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Third Session

REPORT
OF THE
COMMITTEE ON THE
OFFICE OF THE OMBUDSMAN AND THE
POLICE INTEGRITY COMMISSION
ENTITLED
“SECOND GENERAL MEETING WITH
THE COMMISSIONER OF THE
POLICE INTEGRITY COMMISSION”

DATED MAY 1998

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**SECOND GENERAL MEETING
WITH THE
COMMISSIONER OF THE
POLICE INTEGRITY COMMISSION**

**Report of the Committee on the Office of the
Ombudsman & the Police Integrity Commission**

May 1998

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COMMITTEE MEMBERSHIP

Legislative Assembly

- Mr B J Gaudry MP (Chairman)
- Mr J Anderson MP
- Mr A R G Fraser MP
- Mr J S P Kinross MP
- Mr P G Lynch MP
- Mr A P Stewart MP

Legislative Council

- The Hon M Gallacher MLC
- The Hon E B Nile MLC
- The Hon A B Kelly MLC



Secretariat

- Ms H Minnican - Director
- Ms R Miller - Clerk to the Committee
- Ms T van den Bosch - Research Officer
- Ms N O'Connor - Assistant Committee Officer

Committee on the Office of the Ombudsman and the Police Integrity Commission (left to right):
Bryce Gaudry MP (Chairman), James Anderson MP, Andrew Fraser MP, Jeremy Kinross MP, Paul
Lynch MP, Anthony Stewart MP, The Hon Michael Gallacher MLC, The Hon Elaine Nile MLC, The Hon
Anthony Kelly MLC

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 1974* 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.

This 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 1992*, 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 to provide 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 1974* 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

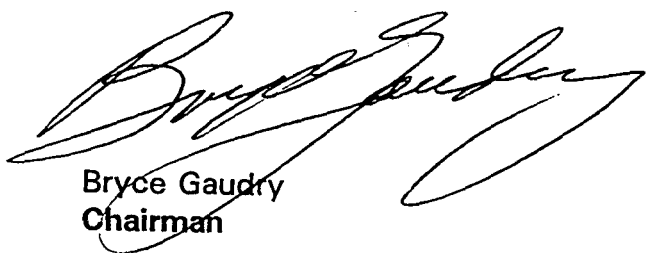
The Committee's second General Meeting with the Commissioner of the Police Integrity Commission was held on 10 December 1997. This report contains a transcript of the proceedings of the meeting, and the written answers to questions provided by the Committee prior to the meeting.

At the time of the meeting, the Commission had been operational for approximately 18 months, although some matters arising from the Wood Royal Commission still occupied Commission time.

The Police Integrity Commission was one of the key reforms arising from the recommendations of the Wood Royal Commission into Corruption in the NSW Police Service. The PIC was established with the objective of ensuring systemic change in addition to investigating incidents of corruption within the Police Service. The Commission's functions, powers, operations and jurisdiction, therefore, are crucial to the success of the reform process, and the oversight provided by the Committee seeks to ensure that the PIC operates as envisaged.

The Commission and the Committee discussed a number of issues important to the reform process. The Employee Management System, the categorisation of police complaints and the police complaints case management system were considered. The problem of the Commission's powers relating to Telecommunications Interception also was addressed.

I wish to thank the Commissioner and his staff for the valuable information they provided to the Committee, and their cooperative approach to the meeting. I would also like to thank my colleagues on the Committee for their participation, and the Committee Secretariat for its assistance in organising the hearing.



Bryce Gaudry
Chairman

COMMISSIONER'S OPENING STATEMENT

Mr Chairman and members of the Committee, may I thank you firstly for the opportunity to make this opening statement. I would like to say a little more about two of the matters that are raised in the questions on notice - telephone interceptions and Category one complaints.

There was some discussion in the media last month about when the Commission became fully operational. Until the Commission is able to conduct its own telephone interceptions, it cannot be regarded as being fully operational. The Commission's current hearings and the Royal Commission's hearings have both illustrated that the successful investigation of serious police misconduct relies heavily on the use of technology.

The same can be said about the investigation of high-level crime generally. The experience of agencies, both here and overseas, which have been authorised to conduct telephone interceptions is that it is a most powerful investigative tool. As the answer to question on notice No. 13 indicates, although we are getting closer to the situation where we can conduct our own interceptions, we are not there yet.

The Commission's Director of Operations Special Services, Mr Andy Nattress, is here today and is able to answer your questions about the processes involved in interceptions. The nature of some of that material may make it better for the whole subject to be dealt with in a confidential session this afternoon, if that is agreeable to the Committee.

There are a number of questions on notice about Category One complaints. And, as you will see from the answers, the area is currently under review by the Ombudsman and by me. I would like to emphasise here that the draft revised schedule attached to the answers is still in that form. Other changes may be made before this schedule is in its final form. Indeed, there is one such change receiving consideration presently by the Commission. (See Appendix 2 for new schedule.)

As well as Mr Andy Nattress, I also have with me the Assistant Commissioner, Mr Sage. He is responsible for operations. Also with me is the Information Manager, Mr Denis Lenihan, and our Director of Corporate and Information Services, Mr Rawson. I have brought with me the four of them so that they can provide to you information pertaining to their particular area of the Commission, and therefore I will be better able, as Commissioner, to provide to you here and now such information as may assist you in the discharge of your duties.

The Chairman has extended the appreciation of the Committee to the Commission for making available to each member of the Committee a view not only of our premises but also of some of the technology which we are able to use to assist us in carrying out our work. On that occasion, you will recall, I extended an invitation, which I repeat now, to all of you that if you would like to have a briefing on any particular aspect of the multi-disciplinary approach which the Commission takes if you think it would be of assistance for you to know what, for example, a criminal analyst does. It occurs to me now, as it did on that occasion, that it is proper for me to accommodate such a request. So I repeat that invitation.

1. MANAGEMENT OF THE COMMISSION

QUESTIONS ON NOTICE

Funding levels

1. In May 1997 the Commissioner advised the Committee that the estimated figure for the PIC's 1997-8 expenditure was \$10.7m. Has there been any variation to this figure?

Yes. The Commission's budget for this financial year is currently \$12.3m. The increase is made up of four elements:

- transfer from the previous financial year of \$0.845m of unspent capital funds;
- additional funding of \$0.433m for the Royal Commission Prosecution Response Unit; this Unit has a staffing level of 5; it was created towards the end of the Royal Commission to deal with matters arising from Royal Commission investigations which are being forwarded to the Director of Public Prosecutions with a view to criminal charges being preferred; it succeeded the Royal Commission's Legal Advising Unit;
- consultancy funding of \$91,000 for the Police Complaints/Case Management System;
- adjustments for maintenance (\$111,000), depreciation (\$66,000) and insurance (\$25,000).

- 2a. Is the current funding provided to the PIC adequate to perform its functions?

Yes; see also the answer to 2b.

- 2b. Are there any particular areas of the Commission's operations which require additional funding in order that they are performed properly and effectively?

Additional funding will be sought in this financial year for telephone interception equipment, and for any further new functions which the Commission may acquire arising from Royal Commission recommendations.

3. How does the Commission propose to demonstrate "value for money" in its work?

The Commission proposes to demonstrate "value for money" in its work by discharging its statutory functions, particularly by detecting or investigating serious police misconduct through its own investigations, and by improving the quality of the investigations conducted within the Police Service.

Staffing levels

At the time of the first General Meeting in May 1997 the Commissioner advised that staffing was a major management issue faced by the PIC. As at 9 May, 1997 the PIC had 46 staff, some of whom were engaged on finalizing Royal Commission work. The expected staffing level given to the Committee was 75.

4. What is the current staffing level of the Commission and to what extent are staff still engaged in Royal Commission work?

The Commission currently has 84 established positions, of which 75 are filled (including the five staff in the Royal Commission Prosecution Response Unit). The nine vacant positions are in Special Services (7 - most in the telephone interception area), Information Technology (1 - the position is being filled on an acting basis) and Administration (1 - the position is in the process of being filled).

The Commission is also accommodating the Royal Commission Wind-Up Team of 20 plus officers who are archiving Royal Commission records and disseminating those of the Royal Commission holdings which were not disseminated to this Commission. The Team is being funded by the Premier's Department. A Commission solicitor who was formerly employed by the Royal Commission may be seconded to the Team for up to six months to assist with the disseminations.

Both the Prosecution Response Unit and most of the Wind-up Team are responsible to officers of the Commission. In addition, the Commission continues to receive requests from the Police Service and other agencies for Royal Commission material.

2. INVESTIGATIVE WORKLOADS

QUESTIONS ON NOTICE

Category One complaints - Serious misconduct & corruption - In Chapter 6 of the PIC Annual Report the following statement is made:

“The Commission does not now have, and while the incidence of such complaints continues at this level will not have, the capacity to investigate more than a small proportion of such complaints. The Commission has the power to take over investigations into complaints which it is exercising and will continue to exercise in appropriate cases and as resources permit. Consistent with the findings and recommendations of the Royal Commission, however, it sees itself as having a role in the monitoring of the quality of investigations carried out by the Police Service, including those conducted by the Office of Internal Affairs, and as to the latter with a view to that Office increasing its efficiency in dealing with such complaints and other police complaints.” (page 23)

The report also states that the PIC has considered 440 Category One complaints, comprising 20% of all police complaints. Of the 390 Category One referred complaints received by the PIC (Police Service - 335; Ombudsman - 55), 369 were referred back to the Ombudsman to be dealt with in accordance with Part 8A of the *Police Service Act*. Upon considering these complaints, the Ombudsman will then decide which cases are appropriate for investigation by the Police Service with Ombudsman oversight.

