

**THIRD GENERAL MEETING
WITH THE
INSPECTOR OF THE
POLICE INTEGRITY COMMISSION**

**REPORT OF THE COMMITTEE ON THE
OFFICE OF THE OMBUDSMAN & THE
POLICE INTEGRITY COMMISSION**



DECEMBER 1999

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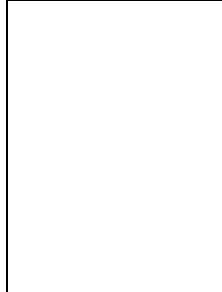
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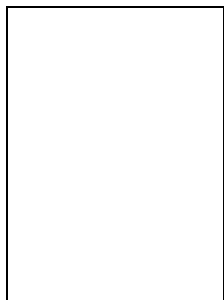
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COMMITTEE MEMBERSHIP

LEGISLATIVE ASSEMBLY



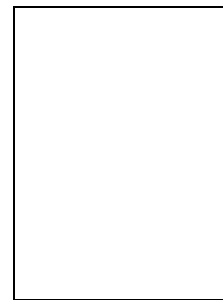
Mr P Lynch MP
Chairperson



The Hon D Grusovin MP
Vice-Chairperson

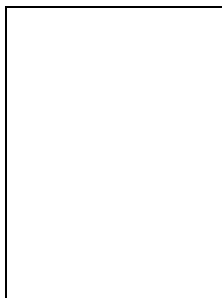


Mr M Kerr MP

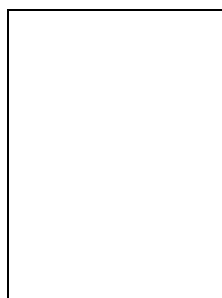


Mr W Smith MP

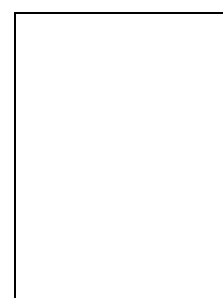
LEGISLATIVE COUNCIL



The Hon P Breen MLC



The Hon J Gardiner MLC



The Hon J Hatzistergos MLC

Secretariat

Ms H Minnican - Director
Ms T Bosch - Research Officer

Ms H Parker - Committee Officer
Ms N O'Connor - Assistant Committee Officer

FUNCTIONS OF THE COMMITTEE

The Committee on the Office of the Ombudsman and the Police Integrity Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the *Ombudsman Act 1974* are set out in section 31B (1) of the Act as follows:

- ◆ to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;
- ◆ to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- ◆ to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- ◆ to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;
- ◆ to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

These functions may be exercised in respect of matters occurring before or after the commencement of this section of the Act.

Section 31B (2) of the *Ombudsman Act* specifies that the Committee is not authorised:

- ◆ to investigate a matter relating to particular conduct; or
- ◆ to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- ◆ to exercise any function referred to in subsection (1) in relation to any report under section 27; or
- ◆ to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or

-
- ◆ to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.

The Committee also has the following functions under the *Police Integrity Commission Act 1996*:

- ◆ to monitor and review the exercise by the Commission and the Inspector of their functions;
- ◆ to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- ◆ to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;
- ◆ to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and
- ◆ to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Act further specifies that the Joint Committee is not authorised:

- ◆ to investigate a matter relating to particular conduct; or
- ◆ to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or
- ◆ to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The *Statutory Appointments (Parliamentary Veto) Amendment Act*, assented to on 19 May 1992, amended the *Ombudsman Act 1974* by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the *Ombudsman Act* provides:

“(1) The Minister is to refer a proposal to appoint a person as Ombudsman,

Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.

- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.
- (5) In this section, a reference to the Minister is;
 - (a) in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
 - (b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and
 - (c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*.”

CHAIRMAN'S FOREWORD

The third General Meeting with the Inspector of the Police Integrity Commission was held on 3 November 1999. This was the first occasion on which the new Committee on the Office of the Ombudsman and the Police Integrity Commission met with Inspector Mervyn Finlay.

During 1999 the Inspector of the Police Integrity Commission had undertaken a comprehensive review of the controlled operations legislation, in addition to performing his statutory functions under the *Police Integrity Commission Act 1996*. The Committee noted that the recommendations made by the Inspector following this review were generally accepted by the agencies and other parties which had participated in the exercise.

The Committee also examined the work undertaken by the Inspector in dealing with complaints concerning the conduct of the Commission or its officers. I would like to congratulate the Inspector on his treatment of complaints and the reports he has produced in this regard. Inspector Finlay made a number of recommendations to the Commission for changes to certain of its procedures for dealing with external correspondence and the Committee was pleased to note that the Police Integrity Commission responded by promptly giving full effect to the Inspector's recommendations.

The Committee remains concerned that the Inspector is still not able to access TI material as the necessary legislative amendments have not been made to the *Telecommunications (Interception) Act (Cth)*. Lack of access to TI material has significant implications for the performance of the Inspector's functions and the Committee intends to monitor this situation in anticipation of legislative amendments to remedy this difficulty. The Commonwealth Attorney General has indicated that a bill will be introduced in 2000 which will enable the Inspector to access TI material.

I would like to thank the Inspector and my Committee colleagues for their participation in the proceedings. The General Meetings with the Inspector continue to play a positive part in the ongoing relationship between the Committee and the Inspector.

Paul Lynch MP
Chairperson

INSPECTOR'S OPENING STATEMENT

As this is the first General Meeting of the new Committee on the Office of the Ombudsman and the Police Integrity Commission, I will take the opportunity of making an opening statement. I have prepared an 18-page document for this purpose. At the end of what I wish to say, I will ask leave to table that document. I will not endeavor to summarise it and certainly not to bore you to tears by reading it, although I hope it may be found helpful, particularly by those who are new to the Committee.

It may be more helpful if I shortly outline the history of how this office evolved, because I think it is of assistance in understanding that to appreciate the operations of its functions today. There are really two people who have responsibility for this office. The first—and earlier in time as an indirect responsibility—is Justice Robert Hope. Some of the Members may have read obituaries of his death last month and may remember that he presided over two Royal Commissions of the Commonwealth.

The first Royal Commission was in 1974, at the request of the then Whitlam Government, which appointed him as Royal Commissioner to look into the activities of the Australian Security Intelligence Organisation [ASIO], the Australian Secret Intelligence Service [ASIS], and three other agencies, which I will refer to as the security and intelligence agencies of the Commonwealth. The second Royal Commission was in 1983 when then Prime Minister Robert Hawke asked him to review ASIO's performance since the earlier inquiry.

One event which you may recollect particularly triggered off the second inquiry was the flawed training exercise conducted by ASIO in Melbourne, simulating the rescue of a hostage from a hotel, but unfortunately without advising the management that a door would be knocked down, people would be wearing masks, et cetera.

Justice Hope recommended that a body be set up as a watchdog to review adverse decisions affecting people associated with the agencies and to achieve independent scrutiny of the legality and propriety of their activities. That resulted in the Commonwealth passing a small Act called the *Inspector-General of Intelligence and Security Act 1986*. At the time of my appointment in 1997 to this office, the then Commonwealth Inspector-General was Ron McLeod, who is now the Commonwealth Ombudsman. William Blick is the present Inspector-General.

The Inspector-General is appointed by the Governor-General on the recommendation of the Prime Minister, who is required first to consult the Leader of the Opposition before any nomination is put forward. The function of that body, the Commonwealth Inspector-General, is that it has a primary duty to provide assurance to the Government, and through it the wider community, that Australia's intelligence and security agencies conduct their activities within the law. That is one of my roles in this sphere. Secondly, to act with propriety—which is another of my roles—and thirdly, the body is to comply with ministerial guidelines and directions and to act consistently with human rights.

That body also makes an annual report. The annual report handed down last month disclosed that in the last reporting year a total number of complaints leading to preliminary or full inquiries was down to fifteen, of which twelve have been finalised. The Office of the Inspector-General is larger than my own, it is physically situated in the premises of the Prime Minister and Cabinet department and has a small staff of about six.

