

REPORT OF PROCEEDINGS BEFORE

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

EIGHTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION

At Sydney on Tuesday 30 November 2004

The Committee met at 3.45 p.m.

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 G. Corrigan
Ms N. Hay
Mr M. J. Kerr

TERRENCE PETER GRIFFIN, Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

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

STEPHEN ALLAN ROBSON, Solicitor for the Police Integrity Commission, 111 Elizabeth Street, Sydney, sworn and examined, and

ALLAN GEOFFREY KEARNEY, Director of Intelligence and Executive Services, Police Integrity Commission, 111 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: Thank you for appearing before the committee today. The committee has received a submission from you in the form of answers to questions on notice and a research paper. Do you wish them to be included as part of the sworn evidence?

Mr GRIFFIN: If that pleases the committee, yes. Mr Kearney has told me that there is a later version of the paper on section 181D that can be provided to the committee.

CHAIR: I have been told that. We will substitute that. Do you wish to make an opening statement?

Mr GRIFFIN: No.

CHAIR: In evidence received today the Ombudsman indicated that he prepared a report for the Attorney General on the dissemination of telecommunications interceptions and other surveillance material during Operation Florida and that the report was entitled "Release of lawfully obtained information by the New South Wales Crime Commission relating to Operation Mascot and the Police Integrity Commission relating to Operation Florida" and dated 27 September 2002. He told us that he sent it to the Crime Commission and to the Police Integrity Commission [PIC]. Has the PIC sent it to the PIC Inspector?

Mr GRIFFIN: I cannot answer that on oath. Every time we come to one of these meetings we carefully consider what the first question might be, and that question did not get a run.

CHAIR: I will count that as a victory.

Mr GRIFFIN: Absolutely. I understand that the whole question was reviewed by Finlay and that that material was available to him. However, I do not know whether we formally provided it to him from the Commission.

Mr ROBSON: The report by the Ombudsman on the audit followed the investigation by Mr Finlay. I certainly saw the report. The Commission was invited to comment on its contents before it was concluded and provided to the Attorney General. I do not personally recollect that a copy was sent at that time to the Inspector.

Mr GRIFFIN: We will take that question on notice and deal with it with some surety.

CHAIR: That is probably the preferable course to follow.

Mr KEARNEY: The Inspector does have access to the document nonetheless.

CHAIR: I refer to the Commission's inquiry into the events surrounding former Justice Shaw. We are significantly restrained in what we can ask about that topic. I make that point very clear, and it is perfectly appropriate. However, I wish to raise a tangential issue. A report in the *Daily Telegraph* on 17 November concerned allegations about Mr James Slater and

there was a subsequent mention in an article by Richard Ackland. Are those allegations being investigated and by whom?

Mr GRIFFIN: They are not. I think I can deal with that issue without it being a problem. Mr Slater is here if the committee requires evidence from him. That is one issue about which we thought there might be questions. On the morning of the hearing in question—which is when Mr Slater is said to have asked some questions—I was with the PIC Inspector having our regular meeting. Mr Slater interrupted the meeting to say that he had been contacted by a journalist who asked him whether he had heard that the judge was missing or out of the jurisdiction. He asked me whether I had heard anything and I said that I had not and told him to tell Mr Nattress what he had heard and to try to find out more about it given that it was relevant to what we were doing. It was about 9.00 a.m. and we were proposing to sit at 10.00 a.m. My understanding from what I have been told by those people is that they then made inquiries to find out whether there was any substance in the report. One of the issues, because it came from a journalist, related to Mr Slater asking journalists who were around the premises whether they had heard anything of that nature.

When Mr Barker raised the matter in the hearing—he did and it is on the public record—honourable members may or may not recall that I asked him whether it was a question that he was alleging Mr Slater put or some other allegation. Mr Barker quite properly said his version was that Mr Slater was asking questions. That is entirely consistent with the process that I had asked him to embark upon. I spoke to the Inspector about it subsequently. He said he did not see a complaint in that given that it had arisen from a perfectly proper approach, and that it had been either misunderstood or perhaps mischievously turned into something else. He did not see it as a complaint and nor do I. It did not go past there. For what it is worth, I notice that apart from the two matters mentioned it seemed to have no other life. I do not know whether that is because the journalist knew the truth behind it. However, that is the story as I know it. Mr Slater is here and Mr Nattress has already been sworn if the committee wants to take it further.

