

PARLIAMENT OF NEW SOUTH WALES



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

## NINTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION

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## Membership & Staff

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## Functions of the Committee

The Committee on the Office of the Ombudsman and the Police Integrity Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the *Ombudsman Act 1974* are set out in s.31B(1) of the Act as follows:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;
- to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.
- These functions may be exercised in respect of matters occurring before or after the commencement of this section of the Act.

Section 31B(2) of the Ombudsman Act specifies that the Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- to exercise any function referred to in subsection (1) in relation to any report under section 27; or
- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or
- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.

The Committee also has the following functions under the *Police Integrity Commission Act 1996*:

- to monitor and review the exercise by the Commission and the Inspector of their functions;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise

Functions of the Committee

of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;
- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and
- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Act further specifies that the Joint Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or
- to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The *Statutory Appointments (Parliamentary Veto) Amendment Act*, assented to on 19 May 1992, amended the Ombudsman Act by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the Ombudsman Act provides:

- (1) The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.
- (5) In this section, a reference to the Minister is;
  - (a) in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
  - (b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and

- (c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the Police Integrity Commission Act 1996.



## Chairman's Foreword

The ninth General Meeting with the Commissioner and executive of the Police Integrity Commission was held in November 2005, shortly after the release of the Commission's Annual Report for 2004-05. The General Meeting provided an opportunity for the Committee to focus on a wide range of issues arising from the Annual Report and recent Commission investigations. The Committee's report on these matters is aimed at improving the level of accountability for the Commission.

The Committee has focussed on several governance issues, which are highlighted in the Commentary of this report. The Commentary gives an overview of previous correspondence with the Commissioner and earlier evidence concerning the Commission's structure and management, the role of the Assistant Commissioner, the use of temporary Assistant Commissioners, and succession planning. The Committee has an ongoing interest in the governance structures and management systems of the Police Integrity Commission, which underpin its operation as an independent investigative commission, and considers that such matters warrant reporting to Parliament. However, these governance issues assume greater significance as the Commission approaches the end of Mr Griffin's term in October 2006 and the appointment of a new Commissioner. Consequently, the Committee has recommended a number of interim measures in order to keep fully informed about developments in relation to these issues during the recruitment, selection and appointment of the next Commissioner.

The Commentary section of this report also focuses on the Commission's reporting on Operation Vail concerning alleged breaches of the telecommunications interception legislation by senior NSW police. The Committee has examined apparent inconsistencies between media accounts of the initial handling of this investigation, particularly the extent of the Commission's involvement in the matter, and the history of Operation Vail as provided in the Commission's report to Parliament. In keeping with the need for transparency and accountability for the Commission's operations, the Committee has indicated that it expects a full history of any Commission investigation should be disclosed in the Commission's reports to Parliament, barring the most exceptional operational circumstances.

The Committee has deferred further consideration of the role and functions of Counsel Assisting the Commission, pending the outcome of appeal proceedings in the case of *Shaw v Police Integrity Commission*.

I would like to thank the Commissioner, Mr Griffin, and the senior members of his staff for their evidence and participation in the General Meeting. I also would like to thank the members of the Committee for their contribution to proceedings and their deliberations on the report.

Paul Lynch MP  
Chairman



# List of Recommendations

## **Recommendation 1**

At the conclusion of the 2005-2006 financial year, the Committee will seek a full costing from the Police Integrity Commission of the expenses incurred through the use of temporary Assistant Commissioners in the period since the Commission's establishment. The Committee also will examine the strengths and weaknesses of the Police Integrity Commission's current governance structures and managerial systems.

The Committee will obtain an independent evaluation of this information in order to make a decision as to the desirability of a fuller inquiry into these aspects of the Commission's operations, in particular, the relative merits of the use of temporary Assistant Commissioners, as against a permanent appointment to the position.

## **Recommendation 2**

The Committee recommends that:

- (a) an *in camera* hearing be conducted with representatives of the Ministry for Police to discuss the current progress in recruiting a new Commissioner of the PIC and any legal difficulties that might arise for PIC operations during a vacancy in office;
- (b) the Commissioner and senior executive of the PIC confirm the arrangements that are being put in place to ensure a smooth transition from the end of Mr Griffin's term through to his successor's initial period of appointment.



# Chapter One - Commentary

## MANAGEMENT AND GOVERNANCE ISSUES

### 1 Structure and Management

- 1.1 The structure and management of the Police Integrity Commission (PIC) has altered significantly since its establishment. In 1996 the executive of the PIC comprised four positions, that of Commissioner, Assistant Commissioner, Director of Operations Special Services and the Director of Corporate and Information Services.<sup>1</sup> While the PIC's current executive would appear to comprise the same number of positions, in effect this is not the case. The responsibilities of the executive positions also has changed considerably, reflecting the extent of the structural and managerial change within the organisation. The most significant structural changes have occurred in the period since the appointment of Mr Griffin as Commissioner in October 2001.
- 1.2 In the 2001-02 reporting period, the position of Manager Investigations was abolished and the Director, Operations assumed responsibility for the Investigations Unit. The newly created position of Executive Officer assumed responsibility for IT and Security.<sup>2</sup> Following a review of corporate services in 2002-03, the position of Director, Corporate and Information Services was deleted from the PIC's structure and the duties and responsibilities associated with this position were devolved to the Manager Finance and Administration, the Information Manager, the Executive Officer and Manager Intelligence (retitled Director, Intelligence & Executive Services).<sup>3</sup> Lines of reporting also changed so that these positions reported directly to the Commissioner in a "flat structure".<sup>4</sup>
- 1.3 The number of permanent executive level positions also decreased over this period: in 2005 there were two executive<sup>5</sup> appointments as compared to four such appointments in 2002-03.<sup>6</sup> The two executive level officers who departed during the 2003-04 reporting year were the Assistant Commissioner, Mr Tim Sage, and the Director Corporate and Information Services, Mr David Rawson.<sup>7</sup> The position of Assistant Commissioner has not been filled on a permanent basis since Mr Sage's departure. Instead, temporary Assistant Commissioners have been engaged by the PIC for specific tasks and operations.
- 1.4 In more recent developments, the PIC's IT structure was reviewed in 2004-05 and the IT Manager position was re-evaluated and re-named Information Communications and Technology (IC&T) Manager. An internal review of legal

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<sup>1</sup> This position was responsible for management of the financial, personnel, information technology, administrative and registry services. Police Integrity Commission, *Annual Report 1996-97*, p.37.

<sup>2</sup> Police Integrity Commission, *Annual Report 2001-02*, p.11

<sup>3</sup> Police Integrity Commission, *Annual Report 2003-04*, p.13.

<sup>4</sup> *ibid.*; also letter from Mr Griffin, dated 26 March 2004.

<sup>5</sup> The term "executive" in this context refers to appointments subject to remuneration at level 5 and above.

<sup>6</sup> Police Integrity Commission, *Annual Report 2004-05*, p.46.

<sup>7</sup> *ibid.*, p.49.

<sup>7</sup> Police Integrity Commission, *Annual Report 2003-04*, p.13.

services resulted in operational lawyers being integrated with staff from the Solicitor's Unit, under the direction of the Manager Legal Services Unit/Commission Solicitor.<sup>8</sup>

1.5 The Commissioner has described the PIC's current organisational structure as "flat" and "responsive"<sup>9</sup> and has indicated that this structure is useful and works well with his preferred approach to the management of the organisation.<sup>10</sup>

1.6 The Committee notes that it has been observed of such structures that:

Every lateral coordination strategy has strengths and weaknesses. A formal or informal meeting is an opportunity for dialogue and decision, but it risks squandering an excessive amount of time and energy. A task force fosters creativity and integration around specific problems but often diverts attention from ongoing operating issues. The effectiveness of coordinators who span boundaries of a number of units is heavily dependent on their skills and credibility.<sup>11</sup>

1.7 As this observation indicates, coordination and leadership are particularly important to the effective operation of an organisation with such a structure. While they "create means of lateral linkage and integration, [they] are notorious for creating conflict and confusion".<sup>12</sup>

### 1.8 **Examination by the Committee**

The Committee has followed the changes to the PIC's management and structure through the regular program of annual General Meetings with the Commissioner, relevant inquiries and by way of correspondence. Given the PIC's status as an independent statutory body, the Committee is reluctant to interfere directly in the management of the organisation. However, the Committee's statutory functions under the *Police Integrity Commission Act 1996* are wide-ranging and include:

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(1) The Joint Committee has the following functions under this Act:

- (a) to monitor and review the exercise by the Commission and the Inspector of their functions,
- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
- (c) to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report.

1.9 Consequently, the Committee has expressed its concerns in previous reports on two particular aspects of the current management of the PIC: the appointment of temporary Assistant Commissioners, in the absence of a permanent appointment

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<sup>8</sup> Police Integrity Commission, *Annual Report 2004-05*, p.13.

<sup>9</sup> Letter from Mr Griffin, dated 4 July 2005.

<sup>10</sup> Letter from Mr Griffin, dated 26 March 2004.

<sup>11</sup> Bolman, Lee G. and Deal, Terrence E. (eds), *Reframing Organizations, Artistry, Choice and Leadership, Third edition*, San Francisco (Jossey-Bass, 2003), pp.55-6.

<sup>12</sup> *ibid.*

to this position, and succession planning. The Committee remains particularly concerned about these two issues and has determined to again draw them to the attention of Parliament as significant matters warranting report.

1.10 It is the view of the Committee that its enquiries to the PIC on these issues are in accordance with its statutory responsibility to oversight the Commission. The Committee's functions and jurisdiction are wide and include matters relating to the management, policies and procedures of the Commission. Therefore, the Committee can examine the current approach taken by the Commission regarding the use of temporary Assistant Commissioners, which it considers to be of significant public interest given the implications in respect of succession planning, business continuity and the expenditure of public funds by the Commission

### 1.11 **Assistant Commissioner**

1.11.1 **The role of the Assistant Commissioner** - The Committee first wrote to the Commissioner on 25 February 2004 concerning recruitment action to appoint a permanent Assistant Commissioner to replace Mr Tim Sage. In his response, Mr Griffin indicated that the role of Assistant Commissioner had changed markedly since his appointment and that it was now focussed more on the conduct of public and private hearings, and the reports to follow, rather than the day-to-day management and administration of the PIC.<sup>13</sup>

1.11.2 At that stage, the Commissioner was considering how the role of Assistant Commissioner might best be performed within the PIC. He suggested devolving some of the functions performed by the Assistant Commissioner to other staff in the Commission, and appointing Assistant Commissioners on a short-term basis as a more efficient way of performing the hearing functions. Mr Griffin had commenced trialling the temporary appointment of Assistant Commissioners for specific tasks by appointing Assistant Commissioner Mervyn Finlay QC to assist with Operation Abelia. He intended to assess the outcome of the trial and determine whether to appoint a permanent Assistant Commissioner or continue with "task specific, temporary appointments".<sup>14</sup>

1.11.3 Following a request from the Committee for further advice,<sup>15</sup> including a cost comparison between temporary and permanent Assistant Commissioner appointments, Mr Griffin indicated that the Assistant Commissioner's responsibilities in relation to the positions of Commission Solicitor and Corporate and Information Services had been principally functional in nature, i.e. concerned with standards and performance, whereas his own responsibilities regarding these positions related to operational matters, i.e. outcomes and results. He further advised that the positions to which the duties of Director Corporate and Information Services had been devolved, namely the Manager Finance and Administration, Information Manager, Executive Officer and the Director Intelligence and Executive Services, reported directly to him, as did the position of

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<sup>13</sup> Letter from Mr Griffin, dated 2 March 2004.

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

<sup>15</sup> Letter from Chairman to Mr Griffin, dated 18 March 2004.

Commission Solicitor. In this sense, the Commissioner now also concerned himself with functional matters.<sup>16</sup>

1.11.4 It appears to the Committee from the devolution of the functions and duties of the Assistant Commissioner that the previous holder of this position was a key player in several internal management bodies within the PIC involved in operational matters. The 1997-98 Annual Report notes that decision-making within the PIC relied on three internal committees to assist the Commissioner in the execution of his responsibilities:

- the Management Advisory Group, which met weekly to consider and make recommendations in respect to budget allocations and a range of high level administrative matters;
- the Screening Committee, which considered all Category 1 complaints received by PIC, and oversighted the complaint monitoring process, recommended which investigations would be undertaken by the PIC, and considered Police investigation reports re Category 1 complaints and internal recommendations regarding complaints. The previous Commissioner had delegated to the Assistant Commissioner the power to make decisions necessary to consider and to deal with such complaints and reports;
- the Operations Advisory Group (OAG), which oversights the conduct of all Commission investigations: sets and reviews operational priorities, allocates investigation resources, monitors the performance of investigations carried out by PIC and makes recommendations on the direction of investigations, and provides strategic and operational advice to the Assistant Commissioner on the use of the PIC's powers. The previous Commissioner had delegated to the Assistant Commissioner the power to make decisions necessary for the proper supervision of the PIC's investigations.<sup>17</sup>

1.11.5 The Assistant Commissioner was a key member of these early internal committees and was the senior member of the OAG and Screening Committee. The OAG was described as playing "a key role in advising the Assistant Commissioner in respect of new investigative opportunities, operational priorities and broad investigation direction". The PIC's Annual Report for 2000-01 clearly outlines the strategic importance of this internal advisory body:

Key decision making is underpinned by a clearly defined decision making model with a common set of criteria applied to operational decisions affecting priorities and resource allocation at a number of levels within the Commission. The criteria encourage a 'strategic' focus, a focus on that work which will produce the greatest impact in terms of reducing serious police misconduct.

The OAG is supported with advice and recommendations concerning:

- active investigations, including progress and direction, predominantly by the Investigations Unit;

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<sup>16</sup> Letter from Mr Griffin, dated 26 March 2004.

<sup>17</sup> Police Integrity Commission, *Annual Report 1997-98*, pp.5-6.

- new investigative opportunities, predominantly by the Target Development Unit; and
  - organisational outcomes, predominantly by the Assessments and Reports Team.<sup>18</sup>
- 1.11.6 At that stage, the OAG's role and responsibilities in operational processes had been reviewed to eliminate duplication of effort and the PIC also was reviewing its approach to risk management to make risk examination integral to key operational decisions points in the organisation.<sup>19</sup>
- 1.11.7 The Assistant Commissioner also chaired the Budget Committee, which met monthly to prioritise and allocate financial resources to meet operational objectives, as determined by the OAG, consistent with overarching corporate objectives.<sup>20</sup> During this period the PIC also finalised an Investigations Performance Framework, which included key indicators for the ability of the Investigations Unit to respond to changes in priorities.<sup>21</sup>
- 1.11.8 Therefore, Mr Griffin's description of the responsibilities of the Assistant Commissioner as being largely functional, seems to pertain to the duties of the position as they had devolved during his term in office. Moreover, the PIC's recent experience of the use of temporary Assistant Commissioners indicates that the role of these appointments is not confined to presiding over hearings. This was evident in Mr Finlay's temporary engagement.
- 1.11.9 Mr Finlay participated in other aspects of the investigation and his duties as temporary Assistant Commissioner included maintaining personal liaison with the Commissioner of Police, chairing round table conferences and other high level meetings with visiting experts and officials, chairing internal meetings of the Operation Abelia team and liaising with team members about the direction of research and recommendations to be made by the Commission.<sup>22</sup>
- 1.11.10 In addition to his appointment as temporary Assistant Commissioner for Operation Abelia, which examined the use of illicit drugs amongst NSW Police officers, Mr Finlay has also presided over PIC's Operation Alpine, an investigation into the conduct of two police officers allegedly involved with stealing and dealing drugs, which arose from evidence taken during Operation Abelia.<sup>23</sup> As temporary Assistant Commissioner, Mr Finlay was also delegated the full functions of the Commissioner while the latter was on recreation leave.<sup>24</sup> This power of delegation had been formalised so that in the event of the Commissioner being incapacitated or unavailable, the temporary Assistant Commissioner would assume the Commissioner's functions. The Committee notes that this delegation extends beyond Mr Finlay's temporary appointment as Assistant Commissioner for Operation Abelia.<sup>25</sup>

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<sup>18</sup> Police Integrity Commission, *Annual Report 2000-01*, p.45.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.* p.46.