PREAMBLE TO THE ANSWERS

The answers below to questions 5 to 8 on Category One complaints should be seen against the following background.

In conjunction with the Ombudsman, the Commission is currently reviewing the schedule to the agreement made on 20 December, 1996 concerning the class or kind of complaints which are Category One complaints. As it is 12 months since the agreement was signed, it is appropriate that it be reviewed in the light of the experience of the Commission and the Ombudsman. That common experience has indicated that some classes of Category One complaints are being adequately investigated by the Police Service (notably unlawful access to and dissemination of information). Experience has also indicated that some classes of complaints did not warrant the level of attention from the Commission accorded to other classes of complaints.

The review accordingly has as its aim the inclusion of those matters that warrant the involvement of the Commission. The resultant Category One complaints will reflect a realistic and meaningful statistical level of serious matters for the Commission's attention, as well as enabling it to give attention to such matters whether by way of investigating them itself or by monitoring, auditing and so on the investigations of the Police Service.

A copy of the present draft revision to the schedule is attached. In summary, it envisages the following changes to the present schedule:

- Numbers 6 and 8 to be omitted; but the Commission to be informed of all complaints against very senior officers so that it might take action in those cases where it wishes to do so;
- Number 2 to be modified to confine such complaints to the more serious levels; again, the Commission is to be informed of all complaints at the level of assault occasioning actual bodily harm (the reasons for this can be dealt with in the private session);
- Number 5 to be reworded to confine such complaints to those involving impropriety;
- All the remaining classes to be reworded to include complaints that officers may in the future commit offences.

It is also relevant to note here that the whole issue of Category One complaints and their handling by the Commission will be profoundly affected by the introduction in 1998 of the Police Complaints/Case Management System. As indicated at page 44 of the Commission's Annual Report, the system will enable the Commission to gain confidential access both to Category One complaints (indeed to all complaints) and to the details of the investigations being conducted into them by the Police Service. The implications of the system for the Commission in dealing with Category One complaints are being considered in conjunction with the development of the system itself.

5a. Is there a specific type of Category One complaint on which the PIC focuses its investigations, and what type of Category One complaints are generally referred back to the Ombudsman?

In the period January-June 1997 the Commission undertook investigations of a range of Category One complaints, partly to become aware at first-hand of what was involved in such investigations and thus to place itself in a better position to review investigations by the Police Service.

Of those Category One complaints currently being investigated by the Commission, most fall into classes 1, 5, 7 and 8 on the schedule and/or involve officers in whom the Commission already has an interest or in whom the Royal Commission had an interest. Complaints falling into classes 2 and 6 are generally referred back to the Police Service (but see the Preamble regarding Class Two complaints). As noted, the Ombudsman and the Police Service are devoting resources to the investigation of Class Six complaints.

5b. What protocols have been established to facilitate this arrangement with the Office of the Ombudsman in relation to Category One complaints?

No formal protocols have been established. The issues involved in dealing with Category One complaints are discussed at regular meetings between the Commission and the Office of the Ombudsman. Ombudsman files containing Category One complaints are sent regularly to the Commission, where they are copied and returned.

After assessment by the Commission of these complaints, and Category One complaints received from the Police Service, the Ombudsman is notified of the decisions made on each complaint by the Commissioner or Assistant Commissioner. The Commission has recently begun to recommend to the Ombudsman that specific complaints be investigated under Part 8A of the *Police Service Act*.

6. Do you consider that the proportion of referred complaints sent by the PIC back to the Ombudsman would permit adequate oversight of the majority of Category One complaints?

As indicated in the Preamble, one of the aims of the present review of Category One complaints is to enable the Commission to reach a position where it can monitor, audit etc the investigation of all Category One complaints referred back.

7. How will the Commission monitor the outcomes of the police service investigations oversights by the Ombudsman?

Under the proposed changes the Commission will have a direct involvement in the investigation of all Category One complaints, either by investigating them itself or, where they are referred back, monitoring auditing etc the outcomes of Police Service investigations.

The Committee will be interested in the results of an audit being carried out by the Commission into a sample of Category One complaints referred back to the Police Service in the period January/June 1997. A random 10% sample of the 440 complaints dealt with in that period was identified and the relevant files obtained from the Office of the Ombudsman. The audit is not complete but a preliminary analysis (of 42 files at this stage) indicates that:

- thirty-eight were the subject of some investigation; three of the four not investigated are being further assessed by the Commission;
- of the thirty-eight matters investigated, twenty-five have been concluded in what were generally reasonable time frames; some of the other matters have been delayed pending the conclusion of legal proceedings;
- adverse findings by the Ombudsman or the Police Service were made in three of the twenty-five completed matters; ten of the twenty-five matters are being further assessed by the Commission.

8. Are the PIC's resources adequate to deal with the proportion of Category One complaints retained by the Commission for investigation?

Yes.

The Annual Report states that the Commission has commenced three investigations on its own initiative (total of 36 investigations commenced during the reporting period).

9. Does the Commission anticipate a significant increase in "own initiative" investigations as the PIC is now fully operational?

Yes, particularly if the proposed changes to the classes of Category One complaints come into effect.

10. To what extent is the PIC finalizing matters initiated by the Royal Commission and has this impacted significantly on the investigative workload and effectiveness of the PIC?

The Commission is still finalizing matters initiated by the Royal Commission, either by way of investigation, assessment or dissemination of material to other agencies. This work has had a significant impact on the workload and effectiveness of the Commission, but less so now than was the case earlier.

Performance indicators

The Annual Report identifies several corporate goals and achievement indicators for measuring the Commission's performance over the short-term (pp.29-30).

11. Do you consider that it would be appropriate for the PIC to set benchmarks for the indicators relating to investigations?

Not at this stage. There are several difficulties in setting benchmarks in regard to, for example, the number of persons charged as a result of the Commission's activities. A benchmark can be wrongly regarded as a target. There are also qualitative and quantitative considerations to be balanced: charging, say, ten officers who have improperly had access to official information from motives of curiosity may look impressive; but charging, say, a senior officer who is taking bribes for protecting criminals is arguably more important and likely to have a greater impact on the prevention of serious police misconduct. The Commission will keep the matter under review.

12. How often does the Commission intend to review these indicators?

At least annually.

3. LEGISLATIVE ISSUES

QUESTIONS ON NOTICE

Telecommunications Interception

The Federal Government recently enacted legislation¹ which enables the PIC to obtain warrants for telephone interception such as that held by the Police Service, NSW Crime Commission and ICAC.

13. What impact has the enactment of this legislation had upon the operation of the PIC and the conduct of investigations?

The Commission will not be able to seek interception warrants of its own motion until a suitable declaration has been made by the Commonwealth Attorney-General. The Commission is working towards obtaining this declaration. To receive the product of interceptions conducted on the basis of warrants issued to it, the Commission also needs to obtain and install a range of special equipment - a process which will take some months (see page 29 of the Annual Report). Other agencies which have obtained or may obtain from their own telephone interceptions material of interest to the Commission have been notified that the Commission is now able to receive such material. Some such material has been received very recently.

Controlled operations & the Ridgeway decision - The PIC Inspector advised the Committee during the General Meeting held on 17 November, 1997 that there were concerns that the High Court decision in *Ridgeway v Queen* (1995; 184 CLR 19) may have possible negative implications for the work of the PIC. The Inspector identified a need for legislation in the area of approved covert operations in order to overcome the implications of *Ridgeway*.

14. To what extent has this been a problem area for the Commission and how has it affected investigations into serious corruption and criminal conduct by police?

In addition to its investigative function the Commission also has a function to assemble evidence that may be admissible in the prosecution of a person (including a police officer) for a criminal offence. The *Ridgeway* decision gave rise to concern as to the legal status of evidence obtained during that part of an investigation that involved a controlled operation. The status of undercover operatives was also uncertain given that they may commit an offence in the course of the operation. For these reasons, and given the development of legislation to overcome these and other problems, the Commission has not embarked upon investigations that would require the use of investigative techniques that will be permitted under the legislation. Now that the legislation has been passed, however, and subject to the legislation commencing to operate, the Commission will use these techniques in appropriate investigations. The techniques are not applicable to every investigation of course, but for those

¹ The Telecommunications (Interception) and Listening Devices Amendment Act - assented to 11 November, 1997

investigations in which they will be of assistance the Commission will not be inhibited by the lack of statutory support.

