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LEGISLATIVE
COUNCIL

THIRD GENERAL MEETING
WITH THE
COMMISSIONER OF THE
POLICE INTEGRITY
COMMISSION

*Report of the
Committee on the
Office of the Ombudsman & the
Police Integrity Commission*



August 1998

CONTENTS

COMMITTEE MEMBERSHIP 1

FUNCTIONS OF THE COMMITTEE 2

CHAIRMAN’S FOREWORD 5

COMMISSIONER’S OPENING STATEMENT 6

QUESTIONS ON NOTICE

 Activities 8

 Investigations 8

 Budget 11

 Law Enforcement (Controlled Operations) Act 12

 Qualitative and Strategic Audit of the Police Reform Process 12

 Category One Complaints

Class or kind agreements 13

Complaints 14

Audit 14

 Police Complaint/Case Management System (PCCMS) 16

 Information Management 16

QUESTIONS WITHOUT NOTICE

 Transcript of Proceedings 17

 Index to transcript of Proceedings 39

APPENDIX

 Minutes

COMMITTEE MEMBERSHIP

Legislative Assembly

Mr B J Gaudry MP (Chairman)
Mr J Anderson MP
The Hon D Grusovin MP
Mr J S P Kinross MP
Mr P G Lynch MP
Mr J Small MP
Mr A P Stewart MP

Legislative Council

The Hon M Gallacher MLC
The Hon E B Nile MLC
The Hon A B Kelly MLC

Secretariat

Ms H Minnican - Director
Ms T van den Bosch - Research Officer
Ms N O'Connor - Assistant Committee Officer

Committee on the Office of the Ombudsman and the Police Integrity Commission (left to right):
Bryce Gaudry MP (Chairman), James Anderson MP, The Hon Deirdre Grusovin MP, Jeremy Kinross
MP, Paul Lynch MP, Jim Small MP, Anthony Stewart MP, The Hon Michael Gallacher MLC, The Hon
Elaine Nile MLC, The Hon Anthony Kelly MLC

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 section 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 1974* 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

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- ◆ 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;
- ◆ 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.

This 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*, assented to on 19 May 1992, amended the *Ombudsman Act 1974* 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 to provide 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 1974* provides:

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- (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

On 9 July 1998, the Committee held its third General Meeting with the Commissioner of the Police Integrity Commission. The Committee valued the opportunity to question the Commissioner, the Assistant Commissioner, the Director of Operations, the Information Manager and the Director of Corporate and Information Services on facing the Police Integrity Commission, and to discuss matters of mutual concern.

The third General Meeting allowed the Committee to further improve its understanding of the functioning of the PIC. Statistics on use of powers, numbers of hearings, budget, complaints received and referred and investigations undertaken all assist the Committee in its awareness of the Commission's activities.

The third General Meeting took place at a time when the effects of the Commission's activities are becoming apparent. As a result of PIC investigations, three police officers have been charged with criminal offences. A total of 28 days of public hearings and 30 private hearings have been held for the purposes of undertaking inquiries for 29 investigations. The Police Integrity Commission also recently tabled its first report on an investigation - the Report on the Special Branch files.

The strategic audit of the police reform process was a subject of discussion with the Commissioner. Legislation was recently passed by the Parliament to require the PIC to engage and supervise an auditor to conduct an audit of the reform process. The Commissioner noted that the audit will be an ongoing process, with the auditor issuing regular reports on the progress of the reform process, and that the PIC's involvement in the audit gave it a statutory involvement in the reform process that it previously lacked. The Committee will examine the process and the results of the audit with interest.

At the time of the meeting, the Police Integrity Commission had not yet been authorised to conduct its own telecommunications intercepts. While federal legislation had been passed, the necessary declaration is still required. The Commission awaits Commonwealth action on this matter. The Commissioner noted that without such a power, the Commission "lacks a most important and necessary weapon in its arsenal", and this is a matter of some concern to the Committee.

Legislation has been passed by the NSW Parliament to deal with a problem identified at previous General Meetings - the need for legal protection for law enforcement officers who are required to commit illegal activities in the course of a covert operation. The *Law Enforcement (Controlled Operations) Act 1998* was passed earlier in the year, and the Commissioner advised that the Commission has sought authority to conduct four controlled operations since the legislation was enacted. The Commissioner informed the Committee that the legislation has been a success.

On behalf of the Committee I would like to thank Judge Urquhart, Mr Sage, Mr Nattress, Mr Lenihan and Mr Rawson for their attendance before the Committee, and for the valuable information they provided. I look forward to developing the relationship further at future General Meetings. My thanks also to Committee members for their participation, and for the assistance provided by the Secretariat.



Bryce Gaudry MP
Chairman

COMMISSIONER'S OPENING STATEMENT

Mr URQUHART: It has been an interesting seven months since I and officers of the Commission last appeared before you. Three police officers have been charged as a result of one Commission investigation about which, for reasons you will appreciate, I will say no more except that a report to the Parliament dealing with relevant issues arising from that investigation is in its final stages of preparation.

The Commission has presented to the Parliament its first report under section 96 of the Police Integrity Commission Act dealing with the former Special Branch of the New South Wales Police Service. The Commission's recommendations were accepted by the Government. One effect of the acceptance by the Government of those recommendations will be to give to the Commission, by legislation, a role in relation to the auditing of the activities of the Protective Security Group which has replaced the former Special Branch. With regard to that report it was a matter of some satisfaction to the Commission that the public attention was concentrated on the message rather than the messenger.

There have been amendments to the *Police Integrity Commission Act*. Perhaps the most notable, and the only one that I shall refer to at this stage, is that which enables the Commission to engage persons to carry out the qualitative and strategic audit of the police reform process as recommended by the royal Commission. There are some further details in relation to that in the answers to the questions on notice.

During the period since our last meeting, the Commission began in a systematic way to examine investigations conducted by the Police Service into category one complaints, and there are further details in relation to that in the answers to the questions on notice. The Commission proposes to continue to give attention to this function and has allocated more resources to it. The royal Commission wind-up team has itself now been wound up. While the Commission provided rations and quarters to the team, salary and other costs were met by the Premier's Department.

As you will have noted from the budget papers, the effect of developments and the Commission's intended telephone interception capability has resulted in an increase in the Commission's budget from 12.9 million dollars in 1997-1998 to an estimated 14.8 million dollars in 1998-1999 and an increase in its average staffing level from 68 to approximately 107. It should be noted that most of these increases will be in the operational area.

It is appropriate to note at the commencement of this meeting that the Commission is still waiting for a section 34 declaration under the Commonwealth legislation that will enable it to conduct its own telecommunications interceptions. Whilst the Commission can, in some circumstances, receive from another agency telecommunications interception product obtained by that other agency, the Commission itself still cannot carry out such an interception. It must await the section 34 declaration and then when that declaration has been made it will be able to seek and obtain the appropriate

warrants. In this regard the Commission lacks a most important and necessary weapon in its arsenal. It cannot do what other agencies, such as the New South Wales Police Service, the New South Wales Crime Commission, the Independent Commission Against Corruption in New South Wales can do.

As on the last occasion I am not alone here today. I have with me the Assistant Commissioner, Mr Tim Sage, the Director of Operations, Mr Andy Nattress, the Director of Corporate and Information Services, Mr Dave Rawson, and the Commission's Information Manager, Mr Denis Lenihan.

In the forward, Mr Chairman, which you wrote to the report of this Committee on its inaugural meeting with me, you thanked me and my staff for the cooperative approach adopted during that meeting. In your forward to this committee's report on the second general meeting with me, again you expressed similar appreciation but you added that "the valuable information" - your words - "which had been provided was of assistance to the committee". It is for the purpose of continuing the cooperation and to provide a continuance of that valuable assistance that I have the others with me today. I might say that if anyone, through you, or otherwise with your leave, wishes to ask them any questions, by all means do so. Thank you, Mr Chairman.

QUESTIONS ON NOTICE

ACTIVITIES

1. How often has the Commission used the following powers during the last annual reporting period:
 - (a) audit powers - ss 14(a) & (b)

With regard to Police Service investigations of Category 1 (and some other) complaints, 458, of which 400 were being audited and 58 monitored. Further information on the monitoring and auditing of these investigations is provided below in the answers to questions 17 and 18, and the addendum to the answer to question 22.

