

PARLIAMENT OF NEW SOUTH WALES



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

## EIGHTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION

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## Membership & Staff

<b>Chairperson</b>	Mr Paul Lynch MP, Member for Liverpool
<b>Members</b>	The Hon Jan Burnswoods MLC (Vice-Chairperson)
	The Hon Peter Breen MLC
	The Hon David Clarke MLC
	Mr Geoffrey Corrigan MP, Member for Camden
	Ms Noreen Hay MP, Member for Wollongong
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## 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 s.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

Functions of the Committee

- 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 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 Eighth General Meeting with the Commissioner for the Police Integrity Commission took place on 30 November 2004.

A number of issues were focused on by the Committee in this General Meeting. One was the use by the Commission of a temporary Assistant Commissioner and the commentary of this report explores this issue more fully. The Committee remains interested in the PIC's decision to make a temporary appointment to this position. The Committee is also interested in the decision to create an instrument to delegate to the temporary Assistant Commissioner the Commissioner's powers in the event of the Commissioner's illness or incapacitation, which extends beyond the duration of the temporary appointment. The cost of employing the temporary Assistant Commissioner, which was initially presented to the Committee as a cost saving measure, will continue to be monitored by the Committee.

NSW Police implementation of PIC recommendations arising from Project Dresden II was another area examined during the General Meeting. At the time of the General Meeting, NSW Police had not implemented nearly half of the Commission's recommendations for improving internal investigations into complaints. As a result of foreshadowed changes to the system of complaint categories, the Committee will consider conducting an inquiry into the status of recommendations made to NSW Police by both the PIC and Ombudsman in relation to complaints management.

The role of the Commission's investigative partners was also examined during the General Meeting. In particular the Committee recommended that the Inspector of the Police Integrity Commission be given a narrow extension of power to investigate the activities of the PIC's investigative partners should allegations of impropriety be made. The second segment of the Committee's current inquiry in s.10 of the *Police Integrity Commission Act 1996* will examine the PIC's investigative partners and current oversight arrangements.

The various issues considered in this Report are all important matters of public interest. The views expressed in the commentary of this report reflect the bipartisan views of the members of the Committee.

I would like to thank the Commissioner and his staff for their participation in this General Meeting. General Meetings are the primary way which the Committee is able to fulfil its monitoring and review functions under the *Police Integrity Commission Act 1996*. The Committee looks forward to continuing its strong working relationship with the PIC throughout the rest of this Parliament.

Paul Lynch MP  
Chairman



# Commentary

## **The Role of the Assistant Commissioner to the PIC**

Since the departure of Mr Tim Sage as Assistant Commissioner at the Police Integrity Commission in late 2003, a restructuring of the PIC's executive led to the responsibilities of the former Assistant Commissioner being distributed to other positions. The Committee was advised that PIC was conducting a trial involving the appointment of a temporary Assistant Commissioner and that it was expected that this would produce a substantial cost saving as the annual salary expenditure for such temporary appointments would fall "in the range of \$90 000 to \$180 000". A full time Assistant Commissioner is paid around \$250 000 per annum.<sup>1</sup>

The PIC also advised the Committee that it was likely that the costs for the current year of employing a temporary Assistant Commissioner were likely to be unusual, as the temporary Assistant Commissioner engaged to assist with Operation Abelia, that is the former Inspector to the PIC, the Hon. M. Finlay QC, had also been asked to participate in other aspects of the investigation rather than just presiding over hearings.<sup>2</sup> In addition to his appointment as temporary Assistant Commissioner for Operation Abelia, which has examined the use of illicit drugs amongst NSW Police officers, Mr Finlay also has presided over PIC's Operation Alpine, an investigation into the conduct of two police officers allegedly involved with stealing and dealing drugs, which arose from evidence taken during Operation Abelia.

As temporary Assistant Commissioner, Mr Finlay also was delegated the full functions of the Commissioner while the latter was on recreation leave.<sup>3</sup> This power of delegation has now been formalised so that in the event of the Commissioner being incapacitated or unavailable, the temporary Assistant Commissioner will assume the Commissioner's functions. The Committee notes that this delegation extends beyond Mr Finlay's temporary appointment as Assistant Commissioner.<sup>4</sup> The Committee also notes that this means that the Commissioner's delegation may be exercised at a later stage by an individual external to the Commission. The Committee further notes that this delegation of powers has not been used.

Mr Finlay's duties as temporary Assistant Commissioner include presiding over public and private hearings, maintaining personal liaison with the Commissioner of Police, chairing round table conferences and other high level meetings with visiting experts and officials, chairing internal meetings of the Abelia team and liaising with team members about the direction of research and recommendations to be made by the Commission.<sup>5</sup>

For the 2003 – 2004 financial year, Mr Finlay presided over a total of 26 hearings (10 public and 16 private) and the Commissioner presided over 11 hearings (6 public and 5

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<sup>1</sup> Correspondence from the Commissioner of the PIC, 26 March 2004.

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> Questions Without Notice, Eighth General Meeting with the Police Integrity Commission, Tuesday 30 November 2004.

<sup>5</sup> Answers to Questions on Notice, Eighth General Meeting with the Police Integrity Commission, Tuesday 30 November 2004.

private). Mr Sage, who departed the PIC in late 2003, presided over 15 hearings (one public and 14 private) during the same period.<sup>6</sup>

The cost of employing Mr Finlay to 30 September 2004 as a temporary Assistant Commissioner was \$278 000.<sup>7</sup> This is almost \$100 000 over the initial annual estimate provided by the PIC, and \$28, 000 more than the PIC estimated for employing a full time Assistant Commissioner.

The appointment of a temporary Assistant Commissioner was presented to the Committee as a cost saving exercise, with the day-to-day managerial duties of the Assistant Commissioner being redistributed to other members of the executive. However it appears that the PIC has engaged Mr Finlay to undertake a wide range of duties, in addition to presiding over hearings, similar to the duties previously carried out by the permanent Assistant Commissioner, and at an increased cost to the PIC. The Committee will continue to monitor this issue and awaits the PIC's evaluation of the trial. The Committee is particularly concerned that the cost of appointing Assistant Commissioners should not detract from the funds and resources available to the PIC to undertake its statutory functions.

### **NSW Police response to Project Dresden II recommendations**

In June 2003 the Police Integrity Commission tabled *Project Dresden II*, the report on PIC's second audit of the quality of NSW Police internal investigations. Project Dresden II involved both quantitative and qualitative examination of NSW Police management (including investigations) of more than 400 complaints of serious police misconduct from July 1998 to June 2001. This report followed *Project Dresden*, an audit of internal investigations that was tabled in Parliament in April 2000.

Dresden II found:

- 15.3% of investigating officers reviewed the complaints histories of the officers they were investigating;
- 28.7% of investigations appropriately used investigations techniques such as physical or electronic surveillance;
- 23.3% of investigations that resulted in adverse findings made inappropriate recommendations in response to the finding (up from 8.8% in Dresden I);
- 4.7% of investigations were very satisfactory;
- 65.8% were satisfactory;
- 26.1% were unsatisfactory; and
- 3.4% were very unsatisfactory.<sup>8</sup>

These findings generally represented an improvement from the first Dresden audit – except for the 8.8% increase in inappropriate recommendations for action against officers who had adverse findings made about them.

The PIC made eleven recommendations to NSW Police on the basis of the Dresden II audit results. The recommendations were concerned mainly with improving consistency and

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<sup>6</sup> Answers to Questions Taken on Notice, Eighth General Meeting with the Police Integrity Commission, Tuesday 30 November 2004.

<sup>7</sup> Correspondence from the PIC, 8 November 2004.

<sup>8</sup> *Project Dresden II: The second audit of the quality of NSW Police Internal Investigations*, June 2003, vii-ix.

transparency of decision-making and investigation planning, the management of conflict of interest risks, the consideration of complaint histories in investigation and the timeliness of the complaints process.

The PIC reported in its Annual Report for 2003/2004 that NSW Police had implemented four recommendations but had not implemented five recommendations. At the time of the Annual Report the PIC was awaiting advice from NSW Police on the status of a further two recommendations.<sup>9</sup>

The recommendations not implemented by NSW Police are as follows:

- Recommendation 3 – including that an officer must be of at least the same rank as that of the officer being investigated;
- Recommendations 4 – closely monitoring the compliance rate of the submission and approval of investigation plans for Category 1 complaints;
- Recommendation 5 – the mandatory supply of an officer's complaints history to the investigators;
- Recommendation 6 – developing a way to measure and monitor the involvement of Professional Standards Managers and supervisors in Category 1 investigations, and what effect their involvement has on Category 1 investigations; and
- Recommendations 9 – conducting a review of the timeframes of Complaints Management Teams, Local Area and Region Commanders signing off Investigator's Final Reports for submission to the Ombudsman, and implementing measures to alleviate delays.<sup>10</sup>

These recommendations echo those made by the Ombudsman in two special reports to Parliament: *Improving the Management of Complaints: Identifying and managing officers with complaint histories of significance* (March 2002) and *Improving the Management of Complaints: Assessing police performance in complaint management* (August 2002). While addressing Category 2 complaints, the Ombudsman made a number of recommendations that foreshadowed the PIC's recommendations: effectively, putting NSW Police on notice for at least a year prior to Dresden II that aspects of their complaints management system needed to change.

As this matter concerns the work of both the Ombudsman and the PIC, the Committee will be closely following the implementation of these recommendations. On the tabling of the long overdue review of the *Police Act 1990*, the Committee will consider an inquiry into the status of the recommendations made by the PIC and Ombudsman in relation to complaints management by NSW Police.

### **Police Integrity Commission Investigative Partners**

The Police Integrity Commission has conducted two joint investigations. Operation Florida, which concerned wide ranging acts of police corruption in the Northern Beaches area occurring prior to the Royal Commission until 2002. This operation was conducted jointly with the New South Wales Crime Commission (NSWCC) and Special Crime and Internal

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<sup>9</sup> PIC Annual Report 2003/2004, p.23.

<sup>10</sup> Answers to Questions Taken on Notice, Eighth General Meeting with the Police Integrity Commission, Tuesday 30 November 2004.

Affairs (SCIA) from NSW Police. The PIC tabled the report on Operation Florida in Parliament in June 2004. Operation Jetz, which examined police misconduct in relation to the police promotions system, was conducted jointly with SCIA. A report on Operation Jetz was tabled in Parliament in February 2003.

In light of PIC's participation in joint investigations, the Committee recommended in its report *Sixth General Meeting with the Inspector of the Police Integrity Commission*, that there be a narrow extension of the Inspector's powers in specific circumstances to enable a full investigation of all matters relating to the activities of the PIC, including its interaction with investigative partners such as SCIA and NSW Crime Commission. The Committee recommended the following amendment to the *Police Integrity Commission Act 1996* as part of the package of legislative amendments to the Act:

The *Police Integrity Commission Act 1996* be amended to provide the Inspector with jurisdiction to investigate alleged improprieties and misconduct by non-PIC officers, in circumstances where:

- the conduct of a PIC officer also is involved; or
- there is a connection between the alleged misconduct and the activities of the PIC; or
- the legality or propriety of the PIC's activities is called into question;

and the conduct is conduct of a type that would fall within the Inspector's jurisdiction, as defined in the terms of s.89 of the Act.<sup>11</sup>

The *Police Integrity Commission Amendment Bill 2004* was introduced in Parliament in October 2004. The Committee's proposed amendment does not appear in the Bill. Correspondence from the previous Minister for Police, the Hon John Watkins MP, advises that the current legislative framework provides for the Inspector and the Independent Commission Against Corruption to cooperatively deal with concerns arising from PIC joint investigations.<sup>12</sup>

However Inspector Ireland, during the Sixth General Meeting with the Committee in September 2004 concluded that the present arrangement with the ICAC is:

[a] piecemeal approach of contemplating multiple hearings of alleged misconduct in a single operation or, alternatively, abdicating the functions of the PIC Inspector in favour of the ICAC [and is] devoid of practical efficacy. Apart from the abdication of a principal function of the Inspectorate or, alternatively, the fragmentation of investigations, there is a high degree of risk to the confidentiality and security of PIC operations.<sup>13</sup>

The Committee is concerned that this important amendment was not progressed as part of the *Police Integrity Commission Amendment Bill 2004* introduced in the Parliament in October 2004 and currently awaiting second reading in the Legislative Council (as at 22

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<sup>11</sup> Sixth General Meeting with the Inspector of the Police Integrity Commission, September 2004, p.6.

<sup>12</sup> Correspondence from the Minister for Police, 13 December 2004.