CHAIR: I do not want to take it any further. I am not sure it is appropriate for the committee to inquire into a complaint. My question was about the process rather than the substance.

Mr GRIFFIN: Because it was not a complaint, it seems to be sensible to explain how it happened. It is without substance as a complaint or anything else. It was a sensible inquiry because I wanted a witness at my hearings.

Mr MALCOLM KERR: I was going to ask some questions about the Shaw inquiry.

CHAIR: I am not sure we will go back to the Shaw inquiry in terms of the committee's jurisdiction. I am very reluctant to have questions about an inquiry which the Commission is still conducting and on which it has not reported.

Mr MALCOLM KERR: My question does not relate to anything under investigation. Has the Commissioner met the judge or did he have any relationship with the judge prior to the inquiry?

Mr GRIFFIN: I have no recollection of it. When it first came to notice I spent some time racking my brain and I do not think I have. I certainly do not know him and I do not have any recollection of any contact.

CHAIR: I turn to the relationship between the PIC and the Crime Commission. Is there a strong nexus between organised crime and police corruption in New South Wales?

Mr GRIFFIN: I imagine there must be a connection between the two. Historically, those involved in well-organised crime see a benefit in having police working for, with or around them. It is reported that the Mafia set out to achieve access to police. There is also

some historical material that outlaw motorcycle gangs do the same thing. They make it a part of how they do business to have access to police. So the answer has to be yes, and I think that Mr Bradley would say, if he were here, that the serious criminals they look at would also enjoy access to police whenever they are able to. So I think there has to be a nexus. It would be nonsense to say anything else, I think.

Mr Kearney says our investigations reveal it. But what we reveal is that on occasions I think you can say more broadly across-the-board it is likely to happen, not just here but in any country where organised crime is flourishing. It is likely to be one of the symptoms I would have thought.

CHAIR: How many of the current PIC investigations that you are conducting would have been commenced because of intelligence you have got from the Crime Commission?

Mr GRIFFIN: I would have to go back and count them, and perhaps we should put the number on notice. But I can talk about, for instance, the things that we are currently doing. Laycock is a case in point. Whilst there was information around about him, there was also information flowing to the Crime Commission at about the same time. My first knowledge of it, although it was not the first knowledge of the Commission, was when the Commissioner of the Crime Commission rang me up and said, "We have just identified some issue". I do not want to go into too much detail, but it was the fact, I think, that already by then some profiling of that gentleman had been done in our Commission, so they coincided, to some extent. But whether that raised or re-focused it I do not know which would be fairer really.

So that is an example of one where at least the Crime Commission had some direct interest. There have been a number of matters where we have looked at people that the Crime Commission has said, "This person may be of interest, or we see some connection with", but I do not know if there are. The number of current investigations I think firstly I would have to take on notice because I think there are 52 or something and I would not want to be guessing. We need to be a little bit careful about how much information we provide on the public record in any event. But certainly there are some, and I think it flows from the connection that you first alluded to.

CHAIR: My interest is not necessarily in precise numbers but in general terms how much of what you do comes from the Crime Commission and how much of it comes from somewhere else?

Mr GRIFFIN: Mr Nattress, do you have a feel for the rough percentages?

Mr NATTRESS: It is difficult to talk in terms of exact numbers. As the Commissioner said, there were 52 investigations. Apart from the Laycock matter, and again this is just my feeling for it, I do not think there are any. But I would have to check exactly.

CHAIR: Leaving aside the precise numbers, your general feeling—and that is all you are putting—is that a large proportion of what you are doing is not being sourced from the Crime Commission?

