

**REPORT OF PROCEEDINGS BEFORE**

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

**HEARING: 11<sup>th</sup> GENERAL MEETING WITH THE  
INSPECTOR OF THE POLICE INTEGRITY COMMISSION**

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**At Sydney on Wednesday, 27 October 2010**

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**The Committee met at 1 p.m.**

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**PRESENT**

Mr K Hickey (Chair)

Legislative Council

The Hon. C Lynn

The Hon. L Foley

Mr D Shoebridge

Legislative Assembly

Mr P Pearce

Mr M Kerr

Mr P Draper

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

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

**Mr MOSS:** I would wish that, thank you.

**CHAIR:** Would you like to make an opening statement?

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

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

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

**Mr MOSS:** Could you give me the paragraph number?

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

**Mr MOSS:** The question, I am sorry?

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

**Mr MOSS:** No, I do not.

**Mr PEARCE:** Would you like to expand on that?

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

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

**CHAIR:** On page 15 of the Annual Report you sought comment from the former Commissioner of Police Integrity Commission. Have you tried to seek comment in the past from other commissioners and has that approach

been successful?

**Mr MOSS:** From other police commissioners?

**CHAIR:** From other previous Police Integrity Commissioners.

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

**Mr David SHOEBRIDGE:** Procedural fairness?

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

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

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

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

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

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

I think in fact quite soon someone from the Department is going to visit me

and we are going to talk about what other matters I might see as being usefully discussed.

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

**Mr MOSS:** Well, I think I would just be speculating and I would rather not do that if you do not mind. I am as puzzled as you might be as to why it has taken so long; but it has.

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

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

**CHAIR:** We can do a confidential session.

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

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

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

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

**Mr KERR:** Yes, that is right.

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

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

**Mr KERR:** In terms of justice for the complainant, having had their

complaint upheld and you might make recommendations to the Commission, they are free to ignore those. That is the situation, isn't it?

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

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

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

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

**Mr MOSS:** Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr David SHOEBRIDGE:** The responding to the reports.

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

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

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

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

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

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

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

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

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

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

encouraging and would be regarded as satisfactory by those officers but it is the balance of the recommendations that I would like to follow through as soon as I get the opportunity.

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

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

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

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

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

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

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

**(Evidence continued in camera)**

**(Conclusion of evidence in camera)**

**(The witness withdrew)**

**The Committee adjourned at 1.45 p.m.**