



# Legislative Assembly

## Police Integrity Commission

### Amendment (Access To Documents)

08/03/2001

**Bill Hansard**

**Extract**

#### Second Reading

**Mr TINK** (Epping) [11.26 a.m.]: I move:

That this bill be now read a second time.

This bill enables members of the Police Service to divulge information and produce documents to the Police Integrity Commission despite any existing law to the contrary. It has been argued that there is an existing law to the contrary, namely regulation 46 of the Police Service Act Regulations which, as I understand it, came into force in September last year. Regulation 46, sub-clause 2, states:

... a member of the Police Service must observe the strictest secrecy in regard to Police Service business and is forbidden to communicate without proper society in any way to any person outside the Police Service any information in regard to police or other official business connected with his or her duties, or which may come to his or her knowledge in the performance of them.

Late last year following the sacking of members of the Behavioural Change Unit of the Police Service by this Government, the Government went to court to seek to stop members of that the unit from handing over information to the Police Integrity Commission. The Government took proceedings No. 5146 of 2000 *Commissioner of Police v Kenneth Seddon and Others* in the Supreme Court of New South Wales, Equity Division, on Thursday 28 December 2000 before Justice Hulme. The others were also, as I understand it, members of the Behavioural Change Unit. Mr Toomey, QC, appeared for the Commissioner of Police and Mr Evans appeared for the defendants. I quote from the official transcript of the Reporting Services Branch released on 16 January. I refer in particular to Mr Toomey's submission at page 7 of the transcript of 28 December. It states:

I am asking your Honour to vacate so much of the order as allows the handing over by the defendants of the documents directed to the Police Integrity Commission. In our respectful submission that order was made without power having regard to regulation 46. I know the circumstances in which it was made and the shortness of time and the lateness of the hour but that being so, in our respectful submission there was no jurisdiction to make that order. If it please, your Honour.

I interpose to say that that is a submission by Mr Toomey on behalf of the Commissioner of Police—and, by extension, on behalf of the Government—to prevent members of the Behavioural Change Unit handing documents directly to the Police Integrity Commission, and relying on regulation 46 in making that submission. At page 8 of the transcript Mr Toomey, in answering questions raised by the judge, put this argument:

If the Police Integrity Commission wants to go along tomorrow to the Commissioner of Police or his deputies and prove an entitlement to the documents, they will get every one of them. But with great respect, we object to the making of an order that a defendant to a summons such as this who has no right to documents hand over copies of the documents to a third party who at present has no right to the documents.

To my mind, that is one of the most extraordinary submissions ever made in the New South Wales Supreme Court on behalf of any government. In a nutshell, it says that the Police Integrity Commission has no entitlement to those documents. That is an outrageous proposition. The Premier, in response to a censure motion I moved on 6 March, boasted about the establishment of a standing body outside and beyond the Police Service with the powers of a royal commission. The Police Integrity Commission may stand outside the Police Service, but it does not stand beyond the Police Service if the Police Service seeks to mount an argument that it, and the commissioner's office in particular, should be a clearinghouse for documents that people may wish to send to the Police Integrity Commission to examine matters contained within them.

Here, there is no question that the documents relate to an extremely serious matter which the Police Integrity Commission has now indicated it will hold public hearings on. This Government has been trying, through this regulation, to stop the Police Integrity Commission getting those documents. That is an outrageous proposition. Later the same day the judge, in a decision delivered from the bench, as distinct from a reserved judgment, said, among other things:

Reliance is placed on reg 46 of what I think are regulations made under the Police Service Act which requires a member of the Police Service to treat all information coming to his or her knowledge in his or her official capacity as confidential and not disclose it without proper authority to anyone.

The submission made on behalf of the Police Commissioner is that the defendants have no proper authority to provide the documents they possess or copies of them or information which has come to their knowledge in their official capacity to the Police Integrity Commission.

Then, most importantly, the judge said:

I simply do not know whether that is correct.

So the judge did not come to a final view on that issue. However, in deciding not to do what the police commissioner wanted—that is, to prevent the documents from going to the Police Integrity Commission—the judge said what I think any person who has any commonsense, and who wants the Police Integrity Commission to exercise objectivity and freedom in its deliberations, would agree with. He said:

In that conclusion I am influenced by a belief that no harm is likely to occur, indeed, harm is almost certain not to occur by the disclosure to the Police Integrity Commission of police documents or at least those of which I have become aware in the course of these proceedings.

Frankly, those words of the judge put the matter in perspective. That was a matter of commonsense. This bill is designed to ensure that the sentiments expressed by the judge—sentiments with which I strongly agree—carry forward into express legislation of this Parliament. But, relevantly—and the reason this bill is important and needs to be brought forward—this was not a judgment that was reserved and considered in the fullness of time. It was one that the judge had to give straight away. For the longer term, as to the fundamental argument put regarding regulation 46, he said, "I simply do not know whether that is correct."

If the argument is correct, the regulation should be overturned by this Parliament. Every thinking person who wants independent oversight of the Police Service wants the body exercising that oversight role to be able not only to seek documents but to have people come to it free of any interference by third parties, particularly people from the Police Service. That independent body should be free from any such interference so that those people may come forward with any documents in their possession at any time if those documents are being provided to the Police Integrity Commission for its purposes.