<sup>13</sup> Sixth General Meeting with the Inspector of the Police Integrity Commission, September 2004, 23.



February 2005). The second segment of the Committee's current inquiry in s.10 of the *Police Integrity Commission Act 1996* will examine the PIC's investigative partners and current oversight arrangements.



## Questions on Notice

### EXPOSURE OUTCOMES

1. The Annual Report notes that there were a total of 17 days of public hearings for the 2003 - 2004 period. This was down from 28 days of public hearings in 2002 – 2003 and 105 in 2001 - 2002<sup>1</sup>, although the number of investigations for which public hearings were held doubled from three to six during 2003 – 2004. What could account for such a dramatic decrease in public hearings? Does the Commission expect this to be a sustained trend?
2. How are public hearings days counted? Are they full days of hearings – or is a hearing that is adjourned in the morning counted as a full day? Is the same counting system applied to private hearing days? Would one day where hearings are conducted into two separate operations be counted as one day for each operation, or one half day for each operation?

### TEMPORARY ASSISTANT COMMISSIONER

3. The estimate of \$90 000 to \$180 000 for appointing a temporary Assistant Commissioner provided by the PIC by correspondence dated 26 March 2004 is in contrast to the total cost of employing Mr Finlay as the temporary Assistant Commissioner provided by the PIC in correspondence date 9 November 2004 of \$278 000. What has accounted for the almost \$100 000 blow out in this estimate?
4. Given that a permanent Assistant Commissioner costs \$250 00 per year (PIC correspondence 26 March 2004) and that Mr Finlay has been conducting the majority of the public hearings – wouldn't there be a saving of \$30 000 per year for the PIC to appoint a permanent Assistant Commissioner?
5. What duties does the temporary Assistant Commissioner perform in relation to current PIC operations? How many of the public hearings were presided over by Acting Assistant Commissioner Findlay? How many of the 35 private hearing days did Mr Finlay conduct? To what extent will AC Finlay be involved in other PIC operations, including Operation Alpine?

### INVESTIGATIONS

#### Operation Florida

6. The Commissioner, in the Commissioner' Report in the Annual Report, calls Operation Florida the PIC's "most significant investigation to date" (page 1). Would you care to elaborate on this?

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<sup>1</sup> 46 public hearings were held in 2000-2001; 24 in 1999-2000; and 61 in 1998-1999.

Questions on Notice

7. This operation arose out of Crime Commission and NSW Police investigation called Operation Mascot, when a serving NSW Police officer 'rolled over' to the NSWCC. The Crime Commission ran this investigation for nearly two years before involving the PIC. At what stage was the PIC notified by the Crime Commission of this investigation? Does the PIC have a memorandum of understanding with the Crime Commission about referrals concerning police corruption? Why did the Crime Commission run this investigation without involving the PIC when it was part of the PIC's jurisdiction? How many referrals does the PIC receive each year from the Crime Commission and what proportion of these form, or have formed, major investigations?
8. The segments of the Florida investigation which the PIC conducted resulted in a much higher rate of criminal conviction than the other segments of Florida conducted by the Crime Commission and NSW Police. PIC conducted segments resulted in the conviction of six police officers and three civilians for criminal offences including drug dealing. Crime Commission and NSW Police lead investigations resulted in none. Why was this the case?
9. Of the 44 police officers named in the Operation Florida report, 10 were given medical discharges from NSW Police, and at time of publication an eleventh officer was seeking a medical discharge. In the case of all of these officers, the PIC either recommended charges, supported charges, or recommended the 181 D process for their removal from NSW Police. Is the area of medical discharge a potential escape route for corrupt officers to leave NSW Police with the highest possible levels of pension entitlements?
10. Have NSW Police implemented the recommendations made following Operation Florida?

## **TRACKING THE COMMISSION'S RECOMMENDATIONS**

### **Project Dresden II**

11. Which five recommendations arising from Project Dresden II have NSW Police not implemented? What have been their reasons for not doing so?
12. Why have NSW Police decided not to implement Recommendation 5 which recommends that an officer investigating a serious complaint about a police officer have access to their complaints history?
13. Has the Commission had advice from NSW Police about whether they intend to implement Recommendation 2 relating to managing risks of actual or perceived conflicts of interest?

# Answers to Questions on Notice



ABN 22 870 745 340

Our Ref: 12402/66

25 November 2004

Mr Paul Lynch MP  
Chairperson  
Committee on the Office of the Ombudsman and  
Police Integrity Commission  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Lynch

## **EIGHTH GENERAL MEETING – RESPONSES TO QUESTIONS ON NOTICE**

I refer to your letter of 18 November 2004 which contained the Committee's Questions on Notice for the Eighth General Meeting. Please find attached the Commission's responses to those questions.

I am happy to elaborate on the responses as necessary when we meet on 30 November 2004.

In addition, I note your letter of 17 November 2004 which includes the transcript from the Committee's *in camera* hearing with NSW Treasury staff on 7 September 2004. My comments have been sought on the evidence given to the Committee.

The Commission recommended in its submission on the review of the *Police Integrity Commission Act 1996* that the prohibition on employing current or former NSW Police officers be lifted. One of several arguments used in that submission related to the relative unattractiveness of Commission positions compared to those of the Royal Commission, in terms of remuneration and entitlements. That submission was made three years ago.

I am aware of the avenues available to this Commission to secure additional funding in order to fulfil its functions. I am also aware that maintenance enhancements of the order of \$250,000 are more likely than not to be rejected<sup>1</sup>. This is consistent with earlier Commission evidence that a threshold applied for enhancement bids.<sup>2</sup>

<sup>1</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission Transcript 7/9/04, p 3, para. 4.

<sup>2</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, Transcript 27/5/04 p. 6, para 12.

I note that Treasury evidence is also consistent with the Commission's earlier advice that savings returned to Treasury have largely consisted of unspent funds for protected items which cannot be used for any other purpose<sup>3</sup>.

The Committee is aware that the Commission's position on the removing of the prohibition on employing current or former NSW Police was reversed eight months ago. The Committee is also aware that, three years after its submission to the review of the Act the Commission is experiencing no difficulty in securing and retaining skilled, experienced investigators. A current investigator recruitment process is now being finalised with sufficient candidates identified to fill current and expected vacancies. Additional funding to enhance investigator entitlements is not presently necessary.

I should note, however, that additional funding for telecommunications interception is critical to the ongoing effectiveness of the Commission. The Commission has been working with Ministry and Treasury representatives to secure a significant maintenance of effort enhancement for this purpose from 2005-06.

On another matter, also attached is a research paper which represents the Commission's response to the Committee's recommendation arising from the report: *Research Report on Trends in Police Corruption*.

The Committee had asked that the Commission consider undertaking research:


- to identify the primary reasons why officers are dismissed under s181 (D) (or why those who resign when proceedings begin originally are nominated), and
- to identify whether this group shares any pertinent characteristics eg career histories, type of duties etc

The Commission has undertaken an exploratory study based on data directly available to us from the PODS data source. The findings offer insights into the characteristics and behaviour of officers subject to s181D action. They also indicate areas worth further study, some of which are currently being considered for inclusion in the Commission's research program.

We trust that you will find the report of value to the Committee's ongoing commitment to the management of corruption risk in NSW Police.

Please contact me if I can be of further assistance.

Yours sincerely



**T P Griffin**  
Commissioner

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<sup>3</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission Transcript 7/9/04, p 5, para. 4.

**EIGHTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION  
3:30pm TUESDAY 30 NOVEMBER**

**QUESTIONS ON NOTICE**

**EXPOSURE OUTCOMES**

1. *The Annual Report notes that there were a total of 17 days of public hearings for the 2003 - 2004 period. This was down from 28 days of public hearings in 2002 – 2003 and 105 in 2001 - 2002<sup>1</sup>, although the number of investigations for which public hearings were held doubled from three to six during 2003 – 2004. What could account for such a dramatic decrease in public hearings? Does the Commission expect this to be a sustained trend?*

The frequency of public hearings during any given year is dependent on the nature of the investigations being undertaken by the Commission and the necessity for, and advantages or disadvantages of, holding a public hearing. It is sometimes forgotten that a hearing - public or private - does not constitute the entirety of an investigation by the Commission, but is just one tool in its armoury of investigative powers, albeit a most effective one.

When determining whether it is necessary to hold a hearing a range of factors will usually be relevant for the Commission's consideration, including:

- whether the investigation can be further progressed using hearings;
- the complexity of the matters and the number of witnesses to be examined;
- the extent of the evidence to be considered;
- the extent to which witnesses actively assist the Commission; and,
- the extent to which other avenues of enquiry are identified.

As to whether a hearing should be public or private, the Commission must, by its governing legislation, also consider any factors of the public interest for or against a hearing in either form.

Thus, in 2001-2002, it was the Commission's view that there was a clear investigative advantage and overriding public interest in holding public hearings for operations such as Florida, Jetz and Malta over 105 days. Likewise in relation to the holding of public hearings for six investigations over 17 days in 2003-2004.

Is there a trend towards decreased numbers of public hearings? To the extent this question suggests a conscious leaning towards private hearings, or no hearings at all, no. The Commission considers each investigation on its own merits and has no preference in favour of public or private hearings. Indeed, it is conceivable that there might be a year in which no hearings, public or private, are conducted. However, this is unlikely. Based on current projections, with 12 public hearing days to date, the number of hearing days for 2004-2005 is likely to show an increase over last year.

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<sup>1</sup> 46 public hearings were held in 2000-2001; 24 in 1999-2000; and 61 in 1998-1999.

2. *How are public hearings days counted? Are they full days of hearings – or is a hearing that is adjourned in the morning counted as a full day? Is the same counting system applied to private hearing days? Would one day where hearings are conducted into two separate operations be counted as one day for each operation, or one half day for each operation?*

The Commission counts a public hearing day as any day in which a public hearing has been heard in a particular investigation.

In most cases, for operational reasons, each appearance of a witness on a single day is counted as a 'hearing'.

The Commission is in the process of calculating the average length of a day for public and private hearings based upon the Commission's experience in the three years 2001-02 to 2003-04. It is anticipated that these figures will be available for the Annual General Meeting on 30 November 2004.

### **TEMPORARY ASSISTANT COMMISSIONER**

3. *The estimate of \$90 000 to \$180 000 for appointing a temporary Assistant Commissioner provided by the PIC by correspondence dated 26 March 2004 is in contrast to the total cost of employing Mr Finlay as the temporary Assistant Commissioner provided by the PIC in correspondence date 9 November 2004 of \$278 000. What has accounted for the almost \$100 000 blow out in this estimate?*

The estimate in the letter of 26 March was provided on the basis of those costs that might arise from a typical year, an average number of hearing days in that year and in regard to a temporary Assistant Commissioner performing duties limited to preparing for, and presiding over hearings.

However, the letter of 26 March also pointed out that the current year was likely to be unusual in that “..... *the Assistant Commissioner engaged for Operation Abelia has been also asked to participate in other aspects of the investigation, not just hearings.*” The “*aspects of the investigation*” in which Assistant Commissioner Finlay is involved are discussed in response to Q.5. There has been no 'blow out' in the Commission's estimate, the estimate does not take into account additional duties the Commission has required Mr Finlay to perform during the year, including the period when the more general Instrument of Delegation appointing Mr Finlay as Temporary Assistant Commissioner was activated earlier this year.

4. *Given that a permanent Assistant Commissioner costs \$250 000 per year (PIC correspondence 26 March 2004) and that Mr Finlay has been conducting the majority of the public hearings – wouldn't there be a saving of \$30 000 per year for the PIC to appoint a permanent Assistant Commissioner?*



This might be the case if the costs associated with Mr Finlay's engagement for the last year were typical. This is not the case.

It might also be noted that Mr Finlay has presided on 12 public hearing days and Commissioner Griffin on 14 public hearings days so far during the 2004 calendar year.

5. *What duties does the temporary Assistant Commissioner perform in relation to current PIC operations? How many of the public hearings were presided over by Acting Assistant Commissioner Finlay? How many of the 35 private hearing days did Mr Finlay conduct? To what extent will AC Finlay be involved in other PIC operations, including Operation Alpine?*

Mr Finlay has been appointed as Assistant Commissioner for Operation Abelia. He has presided over all of the Operation Abelia hearings, both public and private. Of the 17 public hearing days conducted by the Commission in 2003-04, Mr Finlay was the presiding officer in 10. He was the presiding official in 16 of the 35 days of private hearings conducted in 2003-2004.