<sup>22</sup> Eighth General Meeting with the Police Integrity Commission- Questions on Notice No.5, p.13.

<sup>23</sup> Police Integrity Commission, *Annual Report 2003-04*, p.15.

<sup>24</sup> Eighth General Meeting with the Police Integrity Commission- Transcript of Evidence, p.32.

<sup>25</sup> Eighth General Meeting with the Police Integrity Commission- Questions on Notice No.3, p.12 & p.32.

1.11.11 Prior to the ninth General Meeting with the Committee, Mr Griffin advised that:

. . . Mr Finlay has been performing duties associated with Operation Abelia other than presiding over hearings. Mr Finlay has maintained personal liaison with the Commissioner of Police and other senior stakeholders, has chaired roundtables and other high level meetings with visiting experts and officials. He was also involved in chairing and/or participating in internal meetings of the Abelia team and liaising with team members about the direction of research and recommendations to be made by the Commission. Mr Finlay is now involved with Commission staff in settling the Operation Abelia Report.<sup>26</sup>

1.11.12 The Committee acknowledges that there may be a significant operational benefit in using a temporary Assistant Commissioner who brings a specific approach or capacity to a PIC investigation, as the Commissioner claimed in respect of Mr Finlay's appointment. The Committee further acknowledges the Commissioner's proposed scenario that there may be a need to engage Assistant Commissioners for a short period where a multitude of investigations required the conduct of multiple hearings.<sup>27</sup> However, it is not evident to the Committee that such a situation has occurred to date. Moreover, the Committee is conscious that this argument needs to be weighed against the additional costs of temporary appointments and the ramifications to the Commission of not having a permanent deputy to the Commissioner.

## 1.12 **A cost-saving measure**

1.12.1 The PIC Commissioner has repeatedly justified the decision not to appoint a permanent Assistant Commissioner on the grounds that there is not the work to justify the position and that a temporary Assistant Commissioner is a cost-saving measure. However, in view of the material before it, the Committee remains somewhat unconvinced of this argument.

1.12.2 The Commissioner cited the cost of employing a full-time Assistant Commissioner as almost \$250,000 per year, in contrast to an annual cost estimate for temporary Assistant Commissioners of \$90,000-180,000: the latter figure calculated on the basis of a fee of \$1,500 to \$3,000 per day for an annual average of 45 hearing days and 15 days preparation time. The costs associated with engaging a temporary Assistant Commissioner for Operation Abelia were anticipated to be unusual as Mr Finlay had been asked to participate in aspects of the investigation apart from just hearings.<sup>28</sup>

1.12.3 The Committee sought further clarification from the Commissioner on the figures provided in this costing. In particular, the Committee considered that the minimum daily rate of \$1,500 a day seemed rather low in view of the daily fees commanded by junior barristers. The Committee also had concerns about the Commissioner's workload estimate as it appeared from PIC's annual reports from

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<sup>26</sup> Letter from Mr Griffin, dated 4 July 2005.

<sup>27</sup> Eight General Meeting with the Police Integrity Commission - Transcript of Evidence, p.30.

<sup>28</sup> Letter from Mr Griffin, dated 26 March 2004.

1998 until 2003 that the average number of public hearing days per year was 48.7 and private hearing days was 46.2. Assuming that the Assistant Commissioner was involved in both public and private hearings for an investigation the actual cost of temporary Assistant Commissioners could be considerably more than that estimated by the PIC. For the 2003–04 financial year, Mr Finlay presided over a total of 26 hearings (10 public and 16 private) whereas the Commissioner presided over 11 hearings (6 public and 5 private).<sup>29</sup> The previous Assistant Commissioner, Mr Sage, presided over 15 hearings (1 public, 14 private). The Committee was concerned that the total cost could eventuate to be considerably more than the cost of employing a permanent full-time Assistant Commissioner.

- 1.12.4 The Committee noted in its previous General Meeting report that the cost of employing Mr Finlay to 30 September 2004, as a temporary Assistant Commissioner was \$278,000. This is almost \$100,000 over the initial annual estimate provided by the PIC, and \$28,000 more than the PIC's estimate for employing a full time Assistant Commissioner.<sup>30</sup>
- 1.12.5 Some of the Commissioner's evidence on the cost-effective argument has been less than convincing from a financial management perspective. For instance, during the eighth General Meeting he gave the following evidence:

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

**Mr GRIFFIN:** I think that is true. But Finlay would not have accepted appointment as a permanent Assistant Commissioner, as far as I know, although I have not asked him. I do not think he would be interested in a permanent job. As I said earlier, if someone had been appointed, Finlay brought those skills and people like Finlay who have those skills and standing to do unusual work for the Commission are unlikely to want permanent appointment. The gravamen and whatever he brings is useful for that purpose. If he had taken the job we would have saved \$30,000, which is not huge, with respect, although it is significant to our budget. But you might say that we have not finished yet, so it might be \$50,000. . . .<sup>31</sup>

- 1.12.6 **Ninth General Meeting** - In the months before the ninth General Meeting the Committee raised the matter again by way of correspondence to the Commissioner, dated 26 May 2005. From the Commissioner's reply,<sup>32</sup> it appeared to the Committee that the Commission may have engaged more than one Assistant Commissioner. The Committee sought confirmation of this and information about the basis on which any other temporary appointments had been made. It also sought details of the cost of the additional temporary appointments. The Committee's concern was that the appointment of more than one temporary

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<sup>29</sup> Eighth General Meeting with the Police Integrity Commission - Questions Taken on Notice on 30 November 2004, p.45; Letter from Mr Griffin, dated 18 January 2005; The duration of the hearings represented in these figures was not specified.

<sup>30</sup> Eighth General Meeting with the Police Integrity Commission- Questions on Notice 3 & 4, pp.12-13.

<sup>31</sup> Eighth General Meeting with the Police Integrity Commission, p.30.

<sup>32</sup> Letter from Mr Griffin, dated 10 June 2005.

Assistant Commissioner is inconsistent with an argument that a permanent Assistant Commissioner would be underemployed.

1.12.7 Mr Griffin replied on 4 July 2005 giving the following reasoning for his continued use of temporary Assistant Commissioners:

Firstly, I maintain that the temporary engagement of Assistant Commissioners, but for the special circumstances surrounding Operation Abelia, is more cost efficient than maintaining a full time Assistant Commissioner. The figures previously provided which describe the costs and possible savings, based on the average number of hearings per year are accurate and likely to be demonstrated as such over time. The Committee might note that the costs associated with the temporary appointment of Assistant Commissioners for the financial year ending 30 June 2005 amounted to \$174,000. This is within the projected costs of \$90-180,000 previously advised to the Committee and a saving of \$76,000 over the cost of maintaining a full time Assistant Commissioner. This was in a year in which there were further costs associated with the temporary engagement of Mr Finlay in his extended role for Operation Abelia. Savings during this financial year are likely to be more significant.

Secondly, the Commission is a small public sector organisation. It is possible in such an organisation, with the right mix of skills in staff, to maintain a flat and responsive structure while effectively managing both strategic direction and day to day operations. I am satisfied with the strength and breadth of the skills of the Commission's Executive, senior officers and other staff, clearly evidenced by the solid results they have achieved over the last few years. The Executive and other senior officers have direct access to me and I to them. This is the way I prefer to run the Commission in order to achieve organisational objectives. An additional layer of management between myself and senior officers in any part of the Commission is an unnecessary bureaucracy. Given the present structure, the roles and responsibilities of staff and the depth of skill and experience available, there is no ongoing management work in the Commission which might fall to a full time Assistant Commissioner.

Thirdly, at an average of 45 hearing days per year, and 15 days preparation time, the workload for hearings is insufficient to justify full time employment of an Assistant Commissioner, absent a substantial change in the Commission's practices.

1.12.8 Mr Griffin had concluded the trial of the temporary Assistant Commissioner arrangement and was satisfied that, with the exception of the extended role for Mr Finlay in Operation Abelia, "the temporary appointment of Assistant Commissioners for specific tasks remains a more efficient option to engaging a full time Assistant Commissioner who might otherwise have little to do or interpose an unnecessary layer of bureaucracy in what is, in my view, a flat, responsive organisational structure".<sup>33</sup>

1.12.9 In response to an enquiry from the Committee about the amount of hearing days conducted by the Assistant Commissioners, Mr Griffin advised:

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<sup>33</sup> Letter from Mr Griffin, dated 4 July 2005.

The relative proportions of hearings presided over by an Assistant Commissioner or by me are, in my view, irrelevant when the key issue is the volume of work, that is, the total number of hearing days conducted by the Commission during the year. An average of 45 hearing days per year with an additional 15 days preparation time, for a total of 60 days per year, is not, in any reasonable view, a full time workload. This is particularly so when the length of a 'hearing day' is so variable and rarely equivalent to a full working day. (The Committee will recall our earlier advice that private hearings average 2.25 hrs in duration and public hearing days average 4 hrs. Some 'hearing days' will be 10 minutes, others will be 6 hours or longer).<sup>34</sup>

1.12.10 On the matter of additional Assistant Commissioners, Mr Griffin advised:

A further Assistant Commissioner has been engaged on a temporary basis for the specific purpose of presiding over private hearings. The cost of this temporary appointment was \$4,500. This cost is included in the total costs for temporary Assistant Commissioners mentioned above.

I disagree that the appointment of more than one temporary Assistant Commissioner is inconsistent with an argument that a permanent Assistant Commissioner would be underemployed. Again, it is the number of hearing days in the year that is the key issue in determining volume of work. Whether the Commission has one temporary, part time Assistant Commissioner presiding over 45 hearing days, or three Assistant Commissioners each presiding over 15 days – the volume of work remains the same and the costs comparable.<sup>35</sup>

1.12.11 During the ninth General Meeting, the Committee sought to clarify some of the Commissioner's advice. With regard to the number of Assistant Commissioners used by the PIC, the Commissioner gave evidence that:

**CHAIR:** Mr Commissioner, you mentioned the names of three Assistant Commissioners: Sage, Slattery and Finlay. Have there been other Assistant Commissioners, or is that the limit of the ones you have had?

**Mr GRIFFIN:** Yes, Mr Justice Donovan. Then Donovan of Counsel did the Jetz matter. I am reminded by Michelle of that. I think that is it. The matter that Slattery did was very short. I am confident that is it, but if there is any change I will inform the Committee within 48 hours.<sup>36</sup>

1.12.12 Of the total 60 hearing days (26 public hearing and 34 private hearings)<sup>37</sup> conducted by the PIC for the year ending 30 June 2005, the Commissioner presided on 36 hearing days and Assistant Commissioners on 24 days.

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<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> Ninth General Meeting with the Police Integrity Commission - Transcript of Evidence, p.47.

<sup>37</sup> PIC advised when providing answers to the Questions on Notice that there is an error in these figures in the Annual Report, which transposes the figures and reports 34 public and 26 private hearing days. The Annual Report on the Commission's web site is to be annotated accordingly. All other figures at Appendix 2 of the Annual Report have been checked and are correct.

1.13 **Comment**

1.13.1 There are a number of points arising from Mr Griffin's advice and evidence given in the period leading up to the General Meeting and at the public hearing on 23 November 2005:

- The adoption of this particular managerial approach and structure is a matter for the Commissioner but the criticism that such structures can create coordination and leadership difficulties assumes greater significance as the PIC heads towards the end of Mr Griffin's term, and this is a major concern for the Committee. The use of a temporary Assistant Commissioner, such as Mr Finlay, as a stopgap measure pending the appointment of a new Commissioner does not adequately address succession planning and leadership issues;
- The ongoing costs of employing temporary Assistant Commissioners should be monitored and the cost-effectiveness of this approach carefully assessed. A breakdown of the total cost of Mr Finlay's appointment (and any other Assistant Commissioners used by PIC) is needed in order to properly evaluate the cost saving arguments put forward by the Commissioner.
- A breakdown of the total time spent by the PIC in public and private hearings would help to assess the respective hearing workloads of the Assistant Commissioners and the Commissioner. The Commissioner has argued that the hearing workload does not justify the appointment of a permanent Assistant Commissioner. Depending on the duration of the hearings, which can vary considerably, and the necessary preparation time the argument could be put that if the Commissioner undertook a higher percentage of the hearing workload the appointment of temporary Assistant Commissioners may not be justified.
- The circumstances in which temporary Assistant Commissioners are utilised also require closer examination in order to gauge whether they are being used for the purpose of accessing particular skills and experience, for dealing with a high number of hearings, or for conflict of interest situations where the use of an independent presiding officer is preferable.

**Recommendation 1**

At the conclusion of the 2005-2006 financial year, the Committee will seek a full costing from the Police Integrity Commission of the expenses incurred through the use of temporary Assistant Commissioners in the period since the Commission's establishment. The Committee also will examine the strengths and weaknesses of the Police Integrity Commission's current governance structures and managerial systems.

The Committee will obtain an independent evaluation of this information in order to make a decision as to the desirability of a fuller inquiry into these aspects of the Commission's operations, in particular, the relative merits of the use of temporary Assistant Commissioners, as against a permanent appointment to the position.

## 1.14 Succession Planning

1.14.1 In response to Questions on Notice for the ninth General Meeting about succession planning undertaken in the lead up to the end of his term in October 2006, Mr Griffin confirmed that he did not intend to recruit a permanent Assistant Commissioner and that the selection of a new Commissioner and interim arrangements pending selection are a matter for the Government. He indicated that the ongoing status of the vacant Assistant Commissioner position will be a matter for the next Commissioner.<sup>38</sup>

1.14.2 The Commissioner gave evidence that:

**Mr GRIFFIN:** . . . I have no capacity, as it should be, to do anything about my successor. I have been assured in writing that that will be done at the appropriate time. I assume that means that I walk out and someone else walks in—and with a bit of luck I can spend a bit of time and help that person over the process. The debate I have with the Committee seems to be about the role of Assistant Commissioner. I stand by my position that it is much more efficient to not have a full-time Assistant Commissioner. As time goes by we will get more and more able to demonstrate the monetary value. In any event, I think there is a structural value . . .

There is one other thing that troubles me about what I see as a perception that I should appoint an Assistant Commissioner, to fill the gap if you like. That is that, as Commissioner, I am able to delegate to an Assistant Commissioner my powers, and the Act allows, if that Assistant Commissioner is appropriately qualified, for the person to sit and conduct hearings and issue process and so on. There is a view—although it is, I do not think, unchallengeable—that a delegation by me to an individual ceases if I am not there. That would leave an Assistant Commissioner in a position where he or she could not exercise any powers because the delegation from me is no longer available, and if there is not another Commissioner as a delegate, you cannot say, "Oh, the delegation flows on because there is a new Commissioner." If that is the case, it does not seem to work very well.

The alternative view of that particular interpretation is that a delegatee, even in the absence of the person who delegates, might keep some powers. I do not know what the better view is; it would be for someone in the Supreme Court to determine that. But that is also the problem. If decisions made by the Commission by an Assistant Commissioner were open to that sort of challenge—a very easy challenge to mount if you look at the problem I suggest—it would stop the Commission cold, it seems to me. Even if I could be convinced that it was a sensible use of public money to have an Assistant Commissioner, I do not believe that that Assistant Commissioner could fill the gap that you envisage as a possibility if the Government does not act promptly on my replacement. I believe it is a problem that I cannot solve.

