

PARLIAMENT OF NEW SOUTH WALES



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

Report on the Eleventh General Meeting with
the Inspector of the Police Integrity Commission

Together with questions on notice,
transcript of proceedings and minutes

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Membership and staff

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Committee's functions

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 are set out in section 31B(1) 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 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;

Committee's functions

- 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 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* and the *Government Information (Information Commissioner) Act 2009* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC, Inspector of the PIC and the Information Commissioner. Section 31BA of the Ombudsman Act now provides:

- The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission, Inspector of the Police Integrity Commission or Information Commissioner 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.
- 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.
- 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.
- A referral or notification under this section is to be in writing.
- In this section, a reference to the Minister is;
 - in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
 - 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
 - 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*
 - in the context of an appointment of Information Commissioner, a reference to the Minister administering section 5 of the *Government Information (Information Commissioner) Act 2009*.

The Committee also exercises the following oversight functions in relation to the Office of the Information Commissioner as detailed in section 44 of the *Government Information (Information Commissioner) Act 2009*:

- to monitor and review the exercise by the Commissioner of the Commissioner's functions,
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commissioner or connected with the exercise of the Commissioner'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 of the Commissioner and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
- to recommend to both Houses of Parliament any changes to the functions of the Commissioner that the Joint Committee thinks desirable,
- 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.

Under section 131 of the *Government Information (Public Access) Act 2009* the Committee is responsible for keeping certain public interest provisions contained in the Act under review to determine whether the policy objectives of those provisions remain valid and whether the content of those provisions remains appropriate for securing those objectives.

Chair's foreword

Issues arising from the Inspector's complaint reports were a focus of discussion in the Eleventh General Meeting with the Inspector of the Police Integrity Commission. The scope of the Inspector's legislative power to publish certain of his complaint reports remains unclear, despite the Committee's recommendation in its March 2009 report on the Ninth General Meeting that the Police Integrity Commission Act be amended to clarify the Inspector's position.

This issue is central to the oversight of the Commission and its public accountability. The Committee hopes that the current review of the Act by the Director-General of the Department of Premier and Cabinet will put beyond doubt the Inspector's capacity to report to any party, including Parliament, at his discretion, in relation to any of his statutory functions.

As this is the Committee's last meeting with the Inspector before the end of the 54th Parliament, I would like to express my appreciation for the vigour with which he has undertaken his role. He has ensured that there is no complacency about the way in which the Police Integrity Commission exercises its considerable powers and that complainants can be confident that the issues they raise will be rigorously examined.

I would like to thank the members of the Committee for their participation in the General Meeting and their contribution to the reporting process. The Committee's report is a consensus document that represents the bipartisan and constructive approach taken by Members of the Committee to the exercise of its oversight role.



The Hon Kerry Hickey MP
Chair

Recommendation

RECOMMENDATION 1: That, as part of the current review of the *Police Integrity Commission Act 1996*, the Department of Premier and Cabinet consider there being a presumption that the Inspector's reports on upheld complaints are to be published unless to do so would be against the public interest.4

Chapter One - Commentary

- 1.1 On 27 October 2010, the Committee conducted the Eleventh General Meeting with the Inspector of the Police Integrity Commission, the Hon Peter Moss QC (the Inspector). This meeting was the fourth General Meeting to have taken place between the Committee and the Inspector during the 54th Parliament.
- 1.2 As part of the process of preparing for the General Meeting, the Committee sent questions on notice to the Inspector about matters discussed in his Annual Report for the year ending 30 June 2010. The answers to the questions on notice can be found in Chapter Two of this report.
- 1.3 Much of the discussion during the General Meeting focused on issues which have been examined in previous general meetings conducted during the 54th Parliament and which have continued to concern the Committee. These issues primarily stem from the Inspector's complaint reports.

Inspector's complaint reports

- 1.4 A principal function of the Inspector is to deal with complaints of abuse of power, impropriety and other forms of misconduct on the part of the Police Integrity Commission (PIC) or officers of the Commission.¹ In the past year the Inspector has published four complaint reports on his website, upholding complaints from the Police Association, and from police officers Philpott, Deissel and Jennings.

Procedural fairness

- 1.5 In these reports, the Inspector found that police officers had been denied procedural fairness by the Commission.
- 1.6 In the case of the complaint by the Police Association, the Inspector considered that procedural fairness had been denied to a number of officers who were mentioned in conversations which had been recorded by telephone intercept or covert listening device. Transcripts and recordings of these conversations were exhibits in public hearings held in relation to Operation Mallard, an investigation on which the PIC reported in December 2007.²
- 1.7 In the case of his reports on complaints by Philpott, Deissel and Jennings which arose from the PIC's report on Operation Whistler,³ the Inspector concluded that they were denied procedural fairness. The PIC had already identified breaches of procedural fairness in relation to Philpott and Deissel in its Operation Alford Report,⁴ undertaken by the Commission to identify publicly the breaches of procedural fairness which occurred in the Whistler Report; however, it was the Inspector's opinion that there were other breaches of procedural fairness which had not been acknowledged in the Alford report.
- 1.8 The Committee has referred to differences of opinion between the Inspector and the Commission over the issue of procedural fairness in its report on the Tenth General

¹ s. 89(1)b), *Police Integrity Commission Act 1996*

² NSW Police Integrity Commission, [Operation Mallard, Report to Parliament](#), December 2007

³ NSW Police Integrity Commission, [Operation Whistler, Report to Parliament](#), December 2005

⁴ NSW Police Integrity Commission, [Operation Alford, Report to Parliament](#), December 2009

Commentary

Meeting with the PIC Inspector.⁵ At the Tenth General Meeting in October 2009 the Inspector told the Committee that the Commission had taken his views into account, whether they agreed with them or not, and that he had seen improvements in their procedures which the Inspector considered would prevent breaches of procedural fairness from recurring.⁶

1.9 However, in the light of the four complaint reports published by the Inspector during his 2009-2010 reporting period, the Committee wanted to establish if he was still of this opinion.

1.10 During an in-camera session of the General Meeting, the Inspector was again able to assure the Committee that he was satisfied that the Commission's practices and procedures had been changed in response to his views in complaint reports and that problems with procedural fairness were unlikely to recur.

Capacity to publish

1.11 The Inspector's capacity to publish his complaint reports has been raised in successive General Meetings since November 2008. It was Inspector Moss's opinion that the Police Integrity Commission Act does not specify:

- who, if anyone, is entitled to receive a copy of a complaint report;
- what discretion, if any, the Inspector has to distribute copies of a complaint report to particular persons; and
- what status is to be given to a complaint report once the Inspector has provided it to a particular person.

