

FOURTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE INTEGRITY COMMISSION

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

FEBRUARY 2001

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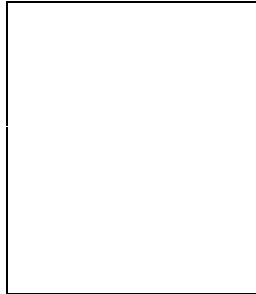
ISBN 07347 6801 x

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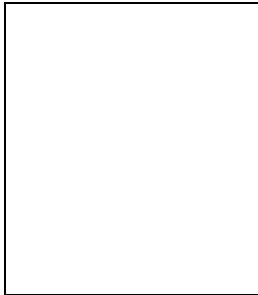
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COMMITTEE MEMBERSHIP

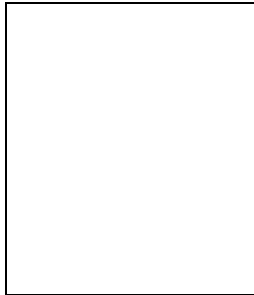
LEGISLATIVE ASSEMBLY



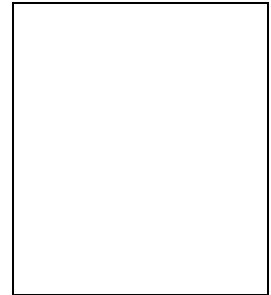
Mr P Lynch MP
Chairperson



The Hon D Grusovin MP
Vice-Chairperson

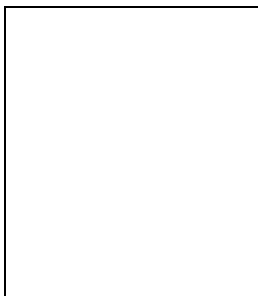


Mr M Kerr MP

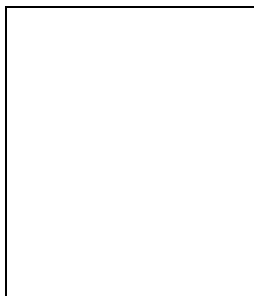


Mr W Smith MP

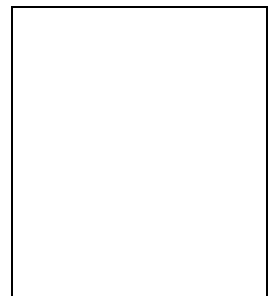
LEGISLATIVE COUNCIL



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The Hon R Colless MLC



The Hon J Hatzistergos MLC

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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* 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*."

The fourth General Meeting with the Inspector of the Police Integrity Commission was held on 1 December 2000.

meetings with the Police Integrity Commissioner and the Assistant Commissioner, where the Inspector is apprised of current activities and has the opportunity to

Police Integrity Commission Act 1996. The Inspector has also continued to audit the respond to individual complaints. He has been instrumental in the Commission's re-assessment of its procedures for dealing with non-referred complaints in a timely

The *Telecommunications (Interception) Legislation Amendment Act 2000* force in June 2000, thus enabling the PIC to communicate telephone intercept material to the Inspector who had previously been prevented access by a legislative the *PIC Act*.

draft Police Service document suggesting changes to the Service's oversight regime which might place sole responsibility for this role with the PIC. The Inspector

serious police misconduct. He felt that any increase in the volume of work done by the Commission would seriously impact on its ability to discharge this responsibility.

of the NSW Police Service (QSARP) was a fundamental and paramount recommendation of the Wood Royal Commission.

Commission and the propriety of its operations are safeguarded by the thoroughness with which the Inspector performs his functions.

Chairperson

QUESTIONS ON NOTICE

THE INSPECTOR'S RESPONSES TO QUESTIONS ON NOTICE FROM THE COMMITTEE

ACTIVITIES AND COMPLAINTS

1. **Are there any activities that have been undertaken or matters which have arisen, since the release of the Inspector's Annual Report for the year ending 30 June 2000, which you wish to raise with the committee?**

See answers to Questions 2, 3, 6, 11, and 12 below.

2. **Could you please provide an update to your Annual Report on the complaints received by the Inspector and the number of audits conducted?**

- (a) Since 30 June, 2000 I have received six fresh complaints. I avoid supplying material from which the complainant or witnesses may be identified or the security of operations put at risk. These six complaints are examples of the range of complaints received by this office. They are:
 - i) a complaint arising out of the publication of the Commission's report to Parliament on 18 October, 2000 in relation to Operation Belfast, alleging abuse of power by the Commission in its conduct and findings adversely affecting a particular witness.
 - ii) a complaint through the Legal Representation Office alleging a breach of the principles of procedural fairness on the part of counsel engaged by the Commission at a public hearing of a particular operation.
 - iii) a complaint from an inmate of a correctional centre referred to me by the Committee on the Independent Commission Against Corruption.
 - iv) a complaint of alleged failure to investigate a *Police Whistleblower* complaint.
 - v) a complaint alleging failure of the PIC to properly investigate a complaint against Internal Affairs (I.A).
 - vi) a complaint alleging impropriety on the part of the Commission in its monitoring an investigation by Internal Affairs by failing to determine that the recommendation of the investigation was unsustainable and in the Commission failing to make overriding recommendations. I have recently completed my preliminary investigation of this complaint which I did not find established.

of current investigations by me.