Some segments of the Abelia hearing program, such as the Alpine segment, commenced as discrete Commission investigations and were then incorporated into the Abelia hearing program for the hearing phase of that particular investigation. Accordingly Mr Finlay's involvement in Operation Alpine and other such investigations is primarily limited to his role as presiding official in the hearings.

As Assistant Commissioner for Operation Abelia, Mr Finlay has maintained personal liaison with the Commissioner of Police, has chaired roundtable conferences and other high level meetings with visiting experts and officials and continues to chair the internal meetings of the Commission's Abelia team and liaise with team members about the direction of research and recommendations to be made by the Commission.

## **INVESTIGATIONS**

### **Operation Florida**

6. *The Commissioner, in the Commissioner's Report in the Annual Report, calls Operation Florida the PIC's "most significant investigation to date" (page 1). Would you care to elaborate on this?*

There are a number of different ways in which Operation Florida can be regarded as a highly significant investigation. To name but one: the *extent* of the police corruption revealed through this matter is unparalleled by any other investigation so far conducted by the Commission. As noted in this year's Annual Report, the Commission found as a result of this investigation that 28 current or former officers had engaged in 43 incidents of misconduct.

7. *This operation arose out of Crime Commission and NSW Police investigation called Operation Mascot, when a serving NSW Police officer 'rolled over' to the NSWCC. The Crime Commission ran this investigation for nearly two years before involving the PIC.*

- *At what stage was the PIC notified by the Crime Commission of this investigation?*

Operation Mascot commenced in February 1999. The then Commissioner, Judge P Urquhart, was notified of broad aspects of the operation at that time. The Commissioner continued to be briefed, in broad terms, under an MOU which was developed from early 1999 and operated from August 1999. A detailed briefing was provided to Commission staff following the signing of a further MOU in July 2000 signalling a more active involvement by the Commission.

- *Does the PIC have a memorandum of understanding with the Crime Commission about referrals concerning police corruption?*

An MOU concerning referrals of relevant matters by the Crime Commission to the Police Integrity Commission has been in place since 1 June 2004.

- *Why did the Crime Commission run this investigation without involving the PIC when it was part of the PIC's jurisdiction?*

The extent of the Commission's involvement in investigations arising from Operation Mascot was considered from February 1999. It was agreed, for operational reasons, that the Commission would not actively participate until the hearings planning stage.

- *How many referrals does the PIC receive each year from the Crime Commission and what proportion of these form, or have formed, major investigations?*

It is not a simple matter to respond to this question. The Commissioner is regularly briefed by the Commissioner of the Crime Commission on matters of mutual operational interest. Some material in these briefings is subsequently formally 'referred' to the Commission, other information is captured in file notes of the briefings and discussions which occur. Some information is incorporated into existing investigations and some is retained for intelligence purposes. Other information concerning possible misconduct is passed within joint investigations which may exist at the time.

Two matters were formally referred to the Commission during 2002-2003. One matter was formally referred in 2003-2004. However, a tally is not kept of information concerning potential police misconduct which is directly incorporated into investigations whether through joint investigation or not, or information which is not formally inducted into the Commission's complaints process but held for intelligence purposes.

8. *The segments of the Florida investigation which the PIC conducted resulted in a much higher rate of criminal conviction than the other segments of Florida conducted by the*

*Crime Commission and NSW Police. PIC conducted segments resulted in the conviction of six police officers and three civilians for criminal offences including drug dealing. Crime Commission and NSW Police lead investigations resulted in none. Why was this the case?*

This question draws a distinction between segments conducted by the Commission and investigations led by the Crime Commission and NSW Police. There is an inference that prosecutions of officers involved in incidents examined during Commission hearings are Commission results as distinct from the results of the joint efforts of all three agencies. This is not the case.

As the Committee will know, the Commission's Operation Florida arose from joint NSW Crime Commission / NSW Police Operation Mascot. Operation Mascot commenced early in 1999. The Commission joined the investigation in July 2000, by which time a substantial body of evidence had been gathered by officers of the Crime Commission and NSW Police. Further evidence continued to be gathered by all three agencies until the conclusion of both operations.

There were 418 separate incidents of police corruption or misconduct identified during Mascot/Florida. The roles for the agencies varied. However, for the most part, all three agencies had some involvement in the investigation of each incident. For NSW Police that involvement included, predominantly, the conduct of investigations and the preparation of briefs of evidence for prosecutions. The Crime Commission, amongst other things, assisted with the conduct of investigations and provided technical and specialist support. The Commission's involvement varied from oversight of Police investigations, to conducting investigations, and, conducting and/or leading investigations once incidents were selected for hearings.

So, in terms of agency involvement and contribution to prosecution results, there is no clear distinction between segments 'conducted by the Commission' and investigations 'led by the Crime Commission and NSW Police'. From July 2000 the investigation of all of the 418 incidents identified in Operation Mascot/Florida were conducted jointly.

Turning to the issue of conviction rate. Twenty-nine of the 418 incidents were the subject of examination in eight segments during the Operation Florida hearings. A number of matters were considered during the selection of incidents for the Operation Florida hearings, including:

- ❑ the extent of evidence available
- ❑ the probability of prosecution / conviction
- ❑ the likelihood of the investigation being advanced
- ❑ the likelihood of witnesses assisting
- ❑ the likelihood of information concerning similar incidents arising from members of the community, and
- ❑ potential for deterrence

Given these criteria, the incidents selected for hearings were always likely to lead to a more significant proportion of successful prosecutions than those not selected.

The success of the prosecutions of officers involved in incidents examined during Commission hearings is attributable to the efforts of all three agencies.

9. *Of the 44 police officers named in the Operation Florida report, 10 were given medical discharges from NSW Police, and at time of publication an eleventh officer was seeking a medical discharge. In the case of all of these officers, the PIC either recommended charges, supported charges, or recommended the 181 D process for their removal from NSW Police. Is the area of medical discharge a potential escape route for corrupt officers to leave NSW Police with the highest possible levels of pension entitlements?*

The Commission has insufficient current knowledge of the processes involved in determining applications for medical discharge to respond to this question.

10. *Have NSW Police implemented the recommendations made following Operation Florida?*

No. The Commission will be engaging with NSW Police shortly regarding the Commissioner of Police's response to the recommendations contained in the report on Operation Florida.

## **TRACKING THE COMMISSION'S RECOMMENDATIONS**

### **Project Dresden II**

11. *Which five recommendations arising from Project Dresden II have NSW Police not implemented? What have been their reasons for not doing so?*

The five Dresden II recommendations which the Commission considers have not been implemented by NSW Police are listed below. Each is followed by a brief summary of the NSW Police position, as indicated through the consultation process between Commission and NSW Police representatives up to August 2004.

Recommendation 3: Including a specific reference in the Investigation Risk Assessment that an officer must be of at least the same rank as that of the Involved Officer to be investigated.

The original position stated by NSW Police on this recommendation was "supported in principle." In consultation with NSW Police, the Commission canvassed variations such as a requirement for the Complaint Management Team (CMT) to record the reasons when it decides, in exceptional circumstances, to allocate an investigator who is junior to the involved officer. No advice of implementation of such a variation has been provided. The most recent position stated by NSW Police is that

*[NSW Police] does not believe that rank parity is appropriate in all circumstances, and further, NSW Police does not believe rank parity is necessary to ensure that a competent and ethical investigation is performed. [...] While NSW Police cannot*

*guarantee to always implement this recommendation in the absolute terms expressed within the Dresden 2 Report, CMTs should provide appropriate safeguards against the risks presented by rank related conflict of interest. [...] NSW Police submits that the Commission amend its stated implementation status regarding this recommendation to 'Implemented.'*<sup>2</sup>

Recommendation 4: Closely monitoring the compliance rate of the submission and approval of investigation plans for Category 1 complaints.

Evaluating whether or not the 7-day timeframe for investigation plans is appropriate.

Using c@ts.i to record whether or not investigation plans are being submitted and approved for Category 1 complaints.

The original position stated by NSW Police on this recommendation was “supported with variation.” The module of c@ts.i which included an element requiring investigation plans is no longer in use. A review of the timeliness of complaint investigations has recently been carried out by NSW Police, but this review did not examine timeframes for investigation plans. The most recent position stated by NSW Police is that

*the CMT policy requires CMTs to manage complaint investigations in a timely manner overall (without specific reference to submission of investigation plans) [...] [T]he submission of an investigation plan is required for complex investigations[ [...] [T]he submission of an investigation plan is at the discretion of the CMT delegate, that is, the LAC Commander*<sup>3</sup>

Recommendation 5: The mandatory supply of an Involved Officer’s complaint history to the Investigator/s responding to the Category 1 complaint, unless there are exceptional circumstances. Such circumstances should be documented.

In most circumstances if a CMT considers it inappropriate to release such information to the Investigator, then the complaint should be re-assigned to another Investigator.

Incorporating into their manual on internal investigations, that a core responsibility of an Investigator is to consider the entire complaint history of the Involved Officer/s they are investigating.

The original position stated by NSW Police on this recommendation was “supported with variation.” However, in later consultation NSW Police indicated the view that it is really the CMT which investigates a complaint, while the investigator is an expert resource of the CMT; and that the CMT would, at its discretion, release complaint histories to investigators if necessary. NSW Police stated that

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<sup>2</sup> Correspondence from NSW Police External Agencies Response Unit, 13<sup>th</sup> of August 2004.

<sup>3</sup> Correspondence from NSW Police External Agencies Response Unit, 13<sup>th</sup> of August 2004.

*NSW Police considers that the relevant CMT is now the investigator of an internal investigation. Further, the CMT is required to review the involved officer's complaint history in regard to every complaint it is tasked with. Accordingly, NSW Police submits that the implementation status of this recommendation is 'Implemented.'*<sup>4</sup>

Recommendation 6: Developing a means to measure and monitor the involvement of Professional Standards Managers and supervisors in Category 1 investigations, and what effect their involvement has upon Category 1 investigations.

The original position stated by NSW Police on this recommendation was "supported with variation." Given changes to the role of Professional Standards Managers (PSMs) which were anticipated to take place in early 2004, in consultation with NSW Police the Commission has sought advice regarding potential implementation measures to follow these changes. NSW Police have not provided advice of any proposed implementation measures regarding the role of PSMs or supervisors. NSW Police states that

*NSW Police has not implemented this recommendation because of the significant changes that have occurred to the role of Professional Standards Managers (PSMs) since the Commission published its Dresden 2 report. [...] Further advice will be provided to the Commission when available.*<sup>5</sup>

Recommendation 9: Conducting a review of the timeframes of Complaint Management Teams, Local Area and Region Commanders signing off Investigator's Final Reports for submission to the Ombudsman, and implementing measures to alleviate delays.

The original position stated by NSW Police on this recommendation was "supported." NSW Police advised that timeliness issues would be addressed in the NSW Police review of the timeliness of internal complaint investigations. However, the Commission notes that this review considered the timeliness of complaint management as a whole and did not examine specific stages of complaint management, including the latter stages referred to in Recommendation 9. NSW Police has stated that

*[T]he recently completed NSW Police timeliness review did not specifically evaluate this latter section of the complaints process (but instead considered overall timeliness, given that Commanders, supported by the CMT, manage the entire complaints process), the review has made recommendations that, if successful, will improve timelines in the latter stages of the complaint management process.*<sup>6</sup>

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<sup>4</sup> Correspondence from NSW Police External Agencies Response Unit, 13<sup>th</sup> of August 2004.

<sup>5</sup> Correspondence from NSW Police External Agencies Response Unit, 13<sup>th</sup> of August 2004.

<sup>6</sup> Correspondence from NSW Police External Agencies Response Unit, 13<sup>th</sup> of August 2004.

12. *Why have NSW Police decided not to implement Recommendation 5 which recommends that an officer investigating a serious complaint about a police officer have access to their complaints history?*

Please note that Recommendation 5 of the Dresden II report is that it be *mandatory* to supply the complaint history of the officer who is the subject of the complaint to the investigator.

For the response to this question, please see the relevant section above of the answer to the question on notice regarding the Dresden II recommendations which have not been implemented.

13. *Has the Commission had advice from NSW Police about whether they intend to implement Recommendation 2 relating to managing risks of actual or perceived conflicts of interest?*

The Commission was advised by NSW Police that issues relating to the management of risks of conflict of interest would be addressed by the report of the Complaint Investigation Allocation Trial, later re-named the Complaint Allocation Risk Assessment project (CARA), which was planned to conclude at the end of May 2004. The Commission is awaiting a copy of this report, and was advised in August 2004 that this was in preparation. NSW Police has confirmed that

*[p]revious NSW Police advice was that NSW Police was currently conducting the complaint allocation investigation trial – which would include both an evaluation of existing CMT conflict of interest risk assessment, the trial of a new risk assessment tool, and will document of [sic] the types, frequency and management of reported conflicts of interest. A copy of the report will be provided to the Commission when complete.<sup>7</sup>*

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<sup>7</sup> Correspondence from NSW Police External Agencies Response Unit, 13<sup>th</sup> of August 2004.