INVESTIGATIONS

4. What is the status of investigations conducted since the last General Meeting which have been the subject of public hearings or reports?

Since the last General Meeting public hearings have been held in relation to Task Force Bax (Operation Jade) The scope and purpose for the public hearings in this investigation were as follows:

“To investigate misconduct, improper practices and corrupt activities involving any members of New South Wales Police Service attached to the former Task Force Bax and any member of New South Wales Police Service associated with officers attached to former Task Force Bax.”

This investigation has been completed and a report to Parliament is currently being finalised in relation to the matter. Three officers have been charged with offences resulting from the investigation and are currently awaiting trial.

Public hearings have been conducted in relation to Operation Warsaw. The scope and purpose for the public hearings were to investigate:

- *the involvement of current or former NSW police officers and civilians employed by the NSW Police Service in relation to the supply of security related goods or Services for the Sydney 2000 Olympic Games;*
- *the involvement of current or former NSW police officers and civilians employed by the NSW Police Service in relation to the supply of security related goods or Services;*
- *the informal and formal networks and relationships which have developed within the NSW Police Service and how they affect and have affected;*

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- *disciplinary and criminal internal investigations;*
 - *the sanctions and penalties imposed as a result of disciplinary and criminal internal investigations;*
 - *the employment and promotions of NSW police officers and civilians employed by the NSW Police Service;*
 - *the informal and formal networks and relationships which are developing in the NSW Police Service;*
 - *the policy of the NSW Police Service from 1 January 1992 regarding employees engaging or seeking to engage in secondary employment; and*
 - *whether there has been, or whether there is a potential for, police misconduct in the aforesaid matters 1), 2), 3), 4) and 5).*

This investigation is ongoing and a report to Parliament will be produced in due course

Public hearings have been conducted in relation to Operation Copper. The scope and purpose for the public hearings are to investigate:

The circumstances by which a police statement dated 2 June 1997, bearing a signature purporting to be the signature of (an officer known as D1) was created and signed, and incorporated in a NSW Police Service Brief of Evidence in the matter of Police v English listed at the Downing Centre Local Court on 11/06/97.

The events following the discovery of the said statement.

The actions taken by the NSW Police Service to investigate the creation of the statement and those subsequent events."

This operation is part of an ongoing sequence of investigations and a report to Parliament will be produced when all investigations and hearings are concluded.

The Commission has recently made a report to Parliament regarding the former Special Branch of the New South Wales Police Service.

5. How many public and private hearings have been held and witnesses examined for the same period?

For completeness this answer covers the period 10 October 1997 to 30 June 1998

(a) Public Hearings

There have been 28 hearing days, concerning 3 matters, involving 40 witnesses.

6. What considerations does the Commission have regard to when exercising a discretion in the public interest under section 33 as to whether a hearing should be conducted in public or private?

As required by Section 33(3), the Commission is obliged to consider matters which are related to the public interest when deciding whether to hold a hearing in public or private.

The Commission policy is that whenever possible all hearings will be held in public unless it is considered in the public interest to hold them in private for reasons such as the following:

- To protect the integrity of any further investigation arising from evidence given at a hearing;
- To protect the safety of a witness or other person and his or her family;
- To protect the reputation of a person who may be named during a hearing where a non-publication order may not be sufficient.

7. Has the Commission derived any information from its investigations which identifies current trends in serious police misconduct and corruption and, if so, what are the implications of this information for the Police Service's management of the EMS and education initiatives for police officers.

- (a) At page 23 of its *Annual Report 1996-97*, the Commission noted some emerging trends in serious police misconduct based upon the Category 1 complaints it had dealt with in the reporting period. The Commission intends to take this discussion further in its forthcoming Annual Report.

8. The Royal Commission envisaged a role for the PIC in inquiring into police shootings and deaths in custody. What role does the PIC have in the investigation of such matters?

The Commission has developed a policy position with the Police Commissioner in relation to police shootings whereby the Commission receives prompt notification of each occasion on which a police officer discharges a firearm, irrespective of whether any person is injured or dies in consequence thereof. This request does not extend to the discharge of a firearm during the course of or related to weapons instruction or the destruction of animals, unless any person is injured or dies as a consequence thereof.

When a police officer discharges a firearm and in consequence thereof any person is injured or dies, the Commission has an involvement in the investigation of the shooting incident. That involvement may be by way of the Commission carrying out an investigation or monitoring or auditing the investigation of the incident by the Police Service. Although each such matter is assessed on its merits, the Commission will not take over the investigation of such an incident unless there is reason to suspect that an

investigation by the Police Service and any inquiry by the Coroner may give rise to serious police misconduct. Thus far, no such reasons have existed.

When a police officer discharges a firearm but no person is injured or dies in consequence thereof, the Commission does not necessarily have an involvement in the investigation of the incident. Each matter is assessed on its merits for the purpose of a decision being made as to whether the Commission will investigate the incident, monitor the incident or take no action.

In relation to deaths in custody, the Commission receives, by way of Category 1 complaint, notification from the Police Service of all such incidents where there is an allegation that a police officer was or may have been involved. The Commission assesses each complaint on its merits for the purpose of a decision being made as to whether the Commission will investigate or monitor the complaint.

Liaison arrangements have been established with the Coroner to better identify matters of potential or actual police misconduct arising from deaths where there may be a suspicion of police involvement in the circumstances of the death. These arrangements have been acted upon.

It is the Commission's intention to include a reference to police shootings in its annual report.

BUDGET

The Budget Information indicates that the Commission will receive recurrent funding of \$1.5 million in 1998-9 to commence coordination of a strategic audit of the reform process of the NSW Police Service and to establish an independent Telecommunications Interception facility.

9. How is the \$1.5 million apportioned between these items?

\$800K for the Telecommunications Interception facility and \$700K for strategic audit of the reform process.

10. Did the Commission receive supplementation for any particular items?

The Commission received supplementation in 1998-9 for the following:

- \$386K for the Prosecution Response Unit and additional staffing for the Information Unit, Registry, Commission's solicitor and Information Technology;
- \$357K to enable the Commission to undertake additional responsibilities relating to the dissemination of Royal Commission paedophile records (Treasury advised of the approval for this funding on 26 June 1998 and accordingly, this information was not shown in the current budget papers).

LAW ENFORCEMENT (CONTROLLED OPERATIONS) ACT

12. How does the Commission measure the success of such operations?

Obviously, a controlled operation which went according to plan and yielded admissible evidence probative of criminal activity/corrupt conduct would be more successful than, all other things being equal, an operation which did not result in the collection of the same evidence. Having said that, whether evidence of criminal activity/corrupt conduct is able to be obtained may not always be an appropriate standard by which to assess an operation. One of the very real difficulties with these types of operations is in trying to predict what may or may not happen given a particular set of circumstances. It would be inappropriate to suggest that simply because a particular set of circumstances upon which a controlled operation plan was based did not transpire that the operation was a failure. There is a very vital need for controlled operations participants to be able to immediately react to changes in circumstances as and when they arise. In the event that circumstances arise inconsistent with a plan, investigators who are involved in operational activities are expected to, and do in fact, exercise their considerable experience to modify their behaviour and plans accordingly. Such an operation will be "successful" if risks to the safety of participants are minimised and the provisions of the controlled operations legislation are observed, that is, that illegal activities are not engaged in without prior authorisation, unless there is a very real danger to life or limb.

13. Have there been any breaches of the code of conduct by operatives involved in controlled operations authorised by the Commission? If so, how have the breaches been dealt with?

To the extent that the Commission can be aware, no.

QUALITATIVE AND STRATEGIC AUDIT OF THE POLICE REFORM PROCESS

In his second reading speech on the Police Integrity Commission Amendment Bill, the Minister has indicated that the Commission will be responsible for drafting the specifications for the audit.

14 a) Will the specifications for the audit encompass all of the ten points proposed by the Royal Commission?

Yes. The tender specifications for the Qualitative Strategic Audit of the Reform Process (QSARP) of the New South Wales Police Service require the external auditor to work closely with the NSW Police Service early in the QSARP to ascertain how best to determine and measure progress in light of all ten key areas in the reform agenda, including reforms introduced since the Royal Commission and those proposed for future implementation. The auditor will be required to report regularly to the Police Integrity

Commission in respect of the key areas of reform.

14 b) Will the Audit examine any additional areas, not already identified by the Royal Commission?

