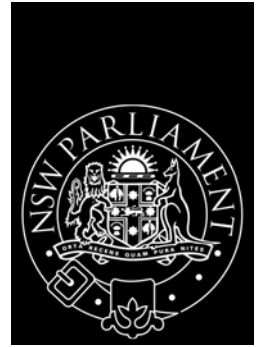


PARLIAMENT OF NEW SOUTH WALES



# Committee on the Office of the Ombudsman and the Police Integrity Commission

Report on an inquiry into the handling of complaints  
against the Police Integrity Commission

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## Membership and staff

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## Terms of reference

That the Committee commence an inquiry into the way in which complaints made against the Police Integrity Commission are examined and the procedures used to facilitate this.

## Chair's foreword

Over the past two years the Inspector of the Police Integrity Commission has produced a number of complaint reports critical of the Commission. In some cases the Police Integrity Commission has disagreed with the Inspector's conclusions. At General Meetings with the Inspector and with the Police Integrity Commission the Committee has satisfied itself that, despite these disagreements, a constructive and appropriate working relationship between the parties continues.

Indeed, the PIC Commissioner has told the Committee on a number of occasions that although the Commission held a different view on a number of matters, its practices and procedures had been changed in response to the Inspector's reports.

However the Committee felt that it would be timely to conduct an inquiry into the practices and procedures for examining complaints made against the Commission and to look at comparable agencies which are oversighted by an Inspector.

Generally speaking there was a consensus of opinion about complaint investigation procedures among those who contributed to this inquiry. Flexibility in any scheme was recommended by most of those giving evidence.

The Committee has suggested some guidelines for the PIC Inspector to follow but it has also recommended that the Police Integrity Commission Act be amended so that, where the PIC disagrees with an adverse comment in the Inspector's complaint report, the PIC's response to that comment is included in the report. The Committee considered that the Commission's views should be available to a reader of the Inspector's report.

I would like to thank all those who contributed to the Committee's inquiry and the Members of the Committee for their participation in the inquiry and their contribution to the reporting process.



The Hon Kerry Hickey MP  
Committee Chair

## List of recommendations

RECOMMENDATION 1: That the Minister for Police amend the *Police Integrity Commission Act 1996* so that, should the PIC Inspector make adverse comment in regard to the Police Integrity Commission and the Commission disagree with the Inspector's position, the Commission's response to that adverse comment be reproduced in full in the Inspector's complaint report. .... 15

## List of acronyms

CCC	Corruption and Crime Commission
CJC	Criminal Justice Commission
CMC	Crime and Misconduct Commission
ICAC	Independent Commission Against Corruption
MoU	Memorandum of Understanding
PCJC	Parliamentary Criminal Justice Commissioner
PCMC	Parliamentary Crime and Misconduct Committee
PIC	Police Integrity Commission



# Chapter One - Current arrangements between the Inspector of the Police Integrity Commission and the Police Integrity Commission

- 1.1 Both the Police Integrity Commission (PIC) and the Inspector of the Police Integrity Commission are established under the *Police Integrity Commission Act 1996* as independent offices. The Act specifies at s 13(5) that for the Commission 'oversight is to be achieved by agreement', and while this is in reference to agencies oversights by the PIC, the same could be said to apply to the relationship between the Inspector and the PIC. Thus, in the same way PIC recommendations to the NSW Police Force or the NSW Crime Commission are not enforceable, recommendations made by the Inspector to the Commission are not enforceable. The Committee considers that this situation carries a necessary implication that, even where there may be conflict between the two offices, this will not adversely impact on the operations of either.

## Current arrangements

- 1.2 Evidence and submissions were taken from both the PIC and the Inspector in regard to current arrangements for handling complaints made against the PIC. (Copies of their responses to questions on notice may be found at Appendix 1.) Both the PIC and the Inspector stated that there were no specific policies and procedures in place, and the substance of a complaint would largely dictate how it was dealt with.

## The Inspector

- 1.3 The Inspector outlined a straightforward process. Once a complaint raises matters within his jurisdiction, the Inspector will then formulate the complaint to include all relevant aspects. This may include matters which are not expressly stated in the original complaint but which the Inspector considers to be relevant. The Inspector notes in his submission that, if the complainant has legal representation, this may be a time-consuming process.
- 1.4 Once the complaint has been formulated, it then goes to the complainant for confirmation and to the PIC so they are aware of the complaint. Correspondence is invited from both parties in response to the complaint. Other relevant bodies may also be consulted at this juncture, for example the Professional Standards Command in the NSW Police Force, the Office of the Director of Public Prosecutions or Counsel Assisting the PIC.
- 1.5 If a report is warranted, a draft report is sent to all parties, and each is invited to respond. All responses are considered by the Inspector prior to settling the final report.

## The Police Integrity Commission

- 1.6 The PIC's submission largely mirrored the Inspector's response. They too noted there were no specific policies or procedures for responding to complaints by the Inspector.
- 1.7 On receipt of a notification of a complaint from the Inspector, the PIC will consider the complaint and any requests from the Inspector in relation to the complaint. It will undertake the appropriate inquiries and provide a response to the Inspector. The PIC

will respond to any additional inquiries from the Inspector and then receive his final advice and recommendations.

- 1.8 However, the PIC drew the following points to the Committee's attention. In relation to the procedural fairness complaints (those made by Briggs, Jackson, Philpott and Diessel; Brazel; and Young), while these matters were raised in the weekly meeting between the PIC Commissioner and the Inspector, the PIC was advised in writing of the complaints only on receipt of a paper referred to variously as a 'draft report' and 'draft document'. This document also contained draft conclusions, relevant legal principles or authorities to be applied in the circumstances, and in one matter draft recommendations for changes to relevant policies and procedures.
- 1.9 In two matters the PIC requested a copy of the original complaint document, but it was not provided. The Inspector advised that the particulars of the complaint as reflected in the draft document supplied were the culmination of correspondence between the complainant and the Inspector before referral to the PIC. In each matter the Inspector had requested information and primary documents from the PIC relating to the complaint before providing the PIC with the nature of the complaint.
- 1.10 The PIC provided a number of suggestions for improving the process. These included providing the PIC with either the actual complaint or the correspondence between the Inspector and the complainant for the purposes of clarifying the complaint, unless there are particular reasons against this. However, the PIC considers that it is neither necessary nor appropriate on all occasions for every separate submission or piece of information that the Commission provides to the Inspector to be provided in turn by the Inspector to the complainant. A complaint to the Inspector should not have the effect of providing a complainant with material and information that would not otherwise be available to them.
- 1.11 In evidence before the Committee the Inspector stated that he has, on the request of the PIC, withheld information from complainants. Complainants have been informed that there is material that the Inspector has seen which the PIC does not agree to the complainant seeing.<sup>1</sup> On further questioning the Inspector clarified that he would not disclose the nature of the information to the complainant and that once or twice he has not agreed with the PIC's request and that, on further negotiation, the PIC has withdrawn its objections and the information has been provided to the complainant.<sup>2</sup>
- 1.12 The PIC stated that as part of any complaint handling process, all relevant information and background material in relation to a particular complaint should be collected before the formulation of any views as to the merit of the complaint and the preparation of any report, even in draft form, containing findings of fact, conclusions and related recommendations.
- 1.13 Finally, the PIC noted that it supports changing the legislation to provide the Inspector with the power to publish complaint reports<sup>3</sup>. However, it also noted that, where such a report contains criticism or conclusions that the PIC does not accept, the Inspector's final report should also refer to, if not include as an annexure, the various submissions of the PIC as to the points of disagreement. The PIC noted that the Joint Standing Committee of the Western Australian Parliament recommended in its *Report on the Relationship Between the Parliamentary Inspector and the*

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<sup>1</sup> Transcript of hearing Monday 26 October 2009, p. 1.

<sup>2</sup> *ibid.*, pp. 2-3.

<sup>3</sup> Police Integrity Commission, Answer to Question on Notice No. 3, see Appendix 1 of this report.

*Commissioner of the Corruption and Crime Commission*, that in any report prepared by the Parliamentary Inspector that is critical of the Corruption and Crime Commission (CCC), the Parliamentary Inspector include in his report all CCC submissions as to the Inspector's adverse comments<sup>4</sup>. This report is summarised in Chapter 2.

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<sup>4</sup> Joint Standing Committee on the Corruption and Crime Commission, [\*Report on the Relationship Between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission\*](#), Report No 2 in the 38<sup>th</sup> Parliament, 2009, p. 38.

## Chapter Two - The Queensland and Western Australian experiences

- 2.1 The purpose of this chapter is to provide a brief narrative on the differences of opinion which arose in two comparable jurisdictions, following the publication of complaint reports; and to set out the processes which were undertaken as a consequence of those disagreements.
- 2.2 Like NSW, Queensland and Western Australia have commissions charged with the tasks of preventing misconduct by police officers and investigating any allegations that misconduct has occurred. As with NSW, the investigative powers of these commissions operate within an accountability framework that is provided for in the respective state legislation.
- 2.3 Whilst there are jurisdictional differences concerning roles and functions, the basic accountability framework in each state is comparable. All the jurisdictions have an office of inspector or commissioner empowered to investigate allegations of misconduct by the commission; and a parliamentary committee to monitor and report to parliament on the exercise of the functions of both the commission and inspector.
- 2.4 The jurisdictional differences which are pertinent to this inquiry concern the respective inspector's (or commissioner's) powers to investigate complaints against a commission and to make a report directly to parliament.
- 2.5 As matters currently stand in NSW and Western Australia, the inspector has the power to initiate and undertake complaint investigations of his or her own volition. For example, the inspector may choose to investigate a matter using this 'own motion' power, or do so in response to a matter referred or reported to them.
- 2.6 There is provision in the respective Acts for the inspector to directly report to parliament; though in the case of NSW, it should be noted that it is the view of the Committee and the Inspector of the Police Integrity Commission that these reporting powers require clarification.<sup>5</sup>
- 2.7 As matters currently stand in Queensland there is no own motion power and its commissioner can only act upon direction from the parliamentary oversight committee. The commissioner has no power to directly report to parliament; reports are provided to the parliamentary oversight committee.
- 2.8 The following table briefly summarises the investigative and reporting powers in the respective jurisdictions:

Inspector's/commissioner's ability to investigate and report in comparable jurisdictions			
Jurisdiction	NSW	Queensland	WA
Own motion power	Yes	No	Yes
Ability to report to parliament	Yes	No	Yes

<sup>5</sup> Committee on the Office of the Ombudsman and the Police Integrity Committee, [Report on the Ninth General Meeting with the Inspector of the Police Integrity Commission](#), 2009, pp. 2-13.

## Queensland

- 2.9 In Queensland the commission with the misconduct function is the Crime and Misconduct Commission (CMC). The CMC was established on 1 January 2002 under the *Crime and Misconduct Act 2001* (QLD) which effected a merger of the Crime Commission and the Criminal Justice Commission (CJC).
- 2.10 The Act also provides for oversight of the CMC by establishing the Parliamentary Crime and Misconduct Committee (PCMC) assisted by the Parliamentary Crime and Misconduct Commissioner (the Commissioner).
- 2.11 Under the current statutory framework in Queensland, it is the PCMC which has the primary responsibility for handling complaints against the CMC. The Commissioner is an agent of the PCMC and does not have own motion powers to conduct investigations or to directly report to the Queensland Parliament. Should the PCMC resolve to direct the Commissioner to investigate and report to it, this would require a bipartisan majority of PCMC members.
- 2.12 Prior to 2002, the CJC had been oversighted by the Parliamentary Criminal Justice Committee (the Committee) who were assisted in this capacity by the Parliamentary Criminal Justice Commissioner (PCJC).
- 2.13 In 1998, the CJC conducted an investigation into allegations which had been made by an MP that both serving and retired police officers had engaged in criminal conduct.
- 2.14 When information about the CJC's investigation appeared in a newspaper article, the Committee requested that the PCJC investigate and report to the Committee 'in relation to whether there had been an unauthorised disclosure of information or other material from the CJC concerning the CJC's investigation of the matter'.<sup>6</sup>
- 2.15 The Committee tabled the PCJC's report on 13 December 1999 and on 23 December 1999 the CJC commenced legal proceedings against the PCJC seeking declarations that:
- the PCJC's report was *ultra vires*;
  - the PCJC was not entitled to make findings of guilt; and
  - the PCJC had failed to observe the requirements of procedural fairness in preparing a report critical of the CJC.
- 2.16 On 25 July 2000 a decision was handed down by the Supreme Court of Queensland which declined to issue the declarations sought by the CJC. An appeal by the CJC was heard by the Court of Appeal on 14 May 2001 which held that parliamentary privilege applied to the report and accordingly a legal challenge to the report was not justiciable.<sup>7</sup>

## Western Australia

- 2.17 In Western Australia, the commission with the misconduct function is the Corruption and Crime Commission (CCC), which was established on 1 January 2004 by the *Corruption and Crime Commission Act 2003* (WA).

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<sup>6</sup> Queensland Parliamentary Criminal Justice Committee, [Annual Report 2000/2001](#), Report No.56, 16 October 2001, p. 6.

<sup>7</sup> See: *Criminal Justice Commission and Ors v Parliamentary Criminal Justice Commissioner* [2002] 2 Qd R 8; re *Criminal Justice Commission* [2000] 1 Qd R 581.

