



NSW Legislative Assembly Hansard

Police Integrity Commission Amendment (Shaw Investigation) Bill

Extract from NSW Legislative Assembly Hansard and Papers Thursday 24 February 2005.

Second Reading

Mr ANDREW TINK (Epping) [10.01 a.m.]: I move:

That this bill be now read a second time.

The object of the bill is to permit the Police Integrity Commission to continue and complete its investigation concerning a missing blood sample taken from Jeffrey Shaw, the former Attorney General, following a car accident in October 2004. The need for this bill became apparent during the inquiry by the Police Integrity Commission into the circumstances surrounding Mr Shaw's car accident last year. I refer to a number of newspaper clippings that identify the course of the investigation so far as it is relevant to the bill. The *Sydney Morning Herald* of Thursday 18 November 2004 reported, in the course of the investigation into the Shaw matter, as follows:

The morning had already begun with a dose of the unexpected. Mr Shaw's counsel, Mr Ian Barker, QC, asked for a stay of proceedings, arguing that because all the police officers questioned had effectively been exonerated, the commission did not have the jurisdiction to continue its investigation. The Commissioner, Terry Griffin, did not agree. Mr Barker then left the hearing to argue his case—ultimately unsuccessfully—in the Supreme Court, leaving Mr Shaw in the hands of [his] junior barrister ...

An AAP report of the previous day, 17 November, said:

NSW Supreme Court Justice Henric Nicholas today dismissed an appeal by Mr Shaw to have the Police Integrity Commission inquiry halted.

Justice Nicholas said the case was not strong enough to justify him granting an interlocutory injunction. "I am not sufficiently persuaded at this stage that the construction of the Act is to the effect that you have submitted it to be, to the end that it would deny the commission further jurisdiction to continue this inquiry," he said.

But that was not the end of the matter. It came before the court again at the end of last year. I refer to an article by Paola Totaro in the *Sydney Morning Herald* of 27 December 2004. This is very important, as it is the basis for the bill. The article states:

The Supreme Court has agreed to hear a legal challenge to the powers of the [Police Integrity] commission and its jurisdiction to report on Mr Shaw's conduct after the disappearance of a blood vial that ultimately revealed he had been driving with a blood alcohol level more than four times the legal limit.

The application, granted by Justice Reginald Barrett late on Christmas Eve, will now be heard on Wednesday morning.

If the motion is allowed, it raises the possibility that a specially constituted court of appeal—comprising three interstate judges—will be asked to ensure that there is no perception of judicial bias in favour of Shaw ...

It was made clear by counsel assisting the commission, Stephen Rushton, SC, during the last day of the public hearings that it does not believe any police officer was connected with the disappearance of Shaw's blood samples, taken after a car accident outside his home at Birchgrove on October 13.

The importance of the article is that it indicates that counsel assisting the Police Integrity Commission, Mr Rushton, had conceded, from a certain point in the PIC's inquiry, that no police were either suspected of being involved in the sample going missing or under further investigation by the Police Integrity Commission. That is the argument that was put by Mr Shaw's lawyers to establish that thereafter the Police Integrity Commission had no jurisdiction. This was the report of the argument put by Mr Shaw's barrister:

He argued the commission's powers, set out in the Police Integrity Commission Act, relate solely to people accused of police misconduct or corruption or people involved in "such police misconduct or corruption".

"At this stage it regrettably appears that the PIC or those assisting it seem to be operating under a misapprehension ... In particular, it would appear that it may have the misconceived view that it has power to express an opinion or make a finding in relation to any alleged misconduct even if it is not police misconduct or related to police misconduct," he told Justice Barrett. He argued that any other meanings attributed to this section would empower the commission to apply its wide-ranging unique coercive powers to any NSW citizen contravening common law rights. "Plainly, this would be nonsense and contrary to the statutory framework of the PIC Act.