Yes. The QSARP specifications can be modified by the Police Integrity Commission to address issues other than the ten key areas in the reform agenda. Following early consultation with the Police Service, the external auditor may recommend some flexibility in the application of the QSARP specifications in year 1. The Commission may agree provided the results of the QSARP would not be compromised.

Similarly, at the conclusion of years 1 and 2 of the three year QSARP cycle, the Commission may elect to modify the specifications either in light of progress communicated by audit reports, the need to focus on high priority areas of weakness, or other matters identified by the auditor, and any Ministerial directives given to the NSW Police Service in relation to previous management audits. The auditor has the opportunity to raise such contingencies with the Commission in either interim or annual audit reports for years 1 and 2 respectively, prior to commencement of the next audit year of the three year process.

14 c) Will the information obtained from the Ombudsman's evaluation of the Employee Management Scheme be utilised in the proposed audit?

Yes. The Auditor will be required to consider available reports, surveys, and evaluations impacting on reforms within the New South Wales Police Service, including the Ombudsman's recent evaluation of the Police Service's Pilot Project for the second phase of the Employee Management Scheme.

Attached for the Committee's information are copies of the advertisement which appeared on 1 July 1998 calling for Expressions of Interest in carrying out the audit, the media release of 30 June 1998, and a letter from the Commissioner which will accompany the package of material sent to those responding to the advertisement.

CATEGORY ONE COMPLAINTS

Class or kind agreement

15. Does the Commission perceive any need for further refining the current class or kind Category One agreement?

Not at this stage.

16. What procedures are in place to enable regular review of the agreement?

The Commission keeps in close touch with the Office of the Ombudsman on matters affecting Category One complaints, both generally and in relation to specific complaints. The Commission proposes to review the agreement annually.

Complaints

17. What are the current levels of Category One complaints considered by the Commission, referrals from the Police Service and the Ombudsman, and complaints referred back to the Ombudsman?

In the year ending 30 June 1998, the Commission considered 1469 Category One complaints. Of these, 1132 were in respect of complaints made in 1997, and 337 made in 1998.

An indication of the current levels of activity can be obtained from the following provisional figures for Category 1 complaints considered under the new Category 1 agreement, that is for the period from 1 February to 30 June 1998. In that period the Commission considered 243 Category 1 complaints, of which 194 were referred and 49 non-referred. Of the referred complaints, 154 were referred by the Police Service and 40 by the Ombudsman. 190 complaints were referred back to the Ombudsman and four were taken over by the Commission. Of the 190 referred back, five are being monitored and the remainder are being audited.

The effect of the new Category 1 agreement is apparent from the following figures. The Commission considered 1226 complaints made in the seven months to 31 January 1998, a monthly average of 175. The Commission considered 243 complaints made in the five months since that date, a monthly average of 49.

While there was certainly an increase in the number of Category One complaints considered in the second half of calendar year 1997 over the first half (1132 as against 440), not all the complaints received by the Commission in the first half of 1997 were considered in that period. Some complaints made in 1997 or January 1998 are still being dealt with.

Note: These figures should be treated as provisional pending more detailed review. Final figures will be published in the Annual Report.

Audit

18. Has the audit been finalised and what were the final conclusions drawn by the Commission?

The Commission has completed its initial consideration of the audit, which has been the subject of discussion with the Office of the Ombudsman. The results of the initial

consideration have since been sent to the Police Service for comment. No final conclusions have yet been drawn by the Commission, pending discussion with the Police Service. At this stage, the Commission proposes to discuss the matter further (including the use of case studies) in its Annual Report. See also the addendum to the answer to question 22 below.

The Commission has also decided to make a Special report to the Parliament at the end of 1998 dealing with the general question of Police Service investigations of Category 1 complaints, drawing on the results of those investigations audited or monitored by the Commission in respect of complaints made in the period 1 January 1997 to 30 June 1998.

19. What findings did the Commission make in relation to the matters which were subject to further assessment by the Commission?

See the answer to 18 above.

20. How many investigations have been taken over by the Commission?

At this stage, one.

21. Has the Commission had call to require a police authority to submit a report on a referred matter in accordance with section 78 of the PIC Act?

Not at this stage.

22. Has the Commission taken any further action on matters referred for investigation where it is dissatisfied with the action taken by a police authority?

See the answer to 21 above.

The Committee will be interested to know that late in 1997 and early in 1998, the Commission identified a further 37 Category One complaints which in consultation with the Office of the Ombudsman were agreed as warranting investigation, or at least preliminary inquiries. The Commission decided to monitor the Police Service investigation in each case and accordingly asked Internal Affairs for:

- a copy of the investigation plan;
- the name(s) of the officer(s) allocated to the investigation;
- a final report on the investigation; and
- in all but 3 cases, a monthly report on the progress of the investigation.

Again, the results of the Commission's initial consideration have been sent to the Police Service for comment. The outcomes will be dealt with in the Special report referred to above in the response to question 18.

POLICE COMPLAINTS/CASE MANAGEMENT SYSTEM (PCCMS)

At the last General Meeting you indicated that the PCCMS would be introduced in 1998

23. What progress has been made since December 1997 towards the introduction of the system?

The PCCMS Steering Committee has since the last General Meeting:

- approved of Ernst and Young undertaking a Risk Analysis and they are currently completing the risk analysis profile;
- arranged for the documentation seeking tenders for the engagement of consultants for the development of detailed requirements specification for a PCCMS;
- approved the engagement of the consultants Doll Martin to prepare the specifications;
- approved the expenditure of interim Project funding.

24. What were the key features of the specification submitted by the Commission for phase 4 of the project?

The successful tenderer, Doll Martin, was only recently appointed and the Commission has not yet submitted its specifications. (The specifications for the Project are due to be developed by the end of November 1998). The Commission has advised the Steering Committee that in order for it to define its own specifications fully, the Commission will require detailed information from the Police Service about its computer network infrastructure and electronic records systems.

25. Is the Commission in a better position at this stage to assess the level of resources which will be required to operate and maintain the new system?

No. As previously indicated, the Commission will not be able to estimate these resources accurately until the detailed specifications stage is completed and approval is given for the building of the PCCMS.

INFORMATION MANAGEMENT

26. Is it possible for the Commission to monitor the access made by its officers to material contained within its electronic information and records system?

The Commission's computer systems are designed with the capacity to provide at any given time a full audit trail which identifies any and all staff members who have accessed any data.

QUESTIONS WITHOUT NOTICE

REPORT OF PROCEEDINGS BEFORE

**Committee on the Office of the Ombudsman and the Police
Integrity Commissioner**

THIRD GENERAL MEETING

At Sydney on Thursday, 9 July 1998

The Committee met at 10 a.m.

PRESENT

Mr B. J. Gaudry (Chairman)

**Legislative Council
The Hon M J Gallacher**

**Legislative Assembly
Mr J Anderson
The Hon D Grusovin
Mr P Lynch
Mr J Small**

PAUL DAVID URUQART, Commissioner, Police Integrity Commission, of 111 Elizabeth Street, Sydney,

GEOFFREY ERNEST SAGE, Assistant Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

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

DENNIS MICHAEL LENIHAN, Information Manager, Police Integrity Commission, 111 Elizabeth Street, Sydney, and

DAVID JOHN HAMILTON RAWSON, Director of Corporate and Information Services, Police Integrity Commission, 111 Elizabeth Street, Sydney, on former oath:

Mr URQUHART: I have received a summons to be here.

Mr SAGE: I am in receipt of the summons.

Mr NATTRESS: I do have a summons to attend here today.

Mr LENIHAN: I acknowledge having received a summons.

Mr RAWSON: I acknowledge that I have received a summons.

CHAIRMAN: Commissioner and officers, I welcome you to our third general meeting. You have produced for us a submission, Commissioner. Do you wish that to be tabled as part of the evidence before the committee, the answers to the first section?

Mr URQUHART: Yes, thank you.

CHAIRMAN: I would ask if you would like to make an opening statement in relation to your response?

[The Commissioner's opening statement appears at page 6]

...

CHAIRMAN: Thank you, Commissioner, and could I say that your verbal statement there in relation to the first and second report is certainly correct. The Committee does value the relationship between itself and yourself in the framework of our accountability to the Parliament and the people of New South Wales for our oversight role and certainly part of that oversight role is to obtain for the people as clear an indication as possible of the operations of the Police Integrity Commission within the legislative framework in which it operates, given obviously the confidentiality of operational matters. I make that as a statement.