- 2.18 The Act also provides for the establishment of a Parliamentary Inspector of the Corruption and Crime Commission (the Parliamentary Inspector) with jurisdiction to investigate allegations of misconduct by the CCC; and for parliamentary oversight of the CCC and the Parliamentary Inspector. The joint standing committee which has this function is the Committee on the Corruption and Crime Commission (the WA Committee).
- 2.19 In 2007 and 2008, a dispute arose between the Parliamentary Inspector and the CCC over reports made by the Inspector which were critical of certain actions by the CCC.
- 2.20 In March 2009, the WA Committee conducted an inquiry into the relationship between the Parliamentary Inspector and the CCC. The following paragraphs briefly summarise the chronology and analysis provided in the WA Committee's report.<sup>8</sup>
- 2.21 In December 2008, the CCC sought an injunction from the Supreme Court of Western Australia to restrain the Parliamentary Inspector from tabling a report in the Western Australian Parliament (the Parliament), on the grounds that it contained errors; made unreasonable conclusions; and that in making his report the Parliamentary Inspector had acted *ultra vires* and had denied the CCC procedural fairness.
- 2.22 In declining to issue the injunction, the Supreme Court expressed doubts as to the justiciability of the proceedings; in short, whether the Parliamentary Inspector as an officer of the Parliament, could be restrained by the courts from reporting to Parliament or whether this would constitute a contempt of Parliament.
- 2.23 Notwithstanding its dismissal of the CCC's application, the Supreme Court held that it raised important issues as to:
- the nature of the report the Parliamentary Inspector proposed to table;
  - whether the Parliamentary Inspector had exceeded his jurisdiction; and
  - whether the Parliamentary Inspector had contravened the reporting provisions in s 205 of the *Corruption and Crime Commission Act 2003 (WA)* (WA Act).
- 2.24 The Parliamentary Inspector tabled his report in Parliament on 24 December 2008 and on 29 December 2008 the CCC sought a declaration from the Supreme Court that the report was unlawful and that the Parliamentary Inspector had acted outside his statutory functions and powers.
- 2.25 This action was discontinued following an all day workshop hosted by the WA Committee at which the Commissioner and the Parliamentary Inspector agreed to a process to address the respective functions and powers of their offices.
- 2.26 The WA Committee's 2009 report considered that the scope of the Parliamentary Inspector's reporting function had been a major issue in the dispute which had arisen between the Parliamentary Inspector and the CCC. The WA Committee reviewed the legal and policy arguments as to whether the Parliamentary Inspector should be able to directly table a report in the Western Australian Parliament, or whether the Queensland model should be adopted, whereby the Inspector tables reports with the oversight committee.

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<sup>8</sup> See: Western Australia Parliamentary Joint Standing Committee on the Corruption and Crime Commission, [Report on the relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission](#), Report No. 2 in the 38<sup>th</sup> Parliament, 19 March 2009. Accessed at 27 October 2009.

- 2.27 It was the view of the WA Committee that the Parliamentary Inspector should retain the own motion power to instigate and undertake inquiries, but it recommended that the WA Act be amended to require the Parliamentary Inspector to table reports through the WA Committee, accompanied by the Parliamentary Inspector's recommendation as to whether it is in the public interest to be tabled in Parliament.
- 2.28 The WA Committee considered that there were five compelling reasons for this amendment:
- the Parliamentary Inspector's role is to assist the Committee in performing its functions;
  - the Committee acts as a check and balance on the exercise of the Inspector's functions;
  - the Committee would preserve the CCC's entitlement to procedural fairness;
  - the prospect of two inconsistent and unresolved reports existing in the public arena would be reduced; and
  - the scope for conflict between the Inspector and the CCC would be diminished.<sup>9</sup>
- 2.29 It was not the view of the WA Committee that the CCC should use its reporting powers to reply to any adverse comments in any report prepared by the Parliamentary Inspector, otherwise the 'spectre of a never-ending tit for tat' would arise. Rather, it recommended that any report prepared by the Parliamentary Inspector which was critical of the CCC should contain the CCC's responses to those adverse comments.<sup>10</sup>

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<sup>9</sup> *ibid*, p. 45. See also the dissenting view of the Hon Ken Travers MLC.

<sup>10</sup> *ibid*, p. 38.

## Chapter Three - Current arrangements between comparable bodies

### **The Independent Commission Against Corruption and its Inspector; and the Corruption and Crime Commission and its Parliamentary Inspector**

- 3.1 The Inspector of the Independent Commission Against Corruption (ICAC) and the Parliamentary Inspector of the Corruption and Crime Commission have responsibilities in regard to the handling of complaints about their respective agencies.
- 3.2 The ICAC Act (NSW) states at s 57B(1)(b) that one of the principal functions of the Inspector is:
- to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission.
- 3.3 Section 57C of the ICAC Act sets out the powers of the Inspector. These are that the Inspector:
- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and
  - (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and
  - (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
  - (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and
  - (e) may investigate and assess complaints about the Commission or officers of the Commission, and
  - (f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and
  - (g) may recommend disciplinary action or criminal prosecution against officers of the Commission.
- 3.4 Under s 195(1)(b) of the Corruption and Crime Commission Act (WA) the Parliamentary Inspector has a responsibility:
- to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector.
- 3.5 Section 196 of the CCC Act sets out the powers of the Parliamentary Inspector. These are that:
- ...
- (2) The Parliamentary Inspector has power to do all things necessary or convenient for the performance of the Parliamentary Inspector's functions.
  - (3) Without limiting subsection (2), the Parliamentary Inspector—
    - (a) may investigate any aspect of the Commission's operations or any conduct of officers;
    - (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them;
    - (c) may require officers to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or the conduct of officers;



- (d) may require officers to attend before the Parliamentary Inspector to answer questions or produce documents or other things relating to the Commission's operations or the conduct of officers;
  - (e) may consult, cooperate and exchange information with independent agencies, appropriate authorities and —
    - (i) the Commissioner of the Australian Federal Police;
    - (ii) the Commissioner of a Police Force of another State or Territory;
    - (iii) the CEO of the Australian Crime Commission established by the Australian Crime Commission Act 2002 of the Commonwealth;
    - (iv) the Commissioner of Taxation holding office under the Taxation Administration Act 1953 of the Commonwealth;
    - (v) the Director General of Security holding office under the Australian Security Intelligence Organisation Act 1979 of the Commonwealth;
    - (vi) the Director of the Australian Transaction Reports and Analysis Centre under the Financial Transaction Reports Act 1988 of the Commonwealth;
    - (vii) any person, or authority or body of this State, the Commonwealth, another State or a Territory that is declared by the Minister to be a person, authority or body to which this paragraph applies;
  - (f) may refer matters relating to the Commission or officers to other agencies for consideration or action; and
  - (g) may recommend that consideration be given to disciplinary action against, or criminal prosecution of, officers.
- (4) The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation.
  - (5) Upon a review under subsection (4), the Parliamentary Inspector may notify the Commission that the matter is to be removed to the Parliamentary Inspector for consideration and determination.
  - (6) On receipt of a notice under subsection (5), the Commission is to comply with its terms.
  - (7) Upon a removal under subsection (5), the Parliamentary Inspector may—
    - (a) annul the Commission's determination and substitute another; or
    - (b) make any decision the Parliamentary Inspector might otherwise have made had the Parliamentary Inspector exercised an original jurisdiction; or
    - (c) make any ancillary order, whether final or provisional, that is remedial or compensatory.
  - (8) Where the Parliamentary Inspector proposes to act under subsection (7)(a), the Commission must be given a reasonable opportunity to show cause why its determination should not be annulled.
  - (9) The Parliamentary Inspector must not undertake a review of a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the *Industrial Relations Act 1979*.

3.6 Both Inspectors are able to hold inquiries with Royal Commission powers.

3.7 At the Committee's hearing on 19 October 2009, the Commissioner of the CCC, the Hon Leonard Roberts-Smith, drew attention to the absence of the word 'complaint' – which is used in the comparable provisions of both the PIC and ICAC Acts – in s 195(2)(c) of the CCC Act (see above). As the CCC Act is the more recent Act, the Commissioner concluded that this omission was deliberate and contemplates the Parliamentary Inspector occasionally 'exercising his statutory oversight role, not a complaint resolution role'<sup>11</sup>.

<sup>11</sup> Transcript of hearing Monday 19 October 2009, p. 15.

Current arrangements between comparable bodies

- 3.8 However, in reviewing the jurisdictions of the PIC and ICAC Inspectors, the Committee notes that, in addition to dealing with complaints, both Inspectors have a proactive oversight role that includes investigating misconduct of which they become aware, for example, through auditing the operations of the PIC and the ICAC.
- 3.9 This chapter summarises how the ICAC and Parliamentary Inspectors handle complaints, using information provided in responses to questions on notice and in evidence given to the Committee at its public hearing held on 19 October 2009.

### **The Inspector of the Independent Commission Against Corruption**

- 3.10 On receipt of a complaint, the ICAC Inspector initially assesses whether it is within jurisdiction and then whether it should be investigated. Investigation is not automatic. The Inspector will carry out the assessment by, for example:
- examining material provided by the complainant in support of the complaint;
  - interviewing the complainant;
  - interviewing other persons nominated by the complainant; and/or
  - obtaining and inspecting relevant ICAC files and documents.
- 3.11 The Inspector may take the following factors into account in determining whether to investigate a complaint:
- whether the complaint is within jurisdiction;
  - the nature of the available evidence;
  - the nature of the complaint, the seriousness of the issues and whether they raise concerns about public confidence and integrity in the ICAC;
  - the age of the complaint and the likelihood of uncovering relevant evidence;
  - the cost of investigating the complaint with respect to the seriousness of the issues raised and the overall merit of proceeding with the complaint;
  - the potential value of the audit suggested by the issues in a complaint;
  - whether any other agency has examined or is examining the complaint and if so, the details and outcomes of any such investigation;
  - the likely impact of either investigating or not investigating a complaint any further in respect of any systemic, procedural or policy issues raised by the complaint; and/or
  - the ICAC's own policies and criteria for determining its own priorities and the best use of its resources.
- 3.12 When investigating a complaint the Inspector may:
- seek further evidence from the ICAC, including interviewing ICAC officers or requiring the production of documents;
  - interview witnesses other than ICAC officers;
  - hold an inquiry as a Royal Commissioner.
- 3.13 The Inspector advised the Committee that he did not send the Commission a copy of the original complaint at the commencement of an investigation, because the majority of complaints he received did not clearly define the issues. Rather, he informs the

Commission of specific complaints, for example, an allegation of assault by an ICAC officer.<sup>12</sup>

- 3.14 At the conclusion of the Inspector's investigation, if his report contains material damaging to a person's reputation or integrity, that person will be afforded a full and fair opportunity to correct or contradict the material in question.
- 3.15 Once the investigation is completed, the Inspector notifies the complainant and the persons affected (normally the ICAC and/or an ICAC officer) of his findings. If he considers it appropriate, the Inspector can make a special report to Parliament, pursuant to s 77A of the ICAC Act.
- 3.16 The ICAC Commissioner informed the Committee that the Commission logs each item of correspondence exchanged with the Inspector about the complaint in a Schedule of Complaints. He also provided the Committee with a copy of the Memorandum of Understanding (MoU) which the Commission has with the Inspector. In that MoU, the Commission undertakes to advise the Inspector when it becomes aware of any matter relating to the conduct of an ICAC officer which comes within the principal functions of the Inspector.

### **The Parliamentary Inspector of the Corruption and Crime Commission**

- 3.17 When the Parliamentary Inspector receives a complaint from a non-CCC public officer or a member of the public, he obtains the relevant files from the Commission together with any other information he requires and then considers the merits of the complaint. If he decides to proceed with an investigation of the complaint, he will write to the Commission inviting further information and submissions.
- 3.18 The Inspector would ordinarily provide a summary of the CCC's response to the complainant for comment. Having gathered all the relevant information and satisfied the requirements of procedural fairness, the Inspector reaches a decision on the matter, which is then provided to the CCC and the complainant in writing. He may recommend a course of action so the Commission can address the problem.
- 3.19 If the Inspector considers the matter to be significant, he can report to the CCC's oversight body, the Joint Standing Committee for the CCC, or to Parliament or to both. The Inspector might choose to report to Parliament if, for example, the Commission had not accepted or acted on a recommendation in the Inspector's complaint report.
- 3.20 Where the Parliamentary Inspector receives a complaint from the CCC itself, he is entitled to remove the matter from the CCC for consideration and determination. He has the authority to:
  - annul a determination the CCC has previously made on the matter and substitute his own;
  - make any decision he may have made had he exercised his original jurisdiction; or
  - make a remedial or compensatory ancillary order.
- 3.21 The Parliamentary Inspector submitted that he considered it important to leave the complaint process flexible so as to cater for any circumstance that might eventuate. At the Committee's public hearing on 19 October 2009, Mr Paul Pearce MP, Deputy

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<sup>12</sup> *ibid*, p. 2.

Current arrangements between comparable bodies

Chair, asked the Parliamentary Inspector, the Hon Christopher Steytler, whether he thought ICAC's Memorandum of Understanding, which outlines ICAC's process for notifying the Inspector of complaints against its officers, was a useful agreement. Mr Steytler doubted whether a MoU was necessary, as the WA legislation 'spelt out [the position] at some length and ... operates perfectly well as things stand.' However, he reflected that a MoU:

...might be a preferable option though, than framing the whole issue in legislation, because it would give the parties a greater degree of flexibility.<sup>13</sup>

3.22 He also considered it paramount that complaints of misconduct by CCC officers should be determined – or at least overseen – by an authority external to the Commission, as is provided by s 196(4)-(8) of the CCC Act.

3.23 The CCC Commissioner in evidence to the Committee spoke in practical terms about the complaint process:

...generally the process of responding to the Parliamentary Inspector can be time consuming and involve significant Commission effort and resources. The present Parliamentary Inspector has asked that where his requests are likely to involve significant effort or resources by the Corruption and Crime Commission, I advise him what that would be. It is a matter for him whether, in light of that, he considers the seriousness or importance of his request is such that the Corruption and Crime Commission should comply with his request notwithstanding and that seems to me a reasonable and appropriate approach.<sup>14</sup>

3.24 The CCC Commissioner made two suggestions for improving the Corruption and Crime Commission Act: first, that the legislation provide for both the Parliamentary Inspector and the Commissioner to refer a question of law to the Supreme Court for determination:

...where an issue arises between them in a particular instance about the proper construction of the Corruption and Crime Commission Act. That, I think, would be helpful given that obviously by virtue of their statutory functions, each of the Commissioner and the Parliamentary Inspector are exercising administrative not judicial authority and any view they express about anything really can only be an opinion, not a binding judicial determination, so that if there were to be a conflict between them as to the proper construction, for example, of the Corruption and Crime Commission Act, if they were not able to reach an agreement or an accommodation on that, then the position would be that there would simply be two opinions about what that meant and it seems to me it would be helpful to have a way of resolving that situation were it to arise.<sup>15</sup>

3.25 The Commissioner's second suggested improvement was for the legislation to expressly state that the Parliamentary Inspector is not an appeals body and cannot review Commission decisions or opinions. He considered that:

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<sup>13</sup> *ibid*, p. 22.

<sup>14</sup> *ibid*, p. 17.

<sup>15</sup> *ibid*, p.19.