- 15a. Has the Commission been consulted on any proposed legislation for “controlled operations”, i.e. “the segment of covert operations during which an operative is required to participate in otherwise illegal activities in order to collect evidence to arrest a person suspected of serious criminal or corrupt behavior”?**²

For some months, the Commission has been working with the Ministry for Police and the other relevant agencies (the ICAC, the Crime Commission, the Police Service and the Attorney-General’s Department) towards the development of draft legislation to help overcome the consequences of the Ridgeway decision. These consultations led to the preparation of the *Law Enforcement (Controlled Operations) Bill* which has since been passed by both Houses³.

- 15b. If so, does the proposed legislation address the consequences of the Ridgeway decision for undercover operations conducted by the PIC, especially in relation to the admissibility of evidence collected during such operations?**

Yes.

- 16. Does the PIC intend to introduce a code of conduct for operatives involved in controlled operations?**

A Working Group of the four agencies concerned (the Police Service, the ICAC, the Crime Commission and this Commission), convened by the Inspector of the Police Integrity Commission, is drafting such a code of conduct. At this stage it is expected that once the four agencies have agreed on a code of conduct with core provisions, each agency will send to the Inspector the proposed code of conduct it wishes to have prescribed by the regulations (pursuant to s 20 of the *Law Enforcement (Controlled Operations) Act*).

² Evidence from PIC Inspector, Opening address, p.10.

³ Law Enforcement (Controlled Operations) Act 1997 - assented to 17/12/97; proclaimed to commence 1/3/98

4. POLICE COMPLAINTS MANAGEMENT SYSTEM

QUESTIONS ON NOTICE

The Annual Report provides information on the project involving the development of the new Police Complaints Case Management System. The Committee has been forwarded a copy of a progress report on the project and has been advised by the Public Sector Management Office that phase 4 of the project, that is the development of detailed specifications for each agency, has been reached (letter 27/10/97).

17. **What role will the Commission's Steering Committee representative have during the fourth phase of the project and to what extent does the success of the project depend on the PIC's input?**

The Commission's representative (the Assistant Commissioner, Mr Sage) will ensure that the major recommendations proposed by the Commission and accepted in principle by the Steering Committee (see page 44 of the Annual Report) are included in all stages of the development of the System. As a major participant in the project, and because of the need for the Commission to have timely and efficient access to Internal Affairs and Police Service data generally to perform its functions, it is imperative that the Commission ensures that its needs are met.

18. **To what extent will the proposed system integrate with the PIC's internal systems?**

The Commission's position is that the System platform should either be the same platform as the Commission's (DETRAK), or a similar platform which DETRAK can link into without major changes needing to be made.

19. **Other than the initial establishment costs of the PCCMS, what resources does the PIC anticipate will be required to operate and maintain the system?**

An accurate estimate of the additional resources required cannot be made until the system takes on a more definite shape.

5. KEY ISSUES

QUESTIONS ON NOTICE

20. What do you consider to be the issues of key importance in the PIC's Annual Report for 1996-7?

So far as the Commission's powers are concerned, the issue of key importance was the absence of the power to conduct telephone interceptions. The first step towards remedying this situation has now been taken. A further key issue was that of staffing and the related issue of the continued presence of the Royal Commission. As noted above, these have yet to be resolved. All these issues affected the final issue of key importance in the Report, which is the Commission's ability to undertake investigations in accordance with its statutory functions.

Attachment (re Preamble to answers to Questions 5-8)

S 67(a) Agreement between the PIC Commissioner and the Ombudsman re Category One complaints: draft revised Schedule

1. A complaint 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 so to act.
2. A complaint that a police officer has or may have committed or may commit
 - (a) an assault which could form the basis of a charge of inflicting grievous bodily harm or more serious offences against the person; or
 - (b) an offence relating to property (including larceny) where the value exceeds \$5000
3. A complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit for himself/herself or for another in return for failing to carry out his/her duties.
4. A complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence.
5. A complaint that a police officer investigating an offence alleged to have been committed by another police officer has or may have improperly failed to carry out, or may improperly fail to carry out, his/her duties in the course of that investigation.
6. A complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivated or may cultivate a prohibited plant, or supplied or may supply a prohibited drug or a prohibited plant, unless the amount or number of such drug or plant is less than the indictable quantity therefor as specified in the *Drug Misuse and Trafficking Act 1985*

Note: The Ombudsman and Internal Affairs are to be asked to forward to the Commission (not as Category One complaints) copies of all complaints involving police officers

- (a) causing assaults occasioning actual bodily harm; and
- (b) of or above the rank of Superintendent.

REPORT OF PROCEEDINGS BEFORE
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN
AND THE POLICE INTEGRITY COMMISSION

SECOND GENERAL MEETING
WITH THE
COMMISSIONER OF THE POLICE INTEGRITY COMMISSION

At Sydney on Wednesday, 10 December 1997

The Committee met at 1.00 p.m.

PRESENT

Mr B. J. Gaudry (Chairman)

LEGISLATIVE COUNCIL
The Hon. M. J. Gallacher
The Hon. Elaine Nile

LEGISLATIVE ASSEMBLY
Mr J. Anderson
Mr J. S. P. Kinross
Mr P. G. Lynch

(See page 6 for Commissioner's opening statement)

CHAIRMAN: I think Mr Lenihan was here this morning for our meeting with the Ombudsman. Certainly a great deal of our time this morning was dealing with the issue of the complaints management system and the Employee Management System and the conciliation system in which the Ombudsman is involved. I understand that your office is very involved in the ongoing issue of the development of the employee management system.

I raised this morning, in discussions with the Ombudsman, concerns about the capacity of the Police Service to actually manage the system that has been put in place. I am wondering whether, in terms of our role, you have any comments on the current status of development of that system.

COMMISSIONER: It is very difficult to evaluate a very large ocean tanker that has been travelling along a certain course for a long time and is required to change course dramatically. It is very difficult to carry out anything other than spot checks as to what is happening. The Employee Management System that you have raised is an example of what is happening to that very large tanker, or, should I say, what should happen to that very large tanker.

I cannot give you an objective evaluation now of what is happening statewide. Can I introduce at this stage something which in my view is appropriate to introduce now, and it concerns a major recommendation of the Royal Commission. That was that there be a strategic external audit of the reform process. The reform process encapsulates all of the modules that go to make up the reform process and, until such time as there is an objective referral point, such as that external strategic audit, all that anyone from outside, including this Commission, and I would venture to suggest also the Ombudsman, or any other agency that has an input into what is happening in the reform process, can do is but a spot and ad hoc check.

CHAIRMAN: In terms of structure, could I ask who amongst your officers is directly associated with an ongoing contact with that system?

COMMISSIONER: Mr Sage and I. Mr Sage goes to meetings that are required to be attended to in relation to that and indeed in relation to the Employee Management System, which is not the other side of the coin but another side of this geographical concept of the reform process. So he may be able to assist you further in relation to the employee management system. He also has direct contact with the Ombudsman's Mr Kinmond in relation to policing matters.

CHAIRMAN: Mr Sage, in relation to the employee management system and ongoing monitoring of the process, what role do you play?

Mr SAGE: I am a member of the steering committee for the development of the police complaints case management system which, as noted in point (d) under question 16, is approaching phase 4, which is the development of the detailed specifications for each agency.

The development of those specifications is very important for the Police Integrity Commission to actively be involved, in as it is for the Ombudsman's Office, to ensure that the system that is developed and introduced is one that captures all complaints and all information about complaints and investigation of those complaints, not only of Category One matters for our purposes but across the board, and down to Category Four, where the employee management system is essential for those lower level or less serious complaints involving more the management types of issues.

So, the user specifications are being very closely monitored by the steering committee. We will be ensuring, as watchdog agencies, that the Police Service system addresses all the needs electronically of the Police Integrity Commission and of the Ombudsman's Office so that effective management electronically of all level of complaints can be effectively addressed.

CHAIRMAN: Who will hold the bag, if I could put it that way?

COMMISSIONER: Could we use some expression other than "bag"?

CHAIRMAN: Who will be the repository of the co-ordinated complaints?

Mr SAGE: What is proposed is a warehousing of information, so that the three agencies, independent of other agencies - more so from the Ombudsman's and the Police Integrity Commission's perspective - can access the police information and data without flagging to the Police Service our interest in whatever piece of information we are accessing. It is because of the fragmented development of computer systems within the Police Service that there are a number of databases from which we would want to draw data for our purposes - not just the complaints data but human resources data and major investigations of matters other than police complaints.

So that will be moved electronically into a warehouse that we would say would be controlled and managed by the Police Integrity Commission, and we would be able to access, and likewise the Ombudsman could draw out that information, massage and do what is needed to be done with it. Also, Internal Affairs of the Police Service would have similar access to it and would be a major contributor to it also. So we would say, with our role and functions under the Act, it is essential that we house that warehouse with the Police Integrity Commission and that it not be housed with the Police Service.

CHAIRMAN: What about the auditing of the input? How will that be audited so that you do not have contaminated material coming in?

Mr SAGE: The only way that you can audit is to go right to the point of development of that information and access the records there from which those reports or whatever is inputted, look at those records and see whether it has been refined, deleted, ignored, or contaminated, to use your word. That is the only way that you can do it - to go back to the source of the information.

CHAIRMAN: Who will have that role?

