

**REPORT OF PROCEEDINGS BEFORE**

**COMMITTEE ON THE OMBUDSMAN, THE POLICE  
INTEGRITY COMMISSION AND THE CRIME  
COMMISSION**

**2016 REVIEW OF THE ANNUAL REPORTS OF OVERSIGHTED  
BODIES**

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**At Sydney on Monday 29 February 2016**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

Mr L. J. Evans (Chair)

**Legislative Council**

The Hon. S. Farlow  
The Hon. T. Khan  
The Hon. A Searle

**Legislative Assembly**

Mr P. G. Lynch  
Dr P. J. H. McDermott  
Ms E. M. Petinos

**BRUCE MEREDITH JAMES, QC**, Commissioner, Police Integrity Commission,

**PETER JAMES BARNETT**, Acting Director, Prevention and Information, Police Integrity Commission, and

**GARY KIRKPATRICK**, Director Operations, Police Integrity Commission, sworn and examined:

**MICHELLE O'BRIEN**, Commission Solicitor, Police Integrity Commission, affirmed and examined:

**CHAIR:** I declare open the Committee's 2016 review of the annual reports of the Police Integrity Commission, Inspector of the Police Integrity Commission, the Crime Commission and the Inspector of the Crime Commission. I thank all witnesses who will be appearing before the Committee today. Before we proceed, do you have any concerns about procedural information sent to you in relation to witnesses and the hearing process?

**Mr JAMES:** No.

**CHAIR:** Would you like to make an opening statement before the commencement of questions?

**Mr JAMES:** Not really, except to say that members of the Committee would be aware that the Government has decided to adopt the recommendations made by Mr Andrew Tink in his report. The Police Integrity Commission [PIC] is cooperating fully in the implementation of the recommendations in that report.

**CHAIR:** Excellent. Committee, are there any questions you would like to ask the Commissioner?

**Mr PAUL LYNCH:** If no-one else wants to, I might start. In relation to the Tink report, I am just wondering whether it actually means that anything will change. It seems to me you currently have two organisations which are going to become subdivisions. They are going to have separate reporting, separate accounting standards and separate management. Apart from the Ombudsman moving into your building and the titles changing, is there actually going to be any change?

**Mr JAMES:** I think that is hard to predict, but it could be that there is not much change. The integrity division of the new Commission looks remarkably like PIC and the oversight division of the new Commission looks remarkably like the police division of the Ombudsman's office.

**Mr PAUL LYNCH:** Thank you.

**The Hon. ADAM SEARLE:** Have you or your organisation had any discussions with the Government about current staff transferring over to the new organisation, yourself transferring over to be the new Commissioner or any of those sorts of logistical arrangements, following through on the theme of change or no change?

**Mr JAMES:** We had a meeting on 15 February with representatives of the Office of Police and there was also a representative of the Department of Premier and Cabinet. It was a general introductory sort of discussion, but one matter which was raised was staffing. I think that the representatives of the Government thought it was too early to say anything very definite, but an indication was given to us that, rather than a complete spill and fill, it at least might be the case that many present employees at PIC would be taken over by the new Commission.

**The Hon. ADAM SEARLE:** Many or indeed all.

**Mr JAMES:** Yes, perhaps all.

**The Hon. ADAM SEARLE:** Certainly if we are talking about staffing below the leadership roles, the sense I am getting from your evidence is that it sounds as though it is more likely than not that rather than the creation of a bespoke, new organisation it will be a rebadging—new title, new legislation—but the same staff and culture from the PIC transferring over to the new body. Does that sound like a fair assessment?

**Mr JAMES:** I do not think that is certain, but it could be the case.

**Ms ELENI PETINOS:** Commissioner, discussions about staffing aside, how involved have you been in the work of the implementation group?

**Mr JAMES:** Not very much—that applies to me personally and it also applies to the other members of the executive group of PIC. There is what appears to me to be an implementation team, consisting, as I say, of officers from the Office of Police and the representative of the Department of Premier and Cabinet. We do not have any representation on what appears to be an implementation committee. All that I am aware of so far—we had that meeting on 15 February. There has been a subsequent meeting—I was not present—devoted, as I understand it, mainly to IT, because the IT systems of the Police Integrity Commission and the IT systems used by the Ombudsman are rather different and that could present some problems.

**The Hon. SCOTT FARLOW:** Commissioner, further to that, in your opening statement you said you were cooperating fully in terms of the implementation with the Law Enforcement Conduct Commission [LECC]. What has that cooperation entailed so far? There have been a few meetings. Is there any other process that is in place in order to realise the LECC?

**Mr JAMES:** No, there is not. When I said "cooperate" it was to indicate a state of mind on our part that anything we are asked to do we will do.

**The Hon. SCOTT FARLOW:** But you have not been asked to do all that much at this stage.

**Mr JAMES:** I think that is a fair comment.

**The Hon. ADAM SEARLE:** Commissioner, I would like to revisit something. Did you say just a moment ago that you did not have anyone on the implementation committee?

**Mr JAMES:** We do not.

**The Hon. ADAM SEARLE:** You do not. Okay. Do you know who comprises the implementation committee and, if so, can you tell us who?

**Mr JAMES:** Should I name names?

**The Hon. ADAM SEARLE:** No. Let's start with which organisations and maybe office holders. I might ask you the names later.

**Mr JAMES:** According to the information I have received, they are officers from the Department of Police and Justice, apart from one representative from the Department of Premier and Cabinet.

**The Hon. ADAM SEARLE:** So three or four people?

**Mr JAMES:** I understand there is someone from Treasury or Finance as well.

**The Hon. ADAM SEARLE:** How could it be otherwise?

**Mr JAMES:** Yes.

**The Hon. ADAM SEARLE:** Okay. So if we are building a new body out of two existing institutions, trying to put them together and dealing with logistical issues like staffing or IT, does it strike you as odd that there would not be any input from your organisation on this implementation committee? Do you expect that to change?

**Mr JAMES:** I would prefer not to make any comment, but we have not been invited.

**The Hon. ADAM SEARLE:** That seems odd.

**Mr PAUL LYNCH:** If I could perhaps turn to a different topic, what is the relationship with the Inspector like now?

**Mr JAMES:** For both the Police Integrity Commission and the Inspector, and I myself as the Commissioner and the Inspector, I think the relationship is businesslike and courteous.

**Mr PAUL LYNCH:** And what sort of interaction is there? What dealings do you actually have?

**Mr JAMES:** From time to time I receive a letter from the Inspector. In that letter, the Inspector will express some doubt or some difficulty that the Inspector believes he has observed, of his own motion or sometimes the Inspector is passing on to us a letter that he has received from somebody else. Typically the Inspector will ask, "Please comment on this." And we try to make a point of getting a prompt and full answer to his inquiry.

**Mr PAUL LYNCH:** I take it from that that he has never made findings against the PIC or made adverse comments about the PIC without at least giving you the opportunity to respond to the concerns.

**Mr JAMES:** Yes, I think that is right.

**Mr PAUL LYNCH:** And the times—

[*Interruption.*]

**Mr PAUL LYNCH:** Mr Khan knows what I am doing—thank you. The other thing I guess I am interested in is whether you have contact from the Inspector during the currency of inquiries. Does he try to intervene with the activities you are involved in?

**Mr JAMES:** Not usually. I cannot recall an instance of that happening.

**Mr PAUL LYNCH:** We all know the fractious history between the previous Inspector and the Police Integrity Commission.

**Mr JAMES:** Yes.

**Mr PAUL LYNCH:** One might be tempted to say that is being replicated in another body at the moment. I am wondering whether you have thought that there might be alternative oversight mechanisms to an Inspector?

**Mr JAMES:** I have seen the suggestion that the idea of a committee should be revived. I do not know how well or how badly the committee system worked. I suppose that when you have an individual as an Inspector there is the risk of conflict on a personal level between the Inspector and the Commissioner or some other officer of the group the subject of the inspection. Perhaps a committee bears less risk of personal conflict, but perhaps not.

**Mr PAUL LYNCH:** Thank you.

**Ms ELENi PETINOS:** I might turn to the relationship with the NSW Police Force. The report refers to two instances which I believe are Project Juda and Project Harlequin, which bear significant delays in the Police Integrity Commission's [PIC] work as a result of dealings with the police force. Can you provide the Committee with any further information on the delays you encountered in relation to these two particular projects?