...the role of the Inspector is an oversight role, to ensure the Commission does not abuse or act outside its powers and that its procedures are appropriate and effective; in short, that the Parliamentary Inspector's role has to do with the process not outcomes.<sup>16</sup>

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<sup>16</sup> *ibid.*

## Chapter Four - Possible arrangements between the Inspector of the Police Integrity Commission and the Police Integrity Commission

- 4.1 All of the agencies that took part in this inquiry agreed that flexibility in responding to complaints is a necessity in any complaint handling system. As Mr Roberts-Smith, Commissioner of the Western Australian Corruption and Crime Commission, observed:
- ...in terms of the processes around how the Parliamentary Inspector would deal with a complaint, it seems to me it is best not to have those embodied in legislation but to leave them to be worked out in a flexible manner as between the Parliamentary Inspector and the Commission, dependent on the nature of the complaint or the nature of the issues, the seriousness of them...<sup>17</sup>
- 4.2 Mr Cooper, Inspector of the Independent Commission Against Corruption observed in his submission to the inquiry that in his opinion:
- ...the way in which complaints are dealt [with] and the process are flexible to meet the requirements of a specific complaint. I can think of no other way of dealing with them.<sup>18</sup>
- 4.3 This point of view was repeated by Mr Steytler, the Parliamentary Inspector of the CCC, who stressed that it is 'very important to leave the whole process as flexible as possible to cater for the wide range of circumstances that can eventuate'.<sup>19</sup> Both the PIC Inspector and the PIC mention that complaints need to be dealt with on a case-by-case basis.<sup>20</sup>
- 4.4 Clearly, flexibility is a primary feature of any effective complaint handling system. While not wishing in any way to impinge on the flexibility of the PIC Inspector and the PIC in managing complaints, the Committee nonetheless suggests that the current case-by-case style process could be improved by some general guidelines. The following guidelines have been formulated from the responses to questions on notice and the evidence given to the inquiry by all the witnesses.

### Guidelines for complaint handling

1. As soon as is practicable after receipt of a complaint, or formulation of a complaint by the Inspector, a written copy of that complaint should be given to the PIC as formal notification of the complaint.
2. As a general rule, responses to the complaint should be sought from all relevant parties before the preparation of any draft report or recommendations.

- 4.5 Needless to say, circumstances may arise where one or both of these guidelines are superseded by events or rendered impractical by particular situations. That said, it seems to the Committee that by observing these guidelines, some of the difficulties

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<sup>17</sup> Transcript of hearing Monday 19 October 2009, pp. 18–19.

<sup>18</sup> Mr Harvey Cooper, Inspector of the Independent Commission Against Corruption, Submission to the Inquiry, p. 3.

<sup>19</sup> Transcript of hearing Monday 19 October 2009, p. 22.

<sup>20</sup> PIC submission p. 1; Inspector of the PIC submission p. 2.

that have arisen in the past between the Inspector and the PIC could have been avoided.

- 4.6 However, while acknowledging that the consensus among those giving evidence in this inquiry is that complaint handling procedures should be flexible, the Committee noted the PIC's opinion that:
- ...where...a [complaint] report contains criticisms or conclusions which the Commission does not accept, the Inspector's final report should also refer to if not include as an annexure the various submissions of the Commission as to the relevant points of disagreement.<sup>21</sup>
- 4.7 The Committee agrees that, where there is a substantive difference of opinion, the Commission's views on the Inspector's opinions and conclusions in his complaint investigation reports should be on the record, for the information of the complainant in particular but also for the report's wider audience. It seems appropriate for both the Inspector's and the Commission's views on the matter to be available in the one document, i.e. the Inspector's complaint report.
- 4.8 This balancing of the differing views about the Inspector's complaint findings will be important if the PIC Act is amended, as the Committee has recommended, to make it clear that the PIC Inspector is able to report to any party, including Parliament, at his discretion, in relation to any of his statutory functions. The full text of the Commission's response to criticism of it in a complaint investigation report would help to clarify why the Commission has or has not taken action on a particular recommendation of the Inspector.
- 4.9 The Committee therefore recommends that, should the Inspector make adverse comment in regard to the Commission and the Commission disagree with the Inspector's position, the Commission's response to that adverse comment be reproduced in full in the Inspector's complaint report.

**RECOMMENDATION 1:** That the Minister for Police amend the *Police Integrity Commission Act 1996* so that, should the PIC Inspector make adverse comment in regard to the Police Integrity Commission and the Commission disagree with the Inspector's position, the Commission's response to that adverse comment be reproduced in full in the Inspector's complaint report.

<sup>21</sup> Police Integrity Commission, Answer to Questions on Notice No. 3, see Appendix 1 of this report.

## Appendix 1 – Answers to questions on notice

Questions on notice were sent to:

- The Inspector of the Police Integrity Commission;
- The Police Integrity Commission;
- The Inspector of the Independent Commission Against Corruption;
- The Independent Commission Against Corruption;
- The Parliamentary Inspector of the Corruption and Crime Commission;
- The Corruption and Crime Commission.

Responses to the questions on notice are set out below with the exception of the CCC.

### Inspector of the Police Integrity Commission

***Question 1: Could you please outline the process and procedures you undertake on receiving a complaint against the PIC.***

#### **Response to Question 1:**

- (a) Assuming that the initial form of the complaint suggests that the matters raised therein are within the Inspector's jurisdiction, I think it is then desirable for the Inspector to formulate the complaint so as to include all relevant aspects including matters which may not be expressly stated in the original complaint, but which seem to the Inspector to be relevant, nevertheless, to the matters sought to be complained of.
- (b) This particular process, depending on whether or not the Complainant is at that stage legally represented, may be a time-consuming procedure. For example, in the case of the complaint by *Mr Hosemans* (still under review) the position is as follows: I received the initial notice of the complaint via a letter from Mr Hosemans dated 31 January 2007. I responded promptly seeking further and better particulars. By letter dated 14 March 2007, Mr Hosemans requested, in effect, that the complaint be left in abeyance until the Commission had published the Rani Report. Following the publication of the Rani Report, I wrote again to Mr Hosemans by letter dated 2 April 2008 requesting his advice as to whether he wished to pursue his complaint. Following further correspondence I directed his attention to the existence of the Legal Representation Office, and by letter dated 11 September 2008, that office advised me they now acted for Mr Hosemans and requested that his complaint be received as now formulated by the LRO. Thus some 21 months had passed between the notification of the initial complaint and its subsequent formulation by the LRO. In the case of the complaint by the *Police Association* (still under review) the position is as follows: The initial complaint was received via letter from the Association dated 14 February 2008, but it was not until letter from the Association dated 4 March 2009, after several attempts by me by way of further correspondence to obtain further and better particulars of the complaint, that I was satisfied I was in a position to formulate that complaint in adequate terms, again noting that the whole procedure had taken some 12 months to get to that stage of the proceedings.
- (c) Once the Inspector is satisfied that the complaint appears to have been satisfactorily formulated, it is desirable that that formulation go [to] each of the parties so that the



Commission may be aware of the substance of the complaint, and so that the Complainant may have the opportunity of confirming, or otherwise, that the complaint as formulated by the Inspector, raises all issues sought to be raised by the Complainant.

- (d) The next stage is to invite correspondence from the parties as to their respective responses to the claim as formulated. Obviously the Commission is likely to respond in much more detail than is the Complainant. Where the Commission takes issue with aspects of the complaint, the relevant correspondence can be lengthy indeed (some of the Commission's responses have exceeded 100 numbered paragraphs). Examples of this are provided by the *Young* and *Brazel* complaints, in particular.
- (e) In addition, fairness, and prudence, may dictate that other entities should be consulted and given the opportunity for their viewpoint to be made known to the Inspector. For example, in the case of the *[name deleted]* complaint, correspondence was entered into with the Director of Public Prosecutions, and Professional Standards Command. In the case of the *Young* complaint, correspondence was engaged in with Counsel Assisting that particular inquiry, and that correspondence extended over many months. I should add that that which emerged from that correspondence, that is, the relevant information provided by Counsel Assisting, was in my opinion invaluable to the formation of the opinions ultimately come to by the Inspector in respect of that complaint.
- (f) Later, where the Inspector is of the view that a Report is warranted, a Draft Report is served upon the parties, and each party is invited to respond to the Draft Report, and all such Responses are taken into Account by the Inspector prior to settling the final Report.

**Question 2: In this the optimal way to deal with a complaint?**

**Response to Question 2:**

It is important to make clear that none of the complaints mentioned herein involved a significant factual issue. Thus no issues of credit arose, particularly concerning the Commission or its Officers, so that there was no basis for me to consider exercising my coercive powers, in particular, holding a formal hearing. Bearing that distinction carefully in mind, I respond as follows: Overall, it does not occur to me that any different process or procedure would be superior to the way complaints are investigated at the moment. In addition to the matters I have referred to above as being time-consuming, I think it is desirable to bear in mind that the Inspector's appointment is part-time only (I was given to understand, at the time of my appointment, that typically two days a week would be sufficient) and that a reasonable time should be allowed to the parties, and others involved in the relevant correspondence, to make their responses. In the case of the Commission, I take into account that some of the most substantial complaints I have dealt with to date, unfortunately, occurred in some instances a matter of years ago. This has meant re-agitating matters with the Commission where the relevant staff may no longer be available to give direct answers to the questions raised by the Inspector. In addition, in some of those cases, the presiding Commissioner has been replaced by a new Commissioner. It seems to me, if the outcomes of the Inspector's reports in the cases of the *Briggs*, *Brazel* and *Young* complaints, are considered, in which each of the complaints was substantially upheld, the overall procedures adopted by which those complaints were dealt with would appear to me to be satisfactory. This is not to suggest that with the benefit of hindsight, it is not possible to see that some of the procedures might have been shortened, and the lengthy correspondence reduced somewhat. Of course, care must be taken that each of the parties

is accorded procedural fairness in the manner in which the Inspector's investigation is carried out.

**Questions 3: Is there any way, in your opinion, that this process could be improved?**

**Response to Question 3:**

It seems to me that all the Inspector can do is to look at the situation on a case-by case basis. In doing so, the Inspector should, in my opinion, try to ensure that the parties, and other relevant persons, respond to the Inspector's questions within a reasonable time. In the case of the Commission, I think it must be borne in mind that the response of the Commission to these detailed complaints can be very time-consuming. In order to do so, it is obvious, the Commission must direct [a] portion of its limited resources to responding to the Inspector's questions. Sometimes other factors are involved which may delay such responses, for example, there are three Draft Reports of the Inspector which have been with the Commission for some time, being in the matters of complaints by Officers *Philpott*, *Deissel* and *Jennings* arising out of the publication of material in the Whistler Report. However, the Commission has, prudently, in my view, retained Senior Counsel to advise in relation to the drafting of the Commission's Report to the NSW Parliament dealing with the multiple instances of a failure to accord procedural fairness to a number of Police Officers as a result of the material published in the Whistler Report. I have taken the view that it is highly desirable, that, so far as possible, there should be consistency between the Inspector's various reports, just mentioned, and the Commission's report dealing with the same subject matters which will ultimately go to Parliament. The limited availability of Senior Counsel, as I understand, has meant that I am still awaiting the Commission's final response to the Draft Reports in the case of Officers *Philpott*, *Deissel* and *Jennings*. As to whether there is room for significant improvement, it might be prudent to look at that question in the light of the number of substantial complaints that are received, once the remaining substantial complaints have been dealt with. Please also take into account the answer to the following question.

**Question 4: Are there any other matters you would like to draw to the Committee's attention in regard to examining complaints against the PIC?**

**Response to Question 4:**

- (a) I think it might be helpful to refer to the fact that prior to my appointment as Inspector, there had been nothing like the number of substantial complaints since made against the Commission, during the currency of my predecessors.
- (b) Indeed during my first twelve months or so as Inspector it appeared that the previous state of affairs would continue, that is to say, that there would be little substance in any of the putative complaints made concerning the Commission to the Inspector. However, all this changed with the advent of the two *Briggs* complaints, each of which I upheld. It may be that the publicity given to the Reports dealing with those complaints made the Inspector's jurisdiction and existence better known to the outside world.
- (c) In any event, there followed fairly rapidly the complaints in *Brazel* and *Young*, both, in my opinion, very substantial complaints. Then followed the three further complaints in Whistler to which I have referred above, and which have not yet been dealt with, but which are the subject of Draft Reports with the Commission.
- (d) The remaining two complaints which appear to me to be matters of substance are those of Mr *Hosemans* and the *Police Association*. Each of those is at an advanced

stage and I have yesterday received a written response from the Commission which, once I have had the opportunity to assess its content, should enable me to prepare a Draft Report in the case of the Police Association complaint. I am still awaiting a response from the Commission in relation to my last communication with them which sought detailed responses in the case of Mr Hosemans' complaint.

- (e) Once I have dealt with, by reports, the complaints by the Police Association and Mr Hosemans, it will be interesting to see whether further substantial complaints are made concerning the Commission. By that I mean that my understanding is that the Commission has considered my reports to date upholding complaints against the Commission, and has taken my opinions into account in relation to the Commission's practices and procedures. I have seen some objective evidence to support this view.
- (f) It is my opinion, and I hope I am right about this, that the type of practices which led to the procedural fairness problems in the Whistler Report would not be repeated in future by the Commission. Similarly, it is my opinion, that the Commission would not again reject such obviously relevant documents as the medical reports rejected in the *Brazel* complaint. I am also confident that the Commission would not again conduct a hearing in the manner such as was conducted when Ms Young and Ms Novotny appeared before the Commission on the same day as dealt with in the *Young* complaint.
- (g) Thus it may be that once I have dealt with the two outstanding complaints, which seem to be of substance, there will be a marked difference in the number of substantial complaints received by the Inspector concerning the Commission. Of course, only time will tell.

## Police Integrity Commission

### **Question 1**

*Could you please outline the process and procedures you undertake on being notified by the Inspector of a complaint against the*

### **Answer**

The Commission does not have any dedicated or specific policies or procedures for dealing with or responding to complaints received from the Inspector. Much will depend on the nature of the complaint such as whether it relates to the specific conduct of an individual officer (or officers) and/or the conduct of the Commission as a whole and the request from the Inspector in relation to it. On some occasions the notification will include the actual complaint letter or document from the complainant to the Inspector while on other occasions this will not be included.

In most matters, the Commission will consider the complaint and the request from the Inspector in relation to it, undertake inquiries and then provide a response to the Inspector. On some occasions there may be further inquiries or queries made with the Commission which it also responds to. The Commission will then receive a final advice from the Inspector containing any conclusions or findings about the complaint with associated recommendations, if any, depending on the outcome.

