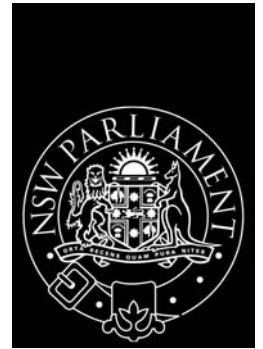


PARLIAMENT OF NEW SOUTH WALES



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

## INTERIM REPORT ON AN INQUIRY INTO SECTION 10(5) OF THE POLICE INTEGRITY COMMISSION ACT 1996

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## Terms of Reference<sup>1</sup>

That, in accordance with its statutory functions under s.95 of the *Police Integrity Commission Act 1996*, the Committee on the Office of the Ombudsman and the Police Integrity Commission has resolved:

- (a) to conduct an inquiry into s.10(5) of the *Police Integrity Commission Act 1996*; and
- (b) to examine the PIC's independence from the NSW Police, with respect to its role as an investigative commission focussed on the detection, investigation and prevention of police corruption and serious misconduct; and
- (c) to inquire into any other matter that the Committee considers relevant to the inquiry; and
- (d) to report to both Houses of Parliament on the inquiry.

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<sup>1</sup> As amended on 5 May 2004





## Chairman's Foreword

Section 10(5) of the *Police Integrity Commission Act 1996* (PIC Act) prohibits the PIC from appointing, employing, engaging or seconding serving and former police officers. This particular statutory provision is what sets the PIC apart from similar oversight bodies responsible for investigating police corruption and serious misconduct. The prohibition establishes the PIC's independence from the agency it oversees, that is, NSW Police.

A proposal to remove the statutory prohibition was made by the PIC during the review of the PIC Act and the report by the Ministry for Police on the outcomes of the review indicated that the proposal was supported by stakeholders. However, the Ministry did not recommend the proposal. Given the significance of this particular provision to the status of the PIC and the conduct of its operations, the Committee was interested to closely examine the arguments put for and against the removal of s.10(5) of the Act.

The result of the Committee's examination is contained within the narrative of this report. The analysis of relevant issues was facilitated by the Commissioner's frankness about his position on the proposal and the implications of the prohibition for the PIC. However, on the basis of what has been put before the Committee, it has recommended the retention of the prohibition within the Act rather than its removal. The present construction of the Act does not prevent the PIC from accessing the assistance of NSW Police investigators, where appropriate. Rather, the prohibition operates so as to prevent serving and former NSW Police from being located within the PIC. The Committee considers this distinction to be a critical one.

The inquiry also highlighted the importance of the Committee's role in overseeing the PIC. In the Committee's opinion the legislative review process has been shown to be inadequate when it comes to reviewing the principal statute governing the operations of the PIC. The functions and powers available to the parliamentary committee enable a comprehensive and detailed examination of issues relating to the PIC, in keeping with the need to balance the PIC's independence and accountability.

In the Committee's view the legislative review process has the potential to undermine the accountability of the PIC to the Parliament, as it does not lend itself to a sufficiently critical analysis of relevant issues and stakeholder opinion. This report recommends the Committee conduct any future reviews of the legislation governing the PIC. It clearly demonstrates the need for decisions concerning the development of the PIC to be fully informed. The Committee's inquiry process permits an open and transparent debate of reform proposals.

As Chairman I would like to thank my Committee colleagues for their role in the inquiry and the witnesses who appeared before the Committee. The Committee appreciates the information provided by NSW Treasury and the evidence given by the Commissioner and senior staff of the PIC.

Paul Lynch MP  
Chairman



## List of Recommendations

### **RECOMMENDATION 1:**

The Committee recommends that:

- (a) any future review of the *Police Integrity Commission Act 1996* be conducted by the Committee not the Ministry for Police or another agency of the Executive;
- (b) proposals for amendments to provisions of the *Police Integrity Commission Act 1996* should be provided to the Committee prior to being sent to Cabinet and introduced into the Parliament, with a requirement that the proposals have the support of the Committee; and
- (c) full consultation with the Committee should continue on the review or amendment of other legislation impacting upon the Police Integrity Commission.

### **RECOMMENDATION 2:**

The Committee recommends that s.10(5) of the *Police Integrity Commission Act 1996* be retained.



## Chapter One - Background

- 1.1 **Royal Commission into the NSW Police Service** – In its *Interim Report*, dated February 1996, the Royal Commission into the NSW Police Service reported on the deficiencies within the police oversight system. One of the limitations examined by the Royal Commission was the employment of ‘home state’ police by the Independent Commission Against Corruption (ICAC) and the Office of the Ombudsman: the agencies responsible at the time for the investigation of police corruption and misconduct respectively.
- 1.2 In the case of the Office of the Ombudsman, the Royal Commission reported that the Office had been heavily reliant on the use of investigators seconded from the Police Service but early fears as to the independence of these officers when investigating colleagues, had not been borne out.<sup>2</sup> In fact, the problems that had emerged related to the detrimental effect that secondment to the Office had upon the careers of the officers when they returned to the Police Service, and the harassment to which they were subjected.<sup>3</sup> In the case of the ICAC, the *Independent Commission Against Corruption Act 1988* specifically provided for the secondment of officers from the NSW Police Service and the ICAC generally used police investigators for terms of up to three years.<sup>4</sup>
- 1.3 The Royal Commission acknowledged that a number of arguments put to it in support of the use of NSW Police investigators by an agency such as ICAC were valid, for example:
- police are best able to improve policing and put their house in order;
  - police who have been seconded to a multidisciplinary external agency are exposed to broader views, ethics and investigative techniques, and are more likely to understand and accept the role of the agency, and communicate that acceptance after they return to their service;
  - knowledge of current investigative techniques, policies, procedures, practices, and reputations and associations are advantages; and
  - non-police investigators may have difficulty interrogating detectives.<sup>5</sup>
- 1.4 However, the Royal Commission concluded that there were substantial difficulties associated with a police corruption investigation agency employing ‘home state’ police because of:
- the negative features of the police culture, with mates protecting mates through leaks and cover-ups;
  - reluctance to embarrass the Service of which the investigator is a member; and
  - concern for subsequent career prospects, particularly if the targeted officer holds senior rank.<sup>6</sup>
- 1.5 The Royal Commission identified the latter factors as being at their most potent in the context of corruption investigations. It considered that the perceived advantages of

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<sup>2</sup> Royal Commission into the New South Wales Police Service, *Interim Report*, February 1996, p.67.

<sup>3</sup> *ibid*, p.65.

<sup>4</sup> *ibid*, p.67.

<sup>5</sup> *ibid*, pp.67-8.

<sup>6</sup> *ibid*, p.68.

Background

using NSW Police could be met by using investigators seconded from other police services, or former members of other police services (as the Royal Commission had done). In conclusion, the Royal Commission expressed the view that the dangers for a corruption investigation body in employing 'home state' police investigators outweighed the advantages<sup>7</sup>.

- 1.6 The Royal Commission recommended that, in order to ensure public confidence in the independence and integrity of the new police corruption investigation body, it should not employ serving or former NSW Police officers. However, if considered necessary, this restriction could be open to review<sup>8</sup>. The views of the Royal Commission were subsequently given effect in the legislation that established the Police Integrity Commission (PIC).

### Relevant Legislation

- 1.7 Section 10(5) of the *Police Integrity Commission Act 1996* (the Act) specifically prohibits the Commission from appointing, employing, engaging or seconding serving or former NSW Police. This provision states:

**s.10(5) Police**

Police officers and former police officers cannot be appointed to, employed or engaged by, or seconded to the service of, the Commission, nor (without limiting the foregoing provisions of this subsection) can arrangements be made under subsection (4) for the use of their services.

- 1.8 In his second reading speech on the draft exposure Bill<sup>9</sup> that proposed establishing the Commission, the then Minister for Police, the Hon. P. Whelan MP, made the following comments on this particular provision:

The Police Corruption Commission Bill explicitly excludes the employment of New South Wales police officers or former officers on the PCC staff. This is to ensure that the PCC is a truly independent external oversight body and is consistent with the royal commission's recommendations. This will not preclude the PCC from being able to second police officers from other jurisdictions. It will also be able to use New South Wales police officers in joint task force arrangements, subject to the concurrence of the Commissioner of Police and Minister for Police. It is intended that this bar on the employment of New South Wales police officers by the PCC should be re-examined in a review of the Act, which is to be conducted within five years.

I expect that this part of the bill will attract some comment. I hasten to point out that the royal commission is happy with the proposal in this form. I must stress that this means that although the option is available, there is no compulsion that New South Wales police be used under the above arrangements. The Government has taken the view that this should be something for the new PCC commissioner, whoever he or she may be, to determine at a future point in time. It may be, however, that this Parliament sees fit to revisit this matter. As I have said, this, like other matters contained in the bill, is open for discussion.<sup>10</sup>

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<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*, p.97.

<sup>9</sup> The title of the new body as proposed in the draft exposure Bill was the Police Corruption Commission. Following consultation this was changed to the Police Integrity Commission.

<sup>10</sup> NSW Parliament, Legislative Assembly Hansard, Police Corruption Commission Bill, Second Reading speech, The Hon. P. Whelan MP, 24 April 1996, pp.443-4.

- 1.9 The Act provides for a number of avenues for the PIC to access police experience other than through the use of serving or former NSW Police, including:
- seconding or engaging officers of the Australian Federal Police, State or Territory police forces, or police forces of other countries as prescribed by regulation - s.10(4)<sup>11</sup>;
  - the use of police officers in task forces involving the PIC, or in investigations conducted for, or on behalf of, or under the direction of the PIC – s.10(6);
  - designating a PIC officer with at least 5 years satisfactory experience with a police force other than NSW Police, as an approved former police officer for the purposes of the Act – s.10(7).

### **Proposed removal of s.10(5) of the PIC Act**

1.10 **Review of the PIC Act** - Proposals supporting the removal of the prohibition contained in s.10(5) of the *Police Integrity Commission Act 1996* were considered during the review of the Act conducted by the Ministry for Police from 2000 until 2002. The Ministry's Discussion Paper on the outcomes of the review examined the submission made by the PIC that s.10 of the Act be amended to enable it to second or employ NSW Police and former NSW Police<sup>12</sup>.

1.11 The PIC submitted to the review that it understood the Government's rationale, and the support by the Royal Commission, for the ban on the recruitment of serving or former NSW Police officers to the PIC, and noted that this methodology appeared to have served the Royal Commission well. However, the PIC claimed that:

This Commission differs from the Royal Commission, however, in that it is not in a position to remunerate staff to the same levels as did the Royal Commission. In particular, it cannot afford to offer rental assistance as a standard component of remuneration packages for investigators drawn from interstate or overseas. In the result, investigative positions at the Commission are, relative to the Royal Commission, less attractive to those residing in jurisdictions where the cost of living is comparably lower than in Sydney<sup>13</sup>.

1.12 The PIC went on to observe that:

. . . while investigators from interstate or overseas jurisdictions have the advantage of being significantly less at risk of having been involved in activities which may come under the Commission's scrutiny, the law, practice and procedure to which these persons are accustomed is often quite different from that which applies to the NSW Police Service. It is acknowledged that this difficulty is not insurmountable, nor is it suggested that for this reason alone, there should be a departure from the practice of utilising police investigators from jurisdictions other than New South Wales. Rather, it is a factor that, in some circumstances, may weigh in favour of the engagement of a current or former NSW police officer, particularly for specialised or discrete tasks.<sup>14</sup>

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<sup>11</sup> The prohibition on serving or former NSW Police still applies in respect of officers who may be appointed, seconded, employed or engaged by the PIC from other police forces.

<sup>12</sup> Ministry for Police, *Report on the Review of the Police Integrity Commission Act 1996, Discussion Paper*, 2002, p.45.

<sup>13</sup> *ibid*, p.47.

<sup>14</sup> *ibid*.

Background

- 1.13 The PIC was sufficiently confident of its security and vetting processes to anticipate that the risk of engaging a corrupt former or serving NSW police officer would be low. Although it acknowledged that there is no guarantee against such a risk eventuating.<sup>15</sup>
- 1.14 Another argument put by the PIC in support of removing s.10(5) of the Act was that the prohibition sent an inappropriate message to police officers whose integrity remains intact but who under the present scheme would be unable, by association, to have the opportunity to compete for a position for which they may have the necessary skills and experience.
- 1.15 The PIC did not envisage appointing, employing or otherwise engaging NSW police officers as a matter of course. Instead the current practice of engaging police officers or former police officers from other jurisdictions would continue. PIC indicated that the perception and actuality of independence resulting from the current recruitment practice has been and continues to be extremely important to the PIC. However, it contemplated that there could be “special or discrete circumstances where the skills and experience of particular NSW Police officers are considered desirable to assist the Commission in the exercise of its functions and the PIC wanted to be in a position to engage such individuals, when necessary.”<sup>16</sup>
- 1.16 The PIC proposed that the existing statutory prohibition at s.10(5) of the *Police Integrity Commission Act 1996* be removed so that in “appropriate circumstances and at its discretion” it could recruit or otherwise engage a current or former NSW police officer if it was satisfied of the officer’s integrity and that their skills and experience would be beneficial to the work of the PIC.<sup>17</sup> It is relevant to note that the Act does not require PIC investigators to have a policing background but as a matter of practice the PIC has employed such persons (with the exception of its financial investigators who generally have an accounting background).
- 1.17 The Ministry for Police referred to comments made by the then Minister for Police the Hon. P. Whelan MP, in the second reading speech on the Police Integrity Commission Amendment Bill 1998, as recognition of the difficulties experienced by the PIC in relying on seconded police from other jurisdictions:
- The engagement of police officers on secondment can cause some difficulties for the commission. When it arranges a secondment from the police force of another State, it is required to meet considerable additional expenses for the period of the secondment. In addition, secondments are generally limited to a two-year period, with the result that there is a significant turnover of investigators. Given that there is inevitably a lead time before a seconded police officer becomes fully operationally effective, this can have a disruptive effect on commission investigations.<sup>18</sup>
- 1.18 The Discussion Paper further indicated that most of the bodies consulted during the legislative review supported the removal of the embargo, including the Inspector of the PIC, the NSW Crime Commission, NSW Police and the ICAC. The NSW Ombudsman noted the issue as appropriately a matter for the PIC.<sup>19</sup>
- 1.19 As a corollary to the proposal to lift the embargo, the Ministry recommended balancing the removal of the employment prohibition with an extension of the PIC

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<sup>15</sup> *ibid*, p.48.

<sup>16</sup> *ibid*.

<sup>17</sup> *ibid*.

<sup>18</sup> *ibid*, p.49.

<sup>19</sup> *ibid*, pp. 49-51.



Inspector's jurisdiction to enable him to exercise the jurisdiction of the PIC in circumstances where conflict of interest issues arise for the PIC in an investigation.<sup>20</sup> For instance, should s.10(5) of the Act be removed, there may be a conflict of interest situation if a NSW police officer seconded to the PIC is responsible for investigating another NSW police officer. In the Ministry's view the extension of the Inspector's jurisdiction might help to reduce the risks associated with the PIC engaging current or former NSW Police.<sup>21</sup>

- 1.20 From the comments in the Discussion Paper it appears that the Ministry also supports considering the removal of the embargo, as the Discussion Paper concludes:

There have clearly been positive changes since the Royal Commission that mean consideration should be given to removing the bar imposed by section 10(5) of the Act.<sup>22</sup>

- 1.21 **Comment** – At this stage, the Committee was uncertain as to the weight to be afforded the arguments put by the PIC as the Discussion Paper does not indicate that they were tested during the review. For instance, it would not appear convincing to argue that PIC has insufficient funds to provide rental assistance for investigative and other positions when the PIC returned an operating surplus in certain financial years since the Ministry's review (see Chapter 3 for further details of the financial issues raised).<sup>23</sup>
- 1.22 The basis for the claim that the uniqueness of policing practice and law in New South Wales is an impediment to the appointment of interstate or overseas police investigators, appears anecdotal and is unclear. Policing principles and techniques would seem to be fairly universal. Also as the PIC acknowledged, its vetting and security procedures do not guarantee against corrupt conduct.
- 1.23 Finally, lifting the employment embargo to enable the PIC to engage NSW Police on an ad hoc basis, rather than as a matter of course, serves as a counter-argument against removing the embargo and would seem unnecessary as the PIC already has the option of seeking temporary assistance from police in other jurisdictions. Although the extent to which the PIC has done so needs to be established.
- 1.24 In fact, measures have been taken since the PIC's establishment to assist the PIC to access police powers while still retaining the s.10(5) embargo. The Ministry for Police cited the second reading speech on the Police Integrity Commission Amendment Bill 1998 as recognition by the Parliament of the difficulties experienced by the PIC in seconding police from other jurisdictions. The Police Integrity Commission Amendment Bill provided for PIC officers with a minimum of five years satisfactory service as a police officer in another jurisdiction, and with appropriate training and experience, to exercise police powers necessary to facilitate the performance of the PIC's functions. The PIC could engage, permanently or by contract, individuals with appropriate qualifications and experience to work as investigators with the required police powers. The then Government envisaged that this would result in significant cost savings for the PIC and improvements to the continuity of its investigative work.
- 1.25 The following extract of the Minister's speech deals with this aspect of the Bill:

The first of these concerns the ability of the commission to engage appropriately qualified persons to undertake investigative and surveillance work. The commission

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<sup>20</sup> *ibid*, p.122-3.

