



NEW SOUTH WALES

*Inspector
of the
Police Integrity Commission*

ANNUAL REPORT

FOR THE YEAR ENDED

30 JUNE 2003

REPORT

**BY THE INSPECTOR OF THE
POLICE INTEGRITY COMMISSION**



***Inspector
of the
Police Integrity Commission***

The Hon Dr Meredith Burgmann MLC
President of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

The Hon John Aquilina MP
Speaker, Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

September 2003

Dear Madam President & Mr Speaker

In accordance with section 102 of the *Police Integrity Commission Act 1996*, I as Inspector of the Police Integrity Commission, hereby furnish to each of you for presentation to Parliament the Annual Report of the Inspector for the year ended 30 June 2003.

The Report has been prepared in accordance with the requirements of the *Police Integrity Commission Act 1996* (“*the Act*”).

Pursuant to section 103(2) of the Act, I recommend that the Report be made public forthwith.

Yours faithfully

The Honourable Morris Ireland QC
Inspector of the Police Integrity Commission

INSPECTOR OF THE POLICE INTEGRITY COMMISSION

30 June 2003

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PRELIMINARY OBSERVATIONS

This is my second Annual Report to Parliament as Inspector of the Police Integrity Commission, my appointment having commenced on 12 June 2002.

These preliminary observations, in accordance with precedent, although repetitive in nature, are directed towards keeping clearly in mind the purpose and origin of the Office of the Inspectorate.

In February 1996, Justice James Wood published the first interim report of the Royal Commission into the NSW Police Service.

Chapter five (5) of that report is of particular importance. A new system was proposed to deal with Police complaints and corruption investigations in NSW.

The proposal took into account that within the NSW Police Service there was a pattern of corruption which must urgently be addressed so that public confidence could be restored.

There was general acceptance by the Royal Commission that a focused, sophisticated and aggressive approach was necessary to uncover and combat serious police misconduct and corruption. The debate largely centred on the model then appropriate for NSW and the agency or agencies which should be tasked with appropriate responsibility. All the existing agencies were carefully considered.

The Royal Commission concluded that the model which needed to be adopted was one in which:

- The Police Service retained a meaningful role in dealing with management matters, customer service complaints, and certain matters of misconduct;
- There was both oversight of the Police Service, and an external responsibility to investigate serious corruption.

After careful consideration it was resolved that a new “*purpose built agency*” (which came to be called the **Police Integrity Commission**) should be established. It was emphasised that it will:

- Provide a fresh approach to the problems;

- Be purpose built, with specific focus upon the investigation of serious police misconduct and corruption; and
- Be free of the institutional baggage attached to an anti-corruption system which had failed to deal with corruption of the kind revealed by the Commission.

The principal function of the Police Integrity Commission was seen to be the detection and investigation of serious police corruption. A key function being to assemble admissible evidence when investigations reveal criminal conduct and to furnish such evidence to the Director of Public Prosecutions.

Consideration was then given to the accountability of this new, very powerful, ongoing body to ensure that it be open to public review and accountable to Parliament.

The first avenue of accountability acknowledged that there is always a risk that an agency that is heavily committed to covert investigations, relies upon informants, and possesses powers which are both coercive and of a kind which might involve substantial infringement of rights of privacy, may overstep the mark.

For this reason the Commission decided that there be a “watchdog”, able to respond quickly and effectively to complaints of misconduct and abuse of power, without risking secrecy of operations, or confidentiality of informants and witnesses. That “watchdog” was designated the **Inspector of the Police Integrity Commission**.

So it was proposed that the Office of the Inspector of the Police Integrity Commission be created by the legislation governing the agency. The Office, it was suggested, might be held by a serving or former Supreme Court Judge and given powers to:

- Audit operations of the Police Integrity Commission;
- Deal with complaints of abuse of power and other forms of misconduct on the part of its employees; and
- Report to Parliament on matters affecting the Police Integrity Commission and its operational effectiveness and needs.

Part Six of the *Police Integrity Commission Act 1996* makes those statutory provisions for the Office of the Inspector.

ROLE OF THE INSPECTOR

The position of the Inspector of the Police Integrity Commission (*the Inspector*) derives its authority from the *Police Integrity Commission Act 1996 (the Act)*.

The Inspector is appointed by the Governor with the advice of the Executive Council. The Joint Committee on the Office of the Ombudsman and the Police Integrity Commission is empowered to veto the proposed appointment which is required to be referred to the Committee by the Minister¹.

The Office of the Inspector may be a full-time or part-time Office, according to the terms of the appointment. A person is eligible (if otherwise qualified) for re-appointment but may not hold the Office of Inspector for terms totalling more than 5 years.

On 12 June 2002 I was appointed by the Governor as Inspector of the Police Integrity Commission for a period of three years on a part-time basis effective from date of appointment, following the retirement of the Hon. M.D. Finlay QC at the conclusion of his two terms of Office (of 3 years followed by an additional 2 years).