1.12 It has been the Inspector's position that:

...Inspector's Reports which uphold substantial complaints concerning the Commission... should be in the public domain and available for public scrutiny, because of the clear public interest involved...⁷

1.13 In its report on the Ninth General Meeting the Committee therefore recommended:

That the *Police Integrity Commission Act 1996* be amended to clarify that the PIC Inspector is able to report to any party, including Parliament, at his discretion, in relation to any of his statutory functions.⁸

To date, the legislation has not been amended. However, on 16 May 2010 the Premier announced a review of the *Police Integrity Commission Act 1996* to be undertaken by the Director-General of the Department of Premier and Cabinet, with a report to Parliament due by 11 March 2011. In addition to examining the general efficacy of the Act, the review is specifically considering:

- Recent recommendations or issues raised by the Parliamentary Joint Committee on the [Office of the] Ombudsman and the Police Integrity Commission; and
- The adequacy of the powers, including the reporting powers, of the Inspector of the Police Integrity Commission.⁹

⁵ Committee on the Office of the Ombudsman and the Police Integrity Commission, [Report on the Tenth General Meeting with the Inspector of the Police Integrity Commission](#), March 2010

⁶ Committee on the Office of the Ombudsman and the Police Integrity Commission, transcript of proceedings, [Tenth General Meeting with the Inspector of the Police Integrity Commission](#), 26 October 2009, p. 3

⁷ Correspondence to the Committee from the Inspector of the Police Integrity dated 27 June 2008

⁸ Committee on the Office of the Ombudsman and the Police Integrity Commission, [Report on the Ninth General Meeting with the Inspector of the Police Integrity Commission](#), March 2009, p. 13

⁹ Review of the *Police Integrity Commission Act 1996* Terms of Reference

- 1.14 The Committee made a submission to the review, drawing the Director-General's attention to its recommendation from the 9th General Meeting with the PIC Inspector and an additional recommendation from its report on an inquiry into the handling of complaints against the Police Integrity Commission.¹⁰
- 1.15 For the General Meeting in October, the Committee questioned the Inspector about his recent practice of publishing his complaint reports on the Inspector's website. The Inspector explained that, in the public interest, he has interpreted section 102 of the PIC Act broadly as allowing him to incorporate summaries in his annual reports and publish the full complaint reports on his website.¹¹ At the hearing on 27 October the Inspector told the Committee:
- I have taken the view, perhaps adopting a broad interpretation of the legislation in the public interest I would hope, that I can at least make these reports part of my Annual Report. That seemed to me to fall squarely within what the Inspector is required to report to Parliament and so I have been adopting that procedure of including all complaint reports upholding complaints in the Annual Report which covers the particular period.
- In these days when the Inspector has a website, I have also taken the course of publishing each Annual Report on the website and including the complaint reports which, as I say, I see as part of the Annual Report, including those on the website as well as the Annual Report itself.¹²
- 1.16 The Committee's expectation is that the current legislative review being conducted by the Department of Premier and Cabinet will clarify this particular aspect of the Inspector's functions.

Public interest

- 1.17 Following discussion at the 11th General Meeting of the Inspector's capacity to publish his complaint reports, Mr Shoebridge asked Inspector Moss about when he might envisage it not being in the public interest to publish a complaint report. The Inspector considered this might be when publishing would breach some confidentiality.
- 1.18 Inspector Moss discussed the kind of material which he considered to be in the public interest:
- ...where the Inspector's reports uphold a complaint, particularly where the ground is a lack of procedural fairness, so that it follows in the Inspector's view the adverse material should not have been published, that would seem to me to be very much a matter in the public interest.
- If powerful agencies, such as the Commission, are not to be held to account in this way, then it is difficult to see how there is going to be any real accountability. These agencies, if they publish adverse material concerning a person of course, can do damage to the person's reputation and the person's integrity, particularly if you happen to be a police officer.

¹⁰ Committee on the Office of the Ombudsman and the Police Integrity Committee, [Report on an inquiry into the handling of complaints against the Police Integrity Commission](#), April 2010, p.15

¹¹ See answer to question on notice No 3, Chapter Two of this report

¹² See Transcript of proceedings, Chapter Three of this report

Commentary

If the Inspector issues a report and gives a considered view that that officer - to take that example - has been denied procedural fairness, then it would simply seem to me very much in the public interest that that be aired and given publicity.¹³

1.19 The Committee considers it should be for the Inspector to decide when publishing a complaint report is in the public interest. Mr Shoebridge suggested at the General Meeting that there should be a presumption that the Inspector's reports on upheld complaints are to be published unless to do so would be against the public interest.

1.20 The Committee notes the Inspector's observation that:

The Inspector's role is clearly *the* critical factor in ensuring the Commission's practices and procedures are open to public review, except of course in those cases where the security of the particular investigation justifies a departure from this vital public-interest principle. If the Inspector is not vigilant in this regard there is no guarantee that this principle of public accountability will at all times be strictly observed.¹⁴

RECOMMENDATION 1: That, as part of the current review of the *Police Integrity Commission Act 1996*, the Department of Premier and Cabinet consider there being a presumption that the Inspector's reports on upheld complaints are to be published unless to do so would be against the public interest.

Report recommendations

1.21 Recommendations made by the Police Integrity Commission and by the PIC Inspector in their reports are not binding. During discussion at the General Meeting Mr Kerr asked the Inspector whether he thought there should be any compulsion on the Commission to act on his recommendations. Inspector Moss replied:

No I do not. I think that would be counter-productive and would introduce great difficulties. These are just the Inspector's recommendations. The Inspector may be wrong; may be over-zealous. I would not like to see them made compulsory, in which case they would cease to be recommendations of course.¹⁵

1.22 The Committee agrees that it should remain at the discretion of the PIC as to how it acts upon the recommendations in the Inspector's complaint reports. To date, the Committee has been advised that the Commission has taken the Inspector's opinions into account, even where it has disagreed with them.