Mr NATTRESS: I would say that that is right; that a large proportion of what we do is not sourced from the Crime Commission. There is regular contact, as you would expect, but they are not the providers of our bread by any manner of means; it is just one of a number of areas that we seek our work from.

CHAIR: I think there is a memorandum of understanding between the PIC and the Crime Commission that has been in place since 1 June 2004. Why 1 June 2004? Did something in particular prompt it?

Mr GRIFFIN: No, it was the earliest that it was able to happen, I think. I do not know whether Mr Bradley had been pressed for such a memorandum earlier. I spoke with him about

it on a number of occasions and we had tacit agreement that that is when he was finally prepared or got round to signing the document. There were arrangements in place, of course. Police misconduct that comes to the notice of the Crime Commission mostly comes to their notice through police officers who work there or for the Crime Commission, who have an obligation under their own Act to report police misconduct. As I understand it, although Mr Bradley might be the proper source, he allowed a dispensation from his secrecy provisions to put that information through to the proper channels. So the process covered police misconduct that was discovered in the Crime Commission, to some extent.

I had, for no reason, a concern that there was a gap in the process for individuals that the Crime Commission chose not to or did not deal with properly, as perhaps is possible, and I wanted something in place that he would tell us if he was aware of it. So it was only filling in a tiny gap or a potential gap. I do not think there was any suggestion that anything had been withheld from us by the police down there, but I wanted to preclude the possibility.

CHAIR: Any questions from other Committee members about Crime Commission connections?

The Hon. PETER BREEN: It seemed to me, reading the material, that Operation Florida involved the Crime Commission certainly to a much greater extent than I realised. Is that unusual? Did that actually come from the Crime Commission initially?

Mr GRIFFIN: I think it originally did come from the Crime Commission because I think that is the way the matter just happened to break. But certainly the Commissioner of Police, the Commissioner of the Crime Commission and Judge Urquhart were involved in that very early on and the agreement that was in place—and I am looking from records, it is outside my knowledge—was that predominately it would be run out of the Crime Commission. Urquhart agreed to that and Commissioner Ryan I think agreed to resourcing it so it could be done. It was certainly run out of their premises, I think almost entirely in the early stages, although they had perhaps some covert premises as well. It was run there for probably most of the investigative stage that was managed jointly.

CHAIR: Could I just turn to another topic that I think could do with a bit of clarity? In the written answers you have given you talk about whether a matter is to be dealt with by way of a public hearing or private hearing, the way that you have put it sounds a little different to traditionally what we have been told. Previously the proposition that had been put to us, as we interpreted it, was that you would have a public hearing unless there was a very good reason not to. That does not seem to be the emphasis you are using in the written answers. I am wondering whether I am seeing too much in terms of different forms of words or is there perhaps a change in the Commission's philosophy?

Mr GRIFFIN: I do not think there is a change in philosophy. Perhaps we are inept in the answering of various lines of questions. I think the hearings are almost entirely an operational tool as far as I am concerned. There is an obligation to have public hearings—I suppose you could call it that—in circumstances, and there is an obligation to have private hearings in circumstances, and the choices are driven almost entirely by the facts and the operational effectiveness of the hearings. If everything else was equal I suppose public hearings would be the sensible way to proceed, but it never is. It is always, it seems, rarely that this could be equally dealt with publicly or privately; there is nearly always something that gives a private hearing or a public hearing a clear advantage one way or the other.

Certainly there has been no formal change in policy or approach; I do not have a sense of it. And this is one complete surprise and now inconsistency, to the extent that we are being inconsistent I think it is probably semantics, there has been no change in approach.

Mr ROBSON: I might just add that there is no presumption in favour of a public hearing in the Act. I cannot recollect a previous statement to that effect, but it may be capable of being read that way. Certainly, all things being equal, things might fall on the side

of a public hearing simply by virtue of the public interest in the community being aware of what the Commission is doing in dealing with police corruption, but usually, of course, there would be other factors, contraindicating a public hearing for that basic reason. But all factors are considered and weighed by the Commission at the time the decision is made. Certainly there is no presumption in the Act that we start off with a public hearing in mind and then decide whether it should be private for any particular reasons.

