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

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



DECEMBER 1999

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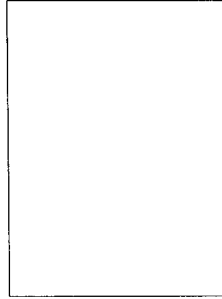
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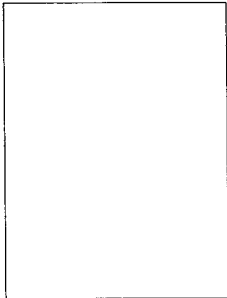
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COMMITTEE MEMBERSHIP

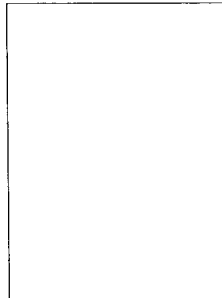
LEGISLATIVE ASSEMBLY



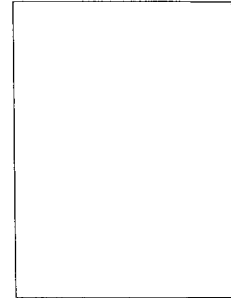
Mr P Lynch MP
Chairperson



The Hon D Grusovin MP
Vice-Chairperson

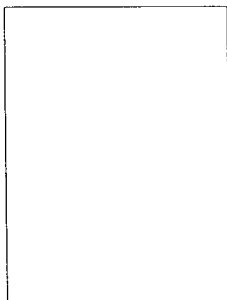


Mr M Kerr MP

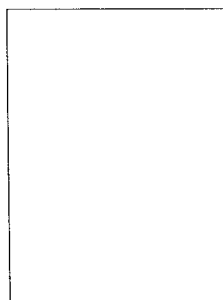


Mr W Smith MP

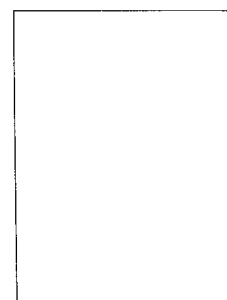
LEGISLATIVE COUNCIL



The Hon P Breen MLC



The Hon J Gardiner MLC



The Hon J Hatzistergos MLC

Secretariat

Ms H Minnican - Director
Ms T Bosch - Research Officer

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

FUNCTIONS OF THE COMMITTEE

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

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

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

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

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

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

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

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

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

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

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

- “(1) The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint

Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.

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

CHAIRMAN'S FOREWORD

The fourth General Meeting between the Commissioner of the PIC and the Committee on the Office of the Ombudsman and the Police Integrity Commission was held on 5 November 1999.

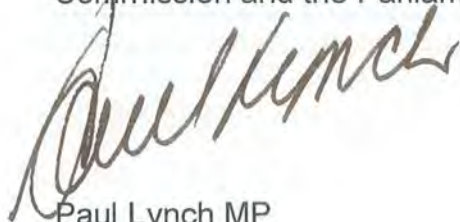
The Commissioner was accompanied by the Assistant Commissioner, Tim Sage, Director of Operations, Andrew Nattress, Information Manager, Denis Lenihan, Director of Corporate and Information Services, David Rawson and the Solicitor to the Commission, Andrew Naylor.

The meeting gave the Committee an opportunity to consolidate its understanding of the Commission's operations and to exercise its oversight role. The only commentary attached to the report relates to the implementation of the Commission's recommendations by the Police Service.

The Committee is prohibited under the legislation from reconsidering the findings, recommendations, determinations or other decisions of the Commission in relation to particular investigations or complaints. Nevertheless, the extent to which the Commission's recommendations are accepted and implemented is a significant factor in its effectiveness. The Committee considers that the oversight functions afforded the Committee under the *Police Integrity Commission Act 1974* appropriately include monitoring this aspect of the Commission's operations.

The Committee expresses concern in the General Meeting Report about comments made in the PIC Annual Report for 1998-9 in relation to the response of the Police Service to recommendations contained in several Commission reports. The Committee intends to monitor the Police Service's response to the recommendations and has advised the Commissioner of Police of the evidence which was taken at the General Meeting.

On behalf of the Committee, I would like to thank Judge Urquhart and his staff for their participation in the General Meeting. The Committee's dialogue with the Commissioner and his senior staff in this forum is a key mechanism through which the Committee can exercise its functions. The General Meeting illustrates the constructive relationship which has developed between the Police Integrity Commission and the Parliament to which it is accountable.



Paul Lynch MP
Chairperson

COMMENTARY

IMPLEMENTATION OF PIC RECOMMENDATIONS

During the General Meeting with the PIC Commissioner, the Committee raised the subject of the rate of implementation of PIC recommendations by the Police Service. In particular, the Committee referred to section 6 of the Police Integrity Commission's Annual Report for 1998-9 which provides details of the Police Service response to recommendations contained in several PIC reports.

Comment was sought from Commissioner Urquhart on the specific shortcomings of the Police Service response to the Jade and Warsaw Reports, as noted by the Commission in its Annual Report. For example, the Annual Report contains the statement that the Police Service responses to recommendations 1 (risk management) and recommendations 2 and 3 (informant management) in the Jade Report were "inadequate, and that the Commissioner may have been badly advised." At the time of the General Meeting, the Commissioner of the PIC had not received any further advice from the Police Service on the recommendations.

The PIC Commissioner refrained from commenting on the Police Service's response to the recommendations made by the Commission, pending the outcome of a meeting scheduled with the Commissioner of Police. The meeting is being held to discuss the Service's progress towards implementing the recommendations and the results of the October 1999 Review of police procedures, which had been presented in Police Service submissions during the Jade public hearings.

The Committee has forwarded a copy of relevant sections of the PIC Commissioner's evidence to the Commissioner of Police for his information and will monitor the extent to which the Police Service implements the recommendations of the Police Integrity Commission. The Committee is particularly concerned at the apparent lack of progress made by the Police Service towards implementing Police Integrity Commission recommendations and this issue will be reviewed at the next General Meeting with the Commissioner of the PIC.

**QUESTIONS ON
NOTICE**

1. ACTIVITIES

1.1 How often has the Commission used the following powers during the last annual reporting period:

- a) **audit powers – ss 14 (a) & (b):** The Commission audited Police Service investigations into 374 Category 1 complaints (s 14(a)); and monitored Police Service investigations into 21 Category 1 complaints (s 14(b)); see also the answer to question 6.3 below
- b) **notices to produce a statement of information – s 25:** 17
- c) **notices to produce a document and other specified things – s 26:** 173
- d) **entering public premises – s 29?:** One was issued but not executed

1.2 How many search warrants, listening device warrants and telecommunication interception warrants have been issued in the course of the Commission's investigations during the 1998-99 annual reporting period?

Five search warrants (two of which were not executed); 260 listening device warrants; 14 telecommunication interception warrants

TELECOMMUNICATIONS INTERCEPTION

1.3 How many of the telecommunications interception warrants issued to the Commission were executed?

All 14 were executed

1.4 What percentage of information obtained from TI warrants is used by the Commission in the course of its investigations to support findings of police misconduct or other specified misconduct?

As no formal findings have been made to date in respect of operations in which TI has been used by the Commission (as distinct from operations in which it has been used by other agencies and the product made available to the Commission), it is not possible to answer the questions at this stage. What may help the Committee, however, is some assessment of the percentage of intercepted communications which are relevant to investigations. Relevance is determined on the basis of whether evidence is disclosed, or information is obtained (eg about financial matters, meetings, associations and networks) which assists in the deployment of other investigative strategies. The

percentage of relevant communications varies from investigation to investigation. For some investigations, very few relevant calls were intercepted, while in others up to 49% of calls intercepted were relevant, at some level.

1.5 Does the Commission have any information on how its use of telecommunications interception compares with that of similar agencies in Australian and overseas jurisdictions, in particular, the United States and the United Kingdom?

In Australia, similar agencies in size and terms of reference included the Independent Commission Against Corruption (ICAC), the Western Australia Anti-Corruption Commission (ACC) and the Queensland Criminal Justice Commission (CJC). The ICAC is the only agency in this group which is currently eligible to apply for interception warrants, although there is a bill which has recently passed through the Commonwealth Parliament proposing the extension of the power to the ACC. The CJC has previously been given the necessary legislative power by the Commonwealth, but has not yet received the necessary legislative approval from the State of Queensland. The publication of the 1999 TI Annual Report by the Commonwealth Attorney General in November 1999 will provide comparative statistics on the usage of TI by Australian agencies. The Commission will forward a copy of the report to the Committee.

The Commission has no information on the use of TI in overseas jurisdictions. It is however aware that in the United Kingdom, TI is able to be used only for intelligence purposes, not evidentiary purposes.

2. INVESTIGATIONS

2.1 What is the current investigative workload of the Commission?

As at 30 September 1999, the Commission had 41 investigations open. Not all of these were active: some were awaiting the outcome of legal proceedings, while others were at the report-writing stage (see the answer to 2.2 below).

2.2 What is the status of investigations conducted during 1998-99 which have been the subject of public hearings or reports?