# Transcript of Proceedings

## REPORT OF PROCEEDINGS BEFORE

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

### EIGHTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION

—  
At Sydney on Tuesday 30 November 2004

—  
The Committee met at 3.45 p.m.

#### PRESENT

—  
Mr P. G. Lynch (Chair)

#### **Legislative Council**

The Hon. P. J.

Breen

The Hon. J. C. Burnswoods

The Hon. D. Clarke

#### **Legislative**

#### **Assembly**

Mr G. Corrigan

Ms N. Hay

Mr M. J. Kerr

**TERRENCE PETER GRIFFIN**, Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

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

**STEPHEN ALLAN ROBSON**, Solicitor for the Police Integrity Commission, 111 Elizabeth Street, Sydney, sworn and examined, and

**ALLAN GEOFFREY KEARNEY**, Director of Intelligence and Executive Services, Police Integrity Commission, 111 Elizabeth Street, Sydney, affirmed and examined:

**CHAIR:** Thank you for appearing before the committee today. The committee has received a submission from you in the form of answers to questions on notice and a research paper. Do you wish them to be included as part of the sworn evidence?

**Mr GRIFFIN:** If that pleases the committee, yes. Mr Kearney has told me that there is a later version of the paper on section 181D that can be provided to the committee.

**CHAIR:** I have been told that. We will substitute that. Do you wish to make an opening statement?

**Mr GRIFFIN:** No.

**CHAIR:** In evidence received today the Ombudsman indicated that he prepared a report for the Attorney General on the dissemination of telecommunications interceptions and other surveillance material during Operation Florida and that the report was entitled "Release of lawfully obtained information by the New South Wales Crime Commission relating to Operation Mascot and the Police Integrity Commission relating to Operation Florida" and dated 27 September 2002. He told us that he sent it to the Crime Commission and to the Police Integrity Commission [PIC]. Has the PIC sent it to the PIC Inspector?

**Mr GRIFFIN:** I cannot answer that on oath. Every time we come to one of these meetings we carefully consider what the first question might be, and that question did not get a run.

**CHAIR:** I will count that as a victory.

**Mr GRIFFIN:** Absolutely. I understand that the whole question was reviewed by Finlay and that that material was available to him. However, I do not know whether we formally provided it to him from the Commission.

**Mr ROBSON:** The report by the Ombudsman on the audit followed the investigation by Mr Finlay. I certainly saw the report. The Commission was invited to comment on its contents before it was concluded and provided to the Attorney General. I do not personally recollect that a copy was sent at that time to the Inspector.

**Mr GRIFFIN:** We will take that question on notice and deal with it with some surety.

**CHAIR:** That is probably the preferable course to follow.

**Mr KEARNEY:** The Inspector does have access to the document nonetheless.

**CHAIR:** I refer to the Commission's inquiry into the events surrounding former Justice Shaw. We are significantly restrained in what we can ask about that topic. I make that point very clear, and it is perfectly appropriate. However, I wish to raise a tangential issue. A report in the *Daily Telegraph* on 17 November concerned allegations about Mr James Slater and there was a subsequent mention in an article by Richard Ackland. Are those allegations being investigated and by whom?

**Mr GRIFFIN:** They are not. I think I can deal with that issue without it being a problem. Mr Slater is here if the committee requires evidence from him. That is one issue about which we thought there might be questions. On the morning of the hearing in question—which is when Mr Slater is said to have asked some questions—I was with the PIC Inspector having our regular meeting. Mr Slater interrupted the meeting to say that he had been contacted by a journalist who asked him whether he had heard that the judge was missing or out of the jurisdiction. He asked me whether I had heard anything and I said that I had not and told him to tell Mr Nattress what he had heard and to try to find out more about it given that it was relevant to what we were doing. It was about 9.00 a.m. and we were proposing to sit at 10.00 a.m. My understanding from what I have been told by those people is that they then made inquiries to find out whether there was any substance in the report. One of the issues, because it came from a journalist, related to Mr Slater asking journalists who were around the premises whether they had heard anything of that nature.

When Mr Barker raised the matter in the hearing—he did and it is on the public record—honourable members may or may not recall that I asked him whether it was a question that he was alleging Mr Slater put or some other allegation. Mr Barker quite properly said his version was that Mr Slater was asking questions. That is entirely consistent with the process that I had asked him to embark upon. I spoke to the Inspector about it subsequently. He said he did not see a complaint in that given that it had arisen from a perfectly proper approach, and that it had been either misunderstood or perhaps mischievously turned into something else. He did not see it as a complaint and nor do I. It did not go past there. For what it is worth, I notice that apart from the two matters mentioned it seemed to have no other life. I do not know whether that is because the journalist knew the truth behind it. However, that is the story as I know it. Mr Slater is here and Mr Nattress has already been sworn if the committee wants to take it further.

**CHAIR:** I do not want to take it any further. I am not sure it is appropriate for the committee to inquire into a complaint. My question was about the process rather than the substance.

**Mr GRIFFIN:** Because it was not a complaint, it seems to be sensible to explain how it happened. It is without substance as a complaint or anything else. It was a sensible inquiry because I wanted a witness at my hearings.

**Mr MALCOLM KERR:** I was going to ask some questions about the Shaw inquiry.

**CHAIR:** I am not sure we will go back to the Shaw inquiry in terms of the committee's jurisdiction. I am very reluctant to have questions about an inquiry which the Commission is still conducting and on which it has not reported.

**Mr MALCOLM KERR:** My question does not relate to anything under investigation. Has the Commissioner met the judge or did he have any relationship with the judge prior to the inquiry?

**Mr GRIFFIN:** I have no recollection of it. When it first came to notice I spent some time racking my brain and I do not think I have. I certainly do not know him and I do not have any recollection of any contact.

**CHAIR:** I turn to the relationship between the PIC and the Crime Commission. Is there a strong nexus between organised crime and police corruption in New South Wales?

**Mr GRIFFIN:** I imagine there must be a connection between the two. Historically, those involved in well-organised crime see a benefit in having police working for, with or around them. It is reported that the Mafia set out to achieve access to police. There is also some historical material that outlaw motorcycle gangs do the same thing. They make it a part of how they do business to have access to police. So the answer has to be yes, and I think that Mr Bradley would say, if he were here, that the serious criminals they look at would also enjoy access to police whenever they are able to. So I think there has to be a nexus. It would be nonsense to say anything else, I think.

Mr Kearney says our investigations reveal it. But what we reveal is that on occasions I think you can say more broadly across-the-board it is likely to happen, not just here but in any country where organised crime is flourishing. It is likely to be one of the symptoms I would have thought.

**CHAIR:** How many of the current PIC investigations that you are conducting would have been commenced because of intelligence you have got from the Crime Commission?

**Mr GRIFFIN:** I would have to go back and count them, and perhaps we should put the number on notice. But I can talk about, for instance, the things that we are currently doing. Laycock is a case in point. Whilst there was information around about him, there was also information flowing to the Crime Commission at about the same time. My first knowledge of it, although it was not the first knowledge of the Commission, was when the Commissioner of the Crime Commission rang me up and said, "We have just identified some issue". I do not want to go into too much detail, but it was the fact, I think, that already by then some profiling of that gentleman had been done in our Commission, so they coincided, to some extent. But whether that raised or re-focused it I do not know which would be fairer really.

So that is an example of one where at least the Crime Commission had some direct interest. There have been a number of matters where we have looked at people that the Crime Commission has said, "This person may be of interest, or we see some connection with", but I do not know if there are. The number of current investigations I think firstly I would have to take on notice because I think there are 52 or something and I would not want to be guessing. We need to be a little bit careful about how much information we provide on

the public record in any event. But certainly there are some, and I think it flows from the connection that you first alluded to.

**CHAIR:** My interest is not necessarily in precise numbers but in general terms how much of what you do comes from the Crime Commission and how much of it comes from somewhere else?

**Mr GRIFFIN:** Mr Nattress, do you have a feel for the rough percentages?

**Mr NATTRESS:** It is difficult to talk in terms of exact numbers. As the Commissioner said, there were 52 investigations. Apart from the Laycock matter, and again this is just my feeling for it, I do not think there are any. But I would have to check exactly.

**CHAIR:** Leaving aside the precise numbers, your general feeling—and that is all you are putting—is that a large proportion of what you are doing is not being sourced from the Crime Commission?

**Mr NATTRESS:** I would say that that is right; that a large proportion of what we do is not sourced from the Crime Commission. There is regular contact, as you would expect, but they are not the providers of our bread by any manner of means; it is just one of a number of areas that we seek our work from.

**CHAIR:** I think there is a memorandum of understanding between the PIC and the Crime Commission that has been in place since 1 June 2004. Why 1 June 2004? Did something in particular prompt it?

**Mr GRIFFIN:** No, it was the earliest that it was able to happen, I think. I do not know whether Mr Bradley had been pressed for such a memorandum earlier. I spoke with him about it on a number of occasions and we had tacit agreement that that is when he was finally prepared or got round to signing the document. There were arrangements in place, of course. Police misconduct that comes to the notice of the Crime Commission mostly comes to their notice through police officers who work there or for the Crime Commission, who have an obligation under their own Act to report police misconduct. As I understand it, although Mr Bradley might be the proper source, he allowed a dispensation from his secrecy provisions to put that information through to the proper channels. So the process covered police misconduct that was discovered in the Crime Commission, to some extent.

I had, for no reason, a concern that there was a gap in the process for individuals that the Crime Commission chose not to or did not deal with properly, as perhaps is possible, and I wanted something in place that he would tell us if he was aware of it. So it was only filling in a tiny gap or a potential gap. I do not think there was any suggestion that anything had been withheld from us by the police down there, but I wanted to preclude the possibility.

**CHAIR:** Any questions from other Committee members about Crime Commission connections?

**The Hon. PETER BREEN:** It seemed to me, reading the material, that Operation Florida involved the Crime Commission certainly to a much greater extent than I realised. Is that unusual? Did that actually come from the Crime Commission initially?

**Mr GRIFFIN:** I think it originally did come from the Crime Commission because I think that is the way the matter just happened to break. But certainly the Commissioner of Police, the Commissioner of the Crime Commission and Judge Urquhart were involved in that very early on and the agreement that was in place—and I am looking from records, it is outside my knowledge—was that predominately it would be run out of the Crime Commission. Urquhart agreed to that and Commissioner Ryan I think agreed to resourcing it so it could be done. It was certainly run out of their premises, I think almost entirely in the early stages, although they had perhaps some covert premises as well. It was run there for probably most of the investigative stage that was managed jointly.

**CHAIR:** Could I just turn to another topic that I think could do with a bit of clarity? In the written answers you have given you talk about whether a matter is to be dealt with by way of a public hearing or private hearing, the way that you have put it sounds a little different to traditionally what we have been told. Previously the proposition that had been put to us, as we interpreted it, was that you would have a public hearing unless there was a very good reason not to. That does not seem to be the emphasis you are using in the written answers. I am wondering whether I am seeing too much in terms of different forms of words or is there perhaps a change in the Commission's philosophy?

**Mr GRIFFIN:** I do not think there is a change in philosophy. Perhaps we are inept in the answering of various lines of questions. I think the hearings are almost entirely an operational tool as far as I am concerned. There is an obligation to have public hearings—I suppose you could call it that—in circumstances, and there is an obligation to have private hearings in circumstances, and the choices are driven almost entirely by the facts and the operational effectiveness of the hearings. If everything else was equal I suppose public hearings would be the sensible way to proceed, but it never is. It is always, it seems, rarely that this could be equally dealt with publicly or privately; there is nearly always something that gives a private hearing or a public hearing a clear advantage one way or the other.

Certainly there has been no formal change in policy or approach; I do not have a sense of it. And this is one complete surprise and now inconsistency, to the extent that we are being inconsistent I think it is probably semantics, there has been no change in approach.

**Mr ROBSON:** I might just add that there is no presumption in favour of a public hearing in the Act. I cannot recollect a previous statement to that effect, but it may be capable of being read that way. Certainly, all things being equal, things might fall on the side of a public hearing simply by virtue of the public interest in the community being aware of what the Commission is doing in dealing with police corruption, but usually, of course, there would be other factors, contraindicating a public hearing for that basic reason. But all factors are considered and weighed by the Commission at the time the decision is made. Certainly there is no presumption in the Act that we start off with a public hearing in mind and then decide whether it should be private for any particular reasons.