The other side of the coin, however, is that the Commission is blessed with senior officers and members of an executive who will maintain the Commission's work and approach, whether or not there is a Commissioner there. The Commissioner can be a figurehead. You could have a Commissioner who did not want to become part of the process of the Commission; he could be a figurehead and exercise the powers and delegate to an Assistant Commissioner; or you could have a Commissioner who would

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<sup>38</sup> Ninth General Meeting with the Police Integrity Commission – Questions on Notice, No.13, p.28.

want to get down and be part of the process. Either way that executive is there, rock solid and very experienced, and the place will continue.

I do not think that bringing in a new Assistant Commissioner to struggle with an organisation that they know nothing about is going to make any difference at all. If there is a gap there will be some things that cannot be done, but that is a problem that the Government has to solve.<sup>39</sup>

- 1.14.3 The Commissioner is mistaken in concluding that the Committee's main concern about the absence of a permanent Assistant Commissioner pertains to the issue of the delegation of his functions during any period when he is absent. The Committee certainly has raised the issue of delegation of the Commissioner's powers to a suitably qualified PIC officer and the Commissioner's most recent evidence suggests there may be a need to obtain some legal clarification of the situation regarding the exercise of the powers afforded the Commissioner when the position is vacant. This could be a matter for serious concern if the Commission were to be in the middle of a sensitive investigation at the conclusion of Mr Griffin's term and there is a gap in the appointment of the new Commissioner. In the absence of a permanent Assistant Commissioner the Committee also has wider concerns about the ongoing leadership and direction of the Commission.
- 1.14.4 The Committee considers that the Commissioner's evidence reflects a rather narrow interpretation of its concerns. In the view of the Committee, succession planning is an integral part of the Commissioner's managerial responsibilities and the risks associated with poor succession planning are matters that the Commissioner should mitigate against. In the Committee's opinion, succession planning is not confined to the leadership position of the Commissioner and should not be equated with providing the Commissioner's successor. Nor is succession planning the sole remit of Government.
- 1.14.5 The Executive branch of Government has responsibility for ensuring that the recruitment process for selecting and appointing a new Commissioner takes place in a timely fashion and, preferably, without a gap between the end of Mr Griffin's term and the appointment of a new Commissioner. However, responsibility for ensuring that the PIC is an organisation possessing the strength of leadership to maintain business continuity in the transition period from one Commissioner to another clearly lies with the head of the organisation. This is consistent with the PIC's status as an independent statutory body.
- 1.14.6 It still seems somewhat inaccurate to the Committee to list the position of Assistant Commissioner as vacant in the PIC's Annual Report for 2004-05, when the position has effectively been abolished through the devolution of the responsibilities and duties of this position to other PIC officers and temporary Assistant Commissioners. The Committee notes the Commissioner's explanation that the Annual Report is not meant to mislead on this point and merely reflects the current vacancy in the position. The Commissioner has indicated that the

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<sup>39</sup> Ninth General Meeting with the Police Integrity Commission – Transcript of Evidence, p.52.

ongoing status of the vacant Assistant Commissioner position will be a matter for the next Commissioner.<sup>40</sup>

- 1.14.7 In the lead up to the end of the Commissioner's term, the Committee remains very concerned that a permanent Assistant Commissioner to the PIC has not been appointed. It is almost six months before the end of Mr Griffin's term as Commissioner. The Committee will be seeking assurances from the Commissioner as to the measures he is taking to ensure that a leadership vacuum will not threaten business continuity, particularly in the absence of a permanent deputy with corporate knowledge of the PIC. In particular, the Committee will examine the Commissioner on the use of short-term measures to provide for continuity of leadership. With regard to the broader issue of utilising temporary Assistant Commissioners to act in the role of Commissioner during the latter's illness or absence (as distinct from a vacancy in office), this also would seem to raise issues about the workload required to balance the managerial and operational demands of an Acting Commissioner, particularly if the temporary Assistant Commissioner were engaged on a part-time basis.
- 1.14.8 Succession planning ensures an organisation's capacity to maintain corporate continuity in terms of strategic planning and decision-making. These tasks require leadership decisions about the allocation of resources against organisational objectives and the Committee is concerned about the capacity for various senior managers at the next level down from the Assistant Commissioner to effectively manage such matters under the current PIC structure, particularly given that they have different roles and responsibilities and possibly different operational priorities. At the time of the General Meeting in November 2005, it was unclear as to who will make decisions internally as to whether PIC is achieving its objectives and who will assign managerial and operational responsibilities under the current structure in the Commissioner's absence or any vacancy in office.
- 1.14.9 Mr Griffin asserted that he does not wish to recruit someone to the position of permanent Assistant Commissioner, given the short period before the appointment of his successor. He also has stated that the appointment of a permanent Assistant Commissioner would be a matter for the new Commissioner. The Committee acknowledges the Commissioner's position but considers that there were other options available to the Commissioner that had practical value and the Committee is disappointed that these options do not appear to have been canvassed. For instance, with the exception of the Commissioner, all members of the PIC's executive are employed under a private contract. It is not apparent to the Committee why consideration was not given to the appointment of a full-time Assistant Commissioner for a shorter contract period of two years. Such an appointment would have had the benefit of providing continuity at the senior executive level for the transition period from the appointment of one Commissioner to the next. Moreover, it may well have been more cost-effective than the appointment of temporary Assistant Commissioners and, given the length of the proposed contract, it would have been possible for the incoming Commissioner to

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<sup>40</sup> Ninth General Meeting with the Police Integrity Commission – Questions on Notice 12&13, p.28.

make a decision as to whether to renew the Assistant Commissioner's contract, readvertise the position or leave it vacant.

## **Recommendation 2**

The Committee recommends that:

- (a) an *in camera* hearing be conducted with representatives of the Ministry for Police to discuss the current progress in recruiting a new Commissioner of the PIC and any legal difficulties that might arise for PIC operations during a vacancy in office;
- (b) the Commissioner and senior executive of the PIC confirm the arrangements that are being put in place to ensure a smooth transition from the end of Mr Griffin's term through to his successor's initial period of appointment.

### **1.15 Committee's power to veto the appointment of the PIC Commissioner**

1.15.1 Under clause 10, Schedule 1 of the *Police Integrity Commission Act 1996* a person cannot be appointed until

- a. a proposal that the person be so appointed has been referred to the Joint Committee under section 31BA of the *Ombudsman Act 1974*, and
- b. the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.

1.15.2 The Committee recently sought and obtained an undertaking from the Director-General of the Ministry for Police, who is involved in the recruitment of a new PIC Commissioner that the selection panel will provide the Committee with a statement as to the merits of the successful applicant for the position.

## **2 Operation Vail**

2.1 On 15 April 2005, the Commissioner of Police wrote to the PIC enclosing correspondence dated 7 April 2004 in which the allegation had been made that Deputy Commissioner David Madden had breached the *Telecommunications (Interception) Act 1979 (Cth) (TI Act)* during the investigation of alleged gang rape by some members of the Canterbury Bulldogs. The Commissioner of Police requested that the PIC undertake an investigation of this allegation.

2.2 The introduction of the PIC's report on this investigation, called Operation Vail, states that:

Prior to the referral to the Commission, the complaint had been assessed by NSW Police and not further investigated. It was then identified by the Office of the Ombudsman as a matter that required further attention. Subsequently, the Commissioner of Police obtained independent legal advice. The tenor of that

advice was that Deputy Commissioner Madden and other senior police may have committed offences against the TI Act.<sup>41</sup>

- 2.3 However it became apparent to the Committee that newspaper coverage<sup>42</sup> following the tabling of Operation Vail in the Parliament indicated a different version of events. Specifically, the media reports claimed that in early April 2004 at the time the Commissioner of Police received the complaint, it was referred to PIC who subsequently referred it back to the NSW Police Professional Standards Command. According to these accounts, the Professional Standards Command apparently decided to take no action regarding the complaint.
- 2.4 The Committee sought advice from the PIC Commissioner on this sequence of events and the extent of the PIC's involvement in this matter. He advised<sup>43</sup> that the PIC had been notified of the alleged breaches of the TI Act on 21 July 2004. The notification indicated that NSW Police had declined to investigate, and that the Ombudsman was in the process of ratifying the NSW Police decision. On the basis of this, the PIC deferred a decision pending advice from the Ombudsman. The PIC Commissioner indicated that preliminary advice from the Ombudsman in September 2004 was that although the Office's assessment had not been completed it was unlikely that the Ombudsman would require further investigation by NSW Police.<sup>44</sup> However advice from the Ombudsman indicated otherwise.
- 2.5 In response to a request from the Committee, the Ombudsman advised<sup>45</sup> that in August 2004 during routine monitoring of NSW Police complaints some irregularities regarding TI product relating to the investigation into some members of the Canterbury Bulldogs were noted. As a result, the Ombudsman requested further information to see if an investigation was necessary. In September 2004, the Ombudsman informed the PIC that the matter would be treated as an investigation and in October 2004, the Ombudsman requested NSW Police investigate the alleged breach. In December 2004, NSW Police notified the Ombudsman that the Professional Standards Command would take carriage of the investigation. In January, March and April 2005, the Ombudsman requested updates on the Police investigation. On 15 April 2005 Commissioner Moroney wrote to the Ombudsman advising that the PIC would be taking over the investigation.<sup>46</sup>
- 2.6 The Ombudsman advised that 'ratification in progress' denotes that the Ombudsman has been notified of a complaint but has not yet made a determination. The status of a matter where ratification is pending does not indicate the likelihood that a complaint will not be investigated.<sup>47</sup>

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<sup>41</sup> PIC, *Report to Parliament Operation Vail*, June 2005, 1.

<sup>42</sup> For example Martin Chulov, 'Fall guy' *The Australian* 23 June 2005; Editorial 'Police probe: the mysteries remain' *Sydney Morning Herald* 17 June 2005 and Les Kennedy 'Watchdog had to bug police to act' *Sydney Morning Herald*, 18 June 2005.

<sup>43</sup> Correspondence from Mr Griffin dated 4 July 2005.

<sup>44</sup> *ibid.*

<sup>45</sup> Correspondence from the Ombudsman, Mr Bruce Barbour, dated 1 August 2005.

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*

- 2.7 The Ombudsman further advised that while there had been contact between his officers and the PIC in September 2004, his officers had advised the PIC that they were awaiting further material in relation to the complaint and that they would be treating it as an investigation.<sup>48</sup>
- 2.8 There is a clear discrepancy between the advice of the PIC Commissioner and the advice of the Ombudsman in relation to the initial handling of this matter. That discrepancy is echoed by the truncated chronology provided in the introduction to the PIC report on Operation Vail, which does not include details of the PIC's initial assessment of the complaint. The Committee notes that the PIC would have been able to access this complaint from the moment it was included in the [c@ts.i](#) database used to record police complaints, and that the explanation as to this discrepancy turns on the interpretation of the contents of a telephone call between officers of the PIC and the Ombudsman's Office. While the Committee is precluded from reconsidering a decision not to investigate a complaint by s.95(2) of the *Police Integrity Commission Act 1996*, the Committee found the chronology of the PIC's handling of the complaint contained in the introduction of the report on Operation Vail to be incomplete. In the future, the Committee expects a full history of any complaint investigation to be disclosed in reports to Parliament, barring the most exceptional operational circumstances.

### 3 **Inquiry into the Police Integrity Commission's Jurisdiction to Oversight the Protective Security Group**

- 3.1 In March 2005, the Committee tabled an Interim Report on an Inquiry into the Police Integrity Commission's Jurisdiction to oversight the Protective Security Group. The Interim Report reviewed the circumstances surrounding the establishment of the Protective Security Group (PSG) following the disbanding of Special Branch, and the PIC's oversight role in relation to the PSG. The Interim Report concludes with an examination of the establishment of the Counter Terrorism Coordination Command (CTCC) and its absorption of the PSG. During the conduct of the Inquiry, the PIC undertook to conduct a risk assessment of the CTCC to provide a basis for making recommendations for an appropriate level of oversight for the CTCC.
- 3.2 Since the Interim Report was tabled, there have been a number of developments substantially impacting on the role and powers of the CTCC. These include:
- the *Terrorism Legislation Amendment (Warrants) Act 2005*,<sup>49</sup> which lengthened the duration of listening device warrants for terrorism offences and created the offence of being a member of a terrorist organisation;
  - the *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005*,<sup>50</sup> which substantially increases the power of the police to detain people suspected of terror related activities;

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<sup>48</sup> *ibid.*

<sup>49</sup> Date of commencement, sec 6 excepted, 13.9.2005, sec 2 (1) and GG No 113 of 9.9.2005, p.7271; date of commencement of sec 6, on the second anniversary of the commencement of sec 5 (ie 13.9.2007), sec 2 (2).

<sup>50</sup> Assented to 7 December 2005 and commenced 16 December 2005.

- CTCC staff increased from 70 in October 2002<sup>51</sup> to 500 in November 2005;<sup>52</sup>
- \$19.8 million of NSW Police budget in 2005-06 to be spent on counter terrorism measures;<sup>53</sup>
- an additional \$4.7 million for a Forensic Science Centre with 140 staff and a specialist counter terror capability to detect and analyse explosive residue and chemical and biological warfare agents;<sup>54</sup>
- reciprocal work secondment arrangements between the New York Police Department and the Counter Terrorism Coordination Command;<sup>55</sup>
- the FBI placing an officer in Sydney in a legal attaché role;<sup>56</sup>
- three NYPD officers to review NSW Police counter terrorism capability;<sup>57</sup>
- more than \$187 million spent on counter terrorism measures in 2005-06, up from \$147 million in 2004-05.<sup>58</sup>

3.3 At the ninth General Meeting with the Police Integrity Commission, the PIC gave evidence that the risk assessment of the CTCC had commenced. In relation to the rapid increase in powers and resources available to the CTCC, the PIC Commissioner stated in evidence that “..there are always dangers with quick growth...it is not surprising that the focus has not come back yet to some of those things we would consider to be basic...”<sup>59</sup>

3.4 It is anticipated that the risk assessment will be concluded by the first half of 2006 and that the PIC’s recommendations arising from the risk assessment will be made available to the Committee.

3.5 The Committee will be issuing a final report of this inquiry in 2006. The final report will detail legislative, structural and financial changes to the CTCC since the publication of the interim report, as well as the outcomes of the PIC’s risk assessment.

## 4 Early Warning System

4.1 In December 2002 the Committee tabled *Research Report on Trends in Police Corruption*: a research report, which made two recommendations. One was that consideration be given to developing an Early Warning System to identify officers at risk of corruption. In January 2003 an Inter-Agency Research Group was established with representatives of the NSW Ombudsman, NSW Police and the PIC to develop an Early Warning System in relation to police misconduct. The Inter-Agency Research Group met four times during 2004-2005.<sup>60</sup>

<sup>51</sup> Press Release, Premier of NSW, *Counter Terrorism Coordination Command*, 30 October 2002.

<sup>52</sup> Press Release, Minister for Police, *NSW Counter Terror Unit to be Expanded*, 13 November 2005.

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

<sup>55</sup> Press Release, Premier of NSW, *NSW Police Boost Counter Terrorism Cooperation with Key US Law Enforcement Agencies*, 22 September 2005.

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

<sup>58</sup> Press Release, Premier of NSW, *Premier Announces Record Spending on Counter Terrorism*, 20 May 2005.

<sup>59</sup> Transcript of Ninth General Meeting with the PIC, 23 November 2005.