- (b) As to the number of audits conducted. Confining the term “audit” to the official examination of the electronic records of the Commission, the year were as follows:

Month	
July 1999	5
August 1999	11
September 1999	0
October 1999	10
November 1999	8
December 1999	5
January 2000	4
February 2000	7
March 2000	4
April 2000	7
May 2000	5
June 2000	6
TOTAL	72

Each of the above audits involved examination of approximately five (5+) different operations.

Until I went on leave on 2 October, 2000 the number of such audits conducted in the first three months of this financial year were as follows:

Month	No. of times audited per month
July 2000	6
August 2000	8
September 2000	9
TOTAL	23

Each of the above audits involved examination of approximately five (5+) different operations.

3. Are there any particular trends or patterns which you have been able to identify in relation to the complaints received by the Inspector about the Commission?

No. I assume what is here sought are “trends and changes in police corruption” (95(1)(d) of the Act) as may be deduced from the complaints about the Commission.

If however what is sought are “*particular trends or patterns*” of the complaints themselves, the answer is still no, subject to an observation appropriate to be made in private hearing with the Committee.

4. At page 5 of the Annual Report the statement is made that a significant proportion of the Inspector’s time is given to monitoring and related activities, which include the auditing of operations of the Commission and regular meetings with the Commissioner and Assistant Commissioner. The latter involves discussion of the “issues of the day, longer term strategies and reviewing representative samples of operational files”.

a. What input does the Inspector have during these discussions into the Commission’s longer term strategies?

I and the Commissioner and Assistant Commissioner remain at all times conscious of the respective Statutory roles which we perform. The principal functions of the Inspector under Section 89(1) of the *Police Integrity Commission Act 1996* (the Act) are:

- (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 of the Commission, and*
- (c) *to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*

On the other hand the principal functions of the Commission are clearly set out in paragraph 13 of the Act.

Under the Statute it is the role of the Commission through the Commissioner and Assistant Commissioner to determine what investigations it will conduct and how they will be conducted. It is however the role of the Inspector to assess the effectiveness and the appropriateness of the procedures of the Commission relating to the legality or propriety of its activities and generally to act as watchdog of any activity by the Commission which may give rise to complaints of abuse of power, impropriety or other forms of misconduct.

I have previously expressed my view likening the effective role of the Inspector to that of a “physician” endeavouring to assist the avoidance of problems rather than merely acting as a “surgeon” when called upon by the receipt of a complaint.

We have now been in our respective roles for some three and a half years throughout which the Commissioner, Assistant Commissioner, and I have enjoyed regular contact. From this has developed a relationship which permits easy discussion of the “*issues of the day*” and “*longer term strategies*”.

As to the former our regular meetings include reference to current public and private hearings and important developments in active investigations.

At our meetings I make such comment as I think might be of value but respecting the responsibility of the Commission arising out of Section 13 of the Act. It is inappropriate that I be more detailed. Material reflecting the internal working and methodologies of the Commission and the legal advice of lawyers employed by the Commission to provide same in pursuit of its functions are matters which it is not in the public interest to be disclosed.

As to “*longer term strategies*” the same observations apply. Sometimes the Commission may have several resource intensive investigations proceeding concurrently at critical stages. It is of course for the Commission to determine the priorities of such matters.

As I have noted elsewhere the Commission cannot investigate every complaint involving serious police misconduct. It investigates only those where it considers there is significant public interest involved.

The Commission is an agency with only limited resources. Where it exercises its discretion to pursue one investigation but not another, such discretionary decision cannot be open to challenge by this office unless it is one that no competent authority with the legislative responsibility of the Commission could have arrived at.

b. On what criteria is the representative sampling of operational files based?

If the criteria here sought is of the standard by which the sampling of the operational file is based, the answer is, those functions identified by Section 89(1)(a),(b) & (c) of the Act which subsections are set out above.

If the criteria sought is for the selection of a file as a **representative** sample, there are a range of factors taken into consideration. These include:

- the level of seriousness of police misconduct being investigated;
- the level of activity of the procedures being used in the investigation; and
- any particular aspect attracting attention (including media attention), either arising from my regular monitoring on Detrak or out of discussions with the Commissioner or Assistant Commissioner.