Second, and more directly, this office owes its origin, of course, to the recommendations of Justice James Wood. In February 1996 Justice Wood as Royal Commissioner published the interim report of the Royal Commission into the New South Wales Police Service. Chapter 5 of that report is of particular importance. It proposed a new system to deal with police complaints and corruption investigations in New South Wales. It took into account that there was within the New South Wales Police Service a pattern of corruption which the Commission considered must be urgently addressed to restore public confidence.

There had, of course, been many commissions and inquiries into corruption in police services around the western world. One of the most notable was the Mollen Inquiry into the New York Police Service. Later Judge Mollen, who conducted that inquiry, was to observe that when that inquiry closed, and the spotlight of media attention went out, in the darkness the coils of corruption recommenced writhing and, inevitably, ten or fifteen years down the track another inquiry would be called for.

It was generally accepted by our Royal Commission that a focused, sophisticated and aggressive approach was necessary to uncover and combat serious police misconduct and corruption. You may remember the debate largely centred on the model then appropriate for New South Wales and the agency or agencies which should be tasked with appropriate responsibility, and all existing agencies were carefully considered.

The Commission, you may recollect, concluded that the model which needed to be adopted was one in which the Police Service retained a meaningful role in dealing with management matters, customer service complaints and certain matters of misconduct. You will recollect the amendment in March this year to the *Police Service Act* in that regard. The model also had to be one in which there is both oversight of the Police Service and an external responsibility to investigate serious corruption.

After careful consideration it was resolved that a purpose-built agency be established, which came to be called the Police Integrity Commission. You may recall that the name first came up as the Police Corruption Commission and that in the House it was considered that a more positive side of the same coin was the Police Integrity Commission, and happily that name was adopted. The Commission recommending that body emphasised that it would provide a fresh approach to the problems, be purpose built with a specific focus on the investigation of serious police misconduct and corruption, and be free of the institutional baggage attached to the anti-corruption system which had failed to deal with corruption of the kind revealed by the Commission.

I would wish perhaps to come back to that later and, with your leave, in an in-camera session give one example of it. The principal function of the Police Integrity Commission was seen to be the detection and investigation of serious police corruption, a key function being to assemble admissible evidence when investigations revealed criminal conduct, and to furnish such evidence to the Director of Public Prosecutions.

Consideration was then given to the accountability of this new, powerful, ongoing body to assure that it be open to public review and accountable to Parliament. The first avenue of accountability acknowledged that there is always a risk that an agency which is heavily committed to covert investigations, relies upon informants, and possesses powers which are both coercive and involve substantial infringement of the rights to privacy, may overstep the mark.

For that reason the Royal Commission decided that there should be a watchdog which was able to respond quickly and effectively to complaints of misconduct and abuse of power but without risking the secrecy of the operations or the confidentiality of informants and witnesses. That watchdog is named the Inspector of the Police Integrity Commission. It was proposed that it should be created by the legislation governing the agency, and that office, it was suggested, might be held by a serving or a former Supreme Court judge, and given powers to audit the operations of the Police Integrity Commission, deal with complaints of abuse of power and other forms of misconduct on the part of its employees, and report on matters affecting the Police Integrity Commission and its operational effectiveness and needs. Part 6 of the *Police Integrity Commission Act 1996* makes those statute provisions for the office of the Inspector. The principal functions are to be found in section 89, and as they are the core ones, I will read them. The section states:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers.
- (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

For the model that I first spoke of, the Inspector-General of the intelligence and security agencies, that was custom made for the purpose in New South Wales, so they are not identical. That last term is identical to section 8(3) of the Commonwealth Act for the Inspector-General. The statute further provides that the Inspector is not subject to the Commission in any respect. It provides extensive powers for investigation and by holding inquiries.

It also includes that police officers or former police officers cannot be appointed, employed or seconded to the service of the Inspector so as to ensure the complete independence of the body. You will remember that the Police Integrity Commission has

a similar provision.

Just as the Police Integrity Commission is a purpose-built agency with its principal functions being the protection and investigation of serious police corruption, so too is the Inspector, as watchdog of that body, purpose-built to provide such oversight. Apart from my annual report to Parliament the fulfilment of my functions is monitored and reviewed by this joint parliamentary committee.

As you will see from my annual report, my position is part-time. I have but one permanent member of my staff. This, I have found, suits the role well. I mention that my office is a block away from the Police Integrity Commission premises at St James Building so as to ensure complete independence. There, from time to time, I will have conferences with delegates from other law enforcement agencies and sometimes with Members of Parliament from other States, as the case may be. In the Police Integrity Commission itself I have a small office that is dedicated for my use. It might be small but the one thing that it houses that is important to me is a computer which gives me unrestricted access to the electronic records of the Commission. The Commission's records are entirely electronic.

I said that I have unrestricted access, but that has one caveat that I wish to refer to later, namely, that telecommunications intercept material cannot be shown to me by the Commission under the present Federal legislation. This is unfortunate and it is a position that I have spoken of in prior annual reports and to a prior committee and it has assisted in representations in this regard. Unfortunately, it has not yet been remedied, although back in September 1998 the Federal Attorney-General advised our State Attorney General that it would be remedied. I will come back to that.

This dedicated office of which I speak is on the same floor as the Commissioner and the Assistant Commissioner, so I have immediate access to them, as I do to other senior officers of the Commission. I have sought to be the physician rather than the surgeon to the Commission. To this end I have worked closely with the Commissioner and the Assistant Commissioner in monitoring its operations for compliance with the laws of the State and in assessing the effectiveness and appropriateness of its procedures relating to the legality or propriety of its activities.

You will understand, I am sure, what I mean by "physician" rather than "surgeon"—endeavouring to avoid problems arising rather than standing back until they have arisen and then coming out and, as a surgeon does, excising them. This, I think, has been effective. I have had the unrestricted co-operation, through the Commissioner, of senior officers. It could be said: By doing so, do you not risk being too close to be objective when complaints have to be dealt with? The answer is: Not at all. As a judge of the Supreme Court I would sit on the Court of Criminal Appeal from time to time when a trial conducted by a fellow judge was under attack in the Court of Appeal because of errors being made in its conduct.

The fact that that judge, who was known to me, was on the same floor or next door to me made no difference because I was simply doing my job. Here, as Inspector, I am simply doing my job when it comes to dealing with complaints. When I have found them justified I have said so; I have made recommendations; and I have found that those recommendations have always been accepted and followed, with the result that it has been unnecessary to hold formal inquiries, that is, using the full panoply of powers of a Royal Commissioner. Such inquiries can be costly, time consuming and resource depleting, not only to this office but to the office involved—the Police Integrity Commission.

No doubt the occasion will arise when such a formal inquiry has to be held, and I have arrangements in hand, with the assistance of the Attorney General and the Minister for Police, to physically accommodate that, with the necessary legal representation. I formally table my opening remarks. These, of course, do not incorporate the historical introduction that I gave. I thought that they may be of assistance to Members to read them if and when they wish to do so.

QUESTIONS ON NOTICE

1. ACTIVITIES & STATISTICS

1.1 How many inquiries have you conducted under s91 of the PIC Act during the last annual reporting period?

Twenty two of which ten (10) matters were dealt with as Preliminary Inquiries concluding in written reports submitted to the parties. A number of those inquiries in turn involved several distinct issues or complaints. These individual complaints are required to be addressed separately within the inquiry. As I observed in my answer to question one (1) of the questions on notice for the second General Meeting with the Committee:

“The term “inquiry” in s91 of the *Police Integrity Commission Act 1996* (“the Act”) includes every investigation undertaken by the Office of the Inspector to deal with a complaint of alleged abuse of power, impropriety or other forms of misconduct on the part of the Commission or officers of the Commission.

Such inquiries generally involve seeking information and submissions in turn from the parties to the complaint until the gravamen of the complaint is clearly established and both parties have had every reasonable opportunity to present relevant material and arguments on the issues identified.

The inquiries usually involve me, as Inspector, accessing by computer relevant electronic records of the Commission.....

Generally, a formal hearing exercising the powers of a Commissioner as conferred by division 1 of part 2 of the *Royal Commissions Act 1923* will only be held where it is necessary by that means to resolve a disputed issue of fact critical to the inquiry.”