<sup>60</sup> Police Integrity Commission *Annual Report 2004-05*, p.39.

- 4.2 In May 2005, the Police Commissioner's Executive Team gave notice that it intended to consider deferring research into the Early Warning System in favour of a separate process called the Officer Risk Assessment Process. NSW Police cited possible high costs of the project, and complications associated with their mainframe replacement project. The PIC wrote to the Commissioner of Police on 20 May 2005 urging in-depth consideration be given to suspending this project.<sup>61</sup>
- 4.3 In the PIC's answers to Questions on Notice, dated 23 November 2005, the PIC noted that they had not yet received a formal response to that correspondence. Additionally, the PIC had not been provided with the proposal for implementing the Officer Risk Assessment Process that was put to the Commissioner's Executive Team. The PIC was informally advised that this proposal had been set aside pending the outcome of the trial of the Early Warning System. The PIC was not, therefore, in a position to offer any advice about the extent to which NSW Police have assessed the relative benefits of the Officer Risk Assessment Process. However, the PIC noted that the information needed to provide indicators for the Early Warning System is being considered during the replacement of the police mainframe.<sup>62</sup>
- 4.4 It was extremely gratifying for the Committee that its recommendation for the PIC and Ombudsman to assist NSW Police to establish an Early Warning System for identifying and assisting vulnerable police officers<sup>63</sup> was taken up by the Ombudsman, the PIC and NSW Police. The Committee notes that the parties to the project have expended significant time and resources in developing an Early Warning System and will await NSW Police's decision regarding its preferred risk assessment model with interest.

## 5 **Role of Counsel Assisting**

- 5.1 The Committee asked the Commission a number of questions concerning the role of Counsel Assisting. The relationship between Counsel Assisting, the Commissioner and PIC staff is grounded in the Commission's investigative functions and is distinguished by the inquisitorial nature of its proceedings. The Committee is particularly interested in exploring the extent to which the relationship between this position and the PIC Commissioner differs to the traditional relationship between Royal Commissioners and Counsel Assisting, and the practices and conventions normally observed in that relationship.
- 5.2 In keeping with the *sub judice* convention, the Committee is mindful of the need to limit its discussions with the PIC on this issue as there is an appeal pending in relation to the judgment of Young J in *Shaw v Police Integrity Commission* [2005] NSWSC 782 (3 August 2005). Consequently, the Committee's examination of the PIC thus far has been general in nature. Following conclusion of the appeal

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<sup>61</sup> *ibid.*

<sup>62</sup> Police Integrity Commission's, Answers to Questions on Notice, Question 23.

<sup>63</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Research Report on Trends in Police Corruption*, December 2002, p.iv.

proceedings, the Committee intends to conduct fuller enquiries with the PIC on this subject.

- 5.3 Primary areas for inquiry are: the role of Counsel Assisting in independently assessing and presenting the evidence at hearings, the extent of input by Counsel Assisting into the conduct and planning of an inquiry, and the extent of involvement by Counsel Assisting in the preparation of PIC inquiry reports. For instance, the PIC has given evidence that its practice is that Counsel Assisting has no responsibility for preparing draft reports on an investigation.<sup>64</sup> Counsel Assisting may be requested to consider a completed draft and provide feedback but there is little other involvement by Counsel Assisting in the preparation of PIC reports. However, PIC's letter of appointment for Counsel Assisting provides that the position will, in consultation with the relevant operational lawyer, prepare part or all of a draft report to Parliament for consideration by the Commissioner, and submit the draft report to the Commissioner.
- 5.4 The letter of appointment indicates that:
- This process will necessarily involve Counsel Assisting formulating views as to findings of fact and opinions and recommendations of the kind set out in paragraph 4 (above). It is expected that Counsel Assisting's written submissions will form the basis for the draft report, modified appropriately having due regard to submissions received in response to Counsel Assisting's written submissions.
- 5.5 The letter of appointment also indicates that the Commission welcomes advice from Counsel Assisting in relation to operational initiatives, especially if the initiative is likely to have an impact upon the conduct of a hearing.<sup>65</sup>
- 5.6 These are the types of matters that the Committee wishes to explore more fully and clarify with the PIC by taking further evidence.
- 5.7 The Committee has considered the letter of appointment in terms of the scope for regulating the requirements of the position. A further related area of inquiry concerns the application of principles of natural justice and procedural fairness.
- 5.8 The Committee will return to a detailed examination of the PIC on these issues following the conclusion of the appeal proceedings.

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<sup>64</sup> Ninth General Meeting with the Police Integrity Commission, Transcript of proceedings, p.44.

<sup>65</sup> Pro forma letter of appointment for Counsel Assisting the PIC, provided by the former Inspector of the PIC, the Hon. M. Ireland QC on 31 August 2005.



## Chapter Two - Questions on Notice

### **OPERATION VAIL (into alleged breaches of the TI Act by NSW Police)**

1. At what stage did the PIC consult the NSW Ombudsman's Office about the NSW Police investigation of the complaint into the alleged TI breaches?
2. What was the advice given to the PIC by the Ombudsman's Office about the status of its oversight of the complaint and its intentions as to whether or not NSW Police should investigate the complaint?
3. What does the PIC understand the classification "ratification in progress" to mean?
4. Was the PIC aware of the Ombudsman's dealings with NSW Police early in 2005 concerning the extent of the delays in finalising the investigation into the complaint?
5. Is there any particular reason that the report to Parliament on Operation Vail does not include reference to PIC's earlier consideration of the alleged breaches in October 2004?
6. Why wasn't it considered that inclusion of this information would have provided a fuller exposition of the background to the PIC's involvement in the matter?
7. Is there any reason why the PIC did not include information in the report to Parliament on the full history of NSW Police's handling of the matter, in particular, the delays in producing the investigation report and the Ombudsman's efforts to have NSW Police undertake to finalise its investigation?

### **ANNUAL REPORT 2004-05**

#### **Addressing serious police misconduct-outcomes**

8. What procedures does the PIC have in place to assess the strength of the evidence compiled against individuals to determine whether referral to the DPP is appropriate?
9. Does the PIC have in place any protocols with the DPP in relation to the compiling of briefs?
10. What is the average turnaround time for the compilation of briefs by the PIC for referral to the DPP?

#### **Plans for 2005-2006**

11. The PIC will continue its activities associated with the assessment of the special risks attached to the work of the NSW Police Counter Terrorism Coordination Command. What is the current state of the PIC's efforts to oversight this particular area of policing? Is the PIC experiencing any particular difficulties in respect of its work in this area?

#### **Governance**

12. The Executive detailed at page 13 of the Annual Report lists the position of Assistant Commissioner as vacant. Isn't that misleading given that the position in effect has been

Questions on Notice

abolished through the devolution of the responsibilities and duties of this position to other PIC officers and temporary Assistant Commissioners?

13. What succession planning has the Commissioner undertaken given that there is less than 12 months before the end of Mr Griffin's term? Is recruitment of a permanent Assistant Commissioner to be undertaken and, if so, what would the duties and responsibilities of this position be?
14. How many of the 34 public and 26 private hearing days were presided over by the Commissioner of the PIC and how many were presided over by Assistant Commissioner/s?
15. During your term as Commissioner, the position of Executive Officer was established.
  - (a) What was the purpose of establishing this position and how does the role of Executive Officer relate to other positions within the PIC's Executive?
  - (b) Following the external IT review, was it the Executive Officer who performs the duties and responsibilities of the Information Communications and Technology (IC&T) Manager?
  - (c) What other functions attach to the position of Executive Officer and what is the level of remuneration for this position? (For instance, the Executive Officer also seems to perform the role of Media Officer and Security Manager)
  - (d) To what extent is the Executive Officer involved in operational matters?
  - (e) Does this position have a role in respect of the handling of complaints?
  - (f) What protocols does the Media Office observe in the release of information relevant to the PIC's current investigations?

**Role of Counsel Assisting**

16. Role of Counsel Assisting:

- (a) What is the relationship between the PIC Commissioner (or Acting/Assistant Commissioner) and Counsel Assisting: How does this relate to the traditional relationship between Royal Commissioners and Counsel Assisting, and the practices and conventions normally observed in that relationship?
- (b) What is the general view of the PIC about "jury rhetoric" and sensationalist flavour in opening address by Counsel Assisting?
- (c) What is the PIC's view about the principles of natural justice and procedural fairness bearing in mind comments at paragraphs 147 and 161 of Young's judgment?
- (d) To what extent is Counsel Assisting responsible for preparing the draft report on a PIC inquiry?
- (e) Do you consider that the letter of appointment for Counsel Assisting the PIC is sufficient regulation for the position and the most appropriate mechanism for such regulation?

**Operation Ovalbay**

17. How many police officers resign before the completion of s.181D proceedings against them?

**Operation Vail**

18. What was the reason for the Commonwealth DPP's decision not to commence criminal proceedings against Deputy Commissioner Madden or Assistant Commissioner Parsons?

**Early Warning System**

19. Has NSW Police indicated to the PIC that the benefits of the proposed Officer Risk Assessment Process (ORA), in terms of its capacity to support corruption prevention strategies and costs, have been formally weighed against the risk management process proposed in the Early Warning System? If so, what was the outcome of the assessment? Has there been any further discussion of this issue?



## Chapter Three - Answers to Questions on Notice

### **OPERATION VAIL (into alleged breaches of the TI Act by NSW Police)**

#### **1. At what stage did the PIC consult the NSW Ombudsman's Office about the NSW Police investigation of the complaint into the alleged TI breaches?**

Consultations occurred with the Ombudsman on 7 and 8 September 2004 in order to prepare advice to the Commissioner as part of the Commission's internal complaints assessment processes.

#### **2. What was the advice given to the PIC by the Ombudsman's Office about the status of its oversight of the complaint and its intentions as to whether or not NSW Police should investigate the complaint?**

Preliminary advice received by the Commission on 8 September 2004 from the Ombudsman's Office was that:

- NSW Police had originally declined the complaint on the basis that "the conduct alleged did not occur". The complaint was closed.
- The Ombudsman's Office had advised NSW Police that the enquiries (no further details noted) already conducted by NSW Police constituted an investigation and the complaint should not be recorded as 'declined' but recorded as 'investigated' and a s.150 Report provided to the Ombudsman.
- Following this advice from the Ombudsman NSW Police reopened the complaint, subsequently closed it again and provided relevant documentation to the Ombudsman for assessment.
- Finalisation of the assessment had been temporarily delayed as the Ombudsman Case Officer was on leave. However, it was not expected that the Ombudsman would require any further work from NSW Police.

Based on the Ombudsman having the oversight of the management of the complaint in hand, and an assessment of the information before it, the Commission decided to take no further action, seeking only a final report of the investigation from NSW Police for review.

#### **3. What does the PIC understand the classification "ratification in progress" to mean?**

This expression refers to the period during which the Ombudsman's Office assesses a decision made by police to either decline a complaint or finalise an investigation. If satisfied with the decision made by police, the Ombudsman 'ratifies' the decision. If not, NSW Police may undertake further enquiries and/or provide additional information.

#### **4. Was the PIC aware of the Ombudsman's dealings with NSW Police early in 2005 concerning the extent of the delays in finalising the investigation into the complaint?**

The Commission was not aware of the Ombudsman's dealings with NSW Police concerning delays in finalising the investigation into the complaint. From December 2004 the Commission was broadly aware that the complaint had again been reopened, as a result of

comments made by the Ombudsman, and that legal advice had been sought concerning the alleged breach. However, the matters raised by the Ombudsman were not known in detail until April 2005 when documentation associated with the management of the complaint was provided with a request from Commissioner Moroney that the Commission conduct an independent investigation of the original allegation.

**5. Is there any particular reason that the report to Parliament on Operation Vail does not include reference to PIC's earlier consideration of the alleged breaches in October 2004?**

A s.96(2) report details available evidence relevant to the purpose of a Commission investigation, assessments of that evidence and any relevant opinions and recommendations. Sufficient background to provide a suitable context for consideration of the evidence is also included. As noted in the Commission's letter of 4 July 2005, the Commission's earlier consideration of the alleged breaches did not present as materially relevant to the incidents and the evidence considered in the report.

**6. Why wasn't it considered that inclusion of this information would have provided a fuller exposition of the background to the PIC's involvement in the matter?**

Please see the response to Q. 5 above.

**7. Is there any reason why the PIC did not include information in the report to Parliament on the full history of NSW Police's handling of the matter, in particular, the delays in producing the investigation report and the Ombudsman's efforts to have NSW Police undertake to finalise its investigation?**

Yes. However, operational reasons restrict further disclosure at this time.

## **ANNUAL REPORT 2004-05**

### **Addressing serious police misconduct-outcomes**

**8. What procedures does the PIC have in place to assess the strength of the evidence compiled against individuals to determine whether referral to the DPP is appropriate?**

The Commission's approach to the referral of criminal briefs is to apply a prima facie case test. That is, where there is admissible, prima facie evidence of the commission of an offence, then a brief will always be referred to DPP for consideration to be given to prosecution. The Commission will include as much evidence as possible in the brief to support the proposed charge. The DPP as prosecutor, will then apply the range of considerations which arise under the Prosecution Guidelines, to guide the DPP in deciding whether to charge or not.

Such considerations include assessing the credibility of witnesses, the age of the matter, the public interest and the prospect of conviction. Many of these considerations are discretionary and are not matters that the Commission takes into account when compiling a brief for consideration by the DPP. This is regarded by the Commission as an appropriate separation of the different functions of an investigative agency and a prosecuting body.

The Commission has an agreement with the DPP that preliminary briefs referred for consideration will contain the substantive evidence in support of a proposed charge, and will

not contain statements in relation to the more administrative aspects such as continuity of exhibits etc. The advantage of this process is that the DPP gets the opportunity to consider the strength of a brief at the earliest opportunity. If the DPP recommends charging then the completion of the formal parts and any further requisitions from the DPP can be attended to. If the DPP recommends against charging then time has not been wasted on non-essential parts of the brief which would have had no bearing on the DPP's decision on the substantive issues.

**9. Does the PIC have in place any protocols with the DPP in relation to the compiling of briefs?**

In addition to the agreement referred to above regarding the provision of preliminary briefs, the Commission has had an MOU in place with the DPP since 2000. Among other things, it deals with the contents of briefs, requisitions by the DPP and obtaining of further evidence.

**10. What is the average turnaround time for the compilation of briefs by the PIC for referral to the DPP?**

While it is technically possible to provide an average turnaround time for the compilation of briefs, it would be difficult and resource intensive. In addition, it is the view of the Commission that the result would also not be meaningful. Each case turns so much on its own facts and circumstances. Preparation of briefs, once evidence of a prima facie case has been established, starts during an investigation. Often it is the case that a Commission hearing results in witnesses choosing to assist the Commission and the process in those cases is to obtain statements in admissible form from witnesses as soon as possible after they have given their evidence at the Commission. However, investigation does not cease at the conclusion of a hearing. Often further inquiries are indicated as a result of evidence sourced from a hearing. The time taken to pursue further lines of inquiry varies.

**Plans for 2005-2006**

**11. The PIC will continue its activities associated with the assessment of the special risks attached to the work of the NSW Police Counter Terrorism Coordination Command. What is the current state of the PIC's efforts to oversight this particular area of policing? Is the PIC experiencing any particular difficulties in respect of its work in this area?**

The Committee may recall that the Commission envisaged a staged approach to this project. Initially the Project will evaluate:

- the nature and extent of the misconduct risks identified by the CTCC;
- the systems the CTCC has in place to identify and manage those risks; and,
- the extent to which the CTCC is complying with those systems.