5. **In relation to the complaint, referred to at page 11 of the Annual Report, about the Commission’s response to a Category One complaint by a serving police officer, the Inspector recommended that the PIC monitor the quality of the complaint investigation by the Police Service rather than simply waiting for a final report pursuant to the audit. The Inspector also suggested some tests for use in monitoring the effectiveness of the particular investigation. What type of tests were suggested?**

In my report of 26 June, 2000 I suggested an obvious test for the appropriateness of that particular investigation. I wish to avoid identification of the parties involved, but in general terms it enquired how long does it take the police service to locate and preserve a particular tape of a recorded interview and to compare that recorded interview with a relevant Section 181D Notice and its supporting documents. It concluded with the question “Was the material presented to the Commissioner of Police in support of the Section 181D Notice likely to mislead the Commissioner?”

6. **The Inspector also recommended that the Commission re-assess the effectiveness and appropriateness of its procedures for dealing with individual complainants with a view to achieving a greater timeliness in its preliminary investigations (Annual Report, p.12).**

- a. **Is the Inspector satisfied that this reassessment has been undertaken and that it has addressed the matters raised?**

Yes, the Commission introduced an appropriate new system for this purpose which it describes as follows:

“The Commission has re-assessed its procedures in dealing with such complaints. All non-referred complaints concerning which the Commission is to conduct external inquiries will henceforth be declared preliminary investigations, and as with other such investigations, will be subject to regular consideration by the Assistant Commissioner. The frequency of this consideration will vary depending on the particular investigation, but will not exceed six weeks. This consideration will continue until the matter is finalised. On each occasion that the matter is

considered, the Assistant Commissioner will be advised of any relevant activity and information which has occurred since the previous consideration. The Assistant Commissioner will also be advised of any recommendations concerning contact with the complainant, and where appropriate the Assistant Commissioner will specify and oversight such contact.”

b. Does the Inspector intend to monitor the conduct of preliminary investigations by the Commission

Yes, I do this by electronic access to the Commission’s files. Each operation involves a preliminary assessment by the Commission through its Operations Advisory Group (O.A.G).

7. The section of the Inspector’s Annual Report concerning the “Report of Operations” contains the statement:

Periodically and at random, I access such operations in absolute security.
(p.6)

Precisely how often does the Inspector access such Commission operations?

During the 12 months ended 30 June 2000, I accessed Commission operations approximately 371 times. The number of days in the 12 month period on which such access was availed of was 72. See table in answer 2. above.

LEGISLATIVE REVIEWS

8. To what extent have the legislative reviews relating to *the Law Enforcement and National Security (Assumed Identities) Act 1998* and *the Law Enforcement (Controlled Operations) Act 1997*, and the Working Party assisting Police Service officers to better understand the *Law Enforcement (Controlled Operations) Act 1997*, impacted on the workload and resources of the Inspector and the Inspectorate?

To answer this question, it is necessary to understand that on 4 June, 1997 I was appointed by the Governor as Inspector of the Police Integrity Commission for a period of 3 years on a part time basis effective from the date of that appointment. I was reappointed by the Governor for a further period of two years from 4 June, 2000 on the same terms. 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. I make no charge for those days upon which I attend the office for the purpose of signing off on mail, checking drafts or viewing incoming correspondence and material but which do not require me to attend for at least one half of the day.

The legislative reviews referred to were undertaken in the case of the **Law Enforcement (Controlled Operations) Act 1997** at the request of the Honourable Paul Wheelan LLB, MP, Minister for Police to report on the results of, a review for the Minister to determine (pursuant to Section 32 of the Act) whether:

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

In the case of the **Law Enforcement and National Security (Assumed Identities) Act 1998** I was similarly asked by the Hon. Paul Wheelan, LLB, MP, Minister for Police as Inspector of the Police Integrity Commission to undertake and report of the results of a review, for the Minister to determine, (pursuant to Section 21 of the Act) whether:

1. the police objectives of the Act remain valid.
2. the terms of the legislation remain appropriate for securing those objectives.

My reports on those reviews were tabled in Parliament and made public. In consequence of them I was asked in April 2000 by the Director-General of the Ministry for Police to chair a “working party” to assist in the better understanding by police service officers of the **Law Enforcement (Controlled Operations) Act 1997**. This followed the Minister and the Commissioner of Police discussing problems experienced by the service in relation to the implementation of that legislation.

I was advised that the Ministry would make available any assistance which I may require for the reviews. In particular, Ms Annie Davis, Senior Policy Analyst with the Ministry for Police acted as co-ordinator for the purposes of both the above reviews.

With the assistance of Ms Jennifer Paton, Senior Policy Analyst with the Ministry for Police I chaired two meetings in the Ministry Conference Room to which I refer to page 13 of my Annual Report.