Appendix 1 – Answers to questions on notice

In relation to those recent complaints alleging a denial of procedural fairness by the Commission in expressing certain adverse opinions about persons in its public investigation reports, the Commission was advised in writing of the complaint by the Inspector in the form of what was referred to as either a “draft report” or a “draft document”. While the general nature of each of the complaints was alluded to during regular weekly meetings with the Inspector, these documents constituted the first written notification to the Commission of the details of the complaint. This document also contained draft conclusions, relevant legal principles or authority to be applied in the circumstances and, in one matter, draft recommendations for changes to relevant policies and procedures and other further related action.

In two matters the Commission requested a copy of the complainant's original complaint document but it was not provided. A covering letter from the Inspector advised that the particulars of the complaint as reflected in the draft document or report was the culmination of an exchange of correspondence between the Inspector and the particular complainant before referral to the Commission for consideration and response. In each matter there were a number of requests from the Inspector to the Commission seeking certain information or primary documents relating to the complaint before the draft report or document was provided.

In these matters, and as with other complaints generally, the material from the Inspector was referred to the relevant officers who were either involved in or had knowledge of the matter for inquiry and response which would then be crafted into a reply on behalf of the Commission to the Inspector. Unless there was an objection from the Commission in doing so, a copy of that response was also provided by the Inspector to the complainant for consideration and response which in turn was provided to the Commission for any further response and so on.

Following an exchange of a number of responses and submissions in this way including any further draft documents from the Inspector, a final draft report by the Inspector was prepared and provided to both the Commission and complainant for consideration and comment before being finalised.

In a current similar matter also alleging a denial of procedural fairness in relation to the Operation Rani Report, there has been a slight variation of this process with the initial complaint document provided to the Commission being referred to as the “*Inspector's Initial Document as to the Complainant made by ...*” with the opening paragraph of the covering letter advising that the “*principal purpose of this document is to illicit from the parties the factual background in respect of certain matters.*” Following an exchange of a number of responses the Commission has recently been provided with a document referred to as the “*Inspector's Third Document*” which follows the provision to the Commission and to the complainant, of the Inspector's First and Second Documents”. The Inspector's covering letter also advised that “*basic purpose of the Third Document is to attempt to establish the remainder of the factual situation surrounding the complainant's investigation and publication of the Rani Report*”.

**Question 2**

*Is this the optimal way to deal with a complaint?*

**Answer**

Ultimately it is for the Inspector to determine how best to deal with a particular complaint including seeking a response from the Commission as part of that process.

Generally, the process of providing the Commission with the original complaint letter or document and then seeking a response allows for the actual complaint and the issues behind it or in support of it to be identified and addressed and in most cases quickly and satisfactorily resolved.

It is acknowledged however that on some occasions a complaint will contain more than one allegation and may also contain different heads of allegations such as those alleging a denial of procedural fairness by the Commission. These complaints, which it must be pointed out are few in number relative to the total number of complaints received by the Inspector and referred to the Commission in say, in any given year, will necessarily involve complex issues of law and procedure, arising as they do from wide ranging and lengthy Commission investigations invariably involving the exercise of coercive powers, public hearings and culminating in the publication of an investigation report under section 96 of the PIC Act.

**Question 3**

*Is there any way, in your opinion, that this process could be improved?*

**Answer**

From the Commission's perspective, the process for dealing with complaints from the Inspector about the Commission should have regard to the following matters.

First, unless there are particular reasons for not doing so, it would be desirable if not more efficient if the Commission was provided with the actual complaint document or letter from the complainant or if there has been correspondence between the Inspector and the complainant with a view to clarifying and settling a complaint, being provided with that correspondence. Having access to all the background information relating to a particular complaint would assist the Commission in quickly identifying and narrowing the nub or gist of the complaint. While it is inevitable that it may on occasions be necessary for a number of different inquiries relating to a particular complaint to be referred to the Commission for response, having early access to all the information in support of a complaint would in the Commission's view assist in reducing the need for an unnecessarily prolonged series of responses and counter-responses.

Second, having said this, in the Commission's view, given the nature of the role and functions of the Inspector as provided for under Part 6 of the PIC Act, in order for the Inspector to satisfactorily and properly deal with a complaint the Commission does not consider that it is either necessary, or indeed on occasions appropriate, for every separate submission or piece of information that it provides to the Inspector to in turn be provided to the complainant.

In this respect, the Inspector is not a court or other a tribunal of review and as such it is more than appropriate and permissible for the Inspector in dealing with a complaint to consider information obtained and provided by the Commission that is not available to a complainant; dealing with complaints should also not have the effect of providing access to information and material that would not otherwise be available to a complainant.

Third, as part of any complaint handling process, an initial step should be for all the relevant information and background material relating to a particular complaint to be collected and gathered before formulating any views as to the merit of the complaint, (preliminary or otherwise), and preparing any report, even in draft form, containing findings of fact, conclusions and related recommendations and then referring this to the Commission for a response.

During the process for dealing with the Young complaint three draft reports were prepared by the Inspector for the Commission's consideration and response before a final report was settled and submitted for review and response. The Commission suggested that the matter could have been shortened with the benefit of an information gathering and collection process before the preparation of any draft reports. As the Commission foreshadowed in its initial response to the Second Draft it was likely that further information not obtained before preparation of the First Draft would affect many of the assumptions and assertions in that draft document which in fact the Third Draft document ultimately acknowledged.

Finally, the Commission supports proposals to amend PIC Act to make it clear that the Inspector's reports may be made public and without the need to do so via the Committee. Allied with this change however, where such a report contains criticisms or conclusions which the Commission does not accept, the Inspector's final report should also refer to if not include as an annexure the various submissions of the Commission as to the relevant points of disagreement. In the Commission's view, given the important relationship between the Commission and the Inspector it is in the public interest for the basis of any disagreement to be made known and it would also assist in maintaining public confidence in the effective operation of that relationship.

In this respect, the Commission endorses the views of the Joint Standing Committee on the Corruption and Crime Commission of the Western Australian Parliament (the JSC) in its *Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission*. As the Committee may be aware that Report dealt with a dispute between the Commissioner of the CCC and the (former) Parliamentary Inspector as to the functions, powers and responsibilities of the CCC and the Parliamentary Inspector as they pertain to each other.

The JSC recommended, *inter alia*, that in any report prepared by the Parliamentary Inspector that is critical of the CCC, the Parliamentary Inspector include in his report all CCC submissions as to the Parliamentary Inspector's adverse comments.<sup>1</sup>

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<sup>1</sup> Joint Standing Committee on the Corruption and Crime Commission, *Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission*, Report No 2, 38<sup>th</sup> Parliament, March 2009, recommendation 1 at page 38

While there are subtle differences in the relationships between the Parliamentary Inspector, the JSC and the WA CCC compared to the similar bodies under the PIC Act, the policy reasons behind the recommendation as discussed in the JSC's report are in the Commission's view, equally applicable to legislative scheme governing the relationship between the Commission and the Inspector.

**Question 4**

*Are there any other matters you would like to draw to the Committee's attention in regard to the way in which complaints against the Commission are examined?*

**Answer**

The background circumstances from which this inquiry originates need to be seen in proper context. In that respect some caution needs to be exercised in drawing inferences or conclusions that suggest a wider or larger problem in existing processes or practices for dealing with complaints from the Inspector than that which in the Commission's view actually prevails.

As the Commission noted during its recent meeting with the Committee, there have been changes and refinements to Commission practices and procedures in light of the Inspector's reports giving rise to this inquiry albeit that the Commission disagrees with many of the views expressed in those reports. It does also appear that as was alluded to during that meeting, the occasions for disagreement between the Commission and the Inspector over the application of the rules of procedural fairness to the functions of the Commission as a commission of inquiry are abating. There have been no complaints referred to the Commission by the Inspector in relation to its most recent public hearings or related investigation since those in Operations Rani and Mallard.

Both the Commission and the Inspector were created at the same time with the commencement of the PIC Act on 1 January 1997. In the ensuing period of almost thirteen years, while at times rigorous and robust, on any objective assessment the overall relationship has been productive, co-operative and professional and characterised by mutual respect for alternative views on those occasions where differences have emerged. As the Commission has previously pointed out, the legislative provisions governing the relationship between the Commission and Inspector allows that in relation to some complaints, differences will arise. Indeed, the Committee Chair acknowledged as much in his foreword to the Committee's Report on the Eleventh General Meeting with the Commission when referring to the issue of recent disagreement giving rise to this inquiry he observed that there is "space for disagreement" between the Commission and the Inspector without adversely affecting the operations of either (at p vi).

## Inspector of the Independent Commission Against Corruption

### 1. The Process and Procedures undertaken on receiving a complaint against the ICAC

- Complaints received will be registered. Registration consists of dating the day the complaint was received and creating a file with an allocated number for the complaint;
- An acknowledgement letter will be sent to the complainant. If the nature of the complaint is clearly not within jurisdiction, the complainant will be advised.
- The complaint will be assessed to determine whether or not it should be investigated. Investigation is not automatic.
- The steps taken during the assessment process depends upon the nature of the complaint and the information provided by or on behalf of the complainant. Such steps may include:
  - examining material provided by the complainant in support of the complaint;
  - interviewing the complainant;
  - interviewing other persons nominated by the complainant; and/or
  - obtaining and inspecting the relevant ICAC files and documents.
- Once all relevant material has been considered a decision is made whether or not the complaint should be investigated.
- If it is decided that the complaint does not warrant investigation, the complainant is advised in writing giving reasons.

In determining whether or not to investigate a complaint, the following factors are taken into account:

- whether the complaint is within jurisdiction;
- the nature of the available evidence;
- the nature of the complaint, the seriousness of the issues and whether they raise concerns about public confidence and integrity in the ICAC;
- the age of the complaint and the likelihood of uncovering relevant evidence;
- the cost of investigating the complaint with respect to the seriousness of the issues raised and the overall merit of proceeding with the complaint;
- the potential value of the audit suggested by the issues in a complaint;
- whether any other agency has examined or is examining the complaint and if so, the details and outcomes of any such investigation;
- the likely impact of either investigating or not investigating a complaint any further in respect of any systemic, procedural or policy issues raised by the complaint; and/or
- the ICAC's own policies and criteria for determining its own priorities and the best use of its resources.



What form the investigation process will take depends upon the nature and extent of the subject matter of the complaint. But it can include:-

- seeking further evidence from the ICAC including by way of interviewing its officers or requiring the production of its documents;
- interviewing witnesses other than ICAC officers;
- the application for and execution of search warrants;
- the application for and execution of warrants under the *Telecommunications (Interception and Access) Act 1979* ;
- the application for and execution of warrants under the *Surveillance Devices Act 2007*; and/or
- holding an inquiry as a Royal Commissioner.

At the end of an investigation, before publishing material damaging to a person's reputation or integrity, that person will be afforded a full and fair opportunity to correct or contradict the material in question.

Once the findings of the investigation are concluded the complainant and the persons affected (normally the ICAC and/or an ICAC officer) will be notified.

In an appropriate case the subject matter of the investigation and findings may comprise a special report pursuant to section 77A of the *Independent Commission Against Corruption Act (1988)*.

**2. Is this the optimal way to deal with a complaint?**

and

**3. Is there any way, in your opinion, that this process could be improved?**

The way in which complaints are dealt and the process are flexible to meet the requirements of a specific complaint. I can think of no other way of dealing with them.

**4. Are there any other matters you would like to draw to the Committee's attention in regard to examining complaints against the ICAC?**

All interviews are sound recorded and the person is given a copy of the recording tape as well as the transcription of the recording.

The nature of the complaints received by the Inspector of the ICAC generally differs from that received by the Inspector of the PIC.

Complaints to the Inspector of the PIC usually emanate from the police officer(s) against whom findings have been made by the PIC. On the other hand, complaints to the Inspector of the ICAC generally emanate from persons who are dissatisfied with the ICAC's refusal to investigate their complaint.

## **Independent Commissions Against Corruption**

**1. Could you please outline the process and procedures you undertake on being notified by the Inspector of a complaint against the Commission.**

The Commission is advised of a complaint received by the Inspector when hard-copy files are requested in writing. On receipt of a request to provide files, the files are identified, accessed and reviewed by the Deputy Commissioner before being couriered securely to the Inspector's office. Each complaint received and file sent out are logged into a Schedule of Complaints which allows the Deputy Commissioner to see what matters have been finalised and which are still being reviewed.

If the Inspector requires information further to that in the files it is requested in writing and responded to in writing - each item of correspondence is logged into the Schedule of Complaints.

A complaint is marked as 'Finalised' on the Schedule when the files are received back from the Inspector's Office.

The Commissioner and the Solicitor to the Commission will advise the Inspector of any complaints relating to staff members - these matters are handled more sensitively.

A copy of the current Memorandum of Understanding with the Inspector's office is attached for reference.

**2. Is this the optimal way to deal with a complaint?**

Yes.

**3. Is there anyway, in your opinion, that this process could be improved?**

No.

**4. Are there any other matters you would like to draw to the Committee's attention?**

No.

## Parliamentary Inspector of the Corruption and Crime Commission

### Question 1 - Processes and procedures on receiving a complaint against the CCC

The processes and procedures undertaken upon receipt of a complaint against the Corruption and Crime Commission (WA) (CCC) depend on the source of the complaint. Most complaints are received by me in one of the two following ways.

#### *(1) From non-CCC public officers and members of the public*

These complaints are made in writing. Upon receipt, a complaint is entered into our electronic complaints register and given an identification number which is used in all subsequent correspondence. Other details in this entry are the name of the complainant, a brief description of the subject matter of the complaint, the date of the complaint and (later) the date upon which the complaint is finalised. The complaint is placed in a file kept in my offices.

I then obtain from the CCC its primary file relating to its investigation, or other matter giving rise to the complaint, and any other information I require (assuming, of course, that the complaint is not obviously specious). I have the power, under s196(2) of the *Corruption and Crime Commission Act 2003 (WA)* (CCC Act), to do all things necessary, or convenient, to carry out my functions. In addition to this broad power, under s196(3) of the CCC Act I am entitled to have full access to CCC records and I may compel CCC officers to supply information and documents to me.

Once I have received the necessary documents and information, I consider the merits of the complaint. If there is obviously no substance to it, I will dismiss it without further troubling the CCC.

If I conclude, *prima facie*, that the CCC has, or may have, acted in such a way as to justify my interference under one or more of the functions entrusted to me by s195(1) of the CCC Act (attached), I inform the CCC accordingly in writing, giving my reasons and inviting it to place any additional information, and to make any submissions, it considers necessary or appropriate. Once I have the CCC's response, I will ordinarily make the substance of it known to the complainant and, if appropriate, invite any further comments. Once all relevant information has been received, and the requirements of procedural fairness satisfied, I will ordinarily reach a decision. This might be communicated to the CCC and to the complainant by letter. Where appropriate, the letter will make a recommendation to the CCC concerning the best means of addressing the problem that has been encountered.