**Mr JAMES:** There have been delays in Project Harlequin and we are very conscious of those delays. We have taken the step of making Project Harlequin number one priority for all our researchers so that we now have a number of researchers who are making Project Harlequin their number one priority. I am hopeful that Project Harlequin can be completed well within this calendar year. The other matter you referred to was Project Juda?

**Ms ELENi PETINOS:** Juda.

**Mr JAMES:** I might refer to Mr Barnett; he is the Director of Prevention.

**Mr BARNETT:** There were some delays with Project Juda and they related to our preferred method of collecting information, which was conducting research interviews with officers in the field. New South Wales police had some reservations about our plans for conducting those interviews and it would be fair to say that those concerns have not been resolved. In a sense, they are ongoing because I have taken—or the Commission has taken—the researcher allocated to that project off Project Juda and assigned them to Project Harlequin. So once Project Harlequin is complete, I will need to revisit those concerns with the police to see if I can resolve them.

**The Hon. ADAM SEARLE:** Are you able to tell us what the nature of those concerns is?

**Mr BARNETT:** We have been conducting research interviews for quite some time—well over five years—in relation to our prevention projects. However, in connection with Project Juda there were some concerns voiced by the NSW Police Force in connection with, I suppose, the governance arrangements around the project: Whether the police officers would be allowed to have a support person with them; the status of Project Juda—whether it was an investigation; and whether officers would be asked any questions about conduct-related issues. We have tried to resolve those issues with the police force but, as at the time that Project Harlequin became the priority project and Project Juda was put on hold, they are unresolved.

**Ms ELENI PETINOS:** Your annual reports contain examples of work undertaken to prevent officer misconduct. Do you receive feedback on these activities from the NSW Police Force?

**Mr BARNETT:** Could you be a bit more specific? What do you mean by "feedback"? I can talk about the engagement we have with the police in connection with our projects.

**Ms ELENI PETINOS:** Yes, that would suffice.

**Mr BARNETT:** There is typically engagement in a number of stages in the life of a prevention project. When we commence a project we will write to the Commissioner of Police explaining the scope and purpose of the project and indicating how we intend to proceed, in terms of our methodology. We will, at various stages during the collection of information, typically engage with the police and talk to them about what we are doing to collect information. Once we have finalised the project we will, in almost all cases, provide the police with a consultation draft and ask for their comments about the accuracy of the information we have presented and whether they have any other views on the proposed recommendations. We ask them to identify alternative recommendations or strategies for resolving the problems we have identified, if they can identify them.

So, at a number of junctures prior to the publication of a prevention project report, there will be engagement with the NSW Police Force. Following the publication of the project report we will write to the Commissioner of Police and ask for a formal response to our recommendations and the actions they propose to take in implementing them. On some occasions we have actually published the Police response to our draft recommendations within the report itself. The project report concerning Project Santuri, which concerned secondary employment, actually contains the police response to the recommendations.

**Ms ELENI PETINOS:** And are you satisfied with the response of the police force in relation to your recommendation on preventing officer misconduct?

**Mr BARNETT:** It does vary from project to project and it varies in terms of the areas the police were involved with relating to those projects. So it is difficult for me to give a simple answer to that. It does vary, depending on the project, depending on the area of the police we are dealing with. With Project Santuri, secondary employment, we had an extensive involvement with the Human Resources area of the police and they were very engaged in that project. There are other projects where the involvement of police is not to that same degree.

**The Hon. TREVOR KHAN:** Could I take you to recommendations 43 and 44 of the Tink review—the recommendations that dealt with the oversight of critical incidents, and I think this is in the context of the Adam Salter matter, if nothing else. Do the recommendations that Mr Tink made satisfy your concerns with regard to oversight of critical incidents?

**Mr JAMES:** I might refer to Mr Kirkpatrick on that.

**Mr KIRKPATRICK:** So far as those recommendations are concerned, we have had some preliminary discussions with the Professional Standards Command relating to the intentions of the Law Enforcement Conduct Commission [LECC] having a role in the critical incident regime. I cannot talk about whether the Commissioner is satisfied that that is a suitable outcome but I can talk about the fact that we are in discussions about the planning for the future of LECC's engagement.

**The Hon. TREVOR KHAN:** Are you prepared to let us in on what those discussions are?

**Mr KIRKPATRICK:** Because we do not represent the Law Enforcement Conduct Commission, it is difficult to anticipate what the LECC Commissioner or the LECC executive will want as the response. Mr Tink foresees a potential layered approach in the LECC's involvement. It really is up to the executive of the LECC to resolve the extent to which the LECC will be involved in the oversight and whether that is active. There is also the issue of the legislation that remains to be seen so far as LECC's regime.

**The Hon. TREVOR KHAN:** We are stuck with that issue on all sides, but if you are having discussions about it with the police now, and I accept your caveat that you are not a representative of LECC, what would you envisage being an appropriate model of oversight of critical incidents?

**Mr KIRKPATRICK:** It seems to me that Mr Tink foresees what he refers to as an active role in oversight by LECC at critical incidents, or at least some. He talks about officers of LECC not managing and interfering with the engagement of the police at the time of a critical incident, but to take records, to have the capability of giving coronial evidence. Whether that is an appropriate response, I really cannot answer.

**The Hon. ADAM SEARLE:** Does your organisation have a view about whether the term "critical incident" should be rigorously defined in legislation?

**Mr KIRKPATRICK:** That is your view, Commissioner.

**Mr JAMES:** Yes. I think there would be an advantage in having a better definition of "critical incident". At the moment it is a miscellaneous collection of things, together with anything else that ought to be regarded as a critical incident. It will not be an easy task arriving at a satisfactory definition, but I do believe that there should be a more rigorous attempt to define "critical incident".

**The Hon. TREVOR KHAN:** Are you of the view that it should be, in a sense, a restrictive definition, limited to the discharge of a firearm, serious injury and death, or is it appropriate that it be a wider definition?

**The Hon. ADAM SEARLE:** Or death; anything involving death or serious injury, for example.

**Mr JAMES:** I find that a very difficult question to answer. Obviously there are advantages in having a more rigorous definition. On the other hand, cases will occur which it would be good to regard as a critical incident but they do not fit the definition.

**The Hon. TREVOR KHAN:** Indeed.

**Mr JAMES:** It may be that you are left with some express classes of case, together with a residual category that catches anything that one's sense says should be regarded as a critical incident.

**The Hon. TREVOR KHAN:** Assuming that I am attracted by that proposition, who is the body or person that nominates that that more amorphous group of incidents might appropriately be described as a critical incident? Is it someone within the police? Does it extend to LECC?

**Mr JAMES:** Yes, a police officer, usually the regional commander, will declare an incident to be a critical incident. The decision that something should be a critical incident, should be treated as a critical incident, is made by him.

**The Hon. TREVOR KHAN:** What interests me is that, in a sense, there are some notorious events that occur that clearly do not fall within what one would normally assume to be a critical incident. As the Commissioner might say, "That is a matter that requires appropriate oversight and proper investigation from outside the area command." Is it appropriate that the Commissioner of LECC have some capacity to declare an incident as being critical and, therefore, setting in train a course of events?

**Mr JAMES:** At first blush that would have an attraction for me. I have not thought through any ramifications of that.

**The Hon. TREVOR KHAN:** We might end up with some fairly irritated middle-ranking police officers.

**Mr JAMES:** Yes

**The Hon. ADAM SEARLE:** In your annual report you talk about the Commission working on 143 investigations during that year, including 40 full investigations. If you look at the table on page 16—

**Mr JAMES:** Which year's report is that?

**The Hon. ADAM SEARLE:** The most recent annual report, 2014-15. Page 16 talks about seven full investigations arising from complaints, which are significantly down on the previous year and still lower than the year before. Will you tell the Committee the reason for that lower set of full investigations? Is it reflective of lower complaints that are worth investigating, or does it reflect resourcing constraints, for example?

**Mr JAMES:** I do not think that it indicates a trend. The figures tend to vary from year to year.

**The Hon. ADAM SEARLE:** There is a big spike. In 2013 it was eight. The following year it went up to 12 and then it is down to 7.