Following is the status of each such investigation:

- Operation Jade: in March 1999, former officers Robert Irwin and Craig McDonald each pleaded guilty to one count of perverting the course of justice and one count of giving false or misleading evidence; Irwin was sentenced to a minimum of 12 months imprisonment and was the subject of a pecuniary order of \$8220; McDonald was sentenced to a minimum of 18 months imprisonment and was the subject of a forfeiture order of \$3300; a civilian, Leslie Kalache, pleaded guilty to one count of perverting the course of justice and was sentenced to a minimum of 18 months imprisonment (he also pleaded guilty to other offences not arising from Jade and received a minimum cumulative sentence of 10 years imprisonment); another person has been committed for trial;
- Operation Warsaw: for the outcome of the Commission's recommendations, see Attachment 2 to this response (the answer to question 3.2 below refers);
- Operation Belfast (matters arising from the Leigh Leigh murder): final submissions on this matter have yet to be made;
- Operations Copper, Nickel and Triton (allegations that named police officers forged the signatures of other police officers on documents intended for court proceedings): a report on these matters is at an advanced stage of preparation;
- Operation Saigon (allegations that police officers are associating with suppliers of prohibited drugs and are involved in the use and supply of such drugs): following Phase 1 of this operation, eight persons (five of whom were current or former police officers) were charged with various offences; Phase 2 of the operation is concerned more particularly with allegations concerning the officers involved in the fatal shooting of Roni Levi at Bondi Beach on 28 June 1997; public hearings in Phase 2 are due to begin on 1 November 1999;
- Operation Oslo (allegations involving current and former police officers involved in misconduct with Kostas Kontorinakis, Roger Rogerson or their associates): this operation is continuing;

-
- Operation Algiers (allegations that a police superintendent is involved in improper or illegal conduct; has engaged in unauthorised secondary employment; and has made false or misleading statements or given false evidence): the investigative and hearings phases of this operation have been completed and a report is in preparation.

2.3 How many public and private hearings have been held and witnesses examined in the last reporting period?

61 public hearings; 33 private hearings; 125 witnesses summonsed.

3. CORPORATE PLAN

One of the performance indicators for the first Corporate Objective of the PIC is “the extent to which issues and trends in serious police misconduct are identified and reported”.

3.1 What issues and trends have been identified by the Commission as a result of its investigations to date?

The matter is dealt with at pages 13-15 in the Commission’s 1998-99 Annual Report; a copy of those pages is at Attachment 1. (Sections from Annual Report not reprinted as part of collation).

3.2 Is the Commission satisfied with the extent to which its strategic advice and recommendations relating to NSW Police Service’s policies, procedures, management practices and training methodologies have been developed and adopted?

The matter is dealt with in Chapter 6, and at page 19 (under the heading *Reviews of Police Service Investigations*), of the Commission’s 1998-99 Annual Report; a copy of the relevant pages is at Attachment 2. (Sections from Annual Report not reprinted as part of collation)

4. CONTROLLED OPERATIONS

4.1 Have the controlled operations conducted by the Commission produced evidence of criminal activity, corrupt or serious misconduct by NSW Police officers?

Controlled operations are one of a number of investigative tools available to the Commission in fulfilling its functions of preventing, detecting and investigating police corruption and serious police misconduct. These tools include electronic and physical surveillance, and the use of the special powers conferred under the *Police Integrity Commission Act 1996* ("the PIC Act").

Unlike the legislation governing the use of telephone interception and listening devices, the *Law Enforcement (Controlled Operations) Act 1997* ("the Act") does not require agencies to assess and report on the evidence of criminal or corrupt activity gathered as a direct result of a controlled operation. Parliaments have recognised that controlled operations and electronic surveillance are used differently by law enforcement agencies, and serve different investigative purposes.

The Commission does not necessarily use controlled operations in the context of a drugs "buy/bust" in the classic *Ridgeway* mode. Commission investigations are often long-term and complex, and controlled operations are generally used as part of multi-faceted operational strategies rather than as discrete investigations into individual transactions. Particular controlled activities do not necessarily themselves produce evidence of corruption: rather, they are often used to enable the success of other investigative techniques within the same investigation.

Another matter to note is that in some cases the value of particular information gathered in the course of an investigation may not be apparent until much later, when it can be analysed in the context of all the evidence produced. It could therefore be misleading, were the Act to require the provision of a report on evidence soon after the conclusion of a controlled operation.

The key indicator of success, therefore, is not whether particular controlled operations produced particular evidence, but whether controlled operations are being used appropriately and effectively as part an overall investigative strategy within the scope of the Commission's functions. In exercising these functions, the Commission aims not only to gather evidence of individual misconduct, but more importantly to identify systemic improvements which can be made to reduce the risk of corruption in the Police Service.

The Commission has used controlled operations in several different investigations since the commencement of the Act. All but one of these investigations produced evidence of criminal activity, corruption or serious police misconduct. In the latter case, a formal complaint had been made which gave Commission investigators

reason to suspect corruption and criminal activity was taking place, however the evidence gathered did not ultimately support the allegations made. Investigating whether or not corruption has occurred as alleged in a complaint is clearly within the Commission's core functions (*PIC Act*, section 3).

4.2 Have there been any breaches of the code of conduct by law enforcement participants involved in controlled operations authorised by the Commission?

The Commission is not aware of any breaches of the code of conduct by law enforcement participants involved in controlled operations authorised by the Commission.

The requirements of the Code are based on a duty of good faith. The good faith standard must be applied by applicants and law enforcement participants at all stages of a controlled operation, including applying for the authority, briefing the participants, executing the operation and reporting to the agency head.

There have been three major reports dealing with the agencies' use of the provisions of the Act: the Ombudsman's Annual Reports on the Act for 1997-98 and 1998-99; and the report on the Review of the Act conducted by the Inspector of the Police Integrity Commission. All three reports have expressed satisfaction with the way the agencies, including this Commission, have implemented the Act and complied with its key provisions. None of the reports have suggested that law enforcement participants have acted other than with professionalism and good faith, and in compliance with the spirit and intention of the Act.

The Ombudsman noted in her 1998-99 Controlled Operations Annual Report that:

"The four law enforcement agencies have been fully co-operative with my inspections and receptive to the observations and the recommendations I have made. In the main the breaches with the legislation detailed in this report are minor and technical in nature. I am fully satisfied that all authorities have been granted in good faith for the purposes envisaged by the Act." [paragraph 3.4.3]

The Inspector of the PIC in his Review concluded that the Act was operating well, and recommended only incremental changes to the legislation. He noted that there was a "strong code of conduct prescribed by the Regulations"¹, and did not express any concerns about adherence to the code (although this issue was not specifically addressed in the Review).

¹ Paragraph 2.8, at page 4

4.3 The Ombudsman's Annual Report to Parliament on the *Law Enforcement (Controlled Operations) Act 1997*, for the year ended 30 June 1999, notes that the PIC failed to provide notifications in relation to the report to the Chief Executive Officer on operations 98/05 and 98/06. The report states that the Ombudsman is of the view that a report should have been provided to the Chief Executive Officer and receipt of such a report should be notified to the Ombudsman (p 17).

Has a report been provided to the Chief Executive Officer on controlled operations 98/05 and 98/06 and, if so, did the report include the information specified in clause 12 of the *Law Enforcement (Controlled Operations) Regulation 1998*?

Clause 12 of the *Law Enforcement (Controlled Operations) Regulation 1998* ("the Regulation") prescribes the information which must be included within a notice to the Ombudsman of the receipt by the chief executive officer of a report on a controlled operation issued pursuant to section 21 of the *Law Enforcement (Controlled Operations) Act 1997* ("the Act").

Neither clause 12 nor any other provision of the Regulation prescribes the information which must be included within the report itself, although clause 7 provides that the chief executive officer may specify matters for inclusion in reports. The Commissioner has not issued any instructions in this regard.

The authorities in respect of controlled operations 98/05 and 98/06 were issued on 8 August 1998. Each was to be in force for a period of 90 days. Owing to changes in circumstances, neither controlled operation could be executed. Cancellation orders were not issued pursuant to section 12 of the Act. This came to attention during the Ombudsman's December 1998 inspection of the Commission's controlled operations records. By this time, each controlled operation had automatically expired, in which event there was no basis upon which cancellation orders could then be issued. While it may be argued that the Commissioner was under no legal obligation to issue such orders, good practice nevertheless demanded as much.

During the course of the same inspection, a question arose as to whether the reporting provisions of section 15 of the Act apply to operations that have been cancelled (or, more particularly, in this case, operations which have not been executed and subsequently have lapsed). The question was whether the latter-mentioned operations can be said to have been "completed". Officers of the Commission engaged in discussions with officers of the Ombudsman's Office as regards the meaning of this provision. While its meaning is not free from doubt and there are various conflicting interpretations, the Commission nevertheless agreed with the Ombudsman that, for reasons of good administrative practice and accountability, a report on non-executed controlled operations should be submitted to the chief executive officer. Such a report necessarily gives rise to a need for notices of the receipt of reports by the chief

executive officer to be issued to the Ombudsman under section 21 of the Act. This also ensures that the Ombudsman can accurately attend to her obligation to report to Parliament on certain statistics. The Commission undertook to issue reports in respect of both controlled operations 98/05 and 98/06.

Reports on controlled operations 98/05 and 98/06 were issued on 11 February 1999. On 5 July 1999, the Commission advised the Ombudsman that each of these controlled operations had been cancelled. This letter did not comply with the form required by clause 12 of the Regulation and as much was noted by the Assistant Ombudsman in a letter dated 16 July issued following the 12 July 1999 inspection of the Commission's controlled operations records.

On 29 July 1999, the Commission wrote to the Assistant Ombudsman acknowledging that its letter of 5 July 1999 did not accurately reflect what had in fact occurred, that is, that controlled operations 98/05 and 98/06 had in fact lapsed by expiration of time rather than been cancelled. The Commission also stated:

It is not the Commission's position ... that the fact that no controlled activities are engaged in (sic) relation to an authority means that no report need be submitted to the Ombudsman.