<sup>21</sup> *ibid*, p.50.

<sup>22</sup> *ibid*, pp.49-50.

<sup>23</sup> See Police Integrity Commission Annual Reports for 2000-2001 onwards.

Background

needs to use investigators who have the training and experience received by police officers. In addition, it requires investigators who have the common law and statutory powers of a constable. However, the Police Integrity Commission Act, for obvious reasons, prevents the commission from engaging any current or former officer of the New South Wales Police Service.

To date, the commission has met its need for investigators with police powers by engaging, on secondment, police officers from other jurisdictions. That is, it has seconded police officers from the police force of another State or from the Australian Federal Police. The Act currently provides that a commission investigator who is a seconded police officer may exercise all the functions, powers and responsibilities of a New South Wales police officer. The Act also exempts commission investigators and commission surveillance officers who are seconded police officers from permit requirements under the Firearms Act and the Prohibited Weapons Act - similar to the way in which New South Wales police are exempt.

The engagement of police officers on secondment can cause some difficulties for the commission. When it arranges a secondment from the police force of another State, it is required to meet considerable additional expenses for the period of the secondment. In addition, secondments are generally limited to a two-year period, with the result that there is a significant turnover of investigators. Given that there is inevitably a lead time before a seconded police officer becomes fully operationally effective, this can have a disruptive effect on commission investigations. There is also a loss in corporate knowledge and expertise. **For this reason, the bill extends the category of persons who may be employed as commission investigators with the powers and responsibilities of police.** (emphasis added)

It is, of course, recognised that the powers and responsibilities of a police officer cannot be given to anyone that the commission chooses to employ as an investigator. That is why the bill will extend only slightly the category of persons to whom these powers are available. It will include persons who have previously satisfactorily served as police officers for a minimum of five years with another jurisdiction. Furthermore, the proposed exemption from the permit requirements will be extended only to persons with appropriate training and experience. These provisions will enable the commission to engage on a permanent or contract basis persons with appropriate qualifications and experience to work as investigators with the required police powers. As well as enabling the commission to make significant cost savings, there should be improved continuity in the investigative work of the commission.<sup>24</sup>

- 1.26 The Committee notes that while the then Minister for Police, the Hon. P. Whelan MP, did outline certain difficulties for the PIC with police secondments from interstate, the context in which he did so was for the purpose of improving the options available to the PIC to access police powers, **without removing the employment embargo**. This point is not evident from the Ministry's Discussion Paper.
- 1.27 The Discussion Paper also refers to the argument that sufficient positive change has occurred since the Wood Royal Commission to justify reconsideration of the employment prohibition in s.10(5) of the Act<sup>25</sup>. According to NSW Police, the reality of joint operations and the substantial change in police culture since the Royal Commission obviate the need for this provision. Similarly, the ICAC submitted that the

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<sup>24</sup> NSW Parliament, Legislative Assembly Hansard, Police Integrity Commission Amendment Bill 1998, Second Reading Speech, The Hon. P. Whelan MP, 2 June 1998, pp.5544-5.

<sup>25</sup> Ministry for Police, op cit, p.50.

Operation Florida hearings demonstrate that the basis for the original concerns about employment of NSW Police officers by the PIC, may apply to a lesser extent “given the change in climate and culture that has taken place since [the Wood Royal Commission]”.<sup>26</sup> This begs the question as to how the Operation Florida hearings have demonstrated this conclusion.

- 1.28 In part, such argument seems to suggest that the success of joint operations involving NSW Police and the PIC justifies the removal of the employment prohibition. This proposition appears to be based on the underlying premise that if NSW police officers can work effectively and reliably in joint operations with the PIC, then they should be able to be employed by the PIC, thereby, making the employment embargo unnecessary and undesirable. The premise would seem flawed as it equates the use of police officers working in joint operations but external to the PIC, with directly engaging police who would be located within the PIC. The two situations are completely different.
- 1.29 The implications of this particular argument are significant. Should the PIC employ either former or current NSW police officers it could no longer claim to be completely independent of NSW Police. It is relevant to note that the PIC places particular importance on its ability to operate and be perceived as an independent body:
- . . . The Commission remains open to the possibility of conducting joint investigations in the future, providing its independence is not compromised . . . Decisions as to whether or not to engage in a joint operation will depend upon the merits of each and every matter and whether or not the Commission is satisfied that its independence, or the perception of its independence, would not be compromised.<sup>27</sup>
- 1.30 The Discussion Paper on the review of the PIC Act draws a direct nexus between Operation Florida and the review of the employment prohibition, and recommends that the review should occur “after the Commission’s Operation Florida investigation has been fully assessed”.<sup>28</sup> However, evidence taken by the Committee would suggest that it would be ill conceived to rely on Operation Florida as a benchmark operation for the purpose of reviewing the employment prohibition. Operation Florida is atypical of PIC operations. The Commissioner of the PIC, Mr Terry Griffin, gave evidence during the seventh General Meeting that Florida “is so extraordinary that it is not a very good paradigm for how we do our work”<sup>29</sup> nor is it “a useful benchmark for Commission investigations”<sup>30</sup>. The PIC also informed the Committee that it does not intend to assess Operation Florida, other than for the purpose of the finalisation of the Operation Florida report.<sup>31</sup>
- 1.31 The PIC normally uses its own officers to conduct investigations and occasionally establishes small task forces.<sup>32</sup> In contrast, Operation Florida was of such magnitude that it required the joint efforts and resources of three agencies.<sup>33</sup> Jointly conducted by the PIC, NSW Police and NSW Crime Commission, Operation Florida followed on

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<sup>26</sup> *ibid*, p.49.

<sup>27</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *Report on the Seventh General Meeting with the Police Integrity Commission*, Report No.3, December 2003, pp.25-26.

<sup>28</sup> Ministry for Police, *op. cit.*, p.54.

<sup>29</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *op.cit.*, p.51.

<sup>30</sup> PIC’s answers to Questions on Notice, dated 19 May 2004, Question 6(b), (see Chapter 6).

<sup>31</sup> *ibid*, Question 6(a).

<sup>32</sup> Report on the Seventh General Meeting, *op. cit.*, p. 51.

<sup>33</sup> *ibid*, p.26.

Background

from the joint NSW Police and Crime Commission investigation named Operation Mascot, which uncovered serious and entrenched corruption in the northern beaches area of Sydney in the 1990s.<sup>34</sup> It comprised 418 separate investigations and eight segments.<sup>35</sup> The Commissioner described Operation Florida as a “landmark” investigation involving long-term covert operations to investigate serious forms of police corruption.<sup>36</sup>

- 1.32 Operation Florida raises several issues about the nature of NSW Police participation in joint operations and the extent of shared decision-making by the PIC and its investigative partners. Significantly, it was agreed that the PIC would not actively participate in the operation until the hearings stage<sup>37</sup>, building upon the evidence uncovered by the NSW Police and Crime Commission investigations in Operation Mascot which commenced early in 1999. PIC joined the investigation in July 2000.<sup>38</sup>
- 1.33 The Commissioner of the PIC has given evidence that Operation Florida underscored the value of partnerships between the PIC and other law enforcement agencies, and achieved more through the joint effort than would have been possible by any one of the three partner agencies acting alone.<sup>39</sup> The Committee is supportive of such joint efforts, subject to appropriate oversight. However, although joint operations have obvious resource advantages, the way in which they are planned and conducted may have the potential to undermine the PIC’s independence. Moreover, it does not follow that good security by SCIA officers during Operation Florida demonstrates that a seconded NSW police officer or officers located within the PIC could resist debriefing by a much senior NSW police officer.
- 1.34 **Committee’s position** - It only appears to have been the strong concerns expressed by this Parliamentary Committee and its predecessor, about the potential impact removal of s.10(5) of the Act may have on the security and integrity of the PIC investigations, which swayed the Ministry to recommend a further review of this particular provision. The previous Committee reported to Parliament in June 2002 that “any decision to remove the employment embargo in s.10(5) of the Act would need to be supported by evidence that clearly demonstrates PIC investigations have been significantly impeded by the application of the embargo”. It observed that the current legislative arrangements allow the PIC to work in joint taskforces with NSW Police and the NSW Crime Commission, and provide access to specialist knowledge held by NSW Police officers. The previous Committee concluded that only in the most exceptional

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<sup>34</sup> *ibid*, p.47.

<sup>35</sup> *ibid*, p.52.

<sup>36</sup> *ibid*, p.47.

<sup>37</sup> Answers to the Committee’s Questions on Notice for the Eighth General Meeting with the PIC (QON 6-8) in letter from the Commissioner to the Chairman of the Committee, dated 25 November 2004.

<sup>38</sup> Police Integrity Commission, *Annual Report 2002-2003*, p.21; Public hearings commenced on 8 October 2001 and continued until 29 November 2002. For the 2002-2003 reporting period 28 public hearing days were held, during which 37 witnesses gave evidence, and 15 private hearings were held, in which 11 witnesses gave evidence. The PIC also reported that it made extensive use of its covert and overt investigative resources. The Operation benefited from “roll-overs” and information volunteered following media coverage for the public hearings.

<sup>39</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *Report on the Seventh General Meeting with the Police Integrity Commission*, *op.cit.*, p.47. In June 2000, the Commissioners of the NSW Police, the PIC and the NSW Crime Commission signed a memorandum of understanding to work in a close cooperative arrangement to jointly pursue serious police misconduct. Ministry for Police, *Report on the Review of the Police Integrity Commission Act 1996, Discussion Paper*, 2002 p.55.

circumstances should consideration be given to removing s.10(5) and it had not been persuaded that such circumstances had arisen.<sup>40</sup>

- 1.35 The Ministry reported that despite the support for the PIC's proposal to lift the embargo, the concerns of the Parliamentary Committee could not be lightly dismissed. Therefore, it did not advocate removing the bar at s.10(5) of the Act at the time but recommended that the PIC be afforded the opportunity to have the matter further reviewed by the Minister for Police and the Parliamentary Committee following a full assessment of Operation Florida:

**Recommendation 4** - Section 10(5) of the Act, which bars the Commission from engaging current or former NSW Police, should remain in place. Any further Police Integrity Commission submissions on section 10(5) should be considered by the Minister for Police and Parliamentary Joint Committee on the Office of the Ombudsman and Police Integrity Commission after the Commission's Operation Florida investigation has been fully assessed.<sup>41</sup>

- 1.36 After considering the Ministry's recommendation, the current Committee reported to Parliament in December 2003 that it had resolved to conduct an inquiry into whether prohibiting the PIC from employing former or current NSW Police has utility as an anti-corruption measure. The Committee considered that such an inquiry would be in accordance with its statutory functions but that it would be inappropriate to conduct the review in conjunction with the Minister for Police, as suggested in the Discussion Paper.<sup>42</sup>

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<sup>40</sup> *ibid*, p.12; see also the Committee on the Office of the Ombudsman and the Police Integrity Commission, *Report on the Sixth General Meeting with the Commissioner for the Police Integrity Commission*, June 2002, pp.xii-xv.

<sup>41</sup> Ministry for Police, *op cit.*, pp.50-51, 54.

<sup>42</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *Report on the Seventh General Meeting with the Police Integrity Commission*, *op. cit.*, pp.12-13.



## Chapter Two - The Scope and Conduct of the Committee's Inquiry

- 2.1 The Committee commenced its inquiry into s.10(5) of the *Police Integrity Commission Act 1996* in February 2004, utilising the Ministry's Discussion Paper as the starting point for its examination of relevant issues. Commencing the inquiry at this time meant that the Committee would benefit from any assessment of Operation Florida, which the Commissioner of the PIC anticipated reporting on in the first half of 2004. The Ministry for Police had placed particular significance on Operation Florida, inferring that it would serve as a benchmark operation and, once assessed, would clarify whether it was desirable to remove the employment embargo.<sup>43</sup>
- 2.2 **Terms of reference:** As amended at a deliberative meeting on 5 May 2004, the Committee resolved on the following terms of reference:
- That, in accordance with its statutory functions under s.95 of the *Police Integrity Commission Act 1996*, the Committee on the Office of the Ombudsman and the Police Integrity Commission has resolved:
- (a) to conduct an inquiry into s.10(5) of the *Police Integrity Commission Act 1996*; and
  - (b) to examine the PIC's independence from the NSW Police, with respect to its role as an investigative commission focussed on the detection, investigation and prevention of police corruption and serious misconduct; and
  - (c) to inquire into any other matter that the Committee considers relevant to the inquiry; and
  - (d) to report to both Houses of Parliament on the inquiry.
- 2.3 **Aim:** The purpose of the inquiry is to examine the utility of s.10(5) of the PIC Act and its impact on the PIC's operations, with a view to considering possible initiatives or administrative measures to enhance the PIC's investigative capacity, without the lifting the embargo. This reflects the Committee's initial view that no apparent conflict exists between the capacity of the PIC's operations to benefit from police investigative experience and the prohibition under the Act from recruiting current or former NSW Police. **The necessary distinction appears to be that joint operations or taskforces may involve external assistance to the PIC from NSW police officers, whereas the removal of the employment prohibition would result in current or former NSW Police being located within the PIC.**
- 2.4 **Conduct:** The Committee decided to conduct the inquiry in two phases. The first phase would involve a thorough examination of those issues previously canvassed in submissions to the Ministry's review of the Act, in order to test the arguments put in support of removing the NSW police employment prohibition.
- 2.5 The second phase of the inquiry would attempt to systematically evaluate the effectiveness of the joint task force approach and the specific contribution made by serving NSW Police to joint task force operations.

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<sup>43</sup> Ministry for Police, op. cit., p.51.

- 2.6 **Submissions and evidence:** As the review of the PIC Act by the Ministry for Police formed the logical starting point for the Committee's inquiry, the Committee sought access from the former Minister for Police to the submissions made to the review by:
- the Police Integrity Commission (dated 21/12/01; and an email from Mr Robson of the PIC, dated 5/6/02);
  - the Inspector of the PIC (dated 22/1/02);
  - the NSW Crime Commission (dated 4/3/02);
  - the Independent Commission Against Corruption (dated 28/5/02);
  - NSW Police (dated 28/5/02).
- 2.7 The former Minister advised the Committee, by letter dated 4 June 2004, that it should approach the authors of the submissions direct for their approval. As the first public hearing for the inquiry had taken place by this stage, the Committee resolved instead to invite submissions from the NSW Police Association and the aforementioned stakeholders. A copy of the evidence taken by the Committee thus far was provided to assist each agency in the preparation of any submission they wished to make. The ICAC, NSW Police and the Office of the Ombudsman, replied that they had no submissions to make in addition to those previously put to the Ministry for Police. However, their stated positions on this particular issue differed from the summation presented in the Discussion Paper by the Ministry (discussed in more detail at section 1.4.1).
- 2.8 The Committee conducted two hearings for the initial phase of the inquiry. The first was a public hearing, held on 27 May 2004, in which evidence was taken from the Commissioner and senior staff of the Commission. The second hearing was held in camera on 7 September 2004 and involved taking evidence from two representatives of NSW Treasury: Mr Ian Neale, Executive Director – Resources and Crown, and Mr Phil Blunden, Director – Justice and Emergency Services. Mr Neale and Mr Blunden later gave permission, on the request of the Committee, for the transcript of their evidence to be provided to the PIC for comment.
- 2.9 The final public hearing for this phase of the inquiry was held on 14 October 2004 at which the Commissioner of the PIC and senior PIC staff gave evidence.

## **The First Phase Of The Inquiry**

### **Change in the position of the PIC Commissioner**

- 2.10 On 18 March 2004, the Committee forwarded Questions on Notice to the PIC in preparation for the public hearing scheduled for 27 May. The Commissioner of the PIC, Mr Terry Griffin, wrote to the Committee on 8 April 2004 to advise that he had altered his position on the issue of engaging former NSW Police officers since the proposal was first considered during the review of the PIC Act.
- 2.11 Mr Griffin still maintained that there are distinct advantages in employing trusted, former NSW police officers in operational and advisory roles, arguing that such individuals are 'intimately familiar' with the environment in which the PIC operates and also live locally, thereby, reducing the costs associated with their recruitment and retention. The Commissioner also remained satisfied that former NSW police officers can usefully and properly assist the PIC in an advisory, non-operational capacity. He



recommended that s.10(5) be amended to provide for ad hoc engagements of non-operational consultants, who may be former NSW Police<sup>44</sup>.