As noted in my Annual Report, during the reporting period my office received twenty-eight (28) new complaints relating to the activities of the Commission. As the report notes, apart from the ten (10) preliminary inquiries mentioned above, another “twelve (12) complaints were dealt with informally by a series of correspondence, without proceeding as far as a preliminary enquiry. Some of the complaints require particularly sensitive handling, especially where the matter is assessed as not warranting the time and expense of a full inquiry”.

I propose to add some observations in the confidential session of our meeting.

1.2 Have you found it necessary to refer any matters regarding the PIC or PIC officers under section 90(1)(f) to other agencies?

No.

1.3 Can you provide the Committee with a record of the number of audits conducted since the last General Meeting and identify any trends which have become apparent through the exercise of your functions?

“*Audit*” is a wide term encompassing not only the official examination of records but also my regular meetings with the Commissioner and senior officers of the Commission.

Confining the term to the official examination of the electronic records of the Commission, the number of such audits conducted each month has been as follows:

Month	No. of times audited per month
July 1998	9
August 1998	7
September 1998	3
October 1998	5
November 1998	6
December 1998	4
January 1999	2
February 1999	6
March 1999	5
April 1999	8
May 1999	7
June 1999	8
Total	70

Each of the above audits involved an examination of approximately six (6) different operations.

The wide range of such operations does not permit identifying “*trends*”. I also wish to avoid disclosing the methodology of the Commission’s operations. Generally corruption remains opportunistic. It is inappropriate to comment further in a public document.

1.4 How many times during the 1998-9 reporting period have you used the following powers and in relation to what types of matters:

- **accessing PIC records and taking or making copies of records – s.90(1)(b);**

On the seventy (70) occasions in answer to question 1.3 above. In only a small percentage did I find it necessary to make copies of any record. It is my practice to shred such copies as soon as possible after making use of them.

- **requiring the PIC to supply information or produce documents and other things about any matter, or any class or kind of matters relating to PIC operations or any conduct of PIC officers – s.90(1)(c); and**

-
- **requiring PIC officers to answer questions or produce documents or other things relating to PIC operations or any conduct of PIC officers – s.90(1)(d)?**

The supply of some information, the production of some documents or answer to some questions was sought in each of the twenty eight (28) cases referred to under the heading “*Complaints*” in my Annual Report. In every case the material has been provided to me at my request without the necessity for me to identify the sub-section of s.90 under which the power of the Inspector was being exercised. In addition information was supplied, and where necessary, documents produced, arising out of my regular weekly conferences with the Commissioner.

As to the type of matters in which such powers were exercised these covered a very wide range of matters and operations. Some of the complaints giving rise to the exercise of such powers are summarised at pages eleven (11) to seventeen (17) of my Annual Report.

1.5 Have you held any formal hearings since the publication of your Annual Report for the year ending 30 June 1999?

No. I propose commenting further in the confidential session of my meeting with the Committee.

2. CONTROLLED OPERATIONS

The Ombudsman's 1998-9 Annual Report on Controlled Operations notes a number of breaches by the Police Integrity Commission of the statutory requirements of the *Law Enforcement (Controlled Operations) Act 1997*.

2.1 Do you intend to monitor the Commission's action in response to the findings made by the Ombudsman?

Yes. I have had the advantage of several conferences in this regard with Mr Andrew Naylor, the Commission Solicitor, as well as the Commissioner.

During the course of the Review of the Controlled Operations Legislation all four (4) law enforcement agencies agreed upon draft forms which they should adopt in making applications and granting authorities under the Act. This would also assist the Ombudsman. I dealt with this matter in the recommendations I made in Paragraph 7.15 of my Report of the Review and I draw attention to the forms annexed to the Report and "marked B, C and D", these I recommended be prescribed by regulation.

The report of the Ombudsman for the period ending 30 June 1999, under s.23(1) of the legislation was tabled in Parliament on 5 October 1999. It does not disclose any breach of consequence by the Commission of the statutory requirements of the Act.

2.2 Were any additional resources needed to undertake the review of the controlled operations legislation requested by the Minister for Police and, if so, was supplementation of the Inspector's budget required?

To answer this question, it is necessary to understand that on the 4 June 1997 I was appointed by the Governor as Inspector of the Police Integrity Commission for a period of three years, on a part time basis, effective from date of appointment. The "part time basis" is reflected by the agreed salary being paid only for those days or half days in each month upon which I am engaged in the business of the Office of the Inspectorate. As Inspector of the Police Integrity Commission I have an existing statutory role under s.20 of the *Law Enforcement (Controlled Operations) Act 1997*, to oversight ethical and professional standards for Controlled Operations as set out in the code of conduct.

I was asked by the Hon Paul Whelan, LLB, MP, Minister for Police, to undertake, and report on the results of, a review for the Minister to determine (pursuant to S.32 of the Act) whether:

The policy objectives of the Act remain valid; and
The terms of the legislation remain appropriate for securing those objectives.

I was advised that the Ministry would make available any assistance which I may require for the Review. In particular, Ms Annie Davis, Senior Policy Analyst, with the Ministry for Police acted as Co-ordinator for the purposes of the Review. With her assistance I conducted the Review using the approaches set out in the section entitled "Review Process" at pages eight (8) and nine (9) of the report of the Review tabled in Parliament.

The Ministry for Police is responsible for providing administrative support for the Inspector.

It was understood that the Review would be conducted simultaneously with the continued performance of my statutory responsibilities as Inspector under the *Police Integrity Commission Act*. Assistance was also given within the Ministry in the printing of my report for the Minister. The principal work of the Review was carried out by me in March 1999. This involved me working twenty one (21) days in that month (about twice the average workload).

In short the additional resources needed to undertake the Review of the Controlled Operations Legislation were provided from within the Ministry and the additional days of work required by me, as Inspector, were paid by the Ministry under the terms of my appointment. Small meetings for the Review were held within my Office. The larger meetings were held in the large Conference Room of the Police Integrity Commission by arrangement with Judge Urquhart, QC, the Commissioner of the Police Integrity Commission.

2.3 How did you accommodate the workload created by the review with the performance of your statutory responsibilities under the *Police Integrity Commission Act*?

This was accommodated by my working for such additional days during the period of the Review as were needed to undertake the Review and at the same time perform the statutory responsibilities of the Inspector under the *Police Integrity Commission Act*.

3. COMPLAINTS

In your Annual Report for the year ended 30 June 1999 you refer to three matters arising from complaints which had not been finalised at the time of reporting.

3.1 What were the outcomes in relation to these complaints?

Re. complaint (A) – this was concluded by a report of Preliminary Investigation dated 6 July 1999. This complaint included the submission by the complainant of three hundred and sixty eight (368) pages of annexures. These called for careful reading.

Two of the concluding paragraphs of my report were as follows:

“In the result I determine that there is no warrant for any further investigation of the alleged impropriety in the conduct of the Commission.

As I noted in my letter to the complainant of 21 June 1999, *“This Office has no jurisdiction whatsoever to review an investigation and report by the NSW Ombudsman”*. I also reiterate that the Office of the Inspector of the Police Integrity Commission has no jurisdiction to deal with a complaint against a judicial officer.”

Re. complaint (B) – this is the matter to which I referred in a letter dated 1 October 1999 to Ms Helen Minnican, the Director of the Joint Parliamentary Committee, wherein I noted:

“As a matter of courtesy to you I advise that I have closed the file at this stage, owing to the failure of the Solicitor for the complainant to provide further particulars, nor indeed to make any reply to that request, nor to subsequent communication.”

Further comment should be restricted to a confidential session.

Re. complaint (C) – this was a complaint aptly described by the complainant as *“primarily one of customer service”*. I closed the file after writing to the complainant on the 3 August 1999 a letter, which excluding matters of identification, is as follows:

“I refer to my letter my letter of 26 July 1999 (Our Ref.).

The Commissioner Judge Urquhart, QC, advises me that he is very conscious of the regrettable oversight by the Commission in failing to give a timely response to your original letter of 7 May 1999.

I trust you have received the Commissioner’s personal letter extending his apology for *“the Commission’s discourtesy in neither acknowledging nor*

responding earlier than 22 June to your letter of 7 May 1999”.