Most complaints are satisfactorily addressed in this way. Occasionally, I might regard the matter as sufficiently important to address it by way of a report to the CCC's oversight body, the Joint Standing Committee for the CCC, or to Parliament (or to both). I would very likely adopt this last procedure in a case in which the CCC declined to accept, or act on, my recommendation. Whilst I do not have the legislative authority to direct, or compel, the Commissioner to accept my view, I do have the power under s199 of the CCC Act to report to Parliament on any matter affecting the CCC, including its operational effectiveness.

In some matters (for example where a CCC officer is suspected of engaging in misconduct, or serious misconduct, as defined by s4 of the Act), I may elect to conduct an Inquiry under s197(1) of the Act (also attached) before arriving at a conclusion. This process is subject to the provisions of the *Royal Commissions Act 1968 (WA)* by virtue of s197(2) of the CCC Act.

*(2) From the CCC itself*

The CCC is obliged by s196(4) of the CCC Act to notify me whenever it receives an ‘allegation that concerns, or may concern, one of its officers.’ This section does not restrict the nature of such an allegation to misconduct, or serious misconduct. The processes and procedures described above, including my discretion to hold an Inquiry under s197(1), apply equally to a complaint received under this section.

Under s196(5) of the Act, upon reviewing the allegation, I am entitled to remove the matter from the CCC for consideration and determination. The CCC must comply with my decision to remove the matter.

Under s196(7) of the Act, if the CCC has made a determination about the matter prior to my removal of it, I have the authority to a) annul this determination and substitute my own; b) make any decision I may have made had I exercised my original jurisdiction; or c) make any ancillary order, whether final or provisional, that is remedial or compensatory.

My jurisdiction excludes matters of an industrial nature: s196(9) of the CCC Act.

Question 2 - Is this the optimal way?

I have held the office of Parliamentary Inspector for seven months. My tenure is five years. The current processes and procedures of my office have evolved during the term of my predecessor, Mr Malcolm McCusker AO QC, who was the first occupier of the position of Parliamentary Inspector (for a five year term). During my term, it has seemed to me that these processes and procedures are efficient in resolving complaints against the CCC.

That conclusion must be considered against a background in which there has been no significant difference between me and the CCC concerning the extent of my powers and in which, so far as I am aware, the CCC has been co-operative and constructive when dealing with my office.

Question 3 - Ways in which the process could be improved

At this stage, I see no need for any material improvement in the processes and procedures of my office.

Question 4 - Any other matters

I have two additional comments concerning the examination of complaints against the CCC.

The first is that it seems to me to be important to leave the process flexible, in order to cater for the wide variety of circumstances that might eventuate.

The second is that it is particularly important that complaints of misconduct by officers of the CCC should be determined, or at least overseen, by an external authority as is provided by s197(4)-(8) of the CCC Act.

## Appendix 2 – List of witnesses

### MONDAY 19 OCTOBER 2009

<b>Witnesses (in order of appearance)</b>	<b>Organisation</b>
Hon Harvey Cooper AM Inspector	Office of the Inspector of the Independent Commission Against Corruption
Mr John Pritchard Commissioner	Police Integrity Commission
Hon Len Roberts-Smith RFD QC Commissioner	Corruption and Crime Commission of Western Australia
Hon Christopher Steytler QC Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission of Western Australia

### MONDAY 26 OCTOBER 2009

<b>Witness</b>	<b>Organisation</b>
The Hon Peter Moss QC	Inspector of the Police Integrity Commission

## Appendix 3 – Transcripts of proceedings

Two public hearings were held for this inquiry. The first hearing was held on Monday 19 October 2009 at 2.30pm in the Waratah Room, Parliament House, Sydney. Committee members attending were: the Hon. Kerry Hickey (Chair), Mr Peter Draper MP, Mr Malcolm Kerr MP, the Hon Charlie Lynn MLC, Mr Paul Pearce MP and the Hon Lynda Voltz MLC. The second hearing was held on Monday 26 October 2009 at 11.30am in the Waratah Room, Parliament House, Sydney. Committee members attending were: the Hon. Kerry Hickey (Chair), Ms Sylvia Hale MLC, Mr Malcolm Kerr MP, the Hon Charlie Lynn MLC, Mr Paul Pearce MP and the Hon Lynda Voltz MLC.

### Transcript of hearing held 19 October 2009

**HARVEY LESLIE COOPER**, Inspector of the Independent Commission Against Corruption, PO Box 5341, Sydney, sworn and examined:

**CHAIR:** The Committee has received your answers to the questions on notice. Would you like to make an opening statement?

**Mr COOPER:** All I would like to do is to correct an error in my letter to you. I did say that amongst the procedures I can take applications for and executions of search warrants, warrants under the Telecommunications (Interception and Access) Act and warrants under the Surveillance Devices Act. I was wrong. I have no power to apply for those in my own right. I can, of course, in appropriate cases do it through an enforcement agency, as defined in the Act, which would probably include the police. That is the only matter I wanted to correct.

**Mr DRAPER:** Do you think that the process of investigating complaints has led to improvements in practices and procedures and can the process of those investigations be further improved?

**Mr COOPER:** Well, if you are talking about investigations generally or investigations that I am concerned with, because the investigations I am concerned with is limited to complaints against ICAC and involve me inquiring as to whether ICAC has been guilty of a particular form of misconduct, as defined in the Act, so I am not really investigating the primary complaint made to ICAC, I am investigating whether in its dealing with that complaint, ICAC has been--

**Mr DRAPER:** Well, that is what I would like to hear about.

**Mr COOPER:** Well, in the 12 months that I have had this office, I cannot point to anything where I have said to the ICAC, "Yes, you have gone wrong here," and they have fixed it up. I suppose what I am is like a policeman looking over the shoulder of a motorist. You observe the speed limits when you know there is a policeman following you, and I think that is probably what I am.

Now, if I were not there I am not suggesting for one moment that ICAC would fall into complete chaos, but the mere fact that there is an Inspector is part of the overall scheme of

transparency that is required, starting off from the ICAC itself, the Inspector, and then the Inspector being answerable to the Joint Parliamentary Committee, which is the same as with the Ombudsman and the Police Integrity Commission.

**Mr KERR:** In relation to complaints, I wonder whether you would provide the ICAC with a copy of the original complaint on commencing a complaint investigation?

**Mr COOPER:** No, I do not, because the complaints I receive are not usually in a coherent form where they set out a complaint. Very often you have to interview the person, either in person or by correspondence, to get the details of the complaint. Where there is a specific complaint, for example if it is alleged that an officer of ICAC has assaulted someone, clearly then you would let them know and then there would be a process of interviewing various people to determine where the truth lay on that allegation, but in general most of my complaints are from people who have made a complaint to ICAC, and ICAC has declined to deal with the matter for one reason or another, and then they are asking me to revisit the complaint.

**CHAIR:** During the conduct of an investigation, would you provide a complainant with information you provide to ICAC or provided to you by ICAC?

**Mr COOPER:** Yes, provided it is not part of the internal workings of ICAC. In general, yes, I do tell them what ICAC has decided, why it has decided it, but then in fairness to ICAC, they have already done that and I then look at it and see well, ICAC has made a decision, does that decision or the reasoning behind it indicate any misconduct, as defined in the Act, on the part of ICAC. That is what I am looking for.

**Mr KERR:** The majority of complaints have been that ICAC has not acted upon the complaint. What is the nature of other complaints that have been made to you? Have there been any others?

**Mr COOPER:** Well, without being specific.

**Mr KERR:** Just in general terms.

**Mr COOPER:** In general terms misconduct on the part of an individual officer.

**Mr KERR:** Any relating to unfair procedures or procedural fairness?

**Mr COOPER:** Yes, there was one that related to that or, rather, two and we went into it. As far as I was concerned there was no basis to it but, yes, there were complaints of that type.

**CHAIR:** So when ICAC does an investigation relating to an individual, does that individual get the format of the complaint against them at the beginning of the investigation, or some time through that investigation? Do they front up to ICAC without knowing what the issue is?

**Mr COOPER:** Well, there you are asking me about the procedures of ICAC and I would rather not go into details of that because, frankly, I do not know all of the details. I think that is really a question you would have to address to ICAC.



**The Hon. CHARLIE LYNN:** Where the views of an Inspector or a commission officer differ over a complaint report, by what means might these differences be given recognition?

**Mr COOPER:** Well, you mean if I disagree with something ICAC has done?

**The Hon. CHARLIE LYNN:** Yes, a difference between you and the commission?

**Mr COOPER:** Well, in that particular case I would certainly write and say, “Look, you have reasoned it out this way. I think, with respect, you are wrong.” I would reason it that way. “Would you please have another look at it.” Now, then that is assuming that I disagree with what they have done, but I am not prepared to find that it is misconduct, that they have indulged in any misconduct. If I find that they have indulged in misconduct, then of course I would put that to them and go further.

**Mr KERR:** Just in relation to the conduct of ICAC and procedures and I think, Inspector, you said that you are not familiar with their procedures of investigation, is that correct?

**Mr COOPER:** Well, I am not as familiar as they are and therefore what I say may not be entirely accurate and I really feel questions of their procedures should be addressed to them, rather than to me, except insofar as I have come across them.

**The Hon. CHARLIE LYNN:** Are there any complaints made to you in regard to what ICAC does not investigate, for example, if somebody lodges a complaint with them and ICAC comes back and says no, we do not think that is worthy of investigation?

**Mr COOPER:** That sort of thing probably comprises the majority of the complaints made to me.

**The Hon. CHARLIE LYNN:** And why is that, do you think, that they do not investigate?

**Mr COOPER:** Well, it probably is because people become unhappy with or, rather, people become preoccupied with the righteousness of their own cause, to the extent that they cannot see any merit in an opposing point of view, and so when someone makes a complaint to ICAC, and ICAC says we are not going to investigate this for some reason or another, they immediately assume that that is misconduct on the part of ICAC and then if I say look, there is no misconduct, back comes the answer, ICAC is corrupt, you are corrupt, I am going to complain to my Member of Parliament.

**CHAIR:** I hear what you are saying and I agree with you. All of those other people are wrong, except me and you, okay?

**Mr COOPER:** Yes, that is right.

**The Hon. CHARLIE LYNN:** Is there a difference between a weighting given between the investigations in regard to an act of corruption or what you have termed endemic corruption?

**Mr COOPER:** No. If it is a act of corruption it will be stamped on, an act of corruption within ICAC, most certainly it will be stamped on.

**The Hon. CHARLIE LYNN:** Do you think ICAC has the resources to handle all of the complaints that they get?

**Mr COOPER:** I am sorry, but I think that is a question which should be addressed to ICAC, not to me.

**Mr PEARCE:** You note that there is a difference between the nature of the complaints received by the Inspector of the ICAC and the Inspector of the PIC. People dissatisfied with the ICAC's refusal to investigate their complaint generally complain to you, and police officers adversely named in reports generally contact the PIC Inspector. Do you think this could make for different practices and procedures in examining these complaints? For example, the police officers contacting the Inspector have already undergone a legal process, leading to substantial amounts of legal paperwork, while your complainants have generally only entered into correspondence with the ICAC?

**Mr COOPER:** Sure, that is one of the problems. Also police officers are usually far better able to collate evidence and collate material than Mr and Mrs Average.

**Mr PEARCE:** How would you see this being resolved?

**Mr COOPER:** Well, the way I try to resolve it is to get together with the complainant, sit down with them, have an interview, and then go through what I have got, go through the material they hand me, get hold of the ICAC files, go through what is in the ICAC files and then try to sort it out myself.

**Mr PEARCE:** As a comment, what sort of success rate do you have?

**Mr COOPER:** Well, as a comment I think I have a good success rate in sorting out what the basis of their complaint is. That does not mean that the complaint is necessarily justified. There have been a couple of cases where I have been frustrated, where I have had a torrent of letters complaining about the ICAC, all sorts of allegations made, and then I have said look, let's get together and work out what are the facts upon which you base your allegations and they say: I am not going to come to you, you are part of the corrupt system, and that is what worries me when I have that sort of answer. Fortunately it has only happened a couple of times, but it still concerns me.

**The Hon LYNDA VOLTZ:** If you were going to make a special report to Parliament regarding a complaint against the ICAC, do you think it would be important, or would it be necessary to allow the ICAC's response to the complaint to be part of that report?

**Mr COOPER:** Definitely. That's part of procedural fairness, or at least to say in the course of the findings that ICAC has been invited to make submissions. It has made submissions A, B, C. I am satisfied that there is no merit to those submissions, words to that effect, but you have to do that. If I did not, I think ICAC could have the finding set aside by the Supreme Court.

**Mr DRAPER:** ICAC provided the Committee with a copy of the Memorandum of

Understanding that was developed between themselves and the former ICAC Inspector. Do you think that MOU is useful in clarifying aspects of complaints handling between the two agencies?

**Mr COOPER:** Yes, it has worked very, very well.

**Mr DRAPER:** Are there further improvements that could be developed or is it where we need to be?

**Mr COOPER:** At the moment I have had excellent cooperation from ICAC. I will give you an example. Last week on Monday I faxed off a request for a file. It was sitting on my desk on Thursday. Now I regard that as pretty good, and this is the type of cooperation I have had from them. You can have all sorts of Memoranda of Understanding but you really have to have the will to cooperate and certainly that has been evidenced by the way in which they have conducted themselves.

**Mr DRAPER:** That is encouraging.

**CHAIR:** Would it be fair to say that the Commission and yourself get on quite well about any issues?

**Mr COOPER:** There have been no issues, no issues that we cannot work out.

**Mr KERR:** Your predecessor as Inspector, are you aware of any disagreements between him and ICAC?

**Mr COOPER:** I think there was one over the Breen report.

**Mr KERR:** Did you have any discussions with your predecessor?

**Mr COOPER:** I did not go into any details with him but I am aware that ICAC was somewhat hurt by the findings, even though they were glad that there were findings of no misconduct, but that is all.

**Mr KERR:** Are you familiar with his findings in relation to the Breen matter?

**Mr COOPER:** Yes, they are published.

**Mr KERR:** Did you have a view on them?

**Mr COOPER:** No, because I had not looked at the evidence. I had not heard the evidence, therefore I felt it would be quite improper for me to express any view of them.