- 2.12 However, following detailed discussion with PIC staff, the Commissioner was now satisfied that there are too many impediments for the PIC to employ former NSW police officers in an operational or investigation role: principally because of the potential impact on the public perception of the PIC's independence. The Commissioner advised the Committee of the change in his position in advance of the public hearing in the event that the Committee wished to reconsider its line of questioning.
- 2.13 The Commissioner's advice was candid and represents an important change from the position put by the PIC to the Ministry. Significantly, the Commissioner's later evidence showed that his personal support for the removal of the embargo in s.10(5) of the Act was not a view shared by the staff and other executive officers of the PIC.<sup>45</sup>
- 2.14 Having considered the Commissioner's correspondence, the Committee advised Mr Griffin that it was not of the opinion that the Discussion Paper on the review of the PIC Act provided an adequate examination of the purpose and effect of s.10(5) of the Act. The Committee also indicated that it viewed the change in position referred to by the Commissioner to be significant and a matter requiring examination at a public hearing. A second phase of the inquiry would include an evaluation of the effectiveness of the joint task force approach and the contribution made by serving NSW Police to PIC operations.<sup>46</sup>
- 2.15 **Assessing stakeholder opinion**  
The Discussion Paper produced by the Ministry for Police relies heavily on stakeholder opinion as provided in the submissions to the review and subsequent consultations. According to the Ministry for Police, "the majority of agencies consulted during the review process support the Police Integrity Commission's submission", including the Inspector "who had previously advised the Parliamentary Joint Committee of his support for the ban".<sup>47</sup> A closer examination of the views expressed in the submissions received by the Ministry shows that such a conclusion of general support oversimplifies the positions taken by stakeholders to the review. Moreover, the Discussion Paper does not include a broad survey of client groups.
- 2.16 The Ministry reported that the NSW Crime Commission noted that NSW Police staff worked closely with PIC staff in joint investigations. NSW Police submitted that the position taken by the Crime Commission recognises "the reality of joint operations" and "the substantial change in culture to NSW Police since the Wood Royal Commission". In the view of NSW Police these developments overcame the need for the original provision. The NSW Police Association apparently was of the view that lifting the employment prohibition would remove "the us versus them mentality".<sup>48</sup>
- 2.17 While these views may be interpreted as an indication of general support among law enforcement agencies for the removal of the ban, it is misleading to suggest that the State's other independent statutory bodies fully supported the proposed change. ICAC

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<sup>44</sup> Letter from the Commissioner of the PIC to the Chairman dated 8 April 2004.

<sup>45</sup> Transcript of proceedings, public hearing 27 May 2004, p.2.

<sup>46</sup> Letter from the Chairman to the Commissioner, dated 5 May 2004.

<sup>47</sup> Ministry for Police, op cit., pp. 49 (para. 16) and 51 (para.26).

<sup>48</sup> *ibid*, p.49-50.

noted PIC's submission and acknowledged that s.10(5) prevented PIC from drawing on a valuable source of investigative experience. ICAC considered the Florida hearings to have "demonstrated that the concerns expressed by the Royal Commissioner may now apply with less force given the change in climate and culture that has taken place since". ICAC did not have any objections or concerns with the proposal to remove s.10(5) of the Act. The Ministry also reported that the Ombudsman's Office considered the employment of police or former police was appropriately a matter for the PIC.<sup>49</sup> The ICAC and Ombudsman's Office restated their views in correspondence to the Committee.

2.18 While the submissions of both the Ombudsman's Office and the ICAC may be interpreted as not expressing any objections to the removal of s.10(5) of the Police Integrity Commission Act the Committee does not consider that either of these bodies actively supported the proposed change. The Ombudsman had previously given evidence during the 10<sup>th</sup> General Meeting with the Committee in June 2002, as follows:

**CHAIR:** I understand that the original police submission has probably changed somewhat, partly as a result of a new Commissioner, and that is perhaps something we can go into in more detail in closed session, but I understand one of the proposals that is being adhered to by the new Commissioner and seems to have a degree of support is that the prohibition upon New South Wales police being employed by the PIC be removed, that is the New South Wales police would be able to work for the PIC. I must say when this Committee heard that there was a degree of horror around the table on a cross-partisan basis. I am wondering what the Ombudsman's Office response might be to that?

**Mr BARBOUR:** We were contacted informally about that issue rather than formally and basically we took the view that it really was a matter for PIC and it was something that we should not involve ourselves with.

**CHAIR:** I must say that some of us are quite concerned about that prospect. The argument that was put up was that Operation Florida has established that police internal affairs can investigate police corruption quite effectively and not allow things to leak out; therefore, it follows that police can be used at the PIC to continue to investigate police corruption. There would be a number of people around this table who would argue that in fact what Operation Florida revealed is that there is still an awful degree of police corruption in the police service and that it is a little bizarre to say you can now get police employed by PIC. Do you have a view on those arguments?

**Mr BARBOUR:** Not specifically. My view in relation to employment of former serving officers would simply be that if there were a change to permit that, it would have to be accompanied by very stringent safeguards that went to checking, integrity testing and the backgrounds of those officers of course would need to be very carefully checked and, once employed, would need to be scrutinised on a regular basis. As to the wisdom or otherwise of using them or the requirements for them, I am not really in a position to argue one way or the other because I am not familiar with the details of what PIC is presenting.

**CHAIR:** The problem with the vetting process of course is that presumably that is what ICAC went through when they employed the person who started leaking stuff to Rogerson. I mean even the vetting starts to become a problem then.

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<sup>49</sup> *ibid*, pp.49-50.

**Mr BARBOUR:** I think the sorts of issues that are raised in terms of people who act inappropriately are not restricted to former serving officers of the police and I think it is a problem for any agency, no matter what work they do in this area, to ensure that the integrity of their staff is a paramount consideration, but the sorts of risks you talk about are risks that are generated by potentially any member of staff from wherever they might come.

**CHAIR:** Just so that I understand the Ombudsman's position on the point, it would be unfair to present your position as one of agreeing to the proposition that former serving police officers should be able to be employed by the PIC?

**Mr BARBOUR:** No, I certainly have not agreed with that<sup>50</sup>.

## 2.19 **The views of the PIC Inspector**

The Police Ministry's Discussion Paper notes that the previous PIC Inspector, the Hon M Finlay QC, who had originally supported the prohibition, now supported the PIC's view.<sup>51</sup> However, the Committee's inquiry has found that the view expressed to the Ministry by the former Inspector is not shared by the current Inspector, the Hon. M. Ireland QC. Further, it appears that Mr Finlay also might have changed his view on the issue, since leaving the Inspectorate.

2.20 At the time the Ministry released its Discussion Paper to stakeholders in December 2002, Mr Finlay had been replaced by Mr Ireland as Inspector of the PIC (the latter's appointment commenced on 12 June 2002). As the Ministry did not prepare a final report on the outcome of the review of the Act, there was no update of the Discussion Paper to include the views of Inspector Ireland prior to tabling of the Discussion Paper in September 2004.

2.21 The Committee considers that the opinions of the current and former Inspectors of the PIC on issues as significant as the proposal to remove the employment prohibition at s.10(5) of the Act, should be accurately reported. As the oversight body with immediate access to operational records and current investigations of the PIC, the Inspector of the PIC holds a position that would seem critical to any consideration of this issue.

2.22 In its Sixth General Meeting with the Inspector, Inspector Ireland gave the following evidence:

**Chair:** ...Recommendation 4 of the report (on the review of the Police Integrity Commission Act) concerned submissions for the removal of s.10(5) of the Act, which prohibits the PIC from engaging current or former NSW Police. As you would be aware, this particular provision is the subject of current inquiry by the Committee. At p.49 of the report the Ministry notes that the previous Inspector of the PIC supported the lifting of the ban preventing the PIC from engaging current or former NSW Police. Do you support the removal of s.10(5) of the Act?

**Inspector Ireland:** I do not support the removal of section 10(5), prohibition, which extends to the Inspector as well as to the PIC. My discussions from time to time with my predecessor, the Hon. M D Finlay, QC, caused me to doubt that he continues to hold the

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<sup>50</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Tenth General Meeting with the NSW Ombudsman*, June 2002, pp.40-41.

<sup>51</sup> Ministry for Police, op. cit., p.123.

view previously held by him. The weight of contrary opinion has also persuaded the Commissioner to change the position that he previously contended for.<sup>52</sup>

### 2.23 The Committee subsequently reported:

The Committee examined the Inspector on two proposals concerning the bar against the PIC engaging serving or former NSW police officers, contained in s.10(5) of the PIC Act. This was the first opportunity for the Committee to examine the Inspector on the embargo provision, which the Committee has under consideration in a separate inquiry. The report by the Ministry for Police on the review of the PIC Act noted that the Inspector's predecessor, the Hon M. D. Finlay QC, supported lifting the ban. However, in evidence during the General Meeting, Inspector Ireland stated that he did not support removal of the prohibition at s.10(5) and that on the basis of his discussions with Mr Finlay he doubted that the former Inspector continues to hold the views he previously expressed. Inspector Ireland noted that the Commissioner of the PIC had also changed the position he previously maintained.

The Discussion Paper by the Ministry for Police further proposed that s.92(5) of the PIC Act, which contains a similar prohibition in relation to the Inspectorate, should remain in place. If given effect, the combination of these proposals would be that the PIC would be in a position to engage current or former NSW Police, whereas the Inspector would not. When asked about the proposals Inspector Ireland told the Committee:

I do not support the removal of either section. The removal of section 10(5), while retaining section 92(5), would not have any significant implications for the performance of the Inspector's functions; it would, however, appear to create an unnecessary anomaly.<sup>53</sup>

### 2.24 **Conflict of interest proposal**

The Police Ministry's Discussion Paper further proposed that removal of the employment prohibition at s.10(5) of the Act would be balanced by extending the jurisdiction of the Inspector to enable him to exercise the PIC's jurisdiction in relation to investigations involving conflict of interest issues for the PIC.<sup>54</sup> But the Discussion Paper does not elucidate how such a balance would be achieved. The Committee is mindful that it would be particularly difficult for the Inspector to exercise PIC's jurisdiction in certain circumstances and then, subsequently, attempt to perform his functions as Inspector, independently of the PIC. In the Committee's view this proposition is not practical and has the potential to seriously compromise the independence of the Inspector and his capacity to oversight the PIC.

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<sup>52</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Sixth General Meeting with the Inspector of the Police Integrity Commission*, op. cit., p.32.

<sup>53</sup> *ibid*, p.8.

<sup>54</sup> *ibid*, p.122-3.

## Chapter Three - Issues under examination

3.1 Based on the information available to it, the Committee approached the hearing phase of the inquiry by examining a number of relevant PIC operational and managerial issues, such as current investigative staffing levels, resources, and recruitment and secondment practices. It was anticipated that information from these areas would assist the Committee to determine a number of apparent threshold questions, including:

- How many current or former police officers from other jurisdictions were used by the Wood Royal Commission and on what employment terms?
- How many AFP, Territory or inter-state police officers are engaged by the PIC in accordance with s.10(4) of the PIC Act?
- What are the trends for the number of officers engaged under s.10(4) of the Act since the PIC's establishment (in other words, has PIC's secondment of serving or former interstate or overseas police officers changed significantly over time)?
- How many former police have been designated officers of the PIC in accordance with s.10(7) of the PIC Act?
- On how many occasions has PIC received applications from interstate police officers for advertised investigation positions and what conditions were offered to encourage such applicants?
- Were any of these applicants successful and, if so, did they subsequently take up the position offered? If not, did the reasons stated involve lack of remuneration or relocation costs?
- Does the PIC actively encourage applications from officers with interstate police forces and, if not, why not?
- What is the PIC's policy on secondments and how does it assist secondees e.g. through the payment of relocation costs?
- Has the PIC received any complaints concerning the application of the employment prohibition contained in s.10(5) of the PIC Act?

3.2 This interim report deals predominantly with the administrative and financial arguments put forward by the PIC in its submission to the Police Ministry's review of the PIC Act. The Committee intends to conduct a second phase of the inquiry, relating to the broader issue of the PIC's investigative capacity later in the 2005 Parliamentary session.

### 3.3 **Recruitment difficulties**

One of the main arguments put forward by the PIC during the review of the PIC Act was that, by comparison with the Wood Royal Commission, its investigative positions were not as attractive to applicants from other jurisdictions, particularly as the PIC is not able to remunerate staff to the same levels as the Royal Commission.<sup>55</sup> The Committee sought evidence from the PIC on the comparative recruitment experience of both bodies and was advised that:

The Royal Commission employed 44 serving police officers from other jurisdictions in investigation, technical and surveillance roles. A total of 22 of these officers were seconded from the Australian Federal Police (AFP). It is not possible to determine from the records available to the Commission the proportion of those AFP officers who were

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<sup>55</sup> Ministry for Police, op cit., p.47.

from NSW. Nor is it possible to identify former police officers employed in 'non-police' roles by the Royal Commission (i.e. analysts, researchers etc).

The specific conditions (terms) for the employment of these officers are not available to the Commission. However, it is understood that the AFP agreed to release staff to the Royal Commission on the basis that pay, allowances and other conditions were maintained. These officers were paid directly by the Royal Commission. Some of the non-AFP officers were on "secondment" from their police forces. The Royal Commission was regularly billed by these agencies for salaries/wages. It is understood that allowances (overtime, travelling etc) were paid directly to officers by the Royal Commission.<sup>56</sup>

Release and secondment arrangements were negotiated directly between the Royal Commission Senior Counsel and the respective police commissioners. The records relating to these arrangements are not readily available to the Commission.<sup>57</sup>

- 3.4 On the basis of this response, it was unclear to the Committee as to how the PIC had been in a position to draw conclusions about the recruitment undertaken by the Royal Commission, in the absence of what would appear to be information necessary to enable any comparison with the PIC. The Chairman subsequently questioned the Commissioner of the PIC on this point:

**CHAIR:** . . . Some of the evidence and the correspondence have shown that the Commission's position is that you could not obtain information from records to confirm the conditions or terms of employment for interstate policing employed by the Wood Royal Commission. I think, however, that your submission to the Ministry for Police review of the Police Integrity Commission Act pointed to your inability to remunerate such officers to the same level as the Royal Commission, which suggested that there was, in fact, access to some information about Royal Commission remuneration levels. Can anyone shed any light on that?

**Mr GRIFFIN:** I think perhaps that comes from a view I hold that when Royal Commissions are cranked up, they are politically important, they are publicly important and funds seem to be almost unlimited. They are not, but there is a lot of money thrown at them. They are for a short term, so that you have a two-year or a three-year appointment and people, particularly investigators, enjoy working for them—they pay well, they do not interfere with the rest of their career and so on. It seems to me that there is an atmosphere which is artificial around Royal Commissions, as is the money, and it was with that in mind that I say we cannot compete with that. It is more than just the money, but the money is nevertheless more than the equivalent people would be paid if you were going on for life—whether or not the Commission does, it is certainly for a longer term than a Royal Commission<sup>58</sup>.

- 3.5 The Commissioner gave further evidence of his own experience of remuneration levels in a number of royal commissions with which he was familiar. However, the information was largely anecdotal and the Committee does not consider that the comparisons drawn on this basis to be particularly useful in enabling it to form a conclusive determination as to whether or not the remuneration levels of investigative positions at the PIC deters applicants from investigators located outside of New South Wales.

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<sup>56</sup> The Commission employs investigators on "composite" salaries where an element of the total remuneration package provides compensation for expected overtime. No other overtime allowance is paid, regardless of hours worked.

<sup>57</sup> PIC submission, dated 19 May 2004, Answers to Questions on Notice No. 1, p.1.

<sup>58</sup> Transcript of proceedings of the public hearing on Thursday 14 October, 2004, p.2.

3.6 The PIC does not have a specific policy on secondments. Asked how it actively encourages applications from police officers within other jurisdictions, PIC informed the Committee:

. . . It is the policy of the respective police forces that drives the process. Some police forces will second officers, others will grant leave without pay, and some do neither. In the latter case, it is then a matter for the officer being engaged as to whether they are prepared to resign in order to take up a contract with the Commission.

The PIC has always sought to attract the widest possible field of investigators both interstate and overseas by advertising in national and interstate press, as well as on the internet. The interstate networks of our current staff are also such that word of mouth is a useful tool in attracting appropriate candidates for Investigator positions. That the Commission attracted 36 applications in the latest round of advertising suggests that the positions are attractive at first glance. To make the acceptance of any offer of employment as attractive as possible, the Commission also offers:

- to pay reasonable removalist costs including insurance, both upon acceptance of the position and upon return to their home state at the end of the employment contract;
- to pay the cost of temporary accommodation in Sydney for up to two weeks;
- one-way airfares for the officer and immediate dependent family upon commencement, as well as on termination; alternatively, appropriate kilometre allowance is payable for one car;
- in the case of temporary relocations, payment of a rental allowance and/or living away from home allowance is considered;
- favourable salaries to attract and maintain suitably qualified and experienced staff;

The success or otherwise of an approach relying on secondments is largely out of our hands. We are relying on individuals to be prepared to move to a very expensive city. We are relying on other organisations to have the resources and the will to agree to our requests, or, for officers to be prepared to resign if not.

3.7 In response to a question on notice from the Committee about the trends in the PIC's secondment of serving or former interstate or overseas police officers under s.10(4) of the Act, since its establishment, the Committee was advised that the number of investigator positions had been maintained at around 11. Since 1997 the PIC had engaged a total of 23 serving and former officers from other Australian and overseas police forces. In 1997, a large proportion of the investigators were from the Australian Federal Police and Victorian Police. Four of these officers were previously engaged by the Royal Commission and took up positions with the PIC as the Royal Commission wound down. Many of the investigators engaged in 1997 later returned to their police force at the conclusion of their secondments. However, the majority of the PIC's current investigators resigned from their original positions to become permanent staff of the PIC. By 2004 no particular police force was over-represented among the PIC's investigative staff.<sup>59</sup>

3.8 In fact, the Commissioner gave evidence at a later stage of the inquiry that confirmed the PIC had been able to maintain a strong compliment of investigators despite the embargo at s.10(5) of the Act. In response to questions on notice from the Committee, PIC advised that while there are difficulties in recruiting investigators

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<sup>59</sup> PIC's answers to Questions on Notice, dated 19 May 2004, Question 1(b).

from police agencies other than NSW Police, the Commission “has effectively maintained a satisfactory complement of investigators over the years”.<sup>60</sup>

3.9 The Commissioner later clarified:

**Mr GRIFFIN:** . . . My position, which I am sure the Committee understands or at least can follow, changed, but, nevertheless, there are some things that impact on recruitment. I think the important position from the Commission's point of view is that we have had no problem recruiting investigative staff at the level we need to. We continue to do that at an effective level, although at the moment I think we are an investigator down and we have not been as quick as we could have been in the process of fulfilling the recruitment steps. For that last advertised position, which I think was in July, I think we had 16 or 18 applications, in that order. I would expect that out of that number we will, as we did the last time, recruit good people, who will come and do the work to our satisfaction.