I enclose a copy of his letter to you, which he has made available to me.

I trust this meets your *“issue of concern”* as you appropriately expressed it, *“primarily one of customer service and my dissatisfaction with having received no acknowledgement from them about my letter”*.

I wish you to understand that I have also discussed with the Commission the steps it has taken *“through the managerial process here at the Commission, to make sure that it is not repeated”*. I consider that the system now adopted provides both at the direct user level and managerial level a method whereby all external correspondence is considered promptly and all actions, to be taken along the chain that will ultimately lead to *“matter finalised”*, are taken within set time frames.

I conclude by wishing you well and thanking you for bringing this matter to my attention.”

3.2 In how many of the 28 new complaints relating to the activities of the PIC did it prove necessary for you to access relevant electronic records of the Commission as part of your inquiries into the complaints?

I accessed the relevant electronic records of the Commission in each of the ten (10) matters which were dealt with as Preliminary Inquiries concluding in written reports submitted to the parties.

I also accessed relevant electronic records of the Commission in each of the six (6) matters to which I refer in the second, third and fourth paragraphs of my Annual Report under the heading *“Complaints”*. I only found it necessary to refer to such records in a small number of the remaining twelve (12) complaints which were dealt with informally by a series of correspondence without proceeding as far as a Preliminary Inquiry.

3.3 Are you satisfied that the Correspondence and Actions Tracking System (CATS) introduced by the Police Integrity Commission has resulted in improvements to the effectiveness and appropriateness of the Commission’s procedures for dealing with external correspondence?

Yes. The CATS is a helpful one. There is always the risk of individual human error. See for example the outcome of the complaint marked (C) in 3.1 above.

3.4 What has been the result of your monitoring of the development and application of the Commission’s document *“Procedures and Guidelines for the notification of corrupt findings to affected individuals and responding generally to requests for dissemination of holdings”*?

There are no outstanding responses in relation to requests for material to support applications for Judicial Review under s.474 (Part 13A) of the Crimes Act. A specific computer program (numbered on Detrak) contains a schedule of all requests made in relation to review of convictions. This schedule sets out by whom the request is made, for example Legal Aid Commission or Crown Solicitor; the name of the person on whose behalf the application is made; the name of the officer(s) implicated; the date of receipt of the application; the date of compilation of the material; and the date on which the response was sent on.

CD Roms of the transcript of Royal Commission hearings have been made available to Corrective Services. Similar arrangements are being made with Corrective Services concerning the transcript of Commission hearings.

Protocol is also in place with the Attorney General’s Department concerning Part 13A matters.

It should be observed however that in any given case where the Commission may find evidence of Officer ‘X’ being involved in corrupt process, eg. falsifying evidence, the Commission will not be aware of the names of other matters over the years in which Officer ‘X’ may or may not have taken part in corrupt process.

4. REPORTS FROM THE PIC

4.1 Have there been any significant changes in the procedures used by the Commission in the handling of Category One complaints since the last General Meeting?

No. In my answer to question five (5) of my Questions On Notice in June 1998 I provided a short summary of the procedures operating. This I recorded as follows:

“The Commission’s procedures relating to the handling of Category One complaints changed early in the year (1998). A short summary of the procedures now operating are as follows:

- 1) Pursuant to section 67(a) of the *Police Integrity Commission Act 1996*, an agreement between the Commissioner for the PIC and the Ombudsman redefined the class or kind of complaint which should be referred to the Commission. Generally, this focussed more on serious police misconduct.
- 2) Complaints made on or after 1 February 1998 are dealt with by the Screening Committee in accordance with the detailed definition under (1) above.
- 3) That a 5 person Screening Committee (which includes the Assistant Commissioner and the Director, Operations and Special Services) meets on a weekly basis to consider complaints received by the Commission. These may be referred (by the Police Service or the Ombudsman) or non-referred (directly from an individual or another agency).

The Screening Committee has a role ranging from receiving every initial complaint sent to the PIC (referred or non-referred) to consider whether it is a Category One complaint to making recommendations to the Commissioner/Assistant Commissioner as to the action to be taken by the Commission on Category One complaints pursuant to Part 4 of the Act and on reports received from the Police Service.

- 5) In respect of all Category One complaints made on or after 1 February 1998, the Commission not only makes an initial decision but also takes continuing action. Recommendations are of specific kinds: For example, the PIC conducting a full investigation, ie, taking over the investigation from the Commissioner of Police (s70); or the PIC conducting a preliminary investigation to decide whether to make the conduct complained of, the subject of a more complete investigation etc (s24); or to oversee the investigation conducted by the Police Service (s13); or to monitor the investigation conducted by the Police Service (s14(b)).

In every case the complaint is given a code name and number. In the new computer system a tab automatically recalls a complaint, after a limited period, for review.

- 6) The Operations Advisory Group (OAG) consisting of four members including the Assistant Commissioner and the Director, Operations and Special Services, has the role of overseeing PIC investigations including preliminary investigations and of advising the Commissioner/Assistant Commissioner on all stages of the investigations.
- 7) The OAG normally meets every two weeks, unless there is a need to call a special meeting. Minutes of the OAG are kept and recorded in the computer system. These include reports by team leaders. The procedures expressly require decisions to be noted in the Minutes of the meeting and action points to be included.

These procedures, from my observation, are operating satisfactorily. Any further discussion is more appropriate for a Closed Session.”

4.2 Do you continue to receive reports from the PIC on the following and, if so, how frequently:

- **notices to obtain information (s.25);**
- **notices to obtain documents or other things (s.26);**
- **authority to enter public premises (s.29);**
- **applications for and execution of search warrants (s.45); and**
- **applications for and execution of listening device warrants (s.50) and TI warrants?**

Yes, I receive weekly reports from the PIC on each of these matters.

Such weekly reports identify the matter in which one of the powers of the PIC in sub paragraphs a), b), c), d) and e) above, have been exercised. If that power has not been exercised in that week a nil return is shown. During the twelve months of the reporting period the number of occasions in which the various powers were exercised by the PIC was as follows:

Re. a) –	notices to obtain information (s.25)	17
Re. b) –	notices to obtain documents or other things (s.26)	173
Re. c) –	authority to enter public premises (s.29)	1 not proceeded with
Re. d) –	applications for an execution of search warrants (s.45)	5 (2 not executed)
Re. e) –	applications for and execution of listening device warrants (s.50) and TI warrants	260

Also I audit the applications granted by the Commissioner under the *Law Enforcement (Controlled Operations) Act 1997*, for authority to conduct such controlled operations. In the reporting year the number of such applications was fourteen (14).

As observed above the Office of the Inspectorate is precluded by the present state of the legislation from auditing the legality or propriety of the issue of TI warrants.

5. TELECOMMUNICATIONS INTERCEPTION

In your Annual Report you indicate that the need to amend the *Telecommunications (Interception) Act 1979 (Cth)* to enable the PIC to communicate lawfully obtained telephone intercept material to you is becoming more urgent and that you are now *“unable to assess the effectiveness and appropriateness of those procedures of the Commission which rely wholly or partly upon TI material to found the legality or propriety of its activities”*.

5.1 What problems has lack of access to TI material held by the Commission created in relation to the performance of your statutory functions?

I am precluded from considering either the legality or propriety of the Commission applying for or executing TI warrants.

Further I am precluded from considering the legality or propriety of the Commission's application for an execution of search warrants (infrequent) and listening device applications which rely upon TI material.

The auditing of operations through the Commission's electronic register is also inhibited in perhaps 10-15% of the operations where material strategically relied upon is TI material inaccessible to the Inspector.

5.2 Have you been unable to investigate any complaints about the conduct of the PIC or its officers as a result of this lack of access?

Not as yet.

The Minister for Police has advised the Committee of the Commonwealth Government's failure to include such an amendment in a recent bill which designates the Anti Corruption Commission (WA) and the Queensland Crime Commission as *“eligible authorities”* under the Act.

5.3 Were you consulted by the Commonwealth Attorney prior to the introduction of the *Telecommunications (Interception) Amendment Bill 1999*?