**Mr KERR:** Did you form any view in relation to his criticisms, whether they were justified or not justified?

**Mr COOPER:** I did not indulge myself that luxury.

**CHAIR:** It might be best left to the ICAC Committee to ask those questions.

**The Hon. CHARLIE LYNN:** But it was well handled.

**CHAIR:** Very well handled.

**Mr COOPER:** Can I add two things which are shortcomings in my ability to investigate. The first one relates to recent amendments to the federal Telecommunications (Interception and Access) Act, which prohibits ICAC from giving to me information received as a result of telephone intercepts so that I can do an audit on them. I cannot do any audit on them because of that. I can only inspect the results of those intercepts if I am doing a targeted investigation of a particular complaint, and that is a matter that concerns me.

**Mr PEARCE:** Just on that, with your comment about the auditing, when you wish to do an audit on these, what exactly are you looking for, whether it has carried out an appropriate procedure, whether it has been reasonably so, or is it something else?

**Mr COOPER:** Not only the proper procedures, but also the way in which those procedures are conducted, that they do not result in any undue invasion of the rights of an individual and also that they are appropriate, that they are not motivated by some improper motive, and that is what concerns me, particularly with regard to telephone intercepts, where the person whose phone is being intercepted does not know about it so therefore is not in a position to make a complaint.

There is a similar position, not quite as bad, under the Surveillance Devices Act. There the ICAC is precluded from revealing to me any information obtained as a result of a surveillance device warrant, unless the ICAC Commissioner certifies that it is in the public interest to do so.

**Mr PEARCE:** Do you feel you need necessarily to get the actual information?

**Mr COOPER:** Not only I do, but the ICAC Act specifically says I have the power to do so and ICAC must obey that.

**Mr PEARCE:** So the Federal Telecommunications Act effectively precludes you from acting in accordance with the powers that are granted under State legislation?

**Mr COOPER:** It does, and also the State Surveillance Devices Act does likewise, because it is an amendment. The State Surveillance Devices Act is a New South Wales legislation, but it is an amendment after the Act which gave me the powers.

**Mr PEARCE:** So it effectively negates that power.

**Mr COOPER:** I might say these particular views are subject to debate, but we have had independent people look at it and as far as I am concerned I think those opinions are probably right and I am certainly not going to throw away \$10,000 or \$20,000 on a challenge in the Supreme Court over it.

**Mr PEARCE:** Would you be able to supply to this Committee the nature of your view on that and where the problem lies?

**CHAIR:** We, as a Committee, can write to the ICAC Committee raising the issue but

it will have to come back to the Federal legislation rather than the State. We have to amend ours.

**Mr PEARCE:** We have struck before inconsistencies between the two tiers of the legislation.

**CHAIR:** I would encourage you to write.

**Mr PEARCE:** There is a problem in trying to make sure everyone is going in the same direction.

**Mr COOPER:** I have made submissions to my Joint Parliamentary Committee.

**CHAIR:** Could we have a copy of those submissions please, Inspector?

**Mr COOPER:** Yes, I do not see why not.

**CHAIR:** The more the merrier.

**Mr COOPER:** We have written to several people pointing out the problems and I would be quite happy to add you to the list.

**(The witness withdrew)**

**JOHN WILLIAM PRITCHARD**, Commissioner of the Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney and

**Michelle Margaret O'Brien**, Solicitor to the Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, affirmed and examined:

**CHAIR:** The Committee has received your answers to the questions on notice. Would you like to make an opening statement?

**Mr PRITCHARD:** No, Mr Chair, I am happy to use the time to answer questions from the Committee.

**CHAIR:** Michelle?

**Ms O'BRIEN:** No, thank you.

**Mr PEARCE:** You have stated that the recent complaints of a denial of procedural fairness dealt with by the Inspector, the first written notification of the complaints came when you received a draft report or draft document. Would it have been more efficient for the Commission to be notified earlier of the allegation of a denial of procedural fairness?

**Mr PRITCHARD:** I should just qualify that premise by saying as we indicated in the answers, the Inspector, in the two matters in particular, indicated during our weekly meetings that he had received a complaint from persons and thereby orally advised of the nature of the complaint, but not in any great detail, so the first written notification in relation to the Brazel and Young complaints in particular was in the form of a rather lengthy draft document, but we certainly suggested, I think in relation to the Young matter in particular, that there might be a step involved whereby the nature of the complaint is given to us to respond to on that basis first and there is a phase of, I suppose, collecting a response from the Commission to the actual allegations before any sort of draft report is moved to, if that is what you mean in relation to your question.

The written notification, the first written notification we received of the complaint was in the form of what was referred to as a draft report or a draft document for comment and the process would move on from there.

**Mr PEARCE:** At the time you raised this with the Inspector, what was his response to that?

**Mr PRITCHARD:** We raised it directly in relation to the Young complaint at some stage during the course of the correspondence and I do not really think we got a response. We raised it again, I think, during the Brazel one and suggested that perhaps it might be something we could discuss as a matter of procedure once the issues were finished, but other than that, it really has not been canvassed any further.

I think, as we indicated in the response to the answers to question on notice, there has been a slight variation with the current complaint in relation to the Rani report, where there was a slight change in the process whereby the first initial document indicated that the purpose was to, I suppose, elicit from the parties or settle a factual background in relation to certain

issues before proceeding to prepare a report that might contain something in the way of preliminary views or thoughts about the complaint itself.

**Mr PEARCE:** With the procedures for establishing the factual background, is there an agreed procedure between yourself and the Inspector? A lot of the correspondence we got seemed to be to some extent questioning the basic facts that everyone was operating under.

**Mr PRITCHARD:** No, there is not. That process, I should also point out, is probably peculiar to those complaints that the Inspector has received alleging a denial of procedural fairness. Your ordinary common garden variety complaint, if I can call it that, does not take that course. For example, picking up what the ICAC Inspector said, if there are complaints from persons complaining that their complaint has not been investigated, then normally it is usually just a letter from the Inspector with the complaint document from the complainant, seeking a response and that tends to be about the only inquiry that is made of us before we receive something from the Inspector saying that he has resolved it.

**Mr PEARCE:** Given the nature of the issues you have been confronting on this, do you think there is a necessity to get an agreed set of procedures between yourself and the Inspector, because this appears to be an issue which the Inspector is clearly very concerned about, otherwise it would not have got to the point it has got to.

**Mr PRITCHARD:** There are certainly some views that the Inspector holds about the rules of procedural fairness as they apply to Commissions of Inquiry, such as the Commission, with which we do not, I suppose, agree but as was indicated in the responses, the occasion for that or scope for that disagreement is abating. We have taken on board some of the views that the Inspector has, and changed and amended procedures and approaches to take some of those matters into account if only to try to forestall similar complaints.

Whether it is necessary to settle on some sort of agreed procedure to deal specifically with complaints of that kind, I would hope that as the occasion for them is diminishing, that that might also have in turn an effect on the need to put procedures in place to specifically deal with complaints of those kind. As we have indicated in the answers, there have not been any further complaints referred to the Commission since the existing ones, which now go back to reports that are coming up to two years old, so I think we have both adjusted, if I can say that, in ways that take account the different views that may be held about this area in such a way that our responses reflect that, if you like.

**CHAIR:** I think that the meeting that Mr Pritchard and Mr Moss had, where I attended, I think the outcome was that there will always be some differences in some respects, but they are liveable differences. I think that was the terminology.

**Mr PRITCHARD:** Yes, I think that is probably right. There may well always be scope for disagreement between us, particularly in relation to issues such as procedural fairness. It is a legal concept to a large extent and lawyers are wont to disagree on things like this. They are matters upon which reasonable minds can differ and to that extent, particularly in light of the legislation for the PIC, which talks about it being permitted to express opinions, that by itself suggests that others may hold opinions different to those of the Commission, but ultimately under the Act it is to the Commission that permission is given to express

opinions of misconduct.

Others may have a different view on the evidence, or have a different view as to a procedure which was taken, which may be perfectly consistent or there may be room within which two competing opinions can be held, such that one thereby is not excluded. As Mr Chair said, there has to be recognition that there may still be that scope for different opinions to be held on the same set of facts about something. I do not know whether there is a solution to that, that means that that can always be resolved.

**Mr KERR:** I take it that you have read the Inspector's annual report to Parliament, have you?

**Mr PRITCHARD:** Yes.

**Mr KERR:** Did that give rise to any concerns, or were you happy with that report.

**Mr PRITCHARD:** I cannot remember it word for word now. There were some issues about it that the Inspector consulted us on before he published the report, particularly a section of the report entitled The Use of Suppression Orders by the Commission, which the Inspector gave us a draft of to comment on, and we made some response to what we thought about the draft. The ultimate section of the report did not vary a great deal, although it did take into account some of the matters we raised. I have read it. I do not remember every piece of detail in it. Whether I disagree or agree with it to a large extent is probably by the way.

**Mr KERR:** I take it if you disagreed violently you would remember.

**Mr PRITCHARD:** Yes, I might, yes. Certainly I did not disagree to the point where I felt that there was a need to do something. The Inspector does his annual report and we do ours, but I certainly do not remember anything and I certainly did not read anything that suggested to me that there might be any point in agitating for anything further.

**CHAIR:** Your response states that no complaints have been referred to the Commission by the Inspector in relation to the most recent public hearings or related investigations since those to do with operations Rani and Mallard. Why do you think this is the case?

**Mr PRITCHARD:** Certainly in relation to aspects of report writing, since those complaints we have changed some procedures about preparing reports to reflect some of the views of the Inspector. Whether that has helped or not I do not know. Those matters, in particular, I suppose are contentious. The Rani matter was a contentious matter in relation to some of the issues that were canvassed during it. The Mallard one to a large extent was, I suppose, a side issue, if I could put it that way, without meaning to downplay it. Ms Brazel was not a major focus of investigation in the Mallard matter in relation to the major officer in that matter.

The issue that generated the complaint, I suppose, was a pretty narrow one in the scheme of things. It is difficult to say, to a large extent, Mr Chair. I could not really answer that with any degree of certainty or exactitude.



**Ms O'BRIEN:** Perhaps I might assist the Committee by saying in my assessment the compass of factual issues that the Commission had to address in the most recent two public hearings was much narrower than that which the Commission had to address in the Rani and the Mallard matters. There were more witnesses in those matters. There were a lot more areas that gave rise to difficult arguments and difficult questions of where the balance should lie, whereas in the most recent two investigations that the Commission has done it has recommended prosecution against a number of people and the evidence is a lot more clear-cut and it would be reasonable to expect that the factual circumstances in those last two matters would be less likely to give rise to arguments about the way witnesses were treated before the Commission, so probably some insight can be gained from that, I think.

**CHAIR:** Do you think that the process of investigating complaints has led to improvements in practices and procedures?

**Mr PRITCHARD:** The process of investigating complaints by the Inspector?

**CHAIR:** And the Commission.

**Mr PRITCHARD:** I wouldn't quibble over the use of the word "improvements". Changes, yes. Whether they have been necessary is probably a point of contention, but they are the sorts of changes that, as I said, if they serve to forestall complaints then I am all for them. If they do not compromise our ability to do our job, then it would be silly to stick our heads in the sand and ignore some views that the Inspector has, simply out of some sort of pique, or pride, or what have you. Some minor changes have been made, reflecting that the Inspector has some views and to the extent, as I said, they have not compromised or they do not unduly put us to any sort of onerous requirement, or compromise our ability to do what effectively is our core function.

**Mr DRAPER:** You have mentioned operation Rani a couple of times. In your first reference to it you mentioned that there was a variation as to normal procedure, a variation when the initial complaint document was provided to the Commission. Was that a useful variance?

**Mr PRITCHARD:** It is difficult to say at this stage because it has not concluded. I do not think it has made much difference. It just simply meant that we still have not been provided with the actual primary source complaint material which may assist in disclosing what is the real gravamen of the complaint to the Commission but, look, I do not think it has made any substantial appreciable difference. There is still a process we are going through of providing information in response to certain requests with a view to, as the Inspector said in his third document, seeking to establish the factual situation.

**The Hon. CHARLIE LYNN:** Commissioner, have you read *Enemies of the State* by Tim Priest?

**Mr PRITCHARD:** No.

**The Hon. CHARLIE LYNN:** You have not read it?

**Mr PRITCHARD:** I am aware of it, but I have not read it.

**The Hon. CHARLIE LYNN:** Have any issues been raised to you about it?

**Mr PRITCHARD:** An issue has been raised about a suggestion of two breaches of suppression orders from the Royal Commission, but I should say self-initiated on that front, but other than that, no. I have read some reviews of the book but I have not read it myself.

**Mr KERR:** Can I just clarify that, Commissioner? There were some issues or concerns raised with you about the suppression orders from the Royal Commission that were self-initiated. I did not quite follow the sequence.

**Mr PRITCHARD:** One of my officers brought to my attention that there appears to be two instances of breaches of suppression orders which are still in place in relation to persons who gave evidence before the Royal Commission, who are named in the book, who are still subject to having their names and identities suppressed.

**The Hon. CHARLIE LYNN:** Has that been investigated?

**Mr PRITCHARD:** Well, to the extent that on the face of it there might be something to it. It has only recently been brought to my attention and it is one of those issues where I am, together with Ms O'Brien, assessing whether it is something that calls for action. Some of these things are best left alone, if I could put it that way.

**Mr LYNCH:** Can I ask if Ms O'Brien has read the book?

**Ms O'BRIEN:** No, I have not.

**CHAIR:** If we have any further questions can we give them to you on notice?

**Mr PRITCHARD:** Yes, definitely.

**(The witnesses withdrew)**

**(Short adjournment)**

**LEONARD WILLIAM ROBERTS-SMITH**, Commissioner, Corruption and Crime Commission of Western Australia, 186 St Georges Terrace, Perth, sworn and examined via video conferencing:

**CHAIR:** Would you like to make an opening statement?

**Mr ROBERTS-SMITH:** Mr Chair, perhaps it is important that I make the point at the outset that I do not appear before the Committee for the purpose of making a submission, but rather because I was asked by the Committee to do so, to answer questions of the Committee. I am happy to do that.

The second point I should make is that an issue which bears in some way at least on the terms of reference of this Committee is the statutory relationship between the Parliamentary Inspector of the Corruption and Crime Commission of Western Australia and the Corruption and Crime Commission itself and the proper scope and exercise of the powers and jurisdiction of the WA Parliamentary Inspector over the Commission.