None of that deals with whether or not there may be other people around who, if we had access to New South Wales officers, would come forward, but the main issue is that money, location, type of work, none of those things are actually preventing us from doing the independent and, we think, important work of the Commission effectively. It seems to me that the concentration, or the focus if you like, on money and/or any of the other single pros and cons that I provided last time is almost irrelevant to that overall position.<sup>61</sup>

3.10 Following further questioning from Members of the Committee, Mr Griffin restated that issues such as finding accommodation in Sydney and transferring from interstate have not impacted on the PIC obtaining excellent staff.<sup>62</sup> In correspondence to the Committee, dated 25 November 2004, the Commissioner confirmed that:

. . . three years after its submission to the review of the [PIC] 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.

3.11 **The financial argument**

The first argument put by the PIC in its submission to the Police Ministry to support removing the embargo against engaging current or former NSW police officers was that it is not in a position to remunerate staff to the same levels as the Royal Commission, particularly with respect to offering rental assistance as a standard component of remuneration packages for interstate or overseas investigators. PIC argued that as a result its investigative positions, relative to the Royal Commission, are less attractive to individuals residing in other jurisdictions. The Committee considers this argument to be particularly significant given that it implies that removal of s.10(5) of the Act is warranted to alleviate difficulties experienced by the PIC as a result of insufficient funding to attract investigative staff.

3.12 It occurred to the Committee that the main questions to be put to the PIC in relation to the financial arguments used to support the removal of s.10(5) of the Act were:

- What level of additional funding would be required if the PIC were to provide financial assistance in terms of relocation costs or rental assistance to applicants

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<sup>60</sup> PIC's answers to Questions on Notice, dated 8 October 2004, Question 2.

<sup>61</sup> Transcript of proceedings of the public hearing on Thursday 14 October, 2004, p.1.

<sup>62</sup> *ibid*, 2004, p.4



for investigative positions from other jurisdictions? Can the PIC provide a breakdown of the additional funds needed for this purpose?

- Has the PIC previously sought supplementation for such costs?
- Can the PIC clarify how the argument that it is unable to offer financial assistance to seconded investigators relates to those periods where the PIC has reported a surplus for the financial year?
- Has the PIC considered seeking approval to transfer unspent funds between programs in order to fund financial assistance to seconded investigators?

3.13 In preparation for the commencement of public hearings the Committee sought advice from the Commissioner on the extent of PIC's difficulties in funding investigator positions. The Committee asked about the level of additional funding that would be required if the PIC were to provide financial assistance in terms of relocation costs or rental assistance to applicants for investigative positions from other jurisdictions. PIC advised that the costs to relocate an employee from another jurisdiction can vary between \$7K and \$10K (average \$8,500). Rental and other assistance varies according to factors such as family size, choice of domicile, whether an owned residence is retained in the other jurisdiction and relevant Australian Tax Office rulings. PIC estimated that the average assistance that might be provided is around \$28,500 per year. Based on the PIC's current mix of investigators (3 local / 8 interstate<sup>63</sup>), and assuming that three secondments will conclude each year – this involved a total of almost \$280,000<sup>64</sup>:

Item	Annual Cost \$'000
Relocation <sup>65</sup>	51
Rental and other assistance <sup>66</sup>	228
<b>Total</b>	<b>279</b>

3.14 However, the PIC had not previously sought supplementation for such costs. Budget supplementations, when they have been sought, had been for specific projects or global increases to cover expenses.<sup>67</sup> PIC clarified prior to the second public hearing with the Committee that this information had been provided for the purpose of answering the Committee's questions and that it had not decided that supplementation to the amount of \$280,000 is required for recruiting investigators.<sup>68</sup>

3.15 At face value, the financial argument for lifting the employment embargo seemed less than convincing to the Committee given that the PIC had experienced an operating surplus for certain years since the Ministry commenced its review of the PIC Act in

<sup>63</sup> Subject to satisfactory conclusion of current secondment negotiations and other recruitment action.

<sup>64</sup> PIC's answers to Questions on Notice, dated 19 May 2004, Question 1(d).

<sup>65</sup> 3 to Sydney, 3 to home State, at an average of \$8.5K per relocation.

<sup>66</sup> 8 x average of 28.5K per officer.

<sup>67</sup> PIC's answers to Questions on Notice, dated 19 May 2004, Question 1(e).

<sup>68</sup> PIC's answers to Questions on Notice, dated 8 October 2004, Question 2.

2000.<sup>69</sup> PIC advised that financial assistance to seconded investigators is an ongoing commitment that it is unable to meet.<sup>70</sup> It explained that a surplus in one year does not necessarily flow into the following year and translate into ongoing savings.<sup>71</sup> (PIC has provided an explanation of its financial position for the years since 1996-7 in the Commissioner's letter to the Committee dated 8 June 2004 – Responses to questions taken on notice during the public hearing 27 May 2004.)

- 3.16 In evidence to the Committee on 27 May 2004, the Commissioner indicated that he saw one of the arguments supporting removal of s.10(5) of the Act as being the considerable savings that PIC could make if it did not need to pay for the costs associated with bringing people from interstate, describing this argument as a "straight commercial proposition".<sup>72</sup> PIC indicated that at present it primarily does not pay for accommodation costs for inter-state appointments and it is of the view that this may have a limiting effect on the field of applicants for investigative positions<sup>73</sup>.
- 3.17 In view of this concern, and the existence of the statutory prohibition at s.10(5) of the PIC Act, the Committee asked about the consideration PIC had given to including sufficient funds for accommodation and other costs associated with the recruitment of interstate investigators as part of its annual budget. There would not appear to be any impediment to the PIC budgeting for accommodation costs associated with such recruitment as part of its normal budgeting process, and returning any unspent funds to the Consolidated Fund. The existence of the statutory prohibition at s.10(5) of the PIC Act would seem to give it a good case for doing so.
- 3.18 In order for the Committee to assess whether or not there were any financial matters associated with s.10(5) of the PIC Act, which would warrant further examination of the PIC, it resolved to obtain the advice of NSW Treasury on the current situation with regard to PIC's financial position and the options available if additional funding was necessary. The Committee also obtained information from NSW Treasury on matters of broader financial management, budgetary and corporate planning. As this was an exploratory hearing to determine whether or not there were any financial matters warranting further examination by way of public hearing with the Commissioner of the PIC, the Committee determined that NSW Treasury should provide its evidence *in camera*. The Commissioner's evidence from the public hearing on 27 May 2004, and the PIC's submissions were forwarded to the Secretary of the Treasury in preparation for the *in camera* hearing.
- 3.19 Treasury's evidence, later confirmed by PIC, showed that in the period from the review of the PIC Act until the dated of the *in camera* hearing, the PIC returned the following funds to the Consolidated Fund (i.e. Liability to the Consolidated Fund):
- \$94,000 in 2001-02 (which related to protected items unspent from the 2000-01 appropriation);
  - \$114,000 in 2002-03 (\$104,000 of which related to protected items unspent from the 2001-02 appropriation); and

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<sup>69</sup> Police Integrity Commission, *Annual Report 2002-2003*, p.73.

<sup>70</sup> PIC's answers to Questions on Notice, dated 19 May 2004, Question 1(f).

<sup>71</sup> Letter from the Commissioner of the PIC to the Chairman, dated 8 June 2004, providing answers to matters taken on notice during the public hearing held on 27 May 2004, Question 3.

<sup>72</sup> Transcript of proceedings of the public hearing on 27 May 2004, p.5.

<sup>73</sup> *ibid.*

- \$849,000 in 2003-04 (\$271, 000 of which related to underspending on protected items from the 2002-03 appropriation).<sup>74</sup>

3.20 This means that \$578,000 of the amount returned to the Consolidated Fund by the PIC in 2003-04 relates to unspent recurrent funds from the appropriation for the previous financial year.

3.21 PIC advised that:

. . . \$271k was due to unspent Protected Item of Witness Protection, \$156k was not spent (as budgeted) on Telephone and other related telecommunications expenses and \$401k was underspent (as budgeted) on Other Operating Expenses.

3.22 A number of variables impact on the PIC's level of recurrent expenditure. PIC submitted that:

. . . the Commission's recurrent expenditure is predicated to a large degree on investigative activity. It is relevant to note here that the resources required by Commission investigations vary markedly from case to case depending upon such things as the geographical location of witnesses and persons and locations of interest. No two matters are exactly the same. Accordingly this has a flow on effect with expenses, particularly legal counsel and transcription fees (from Commission hearings) as well as on more direct expenditure on such things as minor equipment, consumables, travel and telecommunications costs. Given the unique nature of each investigation, it is extremely difficult to accurately predict the cost the Commission will incur from year to year in performing this function apart from such things as employee-related costs and out-goings. The result of this is that in some years there may be returns of monies to Treasury, while in others the Commission may need to seek financial supplementation.

. . . The Commission notes that the savings on Witness Protection, referred to above, were due to delays in finalising arrangements with two ex-Royal Commission witnesses. The other factor that contributed to the return in 2003-04 relates principally to the level of cost incurred by Commission investigations in 2002-03. In simple terms, it is the case that the investigations conducted by the Commission in 2002-03 were not of a nature that required as much expenditure as those of previous years.<sup>75</sup>

3.23 In its submission and evidence to the Committee on 27 May 2004, the PIC indicated that it had not sought additional funding to provide for the costs associated with recruiting staff from interstate because it understood that a minimum threshold applied to enhancement bids and that amounts below \$250,000 did not reach the required threshold. As a result the PIC contemplated requesting supplementation for more than one item in order to reach the minimum amount required. However, the Committee understood that there is no threshold applicable to requests for supplementation (i.e. additional funding from the Treasurer's Advance) and that agencies are not permitted to amalgamate separate expenditure programs when seeking supplementation.

3.24 The Committee sought information from NSW Treasury to identify the options and was told that there were a number of avenues open to the PIC to obtain additional recurrent funding, including an increase in retained revenues, its cash reserves,

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<sup>74</sup> Submission from NSW Treasury, tabled on 7 September 2004; Letter from Mr Ian Neale, Executive Director (Resources and Crown), NSW Treasury, dated 21 September 2004; Letter from the Commissioner to the Chairman, dated 8 October 2004.

<sup>75</sup> Letter from the Commissioner to the Chairman dated 8 October 2004

maintenance of effort and enhancements. Treasury gave the following information on applicable thresholds:

- **supplementation**, i.e. requests for additional funds from the Treasurer's Advance. There is no threshold on supplementation requests;
- **cash reserves - exceeding the agency's Controlled Net Cost of Services (CNCS) up to certain limits, without Treasury approval, by drawing on cash reserves.** This can be done provided the use of the cash balances does not place a strain on future service delivery or the financial health of the agency. In 2004-05 the maximum limit for the PIC is \$200,000. The limits that apply are meant to act as constraints on the use of cash reserves rather than a restriction on requests for additional funds (see Treasury Circular 01/2 1);
- **Maintenance of effort**, i.e. proposals for additional funds to meet costs anticipated in future financial years for an agency's core functions where an agency has insufficient funds. The minimum threshold to be reached by the PIC before the Budget Committee of Cabinet would consider such proposals is \$250,000 p.a. per year. It would be expected that the PIC would find anything below this amount e.g. from cash reserves;
- **Enhancements**, i.e. requests for additional funds made in November preceding the next financial year for new programs that a Minister/agency might seek to undertake. Currently, there is no threshold for enhancement proposals. However, prior to the 2004-5 financial year, thresholds did apply to enhancement proposals and the minimum threshold that the PIC had to exceed in 2003-04 in order to make such a proposal was \$129,000.<sup>76</sup>

3.25 In summary, there are a number of processes that the PIC may use to obtain additional funds. The amount of \$280,000, being the amount identified by the PIC associated with the accommodation and other costs of recruiting interstate investigators, meets the minimum threshold for maintenance of effort but would have exceeded the maximum available to it from cash reserves for 2004-05. There is no issue in terms of the PIC's inability to meet a threshold for supplementation re this item as no such threshold applies. As enhancements are for new programs, it may not be appropriate for the PIC to use this avenue to obtain additional funds to cover costs associated with recruitment.

3.26 Treasury also explained that:

Since Parliament's appropriation lapses at the end of a year PIC cannot use or access the surplus funds in any year after the appropriation year. It can request the Treasurer's approval for additional funding equivalent to the surplus funds. PIC would make this request either as a supplementation or maintenance of effort proposal depending on which year the funds were required.

If PIC becomes aware during the course of a year that it will underspend its appropriation it may increase expenditure on priority areas of its core business in that year provided there is no impact in future years. Hence, such commitments would usually be of a non-recurring nature. Agencies would not require Treasury approval for this expenditure.<sup>77</sup>

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<sup>76</sup> NSW Treasury submission tabled 7 September 2004.

<sup>77</sup> *ibid*, p.4.

- 3.27 At this stage, PIC informed the Committee that it considered “a flexible approach” to the issue is merited and that it will retain the option of offering rental assistance where it considered this to be necessary in order to effectively discharge its functions. Should there be financial implications that cannot be accommodated within its budget, PIC indicated that it will seek financial supplementation. The Commissioner did not consider it prudent to quarantine monies for this purpose unless required because it is unable to predict the need for recruitment action.<sup>78</sup> According to the Commissioner, “it would be a serious error to attempt to compartmentalise the budget in that way.”<sup>79</sup>
- 3.28 The Commissioner advised the Committee by way of correspondence, dated 25 November 2004, that:
- 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. This is consistent with earlier Commission evidence that a threshold applied for enhancement bids.
- 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 that cannot be used for any other purpose.
- 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.** (emphasis added).
- 3.29 The Commissioner’s letter makes the valid point that savings returned by the PIC to Treasury during the period since the review of the PIC Act commenced in 2000, largely derive from unspent funds for protected items. As such it was not possible for the PIC to utilise these unspent funds for a purpose other than that for which they were designated. However, the Committee is concerned that the PIC remains of the view that maintenance enhancements of the order of \$250,000 would probably be rejected by Treasury, as this interpretation does not appear to be the case. Although Treasury gave evidence that it expected agencies to exhaust available options, such as cash balances, and to make a case for extra funds before it would recommend additional funding to the Treasurer, there was some flexibility in its approach to maintenance of effort proposals.<sup>80</sup>
- 3.30 In the Committee’s view, the inclusion in the PIC Act of the statutory embargo at s.10(5) provides a reasonable basis on which the PIC can present to Treasury requests for additional funding to enhance investigator entitlements should such a request be necessary. Treasury officials acknowledged that the employment prohibition affecting the PIC would be a case, which could be considered to have some justification, should the PIC make a case for extra funds.<sup>81</sup> Treasury submitted:

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<sup>78</sup> PIC’s answers to Questions on Notice, dated 8 October 2004, Questions 2-3.

<sup>79</sup> Transcript of proceedings of the public hearing on 14 October 2004, p.2.

<sup>80</sup> NSW Treasury evidence 7 September 2004.

<sup>81</sup> *ibid.*

Issues under examination

One reason why there is no supplementation threshold is so that an agency can seek additional funding to perform its core business in instances where it can demonstrate that it cannot do this within all resources available to it.

Also, if during a Budget process, Treasury received several maintenance of effort proposals from an agency, none of which reach the threshold and the agency could demonstrate that its core function could not be sustained, Treasury would be prepared to consider those proposals if, in aggregate, they exceeded the threshold.<sup>82</sup>

3.31 It appears to the Committee that s.10(5) of the PIC Act is a statutory restriction that bears directly on the capacity of the PIC to undertake its core business. The Committee notes that Treasury submitted that its preparedness to consider submissions by the PIC for additional funds would be based on its costs; the ability of the PIC to meet the expenditure from its Budget; any applicable threshold; and whether PIC have reasonably foreshadowed those costs when allocating its Budget.<sup>83</sup> Consequently, the Committee considers that the PIC should approach Treasury for additional funding to enhance investigator entitlements should it be the case that PIC cannot find sufficient resources for this purpose from within its budgetary allocation. The Committee would expect to be advised if the PIC is experiencing such difficulty as well as NSW Treasury's response. However, the Committee notes that there is no impediment to the PIC transferring recurrent funds between items as required, as PIC has acknowledged<sup>84</sup>.

3.32 The Commissioner indicated to the Committee that the PIC was of the view that it has a number of financial alternatives and that it was prepared to pursue these should the need arise.<sup>85</sup>

3.33 **Problems for interstate investigators**

Another argument advanced by the PIC in support of the removal of the embargo at s.10(5) of the Act was that the law, practice and procedure of police forces in other jurisdictions is quite different to that of NSW Police and that, in some circumstances, may weigh in favour of engaging a current or former NSW police officer. The Committee was keen to understand what particular differences in policing practices and procedures between jurisdictions were being contemplated in this argument, as it seemed to the Committee that policing principles and techniques would appear to be fairly universal.