In terms of that, you have had obviously a far more public persona since our last meeting as a Commission in the conduct of public hearings. I wonder if you might, for our benefit, just give us some details concerning those public hearings and the impact of those public hearings in terms of your brief to investigate and to eradicate corruption within the Police Service?

Mr URQUHART: In the answers to the questions on notice, these matters are dealt with because we refer in answer four, Mr Chairman, to what you termed our Operation Jade. We also refer to what we term our Operation Cobber and we set out the general scope and purpose of each of those hearings. Operation Jade had something to do with a task force within the New South Wales Police Service known as Bax. We are in the course of putting some final touches to the report that will be presented to Parliament about that and it would be, I think, inappropriate to say anything more about that matter. It did result in the arrest of police officers and it will be the subject of a report to Parliament.

There are other matters, such as Cobber, to which I have referred and another operation which we have code named Warsaw, the general scope and purpose of which is set out in the answers to the questions on notice. Warsaw is a continuing operation and media reports have dealt with aspects of the public forum aspects of that. I would not wish to say anything other than it is a continuing operation. We will be returning to public hearings shortly in relation to aspects of it and, of course, in due course, as we are required by the Act, a report will be furnished to Parliament because it involves public hearings. We have a matter this week, which will continue into next week, and another matter next week, all of which will be dealt with in the public forum and, of course, as again with the others, reports will be presented to Parliament in due course.

CHAIRMAN: Without moving then into an area which you still may have to report on, could you give us some indication of the value that the Commission has gotten from those public hearing processes?

Mr URQUHART: Do you mean by that the value to our investigative methodology or in some other area?

CHAIRMAN: That could be one aspect that you might deal with. The other may be in terms of, perhaps the broadcasting, if I can put it that way, of the Commission's role and perhaps highlighting of its importance in the task of both investigating crime in New South Wales in the Police Service and also in the reform process, whether it has any role in that?

Mr URQUHART: There are two parts at least of a public hearing. The first part is what the legislation provides, that is for the purpose of an investigation we can conduct a hearing. So, obviously, we conduct a hearing if it is for the purpose of an investigation, but there is a collateral part or benefit that flows from that. That is concerned with the

deterrence of police misconduct and particularly serious police misconduct. It has a deterrent value in the sense of those police who see what is happening to others, and are thereby hopefully deterred, and it also brings out from the public and other members of the Police Service information, either upon that particular investigation or on investigations generally. We find that whenever we add a public hearing the amount of information that we obtain increases. They are clearly one legislative result or benefit of the public hearing and the other is the collateral advantage of making the public aware that we are doing things and deterring, hopefully, those who would otherwise persist in police misconduct.

So far as our investigative methodology is concerned, all I will say is that it has confirmed that it is more than appropriate.

CHAIRMAN: You say you have had 28 hearing days within the period 10 October to 30 June, that is on three matters and 40 witnesses. What is the cost of a hearing? Do you have that quantifiable?

Mr URQUHART: We have tried to put some financial statistics together in relation to that, Mr Chairman. We can, being meaningful, tell you how much it costs, for example, for the aspects of the infrastructure of the hearing room, the transcript reporters, we can isolate the days spent by Commission officers in the hearing room, but it is impossible to be specific in terms of cost modules, that is time modules, for all of the other members of the Commission staff who have a contribution to make to something that ultimately goes into the hearing room. So the statistics would be very raw statistics and I think could be damaging, but it is certainly a matter that we are working at because we want to be able to look at that ourselves, to be able to say at the end of an investigation what part of it did the hearing room play, and in the general investigative procedures that we adopted, if we can identify cost factors, what was the cost factor of the hearing room, the cost factor of those incidents that preceded the hearing room and which was the more important.

CHAIRMAN: You are saying it is the tip of the iceberg basically?

Mr URQUHART: Precisely, precisely.

CHAIRMAN: Would it be perhaps possible at our next meeting, if you have progressed it by that stage, to look at, perhaps as a case example, one of these reports just to give us an indication? As I see it, it is obviously a very important part of the Commission's operation, both by legislation, and also I think by broadcasting to the public what happens at least in one aspect of the Commission.

Mr URQUHART: We do propose to do that. We have had amongst our public hearings some that have been small, both in so far as investigative input be concerned and time spent in the hearing room. The statistics in relation to them, cost statistics, I think could be more meaningful than those that would result from a major investigation.

Rather than do the major investigation first, our strategy is to take one of the smaller ones, which is easier able to be identified in terms of cost modules, and say they are meaningful statistics and see what difficulties confronted us in reaching those meaningful statistics, and then apply the same methodology, or a refined methodology, to all of the investigations, complicated or less complicated. We certainly do intend to do that with one of these on a case study basis. We will have meaningful cost statistics available, yes.

CHAIRMAN: That, you said, you will report in a report to the Parliament?

Mr URQUHART: That would be an annual report or a special report or we will report to this committee.

CHAIRMAN: Yes. Could I on notice say for our next meeting in six months time, if we could look at one of those cases?

Mr URQUHART: Yes.

CHAIRMAN: I will open to the committee on this issue of public hearings. No questions?

Mr GALLACHER: Mine is to do with reform at this stage, Mr Chairman. If you wish to continue with hearings, I will wait at this stage.

CHAIRMAN: I do not wish to continue with hearings, except for reports I guess. You have produced this report on the Special Branch. The question I would have for that is, in this investigation of the Special Branch, obviously an important report to the Parliament, did your investigations reveal aspects of operations within the Police Service that will aid you in your move towards reform or your assistance in the reform process?

Mr URQUHART: What the investigation did was to identify areas that should not have existed and should no longer exist, and to that extent that part of the reform process that deals with a unit within the Police Service to deal with legitimate tasks that previously, if dealt with by Special Branch, were dealt with in a context of misconduct, will no longer be dealt with in such a context. So, yes, we identified areas. We confirmed the recommendation, so to speak, of the royal Commission and put forward our own recommendations. Legislation will see that we have a role to play in the continuing entity that has taken over from special branch, an audit role in relation to that.

I might just say that whatever the legislation may give us in relation to the unit that takes over from special branch, we of course always have our investigative functions and we are on notice, so to speak, from the work that we did on the former special branch of some areas that we consider appropriate to keep under our consideration.

CHAIRMAN: Without asking what those are, what did it say about aspects, if I can put it this way, of the growth of special branch and its mode of operation, perhaps control within the Police Service?

Mr URQUHART: If you were looking for a word, a word would be management, the absence of effective management. That probably is the premise in any argument that ends up with a conclusion of misconduct or sometimes criminal misconduct. If there is effective management, there is less likely to be misconduct. I say less likely because the most efficient management will never ever make certain an absence of misconduct, but the better the management, the less chance there will be of situations conducive to misconduct developing. If you wanted one word, the word is management.

There are other areas such as informant management programs, proper accountability in so far as the charter of the organisation be concerned, that will be addressed by the special audit of the unit that has taken over the work of special branch. All of those matters which previously were not subject to that sort of control will now be subject to that control and we will have an input into that control. The work that we did - I might say that it was a very very labour and resource intensive investigation that we carried out - has not been wasted. It is not simply contained in that small report. It is part of our intelligence holdings and our corporate knowledge that we can work on and we propose to.

CHAIRMAN: In that case, I might move to that area. I know that Mr Gallacher has an issue related to reform. In the discussions with the Ombudsman in our seventh general meeting with the Ombudsman, and certainly some of the discussions we have been having, there is the issue of the time of the percolation of the reform process. I think the Ombudsman said in the optimistic sense that that is a two to five year period and many believe it will take longer than that.

Given that you are going to have a critical role in the construction of the audit process and an ongoing role in the reform of the Police Service, do you see that there will be a need in that first stage of the audit process for a constant reviewing of what is happening within the audit? We are really just early into the process of reform. We are auditing it almost as the reform process is starting. I imagine that is going to be a very difficult period.

Mr URQUHART: I do not know if "difficult" is the right word because I do not know whether it adequately describes what dynamics there will be in the period. I think it would be incorrect to start with a premise that the reform process will be completed in X number of years. I think that would be quite contrary to common sense. I think the first premise is an acceptance that there must be reform.