If risk is being managed appropriately then the project may need go no further. Other steps outlined in the original proposal, including recommendations for oversight arrangements, would follow if gaps in the management of risk are identified.

Preliminary research has been conducted on the practices of a number of agencies in regard to the management of the risk of misconduct in those areas tasked with similar responsibilities and with similar powers as the CTCC. It is of note that little work appears to

have been done specifically about misconduct associated with the special role and function of CTCC like units.

Preliminary enquiries have also been made with the NSW Audit Office and with Treasury concerning risk management methodologies.

The Commissioner has had a preliminary meeting with Commissioner Moroney and Commission staff have since met with Deputy Commissioners Scipione and Collins. Arrangements are being made for an introductory session with relevant staff of the CTCC for later this year. It is intended that structured interviews, a review of risk management processes and relevant documentation will then follow.

The Commission has encountered no real difficulties at this early stage of the project.

### **Governance**

**12. The Executive detailed at page 13 of the Annual Report lists the position of Assistant Commissioner as vacant. Isn't that misleading given that the position in effect has been abolished through the devolution of the responsibilities and duties of this position to other PIC officers and temporary Assistant Commissioners?**

The Assistant Commissioner position has not been abolished, nor is it the intention that the position be abolished. The Commission has indicated that it only intends that the position not be filled. The ongoing status of the position will be a matter for the next Commissioner.

It was not the Commission's intention to mislead by including the vacant position in the Commission's Annual Report, the inclusion of the position is simply a reflection of the current Commission structure. The position is vacant and has been noted as such. Consistent with this, the details of the Commission's staffing levels noted on page 49 of the 2004-05 Annual Report show two Executive appointments.

**13. What succession planning has the Commissioner undertaken given that there is less than 12 months before the end of Mr Griffin's term? Is recruitment of a permanent Assistant Commissioner to be undertaken and, if so, what would the duties and responsibilities of this position be?**

The selection of a new Commissioner, and interim arrangements pending selection, are a matter for the Government.

As noted above, it is not intended that recruitment of a permanent Assistant Commissioner be undertaken. The ongoing status of the vacant Assistant Commissioner position will be a matter for the next Commissioner.

**14. How many of the 34 public and 26 private hearing days were presided over by the Commissioner of the PIC and how many were presided over by Assistant Commissioner/s?**

Please note that there is an error in these figures in the Annual Report. The figures were inadvertently reversed during the collation of data for Appendix 2 of the Annual Report – Statistical Data on the Exercise of the Commission's Powers. There were 26 public hearing days and 34 private hearing days. The Annual Report on the Commission's web site is to be

annotated accordingly. All other figures at Appendix 2 of the Annual Report have been checked and are correct.

The Commissioner presided on 36 hearing days and Assistant Commissioners on 24 days.

**15. During your term as Commissioner, the position of Executive Officer was established.**

**(a) What was the purpose of establishing this position and how does the role of Executive Officer relate to other positions within the PIC's Executive?**

The original purpose of this position concerned the provision of strategic advice, managing high profile issues, reviewing and advising on reports, media liaison and assisting the Commissioner with a range of projects.

However, since 2001-02 the Executive Officer has also had overall responsibility for Information Technology (IT) and Security. The Manager IC&T and the Security Manager both report to the Executive Officer.

The Committee may recall from correspondence of 4 July that the Commission's Executive consists of the Commissioner, the Director Operations and the Director Intelligence & Executive Services. The Executive Officer is not a member of the Commission's Executive. The Executive Officer is an adviser to the Commissioner and other members of the Executive. The Executive Officer also manages a range of taskings on behalf of the Commissioner.

**(b) Following the external IT review, was it the Executive Officer who performs the duties and responsibilities of the Information Communications and Technology (IC&T) Manager?**

The Manager IC&T is a discrete position, it reports to the Executive Officer, as did the Manager IT before the review. The Organisational chart outlining the reporting relationships associated with the Executive Officer are contained in the Commission's Annual Reports from 2001-02. No changes in these reporting relationships followed the external IT review.

**(c) What other functions attach to the position of Executive Officer and what is the level of remuneration for this position? (For instance, the Executive Officer also seems to perform the role of Media Officer and Security Manager)**

Please see the response to 15(a) above for the additional functions of the Executive Officer.

Commission staff are engaged on individual contracts. It is the view of the Commission that the details of individual contracts, including remuneration, should remain private. The Commission asks that this information, should it be required, be provided on a confidential basis, perhaps during an in camera session of the forthcoming hearing.

**(d) To what extent is the Executive Officer involved in operational matters?**

The Executive Officer is involved in the OAG and the Commission / Professional Standards Command meetings. The Executive Officer provides advice and manages the administrative processes associated with meetings. The Executive Officer also attends meetings between

the Commissioner and the Inspector where the role primarily concerns managing taskings which arise from discussions.

**(e) Does this position have a role in respect of the handling of complaints?**

Not normally, however, there have been infrequent occasions when the Executive Officer has independently ratified recommendations made by complaints handling staff on behalf of the Commissioner.

**(f) What protocols does the Media Office observe in the release of information relevant to the PIC's current investigations?**

Formal media releases are developed by relevant operational or research staff in association with the Executive Officer. The Executive Officer provides copies of the releases to the media following approval by the OAG.

Ad hoc queries from the media are considered by the OAG and a response, if one is to be given, is formulated. The Executive Officer releases the response following approval by the OAG.

**Role of Counsel Assisting**

**16. What is the relationship between the PIC Commissioner (or Acting/Assistant Commissioner) and Counsel Assisting: How does this relate to the traditional relationship between Royal Commissioners and Counsel Assisting, and the practices and conventions normally observed in that relationship?**

The relationship between the Commissioner and Counsel Assisting, is set out in the instrument by which Counsel is retained. The letter of retainer used by the Commission, which has previously been furnished to the Committee, sets out the Commission's expectations of Counsel and the limits on the role Counsel is to perform in a particular matter. It is the Commission's procedure to have Counsel sign a written acceptance of those terms prior to being engaged. The Commission expects Counsel to act within the terms of the retainer.

In practice, while Counsel is instructed by the Commission to undertake certain tasks, within the scope of those instructions Counsel performs, and is expected to perform, his or her role in an independent manner. In particular, Counsel is required to independently assess and present the evidence in its hearings, and make such submissions as might properly lie on that evidence. That is also set out in the Commission Practice Guidelines: Conduct before a hearing. The Commission is not the client of Counsel Assisting, nor does Counsel Assisting act on behalf of the Commission.

So far as the Commission is aware, this role is broadly consistent with the traditional role expected of Counsel Assisting a Royal Commission, to the extent that there can be said to be a "traditional relationship" between Royal Commissioners and Counsel Assisting.

**17. What is the general view of the PIC about "jury rhetoric" and sensationalist flavour in opening address by Counsel Assisting?**

In general, the opening is a matter for Counsel Assisting to present as he or she thinks best to lay out the scope of the inquiry, subject to agreement by the Commission. On occasions that might require a robust approach, on others it might include the presentation of facts in a manner which might lend itself to a charge of sensationalism.

“Jury rhetoric”, if it is meant to convey sensationalism for its own sake, would not be consistent with Counsel’s task of assisting the Commission to arrive at the truth of a matter. So much can be accepted in the abstract, and is the Commission’s general view. Yet in the actual conduct of a hearing, such a hard and fast line can rarely be drawn with any confidence.

In the final result, it is the Presiding Official who is best placed to consider whether the line is crossed and control the proceedings if that is the case. Such an eventuality is not expected to occur in relation to Counsel Assisting the Commission because there has always been a consultative and productive relationship with Counsel Assisting and there have been no surprises for the Commission in the course adopted by any of the Counsel retained.

**18. What is the PIC’s view about the principles of natural justice and procedural fairness bearing in mind comments at paragraphs 147 and 161 of Young’s judgment?**

An appeal is pending in relation to the judgment of Young J. It may be appropriate to leave a response to that question until such time as those proceedings are concluded. Suffice to say the Commission is aware of its obligations to accord procedural fairness and acts accordingly.

**19. To what extent is Counsel Assisting responsible for preparing the draft report on a PIC inquiry?**

The practice at the Commission is that Counsel Assisting has no responsibility for preparing draft reports on an investigation. Counsel Assisting provides written submissions following a public hearing and those submissions, together with the submissions in reply from the witnesses are often drawn on in significant detail in the compilation of the Commission’s report but that is usually the extent of input by Counsel. The compiling of the reports is done by Commission officers, in close consultation with the Commissioner, the presiding official (if not the Commissioner) and members of the OAG. Counsel Assisting may be requested to consider a completed draft and provide feedback but there is otherwise little involvement by Counsel in the preparation of the Commission’s reports.

**20. Do you consider that the letter of appointment for Counsel Assisting the PIC is sufficient regulation for the position and the most appropriate mechanism for such regulation?**

By its letter of retainer, the Commission sets out the tasks that Counsel Assisting is instructed to perform in relation to an investigation, and the manner in which the Commission expects them to be performed. In particular, the flavour of what the Commission would expect is set out in the following statements concerning appearance at hearings:

- (i) assisting the Commissioner to arrive at the truth of the matter under investigation;
- (ii) impartially seeking to adduce the whole of the evidence before the Commission that is relevant to the general scope and purpose of the hearing; and

The Commission considers the letter of appointment to sufficiently set out what is required of Counsel Assisting. That said, it must be borne in mind that the relationship between the Commission and Counsel Assisting does not start and end with the letter of retainer. The relationship is an open and productive one, involving consultation on a daily basis during hearings resulting in mutual agreement on the approach to be taken in each matter.

It should also be remembered that Counsel remain bound by their professional obligations in the course of assisting the Commission. Within the scope of what counsel is instructed to do, they are at liberty, and indeed expected, to exercise an independent judgment so as to better assist the Commission to arrive at the truth of a matter.

### **Operation Ovalbay**

#### **21. How many police officers resign before the completion of s.181D proceedings against them?**

The Commission is not in a position to provide advice concerning all officers inducted into the s.181D process. The Commission last considered this issue in its paper: Research into s181D Action and Critical Corruption Indicators. However, further officers may be inducted into the s.181D process since that paper was prepared.

A copy of the paper was provided to the Committee on a confidential basis at the 8th General Meeting on 30 November 2004. The figures are therefore not reproduced here. The Committee is referred to page 5 of the paper.

### **Operation Vail**

#### **22. What was the reason for the Commonwealth DPP's decision not to commence criminal proceedings against Deputy Commissioner Madden or Assistant Commissioner Parsons?**

This question is more appropriately directed to the Commonwealth DPP. However, it is unusual for the DPP to agree to publish such reasons.

### **Early Warning System**

#### **23. Has NSW Police indicated to the PIC that the benefits of the proposed Officer Risk Assessment Process (ORA), in terms of its capacity to support corruption prevention strategies and costs, have been formally weighed against the risk management process proposed in the Early Warning System? If so, what was the outcome of the assessment? Has there been any further discussion of this issue?**

The question of the relative merits of the ORA in meeting strategic level corruption prevention requirements was raised by the Commission with NSW Police in correspondence on 20 May 2005. A formal response to that letter is yet to be received. The Commission has further sought a formal response.

In addition, the Commission has not been provided with the proposal for implementing ORA which was put to the NSW Police CET. The Commission has been informally advised that this proposal has been set aside pending the outcome of the trial. The Commission is therefore not in a position to advise one way or the other on the extent to which NSW Police have assessed the relative benefits of the ORA.

There have been further discussions concerning the status of EWS and the ORA trial. The Commission has indicated its continuing support for an EWS. NSW Police have advised that Professional Standards Command staff participate on a Mainframe Replacement Project working group. Part of the role of that representation is to ensure that the data needed for EWS indicators is available in new systems.

The Commission is not in a position to provide further details on the ORA.



# Chapter Four - Transcript of Proceedings

## REPORT OF PROCEEDINGS BEFORE

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

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

—

At Sydney on Wednesday 23 November 2005

—

The Committee met at 2.00 p.m.

—

#### PRESENT

Mr P. G. Lynch (Chair)

#### **Legislative Council**

The Hon. P. J. Breen  
The Hon. J. C. Burnswoods  
The Hon. D. Clarke

#### **Legislative Assembly**

Mr S. J. Chaytor  
Mr G. Corrigan  
Mr M. J. Kerr

**CHAIR:** I thank the Commissioner and his staff for appearing today for the Ninth General Meeting of this Committee with the Police Integrity Commission [PIC]. Your appearance before the Committee is to provide information to the general meeting in relation to a range of matters concerning the Commission in accordance with the Committee's statutory functions. We are delighted to receive your evidence.

**ALLAN GEOFFREY KEARNEY**, Director, Intelligence and Executive Service, Police Integrity Commission, level 3, 111 Elizabeth Street, Sydney,

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

**MICHELLE MARGARET O'BRIEN**, Commission Solicitor, Police Integrity Commission, 3/111 Elizabeth Street, Sydney, on former oath:

**CHAIR:** We have received a submission from you in the form of answers to questions on notice, dated 15 November. Is it your wish that the submission be included as part of the sworn evidence?

**Mr GRIFFIN:** It is, if it please the Committee to receive it.

**CHAIR:** Do you wish to make an opening statement?

**Mr GRIFFIN:** No, although there are a couple of matters I would like to mention, if I may, but not by way of opening statement. The first is that the Director Operations and Executive Officer of the Commission, who would normally be here to assist the Committee, are attending the funeral of the father of a senior staff member. They asked me whether that was possible, and I understand that they contacted the Committee Secretariat and there were no issues, as far as I know. If there are things that the Committee needs from them they can be made available at a time convenient to the Committee. The second thing is that Dr Angela Gorta is here who is prepared to, and I think the Committee understands, present a quick summary or some information on Operation Abelia, which, as you know, is a major operation of the Commission. The third matter is that I would like to thank the Committee and the Secretariat for the process of questions on notice that you referred to earlier. We have spoken about this before, but the capacity for the Commission to deal with questions on notice that can be dealt with easily that way saves a great deal of time and effort for the Commission, and I appreciate the efforts in putting that together. I have no other comments to make.

**CHAIR:** We propose to proceed with the normal meeting and then, at the end of that have the material about Abelia.

**Mr GRIFFIN:** Fine. Dr Gorta will be here at your whim.

**CHAIR:** In relation to Operation Vail, which, I think, is dealt with in questions 1 to 7 on the list of questions with notice, did the New South Wales Police notify or refer the allegation of a possible TI breach to the PIC around the time it was received by the police in April 2004?

**Mr GRIFFIN:** We might deal with this in tandem, because Mr Kearney and I have been talking about it. But the matter, as I understand it, went onto c@tsi, the complaints management system, at or about the time it first came to the notice of police and that we had that available to us from that. Are you comfortable with that?

**Mr KEARNEY:** I think there was a slight delay of a month or so. I am just trying to track down those dates.

**Mr GRIFFIN:** That was at a time when, perhaps, those delays were not uncommon?

**Mr KEARNEY:** That is correct, yes.

**Mr GRIFFIN:** The process of putting complaints on c@tsi have been a matter of concern for the Commission, and steps we have taken have achieved a turnaround date of about two weeks, which we have an agreement with the police that they will get everything on within two weeks. At the time that this happened a month, if it was a month—Mr Kearney probably can give me some dates—was not exceptional. It would have gone on more or less in the course of business. We would have had no sense that it had been hidden or that it had not gone on in the normal course of business at that time. It went on more or less at the time it was received. Because of its being on the system from that time, we are more aware of it in the normal course of business. If the actual dates or the delay, if you like, from the instigating moment to when it went on c@tsi, we can obtain that and give it to the Committee.