**CHAIR:** I think in the interests of full disclosure I should say that what has motivated me is some comments by Judge Urquhart several years ago now. He indicated that his view was it ought to be in public unless there was a reason why not—that is my paraphrase.

**Mr ROBSON:** There were different views at that time too in relation to comments about police officers engaging in misconduct. I think Judge Urquhart took the view that it was flying too close to an appearance of a finding of guilt to express an opinion in a Commission report that a particular officer did in fact engage in misconduct, whereas at the present time the Commission's approach is somewhat different. So I guess it is just indicative of a change of perspective over time. In Florida I think there was an opinion expressed in the report that an officer had engaged in misconduct, whereas before then that had probably not occurred in a Commission report.

**Mr GRIFFIN:** Maybe we are not too far apart in the sense that all else being equal I think we would say it is probably a public hearing because of the reasons that Steve has alluded to, because the public interest perhaps is in that; the transparency and the cleansing effect of daylight on those things. But, operationally, it is never, ever that simple. It is not a coin-tossing exercise because if it was dead even we would do it in public, I think. Maybe Urquhart is saying no more than that. The reasons that you do things in private are usually overwhelmingly clear, it seems to me, so the decisions are not particularly hard on a case-by-case basis.

**The Hon. PETER BREEN:** Could you give a couple of examples of why you would make a decision to hold a hearing in private?

**Mr GRIFFIN:** I would certainly rather not, not examples.

**Mr ROBSON:** Prejudice to the very investigation is often a very big factor.

**Mr GRIFFIN:** The development of the case is the obvious thing, and there are risk factors to individuals; they are the two obvious things. They crop up surprisingly frequently—and if you are halfway through an operation. It is the one thing that I think we have trouble getting through to the public most is that what we are doing is investigating and we may very well bring on hearings to startle some rabbits, and they might be public because that is the only way we can do it, but before that there might have perhaps been a private hearing because we wanted to find out where to go. That is difficult because people are so used to court hearings and have a predetermined position, there are briefs of evidence, everyone knows where it is going, it is going to go for four days and finish, and of course that is not what we do. Those would be the two things: safety of individuals or fears for safety of individuals or repercussions, or the development of a particular investigation.

**The Hon. PETER BREEN:** Are there any situations where evidence might be compromised if it were to be a public hearing?

**Mr GRIFFIN:** I think that is the development of the case argument. I think clearly if you have not gathered all the evidence, which you have not if you are still investigating, you run the danger if you put on notice people that you have not got wrapped up or evidence that you have not secured, it gives them some opportunities to leave the jurisdiction, as happens, or, I suppose, destroy evidence.

Anecdotally, when I was involved in the bottom of the harbour prosecutions, northern office in Brisbane had an office manager up there and I said, "Go and buy a shredder, you will need a shredder". You could not buy a shredder in Brisbane, they had all been sold out.

**CHAIR:** Any further questions? There is probably no answer to that, is there?

**Mr GRIFFIN:** It is also entirely true.

**CHAIR:** In the written answers you have mentioned some of the factors of public or private hearings. I am interested in how they affect the decision on the complexity of the matters and the number of witnesses to be examined?

**Mr KEARNEY:** The response to question one is not a discussion about private versus public. It is about hearings, per se. That is why I may have had a confused expression when you first raised the issue, Mr Chairman. This is about whether we do a hearing at all.

**CHAIR:** That explains what I was going to raise. There is another issue of clarification and the use of these terms seems to shift around following various committee hearings and as evidence has been received. What is the distinction between "a hearing" and "a hearing day"?

**Mr GRIFFIN:** That is a good question, actually those are two perfectly good questions. If we need to go into too much detail with this, I would ask that we do with in private session.

**CHAIR:** My interest is not about operational or tactical decisions, it is about exposure outcomes.

**Mr GRIFFIN:** But some of it goes directly to tactical decisions. It is a fact, and for various reasons—reasons that I think are right—that historically private hearings have been single, self-contained entities per witness, for reasons that include not disclosing to other witnesses in private hearings. For instance, there might have been another witness in the same matter. If you had three witnesses in private hearing, they would each think that they had a separate hearing and the transcript would go from 1 to 200, not 201 to 400. Those divisions electronically and internally in our place, create in private hearings an entirely different bag to a public hearing with the same three witnesses; it would be one hearing with three different witnesses. They both might take three days. In the private hearing it would be three hearings for those reasons primarily. In the public hearing it would be one hearing. I hope that explains the discrepancy, which is hard to glean from the answer.

**Mr KEARNEY:** It is the exceptions that we would probably prefer to discuss in camera if further elaboration is necessary.

**CHAIR:** The explanation gets to the bottom of the distinction from my point of view. It was the exposure outcome, rather than the technical decision that I was interested in.

**Mr GRIFFIN:** They are closely aligned, but that is the basis of it. I do not suppose it matters if it is public information.

**CHAIR:** Of course, with exposure outcomes when talking about hearing days, they can be five minutes or a full day?



**Mr GRIFFIN:** That is one of the difficulties and we have been struggling with this internally. They can be quite short. To that extent they are arguably illusory. The advantage in keeping the counting the same way is because it started some time ago and we have a whole lot of apples to compare, it would be silly to change the counting. Pursuant to the concerns that might arise, we thought we ought to look at average hours. I can run those through.

**Mr KEARNEY:** I have averaged them out and summed them up. We have had a look at the hearings over the past three financial years, the last three reporting periods. For public hearings, the average is approximately four hours. For private hearings, the average is approximately two hours and 15 minutes. That will include the odd five-minute hearing and of course it will include the much longer ones, the full-day hearings, which can be five or six hours.

**Mr GRIFFIN:** If you do not want the average, I have them over the years. Those figures are available. Effectively the hearings are on the average short hearings, so the figures are not skewed dramatically by a whole lot of five-minute hearings. Mr Nattress has told me that he has never seen a five-minute hearing, and that is pretty true. By the time we have concluded that someone should be in the hearing room, we usually have something to put to them and we want to hear what they have to say. As it turns out, the average is just over two hours for the private hearings.

**CHAIR:** I turn to Temporary Assistant Commissioner Finlay. You make the point that his involvement as an Assistant Commissioner is very different from what any other assistant commissioner is likely to be. As I follow that, that is because of the number of things he has been doing in Abelia, not just presiding over formal hearings?

**Mr GRIFFIN:** Yes.

**CHAIR:** Why it was the decision taken to have him do that?

**Mr GRIFFIN:** Primarily because Abelia is an entirely different type of hearing from anything we have done. I know you ask questions about figures, how much it cost, why it is not cheaper to have done it some other way. I may be pre-empting that, but even if I had an Assistant Commissioner, something that I feel under some pressure to do and am still determined to resist at the moment, we may still have sought someone of Finlay's eminence to do something like Abelia. It might have been an add-on cost. The reason for that is, it has been said that if you are to be sentenced to death, Finlay would be the person to do it for you. He has a remarkably effective way of communicating with people and bringing them together.

In the plan, which in Abelia was to try to progress this thing in some sort of unique but collegiate way, I thought then and still think that we needed someone who could actually make that happen. He has the skills and has kept the police, the police association representatives, our representatives and some considerable external people, all vaguely talking to each other and going down the track. If we tried to do Abelia like a Malta it would have been five years of hearings and a lot more money than we have spent trying to do it this way.

The extra things he has done, the management of the whole process, have been remarkably successful. My views are not shared entirely I suspect by this Committee, but I think it is true. We have actually made considerable steps with the management of a very difficult investigation or inquiry or project. A lot of it goes to Finlay's personal capacity to bring people together and to manage the process and keep the hearings ticking over. Hopefully that answers some of the questions about Assistant Commissioner Finlay that you are about to ask me.

**CHAIR:** Some of the way. How did the duties that he has undertaken differ from what a permanent Assistant Commissioner would have done?

**Mr GRIFFIN:** In the absence of Abelia being a major separate part of what we do, the things that Mr Finlay does in Abelia, I would have done myself. I think that is the difference. We are a tiny organisation and it is sometimes hard to remember because we seem to be constantly on the run. There are only 100 people there. I do not think we have ever not had hearings when we thought we needed to. They are manageable. In Abelia we needed support and because of the nature of our approach, it has taken us some considerable effort and a lot of our resources. If it got to the point in another area where we had to run to lots of investigations publicly at the same time and had the capacity to do it in the hearing room, the short appointment of an Assistant Commissioner to do just the hearings is perfectly acceptable.

We would fall back into that saving of resources and money that attracted me to this in the first place. The normal management of the rest of it can be done as it is in any event, usually by our people. I would not abandon the management of another operation entirely because there was an Assistant Commissioner running hearings; and I would not need to. To that extent, I think it is different. Abelia is significantly different from anything we have tried. I do not know whether we could try it again. If we did, there may be a really good argument for having an Assistant Commissioner on full time for a year or two years. I could see that argument. Whether I would want one forever is a different matter.

**CHAIR:** What is glaring from the figures is that if you had Finlay as a permanent Assistant Commissioner it would have been cheaper than what has been done.

**Mr GRIFFIN:** I think that is true. But Finlay would not have accepted appointment as a permanent Assistant Commissioner, as far as I know, although I have not asked him. I do not think he would be interested in a permanent job. As I said earlier, if someone had been appointed, Finlay brought those skills and people like Finlay who have those skills and standing to do unusual work for the Commission are unlikely to want permanent appointment. The gravamen and whatever he brings is useful for that purpose. If he had taken the job we would have saved \$30,000, which is not huge, with respect, although it is significant to our budget. But you might say that we have not finished yet, so it might be \$50,000.

**The Hon. PETER BREEN:** You are saying that if you had an Assistant Commissioner who had a particular range of skills, that might not necessarily cover the work you might want that person to do and you might still have to get someone to do a particular inquiry?

**Mr GRIFFIN:** It seems to me that is open, yes. We can actually pick and choose our skills a bit by engaging the people we want. This is a case in point with Finlay. He has particular skills.

**Mr MALCOLM KERR:** I am intrigued by your reference to Mr Finlay and the death penalty. Could you repeat what you said, I do not want to verbal you.

**Mr GRIFFIN:** One of the things I need to do here, and I have not learnt yet, is to leave my sense of humour behind. I was trying to be funny. Mr Finlay is an exceptionally pleasant person to deal with, as I think you would know.

**Mr MALCOLM KERR:** Yes.

**Mr GRIFFIN:** There is a saying, which is not restricted to our office, that if you are going to be sentenced to death you would choose Mervyn to do it, because you would thank him afterwards for putting it so nicely. It was an attempt at humour, and I will try not to do it again. I apologise.

**Mr MALCOLM KERR:** I might commute that comment. On 14 October I asked a number of questions that I had not realised were in camera in relation to Mr Finlay. I do not think they were particularly confidential. Mr Chairman, could I go through those questions again? Perhaps they could be tabled.

**CHAIR:** As a matter of precedence, I prefer you to go through them. I have a prejudice against releasing material that has been given in confidential session when we have given a witness an assurance that it will be held confidentially. I am not sure about the ones concerning Mr Finlay, some of the others are outside your jurisdiction. The proper way to do it is to proceed question by question.

**Mr MALCOLM KERR:** Certainly. Commissioner, last time I said:

I say at the outset that to the best of my information, knowledge and belief, Mr Finlay is a man of the highest integrity, as is the present Inspector General. However, we do not know who will be appointed in the future. There is an old saying in Cronulla that justice has to be seen to be done as well as being done, you can appreciate that is what is required of the role of an Inspector General—they should be fearlessly independent because they need to be a critique of the Commissioner or of the Commission if the circumstances warrant it. If there is a situation where somebody serves as an Inspector General and then has an afterlife with the Commission and somebody who is not as principled might be tempted to go soft with the prospect of future employment. Can you see my point?

I think you then answered:

I can and I understand the allusion to Cronulla. When I first contemplated using an Assistant Commissioner in that way in Abelia, I and the Commission gave considerable thought to who it could be.

**CHAIR:** Could I stop you there, Mr Kerr. You cannot read onto the public record answers that were given in confidential session without breaching both the standing orders and the Act. I suggest the way to proceed is simply to ask a question and let the Commissioner answer it.