No, nor did I approach the Commonwealth Attorney directly. I agreed with the view of the prior Joint Committee (in discussion on this subject) that it was appropriate for my Office to raise the matter with the State Attorney General for representations to be made through him. This I have done. And, I believe, so has the Attorney, with the

support of the Minister for Police.

By letter dated 21 September 1999 the Honourable Paul Whelan, Minister for Police, forwarded me copies of correspondence he had with Mr Paul Lynch, Chairman of the Joint Committee.

It is indeed disappointing that the Commonwealth missed one opportunity to amend the Telecommunications Interception Act to enable the Office of the Inspectorate to access telecommunications interception product held by the Police Integrity Commission. I have written thanking the Minister and concluded my letter of 30 September 1999:

"I thank you for pursuing this matter. I particularly note the following paragraph in your letter:

"I am advised that the Commonwealth are considering preparing a more substantial package of amendments to telecommunications interception legislation for 2000 and, presumably, the necessary amendments can be included in that package."

I would be pleased to hear that Officers in the Department of the State Attorney General are in contact with their counterparts with the Commonwealth Attorney General, to ensure that the necessary amendments are in fact included *"in that package"*.

COMMENT

At the time of compiling this report, the Inspector still was unable to access telecommunications interception material as the necessary amendments to the *Telecommunications (Interception) Act* (Cth) had not been made. The Committee remains concerned about the impact of this situation on the Inspector's ability to exercise his statutory functions and will monitor the progress made by the Commonwealth Government towards remedying the problem.

6. PROCEDURAL REVIEWS

6.1 What is your current evaluation of the PIC's internal audit procedures?

It is important first to identify such internal audit procedures. These are tailored to the different functions involved and powers exercised by the Commission. They include the following:

Public Finance and Audit Act

Here the audit officer (TAO) has an external audit responsibility. However, the relevant records are all on the electronic register of the PIC, which would permit the TAO carrying out the internal audit. Presently discussions are taking place pursuant to the TAO's Client Service Plan for the PIC. Because of the specialist involvement of the TAO, I have not considered it necessary for the Inspector's Office to become involved in the details under the Public Finance and Audit Act.

Law Enforcement and National Security (Assumed Identities) Act 1998 (NSW)

I make reference to this legislation in my report of the review of the *Law Enforcement (Controlled Operations) Act 1997*. The competent Assistant Solicitor of the Commission is responsible for the internal audit of the statutory requirements under this legislation.

Listening Device Warrants

These warrants are granted by a Supreme Court Judge under the legislation. The Commission does have in place procedures for pre-warrant application and for approval in principle to be granted in advance of and before the necessary documentation is prepared for presentation to a judge. The Commission's solicitor, Mr Andrew Naylor, assumes responsibility for this documentation. My review of these procedures has shown compliance with the legislation throughout the reporting year.

Telecommunications Interception Warrants

Here again there are pre-warrant application procedures in which the Commission's solicitor is responsible for audit internally. I am however, precluded from considering these procedures because of the lacuna in the Commonwealth legislation to which I refer elsewhere. Under the act the Ombudsman conducts an external audit of the records post-warrant.

Search Warrants

There have only been five (5) applications during the reporting year (two (2) of which were not executed). Again, there are in place approval procedures audited by Mr Andrew Naylor, the Commission's solicitor, who is also responsible for considering post-warrant holdings. By this I mean that items seized pursuant to a search warrant are not held for an unreasonable time. I did have occasion to report on one earlier matter in this regard but not in the current reporting year.

Controlled Operations Applications

Again there are approval procedures which are subject to an internal audit by the Commission's solicitor. These are set out in particular detail as the granting authority is not external to the Commission. Post-approval, such operations are subject to the external audit by the Ombudsman and internal consequential audit by the Commission's solicitor. As the Commissioner is the decision maker in such controlled operations the roles of the Operations Advisory Group (OAG), the team lawyer and the Commission's solicitor are important.

Generally my current evaluation of the PIC's internal audit procedures is one of satisfaction. However, it is desirable that such procedures be reviewed from time to time to maintain their continued suitability for the function and exercise of power involved.

TRANSCRIPT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE OFFICE
OF THE OMBUDSMAN AND THE
POLICE INTEGRITY COMMISSION**

—————
At Sydney on Wednesday 3 November 1999

—————
The Committee met at 10.00 a.m.

—————
PRESENT

Mr P. G. Lynch (Chairman)

Legislative Assembly

The Hon. Deirdre Grusovin

Mr M. J. Kerr

Legislative Council

The Hon. P. J. Breen

The Hon. Jennifer Gardiner

The Hon J. Hatzistergos

CHAIR: I welcome The Hon. M. D. Finlay to a meeting of this Committee and thank him for appearing. The purpose of his appearance is, as Inspector of the Police Integrity Commission, to provide information to this our third general meeting.

The Hon. M. D. FINLAY: Before I take the oath, I note that in so far as a purpose is to give privilege to what I say under the *Parliamentary Privileges Evidence Act*, it is unnecessary in that section 17S of the Defamation Act expressly provides that anything the Inspector of the Police Integrity Commission says in his office as such, which I am doing now, is absolutely privileged.

CHAIR: The Committee understands that.

MERVYN DAVID FINLAY, Inspector, Police Integrity Commission, 18 Victoria Road, Bellevue Hill, sworn and examined:

CHAIR: You are appearing in the capacity of Inspector. Have you received a summons under my hand this day?

The Hon. M. D. FINLAY: I have, Mr Chairman.

CHAIR: The appropriate course is to table the answer you have provided. Do you seek to do that?

The Hon. M. D. FINLAY: Mr Chairman, in my role as Inspector I table my answers to the Committee's questions on notice.

CHAIR: I invite you to make an opening statement.

The Hon. M. D. FINLAY: As this is the first General Meeting of the new Committee on the Office of the Ombudsman and the Police Integrity Commission, I will take the opportunity of making an opening statement. I have prepared an 18-page document for this purpose. At the end of what I wish to say, I will ask leave to table that document. I will not endeavor to summarise it and certainly not to bore you to tears by reading it, although I hope it may be found helpful, particularly by those who are new to the Committee.

It may be more helpful if I shortly outline the history of how this office evolved, because I think it is of assistance in understanding that to appreciate the operations of its functions today. There are really two people who have responsibility for this office. The first—and earlier in time as an indirect responsibility—is Justice Robert Hope. Some of the Members may have read obituaries of his death last month and may remember that he presided over two Royal Commissions of the Commonwealth.

The first Royal Commission was in 1974, at the request of the then Whitlam

Government, which appointed him as Royal Commissioner to look into the activities of the Australian Security Intelligence Organisation [ASIO], the Australian Secret Intelligence Service [ASIS], and three other agencies, which I will refer to as the security and intelligence agencies of the Commonwealth. The second Royal Commission was in 1983 when then Prime Minister Robert Hawke asked him to review ASIO's performance since the earlier inquiry.

One event which you may recollect particularly triggered off the second inquiry was the flawed training exercise conducted by ASIO in Melbourne, simulating the rescue of a hostage from a hotel, but unfortunately without advising the management that a door would be knocked down, people would be wearing masks, et cetera.

Justice Hope recommended that a body be set up as a watchdog to review adverse decisions affecting people associated with the agencies and to achieve independent scrutiny of the legality and propriety of their activities. That resulted in the Commonwealth passing a small Act called the *Inspector-General of Intelligence and Security Act 1986*. At the time of my appointment in 1997 to this office, the then Commonwealth Inspector-General was Ron McLeod, who is now the Commonwealth Ombudsman. William Blick is the present Inspector-General.

The Inspector-General is appointed by the Governor-General on the recommendation of the Prime Minister, who is required first to consult the Leader of the Opposition before any nomination is put forward. The function of that body, the Commonwealth Inspector-General, is that it has a primary duty to provide assurance to the Government, and through it the wider community, that Australia's intelligence and security agencies conduct their activities within the law. That is one of my roles in this sphere. Secondly, to act with propriety—which is another of my roles—and thirdly, the body is to comply with ministerial guidelines and directions and to act consistently with human rights.