... [T]he Commission agrees that, in order for the Ombudsman to properly monitor the operation of the Act, it is necessary that your office be provided with all relevant information when a controlled operations authority ceases to be in force. This is the case whether the authority is cancelled or simply expires; whether an operation was in fact conducted pursuant to the authority or not; and whether that operation, if conducted, involved any controlled activities.

The Ombudsman's Controlled Operations Annual Report for 1998/99 refers to the Commission's letter of 5 July 1999 stating that it failed to comply with the requirements of clause 12 of the Regulation. The report also stated:

When we inspected the records of these operations it was clear that the operations had not been cancelled, but that no controlled activities took place due to operational reasons. It appears that no report was provided to the Chief Executive Officer in relation to these operations on the basis that such a report was not required in such circumstances. The PIC considered that a report to the Ombudsman was therefore also not necessary and Mr Sage's letters of 5 July 1999 were simply courtesy letters.

It is my view that a report is required to be given to the Chief Executive Officer within 28 days of the completion of the operation whether or not controlled activities take place. I rely on section 15 of the Law Enforcement (Controlled Operations) Act 1998 which states:

-
- (1) *Within 28 (sic) after completing an authorised operation, the principal law enforcement officer for the operation must cause a report on the operation to be given to the chief executive officer.*

In the event that no activity takes place in relation to the operation and the operation is not cancelled, I take the view that the authorised operation is not completed on the date of expiry of the authority.

Contrary to what is reflected in the extract set out above, reports on controlled operations 98/05 and 98/06 were (as indicated above) received by the Commissioner on 11 February 1999. These reports were made available during the course of the 12 July inspection of the Commission's controlled operations records.

Also, contrary to the suggestion in the above extract from paragraph 8.2(d) of the Ombudsman's report, the reports to the Commissioner on controlled operations 98/05 and 98/06 make it clear that these operations were in fact cancelled in that a decision was taken not to proceed.

The Ombudsman's report makes no reference to the Commission's letter of 29 July 1999. With respect, in so doing, it unfairly represents that the Commission disagrees with the position adopted by the Ombudsman as regards when a s 15 report should be issued. This is most surely not the case. It is a matter of regret that the Commission's own position has not been fully explained.

By letters dated 22 October 1999, the Commission notified the Ombudsman of the receipt of reports by the Commissioner in respect of controlled operations 98/05 and 98/06. These reports were issued in accordance with the requirements of cl 12 of the Regulation.

The Commission remains committed to ensuring that all aspects of its controlled operations comply with relevant legislative requirements. It also remains committed to working cooperatively with the Ombudsman and, indeed, appreciates her assistance in working towards the objectives of good accountability as regards its use of the controlled operations regime.

5. REPORTS TO PARLIAMENT

OPERATION JADE

In April 1999, the Commission tabled a supplementary report to Parliament on Operation Jade, in which it explained that a review of the evidence in this matter had led to the conclusion that certain paragraphs and statements relating to Constable Murray Bartlett should not have been included in the report.

5.1 Was Mr Bartlett given an opportunity prior to publication of the report to make submissions to the PIC about the statements in the report concerning him?

The Police Integrity Commission, like other administrative bodies, is bound to observe the rules of procedural fairness, the essence of which is that those whose rights, interests and legitimate expectations may be adversely affected by a decision of, or action by, the Commission are given a reasonable opportunity to formulate and present a response to the proposed criticism in advance of the decision or action being taken: see eg *Annetts v McCann* (1990) 170 CLR 596 at 597 per Mason CJ, Deane and McHugh JJ.

In compliance with this obligation, at the conclusion of hearings regarding Operation Jade, written submissions prepared by Counsel Assisting David Frearson were provided to Mr Bartlett's legal representative, as well as other persons who were given leave to appear during the hearings. In relation to Mr Bartlett, Counsel Assisting's submissions provided that:

1. The evidence establishes that Constable Bartlett formed an association with the convicted drug supplier, Leslie Kalache. That association was the consequence [of] regular attendance at the same Coogee Gymnasium.
2. The association was more than casual and involved the following:

(a) frequent breakfasts after gymnasium workouts	Transcript 699.30
(b) some social outings	699.21
(c) a visit to Kalache's home on 31.7.87	Tape ex 12
(d) a restaurant meal paid for by Kalache	764.36
3. The association developed notwithstanding Constable Bartlett's knowledge that Leslie Kalache had served time in gaol 698.47
4. Constable Bartlett did not read "the code of conduct" document issued by the Police Commissioner until very recently 780.45

-
5. The evidence discloses that Constable Bartlett engaged in some discussions with Sen Const O'Hearn & with Kalache in regard to Kalache's licensing interests in the Town and Country Hotel O'Hearn Report ex 8C
Tape ex 12
763.25

 6. Whilst there was some inconsistency in Constable Bartlett's evidence as to those discussions, the evidence falls short establishing serious impropriety 708.19
709.44
737.40

 7. It is appropriate to recommend to the Commissioner of Police that consideration be given to an admonishment pursuant to sec 173(2) of the *Police Service Act 1990* in respect of the forming and maintaining of an association with a known criminal.

The Commission did not receive any written submissions on behalf of Mr Bartlett in response to Counsel Assisting's written submissions.

Hearings re-convened on 13 February 1998 at which time Counsel Assisting's submissions were tendered (barcodes 5019281-7, ref: 2024/1824). An opportunity was then given to those persons who were adversely mentioned in Counsel Assisting's submissions to make oral submissions. Mr Bartlett's legal representative availed himself of this opportunity and the Commissioner heard oral submissions on Mr Bartlett's behalf in response to the criticisms contained in Counsel Assisting's previously circulated submissions.

Mr Bartlett was not provided with an opportunity to respond to the proposed wording of the final report nor, in ordinary circumstances, is it incumbent upon the Commission to take this additional step: *In re Pergamon Press Ltd* [1971] 1 Ch 388 per Lord Denning MR at 400. Providing that the criticisms contained in the final report do not exceed those which are advanced in Counsel Assisting's submissions and in respect of which an opportunity is given to respond, the Commission has discharged its obligations to accord procedural fairness. If it occurs that, after final submissions have been received, it is intended that additional criticism be included in a final report, an additional opportunity must be given for the person the subject of the proposed criticism to respond.

It is acknowledged that the criticisms of Mr Bartlett contained in the Commission's final report regarding Task Force Bax exceeded those which were reflected in Counsel Assisting's submissions and that Mr Bartlett was not provided with an opportunity to respond to the criticisms over and above those contained in Counsel Assisting's submissions. This was not because the Commission was aware of the additional criticisms and chose to avoid its obligations to accord procedural fairness; it was due merely to mistakes which occurred in the drafting of the final report such that insufficient care was given to ensuring that the substance of what was said against Mr Bartlett did not affect Mr Bartlett in a way which was more serious or profound than that which was suggested in Counsel Assisting's submissions.

5.2 What procedures are in place to prevent a recurrence of the circumstances which led to the Commission publishing a misleading suggestion and a finding which was not supported by direct evidence?

Since release of its report to Parliament regarding the former Task Force Bax, the Commission has adopted a quality control system for the production of external reports (summary enclosed at Attachment 3). The purpose of this system, among other things, is to ensure that all external reports are accurate and legally sound. It is also designed to ensure that, consistent with the Commission's obligations under section 96(4) of the *Police Integrity Commission Act 1996*, reports to Parliament are furnished "as soon as possible after the Commission has concluded its involvement in the matter".

As part of the quality control system, the Commission has established a Projects and Reports Team (PRT), the tasks of which include early involvement in preparation of reports to Parliament and provision of assistance in the preparation of submissions by Counsel Assisting. More generally, the PRT is responsible for drafting and project managing the production of each external report. The system provides for a final draft of each report to Parliament to be submitted to Counsel Assisting for checking as to accuracy and completeness. It also provides that a final draft be submitted to the Commission Solicitor for an assessment as regards compliance with all legal requirements, including the rules of procedural fairness.

5.3 What is the Commissioner's view on the appropriateness of the PIC applying procedural fairness in performing its functions and making findings about possible criminal and corrupt conduct??

As indicated above, the Commission accepts that it is bound by the rules of procedural fairness in respect of decisions or actions which may impact adversely upon a person's rights, interests and legitimate expectations. A proposal to publish findings of fact in a report to Parliament that a person has engaged in police misconduct is an obvious example of a situation in which the rules of procedural fairness apply.

That said, it is not possible to state exhaustively all the situations in which the rules of procedural fairness will have some application nor the way in which the rules ought be applied in each situation. The rules of procedural fairness do not require the inflexible application of a rigid body of rules regardless of circumstances; "it requires fairness in all the circumstances, which include the nature of the jurisdiction or power exercised and the statutory provisions governing its exercise": *National Companies and Securities Commission v News Corporation Ltd* (1984) 156 CLR 296 at 312 per Gibbs CJ; see also *In re Pergamon Press Ltd*; *Donaldson v Wood* (unreported, Supreme Court of NSW, Hunt CJ at CL, 15 September 1995, No 30074 of 1995). "The requirements of natural justice must depend upon the circumstances of each case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth": *Russell v Duke of Norfolk* [1949] 1 All ER 109 at 118.