Mr SAGE: In relation to Category One matters, the Police Integrity Commission. We can go across any complaints, but primarily it will be our function to audit and monitor

and investigate Category One matters.

COMMISSIONER: Because this Committee does receive most of the records of the steering committee, and because the Police Integrity Commission did prepare a fairly detailed submission in relation to these systems, it may be advantageous to take what Mr Sage has said and summarise it. This warehousing concept was in fact what the Police Integrity Commission suggested. Let me approach it this way. We have our own system. It was not the Royal Commission's system; it was a system which the Police Integrity Commission itself has developed.

We find it more than just useful for our needs. We needed to develop such a system because there was no police complaints management system. Having gone to the trouble of initiating something, and having developed it, and having our officers familiar with it, and having participated in the work flow development of it, and our assessing it to be most valuable, we then said: Well, the Police Service has various and different programs, we do not want the Police Service to know what we are accessing, if they could channel all of that information that they have on the various and diverse databases that they have into a warehouse in a form compatible with our system, and in a form compatible with the Ombudsman's system, and if it had a stop valve, in other words, that no-one from that side could know what in the warehouse was being accessed by us or by the Ombudsman, then that is the way we should go. And that was the basis of one of the submissions that we have made to the steering committee. Indeed, it has been accepted, and we have been provided with some funds to further develop our part of that concept.

The bottom line of all of it is that, unless the Police Integrity Commission is the owner of the warehouse, with the responsibility of ensuring the integrity of the warehouse, and the ability to ensure that what goes into the warehouse has an audit trail that can be followed back by the Police Integrity Commission, it will not be of any value. I just remind the Committee that, if it does have access to that submission, it may be appropriate that I draw that to attention.

CHAIRMAN: I am quite aware that the Committee has access to the report, but I think it is more important to this Committee, its function and to the public awareness created by its functioning, that it be put on the record here.

COMMISSIONER: I understand.

CHAIRMAN: I will go to the next question, which has a similar component to it, and that is, as you suggested rightly in your opening statement, the matter picked up from your annual report, where at page 23 you said the Commission does not have, and whilst the incidence of such complaints continues at this level will not have, the capacity to investigate more than a small proportion of such complaints. I think that is taken as a lack of funding statement, whereas in fact I am sure that is not what was intended. For the benefit of the Committee and the public in attendance, would you detail to the Committee the way that Category One complaints are handled, the role of the Police Integrity Commission and the complementary role of the Ombudsman's Office and the Police Internal Affairs in the process. I might note that you did mention

the draft revised schedule is a draft. I wonder whether you want that included in anything that would go out as a public statement or whether you wanted that kept confidential at the moment.

COMMISSIONER: I have no objection to it going into the public forum, Mr Chairman. It is but what I have said; it is a draft at this stage. But it is probative, if anything, that there is a review taking place.

CHAIRMAN: Would you underline the philosophy that is behind these changes?

COMMISSIONER: When the first agreement was entered into by the Ombudsman and by me there was a realisation that at some stage that would need to be reviewed. It was also realised that it was not something that could be reviewed every month and a new schedule brought out every month, that there needed to be a period in which both I and the Ombudsman could develop some experience of this entirely new system, particularly Category One matters, what they were, what they should be, and so forth.

So we began a review process which was predicated upon the common experience of the Ombudsman and me as to what sorts of matters were being received as complaints under the existing schedule and whether any of those should be retained, and whether there were any aspect of conduct of police officers not covered by the existing schedule that should be included. Let me use as an example complaints about conduct alleged against a senior police officer of superintendent or above.

It was considered, when the initial agreement was entered into, that all of those, by the very nature of the rank of the police officer, were serious. Now, at first blush, that appears, I think, to be correct. But, given the experience of the sorts of complaints that have been made against such senior police officer, the concept of seriousness which attaches only to the rank is unilateral only, and the common experience is that you need something other than just one indicia that ought equate with seriousness. You ought to have regard to what the particular conduct was.

You will see on the draft, for example, that it is proposed that there be no part of the schedule that would cover those, but at the same time that the Police Integrity Commission should be notified of such complaints so that it can judge then whether the conduct is such that the Police Integrity Commission should request that it be referred to it and therefore it becomes a Category One complaint. So that was one sort of matter.

Let me use another example - access by police officers unlawfully, improperly, contrary to instructions, to various databases. An example may be looking up the address of somebody through the Roads and Traffic system or some other system that is available to that police officer. I do not suggest that that is not serious, but experience over the past twelve months - a common experience that both the Ombudsman and I have - is that there are many, many such complaints but that they are adequately being investigated by the Police Service. I might add here that the audit trails that do exist in relation to the investigation of such complaints make it easy to investigate them.

So that there is an example of something that is serious, that is being adequately investigated, and to include that into a list of matters that we must be notified of, and that we must make a decision on as to whether we should investigate, takes a considerable amount of our time to deal with that when, as I have said, it already is at present being investigated.

Let me move to another example which introduces a great deal of subjectivity. On the schedule previously we had offences that carried a gaol sentence of more than three years. Let me use as an example of a matter that in theory, and therefore in practice, falls within such a classification. A police officer steals one cent. That is a larceny at law. Now, every larceny at law is capable of being prosecuted on indictment. In theory, that is what the law says can happen.

In practice, that would not happen, and the law would not permit it to happen. So again we find that there is a classification, which experience over twelve months has shown to contain allegations of larceny which, even if they were fully investigated, properly prosecuted before a judicial officer imposing an appropriate penalty, the penalty would not be a gaol sentence. It would be far less than that because of the gravity of the offence, even at its highest. So this is the subjectivity of seriousness in the realms of larceny. On the one hand you have the theory that, yes, it can be prosecuted on indictment, that is, before a judge and jury, whereas the reality is that it would never ever proceed that way.

Another area of subjectivity concerns assaults. Those of you who have knowledge of the law, or passing experience of it, will understand that it is an area of the law in which there is a deal of subjectivity. Perhaps that is best expressed by a reference to what a tribunal of fact (a jury, or a magistrate, or a judge sitting without a jury) may determine the consequences to a person by way of bodily harm an assault may result in.

We have at law things known as common assaults. We have assaults occasioning actual bodily harm. We have a concept of grievous bodily harm. We have crimes associated with maliciously inflicting grievous bodily harm. One of the problems that we have experienced over the past twelve months has been that complaints about police conduct in which it is alleged that there has been an assault - and I stop here to say that an assault does not necessarily include any physical contact at all - but where it is alleged that there has been an assault, plus some physical detriment to the person, the scope of that physical detriment is such is that it can go into the present category of occasioning actual bodily harm.

I say it "can" because the concept of actual bodily harm is that it does not have to be permanent. Nor, however, can it be transient or trifling. It has the capacity of going into that category. Again with larcenies, even if these matters were successfully prosecuted, you would not be faced with a serious offence at the end. So again we are receiving a very large number of complaints about matters which, at first blush, in theory, appear to be serious but when the particular circumstances are taken into account the level of seriousness dramatically drops.

So that is the philosophy, if that be the right word, about this review. The review, as I say, was commenced some time ago for the purpose of saying: What has our common experience led us to? What is there that we should be taking on board that we are not. What is not included in the schedule? What is included in the schedule that we should exclude from the schedule? How best can we ensure that why we have a Category One should continue?

I also say in relation to that the following. When a complaint is made it is either a complaint under the *Police Service Act* or it is a complaint under the *Police Integrity Commission Act*. It is a complaint under the *Police Integrity Commission Act* if it is a Category One complaint. No-one has responsibility for so long as it remains a Category One complaint provided we do not send it back to the Police Service to be investigated there, because once we send it back to the Police Service it then becomes a complaint under the *Police Service Act*, and the responsibilities of the Ombudsman then come into play.

Part of this review is to better ensure that what is in the basket of Category One complaints are the serious complaints that really do warrant my Commission's attention - attention either by way of direct investigation, managing the investigation of part of the Police Service, overseeing that investigation, monitoring that investigation or auditing that investigation. It seems to me that if that basket of Category One complaints was a basket that my Commission had the - not just a - responsibility for, then that would mean the Ombudsman would not need to have her time, effort and resources taken by what is presently occurring.

So that is, not in a nutshell, but more than a nutshell, really is what caused me some time ago and what continues me to consider that the review is very necessary, otherwise we end up with figures that really are quite meaningless. I trust that has been of assistance to the Committee.

CHAIRMAN: They can be so interpreted, yes. That is more the coconut, rather than the kernel. In regard to the issue of the relationship between yourself and the Ombudsman, you are going through this review. I would take it that at the end of that process, as you suggest, the Police Integrity Commission will concentrate on those very serious issues, and the Ombudsman will carry the majority of the Category One matters.

COMMISSIONER: I would expect this to happen at the end of the review: that we would have --- . Could I add another dimension to all of this, because it bears upon something that was raised earlier, the police complaints management system. Why I introduce that at this stage is this: at present we receive notification of complaints in hard copy form. It is a fairly old-fashioned way of receiving information, but we receive it in that form.