That body also makes an annual report. The annual report handed down last month disclosed that in the last reporting year a total number of complaints leading to preliminary or full inquiries was down to fifteen, of which twelve have been finalised. The Office of the Inspector-General is larger than my own, it is physically situated in the premises of the Prime Minister and Cabinet department and has a small staff of about six.

Second, and more directly, this office owes its origin, of course, to the recommendations of Justice James Wood. In February 1996 Justice Wood as Royal Commissioner published the interim report of the Royal Commission into the New South Wales Police Service. Chapter 5 of that report is of particular importance. It proposed a new system to deal with police complaints and corruption investigations in New South Wales. It took into account that there was within the New South Wales Police Service a pattern of corruption which the Commission considered must be urgently addressed to restore public confidence.

There had, of course, been many commissions and inquiries into corruption in police services around the western world. One of the most notable was the Mollen inquiry into the New York Police Service. Later Judge Mollen, who conducted that inquiry, was to observe that when that inquiry closed, and the spotlight of media attention went out, in the darkness the coils of corruption recommenced writhing and, inevitably, ten or fifteen years down the track another inquiry would be called for.

It was generally accepted by our Royal Commission that a focused, sophisticated and aggressive approach was necessary to uncover and combat serious police misconduct and corruption. You may remember the debate largely centred on the model then appropriate for New South Wales and the agency or agencies which should be tasked with appropriate responsibility, and all existing agencies were carefully considered.

The Commission, you may recollect, concluded that the model which needed to be adopted was one in which the Police Service retained a meaningful role in dealing with management matters, customer service complaints and certain matters of misconduct. You will recollect the amendment in March this year to the Police Service Act in that regard. The model also had to be one in which there is both oversight of the Police Service and an external responsibility to investigate serious corruption.

After careful consideration it was resolved that a purpose-built agency be established, which came to be called the Police Integrity Commission. You may recall that the name first came up as the Police Corruption Commission and that in the House it was considered that a more positive side of the same coin was the Police Integrity Commission, and happily that name was adopted. The Commission recommending that body emphasised that it would provide a fresh approach to the problems, be purpose built with a specific focus on the investigation of serious police misconduct and corruption, and be free of the institutional baggage attached to the anti-corruption system which had failed to deal with corruption of the kind revealed by the Commission.

I would wish perhaps to come back to that later and, with your leave, in an in-camera session give one example of it. The principal function of the Police Integrity Commission was seen to be the detection and investigation of serious police corruption, a key function being to assemble admissible evidence when investigations revealed criminal conduct, and to furnish such evidence to the Director of Public Prosecutions.

Consideration was then given to the accountability of this new, powerful, ongoing body to assure that it be open to public review and accountable to Parliament. The first avenue of accountability acknowledged that there is always a risk that an agency which is heavily committed to covert investigations, relies upon informants, and possesses powers which are both coercive and involve substantial infringement of the rights to privacy, may overstep the mark.

For that reason the Royal Commission decided that there should be a watchdog which

was able to respond quickly and effectively to complaints of misconduct and abuse of power but without risking the secrecy of the operations or the confidentiality of informants and witnesses. That watchdog is named the Inspector of the Police Integrity Commission. It was proposed that it should be created by the legislation governing the agency, and that office, it was suggested, might be held by a serving or a former Supreme Court judge, and given powers to audit the operations of the Police Integrity Commission, deal with complaints of abuse of power and other forms of misconduct on the part of its employees, and report on matters affecting the Police Integrity Commission and its operational effectiveness and needs. Part 6 of the *Police Integrity Commission Act 1996* makes those statute provisions for the office of the Inspector. The principal functions are to be found in section 89, and as they are the core ones, I will read them. The section states:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers.
- (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

For the model that I first spoke of, the Inspector-General of the intelligence and security agencies, that was custom made for the purpose in New South Wales, so they are not identical. That last term is identical to section 8(3) of the Commonwealth Act for the Inspector-General. The statute further provides that the Inspector is not subject to the Commission in any respect. It provides extensive powers for investigation and by holding inquiries.

It also includes that police officers or former police officers cannot be appointed, employed or seconded to the service of the Inspector so as to ensure the complete independence of the body. You will remember that the Police Integrity Commission has a similar provision.

Just as the Police Integrity Commission is a purpose-built agency with its principal functions being the protection and investigation of serious police corruption, so too is the Inspector, as watchdog of that body, purpose-built to provide such oversight. Apart from my annual report to Parliament the fulfilment of my functions is monitored and reviewed by this joint parliamentary committee.

As you will see from my annual report, my position is part-time. I have but one permanent member of my staff. This, I have found, suits the role well. I mention that my office is a block away from the Police Integrity Commission premises at St James Building so as to ensure complete independence. There, from time to time, I will have conferences with delegates from other law enforcement agencies and sometimes with Members of Parliament from other States, as the case may be. In the Police Integrity Commission itself I have a small office that is dedicated for my use. It might be small

but the one thing that it houses that is important to me is a computer which gives me unrestricted access to the electronic records of the Commission. The Commission's records are entirely electronic.

I said that I have unrestricted access, but that has one caveat that I wish to refer to later, namely, that telecommunications intercept material cannot be shown to me by the Commission under the present Federal legislation. This is unfortunate and it is a position that I have spoken of in prior annual reports and to a prior committee and it has assisted in representations in this regard. Unfortunately, it has not yet been remedied, although back in September 1998 the Federal Attorney-General advised our State Attorney General that it would be remedied. I will come back to that.

This dedicated office of which I speak is on the same floor as the Commissioner and the Assistant Commissioner, so I have immediate access to them, as I do to other senior officers of the Commission. I have sought to be the physician rather than the surgeon to the Commission. To this end I have worked closely with the Commissioner and the Assistant Commissioner in monitoring its operations for compliance with the laws of the State and in assessing the effectiveness and appropriateness of its procedures relating to the legality or propriety of its activities.

You will understand, I am sure, what I mean by "physician" rather than "surgeon"—endeavouring to avoid problems arising rather than standing back until they have arisen and then coming out and, as a surgeon does, excising them. This, I think, has been effective. I have had the unrestricted co-operation, through the Commissioner, of senior officers. It could be said: By doing so, do you not risk being too close to be objective when complaints have to be dealt with? The answer is: Not at all. As a judge of the Supreme Court I would sit on the Court of Criminal Appeal from time to time when a trial conducted by a fellow judge was under attack in the Court of Appeal because of errors being made in its conduct.

The fact that that judge, who was known to me, was on the same floor or next door to me made no difference because I was simply doing my job. Here, as Inspector, I am simply doing my job when it comes to dealing with complaints. When I have found them justified I have said so; I have made recommendations; and I have found that those recommendations have always been accepted and followed, with the result that it has been unnecessary to hold formal inquiries, that is, using the full panoply of powers of a Royal Commissioner. Such inquiries can be costly, time consuming and resource depleting, not only to this office but to the office involved—the Police Integrity Commission.

No doubt the occasion will arise when such a formal inquiry has to be held, and I have arrangements in hand, with the assistance of the Attorney General and the Minister for Police, to physically accommodate that, with the necessary legal representation. I formally table my opening remarks. These, of course, do not incorporate the historical introduction that I gave. I thought that they may be of assistance to Members to read

them if and when they wish to do so.

CHAIR: They will be formally noted as having been tabled.

The Hon. M. D. FINLAY: I draw attention to one matter in my opening remarks—to paragraph 9 on page 14 which refers to the need for statutory amendment. It is the one I referred to earlier. I note in the paragraph at the bottom of the page that the Federal Attorney-General, the Hon. D. Williams, advised—and his advice was to our State Attorney General, which was in a letter from the State Attorney General on 14 September 1998:

The Telecommunications Interception Act 1979 will be amended to enable the Police Integrity Commission to communicate and lawfully obtain telephone intercept material to the Inspector of the Police Integrity Commission to enable the Inspector to fulfil his or her function under the Police Integrity Commission Act 1996.

That, of course, has not yet taken place. I say in the third paragraph on the following page that it is disappointing that the Commonwealth missed one opportunity since then to amend the *Telecommunications Interception Act* to enable this office to access telecommunication intercept products held by the Police Integrity Commission. I appreciate the communication that this Committee and you, Mr Chairman, have had with the Minister for Police in that regard.