The second premise is that that reform needs to be audited independently and reported on because, as the royal Commission said, if there is not that independent audit, history will be repeated. One of the first steps in the audit process is to identify where the

reform process is at the commencement. Now your word "difficult" is perhaps most appropriate to that, to identify how far has the Police Service moved in reform, has it moved in the right direction and has it put in place the appropriate systems and structures to better progress the reform process.

This audit about which I speak, lest there be some misunderstanding, is not simply going to be an audit which will be conducted. A report will be issued and then in 12 months another audit will be conducted and a report issued. It will be an ongoing auditing process, with appropriate in time reports from the auditor. We will have an integral role in supervising and overseeing what it is that the auditor does, not only because of this recent statutory function that we have acquired, but also because we have a role to prevent police misconduct and this audit of the reform process which is being carried out may well identify, in the context of the knowledge that we have, areas of potential police misconduct.

So premise one is not the reform process will be over in X number of years, but rather there must be a reform process. All acknowledge that. Premise two is there must be an independent audit of it. There is now law that provides we will engage that independent auditor. Further along this argumentative chain that leads to the conclusion there will be reform. This independent audit process is a very necessary part of achieving what, as I said, the royal Commission referred to as the avoidance of history repeating itself.

CHAIRMAN: I think the Mollen Commission is often repeated to us as an indication of how reform can occur. Of course, there is a subsidence of reform and a re-emergence of corruption without that intervening process.

Mr URQUHART: That is right.

CHAIRMAN: I might take questions relating to the reform process.

Mr GALLACHER: Commissioner, I premise my question by making sure that you understand that I do not wish to breach in any way Operation Warsaw's ongoing inquiry. As you know, the Commissioner of Police is overseas. Were you consulted prior to Mr Jarratt's appointment as Acting Commissioner that he should take on that role?

Mr URQUHART: Mr Gallacher, all I am prepared to say is that I was aware that the Commissioner was to travel overseas and I was aware that Mr Jarratt was to be Acting Commissioner in Mr Ryan's absence.

Mr GALLACHER: I probably can expect the answer, I rationalise where you are probably going to answer this next question from. In light of Operation Warsaw, were you in agreeance with Mr Jarratt's appointment as Acting Commissioner of Police?

Mr URQUHART: Your implication is correct and that is not a matter that in the course of a current investigation it would be proper for me to answer.

Mr GALLACHER: Commissioner, were you consulted prior to Christine Nixon's removal from her position within the reform process out to an operational position within the New South Wales Police Service?

Mr URQUHART: I knew that Assistant Commissioner Nixon was transferred from the human resources command to the regional command to which she was transferred.

Mr GALLACHER: Were you in agreeance with her being removed from the human resources command and put out to an operational command, in light of the reform process which is currently under way within the Police Service?

Mr URQUHART: I have some difficulty with the word "agreeance", because that implies that it is something that I necessarily have to agree with, because I do not see that it is one of my functions to manage the New South Wales Police Service. Therefore, I am having some difficulty with whether I was in agreeance with something or not is really part of the function of my Commission.

Mr LYNCH: Can I just interrupt, Mr Chairman? It seems to me that if this is not in fact one of the Commissioner's functions, then it is hard to see how this Committee can ask the Commissioner about something that is not one of his functions.

CHAIRMAN: Yes, I tend to take that point and I think that what the Commissioner has answered indicates that he is not there for determination of individual operational moves of the police. Perhaps the question might be as part of the reform process what level of discussion does occur.

Mr GALLACHER: Mr Chairman, with all due respect, I disagree. I believe that the Commissioner as a truly independent person, in fact as the community's representative on the reform process, should play a very major role in terms of the appointment of senior positions and locations and relocations within the New South Wales Police Service during that reform process.

CHAIRMAN: That is a point of view.

Mr LYNCH: It does not deal with the issue of what this Committee's functions are.

Mr GALLACHER: Mr Chairman, then if I might conclude at this stage by asking the Commissioner one more question? Commissioner, I have been told, through my informants, that the Government will be refusing to renew your contract shortly. Is that the truth?

Mr URQUHART: There are a number of things, and I must say the lawyer in me comes to the fore here.

One, I do not have a contract. I have a Commission. That is not a contract. My Commission expires on 19 August 1998. It is a matter for Government to determine whether it wishes to do anything in relation to me or not. It is not a matter for me.

If that has been an insufficient answer to your question, Mr Gallacher, I apologise for it but I do not want to usurp the role of anyone. I only want to carry out my functions under my Act.

Mr GALLACHER: Commissioner, do you wish to continue in the position?

Mr URQUHART: I think that is a matter really that you can ask me perhaps at a later stage, Mr Gallacher.

Mr GALLACHER: Perhaps on 19 August?

CHAIRMAN: Mr Gallacher, I might just say at the moment, just for the benefit of the people in the audience, the Committee has a particular and specific role in relation to the appointment or the non-appointment of a Commissioner and veto power upon the recommendation of a particular applicant for the view of the Committee, and the Committee's only power in regards to that is to determine whether it will effect a veto, and that is obviously where our role resides.

Mr GALLACHER: Chairman, again, I come back to my point earlier. The Commissioner is in fact the community's independent representative on the reform process. We will not meet again before 19 August. I do not want to read about it in the newspapers that the contract has not been renewed and the Commissioner is unable to comment any further on the contract or the agreement or the Commission and that is why I put it on the record today.

Mr LYNCH: You are a disgrace, Mr Gallacher. You know as well as I do that we have had a Committee meeting which we are not allowed to talk about because it is bound by secrecy and you know as well as I do that most of what you put is outrageous.

Mr GALLACHER: We shall see.

CHAIRMAN: Order. I call for order, and I repeat, Mr Gallacher, I would ask that when we couch our questions to the Commissioner, they be within as far as possible what our role is and what his role is as far as today, which is to deal with the operations of the Police Integrity Commission.

Mr GALLACHER: In the reform process.

CHAIRMAN: In the reform process.

Mr ANDERSON: Can I continue then with the line you were taking and get some opinions from the Commissioner? Judge Mollen and his experience in New York, what have you have learnt from his experiences that you have implemented in our system?

Mr URQUHART: Do you mean what have I learned?

Mr ANDERSON: You, as a Commissioner, and your team.

Mr URQUHART: Can I just put my function as Commissioner and the Commission's function in relation to the reform process into perspective, because the Commission's functions and my functions are dictated by the *Police Integrity Commission Act*, and until very recently our role in relation to the reform process was very tenuous. We now have a statutory role in relation to it and that role is to engage the independent auditor, and through that process of engagement, and the continuing audit process, to have a very direct relationship with the reform process.

Previously, the only way in which we could have a statutorily based relationship with the reform process was in the area of potential police misconduct, so that if there was something about the reform process that was absent police misconduct, it was not something that came within our functions under our Act. That has been a difficulty, because whilst the royal Commission recognised that certain things ought to be done, and we have had something to do with some of them, employee management as an example, we have had something to do with it, but we have not been able to have as much to do with it as I personally would like to have had because of the statutorily limited functions that we have in respect of the reform process. Now it has changed.

CHAIRMAN: As a direct result of the audit?

Mr URQUHART: The recent amendment to the Act, yes.

Mr SMALL: I do not know whether this is relevant, it may have been earlier. Commissioner Urquhart, in past years, in recent years there have been a number of deaths from police shootings in Victoria and whether they did the right thing or not I am not commenting, that is entirely up to them, but in New South Wales we seem to have a situation where the police are more adjusted to, perhaps not going down the same course, every case would be different, but I am just wondering whether in undertaking hearings or investigations, do you in New South Wales undertake the same procedures in investigating any of those shootings within New South Wales? Is there a difference between investigations or is it exactly the same?

Mr URQUHART: Can I just draw your attention to some of the answers to questions on notice in relation to it, and perhaps revisit that and amplify it by saying this, that we have an involvement - I do not want to say what the involvement is - an involvement in

the investigation of what we refer to as police shootings, and by that I mean the discharge by a police officer of a firearm otherwise than in some circumstances, such as when they are doing firearm training or when they have to destroy an animal. I am talking about situations in which there is a discharge by a police officer of a firearm when somebody is injured, when somebody dies, or absent an injury or death, where there are circumstances that require an investigation.