The Commission may make assessments and form opinions as to whether police misconduct or other misconduct has or may have occurred, is or may be occurring, is or may be about to occur or is likely to occur. Section 16(3) of the *Police Integrity Commission Act 1996* makes it clear that:

An opinion that a person has engaged, is engaging or is about to engage:

- (a) in police misconduct (whether or not specified conduct), or
- (b) in specified conduct (being conduct that constitutes or involves or could constitute or involve police misconduct),

is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit a criminal offence or disciplinary offence.

The Commission may not (*Police Integrity Commission Act 1996*, s 16(2)):

- (a) make a finding or form an opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence);
- (b) make a recommendation that a specified person be, or an opinion that a specified person should be prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).

The most that the Commission may do is recommend that consideration be given to the prosecution or the taking of other disciplinary action against particular persons.

At the Committee's request the Inspector of the PIC provided additional comment on the application of procedural fairness by the Police Integrity Commission.

INSPECTOR'S RESPONSE

What is the *Inspector's* view on the appropriateness of the PIC applying procedural fairness in performing its functions and making findings about possible criminal and corrupt conduct?

The question may be divided into two (2) parts, namely:

What is the Inspector's view on the appropriateness of the PIC...

- A) applying procedural fairness in performing its functions? and**
- B) making findings about possible criminal and corrupt conduct?**

I turn to the first question A.)

What is the Inspector's view on the appropriateness of the PIC ... applying procedural fairness in performing its functions?

In my view the PIC is required to apply procedural fairness in performing its functions.

I directed my mind to this question in a report dated 18 November 1998 following a Preliminary Investigation of a complaint. At page seventeen (17) of that report (which I refrain from identifying) I wrote:

"I confirm my opinion expressed earlier that the Commission has a duty to observe procedural fairness or the requirements imposed by the rules of natural justice. The content of this duty shall:

*'... vary with the circumstances of the inquiry and will depend upon the nature of the functions, the subject matter of the inquiry, the rules under which the decision maker operates, the legitimate expectations of the parties and the nature of the consequences which may result from an adverse decision.'*²

As I said earlier:

*The critical question will always be not whether the rules of procedural fairness apply, but rather 'what does the duty to act fairly require in the circumstances of the particular case?'*³. *Such procedures must, it seems, be 'appropriate and adapted' to the circumstances of the particular case.*⁴

I accept as applicable to this Commission what Hunt CJ and CL said in reference to the Royal Commission into the New South Wales Police Service:

*'..The Commission is obliged to observe procedural fairness to those persons against whom adverse evidence may be given. But that obligation does not call into play a body of rigid procedural rules which must be observed regardless of circumstances; the precise content of the obligation varies according to what is necessary in the circumstances of the particular case'*⁵"

As to the second question B.)

² *Stollery v Greyhound Racing Control* (1972) 128 CLR 509 at 526; *Kioa v West* (1985) 159 CLR 550 at 584-585; *Johns v Release on Licence Board* (1987) 9 NSWLR 103 at 109

³ *Kioa v West* above

⁴ *Kioa v West* above at 35 and see judgement of Hunt CJ at CL in *Donaldson v Wood and another* Administrative Law Division (unreported) 15 September, 1995 at p.11

⁵ *Donaldson v Wood & Anor*, (unreported) 15 September 1995 at p.11

What is the Inspector's view on the appropriateness of the PIC ... making findings about possible criminal and corrupt conduct?

First a finding of guilt of a criminal offence can only be made by a Court in which the presiding judicial officer is exercising judicial powers in the legal sense.

The inquiry function of the Police Integrity Commission (the Commission) is not judicial in the legal sense⁶. Sir Henry Winneke (Governor of Victoria and former Chief Justice of the Supreme Court of Victoria) has referred to the fact that inquiries presided over by judges:

*are almost universally, and perhaps not unnaturally, referred to in the press and generally by the public as "judicial inquiries". Nothing could be further from the truth. The misconception stems from characterising the nature of the inquiry by reference to the office that the chairman, by chance, holds.*⁷

Sir Henry Winneke pointed out that the only function of a judge is to determine issues between subjects "in a binding way", but the function of a Royal Commission or Board Inquiry is to find facts, with or without recommendations. No one is bound by the findings and it is up to the executive government whether the findings are to be acted upon.⁸

The decision of the government, of course, may involve subsequent proceedings in the courts of a criminal nature against individuals whose conduct has been investigated by the Royal Commission.

Here, Judge Urquhart, QC, in conducting inquiries as Commissioner, is not conducting a judicial proceeding. The Commission is a creature of the Statute. Its powers and functions are to be found within the terms of the Police Integrity Commission Act 1996 (the Act). (See Part 3 of the Act).

Section 20(1) provides "*the Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate*".

The Commission makes reports on investigations (S.96).

Section 97 makes the following provisions relating to the content of the reports to Parliament:

- (1) The Commission is authorised to include in a report under section 96:

⁶ See eg. *Lockwood v The Commonwealth and Others* (954) 90 CLR 177 at 181, per Fullagher.

⁷ Hallet: "Royal Commissions and Boards of Inquiry" at p.23

⁸ Hallet: "Royal Commissions and Boards of Inquiry" at p.23

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- (a) statements as to any of its assessments, opinions and recommendations, and
 - (b) statements as to the Commission's reasons for any of its assessments, opinions and recommendations.
- (2) The report must include, in respect of each "affected" person, a statement **as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given** (emphasis added) to the following:
- (a) the prosecution of a person for a specified criminal offence,
 - (b) the taking of action against the person for a specified disciplinary offence,
 - (c) the taking of action against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer.
- (3) An "affected" person is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.
- (4) Subsection (2) does not limit the kind of statement that a report can contain concerning any such "affected" person and does not prevent a report from containing a statement described in that subsection in respect of any other person.

Section 16 of the Act is of particular significance as regards assessments, opinions and recommendations which the Commission may or may not make. Section 16 expressly provides:

16 Provisions regarding assessments, opinions and recommendations

- (1) The Commission may:
 - (a) make assessments and form opinions, on the basis of its investigations or those of the Police Royal Commission or of agencies of which it has management or oversight under this Act, as to whether police misconduct or other misconduct:
 - has or may have occurred, or
 - is or may be occurring, or
 - is or may be about to occur, or
 - is likely to occur, and
 - (b) make recommendations as to whether consideration should or

should not be given to the prosecution of or the taking of other disciplinary action against particular persons, and

- (c) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter of its assessments or opinions or the results of any such investigations.
- (2) However, the Commission may not:
- (a) make a finding or form an opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence), or
 - (b) make a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).
- (3) An opinion that a person has engaged, is engaging or is about to engage:
- (a) in police misconduct (whether or not specified conduct), or
 - (b) in specified conduct (being conduct that constitutes or involves or could constitute or involve police misconduct),
- is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit a criminal offence or disciplinary offence.
- (4) Nothing in this section prevents or affects the exercise of any function by the Commissioner that it considers appropriate for the purposes of or in the context of Division 1A of Part 9 of the *Police Service Act 1990*.

I am of the view that the Commission is correct in its concluding paragraph in answer to Question 5.3 from the Committee namely:

“The most the Commission may do is recommend that consideration be given to the prosecution or the taking of other disciplinary action against particular persons.”

6. CATEGORY 1 COMPLAINTS

6.1 What are the current levels of category one complaints considered by the Commission, referrals received from the Police Service and the Ombudsman, and complaints referred back to the Ombudsman?

In 1998-99, the Commission considered 587 Category 1 complaints, of which 417 were referred complaints and 170 were non-referred complaints. Of the referred complaints, 355 were referred by the Police Service, 59 by the Ombudsman, and three by both agencies.

The Commission took over the investigation of 12 of the referred complaints, two were deferred, and the remaining 403 were referred back to the Ombudsman. Of the non-referred complaints, 14 were the subject of investigation by the Commission, four were deferred, 30 were the subject of no further action, and the remaining 122 were referred to the Ombudsman.

CATEGORY 1 CLASS OR KIND AGREEMENT

- 6.2**
- a) When was the Category 1 agreement last reviewed?**
 - b) Has the Commission experienced any difficulties with the current class or kind Category 1 agreement which would suggest the need for revision of the agreement?**

The last formal review occurred late in 1997, prior to the signing on 15 January 1998 of the current agreement. The agreement is kept under notice so that any difficulties which may arise can be considered and the need to revise the agreement assessed. No such difficulties have so far arisen.

Audit – At the third General Meeting the Commission advised that it had decided to make a Special Report to Parliament at the end of 1998 dealing with the general question of Police Service investigations of Category 1 complaints, drawing on the results of those investigations audited or monitored by the Commission in respect of complaints made in the period 1 January 1997 to 30 June 1998.

6.3 What is the status of this report?

The extraction and processing of the statistical data took somewhat longer than anticipated, but work on the report is now well advanced.

The Commission also advised the Committee that it had identified 37 Category One complaints which warranted investigation or preliminary inquiries and that it would monitor the Police Service investigation of each case and include the outcomes in the aforementioned special report.

6.4 What were the outcomes of the Commission's monitoring of the Police Service investigations?

Of the 37 matters, four were not proceeded with: one turned out not be a Category 1 complaint (it concerned a special constable); and three were not investigated after the complaints were withdrawn at various stages. Of the 33 matters which were investigated, 27 have been completed and in the Commission's assessment:

- four of the investigations were of a very satisfactory standard;
- 13 were satisfactory;
- nine were unsatisfactory; and
- one was very unsatisfactory.

The investigations into the other six matters are incomplete. The investigations into two of these matters have been taken over by the Commission.