CHAIR: I think in the interests of full disclosure I should say that what has motivated me is some comments by Judge Urquhart several years ago now. He indicated that his view was it ought to be in public unless there was a reason why not—that is my paraphrase.

Mr ROBSON: There were different views at that time too in relation to comments about police officers engaging in misconduct. I think Judge Urquhart took the view that it was flying too close to an appearance of a finding of guilt to express an opinion in a Commission report that a particular officer did in fact engage in misconduct, whereas at the present time the Commission's approach is somewhat different. So I guess it is just indicative of a change of perspective over time. In Florida I think there was an opinion expressed in the report that an officer had engaged in misconduct, whereas before then that had probably not occurred in a Commission report.

Mr GRIFFIN: Maybe we are not too far apart in the sense that all else being equal I think we would say it is probably a public hearing because of the reasons that Steve has alluded to, because the public interest perhaps is in that; the transparency and the cleansing effect of daylight on those things. But, operationally, it is never, ever that simple. It is not a coin-tossing exercise because if it was dead even we would do it in public, I think. Maybe Urquhart is saying no more than that. The reasons that you do things in private are usually overwhelmingly clear, it seems to me, so the decisions are not particularly hard on a case-by-case basis.

The Hon. PETER BREEN: Could you give a couple of examples of why you would make a decision to hold a hearing in private?

Mr GRIFFIN: I would certainly rather not, not examples.

Mr ROBSON: Prejudice to the very investigation is often a very big factor.

Mr GRIFFIN: The development of the case is the obvious thing, and there are risk factors to individuals; they are the two obvious things. They crop up surprisingly frequently—and if you are halfway through an operation. It is the one thing that I think we have trouble getting through to the public most is that what we are doing is investigating and we may very well bring on hearings to startle some rabbits, and they might be public because that is the only way we can do it, but before that there might have perhaps been a private hearing because we wanted to find out where to go. That is difficult because people are so used to court hearings and have a predetermined position, there are briefs of evidence, everyone knows where it is going, it is going to go for four days and finish, and of course that is not what we do. Those would be the two things: safety of individuals or fears for safety of individuals or repercussions, or the development of a particular investigation.

The Hon. PETER BREEN: Are there any situations where evidence might be compromised if it were to be a public hearing?

Mr GRIFFIN: I think that is the development of the case argument. I think clearly if you have not gathered all the evidence, which you have not if you are still investigating, you run the danger if you put on notice people that you have not got wrapped up or evidence that you have not secured, it gives them some opportunities to leave the jurisdiction, as happens, or, I suppose, destroy evidence.

Anecdotally, when I was involved in the bottom of the harbour prosecutions, northern office in Brisbane had an office manager up there and I said, "Go and buy a shredder, you will need a shredder". You could not buy a shredder in Brisbane, they had all been sold out.

CHAIR: Any further questions? There is probably no answer to that, is there?

Mr GRIFFIN: It is also entirely true.

CHAIR: In the written answers you have mentioned some of the factors of public or private hearings. I am interested in how they affect the decision on the complexity of the matters and the number of witnesses to be examined?

Mr KEARNEY: The response to question one is not a discussion about private versus public. It is about hearings, per se. That is why I may have had a confused expression when you first raised the issue, Mr Chairman. This is about whether we do a hearing at all.

CHAIR: That explains what I was going to raise. There is another issue of clarification and the use of these terms seems to shift around following various committee hearings and as evidence has been received. What is the distinction between "a hearing" and "a hearing day"?

Mr GRIFFIN: That is a good question, actually those are two perfectly good questions. If we need to go into too much detail with this, I would ask that we do with in private session.

CHAIR: My interest is not about operational or tactical decisions, it is about exposure outcomes.