3.34 PIC's response on this issue was that:

At the time it was advanced, this argument was one of a number of arguments offered as supporting removal of the embargo contained in s.10(5). In isolation, it does not provide a particularly solid basis for changing the legislation. As such, it was heavily qualified in the Commission's submission:

*It is acknowledged that this difficulty is not insurmountable, nor is it suggested that for this reason alone, there should be a departure from the practice of utilising police investigators from jurisdictions other than New South Wales. Rather, it is a factor that, in some circumstances, may weigh in favour of the engagement of a current or former NSW police officer, particularly for specialised or discrete tasks."*

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<sup>82</sup> NSW Treasury submission, tabled 7 September 2004.

<sup>83</sup> *ibid.*

<sup>84</sup> PIC's answers to Questions on Notice, dated 19 May 2004, Question 1(g).

<sup>85</sup> Transcript of proceedings of the public hearing on 14 October 2004, p.3.

Clearly, policing principles and broad practices between jurisdictions are similar, however, it is in the detail that variations occur. The argument is that the local investigator will be familiar with the local practice, and, the case law and the reasons why a particular approach might be taken. Variations occur across jurisdictions in the whole range of police practices including those relating to arrest, the conduct of searches and in brief preparation, to mention but a few. For example, it is understood that it is a practice in NSW for police<sup>86</sup> to formally arrest, and potentially charge, a suspect if the suspect is required to remain on premises for purposes connected with a search (of those premises). This practice is based upon local case law and does not appear to be a common practice nationally. It can have significant implications for Police and Commission investigators, including, amongst other things, truncated timeframes for the service of briefs of evidence.<sup>87</sup>

3.35 The Committee is unconvinced as to the relative merit of this argument. It still appears to the Committee that NSW policing practices and policies, on the whole, would not be so dissimilar from that of police forces in other jurisdictions as to severely compromise PIC's capacity to detect and investigate police corruption and serious misconduct in NSW, and warrant the removal of s.10(5) of the PIC Act.

### 3.36 **PIC's independence & the security of investigations**

As discussed at section 1.4.1 of the report, the Commissioner of the PIC advised the Committee prior to the commencement of public hearings that his view on the proposal to remove the employment embargo had changed. The Commissioner confirmed later in the inquiry that his view had not been one shared by the staff of the PIC. He told the Committee:

**Mr GRIFFIN:** . . . The view of the Commission, excluding myself, was strong and almost unanimous, at the senior levels particularly, that the engagement of former NSW Police officers in operational areas was not advisable. We talked among ourselves at the senior executive level—most of those people are here—for a considerable time, and with some feeling about the pros and cons or the merits of either side. In the end, I was convinced that I was wrong in some of the views I held, primarily my view about public perception. I did not know how to deal with that given that the common view, the view of the Inspector of the Police Integrity Commission and the view of this Committee were all contrary to my view—that is, that common sense should prevail and that we could deal with the situation. It was finally put to me that complainants ring the PIC from time to time and ask whether any former NSW Police officers are employed and are comforted when they know that there are not. I do not know how to deal that. I think it is a perception and it is a pity. However, if it is true, we cannot do our business if that is what the public think. On that basis primarily, the admission that we can never vet perfectly and that if we had someone who was corrupt in our employ it would be bad for business I agreed that the risk was not worth taking. That is how I came to the personal view that I was wrong. Therefore, I thought we should contact the Committee and everyone else who had heard my previously held view.

**CHAIR:** Your position is that it is perception and there is a remote chance that the vetting will not work.

**Mr GRIFFIN:** Yes. It is primarily perception. The remote chance is a danger we face regardless of the source of our officers. . . .<sup>88</sup>

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<sup>86</sup> Now also Commission investigators and possibly investigators in other NSW agencies.

<sup>87</sup> PIC's answers to Questions on Notice, dated 19 May 2004, Question 2.

<sup>88</sup> Transcript of evidence, Public Hearing on 27 May 2004, p.2.

Issues under examination

3.37 According to the PIC, the number of former NSW Police it originally expected to engage would be quite small and no changes would be made to the direct supervision of investigations by the Operations Advisory Group. The PIC had not contemplated making “wholesale changes to its investigator profile” and it would continue to seek police from other jurisdictions for operational roles. Consequently, PIC was of the view that its independence would not actually be compromised even if this was the public perception. For the PIC,

It is the argument of public perception, together with the low, but unacceptable, risk to security, which led to the Commission altering its position on the question of engaging former NSW police officers in operational roles.<sup>89</sup>

3.38 However, it is the view of the Committee that the potential risk to the PIC from employing local police officers is more than a matter of public perception. The Committee continues to hold the view that engaging a corrupt NSW police officer has greater potential to compromise a PIC investigation than a corrupt interstate officer, in the sense that the latter’s networks may not be as strong locally and that there is greater scope for a former or current NSW police officer to be faced with potential conflicts of interest during a PIC operation. The Commissioner confirmed as much in the rest of his evidence:

**Mr GRIFFIN:** . . . It would be more dangerous to our work if we had a corrupted NSW Police officer than it would be if we had a corrupt Western Australian police officer because the network would be bigger. They are the issues that changed my view. Leaving aside my view, the Commission's view was almost unanimous and coincided with the Committee's view and the strongly held view of the Inspector.<sup>90</sup>

3.39 And again:

**Mr GRIFFIN:** The principal con—again, the one that has the most effect in the debate—is that the difficulty of having a corrupt New South Wales Police officer on our staff is so great, and the damage that they could do would be so great, that you cannot take the risk. That is the principal con. It is the other side of the pro—that they have knowledge of the systems and the individuals and where to go to get things done. If they are corrupt and they have that knowledge, it seems it works much more effectively against us than for us.<sup>91</sup>

3.40 Although the PIC considered that its security and vetting processes were comprehensive, and the risk of engaging a corrupt former or serving NSW police officer was low, the risk is “too great a risk for the Commission to accept”.<sup>92</sup> But PIC drew a distinction between an operational role and an ad hoc advisory role for NSW police officers arguing that, while it did not wish to engage former NSW police officers in an operational role:

. . . the Commission is satisfied that its independence and effectiveness cannot be undermined by the *ad hoc* engagement of former NSW police officers in non-operational roles given the security measures contemplated in response to Question 3. Without access to operational information, and segregated from investigations and possibly also investigations staff, such an officer would present less risk to Commission investigations than would a serving officer participating on a joint investigation who has some access to both.

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<sup>89</sup> PIC’s answers to Questions on Notice, dated 19 May 2004, Question 4(c).

<sup>90</sup> Transcript of evidence, Public Hearing on 27 May 2004, p.2.

<sup>91</sup> *ibid*, p.5.

<sup>92</sup> PIC’s answers to Questions on Notice, dated 19 May 2004, Question 3.



The Commission is satisfied that former NSW police can be engaged to assist with research and present no risk to the security of the Commission. With adequate transparency and accountability in the engagement process, the Commission is also satisfied that the risk to the public perception of the Commission's independence is minimal.<sup>93</sup>

- 3.41 PIC cited the Hong Kong ICAC as a model for this arrangement and indicated that the projects it envisaged as suitable for obtaining specialist advice would concern areas such as police education and police recruitment.<sup>94</sup> Secondment of NSW Police with policy experience was seen by the Commissioner to carry less of a risk as such investigators would not possess "the network of investigators that might do [the PIC] harm".<sup>95</sup> It was proposed that individuals used in this capacity would be completely isolated from the rest of the work undertaken by the PIC: they would not have access to PIC's systems and its investigation staff, and would be completely segregated.<sup>96</sup>
- 3.42 Having considered PIC's revised proposition, the Committee is of the view that drawing a distinction between operational and non-operational aspects of the PIC's activities, in terms of the engagement of current or former NSW police officers, is somewhat artificial and largely irrelevant to the issue under consideration. The PIC's proposal for an ad hoc advisory role for NSW police officers on non-operational matters does not change the main argument against the removal of s.10(5) of the Act: namely, that if the PIC were to directly engage current or former NSW Police in any capacity it could no longer claim to be independent of the agency it oversees. The Committee considers that the value of such independence, both perceived and actual, to the PIC is critical and it does not support any measure that would have the capacity to undermine PIC's independence and compromise its investigative integrity.

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<sup>93</sup> Ibid, Question 5(c).

<sup>94</sup> Ibid.

<sup>95</sup> Transcript of proceedings of the public hearing on 27 May 2004, p.9.

<sup>96</sup> Ibid, p.11.



## Chapter Four - Conclusions and Recommendations

- 4.1 Having considered the merits of the financial and other arguments put in support of removing the employment embargo found at s.10(5) of the PIC Act, the Committee has concluded that there is no evidence that the PIC was unable to recruit sufficient investigators or that s.10(5) has compromised the PIC's investigative capacity. Even if the PIC considered that it had experienced recruitment difficulties at the time it made its submission to the review of the PIC Act, this was not borne out in the evidence to the Committee. In fact, the PIC clearly stated to the Committee that it has always managed to maintain a full complement of investigative positions, despite the constraints presented by s.10(5) of the Act.
- 4.2 In the event that the PIC ever does face a considerable problem in trying to recruit sufficient investigators, requiring the provision of additional funds or resources, evidence from Treasury indicates that there are a number of avenues open to the PIC to obtain such funds and the PIC has confirmed that it would be prepared to pursue these options, if necessary. The Committee considers all such measures should be utilised before any decision is taken to recommend removal of s.10(5), especially if the main arguments being put in support of such an amendment are administrative and financial.
- 4.3 The present Committee has not received any further information, or taken any evidence, that would indicate a need to reassess the view of the previous Committee that:

The Committee considers that the current staffing arrangements are satisfactory and allow the PIC the advantage of accessing NSW police officers for various investigations without the inherent risks involved in seconding or employing former or serving police officers. In the view of the Committee any decision to remove the employment embargo in s.10(5) of the Act would need to be supported by evidence that clearly demonstrates PIC investigations have been significantly impeded by the application of the embargo.

The Committee is of the view that in only the most exceptional circumstances should consideration be given to lifting the employment prohibition contained in s.10, and it has not been persuaded that these circumstances have arisen<sup>97</sup>.

- 4.4 As the previous Committee observed:

Another argument against lifting the employment prohibition is that PIC investigations already benefit from NSW police who know the corrupt practices of other NSW police. Such information can be accessed through NSW police as members of joint task forces, and through "police roll-overs", such as M5. Also, the current system for investigating police misconduct already provides for NSW Police to investigate NSW Police: this is a role performed by Special Crime and Internal Affairs (SCIA). These methods provide an investigative mechanism for accessing insider knowledge about corrupt NSW police officers without creating unnecessary risks with the potential to compromise the PIC's independence from NSW police and result in internal security risks.<sup>98</sup>

- 4.5 Based on its own inquiry the Committee has formed the opinion that the Discussion Paper on the review of the PIC Act did not provide a full exposition of the arguments for and against the proposal to remove s.10(5) of the Act. The Committee is

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<sup>97</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Sixth General Meeting with the Commissioner for the Police Integrity Commission*, June 2002, p.xv.

<sup>98</sup> *ibid.*

particularly concerned from the evidence supplied to it by the PIC that the Commissioner's support for removal of the employment embargo did not represent the shared perspective of the organisation. The position put to the Ministry for Police during the review of the PIC Act was that held by the Commissioner not the PIC. Another point of concern is that the current Inspector does not support the removal of s.10(5) of the PIC Act and the Committee considers that the lack of support for the amendment on the part of the Inspector should be given particular weight when assessing the merits of the proposal.

- 4.6 The Committee also considers that the main source of support for the proposed amendment among the stakeholders to the review largely came from law enforcement agencies, that is, NSW Police, the NSW Crime Commission and the NSW Police Association. It is relevant to note that the NSW Crime Commission does not have a prohibition on engaging NSW Police and relies heavily on seconded NSW police officers. Neither the ICAC nor the Ombudsman advocated for the proposed change. The position taken by these two independent statutory bodies is significant and appears to be an appropriate position as the matter is one for the PIC and would only seem to concern the Ombudsman or the ICAC to the extent that it has the potential to impact on the exercise of their respective functions.
- 4.7 Any future evaluation of proposals to amend s.10(5) of the PIC Act would benefit from a broader debate, in which the views of a wider range of stakeholders are sought, including Members of Parliament from all political parties. The Committee is one mechanism by which a bipartisan view can be obtained. But on this particular occasion the Discussion Paper on the review of the PIC Act, which was required by statute to be tabled in each House of Parliament on or before 21 June 2002, was not tabled in the Parliament until 21 September 2004: five days after the introduction of the PIC Amendment Bill on 16 September 2004. The Committee also is of the view that some attempt also should be made to survey public opinion on the proposal, either through surveys of individual complainants or relevant interest groups, such as the NSW Council for Civil Liberties.
- 4.8 The outcome of the Ministry's review of the PIC Act has demonstrated to the Committee that the legislation governing the PIC and its operations should only be amended after the arguments for any proposed changes have been thoroughly tested through an examination process supportive of the PIC's independent status and its accountability to the Parliament. The Committee considers that the review of the PIC Act shows that it is inappropriate to apply the Executive's legislative review process to the PIC. In the Committee's opinion, legislative review clearly is not sufficiently transparent, open and critical to safeguard the independence and accountability framework that Parliament established in passing PIC's enabling legislation. Rather, it is preferable for any future reviews of the PIC Act to be conducted by the Committee because of its oversight function and the inquiry powers available to it. Any single amendments or package of amendments to the PIC Act, not arising from a review of the entire Act, also should require the Committee's support. Full consultation with the Committee should continue on the review or amendment of other legislation impacting upon the PIC.

**Recommendation 1:**

**The Committee recommends that:**

- (a) any future review of the *Police Integrity Commission Act 1996* be conducted by the Committee not the Ministry for Police or another agency of the Executive;**
- (b) proposals for amendments to provisions of the *Police Integrity Commission Act 1996* should be provided to the Committee prior to being sent to Cabinet and introduced into the Parliament, with a requirement that the proposals have the support of the Committee; and**
- (c) full consultation with the Committee should continue on the review or amendment of other legislation impacting upon the Police Integrity Commission.**

**Recommendation 2:**

**The Committee recommends that s.10(5) of the *Police Integrity Commission Act 1996* be retained.**



## Chapter Five - Questions on Notice 27/05/04

### Questions on Notice for the public hearing with the Police Integrity Commission held on 27 May 2004

1. The Discussion Paper<sup>99</sup> on the review of the *Police Integrity Commission Act* notes that the PIC acknowledged the rationale for the ban on the recruitment of serving or former NSW police officers by the PIC. However, the PIC submitted that while this methodology served the Royal Commission well there were a number of arguments to be advanced in favour of lifting the prohibition. The first of these arguments is that the PIC differs from the Royal Commission into the NSW Police (Wood Royal Commission) in that the PIC “is not in a position to remunerate staff to the same levels as did the Royal Commission”. In particular, the PIC cannot afford to offer rental assistance as a standard component of remuneration packages for investigators drawn from interstate or overseas, resulting in investigative positions with the PIC being less attractive to potential applicants in other jurisdictions<sup>100</sup>. In view of this argument:
  - (a) How many current or former police officers from other jurisdictions were used by the Wood Royal Commission and on what employment terms?
  - (b) What are the trends for the number of officers engaged under s.10(4) of the Act since the PIC's establishment (i.e. Has PIC's secondment of serving or former interstate or overseas police officers changed significantly over time)?
  - (c) What is the PIC's policy on secondments and how does the PIC actively encourage applications from police officers within other jurisdictions?
  - (d) What level of additional funding would be required if the PIC were to provide financial assistance in terms of relocation costs or rental assistance to applicants for investigative positions from other jurisdictions? Can the PIC provide a breakdown of the additional funds needed for this purpose?
  - (e) Has the PIC previously sought supplementation for such costs?
  - (f) Can the PIC clarify how the argument that it is unable to offer financial assistance to seconded investigators relates to those periods where the PIC has reported a surplus for the financial year?
  - (g) Has the PIC considered seeking approval to transfer unspent funds between programs in order to fund financial assistance to seconded investigators?
  
2. Another argument advanced in support of the removal of the embargo in s.10(5) of the Act is that the law, practice and procedure of police forces in other jurisdictions is quite different to that of NSW Police and that, in some circumstances, this may weigh in favour of engaging a current or former NSW police officer. Policing principles and techniques would appear to be fairly universal. What particular differences in policing practices and procedures between jurisdictions were being contemplated in this argument?

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<sup>99</sup> Ministry for Police, *Report on the Review of the Police Integrity Commission Act 1996 – Discussion Paper* (December 2002).

<sup>100</sup> *ibid*, p.47.

3. The PIC's submission states that it is confident that its security and vetting processes minimises the risk of engaging a corrupt former or serving NSW police officer, although it acknowledges that these procedures are no guarantee against such a situation occurring. Given that the nature of corrupt conduct is opportunistic, how will the PIC's vetting procedures guard against the influence of the close networks and associations that have been shown to exist within the New South Wales policing community?
  
4. In a previous submission to the Committee, the PIC stated that:

. . . The Commission remains open to the possibility of conducting joint investigations in the future, providing its independence is not compromised . . . Decisions as to whether or not to engage in a joint operation will depend upon the merits of each and every matter and whether or not the Commission is satisfied that its independence, or the perception of its independence, would not be compromised.<sup>101</sup>

  - (a) Is the PIC still of this view?
  - (b) To what extent do you consider that the difficulties that arose in previous joint operations with the NSW Police and Crime Commission, in relation to the release of material not admitted into proceedings and the scope of a listening device warrant, have impacted on the PIC's perceived independence?
  - (c) Does the PIC consider that the proposal to recruit current or former NSW police officers, and locate such officers within the PIC, carries greater potential to compromise the PIC's independence than is the case in relation to participation in joint investigations?
  