**Mr MALCOLM KERR:** Certainly.

**Mr GRIFFIN:** I am sorry, I was listening to you reading. With respect, would you mind asking the question again?

**Mr MALCOLM KERR:** Certainly. I say at the outset that to the best of my information, knowledge and belief, Mr Finlay is a man of the highest integrity, as is the present Inspector General. However, we do not know who will be appointed in future. There is an old saying in Cronulla that justice has to be seen to be done as well as being done. You can appreciate that this is what is required of the role of an Inspector General, they should be fearlessly independent because they may need to be a critic of the Commissioner or of the Commission if the circumstances warrant it. If there is a situation where somebody serves as an Inspector General and then has an afterlife with the Commission, somebody who is not as principled might be tempted to go soft with the prospect of future employment. Can you see my point?

**Mr GRIFFIN:** I understand the point you are trying to make. I do not believe it is an issue.

**Mr MALCOLM KERR:** Mr Finlay's duties have not been restricted to that inquiry, that is, Abelia. I think you have used him, in effect, to take over from you? Did you give that evidence? He has not been involved simply in Abelia; he did perform the role of Acting Commissioner while you were in New Zealand?

**Mr GRIFFIN:** That is true. He was appointed Assistant Commissioner, not Acting Commissioner, in my absence in New Zealand for, I think, 10 days. For completeness, in relation to Abelia, part of Operation Alpine, which is a separate operation, is subsumed within Abelia. You need to have that on the record too, that Abelia includes a part of an operation called Alpine. He has been doing hearings which are part of that exercise. We are just trying to clarify the details of the delegation itself. Mr Robson suggests—and I do not know if it is true, but we can check it—that Mr Finlay might have already been appointed as Assistant Commissioner doing Abelia when I went on leave. That corresponds with my recollection but we can check it, if need be, and that he was given a different delegation, to use the powers that I delegated to him in my absence if he needed to. If that needs to be checked, you might let us know. I think the substance of it is that he had, in my absence for that 10 days, additional powers.

**Mr MALCOLM KERR:** I am content to rest with that answer. I think you appointed Mr Finlay as Assistant Commissioner largely because of concerns expressed by the Committee relating to concerns about the succession—if you were run over by bus, who takes over the role?

**Mr GRIFFIN:** I am sure it was a truck when you said it last time, but that is the case. That remains extant. There is the delegation which is contingent upon certain events that would put Finlay in the position of Assistant Commissioner acting with my powers or the powers delegated to him until there was a replacement, which I assume the Government would act on.

**CHAIR:** The final thing is, there was reference in the written answers to the number of hearing days by Mr Finlay and Commissioner Griffin in the 2004 calendar year. Could

someone provide us, not necessarily today, with the number of hearing days, both public and private for the Commissioner and Mr Finlay for the 2003-04 financial year?

**Mr GRIFFIN:** Sure.

**Mr GEOFF CORRIGAN:** I have three matters—one comment and two questions. First, I commend the Police Integrity Commission [PIC] on its investigations that brought to attention the activities of Stephen Laycock. We, the Committee that asks questions, should also pass on our commendations. I know I did privately last time but I pass them on publicly today.

**Mr GRIFFIN:** Thank you, I appreciate that.

**Mr GEOFF CORRIGAN:** Secondly, in closed committee at the last meeting I asked a question about comments in John Marsden's books that non-evidentiary material which is inherited by the Police Integrity Commission was still in existence. My recollection of your answer at that time was—

**CHAIR:** Mr Corrigan, you are not supposed to do that.

**Mr GEOFF CORRIGAN:** Sorry. I would be interested to know your comments. Are you prepared to assure us publicly about what your answer was at that time in relation to those concerns that were raised?

**Mr GRIFFIN:** Mr Corrigan, I do not recollect my answer at that time but my recollection is there was a discussion about listening device material, is that correct?

**Mr GEOFF CORRIGAN:** That is right, yes.

**Mr GRIFFIN:** The position is that the Listening Devices Act requires certain things to be done by the Commission. We do hold, mostly courtesy of the Royal Commission, significant holdings obtained electronically. The Commission has in place a process which is going through the processes outlined in the Act and there is a destruction policy that involves an assessment in each case of whether or not material is caught by the Act and should be destroyed or whether it sensibly needs to be maintained for law enforcement purposes. In relation to a number of matters, that assessment has been made and the destruction process is in place. In relation to another group, a decision has been made on the basis that the material must be kept because it may still be useful or at least required. In the middle, a process has been started whereby cases will be assessed.

I think I said privately, and will say it here, it is a mammoth task for us because on one interpretation—and we think it is the right one—every reference to a particular piece of product from listening devices needs to be dealt with under the Act. In many cases, the Royal Commission material, for instance, the piece of evidence in a listening device may have been used in a briefing note to a counsel who may have made some notes of it for his cross-examination. Those things are difficult to capture and involves somebody, arguably, reading every piece of paper. There are millions of pieces of paper. That process will continue but it cannot be done quickly. So, we have steps in place. There is a settled plan of action recorded, and the process will continue. The operations meeting that drives the operational

area of the Commission will sign off on the various steps as they happen but the first destruction of material of any bulk will happen before Christmas but I would not predict when the last ones will be, but the process is in hand.

**Mr GEOFF CORRIGAN:** I think you also made the comment that despite all that it is also under the most rigorous security in the PIC anyway?

**Mr GRIFFIN:** It is. Thank you. I certainly put that on the record. The material is tightly held and is not generally available to anyone. It is not accessible, which goes to the heart of the Act, but we are also trying to deal with the letter.

**Mr GEOFF CORRIGAN:** My third question relates to research into section 181D. Is it appropriate to ask that now, Mr Chair?

**CHAIR:** Yes.

**Mr GEOFF CORRIGAN:** My question is, as some of your officers are aware, I think the Shaw case intervened after you attended the Fifth National Investigation Symposium. Three of us were there. It was interesting to hear the comments from the Police Commissioner or senior police officer from South Australia, and the paper that was delivered on the more societal aspects of why police officers become susceptible to corruption. This seems to be empirical data that you have in the scope of study here. From memory, the two things to look for in the police officers background for susceptibility to corruption that were mentioned at that symposium and that do not seem to be mentioned here are family breakdowns and gambling. Things like alcohol and drugs are mentioned but gambling and family breakdowns do not appear, on the surface, to be mentioned. They are societal aspects versus empirical aspects?

**Mr GRIFFIN:** I am not sure whether there is a question that specifically needs answering. My view is that those environmental factors or societal factors must have some role in this process, but I am not sure I comprehend entirely the question, if there is one.

**Mr GEOFF CORRIGAN:** It was probably a comment, but also I was interested in the comments that were made, particularly by the senior police officer from South Australia, that he felt strongly that family breakdown and gambling have a large impact on corruption issues in the police. I was interested in your comments.

**Mr GRIFFIN:** My difficulty is that I was not there. I heard that Mr Lynch was there.

**Mr GEOFF CORRIGAN:** And Mr Breen.

**Mr GRIFFIN:** I heard about Mr Breen too, so that is three. Other than to say they must have some impact—Allan, did you have any discussions about this? I know we had a representative there.

**Mr KEARNEY:** My initial thoughts are that they may be indicative of problems, indicative perhaps of misconduct or they may contribute to misconduct. So there are probably two aspects to it.

Concerning the paper that has been provided, it is very much an exploratory piece, just looking to the questions specifically asked by the Committee. Given its nature, it raises more questions than it answers. As such, while the paper is not confidential, we would probably prefer that it not be made publicly available, although we might have to have some discussion on that. Is it too late?

**Mr GRIFFIN:** We just tendered it to a public meeting.

**Mr GEOFF CORRIGAN:** Could I commend to you that you get a copy of the comments made at the Fifth National Investigation Symposium by the police officer from South Australia—

**Mr GRIFFIN:** Mr Corrigan, are you saying perhaps that we need to be sure we do not look at this too narrowly?

**Mr GEOFF CORRIGAN:** That is right, yes.

**Mr GRIFFIN:** We understand that and we will take that on board. It becomes, then, a very difficult task for a Commission that does what we do to take into account the sociological factors, but it must be done in some form, and we will have to look at the paper.

**Mr NATTRESS:** My take on what you said seems to indicate that we were not aware that these sorts of issues arise. There have been three, if not more, significant investigations that the Commission has conducted, and is conducting this calendar year, which will show very starkly how those particular issues do affect corrupt officers. We will be reporting on those particular cases and instances in those reports.

**Mr GEOFF CORRIGAN:** I am sorry to interrupt, but it seemed to me that the Laycock affair certainly exposed that.

**Mr NATTRESS:** Correct.

**Mr GRIFFIN:** The problem is that you open up that whole cause and effect problem, but we are aware. It is just that when we do a single hearing or even a handful of them they are still only anecdotal things, and you run the risk of drawing—you do it at your peril, I think, draw big conclusions from those things. But, I mean, the paper—I am interested to see what was said and whether there was some substantial research to support the conclusions that were made.

**Mr MALCOLM KERR:** Just in relation to question 10 of the questions on notice, "Have NSW Police implemented the recommendations made following Operation Florida?" The answer was, "No, the Commission will be engaging with the NSW Police shortly regarding the Commissioner of Police's response to the recommendations contained in the report on Operation Florida." Has that engagement taken place as yet?

**Mr GRIFFIN:** It is ongoing, but I might ask Mr Kearney to tell us the latest stage. He told me about two hours before we came here and I have now forgotten it.

**Mr KEARNEY:** The police response is currently being considered and we are expecting to finalise our position on that response shortly. We will then need to respond to Police.

**Mr MALCOLM KERR:** Mr Chairman, I was going to ask some other questions that I had asked earlier. Perhaps I might show the Commissioner a record of those questions so that he has them before him when I read them.

**CHAIR:** That might be helpful.

**Mr GRIFFIN:** Thank you.

**Mr MALCOLM KERR:** Going to them, there is a question about one-third of the way down, "I believe the Leader of the Opposition wrote to you on 28 June." Do you have that, Commissioner? I am sorry, page 11.

**Mr GRIFFIN:** I have page 11, thank you.

**Mr MALCOLM KERR:** The question is, "I believe the Leader of the Opposition wrote to you on 28 June. Referring to Operation Florida, he said that he had received information that the Minister of Police had received a copy of the report on 25 June." You wrote back saying, "I refer to your letter dated 28 June in which you query whether copies of the Commissioner's Operation Florida report were provided to the Government prior to the presentation of the report to Parliament this past Monday. I confirm that a copy of the report was provided to the Hon. John Watkins and the director general of the Ministry of Police prior to its presentation to Parliament on the understanding that the report remained strictly confidential until it had been presented to Parliament. No advance copies of the report were provided to any other members of the Government." Does the Minister of Police normally receive an advance copy of PIC reports?

**Mr GRIFFIN:** Are you asking me that question again?

**Mr MALCOLM KERR:** Yes, I am.

**Mr GRIFFIN:** The answer is yes, but maybe I should also respond by putting on the record something similar to what I said before, and that is that I find the way that the issue has been dealt with to be regrettable. The letter has been quoted out of context—my answer to the letter was quoted out of context repeatedly, to the detriment of the Commission, and I believe that is really unfair. I think that the Commission is fiercely independent, demonstrates that on a regular basis, is never interfered with, has not been interfered with that I know of—certainly has not been in my time—and allegations or suggestions that it is either not independent or is incompetent for purposes that do not answer anything that this Committee does are unfortunate. Perhaps the Committee is in a position to do something about that process, but as I asked you before, I ask you to table the letter and the response to it so that that is public.

**Mr MALCOLM KERR:** Well, I think that—are those documents available? They are on the public record in any event.

**Mr GRIFFIN:** Well, they have been published in the press.



**Mr MALCOLM KERR:** They have. That is what I meant by that.

**Mr GRIFFIN:** Well, half of them.

**CHAIR:** On the last occasion, there were things tabled in camera.

**Mr GRIFFIN:** Yes, I understand that, and what I am asking is that, if Mr Kerr wants to go on with the question in public, then he should table the entirety of the correspondence, being his letter and my letter, and if he is not able to do that, the Commission is in a position to provide those, if the Committee wants them.

**CHAIR:** I think that we should probably table both of them.

**Mr MALCOLM KERR:** Both of them, that is right.

**CHAIR:** In open session, right now.

**Mr GRIFFIN:** I do not have a copy with me now. If the private copies are available, I think perhaps the simple way would be to declare them public, but that is a matter for you, Chair.

**CHAIR:** Yes.

**Documents tabled.**

**Mr MALCOLM KERR:** On page 12, four-fifths of the way down—you may want to take this question on notice—"Has the Minister been given an advance copy of every report?"