Various events in 2008 raised those issues in a number of ways, as a result of which our own Parliamentary Committee, the Joint Standing Committee on the Corruption and Crime Commission, conducted some private hearings with the Parliamentary Inspector, me and other persons and an approach was adopted to deal with the statutory and jurisdictional issues which had been raised.

In those circumstances and given that those matters are the subject of continuing consideration by the West Australian Joint Standing Committee it would not be appropriate for me to say anything here about those particular matters or issues and I do not propose to do so. Subject to that, Mr Chair, I am pleased to answer the Committee's questions.

**CHAIR:** Mr Roberts-Smith, could you please outline to the Committee the process and procedures undertaken by your organisation on being notified by the Parliamentary Inspector of a complaint against the CCC?

**Mr ROBERTS-SMITH:** Perhaps there are two points that ought to be made about that to begin with. The first is that, unlike section 89(2) of the Police Integrity Commission Act 1996, section 195(2)(c) which is, I think, comparable to the provision in the Corruption and Crime Commission Act, does not use the word "complaint". The Corruption and Crime Commission Act, instead of saying that the functions of the Inspector may be exercised in response to a complaint made to the Inspector as the PIC Act does, the Corruption and Crime Commission Act says the functions of the Parliamentary Inspector may be performed "in response to a matter reported to the Parliamentary Inspector".

The Corruption and Crime Commission Act was the latter act, being enacted in 2003, and Parliamentary Council obviously drew from the provisions of the PIC Act as well as equivalent legislation in other Australian jurisdictions. That would suggest, I think, that the different form or words in section 195(2)(c) of the CCC Act was deliberate.

The second point flows from the first point and the statutory context. What the Corruption and Crime Commission Act contemplates is that the report of a matter to the Parliamentary Inspector may occasionally exercise by the Parliamentary Inspector of his functions under

subsection (1) of section 195 of the CCC Act. That is in, again, relatively similar terms to the provisions of the PIC Act and I will not go through those now. I am sure the Committee has reference to that material but what it means, I would suggest, is that the Parliamentary Inspector in that way is exercising his statutory oversight role, not a complaint resolution role, so when I speak of a complaint in response to the Committee's question, I do so in the context as I have explained it, and I use the word complaint in its ordinary sense.

The question that I have been asked, Mr Chair, is one about the process and procedures the Commission undertakes on being notified by the Parliamentary Inspector of a complaint against it. To some extent that depends upon the nature of the complaint and the approach the Parliamentary Inspector takes to it. There are three categories of complaint we could talk about here which bear upon the processes and procedures which would be applied in response to them.

The first category, I would suggest, is a complaint alleging misconduct by the Corruption and Crime Commission or one or more of its officers. The second would be a complaint concerning the way in which the Commission itself has dealt with an allegation of misconduct by a public officer and that may be because, for example, the complainant is aggrieved with a decision to call them for examination in a public hearing, or because the Corruption and Crime Commission said there was no substance to, or it would not take action on their own allegation, being an allegation of misconduct against a public officer or, for example, a claim that the Commission failed to comply with procedural fairness in some way. In other words, general complaints of virtually any kind.

Certainly one of the most common complaints in this category is a decision by the Corruption and Crime Commission not to investigate an allegation or to take no further action in respect of it.

The third category of complaints really, I think, would be about Corruption and Crime Commission reports, Parliamentary reports, becoming public because they are tabled in the Parliament and most of those complaints would be specifically about opinions of misconduct in relation to particular individuals and those individuals would say that those opinions ought not to have been expressed or reached.

Against that background we come to the nature of the Parliamentary Inspector's inquiry into complaints. That inquiry may be first by an exchange of correspondence and an examination of records of the Commission, or talking to officers of the Commission, obtaining information in any of those ways, and they are an exercise of the Parliamentary Inspector's powers under section 196(3)(a) and (b), which talk about the Parliamentary Inspector investigating any aspect of the Commission's operations or any conduct of officers and being entitled to full access to the records of the Commission.

In those circumstances obviously where the Parliamentary Inspector raises with me a matter which can be dealt with by exchange of correspondence and an exchange of information, then that would be the way it is dealt with.

The next way in which the Parliamentary Inspector may seek to deal with a complaint is by the conduct of a more formal inquiry, for example, calling Corruption and Crime Commission officers and requiring production of documents and so forth, broadly being the exercise of his powers under section 196(3)(b), (c) and (d) of our Act.

Finally, there is the option of a full formal inquiry with the Parliamentary Inspector exercising the powers of a Royal Commission and that is provided for in section 197 and that is probably most likely to occur where there is a need to examine persons who are not Corruption and Crime Commission officers, or to obtain evidence from other bodies, or where the allegation is particularly serious, an allegation of serious misconduct or corruption, for example.

I think it is probably self-evident what the processes and procedures of the Commission would be in responding to the way in which complaints are being investigated, or dealt with might be a better word, by the Parliamentary Inspector. The processes would also be conditioned to some extent or dependent upon the potential outcome of the Parliamentary Inspector's action and the possible outcomes which may result from the Parliamentary Inspector's action here, maybe making recommendations to the Commission, that is section 195(1)(d) of our Act. It may be that he might wish to make a report to the Parliament or the Joint Standing Committee. That report may be tabled in the Parliament in which case it would become a public document, or it may be tabled to the Joint Standing Committee in private session, in which case it would not be public. That process is dealt with in section 199 of our Act.

Where the Parliamentary Inspector proposes to table a report, he is required under section 200 of the Corruption and Crime Commission Act to give the Commission or any relevant officer a notice of any adverse matter and a reasonable opportunity to respond to it. Obviously therefore one anticipates that after an exchange of correspondence, formal or otherwise, and to conduct of such inquiry, of whatever formality the Parliamentary Inspector may wish to make, if he considers that the situation calls for a report to the Parliament or the Joint Standing Committee in which he proposes to make or contemplates making some comment adverse to the Commission or one of its officers, then he would provide a draft copy of that report to the Commission, or the officer, or both, to enable them to respond to it before he finalises the report.

I should say just in passing that that reflects the process and procedure which the Commission itself is required to follow when preparing a report for tabling in the Parliament in connection with the conduct of public officers.

There are some constraints on the information which the Parliamentary Inspector may include in a Parliamentary report and those are set out in section 205 of our Act.

I think, again as I said, it is probably self-evident then the processes the Commission would follow. We would respond in whatever way was appropriate, depending upon the nature of the inquiry and the way it was being made by the Parliamentary Inspector.

I can make the general observation, that generally the process of responding to the Parliamentary Inspector can be time consuming and involve significant Commission effort and resources. The present Parliamentary Inspector has asked that where his requests are likely to involve significant effort or resources by the Corruption and Crime Commission, I advise him what that would be. It is a matter for him whether, in light of that, he considers the seriousness or importance of his request is such that the Corruption and Crime Commission should comply with his request notwithstanding and that seems to me a reasonable and appropriate approach.

I think probably, Mr Chair, that covers the process of responding, at least I trust it does.

**CHAIR:** Thank you, Commissioner, for your very detailed response. I will throw it open to the Committee for questions.

**The Hon. CHARLIE LYNN:** Commissioner, as a general rule, does the Parliamentary Inspector provide the Corruption and Crime Commission with a copy of the original complaint document and can you think of any circumstance where this might be inappropriate?

**Mr ROBERTS-SMITH:** That practice has varied in the past. Usually, I think it is probably fair to say, what the Commission has received in the past has been a letter from the Parliamentary Inspector which summarises the nature of the complaint. I suppose in some circumstances that it may well be because the letter of complaint contains a number of matters, only some of which perhaps the Parliamentary Inspector considers it necessary or appropriate to pursue with the Commission.

In other instances the Parliamentary Inspector has provided a copy of the correspondence, or the letter from the complainant to him, and sought the Commission's response to that. Whether there are circumstances in which it ought not to be provided, I cannot particularly think of them off-hand, but I guess that is a matter which would depend upon the content of the document and the view that the Parliamentary Inspector takes of it.

**Mr PEARCE:** Mr Commissioner, following up on what you have just said there in response to Mr Lynn, in the circumstances where a letter goes to the Inspector, which may contain matters which are potentially defamatory of individuals, is that privileged?

**Mr ROBERTS-SMITH:** Yes.

**Mr PEARCE:** You have said in your earlier answer and earlier comment that the practice is to provide a copy of a report the Inspector is going to make to Parliament if there is likely to be any adverse comment on any individual or persons to that, so that comment can be sought back from the individual or the Commission. Is there any obligation for the Inspector to note the response made by any individual in the report to Parliament?

**Mr ROBERTS-SMITH:** Before I get to the latter point, can I perhaps just make one qualification to the first part of the question, the first question as to whether a complaint to the Parliamentary Inspector is privileged, there are provisions in our Act which deal with the making of vexatious or malicious complaints, so my answer needs to be taken subject to that. It is an offence under the Act for a person to knowingly make a false or malicious complaint either to the Commission or the Parliamentary Inspector, in which case obviously that would not be protected by any form of privilege.

In relation to the second part of the question, there is no specific legal requirement, in the sense of anything in the Act or otherwise, which requires the Parliamentary Inspector to include responses but certainly the present Parliamentary Inspector, who I observe is now here this afternoon as well and can no doubt speak for himself on these matters, has taken the view, as I understand it, that if there is anything potentially adverse in a report which he may seek to table in the Parliament he would, having obtained the response of the Commission to it, reflect the Commission's response in his report and address those issues which may have been raised by the Commission.

**Mr DRAPER:** In your opinion is there any way that the existing process could be improved?

**Mr ROBERTS-SMITH:** As I have indicated, the existing process has a feature, I think, that the prescription of it is only in its fundamentals. In other words, the requirements in the Act, reflected in section 86 in the case of the Commission and section 200 in the case of the Parliamentary Inspector, those provisions which relate to giving somebody potentially adversely affected notice of those adverse matters and a reasonable opportunity to respond.

In terms of the wider questions which the Committee has asked this afternoon, in terms of the processes around how the Parliamentary Inspector would deal with a complaint, it seems to me it is best not to have those embodied in legislation but to leave them to be worked out in a flexible manner as between the Parliamentary Inspector and the Commission, dependent upon the nature of the complaint or the nature of the issues, the seriousness of them and all those other matters I mentioned.

In terms of whether the process could be improved, I think there are probably only two aspects that I would mention there. The first is that it would be helpful, I think, for the legislation to provide for the capacity of the Parliamentary Inspector, the Commissioner, or both, to refer a question of law to the Supreme Court for determination where an issue arises between them in a particular instance about the proper construction of the Corruption and Crime Commission Act. That, I think, would be helpful given that obviously by virtue of their statutory functions, each of the Commissioner and the Parliamentary Inspector are exercising administrative not judicial authority and any view they express about anything really can only be an opinion, not a binding judicial determination, so that if there were to be a conflict between them as to the proper construction, for example of the Corruption and Crime Commission Act, if they were not able to reach an agreement or an accommodation on that, then the position would be that there would simply be two opinions about what that meant and it seems to me it would be helpful to have a way of resolving that situation were it to arise.

The second suggestion I would make is that I think there is a perception sometimes that the Parliamentary Inspector can overturn decisions or opinions of the Corruption and Crime Commission. That certainly is not the view of the current Parliamentary Inspector but nonetheless I think there is often a perception out there in the wider community that that can be done.

For myself I think it would be desirable if the legislation were to expressly state that the Parliamentary Inspector is not an appeal body and nor does he review Commission decisions or opinions and nor does he have a complaints resolution function, and I adverted to that at the outset.

I suggest that in both the Police Integrity Commission Act and the Corruption and Crime Commission Act the role of the Inspector is an oversight role, to ensure the Commission does not abuse or act outside its powers and that its procedures are appropriate and effective, in short, that the Parliamentary Inspector's role has to do with the process not outcomes.

**(The witness withdrew)**

**CHRISTOPHER DAVID STEYTLER**, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, Locked Bag 123, Perth Business Centre, affirmed and examined via video conferencing:

**CHAIR:** Inspector, the Committee has received your answers to the questions on notice. Would you like to make an opening statement?

**Mr STEYTLER:** No, there is nothing that I would wish to add to what I have already put in writing, thank you.

**CHAIR:** Would you provide the CCC with a copy of the original complaint on commencing a complaint investigation, Inspector, and could you think of any circumstances where this might be inappropriate?

**Mr STEYTLER:** Well, ordinarily I would provide the Commission with a copy of a written complaint. I would not do so necessarily if the complaint was a very lengthy one and I thought that only one aspect of it was worthy of consideration, nor would I necessarily do so if I was asked to maintain confidentiality of particular background evidence which was considered not to be directly relevant to the complaint, but in other circumstances I can see no reason for not making known the whole of the complaint to the Commission.

**CHAIR:** Inspector, during the conduct of an investigation would you provide the complainant with information provided to you by the CCC?

**Mr STEYTLER:** I do not provide the complainant with copies of the correspondence sent to me by the CCC because the Commissioner has expressed to me the opinion that he would prefer that I do not do that as it might inhibit frankness between us in our exchanges and I readily accept that, so what I ordinarily do, where I can, without crossing the border of that arrangement, quote a particular extract or extracts from the letter to me. I might do that but more often than not I would simply summarise the gist of the Commission's response to the complaint.

**Mr DRAPER:** Would you agree, as a general principle, that in providing the complainant with information from the CCC about their complaint, that the complainant should not be given access to information that would otherwise not be available to them?

**Mr STEYTLER:** I certainly agree with that and I would not, as a matter of ordinary prudence, give information to a complainant that the complainant did not need in order to further the complaint, or to understand the response to it. In those very rare instances where it may be necessary to make known confidential information to a complainant, simply in order to explain the position that I have taken up, I would do that as broadly as I could and I would inform the complainant of the secrecy requirements under the Act.

**The Hon. CHARLIE LYNN:** Where your views as Parliamentary Inspector and the CCC differ over a complaint report, what means do you use to satisfy these differences, or come to terms with them?

**Mr STEYTLER:** Well, as matters stand, the Commissioner and I have regular discussions with each other and there has not in my time as Inspector been a situation in



which we have not been able to reach agreement on any particular matter where we may initially have disagreed, or even potentially disagreed, so my first step in any such instance would be to make known the respects in which I disagree with the Commissioner. His response would almost invariably be to invite me to have a discussion with him concerning any matter of difference and until now we have almost always, in fact I think I could say always, been able to agree on the relevant issue, if not necessarily always on the more peripheral issues.