The Ministry for Police is responsible for providing Administrative Support for the Inspector. The office of the Inspector is a portfolio agency.

It was understood that the reviews and the Chairing of the “working party” would be conducted simultaneously with the continued performance of my statutory responsibilities as Inspector under the Police Integrity Commission. Assistance was also given within the Ministry in the printing of my reports for the Minister. In the case of the *Controlled Operations Act* the principal work of the review was carried out by me in March 1999. This involved me working 21 days in that month (about twice the average work load).

Similarly, the principal work of the review on the *Assumed Identities* legislation was carried out by me in March 2000 involving several additional working

days. The time involved in Chairing the “working party” and in preparing and circulating the material involved in that regard was considerably less again.

In short, the additional resources needed to undertake the reviews of the *Controlled Operations* legislation and the *Assumed Identities* legislation, and Chairing the “working party” meetings were provided from within the Ministry. 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 reviews were held within my office. The larger meetings for the reviews were held in the large Conference Room at the Police Integrity Commission by arrangement with Judge Urquhart QC, the Commissioner of the Police Integrity Commission. The two meetings of the “working party” were held in the Ministry Conference Room.

In summary the additional workload created by the reviews and Chairing the meetings was accommodated by my working for such additional days during the periods of the review and of the meetings as were needed to undertake them and at the same time perform the statutory responsibilities of the Inspector under the *Police Integrity Commission Act*.

PIC PROCEDURES

- 9. In relation to the assessment of the Commission’s procedures, the Commission has in place systems requiring requests for applications under sections 25 and 26 of the Act to be written and to identify the relevant investigation. These records may be seen by the Inspector.**

How often has the Inspector seen these records?

In the Year ended 30 June 2000 in approximately eight (8) operations, Section 25 Notices were issued and in approximately sixty-one (61) operations, Section 26 Notices were issued, some with multiple notices. It is my practice to look at those records when I next audit the particular operation on Detrak.

EFFECTIVENESS

- 10. How would the Inspector measure his effectiveness in performing his statutory functions?**

As mentioned above I think of performing the statutory functions of the Inspector with particular emphasis on being a “physician” to the Commission seeking to avoid the emergence of problem rather than the “surgeon” to the Commission operating only to deal with problems which have arisen. My effectiveness in performing the statutory functions of the Inspector may be measured against a range of performance criteria, namely:

- The timeliness of dealing with complaints and conducting inquiries where necessary.

- The acceptance of the reports and recommendations relating to such complaints and inquiries by the complainants and by the Commission and/or Officers of the Commission complained against.
- The acceptance by the Minister and by this Committee of my reports and recommendations.
- The level of assurance I can give this Committee, the Parliament and hence to the public that the Police Integrity Commission is conducting its activities legally and with propriety.

As to the criteria listed above, based on my experience as Inspector of the Police Integrity Commission to date, I can confidently state that the Commission which I oversee is very conscious of its obligation to operate both within the letter and the spirit of the law.

PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1988

- 11. The Inspector's Annual Report for the year ending 30 June 2000, relates that the Inspector is excluded as an investigative agency under the Privacy and Personal Information Protection Act 1998 act, and the office of the Inspectorate is omitted from the exemptions granted by s27 of the same Act. The report states that presumably these were unintended effects of the legislation which could compromise the effective operation of both the Inspector and the Police Integrity Commission.**

Have these issues been resolved?

Not completely. The Attorney-General, the Hon. Bob Debus, MP advised me by letter dated 1 September, 2000:

"I am pleased to advise you that I have approved the making of a direction, pursuant to section 41 of the Privacy and Personal Information Protection Act 1998, to give the Inspector of the Police Integrity Commission the same exemption from the information protection principles as that which applies to law enforcement agencies under section 27(1) of the Act.

This exemption will operate for a six month period to allow legislative amendment to take place to include the Inspector of the Police Integrity Commission in the list of agencies under section 27(1) of the Act."

The Privacy Commissioner, Mr Chris Puplick, advised me by letter dated 5 October, 2000:

"I hereby acknowledge receipt of your letter of 7 September, 2000 with an enclosed letter from the Attorney-General, addressed to me, approving the making of a direction under section 41 of the Privacy and Personal Information Act 1998. The direction, which is currently being drafted, will give you as Inspector of the Police Integrity Commission, the same exemption from the Information Protection Principles as applies to law enforcement agencies under section 27(1) of the Act, for a six month period."

By letter dated 30 October, 2000 I wrote to the Privacy Commissioner including:

*“You say in the first paragraph of your letter that ‘The direction, **which is currently being drafted ...**’ (emphasis added). Would you kindly advise me whether such direction has been made. If not please advise me of the date on which it is expected it shall be made.”*

I note however that the combined effect of s56 of the Act, and the existing exemptions in the Privacy Act, mean that the omission of the Inspector from the specific exemptions is unlikely to be of immediate concern.