The Inspector's duties under the *Police Integrity Commission Act 1996* is to investigate complaints against the Commission's staff, to audit its operations, effectiveness and compliance with the law, and to report to the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission. That Committee has the function of monitoring and reviewing the exercise by the Commission and the Inspector of their functions².

The Inspector is required to report annually to Parliament and may make Special Reports on any matters affecting the Commission or on any administrative or general policy matter relating to the functions of the Inspector.³

The Inspector's principal functions as provided by Statute⁴ are:

- (a) *to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*

¹ Schedule 2 Police Integrity Commission Act 1996 and Section 31BA of the Ombudsman Act 1974

² Section 95(1)(a) Police Integrity Commission Act 1996

³ Sections 101, 102 of the Police Integrity Commission Act 1996

⁴ Section 89 of the Police Integrity Commission Act 1996

- (b) *to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and*
- (c) *to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*

The Inspector may exercise the functions of the Office on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency⁵. The Inspector is not subject to the Commission in any respect⁶.

"The Minister" in the paragraph above is the Minister for Police. The Honourable Michael Costa MLC, was the Minister for Police at the commencement of the reporting year. From 2 April 2003 this Office was held by the Honourable John Watkins MP.

POWERS OF THE OFFICE OF THE INSPECTOR

To perform its function, the Office of the Inspector has been given extensive powers to investigate any aspect of the Commission's operations or any conduct of officers of the Commission⁷.

It is also empowered to make or hold inquiries and for that purpose it has the powers, authorities, protections and immunities of a Royal Commissioner⁸. It was not found necessary to hold a formal inquiry involving hearings during the reporting year. The approach adopted by this Office has traditionally been to restrict the use of costly, time-consuming, formal inquiry hearings to complaints which necessarily involve a formal hearing in order to resolve some factual conflict critical to the complaint.

The Attorney General has advised the Minister for Police that the Legal Representation Office has approval to provide legal advice and representation for persons whose testimony at a formal hearing may warrant legal representation. On one occasion during the reporting year the assistance of the Legal Representation Office has been requested and provided to assist a putative Complainant by furnishing legal advice, at this stage.

⁵ Ibid, s89(2)

⁶ Ibid, s89(3)

⁷ Ibid, s90

⁸ Ibid, s91

THE OFFICE

The Inspectorate has suitable office premises, within the Sydney Central Business District separate from the Police Integrity Commission which is located at 111 Elizabeth Street, Sydney. The postal address of the Inspectorate is G.P.O Box 5215, Sydney NSW 2001. The office telephone number is (02) 9232 3350 and the facsimile number is (02) 9232 3983. The email address is *inspect@tpg.com.au*. One full-time staff member is engaged in the office.

The office operates appropriate computer systems which are maintained by Information Technology Services.

I also have a small office at the Police Integrity Commission where I have full access to the electronic records of the Commission. There I can access, in complete security, the Commission's records of its operations.

FINANCES

The financing of the office of the Inspectorate falls within the operating expenses of the Ministry for Police.

As the Inspector of the Police Integrity Commission is not a Department nor a Department Head for the purposes of the *Annual Reports (Departments) Act 1985*, the requirements placed by that Act on those bodies do not apply to the preparation of an annual report by the Inspector.

Similarly, the provisions of the *Annual Reports (Statutory Bodies) Act 1984* do not apply since the Inspector is not a person, group of persons or body to whom Division 3 of Part 3 of the *Public Finance and Audit Act 1983* applies nor is it prescribed as a statutory body by the *Annual Reports (Statutory Bodies) Act*.

FREEDOM OF INFORMATION LEGISLATION

The Office did not receive any FOI applications in 2002/03 for documents held by this Office. There is therefore no information to give in terms of clause 9(1) of the *Freedom of Information Regulation 2000* and Appendix B in the FOI Procedure Manual.

The Inspector of the Police Integrity Commission is part of the Ministry for Police for the purposes of the reporting requirement in Part 2 of the *Freedom of Information Act*

1989. Hence, this agency's "*policy documents*" are included by the Minister in the *Summary of Affairs* for the Ministry of Police provided to the Government Printing Service for publication in the Government Gazette.

REPORT OF OPERATIONS

In this report the term "monitoring" is used to include the auditing of the operations of the Commission for the purpose of monitoring compliance with the law of the State and to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

Monitoring and related activities have included regular meetings with the Commissioner of the Police Integrity Commission, Mr Terence Griffin and the Assistant Commissioner, Mr G.E. (Tim) Sage to discuss the issues of the day, longer term strategies and to review representative samples of operational files. As the needs arise separate discussion with senior officers of the Commission takes place.

In fulfilling my function under s.89(1)(a) and (1)(c) of the Act, I have available to me a designated office at the Commission where I have a computer providing me with electronic access to all the material on file at the Commission (with the exception of some Telecommunication Interception (T.I.) material). This includes the records of the Commission's various operations. Periodically and at random, I access such operations in absolute security. I have a print-out facility should I require it.