We have, as I say, arrangements in place which firstly ensure that we are notified immediately when such an incident occurs. When homicide is the result, we have arrangements in place with the Coroner, who is the judicial officer who of course will deal at some stage with the results of the police investigation, and so far as the police investigation itself be concerned - and I will use general terms here, without wishing anybody to draw anything more than just general concepts from it - we have those investigations under consideration as they are taking place and after they have taken place.

The difference between New South Wales and Victoria is not an area that I would want to involve myself in in this forum, but clearly the raw statistics are such that would indicate that things are quite different in Victoria on occasions than they are in New South Wales.

Mr GALLACHER: Commissioner, we are coming to the crucial stage in the development of the PIC. Over the next twelve months what would you personally like to achieve as to the set of objectives you would like to get put in place over the next twelve months and satisfied?

Mr URQUHART: The first thing is, and I repeat what I said in my opening statement, I want to get a declaration under the *Telecommunications Interceptions Act* that enables our investigative methodology to use telecommunications interception, and I am grateful to you, Mr Gallacher, for enabling me to again repeat that, and to say that we live in an age when if police so misconduct themselves so as to give rise to serious matters, they are usually, if not invariably, very experienced police.

They know the surveillance methods that will be used by others; they are experts in anti-surveillance, both visual anti-surveillance, telecommunications anti-surveillance, listening device anti-surveillance and all other forms of anti-surveillance. At the moment, and until we get that declaration, we are competing with those on the other side of this record who have the expertise to know that we do not have this weapon in our armoury and to channel whatever they are doing in that area which at the moment we cannot get into. That is number one.

CHAIRMAN: Just on that number one, Commissioner, obviously the Federal Government has now passed, I understood, the amendment to the *Telecommunications Interceptions Act* that enables you and yet it awaits a declaration. Has your concern been communicated, once again, to the Minister? Certainly, I would have expected by

now that to facilitate your very important role there would have been a declaration.

Mr URQUHART: I make no comment, Mr Chairman, except to say that our inquiries of Canberra, as recently as yesterday, produced that it is in line, or in the queue. It is an administrative act that requires whatever needs to be done by whoever it is down there who needs to do it. All I know is that New South Wales has done its part. The Premier, a long time ago, sent off the appropriate documentation to Canberra for this to be done but it has not yet been done.

CHAIRMAN: You have emphasised the importance of it. Could you perhaps give a quantifiable amount of the impact it would have on your operations in terms of hindering them?

Mr URQUHART: To the economic rationalists who appreciate such things, let me say that if you have a look at the amount of money that the New South Wales community has provided to my Commission to involve itself in telecommunications interception, they will see that the inability of us to do that, simply in economic terms, dollar terms, is significant, but because it is so important to our investigative methodology, without it that methodology is like a cart without a horse. We have to pull the cart ourselves.

Let me go back in time to when this Commission was first established. We knew that it was going to take some time for the appropriate legislation in Canberra to be passed. I do not think anyone could have contemplated that it would have taken so long for that legislation to be passed, nor could anyone have contemplated that after the legislation was passed it would have taken so long for the declaration to be made, but they are matters outside the jurisdiction of New South Wales. We started our Commission with a proposed investigative methodology for which telecommunications interception was a very important component and we have been without that very important component now for a significant time.

That is not to say that we have not done anything. We have, and those who are aware of that, simply from the media dealing with our public hearings, will be aware that we have done things, but the point that I emphasise is that our investigative methodology does have as a very important part of it telecommunications interception, because that is where, not only the modern day criminals, but the modern day police criminals are more than likely to be able to fall down.

CHAIRMAN: That was the first of your responses and I interposed the question because from the Committee's point of view it is once again an incredibly important aspect of your work. You may have had some other areas in answer to Mr Gallacher's question.

Mr URQUHART: I do not know to which number Mr Gallacher wants me to proceed, but I want to emphasise again that that is very important. What else would I like to achieve in the next twelve months? I do not want to go through a shopping list so to

Speak.

CHAIRMAN: No, but obviously the start of the audit process is important.

Mr URQUHART: That is extremely important, because, as I have said, with respect reminding everyone, as the royal Commission said, without that history will repeat itself, and the Mollen report has already been referred to, and we all have common sense and we all know that after any inquiry and recommendations and reform is spoken about, there is a tendency for it to go off the boiler and the rabbits who have kept down in their warrens now poke their heads up again to see if the coast is clear, and if the rabbits in this analogy are corrupt police, and they put their heads up and they see that there is no reform taking place, history will repeat itself.

It is not only the corrupt police. We ought not overlook the vast majority of police who are good, who are anti-corrupt and who want to see a New South Wales Police Service, of which not only they can be proud, and I am sure that they are proud of it now, but they want to see their fellow New South Wales citizens view the New South Wales Police Service as a Police Service that everyone can be proud of.

Ms GRUSOVIN: On the reform process, in earlier meetings with the Ombudsman, in talking about the process of reform and the length of time that it would take before we saw some real improvement, I raised my concern about the question of real reform if, in fact, we still are not addressing support mechanisms within reforms for those people who feel they should come forward at times and take certain action.

It seems to be, from certain matters of which I am aware, that we really have not dealt with that aspect of reform, and we are very naive if we believe there is going to be real reform if in fact the support mechanisms are not in place to ensure that officers are able to come forward without fear of proper support and recognition for matters they are bringing to attention.

In fact, I think it would be fair to say that it would be far easier for an officer to do nothing to ensure that they do not jeopardise themselves or their future careers. I realise I am talking about wider cases.

Mr URQUHART: I understand that.

Ms GRUSOVIN: But I think it is something that would help us all and I would like your comments.

Mr URQUHART: I can comment on that and I will indicate that we have some matters which are in the operational stage at the moment, but I can mention that some of them have been in the public forum. They have been dealt with in our hearing room as public hearings, and during the course of them junior police have given evidence about their identification of inappropriate behaviour by other police, of informing superiors and of

how those superiors in the Police Service have dealt with the investigation, and how the junior police have been dealt with within the Police Service itself, and in particular the internal witness program.

So I can comment upon it on the basis that we have conducted those investigations that led to those hearings and they are continuing for precisely the purpose I think that you have mentioned, that is to ascertain how well police, of whatever rank, but particularly junior police, are dealt with by the Police Service as a whole and by their fellow officers when they make a complaint about one of their peers.

I recognise that that is important. As a Commission we have our own policy in relation to such police. We welcome them coming to us, because we believe that we can provide to them, either alone or in conjunction with what we know the Police Service can do, a support system that will, not only help them, but also will let the message go to other police that the old culture of "Don't dob in your mates" is wrong because they were never your mates. If somebody does the wrong thing, then you stand up and say it and those with whom you work ought support you.

That is a cultural change, and it is a big ship and it will take some time for that big ship to change direction, but it is very important. Hence, our involvement in those matters that I have mentioned in passing.

Ms GRUSOVIN: Could I ask you to perhaps comment, do you think in terms of time it is going to take a considerable period of time before those within the Service can feel some confidence that in terms of taking certain actions they will not along the track suffer a pay-back, a very subtle at times pay-back, because we are talking here in terms of things that are very hard to quantify, in terms of people finding it very hard to establish that they have been treated unjustly, where it is clearly apparent that they have been.

Mr URQUHART: I will not say too much about that but I will say something. That is all very subjective quite frankly, and one of the things which somebody from outside looking in has very great difficulty in doing is feeling some empathy. One can feel sympathy, one can feel sensitive, one can be sensitive, but from the outside looking in is sometimes very difficult, when you necessarily need to be objective when you look in.

That is not to say it cannot be done, but part of this strategic and qualitative audit will be surveys. Whatever may be the value of some surveys, one of them will be concerned with the sorts of matters that you raise, that is how members of the Service themselves regard aspects of the reform process, because I think one of the problems in the past has been that there has been no consultation, or insufficient consultation. Officers of junior ranks have simply been told, "This is what you will do". The reform process needs to be something in which there is a great deal of consultation. It is not simply something which is thrust upon all of the members of the Police Service. So this

strategic audit that will take place will have as one of its components the survey type ascertaining of views of members of the Police Service and the particular matter that you refer to will be one.

The pay-back that you referred to has always been there. I do not profess to suggest that it will at some stage cease to exist. It exists in all walks of life. There will always be pay-back for complaints. One of the things that I would like to see developed in fact - and I say developed and not initiated because I am not prepared to say any more about it - is a meaningful study of complaints, such that pay-back complaints can be identified, so that we know in quantitative terms what we are looking at, whether it is simply conceptual, or whether we can say, there are the numbers, that pay-back is a very significant component of complaints, or perhaps not a significant component.