I anticipate that I shall be able to update this answer to the Committee on 1 December, 2000.

TELEPHONE INTERCEPT MATERIAL

12. Have arrangements been completed for you to have access to telephone intercept material obtained by the Commission should you require it?

Yes. Procedures have been agreed between the Commission and myself to facilitate my access to the material.

QUESTIONS WITHOUT NOTICE

TRANSCRIPT OF PROCEEDINGS

REPORT OF PROCEEDINGS BEFORE

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

GENERAL MEETINGS

At Sydney on Friday, 1 December 2000

The Committee met at 10.00 a.m.

PRESENT

Mr P. G. Lynch (Chair)

**Legislative Council
Assembly**

The Hon. R. Colless
The Hon. J. Hatzistergos

Legislative

The Hon. Deirdre Grusovin
Mr M. J. Kerr
Mr W. D. Smith

MERVYN DAVID FINLAY, QC, Inspector, Police Integrity Commission, 18 Victoria Road, Bellevue Hill, on former oath:

CHAIR: Could you please state your occupation and in what capacity you are appearing?

Mr FINLAY: I am, under appointment of the Governor, the Inspector of the Police Integrity Commission pursuant to the legislation, and I appear in that respect before this Committee.

CHAIR: Did you receive a summons issued under my hand to attend?

Mr FINLAY: I have, thank you, Mr Chairman.

CHAIR: We have received a submission from you. I take it that that should be included as part of your sworn evidence?

Mr FINLAY: Yes, I would ask that that be tabled and made a public document, Mr Chairman.

(Submission tabled.)

CHAIR: Have you got some preliminary comments to make before we commence questioning?

Mr FINLAY: Only, Mr Chairman, I thought it may be helpful if I just brought up-to-date some of my answers. My written answers were concluded on 15 November, and in some respects I can bring them up-to-date for the benefit of the Committee. May I do it in reverse order and start with the last one on page 9—that is item number 12? The members will remember that that was:

Have the arrangements been completed for you [as inspector] to have access to telephone intercept material obtained by the Commission should you require it?

You may recollect that followed quite a long period which had required Federal amendment to the Federal legislation so as to place me in the position to be able to have access to this material. That finally came through the Federal Parliament and obtained the Royal assent on 23 June last. May I just remind members also that under the State legislation concerning telephone interception, the Ombudsman has a responsibility but is limited to the documentation of the different agencies using it or to whom telephone intercept [TI] warrants are granted. For this reason there was initially a joint meeting between the Commissioner, Judge Urquhart, Mr Bruce Barbour, the Ombudsman, and myself following the passage of that legislation when we went through the procedure that the Commissioner and I would adopt for my application for this material, for the provision of it, and to ensure that it was in a suitable form and have the approval of the body that had the overall oversight so far as the documentation was concerned. That was satisfactorily done and achieved.

Since then, I have had two further meetings, and the Ombudsman has had Mr Ian McCallum Jamieson, who is responsible for this aspect of the Ombudsman's oversight, attend those meetings. The last one involved the demonstration of a new program which has just this last week come into operation within the Commission, giving, through the internal computers, easier access to the TI material. I am involved in that in an appropriate way and in a way that also has the appropriate documentation trail from the Ombudsman's point of view.

The only thing outstanding there, Mr Chairman, is that to utilise that new access just available, training of those immediately involved has been proceeding this week. I anticipate that Ms Karen O'Neill, who is the supervisor of IT at the Police Integrity Commission [PIC], will be giving me instruction next week. This computer instruction seems to be an ongoing fact of our lives, and I am sure that is the experience of others here. But the arrangements are satisfactory and they are working.

That was the comment I would wish to make on the last item. Now may I go to the previous one to that, which was number 11? You may recollect that under the privacy legislation two things were promised to happen. One was that for an interim period the Privacy Commissioner, Mr Puplick, would make a declaration as recommended by the Attorney General under section 41 to put me in an appropriate position with the legislation whilst amending legislation was put through for section 27 to include me in it on an ongoing basis. Both those things have come to pass, and the amendments to the Privacy and Personal Information Protection Act to include the Inspector and my staff in the exemptions under section 27 of the Act along with the ICAC, the Police Integrity Commission and the New South Wales Crime Commission, were introduced into the Legislative Assembly on the 17th of this month.

In the meantime, whilst that is going through the normal legislative process, Mr Puplick, the Privacy Commissioner, on the 20th of this month made the direction under section 41 of the Act giving me as Inspector the same exemption from information protection principles as applies to the law enforcement agencies for a six-month period. So those things have both come to pass, and I do not see any anticipated problems arising out of that legislation. Matter number 8 I would just like to bring up to date.