**CHAIR:** Did the PIC refer it back to the New South Wales Police, to the Professional Standards Command?

**Mr GRIFFIN:** The PIC looked at the matter and decided that it was not interested in pursuing it at the early stage, and the natural effect of that was that it went from us, who could have interfered, to the police, oversights by the Ombudsman. The variation in that could have been that we could have oversights the matter if we had chosen to. We did not in the early stages and, perhaps it is fair to say, until it became a major issue, we were comfortable with the way it was proceeding.

**CHAIR:** The course of events you just mentioned happened before the Commission's consultations with the Ombudsman's Office in September?

**Mr GRIFFIN:** Yes, sometime in July. I think I probably can give you a date I have here, and we will confirm it. We were notified originally on 21 July 2004. The discussions we had, as you have pointed out, were in September 2004.

**CHAIR:** The Commission became aware that the complaint investigation was reopened in December 2004.

**Mr GRIFFIN:** Yes.

**CHAIR:** The matter does not seem to have been referred to the PIC by the Commissioner of Police until April 2005. Is there any reason that the PIC did not display a bit more interest in it between December and April?

**Mr GRIFFIN:** Mr Kearney, do you have a particular view on that?

**Mr KEARNEY:** Yes. The reopening of the investigation, at the request of the Ombudsman, came to our attention during a review of complaints on the police complaints management system, called c@tsi. The complaints were being reviewed as part of an integrity checking process associated with contract renewals for at least one of the Deputy Commissioners. We were aware that the matter had been reopened, although not the particular concerns of the Ombudsman in making the request.

**CHAIR:** I will move on to some questions and answers about the Director of Public Prosecutions [DPP]. There is a reference in your answer to a memorandum of understanding between the Commission and the DPP. Is that a document we could obtain?

**Mr GRIFFIN:** The document is one that we have. Before making it available to the Committee, and I see no problem, I would seek to speak with Mr Cowdrey about it to see that he has no difficulties. I cannot imagine that would be the case.

**CHAIR:** But that is an appropriate course.

**Mr GRIFFIN:** With that caveat, certainly.

**CHAIR:** One of your other answers about the DPP indicates that it would be too resource intensive to provide an average turnaround time for the compilation of briefs of evidence. Nonetheless, is it possible to give us a sense of how long it takes? For example, what would be the longest period?

**Mr GRIFFIN:** I think the answer that we provided would have been inadequate in the sense that if you were trying to get an idea of time, it did not provide it, and I accept that. The difficulty is, of course, the complexity of the matters that are referred to. I would have thought the simple answer is that we could look at a number of matters we have referred and probably we could, with some considerable effort, work out the time elapsed and just do the mathematics. The difficulty is that it is relatively meaningless to say the average is a month or a year when there may be a number of cases that were dealt with quickly because they were easy or the evidence was available immediately, and there may be other cases that are prolonged because the requisitions cannot be met easily or, as has happened in the DPP, the officer handling the matter has been unwell and they have had to change horses, and so on.

That is why we are happy to talk about it. It seemed like a very difficult number to get any meaning from. It would be useful perhaps to talk to the DPP if the question of delay generally was of concern because I think it is a concern, not just for the Committee and perhaps the PIC. But I do not think the numbers that we could provide, with considerable effort, would assist you in making any sensible assessment of the process. Having said that, if the Committee needs those numbers to do whatever it needs to do, and you can give us some time to do the work, we can achieve it. It would be fairly resource-intensive though.

**CHAIR:** We might give that more consideration before we demand a response.

**Mr GRIFFIN:** It may be that, in considering it, if you had aims that you wanted to get to, you could tell us of that and we could say, "Here is a good way we could do it, or a simple way", and perhaps talk through the process until you have the information you need for whatever purpose it is that you have.

**CHAIR:** Have there been concerns raised with the PIC about the length of time taken to provide briefs?

**Mr GRIFFIN:** From us, providing briefs to the DPP, or the DPP—

**CHAIR:** Either, in fact.

**Mr GRIFFIN:** Not to me. Allan, are there any concerns that you are aware of?

**Mr KEARNEY:** In terms of the time taken to prepare our briefs, no, I am not aware.

**Ms O'BRIEN:** I know, in relation to the matter where we conducted public hearings as part of the Abelia reference, a section of that—the code name was Operation Alpine—it involved a New South Wales police officer on secondment to the Australian Crime Commission and a number of his police associates. There has been some frustration expressed by the other interested agencies, namely the NSW Police and the Australian Crime Commission, about the length of time it has taken for Sam Foster, the main protagonist, to be charged.

The Commission is aware of those frustrations and shares them. In a particular instance, the Commission has attempted to give explanations when it has been questioned about that particular matter. I can tell the Committee that the briefs in relation to the substantive offences in that case have been with the DPP since January this year. There are a number of briefs covering a number of offences. Subsequent briefs were sent after January. They are all with the DPP, and we are in liaison with the DPP. We are hoping that a decision will be made soon about the matters that the DPP considers are strong enough for charges.

I might add that the liaison has been very productive and the DPP is very happy with the quality of those briefs. We are very confident that basically the entire range of charges that we have suggested in that matter will proceed. But that gives you an idea of the sort of time frame that is involved, even after something leaves the PIC, to be fully assessed at the DPP, even with a productive harmonious relationship, and the various backwards and forwards that take place with the DPP seeking clarification of points of evidence and further statements perhaps. So, yes, that is an example of where concerns have been raised.

**CHAIR:** At what stage does the PIC provide the DPP with a preliminary brief? Does it occur during the course of an investigation if you think you have got to a prima facie level? Does it wait until the end of an investigation? What part of the time frame or at what point in the time frame does it go off?

**Mr GRIFFIN:** We have a current understanding that when we think we have enough to show a senior officer at the DPP to get an indication of how we jointly ought to proceed, we do that. While that has not worked perfectly, I understand it is working tolerably well. It would depend very much on the collection of evidence. You would appreciate that sometimes

the evidence is overwhelming early, and sometimes it is never overwhelming, and often it is between those two. When we have a comfortable satisfaction that there is enough for a prosecutor to make a considered view, or to take a view, we would speak to the senior officers and try to get that view from them and some joint assessment of how it would best proceed from there.

One of the things that underlines the difficulty is this public hearing process that we use as part of our investigation. It is still equated generally by members of the public with a court hearing and they therefore expect things to happen immediately thereafter. In some notable cases the public hearings have been very early in the process. In fact, in the Foster matter that Michelle mentioned, investigations were continuing fully, during and well after the hearings which were to open up and obtain witnesses that had been subject to the same sort of behaviour, and it worked quite well as an investigative strategy. That tends to permeate a lot of the views that people hold about how we are proceeding with our briefs because they have had a hearing, so there must be a brief. But of course, that is not the case. It is often not the case.

**CHAIR:** Indeed, as I understand it from what you have been saying, in some aspects you might even have a brief going off prior to a public hearing or during the course of it, depending upon what evidence was available in relation to particular aspects or particular targets.

**Mr GRIFFIN:** It is theoretically possible, though I do not know whether we have actually done it before a hearing. Again Michelle can correct me if this is not right, but certainly Foster is a case where we had put forward a staged number of briefs. I think that is right, is it not—we had some go early to the DPP and some subsequently?

**Ms O'BRIEN:** We try not to have a drip-feed process, obviously because the DPP would prefer to get everything in one job lot. But if I could give you an example to demonstrate the sort of difficulties that arise from trying to give a simplistic start and end point for turnaround time for briefs: in that matter we are talking about, after the public hearing is finished, we do indeed endeavour to compile the briefs as quickly as possible, but one of the particular matters that arose in that investigation involved a civilian that was being investigated.

The corrupt police officer had made approaches to interfere with that particular investigation in return for money from the civilian who was being investigated. When the Commission approached that civilian to try to get information to assist the investigation, he was very reluctant to talk to us. However, the particular criminal matters that he was being investigated for, which did withstand the corrupt approaches from Foster and ran their natural course and resulted in a conviction—once that process had run its course and the offender concerned had been dealt with, he was then happy to assist the Commission.

It is only recently that we have obtained that evidence, which will probably make the difference in that case to the DPP being willing to proceed with that charge. It just provides a sort of example of things that can impact on the length of time it takes to compile a brief of things that are determined by completely external factors out of the control of the Commission.

**The Hon. PETER BREEN:** Commissioner, when the PIC is involved with the DPP over an indemnity for a witness, is that a matter that the PIC deals with through the DPP, or is it something that the PIC would take directly to the Attorney General?

**Mr GRIFFIN:** I think the DPP is usually involved in those applications, but once again, Michelle, have we been directly?

**Ms O'BRIEN:** No. What happens is that the DPP considers whether or not a matter should involve an application to the Attorney for an indemnity in order for the matter to proceed with any prospect of conviction, so it is a decision basically taken by the DPP alone and advanced by the DPP directly with the Attorney.

**The Hon. PETER BREEN:** So you would not normally advance it yourself to the Attorney?

**Ms O'BRIEN:** No.

**The Hon. PETER BREEN:** What about the practice of handing up to judges a sealed envelope in a case where there has been an agreement, or a deal if you like, done with the defendant? Is that a practice that you are aware of, Commissioner?

**Mr GRIFFIN:** I am aware that in cases where there has been assistance, law enforcement agencies generally will provide, in the right circumstances, letters of that type and that the Police Integrity Commission has on occasion put pen to paper saying factually what has happened in relation to a matter. Those documents—and I am only assuming because I do not know—I would imagine find themselves in the hands of the prosecutor, but once again I have not had any direct experience of that. Do you know if we have handed them directly to the courts?

**Ms O'BRIEN:** It is a matter that is covered by the memorandum of understanding that we have with the DPP. It is usually progressed by a contact between our investigator with the prosecutor and it is done with the co-operation and the knowledge of both parties at the time of the sentence hearing.

**The Hon. PETER BREEN:** So is it the prosecutor that actually hands it up to the judge?

**Ms O'BRIEN:** I think normally it is, yes.

**Mr GRIFFIN:** It would not normally be done by one party without the knowledge of the other, so the actual handing up I suspect is of no moment. We would arm the prosecutor. The defence seeks to gain an advantage from it—I assume, normally—and if they were to hand the letter up, it would be of no consequence. My understanding is that these things are normally done only with the concurrence of all the parties. I do not think there has been—and certainly not in my experience—any secret squirrel stuff where the prosecutor does not know or the defence does not know what is happening in relation to such documents.

**The Hon. PETER BREEN:** Are you aware of a different protocol that exists between NSW Police, that is, the police generally and the DPP, as opposed to the Australian Crime Commission and the DPP?

**Mr GRIFFIN:** No, I am not. I am aware that historically, in terms of corruption, it has been alleged that—and there has been some evidence—police have individually handed up such documents to attempt to obtain benefits for people. I think that has been documented over the years, but I do not know any difference between the Crime Commission and the police. Michelle can speak about the procedures. We need to be careful about speaking about police procedures or Crime Commission procedures because they are not ours.

**The Hon. PETER BREEN:** Yes.

**Ms O'BRIEN:** There is a requirement I think—it is either in the Crimes Act or the Criminal Procedure Act—that sets out a particular procedure that police are now required to follow. It requires the swearing of an affidavit and some sort of imprimatur being provided by the commander of the officer who is advancing the information. That was a corruption prevention strategy brought in to try to stop corrupt police giving assistance to their corrupt criminal associates. The officers employed at the PIC are not members of the NSW Police, so those same procedures are not applied but the content of the document that is handed up is of the same nature.

**The Hon. PETER BREEN:** The point that I was getting to is that that procedure that you outlined, about supplying an affidavit as to the contents of the envelope, I understand that that does not apply to the Crime Commission. Therefore, I was just anxious to know what the consequences of that might have been from your point of view.

**Mr GRIFFIN:** I suppose the question would be whether it applies to police who are working out of the Crime Commission. I do not know—that is the answer to your question—but it may well be that Crime Commission staff, like PIC staff, are not police and would not be bound by it, but they would not normally be, I would have thought, doing it, so perhaps the police who are working there would be bound by the requirements of the police. Having said that, I have no knowledge of it. I am only supposing that might be how it is.

**CHAIR:** I might turn to question 11 relating to the counter-terrorism command centre. The note in your answer is that little work appears to have been done specifically about misconduct associated with the special role and function of the Counter-terrorism Co-ordination Command [CTCC] types of units—that you have made preliminary inquiries with the New South Wales Audit Office and Treasury concerning risk management methodologies. What has been the outcome of the preliminary inquiry so far?

**Mr GRIFFIN:** I might pass this to Allan, although I think it is fair to say that at least I was surprised a little at the lack of focus that seems to have been put on this—not across-the-board, as we have asked. But in relation to that particular question, I think Allan can answer it.

**Mr KEARNEY:** Let me clarify the question. You are interested in the findings in response to the inquiries with other agencies that are engaging in CTCC-like functions? I am afraid that that really just about says it all. As the Commissioner said, we are quite surprised that not much work has been done in this area at all. We have got further digging to do and further inquiries to make, but it does not seem as though many agencies have addressed misconduct associated with these kinds of activities per se.

**CHAIR:** Granted the apparent growth in these agencies, I guess that is a matter of some concern?

**Mr KEARNEY:** It is of interest to this agency.

**Mr GRIFFIN:** Perhaps it is not surprising if you relate it back to that actual growth you are talking about. The things are growing quickly. There are always dangers with quick growth in anything. It is not surprising that the focus has not come back yet to some of those things that we would consider to be basic, but certainly of interest, not just to the Committee but also to us.

**CHAIR:** It is certainly a matter of some interest to the Committee and to me. Also in that answer you talked about structured interviews, risk management and document reviews as part of the inquiries you are making. When is it likely that that part of the process will start?

**Mr KEARNEY:** We start with a preliminary discussion with CTCC staff tomorrow. Following that we will be making arrangements, in the remainder of this year, to make a start in regard to those structured interviews, identifying the right people and identifying questions—in fact, we are some way down that track already, undertaking interviews and document collection.

**CHAIR:** While we are dealing with the oversight of counter-terrorism bodies and so forth, was the PIC consulted about the Terrorism (Police Powers) Amendment (Preventative Detention) Bill?

**Mr KEARNEY:** Yes.

**CHAIR:** In relation to what aspects of it were you consulted?

**Mr GRIFFIN:** The aspect that was of interest to the PIC was the use of PIC resources. That is the only aspect in which I had any interest or input into.

**Mr MALCOLM KERR:** When were you consulted, Commissioner?

**Mr GRIFFIN:** I am sorry, I do not know. It would have been three or four days, I think, before the bill was finalised and introduced. I should probably say for completeness that I raised the issue with the ministry myself to have it included. So the consultation came that way around. The timing was mine and not theirs.

**The Hon. PETER BREEN:** Commissioner, the Attorney General used your role in the anti-terrorism legislation to ameliorate concerns that there might be in the community about police exceeding their powers. Your jurisdiction does not extend to the Crime Commission. Do you have any suggestions as to how the Crime Commission might be more accountable under the anti-terrorism laws?

**Mr GRIFFIN:** I think perhaps because of the way it is worded our jurisdiction, if you would like to call it that, is by way of exception in the Act. We are the only people that might question certain decisions that have been made. I think that is relatively narrow. If it is

conceived as some sort of oversight over the entire process I am not sure that it is that wide. Having said that, we do not concede and have never conceded that police operating out of the Crime Commission do not fall within our jurisdiction.

To the extent that there was an issue, that would be our position. It might need to be resolved one day. I do not think that will ever be a confrontational resolution, but it is possible. We still think we have the power. As to civilians, I do not think we have any jurisdiction over them. I do not see any simple resolution of that falling to the PIC, frankly. It seems to me that that must be a matter for the Government rather than anything else.