**Mr GRIFFIN:** I think that was taken on notice, and we would take it on notice, if I may. I do not know the answer.

**Mr KEARNEY:** I think we responded.

**Mr GRIFFIN:** Well, yes, but in private. Now, I take it this is a public request?

**Mr MALCOLM KERR:** Yes.

**Mr GRIFFIN:** Or did we respond publicly?

**Mr KEARNEY:** No, we responded by letter of 8 November.

**Mr GRIFFIN:** To the Committee?

**Mr KEARNEY:** To the Committee.

**Mr GRIFFIN:** Maybe we will table that document, if it suits the Chair, and then it is either private or public, depending on how the Chair feels

**CHAIR:** Yes.

**Mr GRIFFIN:** Does that suit you?

**CHAIR:** That is the easiest way of doing it.

**Mr GRIFFIN:** I table the response.

**CHAIR:** What was the date of that?

**Mr GRIFFIN:** It is 8 November. I can hand a copy of that document up, if that is suitable.

**CHAIR:** Yes.

**Document tabled.**

**Mr GRIFFIN:** Mr Kerr, am I in a position to ask you a question?

**Mr MALCOLM KERR:** No.

**Mr GRIFFIN:** That would have been my answer, were I on the bench, too, but I thought I might ask.

**CHAIR:** I could always suggest that you might want to conduct a separate inquiry and summons him.

**The Hon. JAN BURNSWOODS:** You might suggest to one of us that we ask him.

**Mr GRIFFIN:** I am in the Committee's hands. We, a creature of the Committee, need the help of the Committee from time to time.

**CHAIR:** Are there any further questions?

**Mr MALCOLM KERR:** Yes. On page 15, Commissioner, I asked, "Could you describe the Commission's relationship with the police at the present time in the sense that there are good communications that exist or there are no communications that exist." How would you describe the relationship with the police at the present time?

**Mr GRIFFIN:** I would describe the communications with the police as adequate for our purposes, for the management of the business the Commission needs to do.

**Mr MALCOLM KERR:** What is your assessment of how police are identifying and dealing with corruption?

**Mr GRIFFIN:** I think the difficulty with the answer is in the question. We have talked about short questions and long answers before, of course.

**Mr MALCOLM KERR:** Yes.

**Mr GRIFFIN:** The position of the police, if you refer to the executive and management, I think they are operating effectively and efficiently. What I do not know is whether that, because of my personal lack of knowledge, extends to the 17,000 police that are also encompassed in the question. I do not feel I can answer that.

**Mr MALCOLM KERR:** At page 17, I asked this question, "Given the exposures of the Florida investigation in regard to police corruption involving rip-offs of drug dealers and search warrants, you mentioned earlier about being "a good bloke" in relation to what was happening there. Is there any indication that the lessons in relation to the corruption from the Royal Commission and your reports have not in fact filtered, and changed the police culture?" I think, Commissioner, there has been some public discussion about there still being a mateship ethos operating in the police that might protect them. My question really goes to how effective your reports have been in changing the culture that is undesirable in the police service.

**Mr GRIFFIN:** Thank you. I am just struggling with the reference to "good bloke", given the private hearings, and I wonder whether that ought be something that is not referred to.

**Mr MALCOLM KERR:** Perhaps we can substitute—

**Mr GRIFFIN:** We will just take that out, perhaps?

**Mr MALCOLM KERR:** Yes, certainly. Perhaps we could substitute what I said in a supplementary way, "a mateship culture".

**Mr GRIFFIN:** I am sorry, Mr Chairman, I am just trying to read the question again, if you will excuse me. Mr Kerr, do you think we could take this question on notice?

**Mr MALCOLM KERR:** Yes, certainly. Any of these questions can be taken on notice.

**Mr GRIFFIN:** Thank you. The reason that I ask that is that it is actually I think quite complex and probably the Commission is forming its views more or less from what we are doing at the moment.

**Mr MALCOLM KERR:** I see.

**Mr GRIFFIN:** I mean, the Laycock investigation has shown us things that do not fit with the pattern that you might describe as mateship, I think, but I would like to be able to look at what the rest of the investigations are giving us in relation to that. If we can take that on notice, I think the answer would be much more satisfactory for all concerned.

**Mr MALCOLM KERR:** Yes, certainly. Any of these can be taken on notice, Commissioner.

**Mr GRIFFIN:** Thank you.

**Ms NOREEN HAY:** Commissioner, I just want to get some clarification of a comment you may just a few moments ago. You said that the way it has been handled is unfortunate,

and taken out of context time after time. Can you clarify for me the way that what has been handled, and what has been taken out of context?

**Mr GRIFFIN:** I am sorry, in relation to the letter from Mr Brogden? Is that what you are talking about?

**Ms NOREEN HAY:** I am not sure. I am just trying to get clear on that. Is that what your comments referred to?

**Mr GRIFFIN:** When I said it has been taken out of context, I was referring to the suggestion arising from the publication—surrounding the publication—of the Florida reports, yes, and it came from Mr Brogden's response—a letter to me and my response to him—part only of which has ever been used in the public domain.

**CHAIR:** Are there any further questions?

**The Hon. PETER BREEN:** Can I just ask a question about Operation Tower? I think, Mr Robson, on the last occasion we spoke about this, you indicated that you dealt with Operation Tower?

**Mr ROBSON:** I have knowledge of it, but a number of Commission officers and counsel assisting were involved in that matter, yes.

**The Hon. PETER BREEN:** There has been a question raised with me about the reporting of Operation Tower in the annual report. The bulk of it comes from the report itself, but then the final two paragraphs contain additional material that was not in the report and which seemed to suggest that the report is being used by the Commission to further the knowledge of the police force as to how the Commission operates. That is my paraphrase.

**Mr ROBSON:** I do not have those passages in mind at the moment.

**The Hon. PETER BREEN:** I am happy to put the question on notice but the question has been raised with me as to whether or not in doing that the annual report does reflect adversely on Mr Marsden, who was the subject of the Operation Tower report.

**Mr ROBSON:** I was not the author of the passages in the annual report but I vaguely recollect that there was a comment about the fact that Tower was somewhat unique in that it was the first occasion on which the Commission had effectively reviewed a police investigation and considered whether any issues of misconduct or impropriety arose from the circumstances of that investigation. It is unique in the sense that the police, as we probably all know, have many discretions at their disposal in how they conduct their investigations and go about their inquiries. You will see from the report that a few sections set out the parameters for the Commission's consideration of the allegations of misconduct that were raised by Mr Marsden—comments to the effect that the police do have broad discretions and it would not be appropriate for the Commission in a later investigation with the benefit of hindsight to cast aspersions or negative comments on what the police should have done in the heat at the moment during the investigation. I think personally it would inhibit the proper exercise of police discretions in an investigation. There were comments of that nature made

in the report. I think the comments in the annual report reflect that aspect of the Tower report.

**The Hon. PETER BREEN:** I only raise the issue because Mr Marsden wrote to me about it and said that the last two paragraphs were not in the Operation Tower report and in his view reflected adversely on him. I would be interested to have someone's comments about that. I do not know whether it reflect adversely on him or not.

**Mr ROBSON:** I think it was a comment about the potential usefulness of the Commission's investigation and report in the realm of police investigations. That is all it was.

**The Hon. PETER BREEN:** Is it normal practice to quote an operational report in the way that it is done in the annual report? I do not know whether the other reports are word for word from the reports. Is it normal practice to add additional material, additional commentary if you like?

**Mr KEARNEY:** It is normal practice to précis the contents of a report. However, you will find that a number of investigations are discussed there where no public report is produced. So it is a summary of investigation material that is appropriate to be included. There will, however, be other descriptive material there on what we regard as key outcomes from the investigation. There will be extra material.

**The Hon. PETER BREEN:** So you would describe key outcomes as additional material that you would have in the annual report that might not have been in the report itself?

**Mr KEARNEY:** Certainly. But it is really, I suppose, a succinct statement as to what we feel we have achieved through that investigation or that report.

**Mr GRIFFIN:** It is a fact that the report, and all the reports, are only our views on something. In the annual report—in this case I just read it briefly while you were talking—there was a comment about why and where the matter, around those edges, about why it had proceeded. We would always reserve the right to say in relation to anything we did that we did this and this is why we did it, or this is what we drew from it. I would have thought that is what the annual report is supposed to do: tell you and the public what we did and why we did it, and what we achieved from it. I cannot read anything more than that in it. I do not know whether you have the words before you.

**The Hon. PETER BREEN:** Yes, I have.

**Mr GRIFFIN:** They seem to me to go no further than that, but if it will help—

**Mr ROBSON:** We can provide something in more detail in writing but I suggest if you look at Part 2 of the report beginning on page 5, which is headed "The Commission's Approach" there are a number of issues and policy matters discussed which I think the comments in the annual report were adverting to—matters such as police investigative discretions and assessments and opinions of police misconduct in that context, duty versus discretion, the so-called duty of police to investigate crime and the discretions they have in the discharge of those functions, matters of whether a complainant or victim of alleged

criminal conduct might be regarded as an informer in a certain context. These issues all arose from complaints that Mr Marsden had made about the investigations.

There were also references by Mr Marsden in his allegations to the outcome of civil proceedings, the defamation proceedings, and the Commission needed to state the relevance, if any, of the evidence obtained in those proceedings, being civil proceedings and not a criminal prosecution of any kind. There were issues of thoroughness in the investigation—Mr Marsden was asserting that the investigation had not been thorough enough—and corroboration issues. All those issues arose from Mr Marsden's allegations. So predominantly the comments in the annual report were referring to, I guess, the usefulness of the Commission's views on those matters to operational policing. They were not additional material to the report; they were simply the Commission's comments on the potential usefulness of the Commission's views on those matters, that is all.

**The Hon. PETER BREEN:** And in your view those additional comments do not reflect adversely on Mr Marsden?

**Mr ROBSON:** I do not see how they can because allegations were made—over 100 separate allegations were made. They were investigated and the Commission explained the parameters of its investigation, the proper parameters of the investigation, and in so doing expressed a number of views on how it approached those matters. No, I do not think they could reasonably be taken to reflect adversely on Mr Marsden. They were not intended to, I can say that.

**Mr GRIFFIN:** Mr Breen, the other thing is that you would probably be aware that the Tower matter took up considerable resources of the Commission. It may well be that the issues raised individually would never have found their way into an annual report of a Commission like the PIC but it was a considerable matter for us and it therefore needed the space and time in the report in our view and also the comments that perhaps throw a bit of light on how we ended up where we were. Do you seek some sort of formal response?

**The Hon. PETER BREEN:** No, I think that explanation is quite adequate and I thank you very much for it.

**Mr MALCOLM KERR:** I refer to page 21 of the in-camera evidence, two thirds of the way down. In your estimate, Commissioner, how effective do you think the New South Wales Professional Standards Command has been in its approach to corruption investigation?

**Mr GRIFFIN:** I put on the record that it seems to be a very professional operation.

**Mr MALCOLM KERR:** And how did you arrive at that assessment?

**Mr GRIFFIN:** We have regular meetings with the senior officers of the command. By regular I mean weekly. We have a continuing update of what they are doing in relation to the matters and how they are going about that. I think that is sufficient to make an assessment of how they are going about their business.

**Mr MALCOLM KERR:** In your Dresden report there was a suggestion that the Special Crime and Internal Affairs Unit was not using technology to the extent it should have been. Are you satisfied that the Professional Standards Command is using all available resources?

**Mr GRIFFIN:** Once again, I think the answer to that is that from what I see they use the resources as they are available. There are times, I am sure, when they, like this Commission and the Crime Commission and every other investigative agency, do not have enough resources to do at a particular minute all they would wish to do. But they frequently deploy the normal investigative tools that we all use.

**CHAIR:** I am told, Mr Kearney, that only one copy of the new 181D report has actually been handed out. If you wish to keep it confidential we can withdraw the earlier tender and mark it confidential if that is what you wish.

**Mr KEARNEY:** Given the exploratory nature and the questions that are raised I think I would prefer that it be regarded as confidential. We are considering doing some further work in this area amongst a range of other projects. A decision is yet to be made. But if we choose to do further work in that area we would like to clarify some of the questions that have been raised before expressing a view publicly. So I would prefer if we could keep it confidential for the time being.

**Mr GRIFFIN:** Thank you for that offer and I thank the Committee for its time.

**(The witnesses withdrew)**

**(The Committee adjourned at 5.10 p.m.)**





# Answers to Questions Taken on Notice



ABN 22 870 745 340

Our Ref: 12402/81

18 January 2005

Mr Paul Lynch MP  
Chairperson  
Committee on the Office of the Ombudsman and  
Police Integrity Commission  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Lynch

## EIGHTH GENERAL MEETING – RESPONSES TO QUESTIONS TAKEN ON NOTICE

I refer to the questions taken on notice during the course of the Eighth Annual General Meeting on 30 November 2004. I trust the following responses assist.