With regard to the unsatisfactory and very unsatisfactory investigations, the Commission requested that further inquiries be made in a number of them to remedy deficiencies of various kinds, and these were carried out. In other cases, the Commission requested that its comments be brought to the attention of the officers concerned, or in one case to the attention of the Commissioner of Police.

One of the satisfactory investigations was Case Study 7 in the Commission's 1997-98 Annual Report, while one of the unsatisfactory investigations was Case Study 1. One of the very satisfactory investigations (although incomplete) is Case Study 6 in the Commission's forthcoming Annual Report for 1998-99. Copies of these three case studies are at Attachment 4. (Sections from the Annual Report are not reprinted as part of the General Meeting collation)

CORRESPONDENCE AND ACTIONS TRACKING SYSTEM (CATS)

6.5 Has the correspondence and Actions Tracking System overcome the problems, identified by the PIC Inspector, with the Commission's procedures for dealing with external correspondence?

Yes.

7. QUALITATIVE & STRATEGIC AUDIT OF THE REFORM PROCESS (QSARP)

7.1 What progress has the external auditor made towards completing the qualitative and strategic audit of the police reform process (QSARP)?

Information on the appointment of the auditor is contained in the Commission's forthcoming Annual Report. A copy of the relevant pages is at Attachment 5.

The first two phases of the audit of the reform process, Phase 1 Establish Audit Parameters, and Phase 2 Plan Audit Process, have been completed. Phase 3 – the conduct of the audit - has commenced with two major activities: the acquisition of audit data from the Police Service; and the development by the Auditors of a framework for viewing expected progress in reform across the ten key reform areas identified in Appendix 31 of the Royal Commission report.

The Auditors have also completed a survey of staff attitudes about the reform process and a Justice System Stakeholders Survey to obtain, to the extent possible, the views of stakeholders about the wider community perceptions of reform. Both of these surveys, which will be used to inform the Audit and the areas selected for in-depth analysis, will also be conducted in year 3 of the Audit.

The Auditors propose to examine the areas of Strategic Leadership and Culture, and Selection and Appointment for in-depth analysis for year 1 of the Audit.

7.2 Has the auditor identified in his reports any priority or problem areas in relation to ten key areas in the reform agenda which would impact significantly on the Office of the Ombudsman and the Police Integrity Commission?

The Auditors issued an interim report on 5 August 1999 in accordance with the QSARP audit plan. In accordance with s 14A(5) of the *Police Integrity Commission Act 1996*, copies of the report were furnished to the Minister for Police and the Commissioner of Police. The interim report describes the processes undertaken up to the end of the first half of year 1 of the Audit and a summary of the processes planned for the remainder of the year. The interim report also discussed a number of themes which emerged during Phases 1 and 2. These themes were only discussed in the broadest of terms and were by no means concluded views. No priority or problem areas in relation to the ten key areas have been reported formally at this time. The final report for year 1 is due to be completed by 22 March 2000.

8. POLICE COMPLAINTS/CASE MANAGEMENT SYSTEM

8.1 What is the current status of the PCCMS?

Background

Development of the Police Complaints/Case Management System (PCCM) was a recommendation of the Royal Commission into the NSW Police Service: Interim Report (February 1996). It was approved "in principle" by the Cabinet Standing Committee on the Budget on 9 December 1997, subject to Treasury and Public Works review.

In February 1997 a Steering Committee (including the Police Integrity Commission, NSW Police Service, Ombudsman's Office, Office of Information Technology, Treasury, the Premier's Department) was established. The development of project specifications was completed in January 1999. A cost estimate in March 1999 advised that the Project would be no more than \$15.4M capital and \$9.2 recurrent over four years (not including GST).

In April 1999 an independent review was conducted, of the scope and cost estimates of the project to test compliance with the Royal Commission recommendations and include a review of the tendering process. The findings were that: the scope was generally consistent with Cabinet objectives, the complete PCCM system should be implemented in its component parts, that each agency is to be responsible for delivery of their modules under the auspices of the current Steering Committee, the facility to access Police Service data covertly to be renegotiated and that inter-operability between agencies is to be formalised through the establishment of service level agreements.

Current Situation

The agencies have worked collaboratively towards the development of a Business Case and Cabinet Minute for project approval and a revised Program Charter is under development.

The Cost Estimates have been revised downwards to \$13.73M capital and \$6.23M recurrent (which now includes GST).

Pending Cabinet approval, it is expected that an Expression of Interest and a Fixed Price Quote for the first module will be released in November/December 1999.

TRANSCRIPT OF PROCEEDINGS BEFORE

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

—
At Sydney on Friday 5 November 1999

—
The Committee met at 1.00 p.m.

—
PRESENT

Mr Lynch (Chairperson)

Mr Breen
Mrs Grusovin (Vice-Chairperson)
Mr Hatzistergos
Mr Kerr
Mr W. D. Smith

PAUL DAVID URQUHART, Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

GEOFFREY ERNEST SAGE, Assistant Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

ANDREW STUART NATTRESS, Director of Operations, Police Integrity Commission, 111 Elizabeth Street, Sydney,

DENIS MICHAEL LENIHAN, Information Manager, Police Integrity Commission, 111 Elizabeth Street, Sydney,

DAVID JOHN HAMILTON RAWSON, Director of Corporate and Information Services, Police Integrity Commission, 111 Elizabeth Street, Sydney and

ANDREW PETER LIVINGSTONE NAYLOR, Solicitor, Police Integrity Commission, 111 Elizabeth Street, Sydney, sworn and examined:

CHAIR: I take it each of you received a summons under my hand in accordance with the Parliamentary Evidence Act?

Judge URQUHART: Yes.

Mr SAGE: Yes.

Mr NATTRESS: Yes.

Mr LENIHAN: Yes.

Mr RAWSON: Yes.

Mr NAYLOR: Yes.

CHAIR: I should indicate that the answers provided to questions on notice have already been tabled.

Judge URQUHART: Yes, I understand that.

CHAIR: I invite the Commissioner to make an opening statement.

Judge URQUHART: Ordinarily I would make an opening statement because it has been many, many months since I appeared before this Committee in its previous form. There is a new Parliament: there is a new Committee. The reason I do not propose to make an opening statement is that our annual report was recently presented to Parliament, and it contains, in what is therein described as a report by me, but which is really a foreword to that report, what I would say if I were to make an opening statement. I do not want to take your time in doing that.

There is, however, one matter I wish to mention. In that report reference is made to this Committee and that reference finishes with a notation of an invitation that was extended to this Committee—I think it was in March—to attend the Commission for the purposes having a look at the telecommunications interception facility. It was not noted in the report, because the report covered the year to 30 June, but I would wish it to be noted on the public record of this Committee that that invitation was accepted and many Members of the Committee were able to come down and have a look at that facility and also, given that they were, in the main, new Members of the Committee, they were given an opportunity of seeing where we are and the environment in which we go about our work.

I want to backtrack just a little, to the first time Members of the Committee came to see where we work. I rather gather that that was an innovation, that Parliamentary Committees in the past have not necessarily been invited to come to agencies such as the Police Integrity Commission to have a look. I thought it rather strange, and that is why I initiated that very first visit some year or more ago—probably more than that, perhaps two years ago—and why the invitation was issued in March and why the invitation is always there.

The only other thing I would like to say is that the reason I am not alone here today is not because I have the feeling of being kept in cotton wool. Those who know me will understand I have no feeling that way at all but, rather, as I said at a previous Committee, I believe in the Committee obtaining the best information it can. For that reason, if I do not know I would rather that somebody be here who does know and who can give you the information straightaway. That is by way of explanation of their appearance. That is all I wish to say, thank you, Mr Chairman.

CHAIR: Thank you, Judge Urquhart. Perhaps I can start the questioning. In your annual report you refer to some of the recommendations from Operation Jade that were made to the Police Service. In relation to the first of those recommendations you refer to a response from the Commissioner of the Police Service and note the Commission regards his response as inadequate and you think the Commissioner may have been badly advised. I wonder whether you could provide a few more details in relation to that and whether there has been a response from the Commissioner of Police to your comments?

Judge URQUHART: May I say, by way of preface, that at this stage it may be somewhat unfair for me to take that any further, because I am yet to receive a response from the Commissioner. The expression "may have been badly advised" remains that. I would like to ascertain from him the nature and extent of the advice he has and also what his response has been since his being informed of what is in that report. Some matters were to be reviewed in any event at the expiration of 12 months from the recommendations in the report, and I am due to see the Commissioner next week and that will be on the agenda. So, it may be a little unfair to him for me at this stage to express in a public forum something that may need to be qualified subsequently. However, I would certainly be pleased to respond to that after I have seen him and, if you like, I will do that after I have spoken to him next week.

CHAIR: That is certainly a matter of interest to the Committee.

Judge URQUHART: Certainly.

CHAIR: I suspect in light of the answer you have just given that I can apprehend what the answer to my next question will be but it is probably appropriate to ask it in any event. I think a number of recommendations were made in Jade—seven in total—and only three seem, in part or in whole, to have been accepted by the Police Commissioner. Has he expressed a view as to why there was such a low take-up rate of recommendations? Do you have any concerns at there being such a low take-up rate of recommendations, bearing in mind this Committee's experience with the Ombudsman is that there is a much higher take-up rate of recommendations?

Judge URQUHART: No, he has not expressed to me the reasons. I would much prefer to express a view as to what his answer would be after he has given it to me in consequence of some discussion I have with him. So, the answer to this question is not dissimilar to the answer to the first. I think it would be unfair to him. I understand the Committee's interest in that area. The Committee will no doubt understand that I have and maintain an interest in that area because they were my recommendations. I am no less interested than the Committee in knowing what has happened to them and why nothing appears to have happened. I undertake to the Committee I will let the Committee know after that element of potential unfairness has disappeared.