**Ms O'BRIEN:** What page are you on?

**The Hon. ADAM SEARLE:** Page 16. I will show you my copy.

**Ms O'BRIEN:** That is complaints management, not investigation.

**Mr KIRKPATRICK:** Indeed.

**The Hon. ADAM SEARLE:** Yes, that is complaints management.

**Mr KIRKPATRICK:** Investigations is further into the body of the document.

**The Hon. ADAM SEARLE:** What is your view about the fluctuations under complaints management? I am happy for you to take it on notice. It was not a trick question.

**Mr KIRKPATRICK:** I think we better take it on notice.

**Mr JAMES:** Yes, we would like to take that on notice.

**Mr KIRKPATRICK:** There is another table that refers to investigations, which is higher. At one point the complaints management investigations are lower, the other is higher.

**The Hon. ADAM SEARLE:** If you could take that on notice and give us a fuller explanation.

**CHAIR:** Commissioner, earlier you mentioned that information technology is an issue and there is a planned upgrade of information technology software and systems detailed in the 2014-15 annual report, page 63. Will this benefit the LECC?

**Mr JAMES:** I think I should take that on notice, too.

**The Hon. SCOTT FARLOW:** To that point, have you been given any directives about capital investments within the agency?

**Mr JAMES:** We have not been given any directives. We find ourselves in a position where we have to have some regard to the fact that we are going out of existence in deciding what capital expenditure we occur, but we have not been given any directives.

**CHAIR:** In order to better monitor complaint handling mechanisms, the Ombudsman now has access to a number of agency intranets. Do you have access to the NSW Police Force intranet?

**Mr JAMES:** Yes, we do.

**CHAIR:** Will there be a benefit for you and LECC in having access so as to monitor corruption risk management policies and the information made available to police officers?

**Mr JAMES:** Yes.

**The Hon. SCOTT FARLOW:** Can I turn your attention to the prosecutions that have arisen out of the Police Integrity Commission investigations, which are on page 78. From a quick read, it looks to be a 50 per cent success rate. Is that usual?

**Mr JAMES:** A number of prosecutions result in convictions; a number of prosecutions do not result in convictions. We form a view that we should seek the advice of the Director of Public Prosecutions [DPP] on whether there is sufficient evidence for criminal charges to be brought. The Director of Public Prosecutions forms an opinion on that and, under the system that applied until very recently, the longstanding arrangement was that a criminal prosecution would be formally instituted by an officer of PIC by taking out a court attendance notice but the prosecution would be immediately taken over by the DPP and the DPP would completely control the conduct of the prosecution. It does happen that some of the prosecutions do not result in a conviction. We have had examples of the mental health legislation being invoked successfully by police officers, having the effect of avoiding a conviction.

**The Hon. TREVOR KHAN:** Or it may be that a jury of fact is not convinced beyond reasonable doubt.

**Mr JAMES:** That is so. A number of these cases are heard by magistrates.

**The Hon. TREVOR KHAN:** We will not talk about the vagaries of magistrates. I have been away for a while.

**Mr PAUL LYNCH:** You and me both.

**The Hon. SCOTT FARLOW:** Are you seeing any spikes in particular areas of either police corruption or integrity issues? Are there any areas that are becoming troubling for you or where you are seeing more complaints arising?

**Mr JAMES:** I do not think so. I will ask Mr Kirkpatrick whether he has any views on that.

**Mr KIRKPATRICK:** Thank you, Commissioner. So far as allegations are concerned we have had a higher level of concern in the last year or two about links to outlaw motorcycle groups [OMCG]. Those groups are notorious for drug and steroid use. We are seeing allegations of that in some levels of the police.

**Ms ELENI PETINOS:** As we are touching on outlaw motorcycle groups, looking at the profile of investigations I see that the improper association number has increased this year. What do you attribute the increase to?

**Mr JAMES:** I think that is in accordance with what Mr Kirkpatrick said.

**Ms ELENI PETINOS:** Has there been a specific focus on this area? Is it an emerging trend that you have become aware of? Has there been an active focus on the area?

**Mr JAMES:** I think it is a trend that has been emerging, rather than there being any active steps by us of our own motion. There certainly have been instances of associations between a police officer and an OMCG, often with the further allegation or at least the suspicion that police information is being provided by the police officer to the OMCG for consideration.

**Ms ELENI PETINOS:** Outside OMCG, what else does your label of "improper association" capture?

**Mr JAMES:** Anybody with criminal associations or criminal links. It need not necessarily be a member of an OMCG. In general, it is an association that police ought not to have with someone from the criminal community.

**Ms ELENi PETINOS:** Are there any other typical examples or any other patterns that have emerged over the last year?

**Mr JAMES:** Without being members of an OMCG there are people who are reputedly drug dealers, and we look at associations between reputed drug dealers and police officers.

**The Hon. ADAM SEARLE:** On page 7 of your most recent annual report there has been a decline in the number of public hearing days compared to the previous two years. The number of public hearing days last year was only five, and that was in Operation Protea. Would you tell the Committee what is your view of the reason for the decrease in public hearing days conducted by the PIC? Is it lack of business or some other reason?

**Mr JAMES:** I think the figures show that there were a large number of private hearings in that year. The great majority of our hearings are private hearings. In 2014-15 we had one public hearing going over the five days. The year before, from recollection, there was only one public hearing but that was in Operation Montecristo. What distinguished Montecristo was that there were a large number of hearing days. It was the same public hearing but a large number of days and a much greater number of witnesses. It was a case in which 15 to 20 police officers were involved. Not all of them gave evidence at the public hearing.

**The Hon. TREVOR KHAN:** I want to follow up on that. It might be difficult for me to articulate this and difficult for you to explain. Are you able to explain the strategy of how you use the private hearings in relation to a subsequent public hearing? What are you trying to get out of the private hearing and then either replicate or expand upon in the public hearing? There must be some sort of case theory that underlines how you run your operation.

**Mr JAMES:** One strategy followed is to have private hearings of what might be called the less important witnesses to acquire information that can be used in public hearings of the more important witnesses. That is something that we often do. It is the case that we sometimes have private hearings of people who we anticipate will be called to the public hearing. That does happen.

**The Hon. TREVOR KHAN:** And that would be to firm up, I take it, what their evidence is likely to be at the public hearing?

**Mr JAMES:** Yes.

**The Hon. TREVOR KHAN:** They cannot go back on that once they have given it in the private hearing, I take it.

**Mr JAMES:** Not very readily.

**The Hon. TREVOR KHAN:** Not without exposing themselves to possible prosecution.

**Mr JAMES:** Yes. I might say that in deciding whether there should be a public hearing we have to apply our Act, which says we must have regard to the public interest. The Act does make clear that damage to reputation or invasion of privacy are matters that we can take into account in assessing the public interest. There was some doubt about that, whether those matters really went to the public interest. Generally speaking, since I have been the Commissioner the public hearings we have had have been in matters that are already in the public domain. We also take into account whether someone such as a politician or a judicial officer has referred the matter to us, particularly if the fact that the matter has been referred to us has received publicity in the media.

**The Hon. TREVOR KHAN:** If it has been referred by a politician it is likely to have been.

**Mr JAMES:** Yes.

**The Hon. SCOTT FARLOW:** With a press release attached.

**The Hon. TREVOR KHAN:** Not if it has been done by a leak.

**Mr PAUL LYNCH:** On a slightly different topic, section 26 of your legislation gives Police Integrity Commission officers the power to serve a notice to produce. I am interested in the practicalities of that. Is there a return date set, where things are produced in court, or do you turn up and just give a notice to produce to a person of interest?

**Mr JAMES:** The standard form of notice requires the production of the documents or things to the premises of the Police Integrity Commission at 111 Elizabeth Street. There is a return date, usually two to three weeks ahead. Our usual practice is that officers of PIC have been in communication with the potential recipient of the notice, and the notice has been discussed and the amount of time required to comply with any notice has been discussed. So usually by the time the notice is issued any problems have been obviated.

**Mr PAUL LYNCH:** Are there any instances that you know of where there has not been a return date and someone has simply had a notice to produce served on them and has been told to produce something forthwith?

**Mr JAMES:** I am not aware of any. I sign the notices to produce and, to the best of my recollection, there has always been a return date.

**The Hon. TREVOR KHAN:** Do you use them on persons of interest?

**Mr JAMES:** Yes.

**The Hon. TREVOR KHAN:** In that case, do you still give a return date and place for delivery?

**Mr JAMES:** Yes.

**The Hon. TREVOR KHAN:** I will ask the \$64,000 question. Would it not be unusual to turn up at somebody's house, be invited in, and then bung on them a notice to produce that says, "Give us your mobile phones forthwith."