**CHAIR:** I turn now to issues about Counsel Assisting the PIC. In your answer to question No. 19 you indicated:

The practice at the Commission is that Counsel Assisting has no responsibility for preparing reports on an investigation.

You said that Counsel Assisting might provide feedback on a draft report. The pro forma letter of appointment for Counsel Assisting that has been provided to the Committee states at point 7:

That Counsel Assisting in consultation with a relevant operational lawyer will prepare part or all of a draft report to Parliament for consideration by the Commissioner and submit the draft report to the Commissioner under cover of a memorandum of advice drawing attention to issues in dispute, the manner in which the draft report seeks to resolve such issues, and the reasons for them.

The footnote to that section indicates that the written submission of Counsel Assisting will "form the basis of a draft report modified appropriately having regard to submissions received in response to Counsel Assisting's written submissions." On the face of it, it seems to me that there is an inconsistency between those two positions. Could you enlighten us?

**Mr GRIFFIN:** I will do my best. I think there are inconsistencies. Luckily, I have the world's leading experts on both sides of me. The position is that that letter I think establishes a basis upon which we can deal with Counsel Assisting. I think it is a very full document. Perhaps it could even be shortened a bit as it covers a lot of ground. The modern practice is that there is no expectation on Counsel Assisting to draft reports. The reports are the reports of the Commission. However, their submissions in relation to the issues arising and so on, form a core of what is used to write the report within the Commission.

In my view that letter, to deal with inconsistencies, establishes a basis where if we chose to do it on some occasions we could say to Counsel, "We want you to draft a report for us". It is not the practice, and it is unlikely that it will change for at least another nine months or so, but it is possible that it could after that time. We have a report writer and a lawyer. If that does not answer your question we could ask them whether they would like add anything to that letter of appointment.

**Ms O'BRIEN:** No. Only that the practice very much these days is that Counsel is not called upon to give us anything further than the written submissions that are required to be produced elsewhere under this retainer. They are, in fact, very useful in forming a core for a report before we proceed to take into account other submissions that have been received

from various witnesses and other considerations that the Commission brings to bear in putting together a report to Parliament that may not have been addressed by Counsel.

**Mr KEARNEY:** I think you have covered it.

**Mr GRIFFIN:** One of the things I assume is clear to this Committee, but it would not be to the public, is that Counsel Assisting may be appointed for a hearing, maybe not all the hearings in a particular matter, and certainly not necessarily for an investigation. Therefore, practically, they are not well equipped to write reports in any event.

**CHAIR:** Does Counsel Assisting have any role in the drafting or the formulation of findings against individuals? The Independent Commission Against Corruption, for example, excludes Counsel Assisting from that role altogether.

**Mr GRIFFIN:** If, in the submissions we receive from them, Counsel Assisting has been in a position to be across the whole of the matter—with the exception that I just dealt with—they would normally draft their views on that question. They would then be considered, as is everything else that they have written, by the Commission as a whole—the lawyers, the investigators and me. So yes—a draft, but only to that effect.

**CHAIR:** During the Police Royal Commission Justice Wood held the view that it was important that the presiding officers stood apart from the operational processes and presentation of evidence in order to make an objective evaluation of the evidence when reporting. Is that a view the PIC would adopt? What does that say about the relationship between the presiding officers and Counsel Assisting?

**Mr GRIFFIN:** I would not adopt it in that simple form. I think it is important on whoever is hearing the matter to bring to the hearings the normal, ethical and principled approach you would expect in relation to fairness and so on for witnesses. The investigation, nevertheless, remains the Commission's investigation. It is my view that the Commission should be conducting the investigation and Counsel Assisting should be assisting as Counsel to the Commission. So I do not see that there is a judicial role, if I could use those words to paraphrase Justice Wood, in the Commissioner or an Assistant Commissioner sitting in a particular hearing.

Once again, the hearing is often a tiny part of an investigation and it does not leave itself open to that, apart from ensuring fairness. Certainly since I have been there observing people of the ilk of Slattery, Finlay and Sage, who have sat as Assistant Commissioners, it is my view that witnesses are given great latitude in public and private hearings and are always fully aware of their rights and so on and so forth. But I do not think it applies to the wider issue.

**CHAIR:** I refer to one final comparatively minor point relating to Counsel Assisting. The letter of appointment states:

The PIC welcomes advice from Counsel Assisting in relation to operational matters.

Does Counsel Assisting have much of a role in operational matters?

**Mr GRIFFIN:** It would depend almost entirely on Counsel Assisting in the matter. There are a number of counsel at the New South Wales bar that I know of who would be very effective investigators and their views would be helpful if they knew the matter. Their views, for instance, on obtaining admissible evidence in relation to a future prosecution would be useful. So the answer is, yes, depending on the circumstances and their level of involvement.

If you have a counsel who is there to have a hearing with three or four witnesses and they know no more and do no more, then what they could add would be limited. If you have a counsel who is heavily involved and experienced in criminal matters he or she might be quite useful. I do not mean useful as in identifying what sort of covert equipment would be used to find a particular piece of evidence, but just in an overall view of the way the case can be developed.

**The Hon. PETER BREEN:** I am sure there is a short answer to my question. When Counsel Assisting is making final submissions as to findings, are those submissions or recommendations always confidential?

**Mr GRIFFIN:** In the first instance to us I suppose they are. I imagine that we can do what we like with them. But when we receive them we would receive them as confidential documents.

**The Hon. PETER BREEN:** If you were to make a finding contrary to the recommendations of Counsel Assisting it would be in order to include that in your finding: that it differed from the recommendation of Counsel Assisting?

**Mr GRIFFIN:** I do not accept that that is the case. I would have thought the Commission comes to a conclusion and publishes its conclusions. There are some very robust discussions within the Commission about matters. The final result is published but normally the discussion is not.

**The Hon. PETER BREEN:** Normally you would not attribute in your finding something to Counsel Assisting?

**Mr GRIFFIN:** I think that is fair. Normally we would not. If there were extraordinary circumstances I can imagine that it might happen, but normally, no.

**Mr GEOFF CORRIGAN:** Arising from a comment you made earlier—and this is probably a bit off the subject—I note that the Australian New Zealand Society of Criminology will be holding a conference in February 2006. As part of our professional development do either of the world-class leaders here get to speak at domestic or international seminars?

**Mr GRIFFIN:** In a little while Dr Gorta will be able to tell you about her trip to Canada where she presented the information that came out of Abelia. I have been told, at least by her, that it was very well received. We have people attending and speaking at matters like that, but I am pretty mean with the money, so if they are not really local it is very hard to get me to sign cheques for airplane flights.

**Mr KEARNEY:** There is nothing on my card at the moment.

**Mr GRIFFIN:** We are conscious of the need to keep up. I am happy to spend money keeping some of our technical people up to date. But when we have groundbreaking work, as in Abelia, we try to share it around.

**Mr KEARNEY:** We also spend quite a bit of time with other agency representatives. We get quite a few visits from agencies like the Western Australian Crime and Corruption Commission, the Office of Police Integrity in Victoria and the Crime and Misconduct Commission in Queensland.

**Mr GRIFFIN:** Every known Asian country within flying range.

**Mr KEARNEY:** Indeed. Given the nature of our organisation and its narrow focus on police—I think there is only one other of our kind around in the world—and as such we are pretty popular in that scene.

**Mr GRIFFIN:** Mr Barnett—who is sitting against the wall trying not to be here—actually does the presentations for us. We do a lot of presentations—a lot of them are to international delegations—in all the Australian States.

**CHAIR:** Presumably, in the Australian summer?

**Mr GRIFFIN:** Or, particularly, significant games of football, or whatever.

**CHAIR:** The one other agency in the world that is comparable—is that the Police Ombudsman of Northern Ireland?

**Mr KEARNEY:** Yes.

**CHAIR:** Mr Commissioner, you mentioned the names of three Assistant Commissioners: Sage, Slattery and Finlay. Have there been other Assistant Commissioners, or is that the limit of the ones you have had?

**Mr GRIFFIN:** Yes, Mr Justice Donovan. Then Donovan of Counsel did the Jetz matter. I am reminded by Michelle of that. I think that is it. The matter that Slattery did was very short. I am confident that is it, but if there is any change I will inform the Committee within 48 hours.

**CHAIR:** Question 23 deals with early warning systems. Has the Police Integrity Commission received a formal response at this stage from the New South Wales Minister for Police concerning the proposed early warning system?

**Mr KEARNEY:** No, not yet. We have had some preliminary discussions. I am advised that a formal response is on its way, but it is yet to reach us.

**CHAIR:** In the answers you say that the Police Integrity Commission is not in a position to provide further details on the officer risk assessment process. Is there a reason for that?

**Mr GRIFFIN:** It is in the trial phase, I think is the reason. During the Professional Standards Command regular meetings, which I have with the head of the Command and

some of his officers, they have raised the fact that they are doing this trial. They have six trial sites, and it is ongoing. There is some police documentation about the trial. I do not think the PIC is entirely comfortable with the timing that is involved and how this has been developing, but there is work in hand, and it seems sensible that the trial should finish before they draw any conclusions. I think that is probably why we have not heard anything from them formally.

**CHAIR:** In your answer to question 15 (b) you said that the Executive Officer provides advice at the Operations Advisory Group and Professional Standards Command meetings. What sort of advice does he provide in that context?

**Mr GRIFFIN:** The Executive Officer is a right hand for me. He actually takes the minutes and actions things that arise from that meeting, as much as he provides any advice. The meeting is relatively informal. Whilst it is structured formally, there is not a position where the head of the PSC speaks only to me. Generally the people within the room will talk about issues, and decisions are recorded and dealt with. It is informal advice from somebody who is conscious of what the PIC is doing at the moment, particularly in relation to my views about the general issues.

The same applies—even more so—in relation to the meetings he attends with the Inspector. I have a meeting with the Inspector. He attends, keeps the records, and takes whatever action is necessary from the meetings. Where things need to be done, he ensures they happen.

**CHAIR:** I think you have nine months left in your term. What would you regard as your main achievements as Commissioner, as leader of the PIC? How significant do you think are the organisational changes you have made whilst you have been Commissioner?

**Mr GRIFFIN:** I do not think they are as significant as I would like. I think the main achievement has been a change in the way the PIC is perceived outside the PIC. I think when I arrived there was a level of self-satisfaction with what they were doing, and rightly so. I think the PIC is an effective organisation, and it is needed. But its reputation in some places was that it was overly bureaucratic, and I think it is less bureaucratic both in fact and in reputation. I think that has made a difference of impetus, if you like, and I hope that when I am gone in nine months the impetus will continue.

What I have done, with a great deal of help and flexibility from the people around me, has been to take out some of the levels of bureaucracy, I think. That is in the broad management sense. I think we have had some fantastic results as well. But a bureaucracy can get fantastic results—and so could a benevolent dictatorship. Sometimes, to some extent they depend on the material you have to work with. It sounds like not a lot, but it seemed like a lot of work at times.

**CHAIR:** When you say "less bureaucratic", is it fair to say that is because you now have what you might call a matrix structure of leadership there?

**Mr GRIFFIN:** Perhaps. But I think in much more clear-cut terms there are things now done with only six lawyers, whereas before we would use 12. I am exaggerating, of course. But there was layer upon layer of checking and double checking and, as happens often with

that sort of layering, each person, who is only a cog in the checking system, does not take the responsibility or care that they ought to take, and you end up with nobody quite getting it right because they think someone else has got it right before them. Having cut out some of them—this is my view, and I will not ask the others to comment—I think the people are more responsible and more comfortable with their role, and they are doing better work. That has worked not just in the legal area where I am comfortable things have improved, but in some of the other areas as well.

**Mr GEOFF CORRIGAN:** In your report you talk about Operations Acer, Abelia and Cycad, and you say that at the time of writing they were not concluded, with the section 181D processes taking place. I note your comments in answer to question 21 with regard to the section 181D process. In general, do you think the section 181D process takes too long?

**Mr GRIFFIN:** Yes, I do.

**Mr GEOFF CORRIGAN:** As I do not know what the section 181D process involves, even though I read that report back in November last year, could you outline the process briefly for the Committee?

**Mr GRIFFIN:** There are a number of things that can happen to police officers when they misbehave. One of the things that can happen is that they can put themselves in a position where the confidence of the Commissioner is lacking, and he can act on that. I think that provision arose because Justice Wood saw a need for some such capacity in the Commissioner. That works tolerably well, I think, if there is occasion and some safeguards wrapped around it, and the individual officers are dealt with reasonably quickly.

What can happen if things are not dealt with quickly is that some other arbiter of fact says, "This copper shouldn't have done this, and maybe the Commissioner could not have had some faith in him. But it was a year ago, and nothing has happened. He has been doing something limited, or he has been suspended. It is grossly unfair, and he ought to go back on the job and get another chance." That is my view of too slow, and that is why I say I think it is too slow.

Having said that, I think there are considerable strictures around the process which are clogging up the process. I think the Commissioner is entitled to have every piece of information about that officer he can have, but the gathering process seems to take a long time. So he, the Commissioner, might turn the decision around quite quickly, if only he were given the material. But getting the material seems to take a long while. I think it is unfortunate that if one person, who ought not be a police person because of something that he or she has done, avoids that happening because of the process. I suspect that there is a danger of that happening unless they do them in a very timely way.

**Mr GEOFF CORRIGAN:** Has anything happened with those three cases, Acer, Abelia or Cycad, since the report was written?

**Mr KEARNEY:** I do not think we can advise on that. I am not aware of anything specifically that has occurred. The section 181D process is quite a complicated process in NSW Police, involving a range of different areas, from the local area command to the Professional Standards Command, the legal area, and a range of administrative areas in the

Commissioner's office. It might be useful if we were to take the question on notice and provide you with further information regarding the process.

**The Hon. PETER BREEN:** Is the section 181D process currently under challenge in a legal sense?

**Mr GRIFFIN:** Is the legislation being challenged—?

**The Hon. PETER BREEN:** I was under the impression that a police officer was challenging it in the superior courts.

**Ms O'BRIEN:** I think all the challenge takes place in the Industrial Relations Commission. Justice Wood will probably tell you that one of the problems that has beset the whole regime is that the notion that he had in mind of the Commissioner being able to get rid of an officer in whom he had lost confidence was not intended to become bogged down in a series of reviews in the Industrial Relations Commission, and that is exactly what has happened. That is one of the reasons why NSW Police struggles with trying to deal with things as efficiently and peremptorily as perhaps was envisaged originally, because legal advice now has to be obtained after all the managerial gates have been closed.

The reason that legal advice is an important part of the process is that people are so quick to challenge section 181D dismissal in the Industrial Relations Commission. Only last week there was a matter reported in the newspaper of a former officer called Hosemans, who had had one hearing before a single judge. That went on appeal to a full bench, it was returned to another single judge, and then it went on appeal again to another full bench, who finally upheld the Commissioner's decision to dismiss. As far as I know, that has nowhere left to go, but it is an example of how beset by delay the whole concept can become.

**Mr GRIFFIN:** Mr Breen, you are aware of the industrial relations aspects, I am sure. You obviously had some other idea of challenge—a challenge to the power of the Act?

**The Hon. PETER BREEN:** I thought there might be some question of due process that had been challenged, but perhaps it was in the context of the Hosemans case.

**Mr GRIFFIN:** There is a series of challenges, and the due process seems to arise a lot. We can check, if that is of any help. But I am not aware of any challenge to the section.

**The Hon. PETER BREEN:** Do you know whether the Hosemans case had the support of the Police Association?

**Mr GRIFFIN:** I do not know.

**The Hon. PETER BREEN:** Is it the case that the Police Association will often support officers whom the Association perceives as being dismissed peremptorily?