My regular meetings with the Commissioner and Assistant Commissioner identify the operations in which there has been activity, such as the issue of new warrants. This enables me to examine retrospectively such new warrants to ensure that all necessary approvals and administrative actions were completed in the process of obtaining and executing a warrant. In doing so I am also able to consider issues of propriety. I have undergone tuition on the Commission's new computer program for all its Telecommunication Interception (T.I.) warrants. This program shall simplify my task of auditing the T.I. area of the Commission's operations. I have also received instruction on the new MATRIX recording system which was installed during the reporting year to replace the DETRAK system.

The Commissioner and his staff have been fully cooperative. The Commissioner has provided me with unreserved access to any officer of the Commission whom I may wish to interview.

The operations of the Commission, as observed by me, were in compliance with the laws of the State.

ASSESSMENT OF PROCEDURES

Pursuant to s.89(1)(c) of the Act, the Inspector has the function of assessing “*the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*”

This statutory requirement was taken from and is, in its terms, almost identical with s.8(3)(a)(iii) of the Commonwealth “*Inspector-General of Security and Intelligence Act 1986*”.

I assessed the general procedures of the Commission, as I have seen them, to be effective and appropriate relating to the legality and propriety of its activities.

Each operation of the Commission involves a preliminary assessment by the Commission through its Operation Advisory Group (OAG).

The concerns as to timeliness in some of the Commission's procedures which were expressed by the former Inspector appear now to be addressed routinely. It is important that this aspect of operations continues to be closely monitored.

The Commission has limited resources. These it is required to apply to issues which are oft times competing for the application of those resources.

I have ongoing discussions with the Commissioner and Assistant Commissioner focussing on this question of timeliness and of the adoption of procedures likely to achieve the best and most balanced outcome of the Commission's productivity.

As part of my assessment, I have regard to the records of those operations requiring legislative sanction. For example, I have a weekly report regarding applications for warrants under the *Listening Devices Act 1984* and relating to section 19 reports under that Act. Also, I receive reports on Notices issued to obtain information (s.25 of the Act); Notices to obtain documents or other things (s.26); Authority to enter public premises (s.29); the summoning of witnesses (s.38); and the issue of Search Warrants; T.I. Warrants and the issue of authorities to conduct Controlled Operations.

Applications to obtain information (s.25 of the Act) or to obtain documents or other things (s.26 of the Act) can only be made “*for the purposes of an investigation.*” The Commission has in place systems requiring requests for such applications to be written and to identify the relevant investigation. These may be seen by the Inspector.

The Commission has issued a code of conduct which sets out the standards of behaviour all Commission staff are to observe.

The security of the operations of the Commission is of paramount importance. The reasons for such security being clear from the final report of the Royal Commission. It is also important that the exercise of the Inspector's functions should not put at risk the confidentiality of informants and witnesses.

The Act provides that information, acquired through the exercise of the Inspector's functions, shall not be divulged except in accordance with a direction of the Inspector certifying that it is necessary to do so in the public interest.⁹

REPORT ON THE PRACTICES AND PROCEDURES OF THE POLICE INTEGRITY COMMISSION

On 12 February 2003, the then Minister for Police, the Hon. Michael Costa, referred to the Office of the Inspector of the Police Integrity Commission the question of the appropriateness of the PIC's practices and procedures with respect to the formality and length of its hearings and functions.¹⁰ The Minister noted that the *Report on the Review of the Police Integrity Commission Act 1996*¹¹ (Review) had been tabled in Parliament on 17 December 2002 and that:

“A number of submissions to the *Review* raised concerns about the timeliness, length and formality of the Police Integrity Commission's...investigations and hearings, with particular reference being made to the Malta Operation.”¹²

Following an exchange of correspondence and further discussion with the Ministry for Police the Terms of Reference were agreed as follows:

“Pursuant to Part 6 of the *Police Integrity Commission Act 1996* and conformably with Recommendation 10 of the 2002 Report on the Review of the *Police Integrity Commission Act 1996*, the Honourable Michael Costa, Minister for Police, requests the Honourable Morris Ireland QC, Inspector of the Police Integrity Commission, to conduct an inquiry and furnish a Report on the appropriateness of the Police Integrity Commission's procedures and practices with respect to the formality and length of its hearings and functions (with

⁹ Section 56 of the Police Integrity Commission Act 1996

¹⁰ The matter of an inquiry into the practices and procedures of the PIC had been raised informally with The Office of the Inspector of the Police Integrity Commission in December 2002.

¹¹ The *Review* was prepared by the Ministry for Police in 2002 and was released as a Discussion Paper.

¹² Letter from the Ministry for Police to the Inspector of the Police Integrity Commission dated 12 February 2003.

particular emphasis on public hearings and reporting by the Commission on public hearings) and on any specific improvements that may be made to those practices and procedures.