I interpose here that the Independent Commission Against Corruption, in relation to everybody else in the New South Wales public sector, or in relation to people who have dealings with them, has precisely the same coercive powers as has the PIC in relation to police. My point all along has been that what was put by Mr Shaw's counsel is a technical jurisdictional

argument and that it has nothing to do with the substantive issues of whether it is fair or unfair for this matter to be investigated. It is very clear to me that, if the hearing had been before ICAC, in circumstances where we now know that police were not involved, there would be no question about ICAC being able to use its coercive powers to investigate the matter. This bill seeks to extend ICAC's coercive powers to the PIC for the purposes of this investigation, given that the investigation has got as far as it has with the PIC. It appears that an agreement was reached between the PIC and Mr Shaw's barristers as indicated in press clippings of 31 December last year. This report was published in the *Australian*:

Lawyers for former NSW Supreme Court judge Jeff Shaw have paved the way for a legal challenge against the power of the state's Police Integrity Commission to make findings against him.

Under a deal struck yesterday, the PIC has agreed to give Mr Shaw 21 days' notice of the powers it has to make adverse findings about how a blood alcohol sample taken from him for police testing went missing.

The PIC has also agreed not to table its final report on the missing blood sample in the NSW Parliament until after any legal challenge from Mr Shaw.

Mr Shaw's lawyers claim the PIC has no jurisdiction to make findings about him and should drop the case after exonerating police from any wrongdoing.

A similar article appeared in the *Sydney Morning Herald* of the same day that this agreement has been reached. Mr Shaw's barrister said that he had received an undertaking that the PIC Commissioner, Terry Griffin, would give Shaw's lawyers 21 days notice if after reading submissions he concluded that the commission had the power to make findings against the former Attorney General.

I refer to the statement of the former Minister for Police, Mr Watkins, when the PIC inquiry was commenced. Mr Watkins issued a press release on 3 November 2004 headed "Disappearance of blood sample: Independent investigation", and he referred to the Police Integrity Commission conducting an inquiry into these matters. He referred to the Police Integrity Commission having discussions with the Ombudsman and the Independent Commission Against Corruption because it was then understood that aspects of the case may fall into all three jurisdictions. Most importantly, Mr Watkins said at the end of the press release:

I am extremely concerned about this case. We will take whatever action is required to get answers.

Mr Watkins' commitment to the Parliament on behalf of the Government was that whatever action is necessary will be taken to get the answers. The PIC has completed its hearings and it is fair to say there is intense public interest in the matter. I think the public interest is not particularly because of Mr Shaw's former position in this place but because there must be complete openness and transparency where a former sitting judicial officer has come under notice for alleged serious criminal misconduct. It is important, in order for people to have confidence in the administration of justice, to get to the bottom of what happened and why it happened, in an open and transparent way.

That is what the PIC and the ICAC are there to do, particularly where questions have arisen in this case about the disappearance of blood samples. That is a very, very serious set of allegations. Personally I think it would be intolerable if on a legal technicality the Police Integrity Commission at this late stage in the proceedings were prevented from presenting this Parliament and all of us with a report into its findings on the evidence that has been presented to it and that is in the public domain. It would be particularly intolerable for the PIC to be prevented from providing us with those reasons, given that the police Minister undertook to Parliament, here in question time, that he would take whatever action is required to get answers.

The matter should not fall on a legal technicality. Suppose that matters are left as they are and a legal challenge succeeds—is the Government really going to say, "We will stand back and sit on our hands on the basis of that technicality and never let the Police Integrity Commission report on the outcome of its findings into Mr Shaw?" I think that would be intolerable, unacceptable to the Parliament and unacceptable to the public. Alternatively, if the Government is going to let the matter run in the Court of Appeal and then start a separate inquiry that is equally intolerable in the sense that all the same work would have to be done again. Or is the Government going to spend a lot of taxpayers' money arguing the case in the Court of Appeal and then at the last minute introduce the legislation that I am introducing today?

I think all those approaches are wrong. The Government is on notice that there is a problem and the matter is going to be pursued by Mr Shaw's lawyers. The Government needs to clear the decks now so there is no further expenditure on legal fees and make it quite plain that it will complete the promise given by Mr Watkins last November that it "will take whatever action is required to get answers". In anticipation that legal action is coming to stop those answers being given, this legislation, procedural as it is, will let the PIC get on with the job. After all, the PIC is extremely experienced in running investigations of this type, albeit in relation to police. It is simply extending the powers of the PIC in this particular case to allow the job to be finished. I commend the bill to the House.