CHAIR: The fact that the telephone intercept material has not been able to be accessed by you simply means that, in so far as you need it to do your job, to some extent you cannot do the job that you were really set up to do?

The Hon. M. D. FINLAY: Precisely. I would need to see the basis for some material in order to be able to monitor the lawfulness and propriety of the process. The basis is intercept material which is not available to me. Let me give you an example. This has not arisen, but it is an example that could arise. With a search warrant you may have a complainant saying of a police officer, "My house was entered pursuant to a search warrant and everything was gone through. My family was upset and there was no basis whatsoever for that search warrant to have been sought. That is my complaint." I may then say, "Well that is a complaint. I will certainly inquire into it. When I go to the Commission and say, "Show me the bases upon which you applied for and obtained the search warrant", the Commission will say "We are sorry, it was intercept material, but we are not allowed to show it to you. " That is ludicrous.

The Hon J. HATZISTERGOS: Are you able to look at the warrants for the issue of that material?

The Hon. M. D. FINLAY: Yes.

The Hon. J. HATZISTERGOS: And that would be the basis upon which the intercept orders were granted by the court?

The Hon. M. D. FINLAY: There would be an affidavit. That affidavit, in so far as it relies upon intercept material, is barred to me.

The Hon J. HATZISTERGOS: But what if it does not rely on intercept material?

The Hon. M. D. FINLAY: There is no problem about that. It arises only in those cases that partly or wholly rely on intercept material. There is not a large number, but they will increase with the increasing use of the intercept material. I think that is the probability.

The Hon J. HATZISTERGOS: Have you inspected warrants and affidavits in relation to telephone intercepts which do not contain disclosures?

The Hon. M. D. FINLAY: The warrants and the telephone intercepts are things that I cannot look at. So far as the documentation of an intercept warrant is concerned, that is the responsibility of the Ombudsman. The Ombudsman has responsibility, post-action, of looking at the documentation.

The Hon. J. HATZISTERGOS: I am talking about prior to any action being taken.

The Hon. M. D. FINLAY: I cannot.

CHAIR: Until the Commonwealth Parliament finally gets around to amending its legislation.

The Hon. M. D. FINLAY: Until the Commonwealth passes quite simple legislation.

CHAIR: We have been asking for that for years now.

The Hon. P. J. BREEN: You say that telephone intercepts are on the increase. What do you base that on?

The Hon. M. D. FINLAY: I base that on two things. Each week I am given a report of the number of search warrants, summonses, under sections 26, 28 and 29, which relate to listening devices and telephone intercept warrants. But it just gives me the number. I cannot look at any material. So I know about the number of them, but I cannot look at the material from them. Increasingly and slowly, I come across, in my general auditing, an area from which I am barred on the computer.

The Hon. P. J. BREEN: Do you know the total number of intercept warrants?

The Hon. M. D. FINLAY: No, I do not. I get a report. The Commissioner would be able to give you the precise figures. The Commission keeps records and it gives me the number each week. The Commission gives me all the things that I could be interested in when considering the propriety and legality of the things that are being done. When it is a completely routine or repetitive matter I make a practice of looking at the material

to which I have access so that I can satisfy myself about it. There are internal orders by the PIC now for those mainly conducted by the Commission's Solicitor, Mr Andrew Naylor, or the Assistant Solicitor, but I do the audit myself.

The Hon. P. J. BREEN: Apparently there is no benchmark that you can use to judge this increase in the number of telephone intercepts?

The Hon. M. D. FINLAY: Yes. I can tell the number because I get the bare figure in the weekly reports, and they are not large. But there are more now than there were six months ago.

The Hon J. HATZISTERGOS: The information or the affidavit to obtain telephone intercept warrant goes to a judge of the Federal Court, the Family Court or an Administrative Appeals Tribunal member.

The Hon. M. D. FINLAY: Yes.

The Hon J. HATZISTERGOS: So there is an accountability mechanism in that process?

The Hon. M. D. FINLAY: That is right.

The Hon J. HATZISTERGOS: After the interception is carried out and the product is obtained, an audit is done, I think by the Ombudsman's Office, in relation to the procedural requirements of recording.

The Hon. M. D. FINLAY: The documentation. Yes, there is.

The Hon J. HATZISTERGOS: For the telephone interception?

The Hon. M. D. FINLAY: Yes.

The Hon J. HATZISTERGOS: What is it that you are specifically seeking? Is it the information, the affidavit?

The Hon. M. D. FINLAY: It is the information that is obtained, because that bases (sometimes wholly) the issue of a notice under section 26 or some other action by the use of a procedure open to the Commission. I cannot see the propriety of that action (of issuing such notice) because I cannot look at the material. It is the information that is obtained that is barred that presents the problem.

The Hon. J. HATZISTERGOS: Are you looking at the extent to which telephone interception is being used for the Commission's investigations and the extent to which it is not being used?

The Hon. M. D. FINLAY: Not specifically. If it rose to a degree that would cause alarm bells to ring, that would be an issue that I would certainly be attracted to following, but it is not at that level at all.

The Hon. J. HATZISTERGOS: As I understand it, these telephone interceptions are connected to serious criminal offences. Is that not the test of the legislation?

The Hon. M. D. FINLAY: Yes, basically.

The Hon. J. HATZISTERGOS: Have you any suspicion or reason to think that the interception is being obtained not for the purposes of investigating serious criminal offences but for the purposes of other misconduct?

The Hon. M. D. FINLAY: None whatsoever, no. None at all.

CHAIR: I turn now to controlled operations. You have two hats in relation to controlled operations; you have your normal functions as Inspector of the Police Integrity Commission and at the request of the Minister for Police you carried out a review of the legislation. What I would like to ask you about emerges from the Ombudsman's report. That report suggests that there were something like 181 applications to chief executive officers of various authorities to approve controlled operations.

None of those 181 applications were rejected by CEOs. In one case I think internal affairs said that an application had to be resubmitted and it then approved it. On the first flush of that, with no rejection of any applications, you would have to wonder whether a proper assessment is being made. Is there a danger that CEOs are simply automatically approving anything that comes before them? Do you have any views about that?

The Hon. M. D. FINLAY: I start with the proposition that when an internal approval is given to a particular procedure as against the external one of a judge of the Supreme Court for a listening device or a Federal sphere for a telephone intercept, one is all the more concerned to ensure that there are careful checks and balances, that it was an appropriate application appropriately granted. Controlled operations applications require very stringent and careful preparation to the CEO, and rightly so. But in the review that was held the stringency, difficulty and amount of paperwork required were said by some to be a deterrent; the exercise was too major and too difficult to mount.

The forms that have now been settled with the approval of all the agencies—the Ombudsman has also approved these forms—are ones that will now be common to all the law enforcement agencies. I regard them as comprehensive, and if they are followed that should ensure, as well as one can ensure, that the CEO is presented with a proper thought out presentation of an application. I have looked at the ones with the Police Integrity Commission which are much smaller in number—I think there were 14 in the last reported year—and they have all been in order to my satisfaction.

I do not know if I have completely answered your question. It is a matter always of concern to ensure that there are proper checks to the granting of such applications. However, they are usually fairly major concerns and usually a lot of thought has been given to them. Of course, they can only be approved at the very top level. It is not like anyone at a lower level being able to approve them.

CHAIR: That leads to the point about devolving downwards the power to grant those approvals. Do you have any concerns that if people lower down the hierarchy approve those applications then perhaps a lesser standard is required?

The Hon. M. D. FINLAY: There is a level below which I certainly would have concern. The recommendations that were made here after the conferences of all the representation, all the law enforcement agencies, restricted it to a very high level of accountability.

CHAIR: The Ombudsman's report also itemised what the Ombudsman regarded as breaches by the PIC of some of the relevant rules. Did you review any of the actions referred to in the Ombudsman's report?

The Hon. M. D. FINLAY: Yes, I did. There were some understandable disputes about interpretation of some provisions and there were some errors in all the agencies in the paperwork in the early days. The Ombudsman correctly pointed to that. In the last report there was nothing of anything consequence with the Police Integrity Commission which was under challenge by the Ombudsman.