1. *The Ombudsman has advised that it prepared a report for the Attorney-General dated 27 September 2002: "Release of lawfully obtained information by the NSW Crime Commission relating to Operation Mascot and the Police Integrity Commission relating to Operation Florida". Has the PIC sent a copy of the Ombudsman's report to the Inspector?*

Based on Commission records, it is apparent that the Commission had not sent a copy of the Ombudsman's report to the Inspector. A copy of the report has since been provided (11 January 2005).

2. *How many days, both public and private, did the Commissioner and Mr Finlay preside on Commission hearings during the 2003-04 financial year?*

	Number of Hearings	Commissioner Terry Griffin	Mervyn Finlay QC	Others (Sage)
Public	17	6	10	1
Private	35	5	16	14
<b>Total</b>	<b>52</b>	<b>11</b>	<b>26</b>	<b>15</b>

3. *How effective have the Commission's reports been in changing the undesirable aspects of the 'mateship culture' in the NSW Police?*

In its final report in 1997, the Royal Commission directly addressed claims that police have a 'distinctive way of interpreting and responding to society' which can include characteristics such as 'an isolated social life coupled with a strong sense of solidarity with other police officers'<sup>1</sup>. This solidarity is what is commonly referred to as 'mateship'. The Royal Commission acknowledged that for officers often working in dangerous and unpredictable conditions, 'mateship' can positively contribute to their sense of security. However, they also found that group loyalty can be associated with 'siege mentality' and 'code of silence' and that these characteristics were often linked to the proliferation and concealment of corruption.<sup>2</sup>

In the period after the Royal Commission, the Commission oversaw the conduct of the Qualitative and Strategic Audit of Reform in NSW Police (QSARP). Cultural change was one dimension assessed within the scope of the audit conducted from 1999-2002. The QSARP reported that changes were occurring in NSW Police within that period away from a command and control culture towards a more consultative model, but saw that a concerted leadership effort would be required to sustain positive commitment to reform in the longer term.

Since the time of the Royal Commission and QSARP, there has been little published material to provide external or independent comment on observed changes in the police culture. In 2001, the Legislative Council's inquiry into the Cabramatta LAC found that new management tools had been applied to an 'unchanged authoritarian command and control culture' leading to a 'demoralised local command'<sup>3</sup>. Such conditions, if representative, would seem unlikely to support a move away from the negative features of mateship and secrecy to a more professional leadership and teamwork approach. Commenting in 2003 on reform in general, Professor David Dixon expressed the view that, while change has occurred in NSW Police, the opportunity opened up by the Royal Commission for fundamental change had slipped away<sup>4</sup>.

There may be further opportunity to understand the impact of reforms on the behaviour of officers when results from a study currently being undertaken by Professor Janet Chan are reported. Professor Chan is conducting a follow-up study with a cohort of police recruits who provided data for an original study in 1995, seeking details of specific cultural shifts.

Concerning the Commission's role, it is our view that it is not the Commission's role to be prescriptive as to the 'best' culture for NSW Police. There is ongoing debate regarding desirable features of organisational cultures in general, and police culture specifically. However, it is properly the prerogative of the Commissioner of Police and the Executive to define what they regard as the most effective culture for NSW Police.

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<sup>1</sup> Final Report of Royal Commission into the NSW Police Service vol I May 1997 p.31

<sup>2</sup> *ibid* p.32

<sup>3</sup> New South Wales *Cabramatta Policing Report*, Parliament of NSW, Sydney, 2001

<sup>4</sup> Dixon, D, Review Essay in *Current Issues in Criminal Justice* vol 15, no 2, Nov 2003

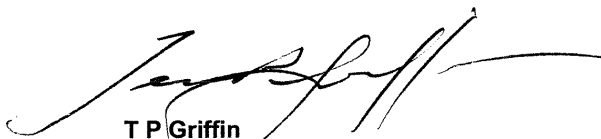
The Commission continues to focus on ways of minimising risk within NSW Police for the development of serious misconduct. Where strong links can be drawn between misconduct and aspects of the organisational culture, we attempt to raise awareness of these and to make recommendations, where appropriate, to influence cultural change.

Recent Commission investigations and public hearings have drawn attention to evidence connecting misconduct to the culture in which it occurs. For example, in our report to Parliament following Operation Florida, the Commission identified failings in supervision as a contributor to the corrupt practices uncovered through investigations. The Commission recommended that NSW Police provide a timetable for evaluation of the effectiveness of the critical supervisory role of Duty Officer. In Operation Florida, the Commission found negative aspects of 'mateship' occurring in a culture where supervision and leadership was weak. The report identified a need for change so that 'police officers at the operational level must take a greater responsibility for ensuring that corrupt officers are exposed'.<sup>5</sup>

To date, the Commission has not independently examined the extent to which these and other recommendations which might influence culture have been implemented. However, in the coming year we have included within our plans a project to do so.

On the last occasion when NSW Police was subject to scrutiny as an overall organisation, the Royal Commission foresaw the possibility that the good features of the prevailing culture could be harnessed to strengthen the opportunity for reform. The Final Report painted a picture of successful reform in which 'solidarity and mutual support which are central to the culture [would] be turned around in support of a goal of integrity and professionalism'.<sup>6</sup> The Commission continues to communicate this expectation to NSW Police, to report on the extent to which it is being realised in the evidence that comes before us and to make recommendations for improved practice.

Yours sincerely



**T P Griffin**  
Commissioner

<sup>5</sup> PIC Report to Parliament on Operation Florida, vol I p.xv

<sup>6</sup> Final Report of Royal Commission into the NSW Police Service vol II May 1997 p.216



## Appendices

Appendix 1: Committee Minutes

Appendix 2: Correspondence tabled at the public hearing 30 November 2004 (previously tabled by Mr Kerr in camera at the Committee hearing on 14 October 2004):

- from Mr John Brogden MP, Leader of the Opposition, to the Police Integrity Commission, dated 28 June 2004
- from Mr Terry Griffin, Commissioner, Police Integrity Commission, in reply, dated 6 July 2004

## **Appendix 1: Committee Minutes**

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Tuesday 30 November 2004 at 2.00pm  
Room 814/815, Parliament House

#### **Members Present**

Mr Lynch (Chair), Mr Breen, Ms Burnswoods (Vice-Chair), Mr Clarke, Mr Corrigan, Ms Hay and Mr Kerr

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

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#### **GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION**

The Chair opened the public hearing at 3.45pm.

Mr Terrence Peter Griffin, Commissioner; Mr Andrew Stewart Nattress, Director, Operations; and Mr Stephen Allan Robson, Commission Solicitor, took the oath. Mr Allan Geoffrey Kearney, Director of Intelligence and Executive Services, affirmed. The Commission's answers to questions on notice were tabled as part of the sworn evidence. The Commission provided an amended version of a research paper on s181D action and critical corruption indicators and requested that the paper remain confidential.

The Chair, followed by other Members of the Committee, questioned the Commissioner and PIC executive officers. The Committee agreed to correspondence between Mr Brogden, Leader of the Opposition, and the Commission, dated 28 June 2004 and 6 July 2004 respectively (previously tabled by Mr Kerr in camera at the Committee hearing on 14 October 2004), being tabled in public session.

Questioning concluded, the Chair thanked the witnesses and the witnesses withdrew. The hearing concluded 5.10pm and the Committee adjourned.

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**Appendix 2: Correspondence Tabled At Hearing 30/11/2004**



Mr T P Griffin  
Commissioner  
Police Integrity Commission  
GPO Box 3880  
SYDNEY NSW 2001

Dear Commissioner

I write in relation to the report on 'Operation Florida' released publicly today.

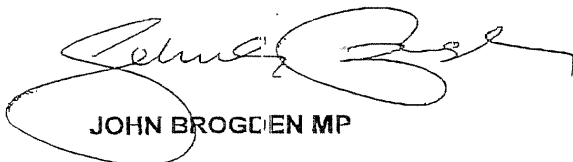
A senior journalist has advised my staff that the Chief of Staff to the Minister for Police received a copy of the report on Friday 25 June 2004.

Given that Section 96 of the *Police Integrity Commission Act 1996* makes it clear, as does your own letter of transmittal, that the report is to the Parliament, I would like you to clarify if the PIC did provide copies of the report to the Government prior to its public release by the Presiding Officers.

If so, who received a copy, and why were copies distributed to the Government given that Sections 96 and 103 of the *Police Integrity Commission Act* required the report to be presented to the Presiding Officers for them to release publicly?

The importance of the work undertaken by the PIC demands, in my view, the strictest adherence to the processes put in place to ensure the independence and impartiality of the Commission.

Yours sincerely



JOHN BROGDEN MP

28 06 04



ABN 22 870 745 340

Our Ref: 11495/99

5 July 2004

The Hon John Brogden MP  
NSW Liberal Leader  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

- 6 JUL 2004

Dear Mr Brogden

I refer to your letter dated 28 June 2004 in which you query whether copies of the Commission's Operation Florida Report were provided to the Government prior to presentation of the Report to Parliament this past Monday.

I confirm that a copy of the Report was provided to the Hon John Watkins and the Director-General of the Ministry for Police prior to its presentation to Parliament, on the understanding that the Report remain strictly confidential until it had been presented to Parliament. No advance copies of the Report were provided to any other member of the Government.

Propos of your concern that the Commission should do nothing to jeopardise its independence and impartiality, I can only agree with those sentiments. I do not take you to be saying that the independence of the Commission in the conduct of the Operation Florida investigation itself is called into question simply because, at the conclusion of the investigation, an embargoed copy of the final Report was furnished to the Minister for Police prior to its presentation to Parliament. Rather, your concern appears to be that the Commission might be seen to have aligned itself politically, by favouring the Government with advance notice of its Report.

With respect, you may well have grounds for concern had that been the case. However, properly considered, provision of the Report to the Minister did not constitute provision of the Report to the Government. Moreover, there is a bright distinction between, on the one hand, the Commission acting in support of the party political agenda of the Government of the day and, on the other, paying due recognition to its place within a ministerial portfolio.

While the Commission is an independent statutory corporation, you will of course be aware that it falls under the responsibilities of the Minister for Police, who in turn is answerable to Parliament for matters within his purview. Although you rightly point out that the *Police Integrity Commission Act 1996* prescribes the process by which Commission Reports are to be released to the public, it contains no express terms which work to preclude the confidential provision of a copy of a Commission Report to the Minister prior to its presentation to Parliament. The Report is not thereby formally presented to the Minister (or the Government) in usurpation of Parliament's role, nor is it publicly released.

LEVEL 3 111 ELIZABETH STREET GPO BOX 3880 SYDNEY NSW 2001 AUSTRALIA  
TELEPHONE (02) 5321 6700 FACSIMILE (02) 9321 6799 FREECALL 1 800 657 079 www.pic.nsw.gov.au

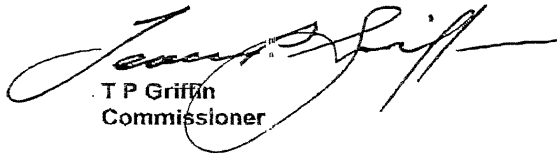


Far from this kind of communication being indicative of impartiality or lack of independence in the exercise of the Commission's functions, in various respects the *Police Integrity Commission Act* acknowledges the Minister's special position vis a vis the Commission and requires the Commission to consult with him. For example, there is a requirement for the Commission to allow the Minister an opportunity to comment upon the contents of a report pursuant to s 100 prior to its submission to Parliament (see s 79(3) of the Act). The Minister must also concur with the deployment of NSW police in the exercise of investigative and other functions under the Act (s 142).

Accordingly, quite apart from the Commission's undoubted operational independence from the Government, or for that matter the Opposition, of the day, the relationship between the Commission and the Minister for Police is by no means an entirely arms length one. This being exhibited by the *Police Integrity Commission Act*, it seems to me to have been reasonable and proper, whether in the light of the concept of ministerial responsibility or otherwise, for the Commission to have paid the Minister the courtesy of advance notice of its Report to Parliament.

I trust the foregoing will serve to satisfy you that no live or perceived issue of lack of independence or impartiality arises from the present circumstances.

Yours sincerely,



T P Griffin  
Commissioner

*I apologise for the delay in responding. I succumbed to a virus for several days.*

*J 5/7/04*