It takes time for all of that to happen. It takes time for the Police Service to tell us, it takes time for the Ombudsman to tell us. What we are working towards is that when the police complaints management system comes on line nobody will have to tell us

anything. Once it is entered on the system, we will have a net that will trawl that, and a reporting system whereby it will be immediately reported to us.

So that all of the Category One matters that will be in that basket at that time, if we have **the** responsibility for them, will be in the warehouse for us to access, and nobody else. Even then, if we for example do not take over an investigation and send it back to the Police Service, the Ombudsman herself will have a statutory obligation in relation to her role with those matters. It may well be that some statutory amendments will be required if she and I agree that she should not have that responsibility, and that that should be a responsibility that my Commission should have.

That is a secondary aspect of the review. It is not as advanced as the category itself part of it, but it is a consequence, and a necessary consequence - the necessary consequence being to at least to consider it, because it does seem to me that it is a waste of resources if we say we will not investigate this complaint, the Police Service will investigate it, and we will manage the Police Service's investigation. If at the same time the Ombudsman also has her obligations in relation to that, then it seems to me that that is a waste of resources. So I mention that.

CHAIRMAN: Are there any questions on this area from members?

Mr KINROSS: Commissioner, I understood Mr Kinmond to say in his evidence this morning that a police officer who was driving whilst intoxicated, and who then either denied that he was the driver or sought to have someone else take the blame, may in fact be investigated by his office. Now, maybe I misunderstood that. That, to me, clearly falls within item 1 of the schedule, which you have not sought in your questions on notice to take away from the Police Integrity Commission and give to the Ombudsman.

COMMISSIONER: No, we do not seek to change that at all.

Mr KINROSS: I am wondering whether there may be a problem in so far as some vetting is done by the Ombudsman and that they are regarding a matter which encapsulates those facts as being investigated by them, whereas to me that is very serious. Indeed, Mr Kinmond stated that there is a problem sometimes in gaining evidence from either the police officer or others around them that there may have been the Commission of a crime, and they consult the Director of Public Prosecutions on that evidence as well, and the DPP may say there is not enough evidence to lay a charge. My question is: should not that be immediately hived off to you and not dealt with by the Ombudsman?

COMMISSIONER: I have no difficulty with that at all. My difficulty is how something comes to be a Category One matter and somehow the Ombudsman will then have an investigative role. We have to remember one thing. If it is a Category One complaint and this review takes place, it is a matter in which my Commission will have a direct interest. Whether it investigates or the police investigate, we will have a direct interest in it. If it is not a Category One complaint, but nevertheless it is something that we want to investigate, or we want to take over the investigation of, or the oversight of the

investigation, all we have to do is request that it be referred to us, and it therefore becomes a Category One complaint. But I would be interested to actually read what Mr Kinmond had to say.

CHAIRMAN: Could I say that Mr Kinmond raised this matter in relation to a question that I asked in order to further expand the Ombudsman's written answers. It was about some difficulties with the employee management system. The statement was, "We are also convening a forum consisting of representatives of this office, PIC and senior personnel from the Police Service to resolve around 30 outstanding hard cases which raised difficult management issues." Within that context, Mr Kinmond was asked to expand, without specific reference, some case examples. He raised that case example as raised by my colleague.

Mr LYNCH: Could I add, Mr Chairman, that my impression of Mr Kinmond's evidence was that that related to two incidents that occurred prior to the existence of the Police Integrity Commission and that therefore they were not terribly relevant to the discussion.

The Hon. M. J. GALLACHER: Commissioner, in relation to your annual report, page 23, you speak about the 369 matters that were referred back to the Police Service. I quote the last paragraph which says, "Of those complaints referred back, the Commission specifically requested in 22 cases that it receive reports from the Police Service on the progress and the outcome." What about the other 347? Obviously you would request the Police Service to come back to you on the outcome. Why have those 22 specifically been excluded from inclusion in the overall number? Do you get my drift?

COMMISSIONER: No, I do not.

The Hon. M. J. GALLACHER: It says there that on 22 cases you wished a report back from the Police Service on the outcome of those 369 that were referred to the Police Service. What about the other 347? Don't you get reports back from the Service as to the outcome of those matters?

COMMISSIONER: We do not automatically get reports because - and this is the point that I was making earlier - once it goes back to the Police Service, it then becomes a complaint under the Police Service Act, in relation to which the Ombudsman then has a role. If we specifically ask for a report, it comes back to us. Then we may take the view, on that report - and they are not just final reports that we ask for; sometimes we ask for periodic reports - it can be upon those reports that we decide to have more than that monitoring type role.

This is why the resource factor to which I referred earlier is not without importance. There is no reason why we would not monitor an investigation and that the police and the Ombudsman would monitor the same investigation, although the meetings that Mr Sage has with Mr Kinmond from time to time deal with such matters. But, nevertheless, there is a statutory system that binds the Ombudsman, as it does bind me.

The Hon. M. J. GALLACHER: The problem that I think many in the community would have is that the previous systems, whereby the Ombudsman was monitoring everything, were proved to have failed. The hope would be in the community that the Police Integrity Commission would provide them safe mechanisms by which they would not fail. But, clearly, if you are not monitoring each matter that is referred back to the Police Service, that you are only monitoring a small number of the outcomes, then clearly there is a system whereby we could find another failure again, and that could cause some disquiet in the community about the system in place.

COMMISSIONER: I understand that. But, as I have said in the answer to question 7 on notice, we have done sampling processes. But, before I go to those, if need be, could I also indicate that the reason for the review perhaps provides an answer to the real question that I think you are asking, because the reason for the review is that of the bulk number of complaints a significant proportion of those are not serious matters.

It is only in what we recognised at the time to be sufficiently serious to warrant our intervention in some form or fashion that we required that reporting back to us. So that, as far as the public be concerned, the outcome of this review will be, or ought to be in my view, that all of those complaints in the Category One basket are matters that we will have an involvement in, whereas in the past we have not, because a significant number of them were not really serious matters.

The Hon. M. J. GALLACHER: But if you look at the graph shown on page 22, it shows 84 complaints of manufacture or supply prohibited drug. If we worked on the basis that you asked for the referral back of 22 cases from the Service came from that category alone, forgetting about the other categories, what about the remaining 62? Surely you would be interested to know the outcome of those 62 other inquiries?

COMMISSIONER: Mr Gallacher, as you would be very well aware, there is a difference between a reactive and a proactive approach, and you will know that there are many complaints which are incapable of being investigated in a reactive manner. Regarding these particular types of complaints that you are referring to, experience has shown that a significant number of those are not capable of being the subject of a reactive investigation, that they are pieces of intelligence that build up in the hands of an experienced criminal analyst to present a reason for a proactive investigation. They are very important - I do not suggest they are not. I am just saying that there is a vast difference between those complaints which are capable of reactive investigation and those which are not but which can form the basis of a subsequent proactive investigation.

Mr KINROSS: Commissioner, do you view that the schedule ought to be something that is encapsulated in law, either by legislation or regulation?

COMMISSIONER: No.

Mr KINROSS: Why do you hold that view?

COMMISSIONER: Because the law says at the moment that it is an agreement between the Ombudsman and me.

Mr KINROSS: But I am suggesting whether that should change to in fact become law, as was suggested - and my colleague might be able to correct me here - with the Child Protection Act. It was flagged that maybe agreements in relation to child protection would be amended in the upper House to make it a law rather than an agreement between the Ombudsman and other agencies, like your class or kind agreement here. I am putting that to you so that the public can see - and I am not suggesting that they cannot see because the schedule is a public document - but it is better to have it in law or in regulation, even if it is changed regularly.

COMMISSIONER: There is provision at the moment for a regulation to be passed prescribing what can be added to the Category One complaints. So there is law at the moment that provides for that.

Mr KINROSS: I am conscious that section 67 states that the schedule itself will be the agreement. But have you got any opposition to the nature of the matters that should be investigated by the Police Integrity Commission being enshrined in legislation either through an Act or through regulation?

COMMISSIONER: I do not have any difficulty in principle, Mr Kinross, with that, in just the same way that I do not have any difficulty in principle with the Parliament being the entity in this State which should pass the laws. So far as how that would come about in practice would be concerned, however, I would need to give some further consideration to that. But, in principle, no, I do not have any difficulty with that. Parliament passes the laws.

CHAIRMAN: In terms of consultation, in our last discussion with the Ombudsman we raised the matter of changes to the class or kind agreements, suggesting that it might be useful to discuss it in consultation with our Committee.

COMMISSIONER: It was raised when I was here as well. I have no trouble with that. That is why we tell you, in fact, that that is the draft that was proposed. I do not have any monopoly on commonsense, and I am sure the Ombudsman does not profess to have any monopoly on commonsense, let alone wisdom. But, at the moment, the law says that Category One complaints will be what the Ombudsman and I agree.

CHAIRMAN: I am interested in whether in those discussions, in reaching the agreement that you have now got, you would also perhaps have discussed that with the Police Service Internal Affairs. Was that part of the process?

COMMISSIONER: No, it has not been part of the process, for the reason that it is an agreement between the Ombudsman and me, based upon our experience. I would not wish to make any comment at this stage about whether it is appropriate or not appropriate to have the Police Service involved in a review process, because being involved in a review process may appear to those involved to give rise to some position

of power or decision. I would not wish to create that impression with the New South Wales Police Service.