**Mr JAMES:** I am told that it is unusual but that that has happened.

**The Hon. SCOTT FARLOW:** Within your agency?

**Mr JAMES:** Yes.

**The Hon. ADAM SEARLE:** Can you give us any further details about that? Has that happened in the last year or was it some years ago?

**Mr JAMES:** I am not personally able to do that.

**The Hon. ADAM SEARLE:** I am happy for you to take the question on notice and provide us with such answers as you can.

**Mr JAMES:** Yes. We will take that on notice.

**The Hon. TREVOR KHAN:** Seeing it has been, in a sense, whispered in your shell-like, Commissioner, are you able to say whether, to your recollection, in your time as Commissioner, you have signed such a notice.

**Mr JAMES:** To my recollection, I have not.<sup>1</sup> I usually make a point of checking the return date. I became Commissioner in the first week of January 2012, and a couple of the first notices I received, by error had a return date of 2011, which prompted me to look carefully at return dates. I have no recollection of signing a notice to produce which did not have a return date.

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<sup>1</sup> See the PIC Commissioner's clarification of his comments regarding notices to produce 'forthwith' [here](#).

**The Hon. TREVOR KHAN:** The standard form for these documents includes a box half way down the page, does it not? There are about three dot points. It has, "You are required to produce ..." on a particular date, at a particular place. A further dot point says, "to", and it nominates a person that it is to be produced to as well. That is the sort of form that it takes, is it not?

**Mr JAMES:** Yes.

**The Hon. TREVOR KHAN:** When you look at this form and sign it there is an expectation of a certain pro forma having been applied in terms of what you are going to see in the relevant box.

**Mr JAMES:** Yes.

**The Hon. TREVOR KHAN:** If one of those dot points were missing, it would not be anything but obvious to you.

**Mr JAMES:** The notices that I have signed have followed a very standard form. I think I would notice anything unusual.

**Dr HUGH McDERMOTT:** Over the last months especially—but probably over the last two years or more—there have been issues regarding criminal activity within new recruits at the NSW Police Force Academy in Goulburn. Would I be right to say that you do not have jurisdiction over people until they are sworn officers? Is that correct?

**Mr JAMES:** We have jurisdiction over police administrative officers who are not sworn. You are speaking about recruits.

**Dr HUGH McDERMOTT:** I am speaking about recruits at Goulburn who, since their time there, have had to leave the training process because of criminal activity.

**Mr JAMES:** I have never considered that but it might well be the position that we do not.

**Dr HUGH McDERMOTT:** As far as I understand it, you do not have jurisdiction until they are sworn as police officers. Do you think that that is a gap or a problem—that perhaps you should have jurisdiction over those people?

**Mr JAMES:** I have never thought about it before. I would like to take that on notice, as well.

**CHAIR:** I thank the Hon. Bruce James, Ms O'Brien, Mr Barnett, and Mr Kirkpatrick for their attendance today. I thank you for your frankness. There are some questions that we will be putting on notice. The committee may wish to send you some additional questions in writing, the replies to which will form a part of your evidence made in public. Would you be happy to provide written replies to any further questions?

**Mr JAMES:** Yes.

**(The witnesses withdrew)**

**DAVID LEVINE**, Inspector of Police Integrity Commission, affirmed and examined:

**SUSAN RAICE**, Principal Legal Advisor, Office of Inspector of Police Integrity Commission, sworn and examined:

**CHAIR:** Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr LEVINE:** No, sir.

**CHAIR:** I invite you to make an opening statement before we proceed to questions.

**Mr LEVINE:** One I trust of extreme brevity, Mr Chair. To my mind as Inspector of the Police Integrity Commission the last two years functioning of that Commission and of my Inspectorate have been positive. The relationship between the Commission and the Inspectorate and their respective staff has been harmonious and productive. The major matter of Operation Anafi has been completed. There is the matter of Operation Calyx, which is for trial early this year, in April. I mention the matter of Operation Calyx, which Committee members may recall is the shooting death by an officer, because its timeline was and is disturbing. However, the Tink reforms if adopted, in principle at least, will serve to ameliorate that kind of situation as I understand it. The outstanding matter over which this Inspectorate has no control and I do not know, to be candid, whether anybody has control is the matter that was known as Emblems. It is out of our hands and I believe still with the Ombudsman. I can make absolutely no comment on that. I know nothing.

**The Hon. TREVOR KHAN:** It is best to stay clear I suspect.

**Mr LEVINE:** Thank you. Otherwise that is all I have to say by way of opening statement. It has been a quiet two years by itself and relative to other aspects of governance. Things have been going very well and I support in principle if not in detail the proposed Tink reform.

**Mr PAUL LYNCH:** I will start with a clarification. I notice that an assistant Inspector was appointed in relation to the Independent Commission Against Corruption [ICAC].

**Mr LEVINE:** Yes.

**Mr PAUL LYNCH:** Of which you of course are the Inspector. Does that appointment also apply to that person for the PIC?

**Mr LEVINE:** No, that person has only then appointed for ICAC.

**Mr PAUL LYNCH:** What has been the impact on your workload as the PIC Inspector of the ICAC matters?

**Mr LEVINE:** None, it is the other way round. The reduction in the workload of PIC over the last two years has been administratively very convenient in this sense: That over the same period there has been the explosive increase in the amount of work for the Inspector of ICAC.

**Mr PAUL LYNCH:** So in your view there was no need for there to be an assistant Inspector of the PIC?

**Mr LEVINE:** Yes, I agree.

**Mr PAUL LYNCH:** I think that concludes my questions.

**The Hon. ADAM SEARLE:** Mr Levine, you said that you are generally in favour of the Tink proposals. Can you outline what you see as the positives of those proposals in your view.

**Mr LEVINE:** If they work and are structured correctly—

**The Hon. ADAM SEARLE:** That is an important caveat.

**Mr LEVINE:** And the right people are appointed—

**The Hon. ADAM SEARLE:** That is a second very big caveat.

**Mr LEVINE:** It should reduce the type of thing that happened in Operation Calyx, for one—that is, the long time between the event and the yet-to-occur resolution. There are several interests that would be served by anything to eliminate that type of thing—if the principal interest is that of the community of New South Wales, the second interest is that of the NSW Police Force as an entity of the administration of justice and the third interest is the interest of serving police officers. There can be too many inquiries by too many people into matters quite disproportionate to that labour. I think removing the matter from the jurisdiction of the ombudsman would be a valuable step as well so that you would have the independent civilian oversight and police oversight. The reduction to that model should work more effectively than what has happened hitherto.

**The Hon. ADAM SEARLE:** The PIC Commissioner gave evidence just before you and, although it is not clear, it seems possible, even if it is not indeed likely, that the new body recommended by Mr Tink will essentially be comprised of existing personnel and staff of the PIC just transferred over and rebadged. What would be your view of that kind of approach on the effectiveness of implementing the Tink model?

**Mr LEVINE:** There are two conflicting elements. I think it highly desirable in institutions such as the PIC and ICAC and any oversight body that there be a period of time in which there is a refreshment of blood in the personnel. That did happen in the PIC, and I do not intend to be wanting in immodesty by saying that it happened when both the Commissioner and I were appointed—a new era started. So the one desirable component is that there be a turnover.

Whether it is going to be every five years or every seven, in another place it can be every nine, which I think might be a bit long, that has to be matched with the desirability of not losing the experience of people who have been working with the PIC, the prior existing organisation. I can see no reason in relation to such members of the upper echelons of the PIC with whom I am acquainted that they should not for some time carry over to the new position. I think it would be invaluable. But that does not mean I support necessarily, and I say this in no personal way, that they spend the rest of their careers there. New blood and experience have to be combined.

**The Hon. TREVOR KHAN:** I take it that you would envisage as an appropriate model that you turn over your Commissioner of PIC, for instance—and we will only talk in terms of PIC—on a five-year cycle or a seven-year cycle and your assistant Commissioner or Commissioners, if they exist, on a similar five- or seven-year cycle, but on an alternate cycle so you have continuity?

**Mr LEVINE:** Yes, there should be an overlap. The Commissioner, in my view, should not be there for more than five years, nor should assistant Commissioners, but they should start at different times so that they are present for when a new Commissioner arrives or a new assistant Commissioner arrives.