At the moment, whilst people who should know, including myself, say that it is a dreadful thing that there should be pay-back complaints and there should not be any but we know there are, we need to have some meaningful statistics as to what the data base is, how many complaints truly are pay-back complaints. That requires a thoroughness in the investigation of them of course. I hope that that has assisted you.

CHAIRMAN: Just in terms of that, Commissioner, in answer to question 7 in your last report, you noted some emerging trends in serious police misconduct under category 1 complaints, and obviously in terms of the ongoing management system and cultural change in the Service's report, that those matters be flowed back via the ICAC and the Police Commissioner and built into the process of reform.

What is the mechanism for doing that in terms of your relationship with those other bodies? Secondly, are you confident at this stage that the Service has a structure in which it can educate and perhaps retrain its officers to understand the need for the cultural change and to put it in effect, or is that going to be all part of the audit process?

Mr URQUHART: I do not think we should say everything is going to be part of the audit process. Although that is true, I do not want it to be, if you like, used by others as an excuse for not doing anything now. I do not want them to say, well, we do not want to do anything now, we will see what comes out of the audit. Clearly that would be wrong.

So far as education be concerned, the primary area that deals with that is an area in which the Independent Commission Against Corruption has a predominance. We have a role, however, because of the involvement of the Police Service itself in anti-corruption programs, and we have the ability to comment upon the value, if they have any value, of the various anti-corruption programs that the Police Service puts in progress.

Now, out of our other knowledge, the intelligence that we have in relation to police corruption, we can appraise the anti-corruption programs that the Police Service has

and comment upon them. We can also usefully comment upon the general education programs that the Police Service has. I do not restrict myself now to the academy type programs, or even the programs where long serving members of the Police Service revisit the academy to do specialist courses. I am talking, in general terms, about all of the education programs the Police Service has.

We see ourselves, from our unique area, having an ability to input into that and we do have some input and we will continue to have an input, but those education programs and the anti-corruption programs will be something that the audit will deal with as part of the reform process.

CHAIRMAN: It just seems to me very important. I have limited outside experience, I visited the Los Angeles Police Department where they had quite a comprehensive program which appeared to be reinforced almost on a daily basis on, I guess, the muster approach. It is certainly something continually reinforced.

Mr URQUHART: Let me take that word "management" again. You are familiar no doubt with the employee management system. In an ideal world what ought to happen from any manager in any organisation is that when he or she has the daily or weekly, or whatever, meetings with the people under that manager, the basics of the charter of the organisation ought be articulated again. It is almost like doing something not just simply because it is a habit but because all recognise that it is important.

Managers ought to confirm the charter every time they have meetings with the troops, and they ought confirm it again in a management environment when one of the troops has done something wrong, but not in the old fashioned way of necessarily disciplined proceedings or saying, well, this now has to go out to this part of the Police Service, truly to deal with it managerially if it can be so dealt with. I hear what you say and I accept that.

Mr GALLACHER: Commissioner, during the course of the reform process continuing on a day to day basis there would arise instances where the PIC and the New South Wales Police Service were of opposite views with respect to things placed under the banner of the reform process. Could you tell us what the relationship between yourself and Commissioner Ryan is? Is it one of Commissioner Ryan must accept the views of the Police Integrity Commission with regards to the reform process or is it he simply may consider the views?

Mr URQUHART: I am not going to provide any information about whether I have had any particular view and Commissioner Ryan has had any different view about anything to do with the reform process or, for that matter, anything else.

Can I go back to what I think is basic to this? We all speak to the reform process; we all acknowledge it is important. I have repeated more than once that unless the audit takes place history will repeat itself, but I have also said that until very recently the Act

which gives my Commission its functions would permit my Commission only to get into the reform process in the area of potential police misconduct and not simply because it was part of reform process. So, we did not have that legislative entree into it.

That is not to say that we did not have more than a passing interest. We did. We did have significant contributions, I would like to think, to the EM program. We have had people go and speak to police officers in local area commands and regions in relation to employee management. Mr Lenihan has spoken to police, others have spoken to police about this. As to whether I, as the Commissioner of Police Integrity Commission, determine how the Police Service will manage the Police Service in the reform process, the answer is to be found in our Act: No. The Police Commissioner manages the Police Service, I do not.

CHAIRMAN: Further questions on any aspects that we may not have yet covered?

Mr LYNCH: Mr Commissioner, if I could just turn to the controlled operations. As a result of the recent legislation, certainly without dealing with particular cases, I am just wondering whether that, from the perspective of the PIC, has been a successful change; whether that is a successful tool that can be used; whether there are any legislative problems with it so far; whether there are any practical problems arising out of the legislation?

Mr URQUHART: I think the controlled operations legislation is a very good example of what can be done to fill a void and how it can be done properly. As you know, the Inspector of the Police Integrity Commission had something to do with that legislation and the codes of conduct and so forth. You may also be aware that the legislation itself was, in a sense, workshopped by the different agencies that would have the ability to use the legislation, so that those in the different agencies who are now dealing with controlled operations within their legal confinements, as well as their investigative areas, are persons who know what they are doing because they were there when we did not have the legislation. They saw the legislation developed, they were privy to what the Inspector of the Police Integrity Commission had to do with that legislation, and it has been, I would like to say, not remarkably successful, but successful.

It is a tool, once again, we have now where before there was a void. It was a very uncertain area and Mr Nattress would be able to tell you that our investigators have a document signed by me saying, yes, you are authorised to do this and this and this and to know that if they do this and this and this, within the operational plan, that they are not breaking the law.

Mr LYNCH: Is there any auditing of that process, of the use of the Act?

Mr URQUHART: By whom? The Ombudsman is the external agency that gives out an audit and has already done several in relation to us.

Mr LYNCH: That has not caused any difficulties of any sort, I take it?

Mr URQUHART: No, no difficulties. In fact, what we have found is that because it is the beginning, if you like, of something which is new but people from the different agencies have all worked on, we are finding that there is a preparedness to share procedures, a recognition that no one has a monopoly on the procedures or the appropriateness of procedures and a preparedness to share things.

I think the Ombudsman's officers can pat themselves on the back for being an appropriate office to facilitate that. I do not want to say the other people have been reluctant to accept it but it has been successful. The auditing function, in fact, showed no difficulty and it has been most conducive to a continued operation of controlled operations with a view to them all being successful.

CHAIRMAN: Further questions?

Mr GALLACHER: On controlled operations, Commissioner, have you had an opportunity to look at the success of controlled operations that are wholly owned and organised by the PIC as opposed to those that are being run by the New South Wales Police Service? The reason I ask is there was concern during the royal Commission, and I suspect there is a fair degree of concern out there, that the integrity of investigations may be compromised because of the relationship that existed between police in New South Wales and those being investigated. Have you had the opportunity to look at the success of your controlled operations as opposed to those by the Police Service?

Mr URQUHART: We have not only had an opportunity in relation to our controlled operations, but we have done that as part of our own internal operations procedures. We have considered each controlled operation after it has taken place and measured it by our own investigative benchmark, so to speak, as to whether it on a stand alone basis has been successful.

I have referred in some of the answers to the questions on notice to what success here means, and common sense would indicate that success is not simply restricted to whether or not you catch the baddy; it is whether or not the operation went off without anything untoward occurring. That is the measure of success. So far as controlled operations by any other agency be concerned, they can speak for themselves about their controlled operations. I am certainly not privy to all controlled operations by all other agencies, nor should I be, and they ought not be privy to the controlled operations that the Police Integrity Commission carries out.

Mr GALLACHER: What I am specifically looking at are the integrity testing procedures that are being used by the Police Service on their own internal control operations, and not necessarily ones involving outside interests or outside criminality. Are you happy with the contribution so far by the internal police investigators with respect to controlled

operations? Have you got any concerns about breach of security as opposed to yours?

Mr URQUHART: In my Commission?

Mr GALLACHER: I am comparing your controlled operations, within your Commission, as opposed to the ones that are being operated within the New South Wales Police Service. Do you have any concerns over the security of those controlled operations that are being run from within the Police Service against other members of the Police Service?

Mr URQUHART: I have no concern, Mr Gallacher.

Mr GALLACHER: There was that concern before and we need to know that is gone.