Mr KINROSS: Commissioner, my concern is that I would be regarding the gravity of matters, at least at this stage, of matters 1 to 8 as still fairly serious. I am not suggesting that in the review you do not. My concern is that by suggesting that two of them, 6 and 8, be omitted and that No. 2 be modified to the Ombudsman, by definition gives to the Ombudsman of course far less powers to investigate because of the fact that they do not have telephone interception powers and a whole range of other issues. So my concern generally is that in deleting some of these provisions the Ombudsman clearly is not going to have those powers. Are you confident enough that if there is concern that the Ombudsman does not have those powers, they may be referred back to you to invoke those?

COMMISSIONER: I have no concern with that at all. I just project myself a little bit into the future to when the police complaints management system will be on board. I have to do this because my Commission cannot spend a lot of money and develop a system knowing that around the corner there will be another system, and therefore go to Treasury and say, "We need some more money now because there is another system, and what we have developed for this temporary purposes is now a waste of time." So let me project now to the police complaints management system.

Information will come into the warehouse, not restricted to Category One complaints, but all complaints against all police. If that is considered to be serious enough, then we will request that it be referred to us, and it then becomes a Category One complaint and we can utilise our investigative powers. So that is what is contemplated will occur.

However, we do not simply say, "I, the Commissioner for the Police Integrity Commission, will decide what will be a Category One complaint." We have to start off with a reasonable bundle and have the ability to draw into that bundle other matters, such as those that you suggest, and I agree, that may, in the circumstances of that particular matter, be serious enough to warrant the use of our particularly powerful investigative tool. That will still be able to be done.

Mr KINROSS: My concern is that when Joe Citizen has simply an allegation because he has heard, either directly from another police officer that someone has, to use the example that I did earlier, was driving the police vehicle whilst intoxicated, or whilst on duty, what does he have to do other than simply make his allegation to report and ensure that that report will be acted upon by the Police Integrity Commission as opposed to the Ombudsman? In other words, to what extent must there be pretty cogent evidence at the source level at the time you make the decision as to who is going to investigate the complaint?

COMMISSIONER: It is not so much a matter of whether there be cogent evidence at the early stage, because it would be rare that there is cogent evidence at the commencement of an investigation. What needs to happen at the commencement of an investigation is for there to be established either that the very nature of the conduct

itself is sufficiently serious, or that the police officer against whom the complaint is made has a certain background that presents him to be a police officer who, given the complaint that is made against him, warrants an investigation, or other circumstances collateral.

So that we do not start off with: Is the evidence that is provided by the complainant cogent? Rather we start off with: What is the conduct which is alleged? Against whom is the conduct alleged? What other collateral matters are there? Do all of these together amount to, yes, it is sufficiently serious for this Commission to be involved in? The outcome of all of this review process, stage 1 and stage 2, will be that even those matters that we do not investigate will be investigated by the police. We will manage the investigation, we will oversight the investigation, we will monitor the investigation, or we will audit the investigation. So Joe Citizen, in that sense, will have that degree of security.

CHAIRMAN: On the management of the investigation, does that mean that your Commission directs the method by which the Police Service will conduct its investigation?

COMMISSIONER: No. The Act does not allow us to do that. It does not envisage that. What it provides is that, given a matter is going to be investigated by the police, there are various ways in which we can have involvement. We can monitor it, we can audit it, or we can manage or oversight it. Those two concepts of management or oversight mean that we provide to the Police Service guidelines or detailed guidelines as to how they should go about that particular investigation.

Let me give you an example of how that may occur, and again I have to progress myself into the future to the police complaints management system stage. We are carrying out an overt observation of how the police are going about investigating a particular matter, and we find that there is a way in which they should be carrying out that investigation but they are not carrying it out in that way. We have come to a fork in the road: they may not be carrying it out that way because they are corrupt, or because they are incompetent. Different circumstances would give rise to whichever path we then take.

Let us assume that we take the path that we want to manage how they go about that investigation from that stage onwards. We would then provide a guideline: You should do A, B, C and D. We then, in that sense, manage or oversight that investigation. So that we have started with a covert monitoring role, and we have then become actively involved in managing or oversighting. That, as I say, is in the covert area initially through the police complaints management system, but subsequently it has become a management oversight. That is how it can happen.

CHAIRMAN: And that would involve timetables and report backs?

COMMISSIONER: Yes. But it may even start with an investigative plan from the police to start with. What is your investigative plan? Give it to us, and you have seven days to provide it to us. We then sit in. If they are going to interview somebody, we actually

sit in on the interview. This is what is done elsewhere. It is done in Hong Kong, for example.

Mr KINROSS: What is the relationship between the Police Integrity Commission and the New South Wales Crime Commission?

COMMISSIONER: Good.

Mr KINROSS: What I meant was, is there a class or kind agreement as well between what the New South Wales Crime Commission examines and what the Police Integrity Commission may examine?

COMMISSIONER: No.

Mr KINROSS: Has there been cause for overlap?

COMMISSIONER: Neither the Crime Commission would know, nor would I know, because I do not know everything that the Crime Commission does and they certainly do not know everything that I do.

Mr KINROSS: No. But, so far, has there been an overlap?

COMMISSIONER: So far, it has been a good working relationship, and the Commissioner of the New South Wales Crime Commission and I have a workable, considered, effective understanding as to what matters his Commission and what matters my Commission will deal with, and how we can best go about co-operating in each Commission doing what its task is.

Mr KINROSS: My question is that, if I am not mistaken, they are the only body that does not allow the privilege against self-incrimination. I am wondering whether you have found, not necessarily in conjunction with yesterday's raid and hearings, as to whether that privilege against self-incrimination ought to be a power that you need.

COMMISSIONER: In what circumstance?

Mr KINROSS: When you are undertaking a hearing, do you believe that the New South Wales Crime Commission is a body that has that power or that ability to waive the privilege against self-incrimination? Have you felt so far the need for the Police Integrity Commission to be able to have that power?

COMMISSIONER: Do you mean in public hearings that we have held so far?

Mr KINROSS: Yes. Or in any of your dealings.

COMMISSIONER: I can only speak in relation to public hearings. I have had no need thus far, in public hearings, to consider that a person who takes an objection to answering a question at a public hearing but who nevertheless has to give an answer, and who would thereby be protected against having that evidence used against him in

any civil or criminal proceedings, the community would be better served by having that person giving those answers and then having those answers used against him or her in any civil or criminal proceedings, notwithstanding the objection. Is that what you are putting to me?

Mr KINROSS: Yes.

COMMISSIONER: I have had no need thus far, as I understand what you are putting to me.

Mr KINROSS: Not thus far, but it is early days in terms of public hearings.

COMMISSIONER: It is a matter of principle, is it not? I might like to have a lot of things done for the purpose of getting, let us say, a crooked policeman whom I suspect of being corrupt. I might like to have a lot of tools to persuade a jury at the end of the track to convict that person. If that person was interviewed by a police officer, the police officer would have to give that person a caution. That is a basic principle of common law. And the person would not have to give an answer.

So we are then removing a basic principle of the common law into an area at the moment that I have and saying "Look, you have to give an answer, but if you give it cannot be used against you in any criminal proceedings" to an area of "Yes, you have to give an answer and it can be used against you in criminal proceedings." That is a very large step, in principle, that at the moment I do not have to deal with.

Whilst I might like to have a lot of other investigative tools or persuasive tools, or tools that would permit me to have admitted in a court of law information that my Commission has, at the moment we do not have it, and I would not even give some consideration to it at the moment, Mr Kinross, because I think that is so far down the track, if at all it is even there.

Mr KINROSS: I only raise it, Commissioner, because I think it strikes in the community when some bodies have it and the Police Integrity Commission is regarded as the ongoing Wood Royal Commission for ever and a day until it is disbanded. Why would not a Police Integrity Commission have that power when a Crime Commission, and I think even the NCA inquiry into John Elliott ----

Mr LENIHAN: No.

Mr KINROSS: Well, there was some Commission that had coercive powers and privilege against self-incrimination abolished in connection with, I think, the Elliott and the "H fee" hearings. My point is that if that is the case, why isn't that being applied in relation to the Police Integrity Commission matters?

COMMISSIONER: You are asking me the question, Mr Kinross, but I cannot give you an answer, because the *Police Integrity Commission Act* was passed by Parliament and no doubt if there was to be debate upon, "Well, why are you restricting the Police Integrity Commission's coercive powers in this particular area" that is the forum in which

it ought to have been raised. I cannot really assist you, Mr Kinross.

CHAIRMAN: Commissioner, at the moment your powers to cross-examine but not to use that in evidence, what about material that you have collected which is not actually involved in the process?

COMMISSIONER: We can obtain information in whatever fashion we consider appropriate. There are various ways in which we can get it. One way in which we get information is by putting somebody in the witness box. The value of that information is very little, and that is understandable. Most of the information that we receive, we receive in the investigative non-hearing stage, as intelligence, as the sorts of things that a criminal investigator finds out in the course of an investigation as part of the hard slog, so to speak.