**The Hon. TREVOR KHAN:** Are there any other levels of the organisation, apart from Commissioners and assistant Commissioners, where you would apply a fixed term of a similar nature?

**Mr LEVINE:** Difficult. I do not have close acquaintance with those at lower levels. I do not think it is a good idea that a person who comes in as a lawyer to the institution at the time the institution is established is still there three decades later.

**The Hon. SCOTT FARLOW:** Do you think that should be captured in the legislation establishing the LECC?

**Mr LEVINE:** If that is the only way for it to be done, yes; or other internal mechanisms, I just do not know. But the culture of an institution, in my view, is established at the top and any change of that culture at that level will filter down to the benefit of the institution by affecting the people at lower levels.

**The Hon. SCOTT FARLOW:** Do you think the appointment of Mr James has benefited the culture of PIC?

**Mr LEVINE:** Unquestionably, yes.

**Ms ELENI PETINOS:** Have you been involved in the work of the implementation group?

**Mr LEVINE:** No.

**Ms ELENI PETINOS:** Do you have an issue with this?

**Mr LEVINE:** No.

**Ms ELENI PETINOS:** Given your experience in your current role, how much additional resourcing would be required for the Inspector of the new body?

**Mr LEVINE:** I do not know; I really do not know the answer to that. I could say, be prepared for the appointment of an Inspector and an assistant Inspector and make provision for both in whatever legislation is enacted. I would rather be in a position to start at a high level than have to go through the business of building up to a level over a number of years. I think there is enough experience and history from both of either the PIC or the Ombudsman and the police for the legislators to get some good ideas for staffing and other levels.

**Ms ELENI PETINOS:** In your submission to the Tink review you outlined concerns about the overlapping or duplication of functions by various agencies following a critical incident. Do the recommendations for how the LECC monitor investigation of critical incidents address your concerns?

**Mr LEVINE:** Overall, yes. If you are asking me if what Mr Tink suggests is adopted would overcome that, yes.

**The Hon. TREVOR KHAN:** I take you to the issue of private hearings and public hearings. Do you think it is appropriate for the same person to be involved in the preliminary arrangements for an investigation or operation and then sit on the private hearings and then the public hearings?

**Mr LEVINE:** Accepting a model that involves both private and public hearings, in a perfect world the same person should conduct both the private and public hearings. I myself, from experience generally, am unimpressed if an inquiry is constituted by witnesses A and B being privately examined by X, and C and D by Y, and then the public hearing by Z. That inevitably leads to the question: Who contributed what input into the wider ultimate decision, when it is made, particularly based upon the subjective response of each separate interviewer to the witness they might have happened to have interviewed? That is the public and private inquiry; the antecedent step of investigation is another matter, and I have no difficulty with any number of required officers conducting preliminary investigations that provide the material that will then lead to either a public hearing at the end or the intervening private hearings.

**The Hon. SCOTT FARLOW:** I turn to the annual report and expenditure for the period 1 July 2014 to 30 June 2015, which was \$235,919 as opposed to \$438,554 the previous year. From your perspective, what is the reason for the significant difference?

**Mr LEVINE:** I must confess when I, after so long, reread these annual reports for today I, in fact, flagged that part and said good grief.

**The Hon. SCOTT FARLOW:** Cost savings for New South Wales taxpayers?

**Mr LEVINE:** That is always our—

**The Hon. SCOTT FARLOW:** Aim, very good to hear.

**Mr LEVINE:** —aim but not at the expense of the just administration of instruments of governments. The money side of this presently existing Commission is handled by the Premier's department; we do not have our own budget.

**The Hon. TREVOR KHAN:** It must be right then.

**Mr LEVINE:** His management. I think at that time we were beginning to see the downturn in the work—business, in effect. If things were to continue without any Tink intervention, I would imagine that there would still be a figure in that general area for the remaining year of PIC, or however long it is.

**The Hon. SCOTT FARLOW:** This is not necessarily in the remit of this Committee, but considering your role as also the Inspector of Independent Commission Against Corruption, would you expect similar figures for the oversight of that agency or would they be higher?

**Mr LEVINE:** I think there is no other answer than they would be going up.

**The Hon. SCOTT FARLOW:** In terms of your workload and focus, would it be fair to say it would be predominantly based on oversight of the ICAC rather than the PIC?

**Mr LEVINE:** Yes.

**The Hon. TREVOR KHAN:** If you were to stand back from your role and look at it as an objective observer, what would you like changed in your powers, if anything, to more effectively perform your role?

**Mr LEVINE:** One weakness of the system—I am not embarrassed to talk about both the Police Integrity Commission and Independent Commission Against Corruption.

**The Hon. TREVOR KHAN:** You have an idea why I am asking?

**Mr LEVINE:** I am practising for the ICAC.

**The Hon. ADAM SEARLE:** Tell us what you think. How you answer is a matter for yourself.

**Mr LEVINE:** There is no merits review. Matters go to the supreme court for administrative review that will not affect the merits of any finding by the PIC or ICAC. Whether a person in the position of Inspector can perform some filtering role might be worth looking at. That person does not presently have a strictly judicial function, it would be an executive function. It is a difficult and provocatively philosophical question and issue. In my view an Inspector already can report to a Parliament about a major issue involving a PIC enquiry and say, "I have seen everything, I have examined everything, I note that the PIC has recommended A, B, C, D and E. I disagree for the following reasons and I recommend E, F, G, H." I think that can presently be done but to what effect practically I do not know. I think the real function of the Inspector is to make sure that the oversighted body behaves lawfully. That means with good sense, common sense and discretion, amongst other things.

**CHAIR:** Thank you, Inspector and Ms Raice, for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies of which will form part of the evidence made public today. Would you be happy to provide written replies to any further questions?

**Mr LEVINE:** Yes. Certainly.

**(The witnesses withdrew)**

**(Short adjournment)**

**GRAHAM RUSSELL BARR**, Office of the Inspector of the NSW Crime Commission, affirmed and examined:

**CHAIR:** Thank you for coming along today Inspector. Before we proceed do you have any questions concerning the procedure or information sent to you in relation to the witnesses and hearing process?

**Mr BARR:** No.

**CHAIR:** would you like to make an opening statement prior to the commencement of questions?

**Mr BARR:** No, thank you.

**Mr PAUL LYNCH:** Inspector, you are no doubt aware of the Tink report?

**Mr BARR:** Yes.

**Mr PAUL LYNCH:** And the proposal to effectively abolish your position, I am wondering what your view of that may be?

**Mr BARR:** Would that matter?

**Mr PAUL LYNCH:** It does to the Committee.

**Mr BARR:** My view is set out in my submissions that I made to Mr Tink.

**The Hon. ADAM SEARLE:** I have no questions.

**Mr BARR:** I am remiss, most of you have met Angela Zekanovic previously. She is the solicitor who assists me in my office.

**Ms ELANI PETINOS:** We can talk about resourcing. Are the current levels of resourcing and staffing sufficient for you to adequately perform your functions?

**Mr BARR:** Yes.

**The Hon. SCOTT FARLOW:** You receive very few complaints, which is the view you have outlined in terms of not revealing some of the details because it could identify persons, how many complaints would you receive per year regarding the operation of the Crime Commission?

**Mr BARR:** It is in the report, not many, a handful. One of the reasons for this is that the complaints go to the Police Integrity Commission. Anybody who comes by knowledge of a complaint about the Crime Commission or an officer of the Crime Commission is bound by the Police Integrity Commission Act to report it to the PIC, nobody has to report it to me even though I have the power to deal with it. That explains why a lot of that material goes in that direction and bypasses me altogether. There are a couple of matters that are going on at the moment which you can ask the PIC about or may already have asked.

**CHAIR:** Thank you very much for appearing today.

**Mr BARR:** It is a pleasure, always glad to help.

**CHAIR:** The Committee may wish to send you some additional questions in writing the replies to which will form a part of the evidence conveyed to the public. Would you be happy to provide a written reply to any further questions?

**Mr BARR:** Yes, of course, I would.

**CHAIR:** I apologise for the interruption to your day.

**Mr BARR:** It is not an interruption.

**(The witness withdrew)**

**PETER HASTINGS**, Commissioner, NSW Crime Commission, affirmed and examined:

**CHAIR:** Thank you for coming along this afternoon. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr HASTINGS:** No, thank you.