The Police Integrity Commission, if it is embarking on an inquiry and certain things come to its knowledge, should be able to approach people and request certain documents. There will be many other problems of which the Police Integrity Commission has no knowledge. In those instances the Police Integrity Commission may rely on people coming forward with documents and information without the Police Integrity Commission moving to seek those documents or that information. In those circumstances it is fundamentally important that there be no impediment whatsoever to that process taking place. I note that on 20 October 2000 the Commissioner of Police issued a press release when the issue of the behavioural change group first blew up. That media release of the New South Wales Police Service Commissioner's Office, entitled "Police Service Reform", is noted to be "Issued by Rob Kinny, Commissioner's Media Officer, Authorised by Commissioner, Peter Ryan." It states:

Mr Ryan has asked Police Integrity Commissioner Judge Paul Urquhart to expedite any inquiry that might arise from material delivered to him today alleging any attempt to divert or damage the reform process.

Since the issue of that press release, which I support, the commissioner has gone to court—and, by extension, the Government has gone to court—to try to block material going to the Police Integrity Commission or sought to be forwarded to the Police Integrity Commission for the purpose of that very inquiry. I suppose the argument that Mr Toomey put to Justice Hume is that we are to trust senior police when it comes to the handing over of documents to the Police Integrity Commission. I must say that an incident raised with me raises in my mind the question of the processes undertaken in that regard and whether that trust is well placed.

I now quote from a letter written by the Deputy Ombudsman, Mr Chris Wheeler, dated 5 February 2001 to the police commissioner. It is in my possession because it arises in connection with a complaint made by the honourable member for Davidson and was circulated by the honourable member. The Deputy Ombudsman says in his letter to Mr Ryan:

I would like to advise you of my concern about the Police Service's handling of Mr Humpherson's FOI applications. When he met with Mr Kosh on 22 August 2000 to discuss Mr Humpherson's FOI complaint Chief Superintendent Andrew Scipione informed him that Inspector Les Langburne was only provided with limited access to Mr Ryan's diary for the purposes of conducting his determination of Mr Humpherson's FOI application.

In order to properly determine an application under the FOI Act, it is imperative that an agency's determining officer is able to thoroughly examine all documents the subject of the application, particularly if the determination is to refuse access to the documents. A determination cannot be performed in a proper manner if the determining officer is not permitted unhindered access to all the documents the subject of the FOI application.

It is of concern to this Office that Inspector Langburne was permitted only limited access to the documents sought by Mr Humpherson. In dealing with any future complaints about the Police Service's determinations under the provisions of the FOI Act, this Office will closely examine the Police Service's determinations in order to determine whether or not the determining officer has been allowed unhindered access to all documents the subject of the FOI application.

To be fair, the Police Service has now responded to the Ombudsman's Office. Again, a copy of this letter has been made available to Mr Humpherson. In that document the Police Service takes issue with what was said by the Ombudsman's Office. I quote from the letter, dated 14 February 2001, addressed to Mr Bruce Barbour, Ombudsman, by Mr Michael Holmes, General Manager of the Court and Legal Services Branch of the New South Wales Police Service:

Chief Superintendent Scipione denies ever limiting Inspector Langburne's access to the Commissioner's diary other than to indicate that inspection be restricted to the dates referred to in the application of Mr Humpherson.

Former Inspector Langburne was contacted by my Office in respect of the issue raised concerning the comments attributed to Chief Superintendent Scipione. The former inspector has confirmed he was given as much access to the Commissioner's diary as he required for his determination and that his access to the material was unfettered. He further advised he was free to scroll through the diary as he desired in indicating that Chief Superintendent Scipione in no way hindered his access to the material subject of the application.

Whichever way we look at this, it is a most unsatisfactory situation. It raises an important conflict relating to a freedom of information [FOI] application by a member of Parliament, which touches on the commissioner personally. My concern is that on the one hand the Office of the Ombudsman is saying that unfettered access was not obtained—which, if true, I think is disgraceful—and on the other hand the Police Service is saying that the Office of the Ombudsman has got it wrong. Chief Superintendent Scipione, who was then working in the commissioner's office, has since become head of internal affairs in the Police Service.

I indicate here and now that I will be referring this fundamentally important matter to the Police Integrity Commission [PIC] to be sorted out. I do not make any final judgment at all about these competing claims, except to say that they are serious competing claims that involve senior police—the most senior police—and senior people in the Office of the Ombudsman, whose duty it is to be a source of appeal under FOI applications. However, something which I think is highly relevant to this bill is that huge question marks hang over the handling and provision of documentation by the Police Service in accordance with the laws of this State. I do not believe that anybody in the Police Service should be a third party conduit for what individuals can or cannot send to the Police Integrity Commission. Different questions arise if individuals send things to third parties.

The charter of the Police Integrity Commission is to oversight the Police Service. As the Premier said the other day, the charter of the Police Integrity Commission is to be a standing royal commission. In my opinion it cannot do its job unless it clearly has access to, and it is seen to have access to, any documents that any person or persons want to bring to it relating to any matter which they believe alleges misconduct in the Police Service.

In light of the dispute between the Ombudsman's Office and the most senior police in this State about the provision of documents in accordance with the laws of New South Wales, at the moment there can be no confidence in the capacity of third parties to act beyond doubt as third party middle people for the passage of documents. Any person who wants to take a document to the PIC should be able to do so. That is what this bill is about. This bill is about ensuring that the PIC is a standing royal commission with unfettered powers in every sense of the word when it comes to gathering information. I commend the bill to the House.