In addition, we have technical and surveillance tools that assist us. I will not go into all of them, but I just mention in passing now telephone interception power, when finally we have that full capacity. The various ways in which you gather together in an investigation evidence that is admissible in a court of law to prosecute a person, or evidence that is admissible in disciplinary proceedings or other proceedings to get a corrupt police officer out of the New South Wales Police Service.

There, at the end, in criminal prosecution or disciplinary proceedings, if we have to gather evidence that is admissible in those, we have to be concerned that the processes that we use will gather such evidence and will not affect adversely the integrity of that evidence, so that we do not end up with a prosecution that fails because the way in which the evidence was gathered itself is susceptible to attacks on its integrity, or in relation to disciplinary proceedings as well.

Mr LYNCH: The main material is in the evidence gathered, not in admissions that you get from the witness box, because unless you have got evidence people are hardly likely to make admissions in the witness box, whether or not there is protection against self-incrimination.

COMMISSIONER: That is so.

The Hon. M. J. GALLACHER: Commissioner, I am sure I have pursued this in the past, but in light of recent events the matter comes again in my mind. It relates to the question of multi-jurisdictional investigations that the Police Integrity Commission may well participate in. I am talking about a purely hypothetical case. Can you get access to anything elucidated from the application of, say, telephone interception whereby the other body participating in the multi-jurisdictional investigation is legally entitled to apply for and get telephone interception? Can you get access to that information if you are in a multi-jurisdictional situation?

COMMISSIONER: It depends upon whether the recipient of the product in the first instance can disseminate it to us, and whether we can receive that product. It is not just simply a matter of agency A saying "We have telephone interception product" and

puts it in the wheelbarrow, wheelbarrows it to us and tips it out and says "There it is." There are very stringent parts of the law relating to telecommunications interception that govern that.

As a general rule, however, within the concepts of permitted purposes, if some other agency had telephone interception product, for example, that might give rise to something of value in an investigation of a corrupt police officer qua that corruption, that would be the sort of product that we would obtain.

The Hon. M. J. GALLACHER: So, therefore, if you had a situation such as a corrupt police officer who was associating with fairly well recognised underworld figures, criminal people, and you were to go to say the New South Wales Crime Commission seeking their participation in a joint attack on both the corrupt police officer and also the criminal element outside the Police Service, and they employed their telephone interception powers, if information came out of that process that identified both the police officer involved in the process and the criminals, you could get access to that?

COMMISSIONER: Provided that the law had been satisfied, yes.

The Hon. M. J. GALLACHER: So the door is not totally shut on you in terms of telephone interception? There are still means by which, if police are involved with criminals, you can get that product?

COMMISSIONER: There is no question, as from 11 or 14 November this year we have been able to receive telecommunication interception product that another agency has intercepted. The difficulty at the moment is that because we do not have the declaration from the Commonwealth Attorney General, nor the infrastructure to maintain it, we cannot do the interceptions ourselves. But we can get the product, provided the law is satisfied.

CHAIRMAN: Commissioner, have you had any indication from the Commonwealth Attorney General as to when that provision might apply?

COMMISSIONER: No. I think it is best if I just say no to that question, Mr Chairman. However, can I add this - and I think I have said this on more than one occasion: the New South Wales Parliament a long time ago passed a law which added the Police Integrity Commission to those agencies which, for the purposes of New South Wales, would be regarded as telecommunications interception agencies. That was done a long, long time ago. As I say, it was close to November of this year before the Commonwealth legislation enabled us to at least receive the product. We do not anticipate there will be any difficulty. This is purely an administrative thing in us getting the declaration. I do not anticipate any difficulty in that.

Mr ANDERSON: Why is the Commonwealth resisting giving you the authorisation?

COMMISSIONER: The history of what happened with the amending bill and the Commonwealth legislation is interesting, and I will not trouble the Committee with the reasons for that. As I understand it, the declaration that I am talking about is something

that needs to go initially from New South Wales to Canberra, to be acted upon by Canberra, and then we are notified. What is holding that up, I really do not know. But, as I say, we do not anticipate any difficulties with that because it is an administrative step.

I say we do not anticipate any difficulties because, even if we were to have that piece of paper today, that does not mean that we can take our little cords, like these microphones here, and plug them into the wall. As you might hear from Mr Nattress later, there is a hardware infrastructure that needs to be put into place. So we are quite confident that this administrative matter will be attended to in sufficient time for us to be able to put the plugs in where we want to put the plugs in.

CHAIRMAN: As I said earlier, I had the benefit of seeing the tip of the iceberg of the Commission's public face in one of its operations. Will you, over time, in your own internal audit, work out the cost of such operations and report on those? To me, a very important part of the Commission's work is not ever on display, because it is covert and the public demonstration of it in a hearing is really just a tiny part of the amount of work that would have to go into achieving that result. It would be beneficial for us to gain some idea of the actual cost of providing that outcome. I suppose in that way, too, Mr Nattress would like to detail some of the operational aspects.

COMMISSIONER: There are two things I would say there. I will deal with the second one first. If you would like to hear from Mr Nattress, can I say that I would prefer that to be done in a confidential session.

CHAIRMAN: We will make that part of the confidential session.

COMMISSIONER: So far as the first be concerned, yes, the cost in dollars and cents of any particular operation is something that ought to be known, to the extent that the actual dollars and cents could ever be worked out, because a lot of them will need to be apportioned and so forth. It is not simply a matter of saying, "Here is the cake that came out of the oven. How much did the flour cost, and the milk, and the electricity," and you end up with a certain price. You will appreciate that there are all sorts of different things that impact upon that. But, to the extent that we can produce a realistic costing, yes, we will do that.

CHAIRMAN: I think it is important, in relation to the criticism that was levelled arising out of your report, the focus that the Commission is taking on what is a major Category One complaint, and the importance of the operations that you are undertaking to the eventual change in police culture and the removal of corrupt forces, that the public understand that these are in fact major operations and that they are quite costly.

COMMISSIONER: I think what you say is very true. For instance, you, Mr Chairman and members of the Committee came down and had a look at the place, and you walked through and sat in the hearing room, and you saw things there. As you said, Mr Chairman, yesterday you came down and saw things there. That is only the tip of the iceberg. We can tell you how much the whole iceberg costs because that is in the account figures. Those global figures need to be able to be related to particular

matters to which the public, to whom we are all accountable, can relate. As I say, we will endeavour to produce figures that are as realistic as possible, with whatever averaging processes that we may need to adopt. But I think we can do that.

Mr KINROSS: On the operational side, I do not know whether it will verge on the in camera hearing, but I was at a seminar earlier this year entitled, I think, *Who Watches the Watchdog*, in Brisbane. Concerns were expressed by civil liberties groups generally about either excessive power per se but also to some extent that a number of silks who had represented "colourful identities" because they are always one step ahead of the watchdog. They have the technology, the resources and the network by which they can remain one step ahead. On any of those - network, resources, equipment or technology - do you feel you are ahead of them?

COMMISSIONER: Who are the "them", the "colourful identities"?

Mr KINROSS: Yes, the colourful identities, the suspicious characters.

COMMISSIONER: It's a real war out there, Mr Kinross! I think it is a very brave person who says during the course of the war, with certainty, "We are going to win the war" other than as a rousing statement or flag-waving exercise. I can say we are going to win the war. We have very sophisticated technology. As to whether others have equally as sophisticated or more sophisticated technology, we are not silly enough to think that cannot happen, nor to think that we can sit where we are. We need to further develop what we have already developed. That, in Mr Nattress's bailiwick, is a very important part of what his particular part of the Commission is doing.

I do not think he would be prepared to say anything more than I have said about that. I would be very concerned if he did. I am sure he would not, because that would indicate to perhaps everyone what it is that we may or may not be doing. But we recognise that it is a war, they have guns, we have guns, and we have to make sure, as best we can, that our guns are bigger than theirs.

Mr KINROSS: And by guns, I am talking about advanced stages of very sophisticated software programs and intelligence devices to overcome maybe even hacking into your system.

COMMISSIONER: Precisely.

CHAIRMAN: We are dealing, of course, with your very proactive end of removing corrupt police, but you are involved also in the Employee Management System. Certainly this morning, in discussions with the Ombudsman, and just from a few very simple case examples, there is still evidence of resistance to change with the Police Service. The sorts of complaints coming to the Ombudsman obviously mean that there are difficulties there. I think you said at our previous meeting that you do not see yourself as having a major role in education. The Ombudsman also said that their role in education is peripheral or involved only those matters that came to the Ombudsman. Yet it is evident that there really does need to be a huge effort made regarding education of officers of the Police Service. What level of involvement do you have in

that?

COMMISSIONER: Our Act says that we do have an educative role, but it is a fairly vicarious type of role. We do not have a direct role. We can make recommendations to those who do have an educative role. For example, we can make suggestions to the Police Service about how the Service can educate police and trainee police. ICAC retains the educative role in that regard.

I will need to try to put myself in the future a little but we see ourselves perhaps in twelve months time, looking back over the past twelve months, saying, "Have we had an educative role?" Yes, we have because a number of former police officers are now former police officers because they have been exposed by us and successfully prosecuted on evidence we have gathered. We have taught police that they can't get away with it, and we have taught the community that police won't get away with it.