**CHAIR:** Would you like to make an opening statement before the commencement of questions?

**Mr HASTINGS:** No, thank you.

**The Hon. ADAM SEARLE:** Could I ask you to tell the Committee about the restructuring of the Crime Commission and how you see the restructuring advancing the work of the organisation?

**Mr HASTINGS:** Past or present restructuring, or future?

**The Hon. ADAM SEARLE:** Could you tell us what you have done to date and what you are planning to do in the future and how that feeds into enhancing the role of the Commission?

**Mr HASTINGS:** To date the emphasis has been on restructuring with a view to improving the management of the Commission by introducing a director of corporate services and a director of legal services. That, I think, has had a major improvement on the way the place is administered—although there are some major challenges ahead. The future is a little uncertain. On the one hand I am looking at revising the operational side of the Commission to fall more in line with the Queensland Crime and Corruption Commission model.

I might have mentioned previously that I have been to see them and was impressed by the way their organisation is structured in terms of having a standing reference in relation to organised crime and then cooperating with the Queensland Police Service in identifying specific crimes that the Commission there can assist the investigation of by using its coercive powers. I do not think we do that particularly well. What I am aiming to do is to revisit our relationship with the New South Wales police to broaden the scope of the matters in which the Commission can assist by getting out of drugs and getting into other crimes in which hearings are a more likely contribution.

**The Hon. ADAM SEARLE:** You see an increased role for hearings as part of the operation of the Crime Commission?

**Mr HASTINGS:** Very much so, yes. I think that was a silent change made by the 2012 Act in that the terms for making a reference by the management committee changed from a vague concept of whether ordinary police methods would be effective to a more direct requirement that the management committee shall not issue a reference unless satisfied that the use of the powers of the Commission are necessary to investigate. I think the natural consequence of that is a judicial requirement on the Commission to use its powers more.

**The Hon. ADAM SEARLE:** You talked about revising the operational side of the Commission more in line with what happens in Queensland. Are you able to tell us what particular innovations you are considering?

**Mr HASTINGS:** In broad terms I think it is a move away from drugs. In fact, the Commission started as the State Drug Crime Commission but over time the drug connection was removed, including from its title. As I mentioned earlier, the terms upon which references may be issued makes it even more important that the Commission will have a broad remit in relation to a wider variety of crimes than drugs. As it turns out, drug investigations are probably the least likely area of activity in which the Commission can use its powers because once the Commission begins to use its powers it becomes known to the targets that they are under investigation and more than likely they will desist.

**The Hon. ADAM SEARLE:** Last September an article in the *Daily Telegraph* talked about staff morale in the Crime Commission and linked to a People Matter survey conducted in the public sector. The article and the survey indicated issues that staff members have with the leadership and management of the Commission. Can you tell the Committee about your view on the matters contained in the People Matter survey and how you propose to address those concerns?

**Mr HASTINGS:** I think you have already asked me this but I will say it again if you like. I think one of the difficulties is that the staff of the Commission have been in a comfort zone where they have got used to doing what they have always done, which is the catchcry that I continually get when I suggest change. What has caused them some dissatisfaction, I think, is the change itself. As I might have mentioned on the last occasion, there is more to come because there are some major aspects of the operation of the Commission which are yet to take effect.

We have just introduced electronic document record management, which is driving everyone crazy, including me, because it means that every piece of paper you have got has got to be scanned. For the lawyers in particular and the financial analysts and forensic accountants their vast quantities of material have got to be scanned into a system in order to comply with the State Records Act. There are major changes to happen to the IT system, which has been allowed to fall behind in terms of its robustness insofar as it is prone to immediate collapse, so we are told by experts, and will be inadequate for the future of the Commission. And the dark shadow of the Government Sector Employment Act looms over the Commission, which will probably cause half the staff to leave.

**The Hon. ADAM SEARLE:** Can you talk to us some more about that particular issue? Before the Government Sector Employment Act what was used to govern the employment relationships in the Commission?

**Mr HASTINGS:** Common law, I am told.

**The Hon. ADAM SEARLE:** I think from what you have just said that the Government Sector Employment Act will now apply to the Commission staff? Is that your understanding?

**Mr HASTINGS:** That is my view. There is a little bit of uncertainty about it but I think the majority view is that it will. There are negotiations underway with the Public Service Commission at the moment as to whether that is the fact and how the process of implementation will unfold.

**The Hon. ADAM SEARLE:** As far as you are aware does the Government Sector Employment Act now legally apply or is it to apply at some future date to staff of the Commission?

**Mr HASTINGS:** On my view legally it does apply. The question is whether the Commission complies, more than anything. But there is a time frame in which that may be done, which is February next year.

**The Hon. ADAM SEARLE:** February 2017. What steps are you now taking to engage with your workforce about these changes?

**Mr HASTINGS:** At the moment there is very little we can do because we are in a state of indecision because we have opened discussions with the Public Service Commission and at the moment they have stalled because of some apparent uncertainty as to whether the Act applies to the Commission or not. We have not been able to inform the staff much more than that. We have in the executive sort of contingency plans which we have in mind but we are not in a position to say anything about them until we know precisely what we have to do.

**The Hon. ADAM SEARLE:** I am not asking you for the content of any advice but have you sought as Commissioner any advice about the applicability or otherwise of the Government Sector Employment Act to your Commission or are you relying on the Public Service Commission to advise you as to its view?

**Mr HASTINGS:** I gave myself advice. I have been in the law for a while.

**The Hon. ADAM SEARLE:** I accept that.

**Mr HASTINGS:** No, various people at the Commission looked at it. I looked at it myself. I think my view is anyway that it probably does apply. It seems to be generally accepted elsewhere except in one area and the Crown Solicitor's advice is being sought.

**The Hon. ADAM SEARLE:** That was going to be my next question, whether Crown advice was being sought. Assuming that the Government Sector Employment Act does apply to the Commission and its staff—

and I think you adverted to a fairly drastic outcome of staff resigning in that case—what do you see as the practical impacts on your staff as a result of that legislation applying?

**Mr HASTINGS:** For some people less pay I think.

**The Hon. ADAM SEARLE:** At what level?

**Mr HASTINGS:** The senior level; coming a fair way down. At the moment the immediate obligation is to introduce the senior executive implementation plan, which has a reduced number of senior officers. One needs to fit into those bands, and the bottom level comes a far way down our staff in terms of pay levels.

**The Hon. ADAM SEARLE:** Assuming the Government Sector Employment Act does apply what award would apply to you—

**Mr HASTINGS:** There is not one.

**The Hon. ADAM SEARLE:** If there is no award restriction how then would that effect remuneration?

**Mr HASTINGS:** At the moment there are prescribed levels for senior executives—levels four down to one—so at that level there is some certainty. If and when an award is made then it would apply to other staff as well, unless one can exempt them.

**The Hon. ADAM SEARLE:** But at the senior executive level there is the possibility of applying to the tribunal to set bands for particular roles or functions, is there not?

**Mr HASTINGS:** It is limited because the tribunal already fixes my salary and that of the assistant Commissioner. It may be possible to get the next level included but that is the subject of discussion.

**The Hon. ADAM SEARLE:** Part of the role of the NSW Crime Commission, of course, is to disrupt organised criminal activity in New South Wales, and that is obviously a difficult thing to measure. How do you think we or you, indeed, could measure the effectiveness of the NSW Crime Commission in undertaking its activities?

**Mr HASTINGS:** I am waiting for this Committee to tell me. I am waiting for the report following the inquiry in 2013—was it?

**The Hon. ADAM SEARLE:** That was the Catherine Cusack inquiry about inputs and outputs?

**Mr HASTINGS:** Yes. I am being facetious. I say that because it is a very difficult topic and my assumption is that the Committee having embarked on it realises how complex it is. There are a number of factors that are not indicators—and I have said this to you before—in relation to charges and arrests. They really mean nothing because a lot of them are low-level people and in terms of measuring disruption to organised crime amount to very little.

**The Hon. ADAM SEARLE:** In the budget papers there is a forecast decrease in arrests predicted.

**Mr HASTINGS:** That is right.

**The Hon. ADAM SEARLE:** And there has been a decline in telephone intercepts and other things. You are saying that none of those mean anything or do they mean something but not much?

