

REPORT OF PROCEEDINGS BEFORE

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

NINTH GENERAL MEETING  
WITH THE POLICE INTEGRITY COMMISSION

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At Sydney on Wednesday 23 November 2005

**CORRECTED TRANSCRIPT**

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The Committee met at 2.00 p.m.

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PRESENT

Mr P. G. Lynch (Chair)

**Legislative Council**

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

**Legislative Assembly**

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

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

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

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

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

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

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

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

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

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

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

**CHAIR:** In relation to Operation Vail, which, I think, is dealt with in questions 1 to 7 on the list of questions with notice, did the New South Wales Police notify or

refer the allegation of a possible TI breach to the PIC around the time it was received by the police in April 2004?

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

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

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

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

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

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

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

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

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

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

**Mr GRIFFIN:** Yes.

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

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

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

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

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

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

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

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

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

That is why we are happy to talk about it. It seemed like a very difficult number to get any meaning from. It would be useful perhaps to talk to the DPP if the question of delay generally was of concern because I think it is a concern, not just for the Committee and perhaps the PIC. But I do not think the numbers that we could

provide, with considerable effort, would assist you in making any sensible assessment of the process. Having said that, if the Committee needs those numbers to do whatever it needs to do, and you can give us some time to do the work, we can achieve it. It would be fairly resource-intensive though.

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

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

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

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

**CHAIR:** Either, in fact.

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

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

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

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

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

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

**Mr GRIFFIN:** We have a current understanding that when we think we have enough to show a senior officer at the DPP to get an indication of how we jointly ought to proceed, we do that. While that has not worked perfectly, I understand it is working tolerably well. It would depend very much on the collection of evidence. You would appreciate that sometimes the evidence is overwhelming early, and sometimes it is never overwhelming, and often it is between those two. When we have a comfortable satisfaction that there is enough for a prosecutor to make a considered view, or to take a view, we would speak to the senior officers and try to get that view from them and some joint assessment of how it would best proceed from there.

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

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

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

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

The corrupt police officer had made approaches to interfere with that particular investigation in return for money from the civilian who was being investigated. When the Commission approached that civilian to try to get information to assist the

investigation, he was very reluctant to talk to us. However, the particular criminal matters that he was being investigated for, which did withstand the corrupt approaches from Foster and ran their natural course and resulted in a conviction—once that process had run its course and the offender concerned had been dealt with, he was then happy to assist the Commission.

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

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

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

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

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

**Ms O'BRIEN:** No.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**Mr KEARNEY:** Yes.

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

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

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

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

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

**Mr GRIFFIN:** I think perhaps because of the way it is worded our jurisdiction, if you would like to call it that, is by way of exception in the Act. We are the only people that might question certain decisions that have been made. I think that is relatively narrow. If it is conceived as some sort of oversight over the entire process I am not sure that it is that wide. Having said that, we do not concede and have never conceded that police operating out of the Crime Commission do not fall within our jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr KEARNEY:** Yes.

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

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

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

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

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

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

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

**Mr GRIFFIN:** The Executive Officer is a right hand for me. He actually takes the minutes and actions things that arise from that meeting, as much as he provides any advice. The meeting is relatively informal. Whilst it is structured formally, there is

not a position where the head of the PSC speaks only to me. Generally the people within the room will talk about issues, and decisions are recorded and dealt with. It is informal advice from somebody who is conscious of what the PIC is doing at the moment, particularly in relation to my views about the general issues.

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

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

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

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

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

**Mr GRIFFIN:** Perhaps. But I think in much more clear-cut terms there are things now done with only six lawyers, whereas before we would use 12. I am exaggerating, of course. But there was layer upon layer of checking and double checking and, as happens often with that sort of layering, each person, who is only a cog in the checking system, does not take the responsibility or care that they ought to take, and you end up with nobody quite getting it right because they think someone else has got it right before them. Having cut out some of them—this is my view, and I will not ask the others to comment—I think the people are more responsible and more comfortable with their role, and they are doing better work. That has worked not just in the legal area where I am comfortable things have improved, but in some of the other areas as well.

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

with regard to the section 181D process. In general, do you think the section 181D process takes too long?

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

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

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

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

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

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

**Mr KEARNEY:** I do not think we can advise on that. I am not aware of anything specifically that has occurred. The section 181D process is quite a complicated process in NSW Police, involving a range of different areas, from the Local Area Command to the Professional Standards Command, the legal area, and a range of administrative areas in the Commissioner's office. It might be useful if we were to take the question on notice and provide you with further information regarding the process.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Mr GRIFFIN:** I think that probably there are things. Five years seems to go very quickly when you get to my age. If I had another five years I could probably get around to them. The Commission works on the basis that there is a never-ending list

of things that it ought do. The counter-terrorism interest we had was held up by Operation Abelia work we were doing, and so on. The list we have of things we would like to do is not endless but certainly will see my lifetime through. I would like to have gone further through that list, but, having said that, I think we have gone some way through it and the list remains for the next person. That would be a disappointment

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

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

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

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

**(The witnesses withdrew)**

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