CHAIR: We will no doubt return to that at the next meeting.

Judge URQUHART: Certainly.

CHAIR: The other question I wanted to ask about Jade is that your annual report notes a number of people being charged and dealt with. How much of that resulted from evidence being assembled from the Police Integrity Commission as opposed to evidence being assembled by other investigative agencies?

Judge URQUHART: There is probably a combination. I think it would be difficult to put evidence in the basket of, "It was this evidence, and this evidence alone, that came from that source that was responsible for that prosecution. This evidence in this other basket was alone responsible for this other prosecution." There certainly can be some analysis of all of the evidence that was available to prosecute people, but essentially we became involved after other agencies had commenced in operation.

We became involved because there were police involved. There was a joint operation involving us and other agencies, including the New South Wales Police Service. It is for that reason—that is, because of the joint aspect of the operation—that it would be difficult to say that it was the evidence that that person from that agency obtained, as distinct from the evidence that this person from this agency obtained, when they were working jointly. I am not able to answer the question beyond that. If need be, I can certainly provide some analysis of the evidence that was led against the people who were successfully prosecuted. If the Committee would like that, we could provide it.

CHAIR: I look forward to seeing that. I take it that it would not take six months full-time work to prepare that information?

Judge URQUHART: No.

The Hon. J. HATZISTERGOS: In your annual report, in connection with Operation Oslo you refer to an incident involving a seconded police officer to the Independent Commission Against Corruption [ICAC] having been found to have leaked confidential information relating to an inquiry, and the subsequent suspension of that officer from both the Police Service and the ICAC. What is the status of that individual at present?

Judge URQUHART: Do you mean whether or not he is still on suspension?

The Hon. J. HATZISTERGOS: Have criminal charges been brought, or is it proposed that criminal charges will be brought?

Judge URQUHART: We have not yet brought out a report on our Oslo operation. I do not know whether the Police Service has initiated any charges against him. We have not, because it would be wrong for us to do so before we brought out our report. I understand from Mr Sage that the ICAC investigation into the Liverpool Council has not yet concluded, or the report has not yet come out. But our Operation Oslo is ongoing, and it is for that reason that we have not taken steps in relation to that officer at this stage.

The Hon. J. HATZISTERGOS: Are you aware of any screening processes that are in place within the Police Service for people who may be seconded to agencies such as the ICAC?

Judge URQUHART: I am not aware of any. Mr Sage informs me that neither is he. If they do any vetting, it is done not through us.

The Hon. J. HATZISTERGOS: Your report identifies that prosecutions are quite important in terms of getting the message through to the Police Service about misconduct. I congratulate you on that approach; I think it is part of one of your performance measures. Before you go to a public hearing, is it the approach of the Police Integrity Commission to try to assemble for a prosecution as much evidence of an admissible nature as possible before it is actually exposed at the public hearing?

Judge URQUHART: I do not want to tell you what our Act says, because I assume that you are familiar with it. But our Act does say that for the purposes of an investigation we can have a hearing. Our Act also gives certain protection to people who come along to give evidence. We do not want to find ourselves in a situation of calling in a police officer who we may suspect but do not have evidence against, in relation to having committed serious police misconduct, putting him in the witness box, giving him the protection which that witness box provides to him, asking him, "Have you done A, B and C?" and he saying, "Yes." All that that will have achieved is his exclusion from the Police Service, when a greater penalty may have been required.

So our methodology is to obtain as much evidence as we can which is probative—and I mean that in a forensic or court sense—of the criminal conduct of a police officer, and then to use our hearing room for the purposes of ascertaining whether or not that particular criminal conduct is extensive, and to use it to draw members of the community to come forward to us with further information that may indicate to us that what we thought existed is greater than what we thought existed; then we may go into a different investigative mode. But we do not start off with, "Let's have an investigation in the hearing room to find out what we can." Our view is that, from an investigative point, it would be wrong to do that.

The Hon. P. J. BREEN: I note that in your answer to one of the questions on notice you said that there is no information on the use of telephone intercepts in overseas jurisdictions, except to the extent that the United Kingdom has them for intelligence purposes but not evidentiary purposes. There is a bit of information—it may well be misinformation—floating around that we in New South Wales have an unusually high number of telephone intercepts. Indeed, I have heard a statistic to the effect that New South Wales has more telephone intercepts than the whole of America has. Is there some way of dismissing that kind of information, or saying that it is the true position, or qualifying it in some way? Do you have any indication about that?

Judge URQUHART: I cannot answer the question, but I would think it would be fairly easy to find out how many telephone intercept warrants are legitimately obtained in the United States, how many are obtained in New South Wales, and then to do the comparison. I am not familiar with what the figures are in the United States. But if there is that perception in the community and elsewhere, I would think it is a perception that should be laid to rest by the facts.

The Hon. P. J. BREEN: It may be that if the position in America is the same as the position in the United Kingdom—that is, that telephone intercepts are not used for evidentiary purposes—that kind of a comparison would make sense. But, in the absence of that information, are you able to obtain that information?

Judge URQUHART: I suppose in the same way that the Parliamentary Library here is probably able to obtain that information as well.

CHAIR: I suggest that that is probably something that we as a Committee should deal with.

The Hon. P. J. BREEN: There was some information floating around in the press recently about telephone bugs on Members of Parliament. I assume that was a reference to something that was left over from the Cold War. As far as I am aware, telephone bugs have pretty much been replaced by more up-to-date technology, such as telephone intercepts. Are you aware of any telephone intercepts on Members of Parliament at this point in time?

Judge URQUHART: The Commonwealth Act would preclude me from providing any information. Let me present a hypothetical. Let us assume for a moment that I was aware that your telephone had been the subject of a telecommunications interception. That would be information which I could not divulge to anyone because of a prohibition in the Commonwealth Act. Given that hypothetical, if I were to answer your question by "Yes, I am aware," I would be committing an offence. I can tell you that I am not aware of any such telecommunications interceptions. But beyond that, I do not suppose you want to ask me any questions.

CHAIR: I remind Mr Breen of the jurisdiction of the Police Integrity Commission. I will not stop you asking questions, but it seems to me that it would probably be better to direct the questions to someone other than the Commissioner of the Police Integrity Commission. The questions probably should be directed to the Commissioner of the ICAC.

The Hon. P. J. BREEN: If I could perhaps take the matter one step further. If there were telephone intercepts on Members of Parliament, the only reason would be that it would be in the course of an investigation of a criminal offence. A warrant would be granted in the usual way, and it would be to the satisfaction of a judge or a member of the Administrative Appeals Tribunal. In that event, it would be quite legitimate to get a telephone intercept on a Member

of Parliament, is that correct?

Judge URQUHART: It would be legitimate if the warrant were legitimately granted, of course.

The Hon. J. HATZISTERGOS: Your report talks about the Commonwealth privacy legislation, which may affect the ability of the Commission to obtain personal information from private sector companies in its investigations. What is the current status of that?

Judge URQUHART: The status at the moment is that after a great deal of considered discussion by law enforcement agencies with the Commonwealth, it was thought that the way in which it is dealt with in New South Wales, and de facto at the moment in the Commonwealth area, would be replicated in the proposed Commonwealth legislation. However, we have a concern, which we are taking up with the Minister for Police of New South Wales, that there is a chance there will be a provision in the proposed Commonwealth Act that, although never used, may cause the agencies here some difficulty.

I do not intend to be cryptic, except to the extent that I do not want to compromise whatever the relationship between the New South Wales and Commonwealth Ministers may be in that area. All I can say is that we do have a concern, and we have published our concern to the New South Wales Minister for Police. It is not a concern that we alone as an agency in New South Wales have; it is a concern that other agencies have. We have made a good case sufficient for the Minister for Police to go to the Commonwealth and ask for the bill to be looked at again.

The Hon. J. HATZISTERGOS: You made some recommendations flowing from Operation Warsaw about Deputy Commissioner Jarratt's lack of recognition of potential conflicts of interest and how that should be approached. A course was recommended, which the Commissioner of Police took up. I understand that the Deputy Commissioner has now had training in ethics at the St James Centre for his personal development in recognition of the matters you identified. Are you now satisfied with the actions that have been taken by both the Police Commissioner and the Deputy Commissioner in relation to the concerns you expressed in your report?

Judge URQUHART: I am satisfied that the recommendations I made have been carried out by the Police Commissioner and, on his direction, by the Deputy Commissioner. The recommendations I made have been carried out. I cannot say any more than that because I made no other recommendations concerning the Deputy Commissioner.

The Hon. J. HATZISTERGOS: Did you make any recommendations or have you made any suggestions about how similar incidences could be prevented amongst senior officers who are responsible for recruitment?

Judge URQUHART: I have, and I know the Police Commissioner has taken the recommendation on board. We have our own methodology as to how that sort of recommendation and its execution by the Commissioner will be reviewed by us. It is perhaps a little premature at this stage to have a look service wide at the top level as to how the Commissioner has achieved what I expected would be the beneficial result.

The Hon. J. HATZISTERGOS: What recommendations did you make?

Judge URQUHART: To the Commissioner?

The Hon. J. HATZISTERGOS: Yes.