Specific regard is to be had to section 20 of the Act which provides:

“20. Evidence and procedure

- (1) 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.
- (2) The Commission is required to exercise its functions with as little formality and technicality as possible, and, in particular, the Commission is required to accept written submissions as far as is possible and hearings are to be conducted with as little emphasis on an adversarial approach as possible.”¹³

On 4 March 2003 notices were published in major newspapers calling for written submissions from interested organisations, groups and individuals. An invitation was extended to a number of government and non-government organisations and individuals to make submissions. As a result of the notices the Inspectorate received 12 submissions which are listed in Appendix A to the Report. In addition to the written submissions limited consultations were conducted with various interested parties in order to clarify certain matters raised in the written submissions and to further investigate areas relevant under the Terms of Reference.

The Report examined the ways in which the PIC conducts its hearings, the procedures used and the manner in which the PIC reports to Parliament. In doing so particular reference was made to the Report to Parliament in Operation Malta, which was tabled in Parliament by the PIC in February 2003. The submission of the Report to Parliament in Operation Malta has been the catalyst for considerable public debate concerning the length of hearings, the time taken to produce the report, the nature of the ultimate conclusions reached and the perceived cost of the proceedings. It should be stressed that the Report is not a review of the PIC’s conclusions in Operation Malta – indeed such an inquiry would be ultra vires the powers ascribed to the Inspector under the Act. Rather the Report considers, with reference to Operation Malta, whether the then current practices and procedures relating to hearings at the PIC were susceptible to improvement.

¹³ Letter from the Inspector of the Police Integrity Commission to the Ministry for Police dated 4 April 2003.

A further matter which the Report did not address, except in a tangential sense in terms of hearings, is the power of the PIC to compel production of privileged documents. The Review recommended that investigation of privilege which impinges upon the operations and functions of a number of statutory investigative bodies should be the subject of a separate inquiry.

The Report on the Practices and Procedures of the Police Integrity Commission was tabled in Parliament on 18 June 2003. The Executive Summary of the Report is expressed in the following terms:

EXECUTIVE SUMMARY

Born out of the recommendations of the Royal Commission into the New South Wales Police Service ("Wood Royal Commission"), the Police Integrity Commission ("PIC") became fully operational in early 1997. Tasked with investigating and, where required, reporting to Parliament on matters of serious police misconduct, the PIC discharges the important function of helping to maintain public confidence in NSW Police. It achieves this through various means; sometimes through the use of covert operations and private hearings, sometimes by conducting public hearings and often through the employment of both means. The broad coercive powers ascribed to it under the *Police Integrity Commission Act 1996* are a measure of the degree to which Parliament, and through Parliament the public, desires the PIC to succeed in its task. It should also be said that the vast majority of submissions received by this Inquiry support that view. The recommendations in this Report are made to the same end; namely, with the purpose of assisting the PIC to succeed in its mandate.

This Report deals with the practices and procedures of the PIC with particular reference to the conduct of its hearings. Section 20 of the Act requires, amongst other things, that the PIC conduct its proceedings with as little technicality or formality as possible and that hearings be conducted in a non-adversarial manner. Further, the PIC is not bound by rules of evidence. The submissions received by this Inquiry demonstrate that this is easier to legislate than to put in practice.

This Report is in Five Chapters. Chapter One is an introduction to this Inspectorate, the Terms of Reference of this Inquiry and to the PIC. Chapter Two sets out the legislative framework and powers of the PIC which are relevant to this Inquiry. Chapter Three considers the criticisms raised in submissions as to the problems with present practices and procedures of the PIC. Chapter Four deals with the responses to those criticisms and contains the relevant recommendations for improvement which are extracted below. Finally,

Chapter Five applies the framework adopted in the previous chapters to the hearing and report into Operation Malta.

The following recommendations are made:

1. The PIC has a broad mandate to investigate police misconduct. Provided that the PIC acts within the scope of its mandate the PIC should conduct its investigations in such a manner as it considers fit, free from interference from external influences.
2. The PIC should not engage external assistance on its Operational Advisory Group.
3. The Operational Advisory Group must remain fully apprised of the status of investigations and ensure that investigations are appropriately project managed.
4. There should be no interference with the way in which the PIC elects to convene public or private hearings.
5. That the PIC develop and publish guidelines in relation to its practices concerning the non-publication of names.
6. That the guidelines set out the statutory and common law requirements and the manner in which the PIC will interpret these in considering applications for non-publication orders.
7. That no change be made to proceedings followed by the PIC with regard to notification or otherwise of the General Scope and Purpose of Proceedings.
8. The PIC should develop conflict management guidelines which would regulate the granting of leave to counsel to appear for more than one individual or organisation or an individual and an organisation.
9. The PIC should, as soon as the general scope and purpose of the hearing is determined, require counsel wishing to appear for more than one party to provide written submissions seeking leave to appear. Consideration should be given to the inclusion of a declaration from counsel that counsel is free of any conflict.
10. If the general scope and purpose of the hearing changes and/or the nature of the investigation becomes such that the general scope and purpose might

change, then the PIC should consider convening a special hearing if, in its opinion, those changes might have the effect of producing a conflict of interest in counsel appearing.