Mr KERR: You mentioned there was some dispute as to interpretation. Have those disputes been resolved?

The Hon. M. D. FINLAY: Yes they have. They have been resolved by the Police Integrity Commission's solicitor. While not acceding that his interpretation was wrong, he agreed that for future operations the strict interpretation should apply, and I think that is the right way to go.

CHAIR: I turn now to the activities in the statistics section and the way you deal with audits. I am interested in what exactly an audit involves. On page 3 of your answers you have set out a timetable in which you refer to the number of times you audit things in a month. Each audit refers to six different operations. In July there were nine audits so that is 54 separate operations of some kind. What exactly does that involve?

The Hon. M. D. FINLAY: It varies. Each operation has a file number and every sub-piece of work involved in that operation has a sub-number in that file. This means that on some occasions I may wish only to look at what has happened since I last was there to see the basis for which the section 26 summons has been issued. That would be a short exercise. I know exactly where the operation was up to when I last had a look at it, so I am just looking for something specific which would be a short operation.

In another operation I may look at it—it may not be one of those of which I have had notice of recent activity—just to see where they are at. I may be interested in reading the reports of the organising committee, the OAG, of its fortnightly meeting where it is required by the procedures to detail all matters for consideration when it discussed that particular operation. It is helpful for someone auditing to be able to see a résumé of just what was considered the last time it was considered by the Committee, what was suggested to be done and sometimes whose responsibility it is to contact a particular officer in internal affairs or wherever it may be.

If there is something that I do not understand or raises a query in my mind I will make a little note. I may simply walk out of the room and go straight into the room of the Assistant Commissioner, Mr Tim Sage, or one of the other senior officers. So it varies as to what degree I would need to go to. Sometimes if it is a warrant that has been issued, for example, a search warrant, I would have a look at the documentation so I understand how that came about and how it fitted in with what I had read about the operation before. That is the type of audit. It can best be done—and this is how the Commonwealth Inspector General does it—by a random look at the depth of things; otherwise trying to keep in touch with what is going on.

CHAIR: Do you ever follow a particular investigation through from whoa to go?

The Hon. M. D. FINLAY: Yes, particularly the ones we have been discussing at the regular Tuesday or weekly meetings and how they are using the major ones that may lead to hearings in private or in public.

CHAIR: On page 4 of your answers you make the comment that generally corruption remains opportunistic. That jumped out at me from the page. It almost sounds like it is recanting away from the Royal Commission and a sort of rotten apple theory.

The Hon. M. D. FINLAY: No, I do not mean that at all. Rather, I mean that it is difficult to finger any particular thing. It may be car stripping or some involvement in this area. That may be the area of the day in which you see most of because of the focus of some operations that may be involved and as that comes under the examination spotlight those who are corrupt minded may turn to softer things. That is what I mean by opportunistic. It takes the opportunity of going wherever the money is, which is likely to be a softer target and they are less in danger of being uncovered or exposed.

You may have noticed that in the report of the Commission about two-thirds of the complaints made to the Commission—and sometimes it is misleading to talk about numbers of these things because the seriousness of one may completely outweigh 50 of another—are about those matters that are under the category of seek to pervert the course of justice. You may recollect that the Ombudsman and the Commissioner in the schedule under section 67A, which appears on page 86 of the report of the Police Integrity Commission, one category of complaint is that a police officer has or may have sought or may seek to pervert the course of justice by giving false evidence, by

destroying or interfering with evidence, by withholding or refraining from giving evidence, by fabricating evidence or by influencing another to act.

The statistics published show that to be about two-thirds of the complaints received, and rising, it is suggested. There is a reference to that at page 37 of the report, which states, "Allegations that police officers have perverted the course of justice continue to be the largest class of complaint and are increasing as proportionable complaints."

Mr KERR: You referred to opportunistic corruption in your opening statement and said that the Royal Commission had found a pattern of corruption in the New South Wales Police Service. What is your understanding of the nature of that pattern?

The Hon. M. D. FINLAY: A pattern in the sense of it being widespread and occurring in most areas of police activity. It is not a bad apple in the barrel but is endemic and the young ones are inculcated into the culture. One need only hear that tape, "You are playing first grade now, mate" to appreciate the seriousness of it.

Mr KERR: Do you think that patterns still exists or has it come to an end?

The Hon. M. D. FINLAY: No, it has not come to an end. It has been said before that the most one can hope for is a corruption-resistant Police Service, not a corruption-free one. It has not come to an end. Operations that have been concluded and others still under way show that.

Mr KERR: I understand the justification for your office was to avoid a repeat of what happened with Judge Mollen's inquiry?

The Hon. M. D. FINLAY: That is right. That was really the justification for the Police Integrity Commission as the ongoing, very powerful body and the justification for my office was that such a body really required a watchdog to make sure it does not overstep the mark, or to deal with complaints about it.

Mr KERR: Are records kept of the weekly meetings between you and the Commissioner? Are the meetings formal in that sense?

The Hon. M. D. FINLAY: There are regular things that we have worked out that I require for every meeting and we are in agreement on that. If there is a special matter I will ring up the secretary or the associate to the Commissioner and ask her to include it in the agenda. Likewise, the Commissioner includes anything he particularly wants to talk to me about. Sometimes the Assistant Commissioner will be involved where appropriate. I keep some little notes when I come back from those meetings in case I wish to follow up something, but that is the degree of formality. There is no circulation of minutes afterwards.

CHAIR: There are a standard number of things provided?

The Hon. M. D. FINLAY: That is right, and usually there are two or three additional subjects for the day.

Mr KERR: You have only one permanent staff. Who is that and what are his or her qualifications?

The Hon. M. D. FINLAY: Jacqueline Leddy, who has no legal training. We think of her as a very competent secretary, but she is a little more than that. She now has the capacity to deal with routine matters. She has a demanding requirement to deal with telephone inquiries and whilst the majority of those are civil, unfortunately there are those that do not fall into that category. She is very calm, courteous and level-headed in handling, and sometimes defusing, anger which people have that may have originated five years ago because of an argument with a neighbour, because a police officer did not take the right side and allegedly gave false evidence, and it becomes all consuming to the unfortunate person.

Mr KERR: You mentioned Mollen's inquiry into the New York police force. Is there an equivalent to your office in other countries?

The Hon. M. D. FINLAY: Not precisely. There is an oversight body in London, but it is not really equivalent. You may be familiar with some of the delegates from civilian oversight bodies who came to Sydney for the world conference in September or October, but there was no-one precisely in my position. That is why I dealt with the Inspector-General of the security agencies as an historical background. Western Australia has been considering installing a similar body because of difficulties it has experienced and the [Western Australian] joint parliamentary committee is being asked to deal with complaints that really are not appropriate for a committee to deal with at all

Mr KERR: Question 5.3 on page 13 of the questions and answers asks, "What is the Commissioner's view of the appropriateness of the PIC applying procedural unfairness in performing its functions and making findings about possible criminal and corrupt conduct?" My understanding of your job is that it is to ensure that the PIC does not overstep the mark.

The Hon. M. D. FINLAY: Yes.

Mr KERR: It seems to me that the question of the Commissioner's understanding of procedural fairness would go to the heart of your role. Would you look at his answer and see whether you agree, disagree or would like to make further comments?

The Hon. M. D. FINLAY: I would agree with the first sentence, and indeed it has been the foundation of one or two of my reports in the past that it is bound by rules of procedural fairness.

Mr KERR: Perhaps you should take the question on notice in order to look at the case law.

The Hon. M. D. FINLAY: Yes.

CHAIR: The Commission's Solicitor carries out an internal audit of the statutory requirements of the *Law Enforcement and National Security (Assumed Identities) Act*. That is then audited again by somebody else. Did you perform that further audit role?

The Hon. M. D. FINLAY: No. I have a look at that material but I do not regard myself as the auditor in the sense that the TAO, for example, would go through the detail of everything. That would be an impossible job and would require several of me. I do not think that is required.

(Evidence continued in camera)

(The Committee adjourned at 3.10 p.m.)

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