Inclusion of PIC's response to adverse comment

1.23 In its *Report on an inquiry into the handling of complaints against the Police Integrity Commission*, the Committee recommended that the PIC Act be amended:

...so that, should the PIC Inspector make adverse comment in regard to the Police Integrity Commission and the Commission disagree with the Inspector's position, the Commission's response to that adverse comment be reproduced in full in the Inspector's complaint report.¹⁶

1.24 In correspondence to the Committee, dated 21 May and 16 June 2010, following publication of the complaint handling report, the Inspector commented on the

¹³ *ibid*

¹⁴ See answer to question on notice No 2, Chapter Two of this report

¹⁵ See Transcript of proceedings – Chapter Three of this report

¹⁶ Committee on the Office of the Ombudsman and the Police Integrity Commission, [Report on an inquiry into the handling of complaints against the Police Integrity Commission](#), April 2010, p. 15

Committee's recommendation. In his first letter, he considered the inclusion of the Commission's response impracticable, given the volume of correspondence which he had exchanged with the Commission during the drafting of his complaint reports. In his second letter he provided a further rationale against the inclusion of the Commission's response in his complaint reports. For example, he argued that:

- the Inspector indicates in his reports where the Commission disagrees with his opinions;
- the complainant receives copies of significant correspondence from the Commission (unless the Commission objects to it being made available);
- the Commission's response to the issues raised by the complaint and to the Inspector's draft report is taken into account in the final form of the report;
- the Inspector's opinions and recommendations are authorised and required by the Statute to deal with relevant complaints. To consider that the Inspector's:
 - ...relevant opinions are just opinions and should have no greater weight than the opposing opinions of the Commission... would not only be a mistake but one that would lead, in my opinion, to a serious weakening and undermining of the Inspector's authority and effectiveness.¹⁷

This could lead to a situation where prospective complainants are discouraged from complaining because the Inspector's reports are perceived as ineffective.

If such a situation were to evolve it would, in my opinion, emasculate the Inspector as "watchdog", and diminish the Inspector's effective jurisdiction directed to the prevention of the abuse of power and other misconduct on the part of the Commission.¹⁸

- the Commission can have recourse to the Supreme Court if it believes the Inspector has exceeded his complaints' jurisdiction.

1.25 At the General Meeting on 27 October 2010, the Inspector was asked whether he thought that excluding the PIC's response to adverse comment in a complaint report published by the PIC Inspector could be seen as denying the Commission the opportunity to make its viewpoint public. The Inspector replied that, for the reasons he had provided in his correspondence to the Committee:

...I do not consider that there is any unfairness to the Commission or in the public interest in not including the Commission's response in the Inspector's report.¹⁹

1.26 The Committee acknowledges the robust oversight of the Commission provided by Inspector Moss and considers his role is vital because of the 'risk that an agency which is heavily committed to covert investigations, reliant on informants, and possesses powers which are both coercive and of a kind which might involve substantial infringements of rights of privacy, may overstep the mark.'²⁰ The Committee values the contribution of a strong, independent Inspector who can safeguard the rights of individuals.

¹⁷ Inspector of the Police Integrity Commission, Correspondence to the Committee dated 16 June 2010

¹⁸ *ibid*

¹⁹ See Transcript of proceedings, Chapter Three of this report

²⁰ The Hon Justice Wood, Commissioner, [Royal Commission into the NSW Police Service, Interim Report](#), February 1996, p. 95

Administration of the Inspector's office

- 1.27 The Inspector's Annual Report noted that from 1 July 2009, the Office of the Inspector has been administered by the Department of Premier and Cabinet. In response to a question on notice, the Inspector informed the Committee that this had improved the efficiency and effectiveness of his office by:
- allowing his office direct access to the ServiceFirst network which provided a range of support facilities;
 - upgrading office equipment; and
 - improving website management.²¹
- 1.28 The Committee notes that these changes have streamlined the administrative support of the Inspector's office without impairing relevant security.

²¹ See answer to Question on notice No 1, Chapter Two of this report

Chapter Two - Answers to questions on notice

QUESTION 1

The Annual Report notes that from 1 July 2009, the Office of the Inspector has been administered by the Department of Premier and Cabinet²². Apart from changes to email addresses and hosting of the Inspector's website, what other differences have there been? Has this improved the effectiveness of your administration? Are there any risks to the security of your work?

ANSWER

- a) A new link has been installed in the office to allow direct access to the ServiceFirst network to enable the office of the Inspector to have access to the full suite of office support facilities made available to the Department of Premier and Cabinet. These include:
 - Access to DPC intranet, SAP, etc;
 - Availability of various core office software products and programs;
 - IT Help Desk to address concerns re IT support; and
 - Office Services Branch Facilities to address concerns re office security, maintenance, etc.
- b) Upgrade/replacement of obsolete office equipment i.e. computer hardware and software applications (Microsoft office suite, email and diary management, anti-virus, etc); converted current photocopier into a multi-function device to provide scanning facilities, network printer, etc.
- c) Improved management and security of data i.e. all documents/files are stored in the network drives.
- d) Substantial improvement in website management by DPC e.g. prompt response to queries or requests, reliability to services provided, etc.
- e) Cost-effective initiatives e.g. closure of external services e.g. website hosting, internet services, etc.

These innovations, as listed above, would appear to have improved the effectiveness of the Inspector's administration. There is no indication they have or will impair relevant security.

QUESTION 2

The annual reports of successive PIC Inspectors have cited the Wood Royal Commission as wanting to ensure that the Police Integrity Commission would be 'open to public review' (AR 2010, p.6 para 12) Can you elucidate for the Committee how you see your role in that public review process? Does it at times conflict with your Office's role in being a 'watchdog', able to respond quickly to matters without risking the secrecy of operations or the confidentiality of informants and witnesses (AR 2010, p.6 para 14).

ANSWER

The Inspector's role is clearly *the* critical factor in ensuring the Commission's practices and procedures are open to public review, except of course in those cases where the security of the particular investigation justifies a departure from this vital public-interest principle. If the

²² Annual Report p.10 para 33, para 37, p. 34 para 111.

Inspector is not vigilant in this regard there is no guarantee that this principle of public accountability will at all times be strictly observed. Experience teaches that powerful agencies such as the Commission may find it more convenient and less time-consuming to operate out of the public limelight unless called to account by an overseeing authority empowered to do so. It is thus a significant factor that such agencies should be conscious at all times that their relevant activities are being scrutinized by the overseeing authority, however irksome that may seem to the agency. The Inspector's ability to "respond quickly" depends on a number of matters, in particular, the point in time at which the Inspector is notified of a particular complaint. For example, in respect of the various complaints arising out of the Whistler Report, and now dealt with by me in five published Reports upholding such complaints, the first of those complaints was not made to my office until some years after the relevant events, and subsequent to the departure from Office of the presiding PIC Commissioner. So far as the security of the Commission's operations is concerned, all that can be done is to exercise caution that such security is not inadvertently breached in the course of investigating complaints against the Commission and in publishing Complaint Reports.