**Mr GRIFFIN:** I think that is certainly the case.

**CHAIR:** Mr Commissioner, I have one topic left. I wonder whether there are any contingency plans in place in the event that there is a significant period of time between the end of your term in office and the appointment of a new Commissioner?

**Mr GRIFFIN:** I thought there might be.

**Mr GEOFF CORRIGAN:** We have been assured that that will not happen.

**Mr GRIFFIN:** I think that is right and that, I must say, is my formal answer—although perhaps I would like to go a little bit further because this has been an issue between us for some time. I have no capacity, as it should be, to do anything about my successor. I have been assured in writing that that will be done at the appropriate time. I assume that means that I walk out and someone else walks in—and with a bit of luck I can spend a bit of time and help that person over the process. The debate I have with the Committee seems to be about the role of Assistant Commissioner. I stand by my position that it is much more efficient to not have a full-time Assistant Commissioner. As time goes by we will get more and more able to demonstrate the monetary value. In any event, I think there is a structural value and it comes back to the bureaucracy I spoke about.

There is one other thing that troubles me about what I see as a perception that I should appoint an Assistant Commissioner, to fill the gap if you like. That is that, as Commissioner, I am able to delegate to an Assistant Commissioner my powers, and the Act allows, if that Assistant Commissioner is appropriately qualified, for the person to sit and conduct hearings and issue process and so on. There is a view—although it is, I do not think, unchallengeable—that a delegation by me to an individual ceases if I am not there. That would leave an Assistant Commissioner in a position where he or she could not exercise any powers because the delegation from me is no longer available, and if there is not another Commissioner as a delegate, you cannot say, "Oh, the delegation flows on because there is a new Commissioner." If that is the case, it does not seem to work very well.

The alternative view of that particular interpretation is that a delegatee, even in the absence of the person who delegates, might keep some powers. I do not know what the better view is; it would be for someone in the Supreme Court to determine that. But that is also the problem. If decisions made by the Commission by an Assistant Commissioner were open to that sort of challenge—a very easy challenge to mount if you look at the problem I suggest—it would stop the Commission cold, it seems to me. Even if I could be convinced that it was a sensible use of public money to have an Assistant Commissioner, I do not believe that that Assistant Commissioner could fill the gap that you envisage as a possibility if the Government does not act promptly on my replacement. I believe it is a problem that I cannot solve.

The other side of the coin, however, is that the Commission is blessed with senior officers and members of an executive who will maintain the Commission's work and approach, whether or not there is a Commissioner there. The Commissioner can be a figurehead. You could have a Commissioner who did not want to become part of the process of the Commission; he could be a figurehead and exercise the powers and delegate to an Assistant Commissioner; or you could have a Commissioner who would want to get down and be part of the process. Either way that executive is there, rock solid and very experienced, and the place will continue.

I do not think that bringing in a new Assistant Commissioner to struggle with an organisation that they know nothing about is going to make any difference at all. If there is a gap there will be some things that cannot be done, but that is a problem that the Government has to solve. I do not think an Assistant Commissioner will solve it. The things that can be done will be done by the members of the executive. I cannot speak too highly of them, even though I have nine months to go. They are very, very solid operators, in my view.

**CHAIR:** The moral of the story is to make sure that the appointment of a new Commissioner occurs before the expiry of nine months.

**Mr GRIFFIN:** It seems to me to be so simple. I cannot understand how it could not be. Certainly I will be agitating in the limited capacity I have to make sure that that happens, but it just seems bizarre not to.

**CHAIR:** As Mr Corrigan interjects, we have received assurances that it will not happen either, but some of us doubt lots of things.

**Mr GRIFFIN:** But I have it in writing!

**Mr GEOFF CORRIGAN:** We had it sworn before this Committee.

**Mr GRIFFIN:** I cannot say anything more.

**Mr MALCOLM KERR:** In relation to the role of Counsel Assisting, how is it determined who will be Counsel Assisting?

**Mr GRIFFIN:** There is not a list, but we have people whom we are comfortable instructing and we are driven to some extent by availability. Usually by the time we have concluded what we want to do, we want to get on with it. There would be probably some counsel that we would not instruct. Apart from that, I do not think there are any restrictions.

**Mr MALCOLM KERR:** But you do not have a list as such at the Commission?

**Mr GRIFFIN:** There is not a list of people we would use. We do not have a panel. Whilst it is very easy, as I am sure you know, to continue to use people you are comfortable with who have done good work, we are all conscious of the need to try to bring in new people. The difficulty, of course, is that this is not just normal court work. Most counsel are perfectly competent on their feet in front of the Supreme Court or the Local Court; the Commission's jurisdiction is slightly peculiar. Some people are not comfortable with it and some people do not know much about it.

**Mr MALCOLM KERR:** You were asked a question earlier about your achievements. Have there been any significant disappointments or frustrations?

**Mr GRIFFIN:** I think that probably there are things. Five years seems to go very quickly when you get to my age. If I had another five years I could probably get around to them. The Commission works on the basis that there is a never-ending list of things that it ought do. The counter-terrorism interest we had was held up by Operation Abelia work we were doing, and so on. The list we have of things we would like to do is not endless but certainly will see

my lifetime through. I would like to have gone further through that list, but, having said that, I think we have gone some way through it and the list remains for the next person. That would be a disappointment

**Mr MALCOLM KERR:** Are there any changes you would like to see to the Commission and the police force, if you have it in your power to do?

**Mr GRIFFIN:** I think the Commission itself is about right. I am concerned—and I should wait until we finish our review of the counter-terrorism thing—about the oversight of counter-terrorist activity, but I am sure that that will get itself right as we all come to know more about it. The fact is we do not know much about it yet. I have asked for great concentration to be put on any complaints that arise out of the area. There have not been any as yet. We are in the dark. That will be an area that needs watching. The police force remains a lot of talented people doing extremely difficult work, and there are areas where probably the community and we could make things easier for them. The education of police officers, the capacity of younger police officers to be schooled and tutored as they develop, those sorts of things will improve. I think everyone is aware of them and they are much more easily said in a place like this than done elsewhere.

**Mr MALCOLM KERR:** In the five years during which you have been Commissioner have you noted an improvement in the police force or a change in the police force?

**Mr GRIFFIN:** I think probably the trend that had been started by Justice Wood towards a different police force has continued. Things like the quality and strategic audit of the reform process [QSARP], which could have been different, have had an impact. I hope that things like Operation Abelia will have an impact. I think there is a trend towards improvements that are happening, but as for the list of things I think still need to be done, it would be nice to keep that going.

**(The witnesses withdrew)**

**(The Committee adjourned at 3.10 p.m.)**



## Chapter Five - Answers to Questions Taken on Notice

Our Ref: 15292/2

7 February 2006

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

### **NINTH ANNUAL GENERAL MEETING OF THE PARLIAMENTARY COMMITTEE - RESPONSES TO QUESTIONS TAKEN ON NOTICE**

I refer to the questions taken on notice during the course of the Ninth Annual General Meeting on 23 November 2005. I trust the following responses assist.

#### ***Operation Vail – Dates original complaint received and logged by NSW Police***

Based on records available to the Commission the complaint which subsequently led to Operation Vail was received by NSW Police on 5 May 2004. It is possible that the complaint may have been received earlier by NSW Police on 7 April 2004, when it is believed to have been emailed, however, without undertaking further enquires this cannot be confirmed. NSW Police registered the complaint on the c@ts.i system on 21 July 2004.

#### ***MOU with DPP***

Please find attached a copy of the current Memorandum of Understanding between the Commission and the Office of the Director of Public Prosecutions dated 23 June 2000. The Director of Public Prosecutions has agreed to the publication of the document to the Committee. In the course of obtaining that agreement it was suggested that a review of the MOU be undertaken. That review is presently underway.

Answers to Questions Taken on Notice

***NSW Police s.181D processes***

*Description of s.181D process*

Please find attached a three page Police memo which broadly outlines the stages of the s.181D process. The document is classified as a 'Protected' NSW Police document. It is requested that access be restricted to members of the Committee and that it not be communicated further without the prior agreement of the Commander, Professional Standards Command, NSW Police.

Has anything happened [s181D action] with the three cases mentioned in the Annual Report, Acer, Avillia or Cycad, since the report was written?

Action remains ongoing in respect of each of the three officers referred to in the Annual Report as the subject of s.181D action arising from Operations Acer, Avillia and Cycad.

*Challenge to the s.181D process*

There have been a number of challenges in the Industrial Relations Commission to specific decisions made in 181D processes. However, the Commission is not aware of any broader challenge to the s.181D legislative framework.

Please contact me should I be able to assist further.

Yours sincerely

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

# Appendix One: Committee Minutes

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

Wednesday 12 October 2005, 6:30pm  
Room 1043, Parliament House

### **Members Present**

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

### **Apologies:** Ms Burnswoods

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

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### **3. Correspondence received**

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(e) Correspondence from the Ombudsman, dated 1 August 2005, concerning Operation Vail (into alleged breaches of the TI Act by NSW Police).

Moved on the motion of Mr Kerr, seconded by Mr Corrigan:

- i) that the Committee put the following questions on notice to the Commissioner of the PIC for the General Meeting on 23 November 2005:
  - At what stage did the PIC consult the NSW Ombudsman's Office about the NSW Police investigation of the complaint into the alleged TI breaches?
  - What was the advice given to the PIC by the Ombudsman's Office about the status of its oversight of the complaint and its intentions as to whether or not NSW Police should investigate the complaint?
  - What does the PIC understand the classification "ratification in progress" to mean?
  - Was the PIC aware of the Ombudsman's dealings with NSW Police early in 2005 concerning the extent of the delays in finalising the investigation into the complaint?
  - Is there any particular reason that the report to Parliament on Operation Vail does not include reference to PIC's earlier consideration of the alleged breaches in October 2004?
  - Why wasn't it considered that inclusion of this information would have provided a fuller exposition of the background to the PIC's involvement in the matter?
  - Is there any reason why the PIC did not include information in the report to Parliament on the full history of NSW Police's handling of the matter, in particular, the delays in producing the investigation report and the Ombudsman's efforts to have NSW Police undertake to finalise its investigation?
- ii) that the Committee consider the necessity of referring any questions concerning PIC's operational decisions in this particular investigation to the Inspector for consideration.

Committee Minutes

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## 5. General Business

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The Committee discussed a recent publication entitled, *Sympathy for the devil: confessions of a corrupt police officer* by Shawn Padraic as told by Trevor Haken. The Committee agreed that the Secretariat should draft questions on notice for the next General Meeting with the Police Integrity Commission regarding matters raised in the publication for the Committee's consideration, including a question about Mr Haken's allegation made on *Australian Story* that the PIC has not responded to his correspondence.

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

Wednesday 9 November 2005, 6.30pm  
Room 1043, Parliament House

### Members Present

Mr Lynch (Chair), Mr Breen, Ms Burnswoods, Mr Chaytor, and Mr Corrigan

### Apologies: Mr Kerr

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

The Chairman commenced proceedings at 6.37pm.

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## 4. Inquiry Program

*General Meetings with the Ombudsman and the PIC:*

Resolved on the motion of Mr Corrigan, seconded by Mr Chaytor, that the draft Questions on Notice sent by the Chair to the Ombudsman and the PIC be endorsed and formally confirmed with the Ombudsman and Commissioner of the PIC.

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

Wednesday 23 November 2005, 10.00am  
Room 814-5, Parliament House

### Members Present

Mr Lynch (Chair), Mr Breen, Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan, Mr Kerr

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves, Lluwannee George

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The Committee adjourned at 12.17 pm until 2.00pm.

## **9<sup>th</sup> GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION**

### **Witnesses present**

Mr Terry Griffin (Commissioner), Mr Allan Kearney, Ms Michelle O'Brien.

### **Also present**

Mr Peter Barnett (PIC)

The Chair reopened proceedings to take evidence in public from the Commissioner and senior staff of the PIC at 2.04pm.

Mr Terence Peter Griffin, Commissioner, Police Integrity Commission, and Ms Michelle Margaret O'Brien, Commission Solicitor, previously sworn; and Mr Allan Geoffrey Kearney, Director, Intelligence and Executive Services, previously affirmed.

The Commissioner tabled the answers provided by the PIC to the Questions on Notice as part of his sworn evidence (answers dated 15 November 2005).

Mr Griffin advised the Committee of Mr Nattress's absence and apologised on his behalf. He indicated that Dr Angela Gorta would be making a presentation for the information of the Committee on Operation Abelia at the conclusion of the public hearing. The Commissioner also thanked the Committee for the Questions on Notice and the opportunity provided by the General Meeting process. The Commissioner did not make an opening statement.

The Chair commenced to question the witnesses followed by other members of the Committee.

The public hearing concluded at 3.10pm and PIC commenced a briefing for the Committee on Operation Abelia.

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

Thursday 1 December 2005 at 10.00am

Room 1153, Parliament House

### **Members Present**

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

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves.

The Chairman commenced proceedings at 10.05am.

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### 3. Inquiry Program

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#### *Ninth General Meeting with the Police Integrity Commission*

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

- i. the Committee's report on the Ninth General Meeting with the PIC shall consist of:
  - the questions on notice and the PIC's answers, dated 15 November 2005;
  - the corrected transcript of proceedings of the PIC's evidence during the public hearing on 23 November 2005;
  - the commentary circulated by the Chair to the Committee Members, which is the subject of consensus by the Members, highlighting issues such as: the need to extend the Inspector's jurisdiction, management issues (the appointment of a new Commissioner, succession planning, the use of temporary Assistant Commissioners), the role of counsel assisting and their relationship with the Commission, PIC and the history of Operation Vail, future direction of the PSG/CTCC inquiry, early warning system for police officers;
  - relevant information (that is not confidential) as provided by the Commissioner in response to matters taken on notice during the hearing;
- ii. the report, so comprised, be adopted as the report of the Committee and that it be signed by the Chair and presented to the House, together with the minutes of evidence;
- iii. the Chair and Committee Manager be permitted to correct stylistic, typographical and grammatical errors.

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

Wednesday 5 April 2006 at 6.30pm

Room 1043, Parliament House

#### **Members Present**

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

#### **Apologies**

Ms Burnswoods, Mr Kerr

In attendance: Helen Minnican, Pru Sheaves, Jennifer North.

The Chairman commenced proceedings at 6.30pm.

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### 3. Inquiry Program: Reports and new inquiries

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- (b) **9<sup>th</sup> General Meeting with the Commissioner of the PIC:** The Committee deliberated on the draft report and proposed amendment to recommendation 1, as previously

circulated to Committee Members. The Committee proceeded to consider the schedule of proposed amendments to the *Commentary* of the report as circulated and addressed by the Chairman.

The Committee considered the Commentary of the report.

Recommendation 1 as amended, adopted.

Recommendation 2 as amended, adopted.

Section entitled "Structure and Management" as amended, adopted.

Sub-section entitled "Examination by the Committee" as amended, adopted.

Sub-section entitled "Role of Assistant Commissioner" as amended, adopted.

Section entitled "A cost-saving measure" as amended, adopted.

Section entitled "Comment" as amended, adopted.

Section entitled "Succession Planning" as amended, adopted.

Section entitled "Operation Vail" as amended, adopted.

Section entitled "Role of Counsel Assisting" as amended, adopted.

The remainder of the report adopted as stands.

The Committee resolved on the motion of Mr Corrigan, seconded Mr Chaytor, that: the draft report as amended be the Report of the Committee and that it be signed by the Chairman and presented to the House, together with the minutes of evidence; and, the Chairman, Committee Manager and Senior Committee Officer be permitted to correct minor stylistic, typographical and grammatical errors.

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