**Mr HASTINGS:** They do not mean much. If you want the most tangible key performance indicator under the Act it would be the number of hearings we have. That is the key function of the Commission and tied directly into that is the granting of references. One of the factors that I have been pushing very hard within the Commission is to increase the number of hearings because that is basically why the Commission exists. The utility is another question I suppose, but in statistical terms the fact that we have now increased the number of hearings that we have I think is one indicator that we have increased our output.

**The Hon. TREVOR KHAN:** If that were the measure, that is as capable as being manufactured as anything else. You could just get low-level scum off the street and have a chat and count them as a number.

**Mr HASTINGS:** Quite right. Just in the statutory framework if you were to look for some function that is central to the existence of the Commission, it is the use of its coercive powers. So the number of times that we use them I suppose is one indicator of our productivity.

**The Hon. ADAM SEARLE:** I readily accept that no one indicator would necessarily paint the whole picture, but what are the key factors that you think regard should be had to in determining whether or not the Commission is operating effectively?

**Mr HASTINGS:** I really think it is beyond measurement. In my view, if the Commission were to have four arrests of tier one criminals in a year that would be a major event; whereas, as you know from my annual reports in the past, the figure is something like 400 or 500 arrests and charges and that means nothing because they are tier three, tier four low-level runners and street dealers. The thing that really counts from the Commission's point of view is the extent to which we really hit the top line of organised crime, because the police don't.

**The Hon. ADAM SEARLE:** Apart from hearings, what other factors do you think regard should be had to in determining whether or not the Commission is operating as effectively as it can?

**Mr HASTINGS:** As I indicated, there is not really one factor that is capable of being applied in order to effectually measure its performance.

**The Hon. ADAM SEARLE:** I understand there may not be one factor but I am asking whether you think there might be three, four or five factors that taken together might provide a window into how effectively the Commission is operating.

**The Hon. TREVOR KHAN:** I think Mr Searle is asking you to do a Robert McNamara body count sort of exercise. We all know how well that went.

**The Hon. ADAM SEARLE:** Not necessarily, but if you cannot give an answer I am happy for you to take the question on notice.

**Mr HASTINGS:** As one would expect from Mr Searle, it is a very pertinent question; my difficulty in answering is that it is almost impossible to come up with an answer. I mean our function is to reduce the incidence of organised crime—we have been given certain powers to do that and we use those powers. Thereafter it becomes a matter of almost luck sometimes as to whether you actually secure arrests or you don't. One of the reasons I mentioned the telephone interception issue in the annual report is that that has become a substantial impediment to arresting tier two and even tier one criminals because they are simply not using phones in a way that is interceptable.

I was reading that new book by Clive Small the other day about the mafia and right towards the end there is a story about the arrest of Pasquale Barbaro in 2008 with his 4.4 tonnes of ecstasy. They have chapter and verse about who was doing what and when and who paid and why, and all that sort of business, because at that stage even crooks of Barbaro's standing talked on the phone. The Australian Federal Police apparently had 185,000 recorded conversations from their telephone intercepts.

That just does not happen anymore. We still have to sit on people's phones, because if you do not it is sort of neglect but at the end of the day it is absolutely nothing because they just don't speak on their phone or they are using a BlackBerry or Viber or some other app. From the Commission's point of view it is a serious impediment because the Commission has basically been in the past a telephone intercept agency. With its small budget, the one thing that it could do rather cheaply and effectively was to put someone's phone off and have analysts sitting there all day listening to it and digesting the information that was obtained. That has now ground to a halt, and the way in which we circumvent that is still under discussion.

**The Hon. ADAM SEARLE:** Obviously cooperative arrangements between the NSW Crime Commission and the NSW Police Force would be a key relationship for the Commission to foster and maintain in good working order. Would you agree with that?

**Mr HASTINGS:** Yes.

**The Hon. ADAM SEARLE:** How would you describe the operational relationship between the Commission you head and the NSW Police Force? Has it improved under your stewardship, has it remained about the same or has it decreased?

**Mr HASTINGS:** I think it has remained the same. That is not to say it is perfect by any means. There are ongoing discussions that I am having with the Commissioner and deputy Commissioners about new arrangements and they are progressing positively. I am hopeful that before long there will be a new arrangement, which will better suit the revised role of the Commission in the light of the difficulties I have been outlining.

**The Hon. ADAM SEARLE:** I do not wish to verbal you or put words in your mouth, but your evidence is that it is very difficult to evaluate the effectiveness of the Commission. Things like interception warrants, surveillance device warrants, arrests and charges do not tell you much. The number of hearings you think is a pertinent matter, but beyond that it is very hard to adjudge how effective the Commission has been. Is that what you are saying?

**Mr HASTINGS:** That is right. You have mentioned warrants. In fact, I think if one compares the numbers of telephone intercepts and surveillance devices over the last three years, at the end of this 2014-15 financial year the volume of them is about 55 per cent of what it was two years ago. So in two years the number of telephone intercept warrants we have obtained and, for some reasons, surveillance device warrants, has dropped by over 50 per cent.

**The Hon. ADAM SEARLE:** Is that because it is your evaluation that they are not as effective a tool as they were in the past, or is there some other reason why they are decreasing?

**Mr HASTINGS:** No, that is quite simply it. In the last 18 months—and it is not just our Commission that is saying it—after the Paris terrorist attacks even the French police were saying how difficult it is these days to keep track of terrorists because of the fact that they do not use phones. Following that, the Australian Federal police made a public statement in the *Australian* about how difficult it is without being able to make effective telephone intercepts. It is just the fact operationally. The problem is that I think the police numbers of telephone intercepts are exactly the same—

**The Hon. ADAM SEARLE:** I was going to ask you whether the NSW Police Force agree with your assessment.

**Mr HASTINGS:** —because they focus at a lower level where the people are still using phones. Street runners cannot operate a drug run without a phone, so they are using phones all the time. The problem is that it is that top level, the organisers that we should be attacking, who have stopped.

**The Hon. ADAM SEARLE:** Do the New South Wales police agree with your assessment about the decline in the utility of telecommunication intercept warrants or surveillance device warrants? Have you had dialogue with the NSW Police Force about these matters?

**Mr HASTINGS:** In the area in which I operate there is no dispute about it. I have raised this at meetings with AFP, the Australian Crime Commission, Australian Border Force and other regular meetings we have and no-one demurs, because it is the fact.

**The Hon. ADAM SEARLE:** So you are saying these other bodies all agree with your assessment about the declining utility of these mechanisms?

**Mr HASTINGS:** Yes. Again, the caveat is that it is at the level that the Commission is operating, and that is in the upper echelons of organised crime. I mean we are, at the moment, intercepting a lot of phones in relation to money laundering, because, again, those who are handing over cash cannot do so without ringing someone to say so. All you get is a 10-second conversation—"Meet you there. I need 50", or something—and that is it. I am sorry to be tedious about this but there is a subtle distinction between investigatory value of telephone intercepts, which comes from the example which I have just given, that you can get some assistance for your investigation by just a few words and the evidentiary value, and that comes from the sort of example I was giving earlier with the Barbaro case where they were just providing the prosecution with chapter and verse to prove their guilt because they said so on the phone.

**The Hon. ADAM SEARLE:** Sure, but a decline of 55 per cent obviously reflects—I think your evidence was that that was a conscious decision of a change of policy by you as Commissioner because of your assessment that the utility of those mechanisms as tools for your Commission were declining in their value.

**Mr HASTINGS:** No. I have given no instruction about it at all. This is just a natural consequence of the decisions to be made in relation to particular investigations. The opportunity just has not existed because we will get someone's phone number, get an intercept and then there is just nothing; so there is no point in persisting with a telephone intercept of that target because you know he does not use regular telephones. I do not instruct anyone not to intercept his phone—you can intercept his phone—the operational decision is that there is simply not an opportunity to gain any evidence and they do not do it.

**The Hon. ADAM SEARLE:** I think that is slightly different to what I had understood you were saying earlier, that is all.

**Mr HASTINGS:** No, not all. I mean, if there is an opportunity go for it. In fact, as I said, we do sit on phones for ages and get very little, but it needs to be done because of the chance that you will get some small shred of investigatory indication.

**The Hon. SCOTT FARLOW:** I just wanted to go back to Mr Searle's questions to you before in terms of measures of effectiveness and invite you to perhaps reflect on the estimated realisable value of confiscation orders and how effective you think that is in terms of making a measurement of the Commission's impact in disrupting organised crime.