The Hon. J. HATZISTERGOS: Sorry, inspector, those dates were last month, were they not?

Mr FINLAY: Sorry. Did I say this month?

The Hon. J. HATZISTERGOS: Yes.

Mr FINLAY: I am forgetting that it is hares and rabbits, 1 December. They were both November dates, of course—17 November and 20 November. Thank you. The next matter that I wish to mention is number 8. They were questions arising out of the part that I had played in reviewing the assumed identities legislation and prior to that the controlled operations legislation and then chairing a working party relating to the controlled operations legislation. The answers were as there but, if I may just

note, under the amending legislation, the further review of the Law Enforcement (Controlled Operations) Act will now be undertaken as soon as possible after today, the 1st of this month (1 December 2002).

Sorry, if I may go back, the regulations commenced today, Friday, 1 December. Members may have noted, through that, that the regulations brought into operation a number of forms that will now be part of and will be universal for all the law enforcement agencies, and are less likely to cause problems and challenges to the exercise of those applications. There was some delay in those forms being prescribed. They were being made as simple as possible, but the subject matter did not lend itself to a very simple format, and no doubt there will be some learning process of the agencies in that regard.

That was the second matter that I wished to mention, that the amending legislation put a further review back two years as from today. So the further review of that controlled operations legislation will now commence two years from this day. That also means that I will not be part of that because my extended term concludes in 18 months, on 4 June the year after next, so it will be some other person who will no doubt be asked by the Minister to conduct that review when it comes to pass. I anticipate those regulations that have now come into operation will help the agencies. They are ones that are applicable to all of them. They are uniform and I think once they get used to them they will work more easily.

May I go back to No. 5? I was asked there concerning a report that I had made with the recommendation that the Commission monitor the quality of the police investigation rather than simply waiting for a final report on the audit. I was asked what type of tests and I set out the type of tests that were tailor-made, of course, to the particular case. I would just like to bring that up to date, that the Police Service has now confirmed that the tape of the recorded interview was preserved and a transcript of it has been compared with the section 181D notice and the supporting documents.

The Commission itself has also made that comparison and has concluded that the material presented in support of the 181D notice was not likely to mislead the Commissioner. I just make that note because the overseeing by the Commission in the form of monitoring has in fact been hands on. It has not only relied on reports but has looked at the critical material itself, which I found satisfactory. Now that brings me back to one remaining matter I wish to mention, Mr Chairman, and that is number 3:

Are there any particular trends or patterns which you have been able to identify in relation to the complaints received by the inspector about the Commission?

You will notice that my answer is, no, subject to an observation appropriate to be made in private hearing with the Committee. Will I reserve that until later?

CHAIR: We might go into private session at the conclusion of the public session.

Mr FINLAY: Subject to that, those are the matters I wished to mention.

CHAIR: Thank you, Mr Inspector. If I can commence questions by drawing your attention to some recent comments by the Commissioner of Police about the nature of oversight bodies and the like. One of the suggestions that has come from him or from documents from his department is that the jurisdiction of the Ombudsman ought be changed so that it has no oversight role in relation to the police. By implication, one assumes that all investigations of an oversight nature would be conducted by the Police Integrity Commission. Given your role as Inspector of the Police Integrity Commission, I wonder whether you would have a view about that proposal and which implications it might have for the PIC?

Mr FINLAY: May I preface my answer by saying that until the qualitative and strategic audit of the reform process [QSARP] report is made public by the Minister and the response of the Commissioner of Police on behalf of the Police Service is also made public, together with comments thereupon by the Commission under section 14A of the Act, I, as Inspector, should make no hypothetical assumption or comments on hypothetical assumptions that may not accord with what comes out there. But if I may, however, respond in very broad sense, I do see indirectly some of the work of the Ombudsman in this area.

Indeed, in some instances, I become involved in meetings with senior inspectors of the Ombudsman when there is an overlapping interest and sometimes I am asked to do this. Speaking purely from my own experience which is limited to that personal type of contact, I have found the oversight work of that area of the police investigation by the Ombudsman to have been very professional. That has been the experience of the material that I have been involved in. It is also very extensive in the number of complaints and the amount of response work that it engenders, often not at a very deep level but at a very important level from the point of view of the complainant, and that would be very time taking.

I am extremely conscious that the legislation concerning the Police Integrity Commission is tailor-made legislation for it to be free to deal with matters of serious police corruption, serious police misconduct and, even then, necessarily has to be limited to investigate those ones in which it feels there is a public interest involved. Otherwise the volume of work just makes it impossible for it to effectively carry out its custom-made role. The Commissioner will speak for himself in this respect, but I would not think that he would suggest that his body requires any extension of this area of responsibility. It deals with those matters that it considers in the public interest to be very serious that it should personally take over.