QUESTION 3

Previous Committee reports have discussed the PIC Inspector's capacity to publish complaint reports. It was your opinion that the PIC Act did not specify who, if anyone, is entitled to receive a copy of a complaint report; what discretion, if any, the Inspector has to distribute copies of a complaint report to particular persons; and what status is to be given to a complaint report once the Inspector has provided it to a particular person. At the Tenth General Meeting (26/10/2009) you told the Committee:

I was able to overcome those problems in respect of what I would call some major reports by the Inspector to date by including those in my special report to Parliament and by that means those particular reports became public.²³

Since then you have published a number of complaint reports on your website on the basis that they formed part of your annual report.²⁴

Previous Inspectors have not published their reports on complaints in full, limiting the reporting of them in their Annual Report to a summary. Can you explain to the Committee:

- why you consider it necessary to publish complaint reports in full rather than summarising the key elements in your annual reports?***
- how individual complaint reports can be considered to be part of your annual report, particularly where a complaint report is published on your website some months before the annual report is tabled in Parliament?***

ANSWER

I cannot, of course, answer for my predecessors in respect of their decision to publish, or not publish in full, their Complaint Reports. However, it is necessary to bear in mind in this context, in my opinion, that previously no Inspector had upheld a complaint on the grounds of a denial of procedural fairness, let alone the number of such complaints to date upheld by me. Second, the availability of the Inspector's website on which to post Annual Reports

²³ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Report on the Tenth General Meeting with the Inspector of the Police Integrity Commission*, Report 12/54, March 2010, p9.

²⁴ Correspondence to the Committee from the PIC Inspector dated 26 March 2010.

and to include such Complaint Reports as part thereof became a reality only during the currency of my appointment, and as a result of my initiative in that regard. (The importance of this recently available facility and the ready and permanent exposure it provides in respect of material posted thereon should not be overlooked.) It seems to me reasonable to read Section 102 of the *Police Integrity Commission Act* (Annual Reports by Inspector), in the light of such technological advances, and that, accordingly, a summary of such a Complaint Report may be acceptable for inclusion in an Annual Report for convenience of the general reader thereof, provided a complete Report is also made available, either as part of the printed copy of the Annual Report, or by extension, and for convenience, by making the printed copy less cumbersome, by being posted on the Inspector's website for those who may wish to examine the Inspector's reasons and opinions in detail. As to the justification for publishing a Complaint Report on the Inspector's website prior to the Annual Report, in respect of which it is said to form part, that may, in the public interest, require a broad interpretation of Section 102.

QUESTION 4

The Australian Law Reform Commission has recommended changes to the Commonwealth Royal Commissions Act 1902 to provide that an affected person may request that their response to a potential adverse finding, or, where appropriate, a summary of that response, be included in the inquiry report²⁵.

Do you think that including responses to adverse findings in PIC reports – as envisaged in the ALRC recommendation – would help to ensure that procedural fairness is provided to affected persons?

ANSWER

I see practical difficulties in implementing such a recommendation. In any event, provided both the Tribunal in question (including Counsel Assisting, in particular) and the witness' legal representative are alive to the requirements of procedural fairness, and assiduous in ensuring they are not overlooked, it seems to me that that ought to suffice. If that situation obtains, I would doubt that any more formal requirement would be more effective. It is when it is absent that problems arise, in which case I would also doubt that the proposed changes referred to above would do much to alleviate any failure of procedural fairness which may have occurred as a result of this hypothetical situation

QUESTION 5

In a number of your complaint reports you have recommended that the Whistler Report be removed from the PIC's website and only made available 'in a proper case' by application to the Commission²⁶. Can you explain what you envisage as 'a proper case' for being granted access to the Whistler Report, were it to be removed from the website?

ANSWER

The expression "in a proper case" is an oft-used lawyers' expression to indicate that a broad interpretation is appropriate in a particular context, rather than a narrow one. All I meant to

²⁵ Australian Law Reform Commission, [Making Inquiries: A New Statutory Framework](#), Report 111, October 2009, Ch 15, p399.

²⁶ For example: Inspector of the Police Integrity Commission, [Inspector's Report re Officer Jennings 9 June 2010](#), p37.

convey here is that there may be reasonable grounds for an applicant to have access to the particular Report, notwithstanding the Inspector's criticisms of it.

QUESTION 6

The PIC's website crossreferences the Whistler Report and the Alford Report and provides the following statement in relation to the Whistler Report²⁷:

On 16 December 2009 the Commission published its Report in Operation Alford. The Alford Report identifies a number of paragraphs in the Whistler Report which the Commission accepts contain breaches of procedural fairness with the result that parts of the Whistler Report in relation to Detective Senior Constable Timothy Scott Briggs, Constable Amanda Rae Deissel, Senior Constable Christopher John Jackson and Senior Constable Julie Teresa Philpott are accordingly invalid.

In relation to Constable Amanda Rae Deissel, Senior Constable Julie Teresa Philpott and Senior Constable Melinda Jennings, the Inspector of the Police Integrity Commission has published reports upholding complaints by each of these officers in relation to other statements in the Whistler Report which also contain breaches of procedural fairness. The Inspector's reports in relation to each matter may be found by clicking [The Inspector of the Police Integrity Commission](#).

- ***Do you still consider that the PIC should remove the report from its website?***
- ***What is your opinion of the judgment of Simpson J²⁸, relating to events which are dealt with in the Whistler Report, remaining on the NSW Government's Lawlink website, despite the findings in the Court of Appeal on 6 August 2010 disagreeing with significant parts of that judgment.²⁹***

ANSWER

Before attempting to provide an answer to this Question, it should be pointed out that materially different wording has since appeared on the Commission's website, apparently intended to replace the above. That wording as substituted is in the following terms:

On 16 December 2009 the Commission published its Report in Operation Alford. The Alford Report identifies a number of paragraphs in the Whistler Report which were published by the Commission in breach of the Commission's obligation to accord procedural fairness to certain witnesses namely Detective Senior Constable Timothy Scott Briggs, Constable Amanda Rae Deissel, Senior Constable Christopher John Jackson and Senior Constable Julie Teresa Philpott. Those parts of the Whistler Report are accordingly invalid and should not have appeared.

In relation to Constable Amanda Rae Deissel, Senior Constable Julie Teresa Philpott and Senior Constable Melinda Jennings, the Inspector of the Police Integrity Commission has published reports upholding complaints by each of these officers in relation to other statements in the Whistler Report which the Inspector considers also contain breaches of procedural fairness. The Inspector's reports in relation to each matter may be found by clicking on the link below and accessing the reports via [the Inspector's Annual report for 2009-10](#).