**Mr HASTINGS:** First of all, as I have said in this forum previously, the figure itself is not particularly tangible because it can be inflated by one large seizure of \$10 million. In a total of \$20 million for a year it can suddenly give you an unrealistic look. But, having said that, in the years like last year where we did not have any particular large confiscation, it is, I think, a very meaningful indication of the productivity of our financial investigation division, that increasingly there is becoming an interaction between the finance side of things and the organised crime side, because as time has gone on I think law enforcement generally has suddenly woken up to the fact that you can only run big drug enterprises by huge transfers of money offshore. It is not just the profits; it is paying for the shipment that is coming in. So now, and particularly in the Commission, we are trying to focus more on the money side of the transfer than the drug coming in.

**The Hon. SCOTT FARLOW:** And that is because that tells you more, is that right?

**Mr HASTINGS:** No, it is because it more suits our functions I think. We can use our powers much more effectively in relation to remitters and financial institutions and so forth who are actually doing the transfers. So there is becoming a greater integration between the financial confiscation people and the criminal investigation side because the two are interlocking much more than they did in the past.

**The Hon. SCOTT FARLOW:** And how long has that trend been going for now, that you have got that sort of interrelation?

**Mr HASTINGS:** My observation is about two years. It is a bit like telephone intercepts but the other way around. I think for some reason, and I have been involved in this area for a long, long time, very little attention was paid to the money side of drug syndicates. There were money laundering cases that were run where cash was being received and seized but very little attempt to link the money transfers with the drugs coming in or having just come in, depending on whether they are getting them on credit or whatever.

**The Hon. SCOTT FARLOW:** Back to your original comments about the changing scope of the Crime Commission moving away from just drugs, there has been a fair bit of publicity recently with the Alo-Bridget Namoa matter in terms of some of the Crime Commission's work in terms of terrorist-related activities. Is that somewhere that the Crime Commission under your stewardship is focusing more now or being utilised more by police?

**Mr HASTINGS:** Yes, that is quite a deliberate policy on my part. The Commission, for a long time, has been a member of the Joint Counter Terrorism Team, the multi-agency organisation which is principally involved in looking at domestic terrorism in particular. But we were providing analytical support and I did not think that was a particularly significant contribution, so I suggested that the Commission ought to take advantage of its powers and use them in relation to domestic terrorism. I say that deliberately because the

Australian Crime Commission is also part of the same arrangements and they have publicly said they are investigating and conducting hearings for foreign fighters. So there is a neat division between the ACC's focus of interest in overseas activities and the threat provided by domestic terrorism. As the papers have, unfortunately, revealed, we have had several hearings—more than several—in relation to domestic terrorism activity.

**The Hon. SCOTT FARLOW:** With this move, is it something that the police are referring matters to you on or are they ones that you are picking up in terms of your intercepts or other investigatory activities?

**Mr HASTINGS:** No, they come out of the Joint Counter Terrorism Team, and the arrangement sort of being made with them that they will keep an eye open for persons whom they think could be usefully examined. We have got people there, so they are part of the discussion in terms of identifying persons of interest, and it just emerges naturally from that process.

**Mr PAUL LYNCH:** Commissioner, what is your view of the Tink proposal to abolish the Inspector of the Crime Commission?

**Mr HASTINGS:** I personally disagree with it. I thought having an Inspector should have happened at the Crime Commission a long time ago and I welcomed it. I fortunately can get on very well with our current Inspector and we collaborate on areas of sensitivity within the Commission that I think he can usefully examine or audit. I think having that extra oversight works quite well. I understand the proposal will be that there will still be some oversight but I doubt that it will achieve the same level of effectiveness as it has under Graham Barr.

**Mr PAUL LYNCH:** Why will that be?

**Mr HASTINGS:** As I understand it he has proposed that the new body, if it is to be the Law Enforcement Conduct Commission or something, will go back to the way the Police Integrity Commission supervised the Commission. I did not think that worked very well. It was partly a personality issue but in any event I just think having an Inspector directly involved in the Commission's activities is of benefit to the community and ensuring that there is proper oversight of the Commission.

**Mr PAUL LYNCH:** Thanks.

**The Hon. TREVOR KHAN:** You talk in terms of, in a sense, your relationship with Inspector Barr. How does that relationship work? Do you suggest matters to him?

**Mr HASTINGS:** I have—yes. He comes to the premises of the Commission quite regularly and audits processes. He has looked at the way in which we settle confiscation proceedings. He has looked at the way we manage our human sources. He has looked at our processes for issuing controlled operation authorities under the Law Enforcement (Controlled Operations) Act. In the course of those meetings we discuss what he might usefully do next. It was my suggestion that he look at our human source management, for example, because it is a sensitive area and I thought the more input we have in terms of our system the better it is. So he has spent some time there and he comes back and reviews some of the paperwork and so forth.

**The Hon. TREVOR KHAN:** So it is an entirely cooperative relationship that has built up, it seems.

**Mr HASTINGS:** That is right. Having said that, once he goes about the task of auditing our controlled operation authorities, I do not have anything to do with it. He just goes and does it and eventually decides whether he needs to report or not. It is all done independently by him.

**The Hon. ADAM SEARLE:** Commissioner, getting back to your earlier evidence about the potential impact of the Government Sector Employment [GSE] Act on the Commission, I think you said something like, "A lot of staff would be likely to resign." Which positions in your organisation are likely to be impacted? I think you said "senior management positions".

**Mr HASTINGS:** That is right.

**The Hon. ADAM SEARLE:** Without naming names, which positions are likely to be impacted?

**Mr HASTINGS:** Directors and assistant directors and another layer or two below them.

**The Hon. ADAM SEARLE:** Okay. I think there are about 150 staff members in the Commission.

**Mr HASTINGS:** Yes.

**The Hon. ADAM SEARLE:** So how many positions do you think would be adversely impacted by the GSE legislation?

**Mr HASTINGS:** Around 23, I think.

**The Hon. ADAM SEARLE:** About 23. If it did impact those 23 and a sizable number of those persons departed the organisation, what impact would that have on the effective operation of the Commission?

**Mr HASTINGS:** Life will go on.

**The Hon. ADAM SEARLE:** But it would certainly be very disruptive, wouldn't it?

**Mr HASTINGS:** Oh, yes. It will not happen in a block. This will take place over time. It may well be that even some of those who are directly affected may be offset by new arrangements to allow them to more or less continue as they are. There will be some who will be dissatisfied.

**The Hon. ADAM SEARLE:** But you do not think the bulk of the staff will be affected.

**Mr HASTINGS:** No.

**The Hon. ADAM SEARLE:** What about the intelligence analysts and the people who do that sort of work—do you think they will be impacted or that function of the Commission will be impacted?

**Mr HASTINGS:** The difficulty in generalising is that what I inherited was a strange structure where people have the same title but earn entirely disparate incomes. One of the things I have been trying to do in any event, leaving aside the GSE issues, is to provide some regularity and certainty into wage levels. I think the GSE Act will overtake all of that. It is very hard to generalise because one intelligence officer might be on one salary and one might be on a significantly lower salary.

**The Hon. SCOTT FARLOW:** What sort of range are you talking about in terms of disparity? Is it \$10,000 or \$50,000 difference?

**Mr HASTINGS:** It is somewhere in between.

**The Hon. ADAM SEARLE:** Are you talking about people who actually do the same work or work of the same value, or people who might have the same title but do different sorts of things?

**Mr HASTINGS:** They have the same role. The one who gets paid more is probably more senior.

**The Hon. ADAM SEARLE:** And more experienced?

**Mr HASTINGS:** And more experienced—that is right.

**The Hon. ADAM SEARLE:** So that might go some way to explaining some of the disparities.

**Mr HASTINGS:** But if it is all part of this so-called common law philosophy underpinning their employment—

**The Hon. ADAM SEARLE:** No further questions.

**CHAIR:** No more questions? Okay. Thank you very much, Commissioner, for coming along today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of the evidence that has been given today. Would you be happy to provide a written reply to any further questions?

**Mr HASTINGS:** Yes.

**CHAIR:** Thank you very much for your attendance. Enjoy the rest of your day.

**(The witness withdrew)**

**(The Committee adjourned at 2.05 p.m.)**