CHAIR: In effect, the transference of the Ombudsman's work to the PIC would flood the PIC with a whole lot of less serious matters and deflect it from getting on with the investigation of serious aspects of police misconduct.

Mr FINLAY: I agree with you, Mr Chairman.

CHAIR: In relation to the QSARP, I would assume from the comments you made earlier that you would be concerned in relation to the process of reform in the Police Service if the QSARP process were terminated as has been suggested?

Mr FINLAY: It was a fundamental and enormously important recommendation of the Royal Commission.

CHAIR: One of the other proposals that has been mooted is an outsourcing of police functions. I am wondering whether you have any concerns about that in the sense that the oversight role that exists for both the PIC and the Ombudsman on current legislation would not extend to bodies to whom police functions were outsourced and, therefore, we could have people performing police functions without proper oversight?

Mr FINLAY: I have not given that any consideration to be able to respond in a way that would be of any assistance to the Committee.

Mr KERR: Could I ask you, Mr Inspector, just to comment on the proposition that the Police Integrity Commission should be responsible for the external scrutiny of all police complaints, that the Audit Office of New South Wales be responsible for checks on the performance of the Police Service and that the qualitative and strategic audit of the reform process be terminated?

Mr FINLAY: Well, in so far as my first answer to the Chairman dealt with the latter part, I just prefer it to stand as that, if I may. In so far as the initial preface that was put to me there is concerned, I consider, from what I see, that the bodies under their legislative responsibilities are working effectively under, often, a lot of difficulties at the moment. I certainly have seen no reason to, for example, consider making any special report through this Committee to Parliament suggesting that the charter of the Commission be in any way altered.

Mr KERR: Have you had any communication with the Police Commissioner in relation to the reform process?

Mr FINLAY: No, I have not.

The Hon. J. HATZISTERGOS: I just wanted to ask you a question about the Telecommunications Interception Legislation Amendment Act, which was given Royal assent on 23 June. Have you taken any attitude to that legislation, particularly in terms of how you are going to audit interceptions, whether you are going to go back in time, or what approach you will take?

Mr FINLAY: May I just outline the way that after discussions with the Commissioner I put it into operation, or we have put it into operation. It is that any TI warrant that is granted by the Commission is advised to me. It is advised in two ways: one, I have always been receiving advice that it has been granted in the weekly meetings that I have with him but now it has also been advised to me directly in a secure internal computer advice so that I do not have to wait for a week, which it could be if it was just granted the day after the last meeting.

Once that TI has been advised to me, I then give notice to the Commissioner pursuant to the arrangement we have made that I would wish to have access to the hard material or the written material that gave rise to that grant and, in due course, to material that arose by virtue of the intercept, and he, in practice, has been granting

that, and through a secure system, which is so secure that we have to unlock safes, et cetera, I have access to material that is sensitive, that is in writing.

Up to the moment, I have not listened to actual intercept material. I have seen some transcript of parts that were considered important to base further material upon. No doubt, the time will arrive when I will think it appropriate that I should listen to some, but there is an enormous volume of this, as one may appreciate. I do not know whether the Committee has had the opportunity of having a demonstration of how it is gathered, and that would be a matter for the Committee to arrange with the Commissioner, but I am not going back retrospectively to the past. If it should arise out of a complaint on something, I would have to, but it is not feasible for me to do so.

The Hon. J. HATZISTERGOS: Do you go randomly from here on?

Mr FINLAY: I am going to be advised of every TI that is granted, and there is not a huge plethora of them, in order to understand the particular operation and the area and why it was sought and, then, whenever it gives rise to some further action that may be appropriate to have a look at, say, any critical transcript that may arrive. Whether I can do that all the time or whether I may have to be more selective and just choose every third or fifth one will depend, because I do not wish my office to become involved in what I regard as unnecessarily looking at a whole volume of material that could end up with a deputy having been appointed to do it. I do not think that is required, and I do not think it is in the public interest.

Mr SMITH: Inspector, in response to question 4 on page 4, the second-last paragraph, you say:

... the Commission cannot investigate every complaint involving serious police misconduct. It investigates only those where it considers there is significant public interest involved.

Now, I would have thought that any complaint of serious misconduct would be of significant public interest. Would you like to comment on that?

Mr FINLAY: There is always the difficulty such as the High Court has in selecting the appeals that it will grant leave to hear as to what matter is in the public interest and what matter is just in the particular individual interest. The particular individual interest may be so deep and so important that it may be in the public interest it is dealt with. It is always a difficult aspect, and there is a lot of judgment that becomes involved in this. If there is an allegation that the Commissioner of Police or a Deputy Commissioner has done something that is quite improper, that is obviously a most serious matter, but it may be a matter which, seen in the context in which it has come, is not a matter to open up an operation and an investigation using the whole range of facilities and analysts and investigators and lawyers that the Commission brings in to try to do things in depth and properly and fully.