²⁷ [Operation Whistler](#)

²⁸ [Allan Frederick Hathaway v State of New South Wales \[2009\] NSWSC 116](#)

²⁹ [State of NSW v Hathaway \[2010\] NSWCA 184](#)

In my three Reports dealing with and upholding the complaints of a denial of procedural fairness in respect of Officers Philpott, Deissel and Jennings, I have included criticism of the Alford Report as being incomplete and inadequate. Not only does that Report, in my opinion, deal with some only of the considerable material adverse to those (and other) Officers, which material was published in breach of the Commission's obligation to accord procedural fairness to those Officers, but that Report failed to acknowledge the damage done to the reputation and careers of those Officers, and equally failed to make any recommendation to the Commissioner of Police in respect of ameliorating such damage to the extent that that might be possible given the inordinate delay in acknowledging the Commission's breach of obligation in that regard.

I readily acknowledge that the Commission should be given credit for the inclusion of such notation on its website. However, the inclusion of that notation cannot, in my opinion, be equated with the removal from the website of the Report itself, which continues to display in permanent and readily-accessible format the adverse and damaging opinions concerning these Officers, at least some of which the Commission concedes to be invalid. In my opinion there could be no justification whatsoever for this conduct.

As to that portion of the Committee's question relating to *Lawlink*, and the publication on that website of the primary Judge's decision in *Hathaway's Case*, and the subsequent decision of the NSW Court of Appeal, published on 6 August 2010, which set aside and over-ruled that decision, in particular, in respect of crucial findings of fact which the trial Judge had purported to make, concerning and detrimental to the reputation of named and unnamed NSW Police Officers, as well as finding that the Judge had made errors of law in coming to those conclusions and opinions, I would offer the following comments. There appears to me to have been, to date, an omission, generally, to acknowledge publicly and effectively the corrective significance of the reasons of the Court of Appeal so far as the reputations of these Police Officers are concerned, not only in the context of the over-ruled findings of the trial Judge, which received much publicity at the time, but also in respect of not dissimilar adverse opinions published in the Whistler Report. In this context it might be noted that the *Lawlink* website does not indicate in the reference to the decision of the primary Judge, that that decision has been over-ruled and set aside by the Court of Appeal, although there is provision on the site for such an indication to be included in the reference.

In my opinion, the Court of Appeal's decision is a most significant one. Unfortunately, the Court of Appeal decision came more than seven years after the incident, and more than five years after the damage was done, by the publicity given to these earlier adverse opinions, to the reputations and career prospects of these three officers, as well of Officer Briggs, and the other Officers identified in my Reports, all stationed in Wagga at the time of the relevant incident on 6 February 2003. Added to the problems flowing from the lapse of time since the incident in question, is the fact that the Court of Appeal judgment appears to have received no publicity in the mainstream Press or other Media outlets, despite the fact, as mentioned above, that a great deal of publicity was accorded to the findings of the primary Judge.

Baldly stated, the effect of the court of Appeal decision was to allow the Appeal and to over-rule the findings of the Trial Judge on 7 May 2009, and to set aside the Orders made by the latter; to enter verdict and judgment for the State in respect of Hathaway's malicious prosecution proceedings; and direct a new trial, limited to the issue of liability, in respect of Hathaway's action for assault (allegedly by Constable Jackson); Hathaway was ordered to pay the costs of the Appeal.

I will leave aside the effect of the decision in respect of Constable Jackson, on the basis that I have never received a complaint from the latter, although I think it is clear that he too,

was denied procedural fairness by the Commission (indeed, this is conceded in the Commission's Alford Report).

However, in relation to Detective *Briggs*, the decision is a most significant one, in that it set aside the verdict concerning him in respect of the malicious prosecution of the relevant causes of action. Earlier I published two Reports (the correctness of which were generally accepted by the Commission) upholding his complaints against the Commission, and these appear on the Inspector's website at – www.inspectorpic.nsw.gov.au.

Indeed, as I read the Court of Appeal decision, the credit of Detective *Briggs* as well as Officers *Philpott*, *Deissel* and *Jennings*, emerged unscathed from the reasons of the Court of Appeal. Such findings are, of course, in marked contrast to comparable findings of the PIC in the Whistler Report. The evidence of the latter three Officers also seems to have been accepted by the Trial Judge, and the latter, and the Court of Appeal, appear to have accepted the evidence of Officer *Jennings*, in particular, which had considerable relevance to some of the significant issues involved: see, in particular the following paragraphs of the Court of Appeal judgment: 191-193, 243-244, 313, 316. This is in marked contrast to the adverse opinions concerning these Officers published in the Whistler Report, but very belatedly, in the case of *Briggs*, *Philpott* and *Deissel*, expressly withdrawn in the Commission's Alford Report.

Also of considerable significance, in my opinion, is the conclusion of the Court of Appeal that it was not open to the Trial Judge on the evidence to find either that the knife *Hathaway* had been charged with unlawfully possessing at the time, had been planted by a Police Officer or Officers, or that Detective *Briggs* was aware that it had been (paragraph 286).

Another Officer who seems to have been emerged without criticism in the findings of the Court of Appeal, in my opinion, is Inspector *Murphy*, who was the subject of serious adverse findings and criminal prosecution recommendations by the PIC, although I have never received a complaint from that Officer.

QUESTION 7

You have made several findings of breaches of procedural fairness in your reports on complaints by officers Philpott, Deissel and Jennings arising from the PIC's Operation Whistler. At the Tenth General Meeting with the PIC Inspector in October 2009, when these three reports were in draft form, you told the Committee you had seen a distinct improvement in some procedures of the Commission and that you doubted if the procedural fairness problems which had been highlighted in your complaint reports would occur under the current arrangements³⁰. Is this still your view?

ANSWER

Yes. I can elaborate on this answer if required.

QUESTION 8

On pages 14-15, the Annual Report foreshadows the findings of a draft report although affected parties have not yet provided comments. This includes a comment that:

³⁰ Committee on the Office of the Ombudsman and Police Integrity Commission *Report on the Tenth General Meeting with the Inspector of the Police Integrity Commission* March 2010, p.2

The [PIC's] investigation found not a shred of credible evidence to support the anonymous allegation which gave rise to the investigation, and which, according to the Complainant has caused a great deal of damage to his reputation.³¹

Is it your normal practice to provide this much information about the progress of complaint reports and in such strong terms?