5. The submission made by the PIC to the Police Ministry's review of the *Police Integrity Commission Act* states that "the practice of engaging police officers or former police officers from other jurisdictions will, by and large, continue" and that "the perception and actuality of independence that has flowed from this recruitment practice" is "extremely important" to the Commission. However, the PIC contemplates that there may be "special or discrete circumstances where the skills and experience of particular NSW police officers are considered desirable to assist the Commission in the exercise of its functions".
  - (a) Does the PIC currently seek temporary assistance from police in other jurisdictions and, if so, how frequently does this occur and on what basis?
  - (b) The proposal by the PIC to lift the employment embargo to enable it to engage NSW Police on an ad hoc basis, in effect, seems to serve as a counter-argument against removing s.10(5), particularly given the provisions within the Act which enable PIC to participate in joint investigations. In what way does lifting the embargo to engage NSW police officers on an ad hoc basis differ from the PIC's present capacity to make appropriate temporary arrangements with police?
  - (c) Does the PIC hold the view that the benefits to be gained by engaging current or former NSW Police officers outweigh the risks involved and the potential for such arrangements to undermine the PIC's independence and effectiveness?

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<sup>101</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *Report on the Seventh General Meeting with the Police Integrity Commission*, Report No.3, December 2003, pp.25-26.



6. The Discussion Paper recommended that s.10(5) of the Act should be reconsidered after Operation Florida “has been fully assessed”. However, it provides no elucidation on the nature and purpose of the assessment, nor does it identify the body that would be responsible for the assessment.
- (a) Does the PIC have any intention to “assess” Operation Florida and, if so, how?
  - (b) Given that the Commissioner of the PIC has indicated that Operation Florida “is so extraordinary that it is not a very good paradigm for how we do our work”<sup>102</sup>, would it be appropriate to use Operation Florida as a benchmark for the PIC’s operations?

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<sup>102</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *Report on the Seventh General Meeting with the Police Integrity Commission*, op.cit,p.51.



## Chapter Six - Answers to Questions on Notice

TABLED AT THE HEARING ON 27 MAY

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ABN 22 870 745 340

Our Ref: 12402/18

19 May 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

### **INQUIRIES INTO S.10(5) OF THE POLICE INTEGRITY COMMISSION ACT 1996 AND THE OVERSIGHT OF THE PSG**

I refer to your letter of 18 March 2004 concerning the Committee's inquiry into s.10(5) of the *Police Integrity Commission Act 1996* and the Commission's jurisdiction to oversight the NSW Protective Security Group.

I refer also to my letter of 8 April 2004 in which I advised the following:

*"..... I wish to advise that I have altered my position since the question of engaging former NSW police officers was first considered in the Commission's submission to the Police Minister's Review of the Objectives of the Police Integrity Commission Act 1996 nearly 2 ½ years ago.*

*I maintain my position that there are some distinct advantages in employing trusted, former NSW police officers in operational and advisory roles, both in terms of operational effectiveness and in a financial sense. Former NSW police are intimately familiar with the environment in which the Commission operates and many live locally significantly reducing the cost of recruitment and retention.*

*I remain satisfied that former NSW police can usefully and properly assist the Commission in an advisory, non-operational capacity. To that end, I would like to see s.10(5) amended to provide for ad hoc engagements of non-operational consultants who may be former NSW Police. However, following further consideration and detailed discussions with Commission staff and others, I am also*

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*satisfied that there too many impediments for the Commission to employ former NSW officers in an operational or investigation role. Principal amongst these is the potential for impact on the public's perception of the independence of the Commission.*

It is against this background that the Commission's responses to the Questions on Notice, which are attached, have been prepared. I am happy to elaborate on these responses as necessary at the proposed hearing on 27 May 2004.

Please contact me should I be able to assist further.

Yours sincerely



**T P Griffin**  
**Commissioner**

## **Inquiry into s.10(5) of the Police Integrity Commission Act 1996**

### **Responses to Questions on Notice**

1. *The Discussion Paper*<sup>103</sup> on the review of the *Police Integrity Commission Act 1996* (the 'Act') notes that the PIC acknowledged the rationale for the ban on the recruitment of serving or former NSW police officers by the PIC. However, the PIC submitted that while this methodology served the Royal Commission well there were a number of arguments to be advanced in favour of lifting the prohibition. The first of these arguments is that the PIC differs from the Royal Commission into the NSW Police (Wood Royal Commission) in that the PIC "is not in a position to remunerate staff to the same levels as did the Royal Commission". In particular, the PIC cannot afford to offer rental assistance as a standard component of remuneration packages for investigators drawn from interstate or overseas, resulting in investigative positions with the PIC being less attractive to potential applicants in other jurisdictions<sup>104</sup>. In view of this argument:

- (a) *How many current or former police officers from other jurisdictions were used by the Wood Royal Commission and on what employment terms?*

The Royal Commission employed 44 serving police officers from other jurisdictions in investigation, technical and surveillance roles. A total of 22 of these officers were seconded from the Australian Federal Police (AFP). It is not possible to determine from the records available to the Commission the proportion of those AFP officers who were from NSW. Nor is it possible to identify former police officers employed in 'non-police' roles by the Royal Commission (ie. analysts, researchers etc).

The specific conditions (terms) for the employment of these officers are not available to the Commission. However, it is understood that the AFP agreed to release staff to the Royal Commission on the basis that pay, allowances and other conditions were maintained. These officers were paid directly by the Royal Commission. Some of the non-AFP officers were on "secondment" from their police forces. The Royal Commission was regularly billed by these agencies for salaries/wages. It is understood that allowances (overtime, travelling etc) were paid directly to officers by the Royal Commission.<sup>105</sup>

Release and secondment arrangements were negotiated directly between the Royal Commission Senior Counsel and the respective police commissioners. The records relating to these arrangements are not readily available to the Commission.

- (b) *What are the trends for the number of officers engaged under s.10(4) of the Act since the PIC's establishment (i.e. Has PIC's secondment of serving or former interstate or overseas police officers changed significantly over time)?*

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<sup>103</sup> Ministry for Police, *Report on the Review of the Police Integrity Commission Act 1996 – Discussion Paper* (December 2002).

<sup>104</sup> *ibid*, p.47.

<sup>105</sup> The Commission employs investigators on "composite" salaries where an element of the total remuneration package provides compensation for expected overtime. No other overtime allowance is paid, regardless of hours worked.

The number of investigator positions in the Commission's establishment has been maintained at around 11. There have been a total of 23<sup>106</sup> serving and former officers from other Australian and overseas police forces engaged by the Commission to fill these positions since April 1997. In 1997, a large proportion of the investigators came from two agencies, the AFP (5) and VICPol (3). The remainder were from WAPol, TASPOL and SAPol. Four of these investigators had previously been engaged by the Royal Commission and were offered positions at the Commission as the Royal Commission wound down. The situation is quite different in 2004, where no police force is over-represented in Commission investigator numbers. Current numbers are as follows:

<b>Police Force</b>	<b>Number</b>
AFP	1 (former officer)
VICPol	1 (former officer)
TASPOL	2 (former officers)
SAPol	2 (former officers)
QPol	1 (serving officer)
International	1 (former officer)
Vacant <sup>107</sup>	3

Another key difference is that many<sup>108</sup> of the investigators engaged in 1997 later returned to their police force at the end of their secondments. The majority of the Commission's current investigators have resigned to take up permanent positions with the Commission.

*(c) What is the PIC's policy on secondments and how does the PIC actively encourage applications from police officers within other jurisdictions?*

The PIC does not have a specific policy on secondments. It is the policy of the respective police forces that drives the process. Some police forces will second officers, others will grant leave without pay, and some do neither. In the latter case, it is then a matter for the officer being engaged as to whether they are prepared to resign in order to take up a contract with the Commission.

The PIC has always sought to attract the widest possible field of investigators both interstate and overseas by advertising in national and interstate press, as well as on the internet. The interstate networks of our current staff are also such that word of mouth is a useful tool in attracting appropriate candidates for Investigator positions. That the Commission attracted 36 applications in the latest round of advertising suggests that the positions are attractive at

<sup>106</sup> Not including current or former police involved in technical or surveillance roles.

<sup>107</sup> Recruitment action is almost finalised in regard to these three vacancies.

<sup>108</sup> Seven out of the 11 original investigators returned at the conclusion of their secondments. One retired and another resigned while with the Commission. A further two remain in permanent positions with the Commission, one as an investigator and the other in a non-operational position.

first glance. To make the acceptance of any offer of employment as attractive as possible, the Commission also offers:

- to pay reasonable removalist costs including insurance, both upon acceptance of the position and upon return to their home state at the end of the employment contract;
- to pay the cost of temporary accommodation in Sydney for up to two weeks;
- one-way airfares for the officer and immediate dependent family upon commencement, as well as on termination; alternatively, appropriate kilometre allowance is payable for one car;
- in the case of temporary relocations, payment of a rental allowance and/or living away from home allowance is considered;
- favourable salaries to attract and maintain suitably qualified and experienced staff;

The success or otherwise of an approach relying on secondments is largely out of our hands. We are relying on individuals to be prepared to move to a very expensive city. We are relying on other organisations to have the resources and the will to agree to our requests, or, for officers to be prepared to resign if not.

*(d) What level of additional funding would be required if the PIC were to provide financial assistance in terms of relocation costs or rental assistance to applicants for investigative positions from other jurisdictions? Can the PIC provide a breakdown of the additional funds needed for this purpose?*

Costs to relocate an employee from another jurisdiction can vary between \$7K and \$10K (average \$8,500).

Rental and other assistance can likewise vary, being influenced as it is by such factors as family size, choice of domicile, whether an owned residence is retained in the other jurisdiction and relevant Australian Tax Office rulings. The average assistance that might be provided is estimated to be around \$28,500 per year.

The following additional funds are based on the Commission's current mix of investigators (3 local / 8 interstate<sup>109</sup>) and assume that three secondments will conclude each year:

<b>Item</b>	<b>Annual Cost \$'000</b>
Relocation <sup>110</sup>	51
Rental and other assistance <sup>111</sup>	228
<b>Total</b>	<b>279</b>

<sup>109</sup> Subject to satisfactory conclusion of current secondment negotiations and other recruitment action.

<sup>110</sup> 3 to Sydney, 3 to home State, at an average of \$8.5K per relocation.

<sup>111</sup> 8 x average of 28.5K per officer.

(e) *Has the PIC previously sought supplementation for such costs?*

No, the Commission has not sought direct supplementation for these costs. Budget supplementations, when they have been sought, have been for specific projects or global increases to cover expenses.

(f) *Can the PIC clarify how the argument that it is unable to offer financial assistance to seconded investigators relates to those periods where the PIC has reported a surplus for the financial year?*

Surpluses in one year do not necessarily translate into ongoing savings. In 2001-02 the Commission reported a surplus of \$862K, however in 2002-03 the Commission reported a deficit of \$1.699M. Financial assistance to seconded investigators is an ongoing commitment that the Commission is unable to meet.

(g) *Has the PIC considered seeking approval to transfer unspent funds between programs in order to fund financial assistance to seconded investigators?*

The Police Integrity Commission has only one program. Recurrent funding is, as a matter of course, directed to ongoing expenditure requirements during the FY. There is no impediment to transferring recurrent funds as required.

2. *Another argument advanced in support of the removal of the embargo in s.10(5) of the Act is that the law, practice and procedure of police forces in other jurisdictions is quite different to that of NSW Police and that, in some circumstances, this may weigh in favour of engaging a current or former NSW police officer. Policing principles and techniques would appear to be fairly universal. What particular differences in policing practices and procedures between jurisdictions were being contemplated in this argument?*

At the time it was advanced, this argument was one of a number of arguments offered as supporting removal of the embargo contained in s.10(5). In isolation, it does not provide a particularly solid basis for changing the legislation. As such, it was heavily qualified in the Commission's submission:

*"It is acknowledged that this difficulty is not insurmountable, nor is it suggested that for this reason alone, there should be a departure from the practice of utilising police investigators from jurisdictions other than New South Wales. Rather, it is a factor that, in some circumstances, may weigh in favour of the engagement of a current or former NSW police officer, particularly for specialised or discrete tasks."*

Clearly, policing principles and broad practices between jurisdictions are similar, however, it is in the detail that variations occur. The argument is that the local investigator will be familiar with the local practice, and, the case law and the reasons why a particular approach might be taken. Variations occur across jurisdictions in the whole range of police practices including those relating to arrest, the conduct of searches and in brief preparation, to



mention but a few. For example, it is understood that it is a practice in NSW for police<sup>112</sup> to formally arrest, and potentially charge, a suspect if the suspect is required to remain on premises for purposes connected with a search (of those premises). This practice is based upon local case law and does not appear to be a common practice nationally. It can have significant implications for Police and Commission investigators, including, amongst other things, truncated timeframes for the service of briefs of evidence.

3. *The PIC's submission states that it is confident that its security and vetting processes minimises the risk of engaging a corrupt former or serving NSW police officer, although it acknowledges that these procedures are no guarantee against such a situation occurring. Given that the nature of corrupt conduct is opportunistic, how will the PIC's vetting procedures guard against the influence of the close networks and associations that have been shown to exist within the New South Wales policing community?*

The Commission's security and vetting processes, while comprehensive, cannot guarantee that an officer, about whom nothing adverse is recorded, is not corrupt. The Commission's databases are extensive. The Commission also has access to quite extensive information externally. At the time that the Commission made its submission to the review of the Act, it was the expectation that a review of this material, 'positive' vetting processes for any current or former NSW police being considered for engagement, together with a detailed review of associations would minimise the risk of recruiting a corrupt officer.

Restricting access to information concerning known associates, which Commission systems allow, would reduce the risk of corrupt influences on those officers once engaged.

Consistent with current Commission practices, former officers would only be permitted to access material they need in order to perform their role. In addition, an open and detailed auditing of accesses would provide a capacity for early detection of, and deter, corrupt attempts to access prohibited information.

However, in reconsidering the Commission's submission on s.10(5) since it was made some time ago, together with recent experience, it is now the Commission's view that the risk, low as it might be, is too great a risk for the Commission to accept.

4. *In a previous submission to the Committee, the PIC stated that:*

*. . . The Commission remains open to the possibility of conducting joint investigations in the future, providing its independence is not compromised . . . Decisions as to whether or not to engage in a joint operation will depend upon the merits of each and every matter and whether or not the Commission is satisfied that its independence, or the perception of its independence, would not be compromised.*<sup>113</sup>

- (a) *Is the PIC still of this view?*

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<sup>112</sup> Now also Commission investigators and possibly investigators in other NSW agencies.

<sup>113</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *Report on the Seventh General Meeting with the Police Integrity Commission*, Report No.3, December 2003, pp.25-26.

Yes, the Commission still maintains this view.

(b) *To what extent do you consider that the difficulties that arose in previous joint operations with the NSW Police and Crime Commission, in relation to the release of material not admitted into proceedings and the scope of a listening device warrant, have impacted on the PIC's perceived independence?*

It is always difficult to gauge what public perceptions might be, as such matters involve a fair degree of abstract reasoning.

In respect of the first matter, it may have been that from rash statements made before circumstances were fully known, interested members of the general public might have gained an impression that the Commission, in its joint operation with NSW Crime Commission and NSW Police, had had its will overborne, and independence therefore compromised, in engaging in an improper course of conduct.

Once things were properly looked into, the reality was, however, quite different.

The Commission's decision to release telecommunications interception and listening device product to the *Four Corners* programme during Operation Florida hearing occurred against a backdrop of a collaborative effort with NSW Police and the Crime Commission. But the Commission's decision was its own, having been made within its four walls after painstaking deliberation amongst its most senior officers.

In taking the course it did, the Commission was confident that no breach of either the *Telecommunications (Interception) Act 1987* (Cth) or *Listening Devices Act 1984*, or denial of procedural fairness, was involved.

The then Inspector of the *Police Integrity Commission*, the Hon M D Finlay QC, concluded in his report on the matter that the Commission had "valid strategic purposes" in releasing materials to *Four Corners*. The Ombudsman, in his audit of the Commission under the *Telecommunications (Interception) Act 1987 (NSW)*, also concluded that the Commission's decision to provide telecommunications product to *Four Corners* was permitted by s 67 of the Commonwealth Act.

In his report the Inspector was, however, concerned that the rules of procedural fairness may have been breached, in as much as some materials had been broadcast prior to their admission into evidence before the Florida hearing. Though the Commission had put in place a process to ensure that this did not happen, it had not done so because it was considered necessary as a matter of procedural fairness. Ultimately, the Inspector sought the Crown Solicitor's advice on the matter, who advised that no breach of the rules of procedural fairness had occurred. The Commission nevertheless promulgated an internal guideline to ensure that no investigative materials would in future be released to the media prior to admission into evidence before a hearing, without full consideration of any procedural fairness issues.

Properly considered, what occurred in relation to the release of materials to the *Four Corners* programme is a perfect example of the Commission's independence and its hand in glove accountability. The Commission has never shirked responsibility for pursuing a strategy

which, though wrongly considered improper in some quarters, returned very positive results for Operation Florida and the public good. It is a further mark of the Commission's jealously guarded independence that it has refused to rule out the possibility of taking a similar course in future, given an appropriate occasion.