Judge URQUHART: That the senior officers of police receive potential conflict of interest training. As to how the Commissioner goes about doing that is a matter for him. He has to report to me on how he has gone about doing it. It is for us in our investigations to ascertain whether or not the senior police officers have an understanding of potential conflict of interest. We do not target them specifically, however, for that particular area. That arises in our ordinary investigative processes.

The Hon. J. HATZISTERGOS: Have you examined the training that has been provided?

Judge URQUHART: We have not yet had a report from the Commissioner as to what he has done.

The Hon. J. HATZISTERGOS: Do you expect to receive one?

Judge URQUHART: Yes.

The Hon. J. HATZISTERGOS: When?

Judge URQUHART: Before the end of the year, because it will be 12 months after the Warsaw project was terminated with our report, which is subject to review.

The Hon. J. HATZISTERGOS: When the Deputy Commissioner went to the St James Ethics Centre—

Judge URQUHART: That was a specific recommendation that a specific officer receive training in a particular area. He went in accordance with that recommendation and direction by the Commissioner. I am satisfied that our recommendation in that regard was carried out. As to the senior but not as senior ranks, I await the return by the Commissioner of his report on what he has done.

The Hon. J. HATZISTERGOS: How long ago was it that you made your recommendation?

Judge URQUHART: Shortly after the Warsaw report.

The Hon. J. HATZISTERGOS: Twelve months ago?

Judge URQUHART: Yes.

The Hon. J. HATZISTERGOS: You still have not got a report back?

Judge URQUHART: We allocated a 12-month period for the Commissioner to have a look at what he has done.

CHAIR: I turn to controlled operations. There are some comments in the Ombudsman's annual report on controlled operations, dealing with operations 98/05 and 98/06. In your answers to

us, you have answered in fulsome detail some aspects of that. In your view, have those matters now been resolved? Is there anything outstanding that ought to be dealt with?

Judge URQUHART: No. I received a letter from the Ombudsman earlier this week. I am satisfied that those matters have been resolved.

CHAIR: I turn to the review that has been conducted by Inspector Finlay in relation to the Act. Do you have a view about the proposals he made in that review? Do you think they will impact in a positive or negative sense?

Judge URQUHART: I support them. The review was carried out in consultation with all of the relevant agencies. I could go beyond myself and say that I am not aware of any agency that would hold the view that the review which he conducted gave rise to conclusions with which they disagreed. I support his review; they will be for the better.

CHAIR: One of the matters that struck me from the Ombudsman's annual report is that of a total of 181 applications to various chief executive officers [CEOs] for the authority to proceed with controlled operations, in only one instance approval was not given by the CEO. On the face of it—and there may be a perfectly reasonable explanation as to why it occurs—it seems extraordinary that no other applications were rejected by a CEO. That seems to suggest an almost automatic granting of approval. Do you have a view on that and, in that context, whether Inspector Finlay's proposal to devolve the power to grant authority is a matter for concern?

Judge URQUHART: Can I explain to you a little bit about the procedure to obtain a controlled operations authority? A controlled operations application will be made in my agency to me, supported by the appropriate documentation—and by that I mean our procedural documentation—and so on. There is provision in the legislation if I am not satisfied with the information that is available for that information to be supplemented. If I am satisfied with the supplementary information, I will go ahead and authorise a controlled operation.

I do not want to say how many applications I am satisfied with at the beginning and how many I am not, but if you bear in mind that is the procedure, it may assist as to the checks and balances. It is not a rubber stamp. It may be that when first the information is provided there is some concern shown by me, or the CEOs of other agencies, that there is not enough information and there needs to be supplementation or further information. When that is provided, that may provide the hiatus and the controlled operations authority can be given. The devolution in our agency is only to the Assistant Commissioner level, and not beyond. I would have no difficulty in my agency for Assistant Commissioner Sage to have that power, because I am satisfied that he has the qualifications. I cannot speak for other agencies.

CHAIR: So that I am clear as to what you have said or implied, as I read the Ombudsman's figures, you approved 14 operations. Are you suggesting that in some of those applications, without tying it to a number, you would have sought supplementary information before the operations were approved?

Judge URQUHART: Yes.

CHAIR: In that situation, 14 approvals perhaps hide a far more complex process.

Judge URQUHART: They do not hide a complex process. A complex process is in existence to ensure that before I authorise a controlled operation I am satisfied that all of the information before me supports it. During that process supplementary information may be required, which carries out that necessary task.

CHAIR: In your capacity as Commissioner of the Police Integrity Commission [PIC], do you have a role in looking at the Police Commissioner's or the Police Service's approval of authority for such operations?

Judge URQUHART: We do not do it as a matter of course because the Ombudsman has that role. We would not wish there to be a duplication of resources. However, that is not to say that in appropriate circumstances consistent with our functions we would not consider it. We do not as a matter of course carry out an audit, albeit even a sparse audit, because that is the Ombudsman's function in relation to controlled operations. We are satisfied she does that job eminently well.

CHAIR: Has the PIC had occasion to look at the process of approval in any instance, and is what you have observed consistent with the process you have described about seeking supplementary information before an approval is granted?

Judge URQUHART: Do you mean in the Police Service?

CHAIR: Yes.

Judge URQUHART: No, we have not had occasion to do that.

The Hon. J. HATZISTERGOS: Could I go back to my earlier questions about recognition of conflict of interest in the Police Service? On page 57 you state that the Commissioner of Police had provided the PIC with a response in June 1999. In response it was noted that a review of current management courses established that there was no curriculum relating to conflict of interest recognition.

Judge URQUHART: That is right.

The Hon. J. HATZISTERGOS: That was the position in June?

Judge URQUHART: Subject to that, a review is taking place as to what is going to be done.

The Hon. J. HATZISTERGOS: Twelve months ago you asked the Commissioner of Police for information as to what he had in place for recognition of conflict of interest?

Judge URQUHART: And nothing was available.

The Hon. J. HATZISTERGOS: You did not find that out until June this year?

Judge URQUHART: Yes.

The Hon. J. HATZISTERGOS: It took the Police Commissioner from November to June to tell you there was nothing in place?

Judge URQUHART: I do not know whether June is right. I will have that checked.

The Hon. J. HATZISTERGOS: You say in the report that you received a response in June. It seems extraordinary that the Commissioner of Police would take six months to tell you he has nothing in place.

Judge URQUHART: The dates speak for themselves. The next stage is what the Commissioner is going to do about it.

The Hon. J. HATZISTERGOS: Will you wait another 12 months for that?

Judge URQUHART: No.

The Hon. J. HATZISTERGOS: When is the Commissioner going to report to you next on this issue?

Judge URQUHART: I am seeing him next week. He will probably be aware of what happens at this meeting.

The Hon. J. HATZISTERGOS: I hope so. This is a serious matter.

Judge URQUHART: Quite apart from that, there are a number of things following the Warsaw report that we, as the PIC, have to review with him. This will be one of the matters we will review.

The Hon. J. HATZISTERGOS: What does the next sentence in your report mean: "This has been considered in the process of re-establishing continuing program and supervisory management training of first-line team leaders"? Is that the next stage you are talking about?

Judge URQUHART: That is right.

The Hon. J. HATZISTERGOS: You do not know what the content or the timetable is?

Judge URQUHART: We do not know what the time line is, nor do we know the content. I have an expectation that it will be provided to me within the review that is to take place 12 months after the Warsaw report came out.

The Hon. J. HATZISTERGOS: Would you regard this as an important issue that has to be resolved within the Police Service?

Judge URQUHART: Yes, I do. If it happens at a senior level, it can happen at lower levels. If it happens at lower levels—and our evidence is that it does—it is an important matter throughout the service.

The Hon. J. HATZISTERGOS: Are you satisfied that the Police Service is responding to this issue with the same level of priority that you attach to it?

Judge URQUHART: I cannot answer that at this stage until I know what it is that the Police Service has been doing since the initial response.

The Hon. J. HATZISTERGOS: Well, if it takes it six months to tell you nothing, that is hardly satisfactory, is it?

Judge URQUHART: That is a value judgment I will have to make when I find out from the Commissioner of Police what he has done.

CHAIR: Do you think that the Commission has sufficient resources to carry out its functions?

Judge URQUHART: Yes.

CHAIR: On Wednesday the Committee discussed with Inspector Finlay the nature of corruption. Inspector Finlay said in some written answers that corruption in the Police Service was largely opportunistic, which caused some Committee Members some concern. He subsequently explained that and said:

It is difficult to finger any particular thing. It may be car stripping or some involvement in this area. That may be the area of the day in which you see most because of the focus of some operations that may be involved and as that comes under the examination spotlight those who are corrupt-minded may turn to softer things. That is what I meant by opportunistic. It takes the opportunity of going wherever the money is, which is likely to be a softer target and they are less in danger of being uncovered or exposed.

Is that a fair assessment of corruption in the Police Service, or is it more complex than that and is there more structural basis to it?

Judge URQUHART: There is no doubt that there is opportunistic corruption. As to whether opportunistic corruption is endemic or whether there is another form of corruption that is otherwise than opportunistic is the difficult question. One of our performance indicators for one of our corporate objectives is the identification of issues and trends in serious police misconduct. That is a very difficult area in which to give proper consideration. One needs to have a benchmark of valid information to start with and then a comparative data bank of information to give rise to a valid comparison.

What we do in each annual report is to bring out some valid statistics that will demonstrate hopefully trends in serious police misconduct. As to whether I would be prepared at this stage to say that it is opportunistic would be a big call. I would not say it was all opportunistic. There is certainly opportunistic corruption. That is everywhere and if the opportunity presents itself people will be dishonest, commit crimes or what ever. But to suggest that that is what police corruption is about is a simplistic approach. It is far more complicated than that.