11. Where a notice to produce is issued the PIC should strictly enforce compliance with the notice, including where necessary, use of its powers under section 26(3) of the Act.
12. Parties served with notices to produce should be given reasonable time within which to comply with such notices except in circumstances where, in the view of the PIC, evidence is in jeopardy of being lost or destroyed or where parties might collude to defeat the purpose of the notice.
13. No change should be made to the current procedures in place at the PIC to determine privilege over documents.
14. The PIC should establish an internal Practice Guidelines Committee which should include the Commissioner, the Assistant Commissioner and the PIC Solicitor.
15. The PIC should formulate uniform Practice Guidelines dealing with, amongst other things:
 - Legal representation and conflicts of interest;
 - The placement of evidence before the PIC; and
 - The production of documents.
16. The PIC should publish the Practice Guidelines on its Internet site and maintain hardcopies for persons without Internet access.
17. The PIC should ensure that the Presiding Officer (with the assistance of Counsel Assisting) firmly controls the course of the proceedings by requiring parties to adhere to orders to produce documents, regulating the extent of the evidence led and ensuring by determining in open hearing timetables for submissions and requiring undertakings from counsel as to adherence. Counsel should be informed that the matter will be listed for mention, out of court hours, seven days prior to the submissions deadline date. Counsel should be requested to attend the mention and advise of progress.

18. That the PIC employ the term “interim public hearing” when it is expected that investigations will be ongoing at the conclusion of a public hearing. The purpose of this recommendation is to highlight the fact that a public hearing may be but one step, and not the final step, in the investigation process.
19. No change should be made to the PIC’s discretion to refer matters to NSW Police pursuant to section 77 of the Act.
20. The PIC should retain complete discretion as to the use which NSW Police may make of confidential information provided with draft referrals or reports.
21. A process should be in place between the PIC and NSW Police to deal with circumstances where NSW Police consider that a confidential information order should be waived. NSW Police should indicate what information it wishes to use and the purpose for which the information is intended to be used. The PIC should retain an unfettered discretion to authorise the release of such information.
22. The Practice Guidelines Committee should develop and publish guidelines on the release of information in accordance with the advices it has received on the PIC’s obligations in relation to section 56(4)(c) of the Act. The guidelines should use examples of circumstances in which information may be released and circumstances where information may not be released.
23. The Practice Guidelines Committee should publish a “Request for Information” form which would guide applicants through a series of questions matching the guidelines.
24. Both the guidelines and the Request for Information form should be available on the PIC’s Internet site.

In formulating the recommendations it is first recognised that the PIC is a commission of inquiry, not a court. This distinction has ramifications for practically every aspect of the way in which proceedings are conducted, including the outcome and reporting of such proceedings. It is evident from the submissions received in this Inquiry that this distinction is not easily understood at times, either by persons called to appear, or, on occasion, by counsel representing those persons. The gravitation toward a courtroom mentality, unhelpful as it is for the purposes of a commission of inquiry, is not easily discouraged.

Second, it is recognised that, operations which the PIC may be called upon to investigate will break new ground and bring new challenges. Such matters test the existing institutional capacity to control and respond to these challenges. While in some instances the Act will guide the response, in other cases existing internal practices and procedures must be refined or new strategies developed.

Operation Malta is just such a case. That operation involved the investigation of serious allegations concerning the will of senior NSW Police officers to implement reform of the Service. The allegations were formulated and presented in such a way as to attract maximum publicity. Notwithstanding the fact that the complainants were involved with only one aspect of police reform, the allegations were framed in such a way as to call into question the bigger picture of the capacity of NSW Police to implement reform generally. In this sense, the allegations questioned whether or not the Wood Royal Commission reforms were being implemented. Further, the complaints were made against senior serving officers, including the Office of the then Commissioner of Police.

With this background all eyes were on the PIC to respond. The complaints were presented in late October 2000. Many days of public and private hearings were conducted over a two year period. The Report was delivered to Parliament in February 2003.

Both during the operation and following submission of the Report there was disquiet over the nature of the PIC's investigation into the allegations, the time taken to conduct the hearings and the fact that the ultimate conclusions reached in the Report did not involve any adverse recommendations.

From a review of the evidence and submissions considered by this Inquiry it is apparent that the following factors affected the conduct of Operation Malta:

1. During the course of the hearing a conflict of interest arose which required counsel appearing on behalf of two key witnesses to withdraw his representation. The conflict arose in circumstances which are discussed in Chapter Five.
2. Numerous adjournments occurred for reasons which included the need to brief fresh counsel following the abovementioned conflict, for counsel's convenience and due to the unavailability of the hearing room which was required for another concurrent major investigation.
3. Lengthy arguments occurred between the PIC and legal representatives of NSW Police concerning the production of documents pursuant to notices

issued by the PIC. This resulted in delays to the production of documents by NSW Police.