The issue with regard to a particular listening device warrant has also been attended by misconception. The warrant in question was obtained by the Crime Commission without the Commission's knowledge or involvement, although some material obtained as a result of the warrant was later admitted into evidence in the Operation Florida Hearing.

An inquiry by the Inspector of the Police Integrity Commission, undertaken at the request of the then Minister for Police, concluded that the warrant was properly issued in accordance with the law.

It may have been that misinformed media reports which suggested impropriety with the warrant and linked it to the Commission gave air to perceptions, not so much of a lack of independence, as lack of integrity on the Commission's part. The Commission, however, cannot account for the way in which the media reports upon matters, nor tailor its operations to avoid misinformed reporting. All it can hope for is that matters potentially affecting its integrity are made subject to an independent inquiry.

- (c) *Does the PIC consider that the proposal to recruit current or former NSW police officers, and locate such officers within the PIC, carries greater potential to compromise the PIC's independence than is the case in relation to participation in joint investigations?*

The Commission accepts that there is a greater potential for the public perception of the independence of the Commission, as distinct from its actual independence, to be compromised should former NSW Police officers be engaged in an operational role.

The Commission noted in its submission to the review of the Act that "*the practice of engaging police officers or former police officers from other jurisdictions will, by and large, continue.*" It was not contemplated that the Commission would make wholesale changes to its investigator profile. Police would continue to be sought from other jurisdictions for operational roles. The number of former NSW police was expected to be quite small. In addition, no changes would be made to the direct supervision of investigations by the Operations Advisory Group. Hence the Commission's view that it would not be possible for its independence to actually be compromised. The potential for impact on the public perception of the Commission's independence, however, remained. It is the argument of public perception, together with the low, but unacceptable, risk to security, which led to the Commission altering its position on the question of engaging former NSW police officers in operational roles.

The issue that remains is whether the Act might be amended to permit the Commission to engage former NSW Police officers on an *ad hoc* basis for non-operational purposes. The Commission would like to be able to engage former NSW police officers for purposes such as assisting with research projects in which they might have particular expertise. It is the

Commission's view that, in these *ad hoc* cases, it would be possible to adequately address questions of independence through the existing accountability framework.

5. *The submission made by the PIC to the Police Ministry's review of the Police Integrity Commission Act states that "the practice of engaging police officers or former police officers from other jurisdictions will, by and large, continue" and that "the perception and actuality of independence that has flowed from this recruitment practice" is "extremely important" to the Commission. However, the PIC contemplates that there may be "special or discrete circumstances where the skills and experience of particular NSW police officers are considered desirable to assist the Commission in the exercise of its functions".*

(a) *Does the PIC currently seek temporary assistance from police in other jurisdictions and, if so, how frequently does this occur and on what basis?*

The Commission has sought very limited temporary assistance from police in other jurisdictions for specific Commission investigations. The Commission may be able to expand on this assistance during the proposed *in camera* hearing.

The Commission has not sought temporary assistance for research projects, other than responses sought to requests for information.

This argument concerned a recognition by the Commission that some discrete research projects would benefit from an involvement by former NSW police who have particular, relevant expertise in a specialist area (eg. in police education or recruitment).

It can be difficult for the Commission to secure the release of investigator level officers. It is highly improbable that the Commission would be able to secure the release of a specialist, most likely at senior rank, to assist the Commission for what might be an extended period of time.

(b) *The proposal by the PIC to lift the employment embargo to enable it to engage NSW Police on an ad hoc basis, in effect, seems to serve as a counter-argument against removing s.10(5), particularly given the provisions within the Act which enable PIC to participate in joint investigations. In what way does lifting the embargo to engage NSW police officers on an ad hoc basis differ from the PIC's present capacity to make appropriate temporary arrangements with police?*

The nature of the Commission's work is that it is often required to identify the shortcomings and deficiencies of NSW Police corporate policies and practices as they relate to such issues as corruption prevention. At times the Commission has also been publicly critical of very senior police officers. To expect sworn officers of NSW Police who are engaged temporarily by the Commission under the present provisions of the PIC Act to participate in projects or investigations that may result in public criticism of NSW Police or the Commissioner is problematic. It potentially places the officers in an unreasonable position where their loyalties may be divided or where they would find it difficult to speak in other than the 'corporate' voice when providing advice on the effectiveness of NSW Police policy. In

addition, it may expose the Commission to circumstances where its internal advice is not free from bias.

- (c) *Does the PIC hold the view that the benefits to be gained by engaging current or former NSW Police officers outweigh the risks involved and the potential for such arrangements to undermine the PIC's independence and effectiveness?*

The Commission is not satisfied that the risk associated with engaging a former NSW police officer in an operational role, low as it might be, is acceptable. The Commission is also concerned that there is potential for impact on the public perception of the Commission's independence if it were to engage former NSW police in an operational role. The Commission, therefore, does not wish to engage former NSW police officers in an operational role.

However, the Commission is satisfied that its independence and effectiveness cannot be undermined by the *ad hoc* engagement of former NSW police officers in non-operational roles given the security measures contemplated in response to Question 3. Without access to operational information, and segregated from investigations and possibly also investigations staff, such an officer would present less risk to Commission investigations than would a serving officer participating on a joint investigation who has some access to both.

The Commission is satisfied that former NSW police can be engaged to assist with research and present no risk to the security of the Commission. With adequate transparency and accountability in the engagement process, the Commission is also satisfied that the risk to the public perception of the Commission's independence is minimal.

The Commission is not undertaking research at this time, which might benefit specifically from the assistance of a former NSW police officer. However, the Commission remains of the view that there will be circumstances where the possibilities for securing specialist advice (police education, police recruitment for example) from those residing in NSW will be very limited, and then possibly only from former NSW police.

6. *The Discussion Paper recommended that s.10(5) of the Act should be reconsidered after Operation Florida "has been fully assessed". However, it provides no elucidation on the nature and purpose of the assessment, nor does it identify the body that would be responsible for the assessment.*

- (a) *Does the PIC have any intention to "assess" Operation Florida and, if so, how?*

The Commission does not intend to "assess" Operation Florida other than for the purposes of the finalisation of the Operation Florida Report.

- (b) *Given that the Commissioner of the PIC has indicated that Operation Florida "is so extraordinary that it is not a very good paradigm for how we do our work"<sup>114</sup>, would*

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<sup>114</sup> Committee on the Office of the Ombudsman and Police Integrity Commission, *Report on the Seventh General Meeting with the Police Integrity Commission*, op.cit,p.51.

*it be appropriate to use Operation Florida as a benchmark for the PIC's operations?*

Operation Florida is not a useful benchmark for Commission investigations. Operation Florida did not originate with the Commission, it had its genesis in joint NSW Police / NSW Crime Commission Operation Mascot. In addition, the Commission became involved quite late in the investigation. Operation Florida was also the largest operation of its kind undertaken by the Commission.

Joint investigations do routinely occur between the Commission and NSW Police. The Commission will be in a position to provide further details on the nature of these joint investigations during the hearing.

# Chapter Seven - Answers to Questions Taken on Notice



ABN 22 870 745 340

Our Ref: 12402/33

8 June 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

## RESPONSES TO QUESTIONS TAKEN ON NOTICE DURING THE PUBLIC HEARING 27 MAY 2004

I refer to your letter of 2 June 2004 and the attached questions taken on notice during the Committee's public hearing on 27 May 2004. I trust the following responses assist.

1. *For what period was the PIC investigator, formerly Chief of the Victoria Police Drug Squad, the officer in charge of that Squad?*

I am advised that the investigator concerned was the officer in charge of the Victoria Police Drug Squad from 2/12/93 to 1/5/95. The investigator also performed higher duties in the position from either late 1991 or in 1992 until he was confirmed in the position in 1993.

2. *Was the PIC investigator, formerly Chief of the Victoria Police Drug Squad, responsible for approving the release of any large quantities of precursor chemicals in drug operations<sup>1</sup>?*

<sup>1</sup> As occurred in relation to the practice of controlled chemical deliveries, undertaken for a period by the Victoria Police Drug Squad, which involved the sale of commercially available pre-cursor chemicals by police to criminals involved in the manufacture of illicit drugs. (Report of the Ombudsman Victoria, *Ceja Task Force Investigation of Allegations of Drug Related Corruption, Interim Report of the Ombudsman, May 2003*.)

It is understood that, during the period in question, the officer in charge of the Victoria Police Drug Squad did not have the authority to release, nor did the investigator concerned approve the release of, any quantities of precursor chemicals for drug operations. Use of precursor chemicals in 'controlled operations' is understood to have occurred some years after the investigator ceased to be the officer in charge of the Drug Squad.

*Would you please explain:*

- *why money was not available from the PIC's budget allocation to provide for rental subsidies or accommodation assistance to interstate applicants, particularly in view of the PIC's operating surplus since its establishment, which totals \$7million<sup>2</sup>; and,*
- *the reason for the PIC's deficit of \$1.699m (which is referred to in the PIC's Annual Report for 2002-3 as being due to the Liability to the Consolidated Fund<sup>3</sup>)?*

The Commission's Operating Surplus of \$7.174m (since 1996–97) is a figure the Committee has derived from annual *Statements Of Financial Performance* (formerly known as either the Operating Statement or the Profit and Loss Statement). While the Commission did report Surpluses of that amount, during 1999–00, 2000–01 and 2002–03 Deficits of \$2.8m were also reported.

The Surplus/Deficit reported each year is the accounting treatment of Total Government Contributions (ie cash from the Government) less Expenses plus Revenues. The *Statement of Financial Performance* includes large amounts of non-cash items including accrued expenses and depreciation, and acceptance by the Government of employee entitlements and other liabilities (eg superannuation and long service leave). Also included separately in Retained Revenue is additional funds (Grants or Contributions) provided to the Commission. The Commission received in 1997–98, at no cost, assets of \$4.258m from the former Royal Commission, and between 1998 and 2003 amounts totalling \$4.041m were provided separately for both the Police Complaints Case Management and Police Oversight Data Store projects. Due to the nature of these projects, the grants were not necessarily fully expended in the year of receipt and the balances were kept in reserve.

The deficit of \$1.699m reported during 2002–03 was due in part to a Liability to the Consolidated Fund of \$849k, and also an amount for depreciation of \$2.495m (higher than budgeted amount of \$1.572m). The Liability to the Consolidated Fund resulted from general expenditure in that year being lower than anticipated (any previous Liabilities were small amounts), and the higher (non-cash) depreciation figure came about from an understatement of expected depreciation, since corrected for future years. While expenditure during the year was lower than expected, the Commission is unable to make a Provision, for costs associated with recruiting employee from interstate, in future years.

The nature of the Commission's operations and investigative activity makes it very difficult to accurately estimate the total recurrent expenditure during the year. Costs for interstate transfers and ongoing Living Away From Home Allowances or rental assistance are funded

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<sup>2</sup> Surplus total for the financial years ending 30 June 1997 to 2003 is \$7.174m.

<sup>3</sup> Police Integrity Commission, *Annual Report 2002-2003*, p.90.



through the Commission's annual Recurrent Appropriation, and if commenced, funds must therefore be found in following years to meet these expenses.

While it appears that in a particular year the agency may have a surplus of recurrent monies, this surplus does not necessarily flow into the following year. The NSW Treasury has in place an annual process (Liability to Consolidated Fund) to reconcile allocation provided against the Net Claim on the Fund, if the Commission receives more cash than it has spent, the balance is repayable to Treasury, conversely if the Commission overspends on its allocation the balance must be met from reserves.

*4. What contribution did the NSW Police make in initiating the investigations that led to the Operation Abelia hearings?*

It is not entirely clear from the question, or the accompanying transcript, whether this question concerns those investigations which have been revealed publicly in Operation Abelia or those investigations which led the Commission to initiate Operation Abelia. The following is intended to assist with both.

Firstly, the public hearings in Operation Abelia have revealed evidence obtained in Commission investigations Dakota, Regal, Icemint and Alpine, as well as NSW Police Operation Norandra. NSW Police made no contribution to the Commission's initiation of Dakota, Anthill, Icemint or Alpine, however Operation Norandra was a NSW Police investigation.

Secondly, in the months leading up to the commencement of Operation Abelia, information reached the Commission from a number of sources, including NSW Police officers, that serving police in the eastern suburbs of Sydney were involved in the use and supply of prohibited drugs. This information, combined with the evidence previously gathered in Operations Saigon, Dakota, Regal and Anthill, persuaded the Commission that a new, public, investigation should be commenced, combining both investigative and research strategies. NSW Police was responsible for the initiation of the investigation which led to the Commission's Operation Saigon<sup>4</sup> and information supplied by NSW Police also contributed to the Commission's decision to initiate Operation Regal.

*5. Would the Commission provide a copy of the report made by Mr Sage on his overseas travel while Assistant Commissioner and a copy of the formal conference paper he presented?*

Mr Sage presented to the Conference in Ireland in his own capacity and in his own time. All travel and associated costs were either met by the Northern Ireland Ombudsman's Office or by Mr Sage himself. No costs were borne by the Commission. The report Mr Sage provided on his return was verbal. A hard copy report is not available. However, a copy of Mr Sage's paper is available and has been attached for the information of the Committee. Also provided is a copy of the MS Powerpoint presentation used by Mr Sage at the Conference<sup>5</sup>.

<sup>4</sup> Operation Saigon - Report to Parliament June 2001.

<sup>5</sup> To view the presentation it may be necessary to install a codec located at D:/Belfast Presentation/Ligos Codec/lxmp40d.exe

6. *Since the last public hearing with the Committee, on how many occasions has the PIC been approached to use its powers to assist Police investigations into police corruption?*


The Commission meets regularly with senior representatives from the Professional Responsibility Command. At these meetings the potential for the Commission to assist internal NSW Police investigations is routinely discussed. These discussions may, in some cases, lead to a formal request by NSW Police for assistance. The Commission noted those investigations in which it has previously assisted NSW Police during the *in camera* session of the Committee's hearing on 27 May 2004. The potential for the Commission to assist NSW Police internal investigations has been discussed since the preceding Committee Hearing of 25 November 2003, however, none of those discussions have led to a formal request for assistance.

On a separate matter, I undertook at the hearing to provide the Committee with further information on the status of the Commission's Operation Jade as a joint task force. This undertaking was given during the *in camera* session. However, the information provided in the following is publicly available, it was included in the Commission's Operation Jade Report which was presented to Parliament in October 1998.

On 20 March 1997, the Commission was informed by the New South Wales Crime Commission that it suspected a serving NSW police officer had provided a convicted drug supplier with confidential information. The drug supplier was under electronic surveillance as part of the Crime Commission's investigation, Operation Gynea. The Commission initiated Operation Jade to investigate the allegations against the NSW police officer. To facilitate the investigation, a joint task force was established between the Commission and the Crime Commission pursuant to section 17 of the *Police Integrity Commission Act 1996*.

Please contact me should I be able to assist further.

Yours sincerely



T.P. Griffin  
Commissioner

## Chapter Eight - Questions on Notice for 14/10/04

1. It is understood that in the period from the review of the PIC Act to date, the PIC returned the following funds to the Consolidated Fund (i.e. Liability to the Consolidated Fund):

- \$94,000 in 2001-02 (which related to protected items unspent from the 2000-01 appropriation);
- \$114,000 in 2002-03 (\$104,000 of which related to protected items unspent from the 2001-02 appropriation); and
- \$849,000 in 2003-04 (\$271, 000 of which related to underspending on protected items from the 2002-03 appropriation).

Therefore, it appears that \$578,000 of the amount returned to the Consolidated Fund by the PIC in 2003-04 relates to unspent recurrent funds from the appropriation for the previous financial year.

- (a) Are these figures correct?
- (b) What factors contributed to the recurrent surplus returned in 2003-4?
- (c) What variables come into play in relation to the extent of the recurrent funds returned by the PIC to the Consolidated Fund and what particular factors were relevant to the return in 2003-04?

2. In its submission and evidence to the Committee on 27 May 2004, the PIC indicated that it had not sought additional funding to provide for the costs associated with recruiting staff from interstate because it understood that a minimum threshold applied to enhancement bids and that the amount the PIC required, approximately \$280,000, was not sufficient to reach the threshold. As a result the PIC contemplated requesting supplementation for more than one item in order to reach the minimum amount required. The Committee understands that there is no threshold applicable to requests for supplementation and that agencies are not permitted to amalgamate separate expenditures when seeking supplementation.

Since the public hearing occurred on 27 May 2004, has the PIC discussed with Treasury the possibility of supplementation or other available options for the purpose of obtaining additional recurrent funds to cover the recruitment costs?

3. In evidence on 27 May 2004, the PIC indicated that its approach is that primarily it does not pay for accommodation costs for inter-state appointments and that this may have a limiting effect on the field of applicants for investigative positions. In view of this concern, and the existence of the statutory prohibition at s.10(5) of the PIC Act, what consideration has the PIC given to including sufficient funds for accommodation and other costs associated with the recruitment of interstate investigators as part of its annual budget?

Questions on Notice for 14/10/04

4. Has the PIC undertaken any recruitment action for investigative positions since giving evidence on 27 May 2004 and, if so, have any particular difficulties occurred in filling the positions?