CHAIR: How is the qualitative and strategic audit of the reform process being monitored?

Judge URQUHART: We have within our own organisation an officer, one of whose responsibilities is to maintain liaison between the auditors and ourselves. One must understand that the auditors are independent of us and of the Police Service. In fact, the end of the first year of the QSARP is due out in March of next year. I have regular meetings with the auditors for the purposes of them identifying to me where they are at, any difficulties that they may be having and any areas in which they perceive that they may be going to have some difficulties in the future.

So far as actually monitoring the audit that they are carrying out, I need to be very careful to

ensure that there is the degree of independence which the Act requires them to have. My monitoring of their role as auditor is liaison either through me or the officer of the Police Integrity Commission, who is responsible for that.

CHAIR: Is the report proposed in March next year likely to be made public?

Judge URQUHART: That will be a matter for the Minister because it is to him that we report in relation to that, and the Commissioner of Police. If that report were to contain matters which concern me as to areas of potential police misconduct, I might well embrace that myself as part of one of our special activities and report upon it myself, either by way of a special report or as part of our annual report, but it is the province of the Minister as to whether or not he wishes that report to be made public.

CHAIR: When does the Commission anticipate issuing its report on the first annual audit of the Protective Security Group and will that be made public?

Judge URQUHART: Mr Naylor may be able to answer that.

Mr NAYLOR: I am informed that we expect to have the report available by the end of the year.

CHAIR: Is it likely to be made public?

Judge URQUHART: That is not for me to determine. It is not a matter, unlike our reports on specific operations or our annual report, which of its very nature or on my recommendation would become public but nevertheless the Minister may well wish to do that.

CHAIR: In relation to category one complaints, is there any reason for a marked decrease in the use of section 25 notices?

Judge URQUHART: Not really. We looked at the statistics ourselves as to whether or not they were able to do anything other than provide a pretty little chart of ups and downs over the years. It does not reflect upon our methodology. However, it showed that the number of matters we had was such that they did not warrant the use of section 25 notices to require information. They required the exercise of other sorts of powers.

CHAIR: There seems to be a decrease in the number of category one complaints received. Is there any reason for that or is it just a statistical blip?

Judge URQUHART: Mr Lenihan may be able to answer that. My own view is that it is just a statistical blip.

Mr LENIHAN: It is a bit early to say. It is just a statistical blip at the moment, but when we have this year's figures we will be able to say with a bit more certainty.

CHAIR: There is a distinction between public and private hearings. What factors are relevant in deciding whether you have a public or a private hearing and how many private hearings are there compared to public hearings?

Judge URQUHART: I think you have the statistics of how many public hearings and how many

private hearings we have. The public interest is the factor, which as a matter of law determines whether or not a hearing will be held in public or in private. Do you want me to explore what those legal principles are? You are probably well aware of what they are. The statistics themselves are useful but they are not as useful as they could be perhaps in that on one particular day—and I am not necessarily providing these as actual statistics but suggesting the possibility of these—we may have three private hearings and then may go for four weeks without having any private hearings. In a month we may have no public hearing and in another month we may have two public hearings. Of themselves those statistics really are not very useful. What is useful is what our Act says and I certainly decide according to the principles applicable to the public interest as to whether something will be held in public or in private. It is a matter well within the principles of public interest that if something is inimical to or may compromise an investigation, we will hold a private hearing.

The Hon. J. HATZISTERGOS: Is part of the decision for a public hearing based on the desire to accumulate additional evidence from media reporting?

Judge URQUHART: Yes, certainly one of the principles concerning public interest and whether we have a public hearing is the desirability of acquiring further information from the public, but that is certainly only one of many principles that would be applied.

The Hon. J. HATZISTERGOS: That would never be the sole reason?

Judge URQUHART: No.

Mrs GRUSOVIN: Then there is always the balance that a public hearing may in fact result in some people not coming forward?

Judge URQUHART: Yes, it can. I would venture to suggest, however, that you would never know the number of people who never came forward. There are people who do ring up when there is a public hearing and provide information and it is desirable to continue that. There are legal principles that actually recognise that.

CHAIR: If I can turn briefly to the telephone intercept facility. You indicate that is linked to a reduction in the time taken to implement intercepts. How has that impacted upon efficiency? Does it have a real impact on the efficiency of investigations?

Judge URQUHART: The telecommunications interception facility we have is the one we have always had. We have only had it for a short time so we are not able to compare and do not have a benchmark, in a sense. However, our collective experience with other agencies indicates, yes, what used to take other agencies X amount of time takes us X minus a considerable amount of time, but I cannot say it reduces the time taken or makes our investigations more efficient because we have no base to compare it with.

At the commencement you raised certain matters, on which I said that I will get back to you, and you suggested perhaps at the next meeting. It occurs to me that if there are matters I can deal with beforehand, I might write to the executive director or to you, Mr Chairman, so that the information can be distributed to Members of the Committee.

CHAIR: That would be good.

(The witness withdrew)

(The Committee adjourned at 2.00 p.m.)

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APPENDICES

APPENDIX 1



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

MINUTES

Meeting held 1.00pm, Friday 5 November 1999,
Waratah Room, Parliament House

MEMBERS PRESENT

Legislative Assembly

Mrs Grusovin (Vice-Chairperson)
Mr Kerr
Mr Lynch (Chairperson)
Mr Smith

Legislative Council

Mr Breen
Mr Hatzistergos

Apologies: Ms Gardiner

Also in attendance: Ms Helen Minnican, Ms Tanya Bosch, Ms Hilary Parker.

Judge Paul David Urquhart, Commissioner; Mr Geoffrey Ernest Sage, Assistant Commissioner; Mr Andrew Stuart Nattress, Director of Operations; Mr Denis Michael Lenihan, Information Manager; Mr David John Hamilton Rawson, Director of Corporate and Information Services; and Mr Andrew Peter Livingstone Naylor, Solicitor, of the Police Integrity Commission, took the oath and acknowledged receipt of summons.

The Chairman advised that the Commissioner's answers to the questions on notice had been tabled on 3 November 1999.

The Chairman invited the Commissioner to make an opening statement. The Commissioner declined, referring members to his recent Annual Report to Parliament, and made some brief remarks prior to the commencement of questions.

The Chairman commenced questioning the witnesses, followed by other members of the Committee.

Questioning concluded, the Chairman thanked the witnesses for attending and the witnesses withdrew. The hearing concluded at 2.00pm and the Committee adjourned to reconvene for a deliberative meeting at 2.05pm.



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

MINUTES

**Meeting held 11.00am, Thursday 25 November 1999,
Room 1043, Parliament House**

MEMBERS PRESENT

Legislative Assembly

Mrs Grusovin (Vice-Chairperson)
Mr Kerr
Mr Lynch (Chairperson)
Mr Smith

Legislative Council

Ms Gardiner
Mr Hatzistergos

Apologies: Mr Breen

Also in attendance: Ms Helen Minnican, Ms Tanya Bosch, Ms Hilary Parker.

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5. *Draft General Meeting Reports*

The Committee considered the Draft Reports on the General Meetings with the Ombudsman, PIC Commissioner and PIC Inspector. It was confirmed that the Inspector's letter of 4 November 1999 concerning Question on Notice 5.3 to the PIC would be included in relevant sections of the PIC 4th General Meeting Report.

The Committee discussed the Inspector's continued lack of access to TI material and agreed to include a comment expressing concern on this issue in the PIC Inspector 3rd General Meeting Report.

Resolved on the motion of Mrs Grusovin, seconded Mr Smith that:

- a. the Chairman, Director and Committee Clerk be permitted to correct stylistic, typographical and grammatical errors.
- b. the draft reports be the reports of the Committee and that they be signed by the Chairman and presented to the House, together with the minutes of evidence.

APPENDIX 2



POLICE INTEGRITY COMMISSION -
QUALITY CONTROL SYSTEM FOR
PRODUCTION OF EXTERNAL REPORTS

JULY 1999

SUMMARY

The Police Integrity Commission (“the Commission”) has adopted a set of quality standards for its external reports. Reports should:

- ◇ be accurate
- ◇ contain all relevant / significant information
- ◇ be relevant to the Commission’s Corporate Plan
- ◇ be legally sound
- ◇ be timely
- ◇ contain sound grammar and English usage;
- ◇ be written in plain language;
- ◇ be ‘audience’ focused
- ◇ be transparent (ie evidence and reasoning supporting assessments, opinions and recommendations is clearly presented)
- ◇ contain feasible and detailed recommendations
- ◇ conform to the Commission’s external reporting format.

To achieve these quality standards, the Commission has implemented the following systems:

- ◇ the involvement of the Projects and Reports Team in the preparation of the scope and purpose statements for public hearings. Input would be along the lines of identifying:
 - aspects of the scope and purpose that may prove difficult to report on and
 - broader issues that could be explored in the hearings. (Eg causal factors of misconduct)
- ◇ the preparation of submissions from Counsel Assisting the Commission that contain
 - assessments, opinions and recommendations and the reasons for those assessments, opinions and recommendations (see section 97(1) of the Police Integrity Commission Act (“the Act”)) and
 - statements regarding affected persons (see section 97(2), (3) and (4) of the Act)
- ◇ careful and thorough project planning
- ◇ project management and oversight
- ◇ appropriate resource allocation
- ◇ the use of standard report drafting guidelines (proposed in this document)
- ◇ a structured review process, commencing on completion of the first draft