4. The gravity of the allegations and the seniority of personnel under investigation met with an adversarial response by the Courts and Legal Services Branch of the NSW Police. This led to significant friction in relations between the PIC and legal counsel for NSW Police throughout the course of the operation.
5. Although the hearing was conducted in such manner as to meet the requirements of natural justice, the control over the presentation of evidence was not sufficiently robust with the effect that subsidiary issues were not adequately filtered out.
6. Counsel were permitted more than five months to provide written submissions in response to those of Counsel Assisting. This resulted in additional delays in presentation of the Report to Parliament.

The permitted practice of allowing counsel representing parties to call evidence rather than having statements from potential witnesses whose evidence counsel desired to have placed before the inquiry vetted and presented by Counsel Assisting resulted in loss of control of the hearing by the PIC. This practice also introduced an element of open-endedness which culminated in a larger number of witnesses being called by counsel representing NSW Police than by Counsel Assisting the inquiry.

Although the submissions of Counsel Assisting (who had been briefed at a late stage to replace earlier Counsel Assisting) were expeditiously produced, the latitude extended to counsel appearing for the parties was excessive and no apparent effort was made by listing the matter for mention or otherwise to have the parties explain the delays as well as to set and obtain undertakings from counsel to meet deadlines.

Operation Malta was a most unusual, perhaps unique, inquiry involving, as it did, trenchant criticism of the highest echelon of NSW Police administration. The introduction of the complaint accompanied by the calling of a press conference by one of the complainants, guaranteed a great deal of publicity and public interest as no doubt was the complainants' intention.

The response of some of those against whom complaint was made was also ventilated in media. In those circumstances the prospect of the complaint being dealt with by the PIC in-house as an internal or preliminary inquiry was in any real sense, out of the question.

The view expressed in some quarters that Operation Malta produced a 'nil return' is erroneous. On the contrary, the conclusion reached was that there was no serious misconduct by senior police regarding the matters complained of. Nevertheless, the gravity of the allegations and the public interest they generated ensured that the complaints could not, in any sense, have been lightly dealt with.

Two matters should be noted: first, that Operation Malta by virtue of the nature of the complaints made and the adversarial response generated seriously strained the relationship between NSW Police and the PIC, which has now been ameliorated by dint of the efforts of those at the highest executive level of both of those crime prevention agencies; second, a significant number of the recommendations, above, referred to have been identified by the PIC prior to this inquiry and guidelines have been or are in the course of being formulated to obviate unhelpful practices and procedures.¹⁴

In accordance with recommendation 14 of the Report above referred to, an internal Practice Guidelines Committee has been established. Work on the development of comprehensive guidelines has commenced, and it is envisaged that the guidelines, as settled by the Committee, will be available for publication by the time the Commission next convenes a public hearing.

Mr Daniel Meltz was retained as Counsel Assisting in the correlation of submissions received and report drafting. The substantial contribution made by Mr Meltz is gratefully acknowledged.

COMPLAINTS

During the reporting period the Inspectorate dealt with 24 complaints relating to the activities of the Commission.

- Three (3) involved preliminary investigations concluding with formal reports of those investigations. These reports were distributed to the parties involved.
- Eleven (11) were dealt with by a series of correspondence without proceeding to preliminary investigation reports. A number of these complaints required particularly sensitive handling especially where the matter has been assessed as not warranting the time and expense of a full or preliminary enquiry.

¹⁴ This Report is available at www.parliament.nsw.gov.au/Prod/Parlment/Committee

- Two (2) Complaints were resolved by monitoring ongoing internal operations within the Commission.
- Three (3) Complaints were putative in nature and following preliminary investigation were not pursued.
- One (1) complaint by a serving police officer was resolved by Alternative Dispute Resolution undertaken by the Commander of the Integrity Testing Unit of the Special Crime and Internal Affairs Command of NSW Police.
- Four (4) of the abovementioned 24 complaints received by this office in the reporting year remained current at the close of the reporting year and the ongoing investigations are being dealt with as follows:
 - One (1) Complainant has been advised of the evident need for legal advice and assistance. To this end the Complainant has been put in touch with the Legal Representation Office which is now assisting in this regard.
 - One (1) complaint received on 18 June 2003 is in the course of correspondence to enable an assessment to be made as to whether the matter can be dealt with by preliminary investigation and report or will require further investigation.
 - One (1) complaint formerly closed has been re-opened to deal with a further issue by way of a supplementary preliminary report.
 - One (1) complaint has been the subject of a Preliminary Investigation and report since the close of the reporting year.

A preliminary inquiry allows this Inspectorate to conduct a review of a complaint, once the parties, in the course of correspondence processed through this office have identified the issues, with a view to determining whether there is sufficient substance in the complaint to warrant a further inquiry using the full range of statutory powers.

Such preliminary inquiries generally involve seeking information and submissions in turn from the parties to the complaint until the gravamen of the complaint is clearly established and both parties have had every reasonable opportunity to present relevant material and arguments on the issues identified. This usually also involves the accessing of relevant electronic records of the Commission.