## Chapter Nine - Answers to Questions on Notice



ABN 22 870 745 340

Our ref: 12402/55

8 October 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

### **INQUIRIES INTO S.10(5) OF THE *POLICE INTEGRITY COMMISSION ACT 1996***

I refer to your letter of 1 October 2004 concerning the Committee's inquiry into s.10(5) of the *Police Integrity Commission Act 1996*.

The Commission's responses to the Questions on Notice are attached.

I am happy to elaborate on these responses as necessary at the hearing on 14 October 2004.

Please contact me if I can be of further assistance.

Yours sincerely

  
T P Griffin  
Commissioner

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

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## **Inquiry into s.10(5) of the Police Integrity Commission Act 1996**

### **Responses to Questions on Notice**

1. *It is understood that in the period from the review of the PIC Act to date, the PIC returned the following funds to the Consolidated Fund (i.e. Liability to the Consolidated fund):*

- *\$94,000 in 2001-02 (which related to protected items unspent from the 2000-01 appropriation);*
- *\$114,000 in 2002-03 (\$104,000 of which related to protected items unspent from the 2001-02 appropriation); and*
- *\$849,000 in 2003-04 (\$271,000 of which related to underspending on protected items from the 2002-03 appropriation)*

*Therefore it appears that \$578,000 of the amount returned to the Consolidated Fund by the PIC in 2003-04 relates to unspent recurrent funds from the appropriation for the previous financial year.*

- a) *Are these figures correct?*
- b) *What factors contributed to the recurrent surplus returned in 2003-04?*
- c) *What variables come into play in relation to the extent of the recurrent funds returned by the PIC to the Consolidated Fund and what particular factors were relevant to the return in 2003-04?*

With regard to 'a', the figures are correct.

With regard to 'b', \$271k was due to unspent Protected Item of Witness Protection, \$156k was not spent (as budgeted) on Telephone and other related telecommunications expenses and \$401k was underspent (as budgeted) on Other Operating Expenses.

With regard to the first part of 'c', the Commission's recurrent expenditure is predicated to a large degree on investigative activity. It is relevant to note here that the resources required by Commission investigations vary markedly from case to case depending upon such things as the geographical location of witnesses and persons and locations of interest. No two matters are exactly the same. Accordingly this has a flow on effect with expenses, particularly legal counsel and transcription fees (from Commission hearings) as well as on more direct expenditure on such things as minor equipment, consumables, travel and telecommunications costs. Given the unique nature of each investigation, it is extremely difficult to accurately predict the cost the Commission will incur from year to year in performing this function apart from such things as employee-related costs and out-goings. The result of this is that in some years there may be returns of monies to Treasury, while in others the Commission may need to seek financial supplementation.

The last limb of 'c', asks what particular factors were relevant to the return in 2003-04. The Commission notes that the savings on Witness Protection, referred to above, were due to delays in finalising arrangements with two ex-Royal Commission witnesses. The other factor that contributed to the return in 2003-04 relates principally to the level of cost incurred by Commission investigations in 2002-03. In simple terms, it is the case that the

investigations conducted by the Commission in 2002-03 were not of a nature that required as much expenditure as those of previous years.

2. *In its submission and evidence to the Committee on 27 May 2004, the PIC indicated that it had not sought additional funding to provide for the costs associated with recruiting staff from interstate because it understood that a minimum threshold applied to enhancement bids and that the amount the PIC required, approximately \$280,000, was not sufficient to reach the threshold. As a result the PIC contemplated requesting supplementation for more than one item in order to reach the amount required. The Committee understands that there is no threshold applicable to requests for supplementation and that agencies are not permitted to amalgamate separate expenditures when seeking supplementation.*

*Since the public hearing occurred on 27 May 2004, has the PIC discussed with Treasury the possibility of supplementation of other available options for the purpose of obtaining additional recurrent funds to cover the recruitment costs?*

The Commission has not sought any additional supplementation from the NSW Treasury for the purpose of recruitment of investigators.

However, the Commission would like to clarify a point from the preamble to question 2, namely:

In its submission and evidence to the Committee on 27 May 2004, the PIC indicated that it had not sought additional funding to provide for the costs associated with recruiting staff from interstate because it understood that a minimum threshold applied to enhancement bids and that the amount the PIC required, approximately \$280,000, was not sufficient to reach the threshold.

It would appear that this is drawn, in part, from the Commission's response to question 1(d) which asked, hypothetically, the level of funding that would be required if the PIC were to provide relocation costs or rental assistance to applicants for investigative position from other jurisdictions. The Commission's response estimated the figure at \$279,000 based on a number of assumptions that were explained in that document. This figure was calculated for the sole purpose of responding to a question on notice ahead of the 27 May 2004 Committee hearing and was not derived from the Commission's human resource planning and budgeting processes. No decision has been taken by the Commission that supplementation of \$280,000 is required for the purpose of recruiting investigators.

During the hearing on 27 May 2004, the Commission responded to a question from the Chair (page 6 of the transcript refers) indicating that: in its understanding there was a minimum threshold for enhancement bids; that the amount of nearly \$280,000 was not sufficiently high; and that if it were aggregated with a larger bid for resourcing then perhaps it would be considered. These remarks reflected the Commission's understanding of the process that would be involved *if* the Commission were to require a supplementary amount of approximately \$280,000 for the purposes of recruitment. They do not represent an explanation as to why the Commission had not, as at 27 May 2004, sought supplementation of this amount.

The Commission takes as relevant to this question the broader issue of the recruitment and retention of suitably qualified and experienced investigators from other jurisdictions and whether or not the offer of rental assistance is critical to this objective. While, as indicated in the Commission's evidence on 27 May, there are difficulties in recruiting investigators from police agencies other than NSW Police, it is also true to say that the Commission has effectively maintained a satisfactory complement of investigators over the years.

The Commission does not at this stage consider a blanket payment of rental assistance as essential in maintaining its pool of highly qualified and experienced investigators. The Commission sees that a flexible approach to this issue is merited and it will retain the option of offering rental assistance in circumstances it judges as necessary in effectively discharging its functions. Should there be financial implications arising from this that cannot be accommodated within its budget, it will seek financial supplementation.

3. *In evidence on 27 May 2004 the PIC indicated that its approach is that it primarily does not pay for accommodation costs for inter-state appointments and that this may have a limiting effect on the field of applicants for investigative positions. In view of this concern, and the existence of the statutory prohibition at s10(5) of the PIC Act, what considerations has the PIC given to including sufficient funds for accommodation and other costs associated with the recruitment of interstate investigators as part of its annual budget?*

The Commission does allow a small item of recruitment costs in its budget, which can cover, if need be, rental assistance. However, as the Commission is unable to predict the need for recruitment action until the need arises, it does not seem prudent to quarantine monies for this (or any other) purpose unless required.

4. *Has the Commission undertaken any recruitment action for investigative positions since giving evidence on 27 May 2004 and, if so, have any particular difficulties occurred in filling the positions?*

The Commission advertised for a vacant investigator position in late July 2004. This recruitment action is still in train and the Commission is therefore unable to comment on difficulties in filling the position. However, at this stage, the Commission is not anticipating any particular difficulties.



## Chapter Ten - Answers to Questions Taken 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>

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<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:

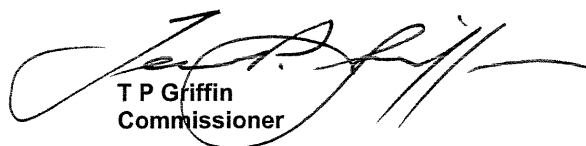
- to identify the primary reasons why officers are dismissed under s181 (D) (or why those who resign when proceedings begin originally are nominated), and
- to identify whether this group shares any pertinent characteristics eg career histories, type of duties etc

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.

## Appendix One: Committee Minutes

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

Wednesday 25 February 2004 at 6.40pm  
Room 1043, Parliament House

#### **Members Present**

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

#### **Apologies**

Mr Kerr and Ms Hay

In attendance: Helen Minnican, Hilary Parker

....

#### **4. Inquiry program**

(a) Inquiry into s.10(5) of the *Police Integrity Commission Act 1996*

Resolved on the motion of Mr Clarke, seconded Mr Breen, that the following terms of reference be adopted:

That, in accordance with its statutory functions under s.95 of the *Police Integrity Commission Act 1996*, the Committee on the Office of the Ombudsman and the Police Integrity Commission has resolved:

- (i) to conduct an inquiry into s.10(5) of the *Police Integrity Commission Act 1996* and any other matter that the Committee considers relevant to the inquiry; and
- (ii) to report to both Houses of Parliament on the inquiry.

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

Wednesday 17 March 2004 at 6.35pm  
Room 1043, Parliament House

#### **Members Present**

Mr Lynch (Chair), Mr Breen, Mr Clarke, Mr Corrigan and Mr Kerr

**Apologies**

Ms Burnswoods

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

....

**4. Inquiry program for s.10(5) and PSG oversight inquiries**

- (a) The date of Friday 28 May 2004 was flagged for public hearings.
- (b) Resolved on the motion of Mr Kerr, seconded by Mr Clarke, that the previously circulated Questions on Notice for both inquiries be sent to the Police Integrity Commission.

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

Wednesday 5 May 2004 at 6.35pm  
Room 1043, Parliament House

**Members Present**

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

**Apologies**

Mr Corrigan

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

....

**3. Correspondence Received**

....

- (b) Letter from the PIC Commissioner, dated 8 April 2004, concerning the inquiry into s.10(5) of the Police Integrity Commission Act. The Chair spoke to the correspondence and the recommendation.

Resolved on the motion of Ms Burnswoods, seconded by Mr Kerr that:

- i. the Committee should examine the Commissioner on the change in his position during the forthcoming public hearing to:
  - a. clarify the issues canvassed in his discussions with PIC staff;
  - b. identify the other parties consulted by the Commissioner;

- c. seek an explanation as to the full extent of the “impediments” working against the engagement of former NSW police officers by the PIC in an operational or investigation role;
  - d. establish how the PIC proposes to utilise former NSW police officers if s.10(5) were amended to provide for “ad hoc engagements of non-operational consultants, who may be former NSW Police”, as the Commissioner has suggested;
  - e. consider the extent to which the information obtained through such consultancies will influence the operations and activities of the PIC;
  - f. discuss existing procedures and policies concerning the engagement of consultants.
- ii. the Committee advise the Commissioner that it still seeks answers from the PIC to the Questions on Notice, as originally requested;
  - iii. the Committee announce the scope of the second phase of the inquiry, which involves an evaluation of the effectiveness of the joint task force approach and the contribution made by serving NSW Police to joint operations;
  - iv. the terms of reference for the inquiry be broadened to include an examination of the PIC’s independence from the NSW Police, with respect to its role as an investigative commission focussed on the detection, investigation and prevention of police corruption and serious misconduct.

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

Thursday 27 May 2004 at 2.00pm  
Waratah Room, Parliament House

#### **Members Present**

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

#### **Apologies**

Mr Corrigan

In attendance: Helen Minnican, Hilary Parker, Kylie Rudd, Pru Sheaves

### **INQUIRIES INTO S.10(5) OF THE POLICE INTEGRITY COMMISSION ACT AND THE JURISDICTION OF THE PIC IN RELATION TO THE PROTECTIVE SECURITY GROUP**

#### **PUBLIC HEARING WITH THE POLICE INTEGRITY COMMISSION**

The Chairman opened the public hearing at 2.00pm and made a brief statement introducing the inquiries.

Mr Terence Peter Griffin, Commissioner; Mr Andrew Nattress, Director, Operations; and Mr Stephen Allan Robson, Commission Solicitor took the oath. Mr Allan Geoffrey Kearney, Director, Intelligence and Executive Services, affirmed. The Commission's answers to questions on notice and the accompanying letter were tabled as part of the sworn evidence. The Chairman questioned the Commissioner and PIC executive officers, followed by other Members of the Committee.

The hearing adjourned at 3.25pm, resuming at 3.40pm in public session. Mr Peter James Barnett, Manager of Assessments and Reports, took the oath immediately following the adjournment.

### **IN CAMERA HEARING**

The hearing went in camera at 3.50pm.

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew. The hearing concluded at 4.40pm and the Committee adjourned *sine die*.

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

Wednesday 23 June 2004 at 6.30pm  
Room 1043, Parliament House

### **Members Present**

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

In attendance: Helen Minnican, Pru Sheaves

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### **4. Correspondence Received**

- (g) Letter from the Minister for Police, dated 4 June 2004, in reply to correspondence concerning the Committee's current inquiries.

Resolved, on the motion of Mr Corrigan, seconded by Mr Clarke, that:

- (i) It is recommended that the Chairperson write to the NSW Crime Commission, ICAC, NSW Police, Ombudsman and the President of the Police Association, on behalf of the Committee, to inform them of the terms of reference for the inquiry into s.10(5) of the Police Integrity Act, provide a copy of the Commissioner's evidence from 27 May, and invite submissions on the inquiry.

- (ii) It is recommended that the Chairperson write to the Minister to advise him that term of reference (c) is in accordance with PIC and Ombudsman oversight of CTCC officers.
- (h) Letter with responses from the Police Integrity Commission, dated 8 June 2004, to Questions on Notice from the public hearing held on 27 May 2004.

Resolved on the motion of Mr Corrigan, seconded by Mr Kerr, that

- (i) the Chairperson write to the Commissioner indicating that –
- the Committee would have preferred a more definite answer to the matters concerning the PIC officer formerly of the Victorian Police; and
  - in the absence of any specific allegations the Committee will not be examining this matter further;
  - should any specific allegations be made concerning the conduct of a PIC officer they should be referred to the Inspector of the PIC, who has jurisdiction in such matters.
- (ii) the Committee conduct an in camera hearing to take evidence from Treasury officials, with a view to determining whether or not there are any financial matters warranting further examination by way of public hearing with the Commissioner;
- (iii) the transcript of the Commissioner's evidence from the public hearing on 27 May 2004, and the answers provided to the matters taken on notice, be forwarded to the Secretary of the Treasury in preparation for the in camera hearing.

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

Tuesday 7 September 2004 at 2.00pm  
Waratah Room, Parliament House

#### **Members Present**

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

Apologies: Mr Breen, Ms Hay

In attendance: Helen Minnican, Hilary Parker, Kylie Rudd, Pru Sheaves

....

## **2. SECTION 10(5) INQUIRY, IN CAMERA HEARING, NSW TREASURY**

The in camera hearing commenced at 4.00pm.

Mr Ian William Neale, Executive Director, Resources and Crown, New South Wales Treasury, Governor Macquarie Tower, 1 Farrer Place, Sydney, and Mr Philip Jamieson Blunden, Director, Justice and Emergency Services, New South Wales Treasury, Governor Macquarie Tower, 1 Farrer Place, Sydney, sworn and examined.

Mr Neale tabled answers to questions on notice. Mr Neale and Mr Blunden were questioned by the Chairman, followed by Members of the Committee. Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew at 4.30pm. The Committee adjourned until 5.15pm.

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

Wednesday 22 September 2004 at 10.30pm

Room 1153, Parliament House

**Members Present**

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

Apologies: Mr Breen

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

**3. Correspondence Received**

Resolved in globo on the motion of Ms Burnswoods, seconded by Mr Corrigan:

....

(c) *Inquiry into s10(5) of the PIC Act*

**Item 5:** Correspondence from the ICAC Commissioner, dated 8 July 2004, advising that the Commission continues to support removing the restriction on the employment of NSW police by the PIC and indicating that ICAC will not make a submission to the Committee's inquiry.

That the Committee note the correspondence.

**Item 6:** Correspondence from the NSW Ombudsman, dated 8 July 2004, referring to his past statements on s 10(5) and requesting that he be advised of any proposals by the Committee which may impact on his office.

That the Committee note the correspondence.



**Item 7:** Correspondence from the Commissioner of Police, dated 16 July 2004, indicating that he did not wish to add to the NSW Police submission of 28 May 2004.

That the Committee note the correspondence

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## **5. Inquiry program**

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- (b) Further evidence re inquiry into s.10(5) of the PIC Act  
The Committee agreed to hold a public hearing with the PIC Commissioner on 14 October 2004 at 10.00am.

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

Thursday 14 October 2004 at 9.00am  
Room 814/815, Parliament House

#### **Members Present**

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

Apologies: Ms Hay

In attendance: Helen Minnican, Hilary Parker, Kylie Rudd, Pru Sheaves

#### **INQUIRY INTO S.10(5) OF THE POLICE INTEGRITY COMMISSION ACT**

##### **PUBLIC HEARING WITH THE POLICE INTEGRITY COMMISSION**

The Chairman opened the public hearing at 9.05am.

Mr Terrence Peter Griffin, Commissioner; Mr Peter James Barnett, Manager of Assessments and Reports; Mr Andrew Stewart Nattress, Director, Operations; and Mr Stephen Allan Robson, Commission Solicitor, took the oath. The Commission's answers to questions on notice were tabled as part of the sworn evidence. The Chairman questioned the Commissioner and PIC executive officers, followed by other Members of the Committee.

The hearing adjourned at 9.20am, resuming at 9.23am in public session.

#### **IN CAMERA HEARING**

Appendix One – Committee Minutes

The hearing went in camera at 9.27am. Questioning continued. Mr Kerr tabled a copy of correspondence from Mr John Brogden MP to the PIC Commissioner, dated 28 June 2004, re the provision of PIC reports to the Government prior to tabling and the response from the Commissioner, dated 5 July 2004.

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew. The in camera hearing concluded at 10.50am.

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