ANSWER

To the extent this Question appears to assume that at the relevant time the “affected parties” had not provided comment in respect of my Draft Report provided to them for that purpose, I would seek to point out, as I think made clear by paragraph 64 of my Annual Report, that I had in fact received the comments from both Counsel Assisting and Counsel for Mr Hosemans, and that I had also been made aware as a result of voluminous correspondence with the Commission, of the Commission’s views in respect of the issues covered in my Draft Report. It is not in issue that the PIC’s investigation found not a shred of credible evidence to support the anonymous allegation which gave rise to the investigation. That being so, I would not agree, with respect, that I have used “strong terms” in merely recording that non-controversial statement. Indeed, it seemed to me that in fairness to the Complainant it was reasonable to include that statement in my Annual Report in the context in which it appears.

QUESTION 9

In the past two annual reports you make extensive comments about the use of suppression orders by the PIC in relation to the hearings for what was known as Operation Alford. Although no complaint has been made about the use of such orders your report notes:

It is clearly within the functions of the Inspector to keep a watchful eye on the circumstances in which such directions are made from time to time by the Commission to ensure that in a particular case there can be no reasonable apprehension such directions are given in circumstances clearly contrary to the public interest and for the purpose of shielding matters of public interest from public scrutiny.³²

In raising these matters have you considered the sort of changes to its policies and procedures the Commission should make to prevent similar issues arising in future? Has there been a response from the Commission to these concerns?

ANSWER

In attempting to provide an answer to this Question, I would refer the Committee, first, to paragraphs 77, 79 and 90, in particular, from my Annual Report. I would also repeat the sentiments expressed above in relation to ensuring the observance of the rules relating to procedural fairness: provided both the Tribunal in question (including Counsel Assisting, in particular) and the witness’ legal representative are alive to the statutory requirements referred to in paragraph 77, and assiduous in ensuring they are not overlooked, it seems to me that that ought to suffice. It is a very grave step for a Tribunal, such as the Commission, to exclude the public from its hearings, and the grounds for so doing should be clearly stated, otherwise the decision may not be examinable, which is clearly not in the public

³¹ Annual Report p.14

³² Annual Report p.28, para 78

Answers to questions on notice

interest. As to the Commission's response to these concerns, I think that sufficiently appears from paragraphs 79, 90 and 91 of my Annual Report.

QUESTION 10

On page 27 (at para 73) the Annual Report notes the Legal Representation Office (LRO) represented four officers who subsequently made complaints to your office and that:

...that Office occupied an important role in bringing these complaints to the Inspector's notice, which might otherwise not have come to such notice.

Why would these complaints not have come to your notice? Did the LRO advise these complainants of the possibility of contacting you or was its representative role more formal in the sense of drafting complaints for the officers?

ANSWER

I did not intend to imply, in the quotation above from my Annual Report, that these complaints would not necessarily have come to my notice, simply that they *might* not have done so. I had in mind that at the time I received the complaints from Officer Briggs, it was made plain that he had been until then completely unaware of the existence of and role of the PIC Inspector, and this seems to have been the case also with the three officers involved in the same incident, who subsequently lodged complaints with my office, namely, Officers Philpott, Deissel and Jennings. It also appears from a reference to my files that each of the complaints from Ms Young and Sergeant Brazel were received in my office via the Legal Representation Office.

Chapter Three - Transcript of proceedings

Note: The Eleventh General Meeting with the Inspector of the Police Integrity Commission took place on Wednesday 27 October 2010 at Parliament House.

PETER JAMES MOSS, Inspector of the Police Integrity Commission, affirmed and examined:

CHAIR: The Committee has received your answers to the questions on notice. Do you want this response to form part of your evidence?

Mr MOSS: I would wish that, thank you.

CHAIR: Would you like to make an opening statement?

Mr MOSS: I see no need to; I do not think that it will be necessary or helpful.

Mr PEARCE: On page 14 of your Annual Report you comment that no criminal prosecution has been commenced against any person, nor has any action been taken by the Commissioner of Police under the Police Act despite the PIC's recommendations in that regard in Section 10 of the Rani Report.

Do you consider that it reflects negatively on the work of the Commission if PIC report recommendations are not adopted?

Mr MOSS: Could you give me the paragraph number?

Mr PEARCE: It is page 14, paragraph 64 and it makes reference there.

Mr MOSS: The question, I am sorry?

Mr PEARCE: The question is do you consider it reflects negatively on the work of the Commission that the PIC report recommendations are not adopted?

Mr MOSS: No, I do not.

Mr PEARCE: Would you like to expand on that?

Mr MOSS: These recommendations, of course, are matters for third parties, such as the Commissioner of Police, such as the Director of Public Prosecutions and there are considerations no doubt that those third parties are required and do take into account, which form no part of the considerations of the Police Integrity Commission.

These are mere recommendations; whether they are acted upon or not is a question for these third parties. Just as when I make recommendations to the Commission, they are nothing more than recommendations. The Commission can decide to act upon them or can decide not to, but it is certainly not a reflection, in my view, on the Commission that particular recommendations are not acted upon. We do not know the reasons why and there is no point in speculating.

CHAIR: On page 15 of the Annual Report you sought comment from the former Commissioner of Police Integrity Commission. Have you tried to seek comment in the past

from other commissioners and has that approach been successful?

Mr MOSS: From other police commissioners?

CHAIR: From other previous Police Integrity Commissioners.

Mr MOSS: No, this is the first occasion because on this occasion my draft report was clearly critical or could be interpreted as being critical of the then presiding commissioner, who of course is no longer the commissioner and indeed, who had ceased to be the commissioner before my appointment, but it was not only my opinion, but the opinion of the Commission, that the former commissioner should at least, in terms of procedural fairness, be given the opportunity to comment on my draft report, given, as I say, that it could be interpreted as critical of events which occurred when he was the presiding commissioner, but I had not done it previously.

Mr David SHOEBRIDGE: Procedural fairness?

Mr MOSS: It was a matter of procedural fairness I would have thought, at least if you are going to criticise someone, particularly in a report that may become public, it is basic, as I understand it, to procedural fairness, that you give that person a full and ample opportunity in advance of commenting on what you propose to publish.

Mr DRAPER: The Committee notes that the Police Integrity Commission Act 1996 is currently under review by the Department of Premier and Cabinet in accordance with section 146. What changes would you like to see made to this Act?

Mr MOSS: I have made written submissions which as I understand it are in the public arena. I have not brought them with me; I am not sure whether I provided a copy at some stage to the Committee but essentially the one that I have put before the Review as important is the one that I have mentioned I think in each of my Annual Reports, and that is an amendment which would clarify the Inspector's complaint reports, particularly when the Inspector upholds complaints against the Police Integrity Commission.

The clarification needed, in my view, is what is the status of such reports and can the Inspector publish them and to whom should such reports be delivered? I think there is a general view, not only my view but the view of my predecessor and I think the Commission itself holds the view that this matter needs clarification.