The fact that none of the new complaints against the Commission led to full, as opposed to preliminary inquiries, indicates that these more formal processes are not invoked lightly.

All recommendations made by this Office to the Commission during the reporting period, including those set out in the Report on the Inquiry Into the Practices and Procedures of the Commission have been accepted without demur and have been, or are in the course of being implemented by the Commission.

The Legal Representation Office has helpfully furnished legal advice to one putative Complainant. This matter is yet unresolved.

Some of the complaints are summarised below. Such summaries attempt to avoid identifying Complainants or confidential informants. The Report also avoids publishing material reflecting the internal working and methodologies of the Commission and the legal advice of lawyers employed by the Commission to provide the same in pursuit of its functions, which are not matters in the public interest to be disclosed.

- A. One complaint regarding an officer of the PIC was received by the Commission from an anonymous source. An identical complaint dealing with the same subject matter was referred to this Office by the Business Support Unit of NSW Police SCIA.

The situation is being monitored and SCIA has been so advised, however, the anonymous source of the complaint and the subject matter suggest that the complaint may be mischievous in nature.

- B. A number of complaints were received following the tabling in Parliament of the Commission's report on Operation Malta on 12 February 2003. The issues of timeliness and the criticisms made concerning the conduct of certain individuals who were identified in the Operation Malta Report were central to the complaints.

The misconception that the Office of Inspector of the Police Integrity Commission exercises an appellate role in relation to the acceptance or rejection of evidence and the opinions expressed in the Commission's reports rather than the statutory function of dealing with complaints of abuse of power, impropriety or other forms of misconduct and/or illegality prescribed by Section 89 of the Police Integrity Commission Act 1996 is apparent in part or, in one instance, in the whole of complaints received.

One of the complaints arising out of the Operation Malta Report which in part falls to be considered under Section 89 is the subject of current submissions.

- C. Another complaint which embraces wide ranging allegations of serious criminal conduct on the part of serving and former police officers; high ranking politicians and others, has generated several hundreds of pages of submissions and has continued throughout the reporting year. It is now concluded. The Report of Preliminary Investigation has been furnished to the parties since the close of the reporting year.
- D. One putative complaint was received from a person convicted of a serious crime. The conviction was allegedly the result of reliance upon the evidence of a corrupt police officer. The appeal by the putative Complainant in this case was upheld by the Court of Criminal Appeal. The complaint was thereafter not pursued.
- E. One complaint, which was referred to the Office by the Commission relates to alleged misconduct on the part of, inter alia, Commission officers during the course of a joint operation undertaken by NSW Police and officers of the Commission.

The nature of the matter complained of was an allegation of lack of timeliness in bringing to conclusion a joint investigation into allegations in relation to an arrest by the complainant in the course of duty. This complaint was resolved to the satisfaction of the Complainant by alternative dispute resolution (ADR), conducted by the Commander of the Integrity Testing Unit of the Special Crime and Internal Affairs Command, NSW Police. A signed acknowledgement by the Complainant that he did not wish to pursue any issue or complaint against any officer of the Commission was in due course received.

TELECOMMUNICATION (INTERCEPTION) ACT 1979 (Cth)
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The *Telecommunication (Interception) Legislation Amendment Act 2000* (Cth) which included the Inspector of the Police Integrity Commission as an “eligible authority” was given Royal Assent on 23 June 2000.

Mr Terrence Griffin, the Commissioner of the Police Integrity Commission, and I have made satisfactory arrangements to facilitate Intercept material obtained by the Commission, being available to the office of the Inspector when it is required for an investigation which the Inspectorate is conducting in the performance of its functions under the Act. These arrangements have been working satisfactorily.

POLICE INTEGRITY COMMISSION ACT 1996

Section 146 of the Police Integrity Commission Act 1996 (the Act) provides for a review of the Act as follows:

"146. Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.*
- (2) The review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to this Act.*
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years."*

This review has been conducted by the Ministry.

By facsimile, dated 22 May 2002, Mr David Hunt, Policy Manager, afforded the former Inspector the opportunity to make submissions on a number of discrete aspects of possible amendments to the Act which had been proposed in submissions received by the Ministry.

By letter, dated 28 May 2002, the former Inspector furnished a comprehensive response to the following:

1. The sufficiency of the powers available to the Inspector under the Act.
2. The achievements of the Inspector.
3. The establishment of a management committee (its advisability).
4. The expansion of the role of the Joint Parliamentary Committee (its advisability).
5. Legal Representation before the Inspector.
6. The expansion of the jurisdiction of the Inspector to exercise the functions of the Police Integrity Commission, where that body is concerned that it may not be appropriate to exercise, or continue to exercise, its functions in a particular matter.

By letter of 20 June 2002, I informed the Director-General of the Ministry for Police that I respectfully adopted and supported the views expressed by Mr Finlay.

A further matter which, on one view, which I do not share, may have warranted amendment of the Act relates to the question of natural justice and procedural fairness.