**CHAIR:** Just for your information you may see some photos being taken. This is the first time we have used video conferencing in this Parliament, so if you see any photos being taken, that is what it is about.

**Mr PEARCE:** In your letter to us, on page two, the heading: Section 2, "From the CCC itself", you state there at page three that:

Under s 196(7) of the Act, if the CCC has made a determination about the matter prior to my removal of it, I have authority to...

and then you state that you have three different options. From that, what is the status of the actual original determination that the CCC made, should you choose to act in any of those given manners?

**Mr STEYTLER:** Well, I am sure that the Committee appreciates this, but this relates only to the situation where the Commission notifies me under section 197(4) of an allegation concerning an officer and under subsection (7) of section 197 I have the power either to annul the Commissioner's determination and substitute another, or make any decision that the Parliamentary Inspector might have made had I exercised an original jurisdiction, or make any ancillary order with a final provision that is remedial or compensatory, so in a situation where I disagreed with the Commission's decision I would annul the decision in most instances.

In fact that situation has never arisen and the reason it has not arisen is because the Commissioner currently takes the view when there is an allegation concerning a particular officer he almost always refers it to me immediately and sometimes, depending on the nature of the allegation, asks me to take over the investigation. Alternatively, if I think it is appropriate that I do so, I tend to take it over before any final outcome is arrived at. There may be many circumstances, I would imagine, where the complaint is very minor and it is best dealt with by the Commissioner himself.

**Mr PEARCE:** The New South Wales Independent Commission Against Corruption has a Memorandum of Understanding between itself and the Inspector of the ICAC. The Memorandum of Understanding outlines points of contact between the two offices as well as the ICAC's process for notifying the Inspector of complaints against its officers. Do you think such an agreement is a useful thing?

**Mr STEYTLER:** I doubt that it is necessary under our legislation. The position is spelt out at some length and it operates perfectly well as things stand. It might be a preferable option though, than framing the whole issue in legislation, because it would give the parties a greater degree of flexibility.

**CHAIR:** Are there any other matters you would like to draw the Committee's attention to?

**Mr STEYTLER:** Only the point that I have made in my letter, which is that it seems to me to be very important to leave the whole process as flexible as possible to cater for the wide range of circumstances that can eventuate.

While I was waiting to give my evidence I was able to listen to the last few minutes of the Commissioner's evidence and I heard him suggest that it would be a useful option to have the Commissioner and the Inspector jointly to frame questions for resolution by the court when there are differences of interpretation. I agree with what he said in that respect.

**(The witness withdrew)**

**The Committee adjourned at 4.37 p.m.**

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## **Transcript of hearing held 26 October 2009**

**CHAIR:** The Committee will now conduct its inquiry into complaints handling by the Police Integrity Commission.

**PETER JAMES MOSS**, Inspector, New South Wales Police Integrity Commission, on former oath:

**CHAIR:** The Committee has received your answers to questions on notice. Do you wish to make an opening statement?

**Mr MOSS:** I do not think I could add anything at this stage to what I have responded to you, Mr Chairman.

**CHAIR:** Inspector, would you provide the Police Integrity Commission with a copy of the original complaint on commencing a complaint investigation? Can you think of any circumstances where that may be inappropriate?

**Mr MOSS:** I have always obtained the complainant's express consent before providing the complaint. The only time I think I have held a paragraph back was at the request of a particular complainant and that was because of the vitriolic language in the paragraph, which did not add anything to the complaint. I informed the Commission, of course, that there was a paragraph being held back but it had nothing to do with the complaint.

**CHAIR:** During the conduct of an investigation would you provide the complainant with the information provided to you by the Police Integrity Commission?

**Mr MOSS:** Unless there is an objection by the Police Integrity Commission, and from time to time there have been objections. They have put forward the view that the complainant does not need to know this particular information and it may reveal

unnecessarily the workings of the Police Integrity Commission. So far, I have not had a problem with that. I have not always understood what the objection was, I must say. But rather than argue about it, I have simply said okay and informed the complainant that there is material that I have seen and that the Police Integrity Commission does not agree to the complainant seeing it. I do not think for a moment that it has affected any of the complaints or the justice of the matter or the outcome of the complaint.

**Mr MALCOLM KERR:** In the context of complaints and procedural fairness, Mr Justice Hall wrote a book in relation to inquiries. Have you had an opportunity to read that book?

**Mr MOSS:** Yes. Since then, Mr Kerr, there have been a lot of texts. Particularly the High Court has developed this jurisprudence to such an extent that I think anything written even two or three years ago has been overtaken. They keep on churning out cases on procedural fairness. When I say "churning out", I do not mean that disrespectfully. Particularly in relation to tribunals such as the refugee tribunal board, those sorts of organisations, almost not a month goes by without my seeing yet another case from the High Court on procedural fairness. Although you think you might have read them all before, there is always a twist that was not in a previous case. I do have texts on the subject, but rather than rely heavily on the texts I do prefer to rely on the High Court judgements themselves.

**Mr MALCOLM KERR:** Have you found that the Police Integrity Commission has kept itself abreast of the development of law in relation to procedural fairness?

**Mr MOSS:** I do not really feel equipped to answer that. It would be rather difficult for me to put that question to them, I think, Mr Kerr.

**Mr MALCOLM KERR:** Perhaps if you put a question as to whether a mechanism exists in the Commission to keep themselves up to date. Obviously it impacts on their work.

**Mr MOSS:** Yes. On the other hand, in all those complaints that were upheld I put before them a large number of cases on procedural fairness and they have responded as to those cases—the solicitor in particular. So I have no evidence that the Commission's solicitors are not up to scratch with procedural fairness. I suggest if they were not when I started they probably are now.

**Mr MALCOLM KERR:** But it is still developing monthly?

**Mr MOSS:** It is. The basic material is there. It is just that these cases come up with a twist in the facts that was not there before, and it depends on which side of the line the facts fall. Sometimes it is a pretty fine distinction.

**Ms SYLVIA HALE:** Mr Moss, would you agree as a general principle that in providing complainants with information from the PIC about their complaints the complainants should not be given access to information that otherwise would not be available to them?

**Mr MOSS:** Yes.

**Ms SYLVIA HALE:** You would say that that was acceptable as a general principle?

**Mr MOSS:** Yes, Ms Hale.

**Ms SYLVIA HALE:** Do you need a general principle in that regard, or would it be a case of assessing things on a case-by-case basis?

**Mr MOSS:** On a case-by-case basis.

**Mr PAUL PEARCE:** Based on your earlier response you said that you would, however, let complainants know there was information that was not available to them?

**Mr MOSS:** Yes.

**Mr PAUL PEARCE:** Without disclosing the nature of the information?

**Mr MOSS:** Yes. I would send both parties the letter that I was sending to the Commission. If the Commission wrote back with a response and said, "We do not want this to go to the complainant", I would write to the complainant and say, "I have received a response to that letter, but the Commission does not consent to you seeing that response."

**Ms SYLVIA HALE:** What would you do if you were of the strong opinion that the complainant needed to see that evidence?

**Mr MOSS:** That has happened, Ms Hale. I have written back to the Commission and said, "I cannot agree with this. I think this has to appear in my forthcoming report and, therefore, the complainant needs to know your response to it." That has happened once or twice and, from recollection, the Commission has then withdrawn its objection.

**Ms SYLVIA HALE:** So it has reconsidered its position?

**Mr MOSS:** Yes.

**Ms SYLVIA HALE:** The provision of that evidence really is dependent on negotiations between the two offices. From your perspective, so far that has produced an acceptable outcome?

**Mr MOSS:** It has.

**Mr PAUL PEARCE:** The ICAC provided the Committee with a copy of a memorandum of understanding between the ICAC and the former ICAC inspector. Do you think a memorandum of understanding would be useful in clarifying aspects of complaints handling between the two agencies?

**Mr MOSS:** I must say that I have not found the need to date, Mr Pearce. That is not to say that it could not be thought about, but I have not felt the need of it to date.

**CHAIR:** Inspector, do you think that the process of investigating complaints against the PIC has led to improvements in its practice and procedures? You said earlier that it had in relation to procedural fairness, but what about complaints handling overall?

**Mr MOSS:** Complaints handling against the Commission?

**CHAIR:** Yes. Do you think there has been a major improvement in the way in which it has been handling complaints overall?

**Mr MOSS:** I think so, yes. I think the timeliness has improved in that regard.

**CHAIR:** Do you think there could be an improvement in other aspects of its complaints handling?

**Mr MOSS:** As I said in correspondence to the Committee, I would like to wait and see what the position is once I am finished with the two outstanding complaints that I have mentioned. As I said, a draft of one has now gone to the Commission and the complainant, leaving only one outstanding. I would like to wait and see what the pattern is once those complaints have been disposed of, to see whether there is a distinct fall in the number and substance of the complaints, which is what I anticipate is likely to happen.

**Ms SYLVIA HALE:** Mr Moss, returning to the issue of the memorandum of understanding, I gather that the Inspector of ICAC has developed a memorandum of understanding, and the Inspector believes that it has worked particularly well. I revert to the earlier discussion we were having when we were talking about how the personalities of both the Inspector and the Commissioner may be important in determining the issues.

**Mr MOSS:** Yes.

**Ms SYLVIA HALE:** Do you not think a memorandum of understanding might provide a solid foundation for the way in which complaints are investigated, so that it would not be so dependent on the personalities of the key participants?

**Mr MOSS:** All I was suggesting about the personalities is that if you get two strong personalities in these positions you might have a different situation from the situation you might have if other types of personalities were in the position. I am not suggesting that it makes a difference as to how the complaint is investigated or how the Commission responds to the investigation, and I am certainly not suggesting that it makes a difference to the outcome of the complaint. I would be perfectly prepared to have a look at the memorandum of understanding to which you are referring to see whether we could learn something from it. It has not occurred to me to date, but I am perfectly prepared to have a look at it.

**Ms SYLVIA HALE:** I take your point that, no matter what is in writing, unless there is a spirit of cooperation that may be irrelevant?

**Mr MOSS:** Yes. Sometimes it is better to have flexibility than it is to have anything like a rigid framework. I am friendly with the Inspector of the ICAC and I have known him for a long time. I will ask him and I will have a good look at that.

**Ms SYLVIA HALE:** Thank you.

**Mr MALCOLM KERR:** Just referring to the Inspector of the ICAC, I took it that you knew him quite well?

**Mr MOSS:** I have known him for a long time, Mr Kerr.

**Mr MALCOLM KERR:** Have you had any discussions with him about his duties and your duties?

**Mr MOSS:** When he was first appointed I called on him, had a conference with him and we discussed a few matters. At that stage he had only been in the job for a few weeks. We had a discussion. Since then I recently received his annual report and I have read that. I noticed that he is of the view that he has a few problems with the Federal legislation dealing with the intercept of telephone calls. But apart from that I have not yet had anything more to do with him.

**Mr MALCOLM KERR:** Once you have read the memorandum of understanding that might be a basis for some protracted discussions with him?

**Mr MOSS:** Yes, Mr Kerr.

**CHAIR:** We will now move into closed session. I ask members of the secretariat to clear the public gallery.

**(Evidence continued in camera)**

**(Public hearing resumed)**

**CHAIR:** I take this opportunity to thank you for addressing many of the questions put to you openly and candidly. Thank you for your forthright manner. Thank you for attending today.

**(The witness withdrew)**

**(The Committee adjourned at 11.53 a.m.)**

## Appendix 4 – Minutes of meetings

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 19)**

10.30 am Thursday 3 September 2009  
Room 1254, Parliament House

#### **Members Present**

Mr Draper MP	Ms Hale MLC	Mr Hickey MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC

#### **Apologies**

Mr Kerr MP

#### **Also Present**

Jonathan Elliott, Hilary Parker, Pru Sheaves

The meeting commenced at 10.32am.

...

### **3. General meeting reports**

- (i) *Report on the Eleventh General Meeting with the Police Integrity Commission*

...

The Committee discussed a possible Committee inquiry, a recommendation of the report. Resolved on the motion of Mr Pearce, seconded by Ms Hale, that the Committee commence an inquiry into the way in which complaints made against the Police Integrity Commission are examined and the procedures used to facilitate this.

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### **5. Inquiry program**

The Committee had previously resolved to commence an inquiry into the way in which complaints against the PIC are examined (see Item 3(i) above). The Committee noted the briefing paper.

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### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 20)**

2.30 pm Monday 19 October 2009

Waratah Room, Parliament House

**Members Present**

Mr Draper MP	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC

**Apologies**

Ms Hale MLC

**Also Present**

Nina Barrett, Jonathan Elliott, Hilary Parker, Pru Sheaves

The meeting commenced at 2:30pm.

**INQUIRY INTO PROCEDURES FOR EXAMINING COMPLAINTS AGAINST THE POLICE INTEGRITY COMMISSION**

The Hon Harvey Cooper AM, Inspector of the Independent Commission Against Corruption, PO Box 5341, Sydney, took the oath.

The Committee questioned the Inspector. Questioning concluded, the witness withdrew.

Mr John Pritchard, Commissioner of the Police Integrity Commission and Ms Michelle O'Brien, Solicitor to the Commission, affirmed.

The Committee questioned the Commissioner and Ms O'Brien. Questioning concluded, the witnesses withdrew.

The Committee adjourned at 3:45pm for a short recess and resumed proceedings via video conferencing at 4:00pm.

The Hon Leonard Roberts-Smith QC, Commissioner, Corruption and Crime Commission of Western Australia, took the oath.

The Chair questioned the Commissioner, followed by other members of the Committee. Questioning concluded, the witness withdrew.

The Hon Christopher Steytler QC, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, affirmed.

The Chair questioned the Parliamentary Inspector, followed by other members of the Committee. Questioning concluded, the witness withdrew.

The Committee adjourned at 4:37pm.

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**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 21)**

11:00 am Monday 26 October 2009  
Rooms 814-815, Parliament House

**Members Present**

Ms Hale MLC	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC

**Apologies**

Mr Draper MP

**Also Present**

Nina Barrett, Jonathan Elliott, Hilary Parker, Pru Sheaves

The meeting commenced at 11:00am.

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**INQUIRY INTO PROCEDURES FOR EXAMINING COMPLAINTS AGAINST THE POLICE INTEGRITY COMMISSION**

The Chair questioned the Inspector, followed by other members of the Committee. At 11:38am, the proceedings continued in camera. At the conclusion of the in camera evidence, the public hearing resumed. Questioning concluded, the witness withdrew.

The Committee adjourned at 11:53am.