In my written submissions to this Review that you mention I have again introduced that. As I understand it, there is no real disagreement about it. I understand that an amendment will be made but that has been on the books for a number of years.

I have also said in that submission that I was not sure just how wide ranging this review was going to be and that if those who are conducting it were interested in further views of mine as to how the Act might be amended, then I would be pleased to elaborate, if they wished me to do so; but I did not want to go into detail if it was going to be a narrow review.

I think in fact quite soon someone from the Department is going to visit me and we are going to talk about what other matters I might see as being usefully discussed.

Mr DRAPER: Given the amount of time that has gone by now and the number of times it has been submitted, do you have an opinion as to why there seems to be resistance or a blockage?

Mr MOSS: Well, I think I would just be speculating and I would rather not do that if

you do not mind. I am as puzzled as you might be as to why it has taken so long; but it has.

The Hon. Luke FOLEY: In your answer to question seven of our questions on notice you offer to elaborate on the answer. You agree with the proposition that there has been a distinct improvement in some procedures of the Commission and you doubt the procedural fairness problems which had been highlighted by you in the past would occur under the current arrangements. Would you like to elaborate on that, in particular how have the Commission's procedures been improved?

Mr MOSS: May I inquire, are we going to have a confidential session, was that envisaged?

CHAIR: We can do a confidential session.

Mr MOSS: If so, I think I would probably, if I may, prefer to answer that in confidential session.

Mr KERR: You receive a complaint, if you uphold that complaint, you can publish your reasons for upholding that complaint and make them public at the moment or not?

Mr MOSS: I think as you say, we have had the discussion each time I have appeared before the Committee. That does not mean we cannot have it again for the benefit of those who were not there on previous occasions.

There is this difficulty about the status of the Inspector's reports. First of all, has the Inspector power to publish them? Assuming that the Inspector has, we are talking about, by the way, as I understand it, complaint reports which uphold the complaint?

Mr KERR: Yes, that is right.

Mr MOSS: I have taken the view, perhaps adopting a broad interpretation of the legislation in the public interest I would hope, that I can at least make these reports part of my Annual Report. That seemed to me to fall squarely within what the Inspector is required to report to Parliament and so I have been adopting that procedure of including all complaint reports upholding complaints in the Annual Report which covers the particular period.

In these days when the Inspector has a website, I have also taken the course of publishing each Annual Report on the website and including the complaint reports which, as I say, I see as part of the Annual Report, including those on the website as well as the Annual Report itself.

Mr KERR: In terms of justice for the complainant, having had their complaint upheld and you might make recommendations to the Commission, they are free to ignore those. That is the situation, isn't it?

Mr MOSS: Yes, they are free to ignore them, yes.

Mr KERR: Do you believe there should be any compulsion on the Commission to act upon your recommendations?

Mr MOSS: No I do not. I think that would be counter-productive and would introduce great difficulties. These are just the Inspector's recommendations. The Inspector may be wrong; may be over-zealous. I would not like to see them made compulsory, in which case they would cease to be recommendations of course.

Mr David SHOEBRIDGE: In response to the question on notice number three, about your powers to publish reports under section 102 of the Police Integrity Commission Act, you indicate that in order for complaint reports to be published in full on your website prior to the publication of the Annual Report in which they would be summarised, that that might in the public interest require a broad interpretation of section 102?

Mr MOSS: Yes.

Mr David SHOEBRIDGE: I am just trying to explore with you what factors you think you would be considering in assessing the public interest and in what circumstances you might envisage the public interest being against publication?

Mr MOSS: Well, where the Inspector's reports uphold a complaint, particularly where the ground is a lack of procedural fairness, so that it follows in the Inspector's view the adverse material should not have been published, that would seem to me to be very much a matter in the public interest.

If powerful agencies, such as the Commission, are not to be held to account in this way, then it is difficult to see how there is going to be any real accountability. These agencies, if they publish adverse material concerning a person of course, can do damage to the person's reputation and the person's integrity, particularly if you happen to be a police officer.

If the Inspector issues a report and gives a considered view that that officer - to take that example - has been denied procedural fairness, then it would simply seem to me very much in the public interest that that be aired and given publicity.

As to when it would not be in the public interest to publish such a complaint report, I can only say that so far I have not come across such a situation, but presumably one could be envisaged where to do so perhaps would breach some confidentiality.

Mr David SHOEBRIDGE: Do you think the default position should be established that where a complaint is upheld the report is published and it is only if there be a public interest not to publish, should we be changing the onus and change the structure?

Mr MOSS: I certainly think where the complaint is upheld and in the Inspector's opinion the upholding of the complaint involves significant procedural fairness issues on the part of the Commission, following that the material should not have been published in the Inspector's view, then I certainly think, as I say, that in the public interest that sort of report should be capable of being published and publicly discussed.

CHAIR: It is going to come down to the interpretation of the Inspector at the end of the day.

Mr David SHOEBRIDGE: You say a broad definition of the public interest, there may be a private individual who has had their reputation tarnished by a report but there may not be a systemic fault in the Commission, it may just be an error of judgment. Would there be a public interest there? Is that a problem?

Mr MOSS: It is difficult seeing such a complaint being upheld, that is the only thing there. The Inspector presumably has to have significant grounds for upholding a complaint and if there is no lack of procedural fairness and no bias, then it is difficult off the cuff to see how a complaint could be upheld.

Mr David SHOEBRIDGE: I just ask again, should not the default position be publication and only if the public interest suggests otherwise do not publish?

Mr MOSS: I do not think I would disagree with that, with respect.

CHAIR: Has the Commonwealth Director of Public Prosecutions replied to your correspondence in relation to a possible breach of the Telecommunications (Interception and Access) Act 1979 (Cth) and did you inform PIC of your intention before you referred the matter to the DPP?

Mr MOSS: Dealing with the first question first, apart from an acknowledgement some weeks, if not months ago, no, I have not heard anything further from the Director of Commonwealth Prosecutions.

Second, yes, I did inform the Commission in advance that I intended to refer the matter and I did send them a copy of the referral letter in advance, so that they knew not only that it was being referred but the grounds of the referral and the material which was going to the Director.

The Hon. Charlie LYNN: In response to question on notice number six you noted that the Commissioner's website annotation in relation to the Whistler and Alford reports had been altered materially in the time between the Committee sending you questions on notice and 20 October. In your view, is the effect of this annotation to clarify those areas where the Commission agrees and disagrees with your reports?

Mr MOSS: Sorry, Mr Lynn, I am not quite sure of the question there? I have got the answer to question six and I understand what you mean about the change in material on the Commission's website, I just did not follow the question that followed that.