Having considered the advice of the Crown Solicitor furnished in the "*Four Corners*" matter and the decided cases relied upon, in particular: *ICAC v Chaffey* (1993) 30 NSWLR 21 per Gleeson CJ; and *Donaldson v Wood* per Hunt CJ at CL Supreme Court of NSW, 12 September 1995, unreported, I wrote to the Director-General on 26 June 2002 in the following terms:

"In my opinion, however, it would be inimical to the flexibility of approach, recognised in the decided cases as appropriate in considering questions of procedural fairness and natural justice, to endeavour to regulate or prescribe by amendment to the Police Integrity Commission Act 1996, a particular procedure to be adopted as this would militate against accommodating, so far as reasonably possible, the circumstances of each individual case."

I have also had the opportunity of considering, in draft form, the submissions made by the Police Integrity Commission which I support and with which I respectfully concur.

FUTURE OPERATIONS

The functions of the office of the Inspector may be regarded as twofold:

First, that of auditing the operations of the Commission for the purpose of monitoring compliance with the law of the State¹⁵ and assessing the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities¹⁶.

The procedures in place to fulfil the above functions are several. One being by regular conferences with the Commissioner and the Assistant Commissioner. Another by conferences from time to time with senior officers of the Commission.

A further procedure is by regular access to the computer in my room at the Commission. Without giving details, this enables me to closely follow operations in complete security.

Another procedure is to look at the records of those operations requiring legislative sanction.

¹⁵ s. 89(1)(a) of the Act

¹⁶ s. 89(1)(c) of the Act

The law of the State which imposes obligations in relation to the keeping and inspection of interception records is the *Telecommunication (Interception)(NSW) Act 1987* (“the State Act”). Section 10 of this Act imposes an obligation upon the Ombudsman to inspect the records of each eligible authority “at least twice during each financial year, beginning on or after 1 July, 1988”. The Police Integrity Commission is an “eligible authority” for the purposes of the State Act (s3). Thus, it is clear that the Ombudsman, and not the Inspector of the Police Integrity Commission, is the designated authority for the purpose of ensuring that the Police Integrity Commission **complies with its record keeping responsibilities** (emphasis added) under the State Act and other relevant obligations under the TI Act.

Second, that of dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission¹⁷.

Section 90 of the Act empowers the Inspector to investigate any aspect of the Commission’s operations or any conduct of officers of the Commission and entitles the Inspector to full access to the records of the Commission. It provides that the Inspector “*may investigate and assess complaints about the Commission or officers of the Commission*”.

Section 91 of the Act provides that the Inspector may make or hold inquiries for the purposes of the Inspector’s functions.

Such inquiries generally involve seeking information and submissions in turn from the parties to the complaint until the gravamen of the complaint is clearly established and both parties have had every reasonable opportunity to present relevant material and arguments on the issues identified. They usually involve accessing by computer relevant electronic records of the Commission.

Other inquiries may require the holding of a formal hearing. Generally, a formal hearing exercising the powers of a Commissioner as conferred by Division 1 of Part 2 of the *Royal Commissions Act 1923* will only be held where it is necessary by that means to resolve a disputed issue of fact critical to the inquiry.

Such hearings may be small scale and appropriately held in the Inspector’s office. For this purpose, the Ministry for Police has made arrangements for a court reporter from the Attorney General’s Department to be available for such hearings.

It may, on the other hand, require a larger scale hearing. The circumstances may indicate that it should be public or that it should be private. If public, the facility of a

¹⁷ s. 89(1)(b) of the Act

Commission hearing room may be appropriate to be arranged pursuant to section 92(4)(a) of the Act. On the other hand, it may be more appropriate for a hearing room to be arranged through the Attorney General's Department, at a venue which is seen to be quite independent of the Commission.

ELECTRONIC RECORD KEEPING

During the reporting year, the DETRAK system of electronic record keeping previously employed by the Police Integrity Commission was replaced by the MATRIX system.

I have undertaken training in accessing the Matrix system by Commission staff. The new system continues to be modified to better provide ready access by authorised personnel to Commission operational activities.

MEETINGS WITH PARLIAMENTARY COMMITTEES

The Committee on the Office of the Ombudsman and the Police Integrity Commission (the Parliamentary Joint Committee) 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.

Under the *Police Integrity Commission Act 1996*, the Parliamentary Joint Committee has the function of monitoring and reviewing '*the exercise by the Commission and the Inspector of their functions*'.¹⁸

On 26 June 2003 the Fifth General Meeting was held with the Parliamentary Joint Committee. I there made an opening statement and answered questions from members of the Committee. I also answered a number of questions from the Committee on notice in advance of the meeting.

The transcript of the public hearing segment of the meeting is available on the Committee website at www.parliament.nsw.gov.au/prod/parlament/committee. The Committee's report on this meeting is expected to be published following resumption of Parliament for the Spring Sittings 2003.

¹⁸ S.95(1)(a) of the Act