That is the major educative role that we have. The other one is a contribution to lectures, perhaps, at the academy and various other things - an involvement in various committees so that we can pass on whatever we consider is appropriate for us to pass on.

CHAIRMAN: The very nature of your surveillance and of the sorts of criminal activities that you are exposing in what the ICAC referred to as a condition conducive to corruption that might occur, and the passing on of that information would also be useful in assisting in education. I imagine that is part of your ongoing role.

COMMISSIONER: That is so.

Mr ANDERSON: Commissioner, does not the experience that you had yesterday make you think that the service that you are providing is probably held in some sort of contempt by certain members of the Police Service in that they are still game enough to go on with the activities that they have been involved in when things are as blatant as they were yesterday?

COMMISSIONER: I have, in my days as a judge, sent many armed robbers to gaol for a long time, but there are still people who find themselves in every criminal court in Australia being sentenced for armed robbery.

Mr ANDERSON: But, with respect, I am talking about police officers and I am talking about the Police Service.

COMMISSIONER: There is a certain effect upon criminals of other criminals being sent to gaol. There is a certain effect upon police officers of other police officers being found to be corrupt and being dealt with. The Royal Commission exposed some police. All police officers in New South Wales did not suddenly all overnight become non-corrupt. The corruption will continue. Beyond that, as to what is happening at the moment and what has happened in the recent past and what will continue to happen, it is inappropriate for me to make any further comment on.

Mr LYNCH: Commissioner, could I go back to one comment you made in your opening address. You spoke about one of the recommendations from the Royal Commission

being an external strategic audit of the reform process. Have you any thoughts about what exactly that might involve, what sort of body will be carrying out that process, and when it would be appropriate for that process to commence.

COMMISSIONER: There were some fairly detailed specifications, so to speak, in the report of the Royal Commission. I think it was appendix 31 that set out some specifications. The recommendation itself was that there should be a strategic external audit in which the Police Integrity Commission should have a role, that there should be an auditor engaged by the Police Integrity Commission to audit, in basic terms, how the reform process was going.

It seems to me that it is proper to find out how the reform process is going for there to be an external auditor to comment upon that, because then you have an outside, objective, independent entity who will be carrying out the auditing role appropriate to satisfy the people of New South Wales that the reform process is proceeding on target.

CHAIRMAN: Are there further questions? There being none, we will move into confidential session.

(Public hearing concluded)

(The Committee continued to take evidence in camera at 3.00pm)

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APPENDIX 1



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

**Proceedings of the
Committee on the Office of the Ombudsman
& the Police Integrity Commission**

Wednesday, 10 December, 1997
at 10.00am in the Jubilee Room, Parliament House

MEMBERS PRESENT

LEGISLATIVE ASSEMBLY

Mr B Gaudry MP (Chairman)
Mr J Anderson MP
Mr J Kinross MP
Mr P Lynch MP

LEGISLATIVE COUNCIL

The Hon M Gallacher MLC
The Hon E Nile MLC

APOLOGIES

The Hon A Kelly MLC, Mr A Fraser MP, and Mr A Stewart MP

IN ATTENDANCE

Ms Helen Minnican (Director), and Ms Natasha O'Connor (Assistant Committee Officer).

DELIBERATIVE MEETING (GREENWAY ROOM) - Commenced at 10.10am - concluded 10.15am.

The Committee discussed the procedures for conducting the General Meetings with the Ombudsman and Commissioner for the PIC.

GENERAL MEETING WITH THE OMBUDSMAN (JUBILEE ROOM)

The Chairman opened the public hearing at 10.20am and welcomed the Ombudsman, Ms Irene Moss, Deputy Ombudsman, Mr Chris Wheeler and Assistant Ombudsman (Police), Mr Steve Kinmond.

The witnesses, all on former oath, acknowledged receipt of summons.

The Ombudsman tabled her original answers to the questions on notice dated 5 December, 1997 and the addendum to the answers dated 8 December, 1997.

The Ombudsman addressed the Committee, then the Chairman questioned Ms Moss, followed by other Members of the Committee.

Questioning concluded, the Chairman thanked the witnesses for attending.

The Committee adjourned at 12.15pm and resumed at 1.10pm.

GENERAL MEETING WITH THE COMMISSIONER OF THE PIC

The Chairman opened the public hearing and welcomed the witnesses.

Commissioner for the PIC, Judge Paul Urquhart QC, Assistant Commissioner, Mr Tim Sage, and Information Manager, Mr Denis Lenihan, all on former oath, acknowledged receipt of summons.

Mr Andrew Nattress, Director of Operations Special Services, took the oath and acknowledged receipt of summons.

Mr David Rawson, Director of Corporate and Information Services, took the oath and acknowledged receipt of summons.

The Commissioner tabled his answers to the Committee's questions on notice.

The Commissioner addressed the Committee, then the Chairman commenced questioning Judge Urquhart, followed by other Members of the Committee.

The public hearing concluded and the Members of the Committee continued to examine the witnesses in private.

Questioning concluded, the Chairman thanked the witnesses for attending.

The hearing closed at 3.10pm.

DELIBERATIVE SESSION - commenced at 3.15pm

Draft Report - General Meeting with the Inspector of the PIC

The Committee considered the draft report on the first General Meeting with the Inspector of the PIC, as previously circulated.

The Committee resolved on the motion of Mr Lynch, seconded Mr Anderson, that the draft Report be adopted as the Report of the Committee and that it be signed by the Chairman and presented to the House.

The Committee further resolved on the motion of Mr Lynch, seconded Mr Anderson, that the Chairman, Director and Committee Clerk be permitted to correct stylistic, typographical and grammatical errors.

Minutes of the meetings held on 12 and 17 November 1997 confirmed on the motion of Mr Lynch, seconded, Mr Anderson.

The Committee adjourned at 3.20pm sine die.

APPENDIX 2



Our Ref: 1129/50

5 February 1998

Mr Bryce Gaudry MP
Chairman
Committee on the Office of the Ombudsman
and the Police Integrity Commission
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Gaudry

You will recall that at the Second General Meeting between the Committee and the Commission on 10 December 1997, there was some discussion about revising the s 67(a) agreement between the Ombudsman and me regarding Category 1 police complaints.

On 15 January 1998, the Ombudsman and I entered into a new agreement on the matter, and I attach a copy for the Committee's information.

In addition, at the Commission's request, the Ombudsman and the Commissioner of Police will forward to the Commission (but not by way of a request for referral under s 67(b)), copies of:

- (a) all complaints that a police officer has or may have committed or may commit the crime of assault occasioning actual bodily harm; and
- (b) all complaints that a police officer has or may have committed or may commit a crime (other than a crime relating to property) punishable on conviction on indictment by a maximum sentence of not less than three years imprisonment or three years penal servitude; and
- (c) all complaints made against a police officer of or above the rank of Superintendent.

Yours sincerely

Judge P D Urquhart QC
Commissioner

**SCHEDULE TO THE AGREEMENT MADE ON 15 JANUARY 1998 PURSUANT
TO S 67(a) OF THE POLICE INTEGRITY COMMISSION ACT 1996 BETWEEN
THE COMMISSIONER FOR THE POLICE INTEGRITY COMMISSION AND THE
OMBUDSMAN**

- A. A complaint 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 so to act.

- B. A complaint that a police officer has or may have committed or may commit
 - (i) an assault which has caused or may cause a serious injury and which could lead to a charge of maliciously wounding or inflicting grievous bodily harm upon a person pursuant to section 35 of the *Crimes Act 1900*; or
 - (ii) an offence (including larceny) relating to property where the value exceeds \$5000; or
 - (iii) any offence (other than assault occasioning actual bodily harm) punishable on conviction on indictment by a maximum sentence of imprisonment or penal servitude for five years or more.

- C. A complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit for himself/herself or for another in return for failing to carry out his/her duties.

- D. A complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence.

- E. A complaint that a police officer investigating an offence alleged to have been committed by another police officer has or may have improperly failed to carry out, or may improperly fail to carry out, his/her duties in the course of that investigation.

- F. A complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivated or may cultivate a prohibited plant, or supplied or may supply a prohibited drug or a prohibited plant, unless the amount or number of such drug or plant is less than the indictable quantity therefor as specified in the *Drug Misuse and Trafficking Act 1985*

AGREEMENT made this fifteenth day of January 1998

BETWEEN THE COMMISSIONER FOR THE POLICE INTEGRITY COMMISSION ("the PIC Commissioner") AND THE OMBUDSMAN ("the Ombudsman")

WHEREAS:

- A. the PIC Commissioner and the Ombudsman made an Agreement on the twentieth day of December 1996 pursuant to section 67 (a) of the Police Integrity Commission Act 1996;
- B. it is now appropriate to amend the Schedule to that Agreement;

IT IS HEREBY AGREED that the Schedule attached to this Agreement shall replace the Schedule to the Agreement made on the twentieth day of December 1996; and that the Schedule attached to this Agreement shall come into effect on 1 February 1998.



PIC Commissioner



Ombudsman