Mr David SHOEBRIDGE: The responding to the reports.

The Hon. Charlie LYNN: Responding to your reports, in your view, the effect of the annotation to clarify those areas where the Commission agrees and disagrees with your reports or to clarify the position of your reports, the annotations?

Mr MOSS: As I think I have said, I hope I have understood the question correctly. I have said as part of the answer on page five, I readily acknowledge that the Commission should be given credit for the inclusion of such notation on its website; that is about point five of the page. I readily acknowledge that it should be given credit.

The Hon. Charlie LYNN: In relation to the change in the Commission's website annotation in relation to the Whistler and Alford reports, could you advise whether the annotation changed in response to your Annual Report or for some other reason?

Mr MOSS: I have no idea. It was only when I received the Committee's questions and to be sure, we then checked the Commission's website to make sure that that material was in fact there, that we came across this material, which I have set out in my answer to question six, which has obviously replaced the initial material. It was only then that I became aware of this material on the website.

If the question is why has it changed between the Committee's looking at it and my looking at it; the answer is I have no idea.

CHAIR: That is something we need to ask the Commission.

Mr PEARCE: I am referring to your report page 22, paragraph (xxx). Has there been any response from the Police Commissioner to your recommendation that action be taken to remedy as far as possible the effects of the section 173 notices arising from the Whistler report?

Mr MOSS: Yes, there has been a very recent response, so recent - can I be frank - that I have not yet had time to digest it fully, but I am very grateful for the response because of course, I do not have any powers in relation to New South Wales Police and they could have just ignored me completely, but they have not. They have responded, and as I say, that is encouraging but I think I can say that that correspondence from my point of view is not yet at an end. I think even though I have had some sort of response, I think I am minded to follow it up to see whether a further response can be forthcoming.

Mr PEARCE: Are you in a position to give the Committee some idea of the nature of the response?

Mr MOSS: I do not think it is confidential, because I wrote to the Commissioner recently when I had not received a response and said that I was appearing before this Committee today and presciently perhaps, I said I might be asked questions by the Committee about whether you were going to implement any of those recommendations or reject them. To the Commissioner's great credit, I have received this very recent response but as I understand it, it deals only with a number of the police officers in respect of whom I made the response. I think for two of them the response is encouraging and would be regarded as satisfactory by those officers but it is the balance of the recommendations that I would like to follow through as soon as I get the opportunity.

CHAIR: In correspondence of 16 June 2010 you have disagreed with the Committee's recommendation in its *Report on an inquiry into the handling of complaints against the Police Integrity Commission* that the PIC's response to the adverse comment be included in the Inspector's complaint report in full.

Do you think that excluding the PIC's response to adverse comment in a complaint report published by the PIC Inspector could be seen as denying the Commission the opportunity to make its viewpoint public?

Mr MOSS: Could I preface that question by saying as the Committee is aware, I have submitted a very lengthy submission about this matter and I could not do justice to that submission in this off the cuff answer that I am about to make. I would therefore be grateful if I could continue to rely on that written submission, which has gone, as you know, to the Review into the Act and which I understand is therefore a public document.

But no, my brief answer is as the Committee is aware I think, as the Inspector formulates his or her draft complaint reports, at least in my time this has involved an extensive correspondence with the Commission, extensive; no stone has been left unturned in terms of issues raised and raised more than once - I am not being critical about that - so that the Inspector is fully aware of the Commission's position on every point that is covered by the draft report.

Therefore, again, for the reasons I have put forward in that written submission, I do not consider that there is any unfairness to the Commission or in the public interest in not including the Commission's response in the Inspector's report.

Mr David SHOEBRIDGE: There has to be an end to it at some point, otherwise then the Inspector does a response to the Commission's response, which is responded to in due course and you think this is the appropriate point to draw a line?

Mr MOSS: This is one of the points I hope I made in that written submission, but believe me, if you saw this correspondence, as others have been, you would be quite taken aback at its length and complexity. To suggest, with respect, that that be annexed to the Inspector's report - assuming that anybody is going to read it in the first place - is something that I remain unpersuaded about.

(Evidence continued in camera)

(Conclusion of evidence in camera)

(The witness withdrew)

The Committee adjourned at 1.45 p.m.

Appendix 1 – Minutes of meetings

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 27)

10.15 am Tuesday 10 August 2010
Waratah Room, Parliament House

Members Present

Mr Foley MLC Ms Hale MLC Mr Hickey MP
Mr Kerr MP Mr Pearce MP

Apologies

Mr Draper MP, Mr Lynn MLC

Also Present

Vicki Buchbach, Lisa Kitvitee, Hilary Parker, Kylie Rudd, Rohan Tyler

DELIBERATIVE MEETING

The meeting commenced at 10.15am.

....

4. PIC Inspector:

....

c) General Meeting

Resolved on the motion of Mr Foley, seconded by Ms Hale, that the Secretariat circulate calendars for September and October with a view to establishing a date for a General Meeting with the PIC Inspector.

....

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 28)

10.30 am Thursday 21 October 2010
Room 1102, Parliament House

Members Present

Mr Draper MP Mr Foley MLC Mr Hickey MP
Mr Kerr MP Mr Pearce MP Mr Shoebridge MLC

Apologies

Mr Lynn MLC

Also Present

Vicki Buchbach, Lisa Kitvitee, Hilary Parker, Kylie Rudd

The meeting commenced at 10.30am.

....

5. Eleventh General Meeting with the PIC Inspector

a) Response to questions on notice

Resolved on the motion of Mr Draper, seconded by Mr Shoebridge, that the Committee note the Inspector's response.

b) Questions without notice for the General Meeting were distributed to members at the meeting.

....

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 29)

1 pm Wednesday 27 October 2010
Waratah Room, Parliament House

Members Present

Mr Draper MP	Mr Foley MLC	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Mr Shoebridge MLC	

Also Present

Vicki Buchbach, Lisa Kitvitee, Hilary Parker, Kylie Rudd

The meeting commenced at 1pm.

ELEVENTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE INTEGRITY COMMISSION

The Hon Peter Moss QC, Inspector of the Police Integrity Commission, affirmed.

The Inspector's answers to question on notice were included as part of his evidence.

The Committee questioned the Inspector.

In camera evidence

The Chair commenced an in-camera hearing at 1:35pm and the Committee questioned the Inspector about his response to question on notice number seven, concerning changes to the Police Integrity Commission's practices and procedures which would prevent issues of procedural fairness from arising in the future.

Questioning concluded, the witness withdrew.

The Committee adjourned at 1:45pm.