It may be one that is dealt with much more appropriately by being referred to be oversighted by the Ombudsman, for example. You will appreciate that it is often difficult with a particular complaint that may be buried in a whole mound of material to see in a preliminary way whether there is any real risk that there may be substance to it and that it should have a lot of resources spent on it. It may be that

there is just some little grain under the saddle of the person that is very understandable if you can identify it, but it may take a long time identifying, and all the others being built up by perhaps a paranoia, or whatever it may be, of those people who sometimes are troubled by what happens to them in the community.

So it is a difficult selection, but it is responsibly done. There is the operational advisory group, a responsible group with multicapacities—by that, I mean investigative, legal and analytical—and they become very experienced at assessing these matters at an early stage and assessing whether it is a matter that a full-blooded expensive resource-taking operation should be opened up on and a recommendation made to the Commissioner to do so.

Mr SMITH: After that early judgment call, then, would it be fair to say that if it was felt that more resources were necessary, then you would change that early call?

Mr FINLAY: Certainly. I think this is perhaps for the Commission to answer rather than me, but from what I have seen about it, there is an endeavour always to leave a flexibility about these matters, and that is important.

Mr KERR: Mr Inspector, yesterday the member for Bligh told State Parliament:

The community fears that the millions of dollars spent on the Wood Royal Commission have not achieved the expected outcomes. The New South Wales Police Service has become increasingly secretive and rigidly controlled. The Commissioner's publicly-stated distaste for scrutiny by, and accountability to, various watchdogs, as well as the secrecy surrounding the current proposal, are only fuelling these fears.

I just wondered if you had seen any evidence that would support the member for Bligh's concerns.

Mr FINLAY: Mr Chairman, I am most reluctant to comment upon that, if I may, except to do it this way: I would commend everyone in the community to wait until the publications to the Minister of the QSARP report and the official responses to that and what the Minister no doubt will be saying at that time.

CHAIR: Any further questions?

Mr KERR: Leaving aside the document and the final drafting of it, the allegation that the Police Service has become more secretive, in your position, have you had any difficulty in obtaining co-operation or seen any unnecessary secretive behaviour by the police in your role as a watchdog?

Mr FINLAY: There is no answer that is universally accurate or applicable to that. The very nature of corruption, particularly when it is consensual corruption such as bribery where neither party has an interest in anyone knowing about it, is very difficult to locate. The first great benefit the Wood Royal Commission did was to go in at a depth and do the ground work to have that absolutely exposed. I think the present Commission endeavours also to do things at a depth and in an appropriate way and not in a show-pony way at all. I am sure that is what has been happening from my experience.

Mr KERR: So you have not encountered any problems in obtaining the information that you have received?

Mr FINLAY: I have not. That does not mean I have not in all sorts of sources not been always satisfied with the response that is made, but that is what I expect would be happening in areas that I am involved in. People may wish to give you the appearance of complete co-operation but they may not in fact be doing so.

Mr KERR: If you had a response that you regarded as unsatisfactory, you would require a further response, I take it?

Mr FINLAY: I certainly would.

Mr KERR: When you have experienced an unsatisfactory response and required a further response, has there been any difficulty in obtaining that?

Mr FINLAY: You must appreciate that I am limited to overseeing the Commission and complaints against the Commission, not against the Police Service. I underline that a little because many responsible people in the community have the understanding that my office in some way is overseeing the Police Service. It is not doing that. It is limited to being the watchdog to try to ensure as well as Parliament can through the provisions it makes that the huge investigative powers of the Police Integrity Commission are not abused and are not used illegally or improperly.

Mr KERR: Did you have any dealings in relation to the Leigh Leigh inquiry in your capacity as Inspector? From memory that was a murder in the Newcastle area.

Mr FINLAY: I do have, Mr Chairman, a particular investigation that involves one aspect of it but I do not wish to make that public. It is not appropriate that I do. But as with every major inquiry, I try to make myself aware of what is going on and, in a broad sense, I have some feeling of oversight so that I am in a position to fulfil my role, really.

Mr KERR: From your observations, was the role of the Police Integrity Commission or its investigation adequate?

Mr FINLAY: I think you would have read the Belfast report that is available to the public. I see no reason to make any adverse observation about the Belfast report now nor have I seen any reason to make a private report to that effect.

CHAIR: Any further questions? If there are no further questions, we might go into the in-camera session.

(Evidence continued in camera)

(The witness withdrew)

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