Mr URQUHART: As with the informants management plan, it is the same with a lot of structures with the Police Service. I do not want to fall into the trap that I created for myself, but I will say that that is an area that the audit process will deal with, deal with in the sense of it is not going to be a panacea, it is not going to be the magic wand, but it will provide a review area. I do not want to say whether or not something you have mentioned is something we have more than a passing interest in, but I have no cause for concern at the moment.

CHAIRMAN: Do we have further questions?

Mr LYNCH: Just one minor point. Has there been any non-operational overseas travel by members of the Commission to conferences and the like? If there has been, how much, and do you have a policy on that?

Mr URQUHART: I have not been, although I might tell you that I propose to go to the IACOLE conference in October. Our senior investigation lawyer, Mr Matthew Burn, attended a conference in Hong Kong of the Hong Kong ICAC, the annual corruption conference.

Mr LYNCH: Anti-corruption?

Mr URQUHART: Anti-corruption, thank you, Mr Lynch. That is the only non-operational matter. We have had operational matters, or matters related to operations in certain senses that I do not propose to go into. Non-operational travel, one to Hong Kong by Mr Burn, that is all, and there will be one by me in October.

CHAIRMAN: I might note that matter, Mr Lynch, too, in that the Independent Association of Civilian Oversight of Law Enforcement Agencies and the International Ombudsman's Association has taken a great interest in reforms in New South Wales in particular, and the operations of the Police Integrity Commission and the Ombudsman's office, and have been advocating both because of their interest in that

reform and also because of what you might call a need for peer advice for similar bodies for both the Ombudsman and Commissioner.

Mr LYNCH: You would be hard pressed to be critical of IACOLE.

Mr URQUHART: There will always be those that will be. I have been invited to speak at that conference and the letter that I received from the president, the invitation to speak, was couched in words along the lines of the Police Integrity Commission in New South Wales is at the forefront of civilian oversight of law enforcement agencies and all of those who will be at the conference would welcome - I would say would be sitting on the edge of their seats - hearing from someone from the Police Integrity Commission.

Mr GALLACHER: You are going there as a world leader in this area.

Mr LYNCH: Let's not ask too much of a good thing.

Mr ANDERSON: In our meeting with Mark Gissiner - I said it yesterday, I will say it again - he certainly acknowledged that New South Wales is leading the world in this type of enquiry and they are looking forward to hearing from you at that conference.

Mr URQUHART: It is very interesting when you hear the views from agencies elsewhere in the world and they hear what we do, and we have a presentation telling them what we can do lawfully, because the laws of New South Wales and the appropriate Commonwealth laws permit us so to do, and surprise is an understatement of the effect upon them.

CHAIRMAN: We did have a discussion earlier this morning about some other matters. I am wondering whether you would like a five minute recess in which we would take a coffee break and you can decide which issues you wish to mention in the confidential conference.

(Short adjournment)

CHAIRMAN: Commissioner, I have here an untabled document, a confidential document, and I now seek if there are any matters within that document that you may wish to give in verbal evidence to the Committee, perhaps retain any issues that were not to be tabled.

Mr URQUHART: Yes, thank you, Mr Chairman. In relation to the questions on notice, I will deal with those of them that are in a form which can be tabled. I will deal with the others that can enter the public forum through this current and present public session in the following manner, by repeating the question and then giving the answer.

Question 1 How often has the Commission used the following powers during the last annual reporting period?

(B) Notices to produce a statement of information, section 25?

Answer: 119.

(C) Notices to produce a document and other specified things, section 26?

Answer: 206.

(D) Entering public premises, section 29?

Answer: 3.

Question 2 How many search warrants, listening device warrants and telecommunication interception warrants have been issued in the course of the Commission's investigations?

Answer: The Commission has not sought the issue of any search warrants from an authorised justice pursuant to subsection 45(1) of the *Police Integrity Commission Act 1996*, nor has the Commissioner issued any search warrants pursuant to subsection 45(2) of the *Police Integrity Commission Act 1996*. The Commission has sought and obtained 126 warrants under the *Listening Devices Act 1984*. The Commission has not yet been declared an agency under section 34 of the *Telecommunications Interception Act 1979* and the Commission remains unable to obtain interception warrants until this declaration is issued by the Commonwealth Attorney General.

Question 3 What is the current investigative workload of the Commission?

Answer: As at 24 June 1998, in terms of complaints which have been received or matters initiated classified as category 1 and made either preliminary or full investigations by the Commission, there were 29.

Question 5 How many public and private hearings have been held and witnesses examined for the same period?

Answer: As to private hearings, there have been 30 hearing days, concerning seven matters, involving 34 witnesses.

Question 7 Has the Commission derived any information from its investigations which identifies current trends in serious police misconduct and corruption, and, if so, what are the implications of this information

for the Police Service's management of the EMS and education initiatives for police officers?

Answer: The Commission is currently conducting a project concerning police assaults, which it is hoped will identify trends in relation to assaults carried out by police officers and maximise the opportunity for the Commission to inform stakeholders of the extent of the problem and influence change within the Police Service. It is anticipated that the conclusions reached will be useful for the management of the Police Service and incorporated in education and training initiatives for police officers.

Question 11 How many applications have been submitted to the PIC Commissioner under the new legislation to seek authorisation to conduct controlled operations?

Answer: 4

(The hearing continued in camera)

(The witnesses withdrew)

(The Committee adjourned at 12.35 p.m.)

INDEX TO TRANSCRIPT OF PROCEEDINGS

Audit of the police reform process	6, 22-25, 28, 30
Budget	6
Complaints received	36
Controlled operations	32, 33, 37
Corruption education	31
Integrity testing	34
Public hearings	19, 20, 37
Report on Special Branch	6, 21, 22
Telecommunications intercepts	6, 27, 28
Trends in serious police misconduct and corruption	37
Use of powers	36

APPENDIX



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

**Proceedings of the
Committee on the Office of the Ombudsman
& the Police Integrity Commission**

Thursday, 9 July, 1998
at 10.00am in Room 814-5, Parliament House

MEMBERS PRESENT

LEGISLATIVE ASSEMBLY

Mr B Gaudry MP (Chairman)
Mr J Anderson MP
Mrs D Grusovin MP
Mr P Lynch MP
Mr J Small MP

LEGISLATIVE COUNCIL

The Hon M Gallacher MLC

APOLOGIES

The Hon E Nile MLC, The Hon A Kelly MLC, Mr J Kinross MP and Mr A Stewart MP

IN ATTENDANCE

Ms Helen Minnican (Director), Ms Tanya Bosch (Research Officer) and Ms Natasha O'Connor (Assistant Committee Officer).

GENERAL MEETING WITH THE COMMISSIONER OF THE PIC

The Chairman opened the public hearing and welcomed the witnesses.

The Committee then went in camera and discussed the answers to the questions on notice which the PIC had requested be dealt with confidentially.

The Commissioner of the PIC undertook to advise the Committee about which of the answers, originally marked confidential, could be publicly released.

The Chairman reopened the hearing to the public.

The Commissioner for the PIC, Judge Paul Urquhart QC, Assistant Commissioner, Mr Tim Sage, Director Special Services and Operations, Mr Andy Nattress, Director Corporate and Information Services, Mr Dave Rawson, and Information Manager, Mr Denis Lenihan, all on former oath, acknowledged receipt of summons.

The Commissioner tabled his answers to the questions on notice which were to be dealt with in public session.

The Commissioner addressed the Committee, then the Chairman commenced questioning Judge Urquhart, followed by other Members of the Committee.

The Committee took a short adjournment.

The Commissioner then gave evidence on a number of answers which he previously had asked to be dealt with on a confidential basis.

The public hearing concluded and the Members of the Committee continued to examine the witnesses in private.

Questioning concluded, the Chairman thanked the witnesses for attending.

TALKS WITH HEADS OF AGENCIES (closed briefing session)

The Chairman discussed procedures for the briefing session with the Commissioner for the PIC, Judge Paul Urquhart QC, the Assistant Commissioner, Mr Tim Sage, Director Special Services and Operations, Mr Andy Nattress, Director Corporate and Information Services, Mr Dave Rawson, and Information Manager, Mr Denis Lenihan.

The Committee discussed aspects of the Commission's work with the participants.

Discussions concluded, the Chairman thanked the participants for attending and the participants withdrew.

The Committee concluded at 12.35pm.