Mr GRIFFIN: But some of it goes directly to tactical decisions. It is a fact, and for various reasons—reasons that I think are right—that historically private hearings have been single, self-contained entities per witness, for reasons that include not disclosing to other witnesses in private hearings. For instance, there might have been another witness in the same matter. If you had three witnesses in private hearing, they would each think that they had a separate hearing and the transcript would go from 1 to 200, not 201 to 400. Those divisions electronically and internally in our place, create in private hearings an entirely different bag to a public hearing with the same three witnesses; it would be one hearing with three different witnesses. They both might take three days. In the private hearing it would be three hearings for those reasons primarily. In the public hearing it would be one hearing. I hope that explains the discrepancy, which is hard to glean from the answer.

Mr KEARNEY: It is the exceptions that we would probably prefer to discuss in camera if further elaboration is necessary.

CHAIR: The explanation gets to the bottom of the distinction from my point of view. It was the exposure outcome, rather than the technical decision that I was interested in.

Mr GRIFFIN: They are closely aligned, but that is the basis of it. I do not suppose it matters if it is public information.

CHAIR: Of course, with exposure outcomes when talking about hearing days, they can be five minutes or a full day?

Mr GRIFFIN: That is one of the difficulties and we have been struggling with this internally. They can be quite short. To that extent they are arguably illusory. The advantage in keeping the counting the same way is because it started some time ago and we have a whole lot of apples to compare, it would be silly to change the counting. Pursuant to the concerns that might arise, we thought we ought to look at average hours. I can run those through.

Mr KEARNEY: I have averaged them out and summed them up. We have had a look at the hearings over the past three financial years, the last three reporting periods. For public hearings, the average is approximately four hours. For private hearings, the average is approximately two hours and 15 minutes. That will include the odd five-minute hearing and of course it will include the much longer ones, the full-day hearings, which can be five or six hours.

Mr GRIFFIN: If you do not want the average, I have them over the years. Those figures are available. Effectively the hearings are on the average short hearings, so the figures are not skewed dramatically by a whole lot of five-minute hearings. Mr Nattress has told me that he has never seen a five-minute hearing, and that is pretty true. By the time we have concluded that someone should be in the hearing room, we usually have something to put to them and we want to hear what they have to say. As it turns out, the average is just over two hours for the private hearings.

CHAIR: I turn to Temporary Assistant Commissioner Finlay. You make the point that his involvement as an Assistant Commissioner is very different from what any other assistant commissioner is likely to be. As I follow that, that is because of the number of things he has been doing in Abelia, not just presiding over formal hearings?

Mr GRIFFIN: Yes.

CHAIR: Why it was the decision taken to have him do that?

Mr GRIFFIN: Primarily because Abelia is an entirely different type of hearing from anything we have done. I know you ask questions about figures, how much it cost, why it is not cheaper to have done it some other way. I may be pre-empting that, but even if I had an Assistant Commissioner, something that I feel under some pressure to do and am still determined to resist at the moment, we may still have sought someone of Finlay's eminence to do something like Abelia. It might have been an add-on cost. The reason for that is, it has been said that if you are to be sentenced to death, Finlay would be the person to do it for you. He has a remarkably effective way of communicating with people and bringing them together.

In the plan, which in Abelia was to try to progress this thing in some sort of unique but collegiate way, I thought then and still think that we needed someone who could actually make that happen. He has the skills and has kept the police, the police association representatives, our representatives and some considerable external people, all vaguely talking to each other and going down the track. If we tried to do Abelia like a Malta it would have been five years of hearings and a lot more money than we have spent trying to do it this way.

The extra things he has done, the management of the whole process, have been remarkably successful. My views are not shared entirely I suspect by this Committee, but I think it is true. We have actually made considerable steps with the management of a very difficult investigation or inquiry or project. A lot of it goes to Finlay's personal capacity to bring people together and to manage the process and keep the hearings ticking over. Hopefully that answers some of the questions about Assistant Commissioner Finlay that you are about to ask me.

CHAIR: Some of the way. How did the duties that he has undertaken differ from what a permanent Assistant Commissioner would have done?

Mr GRIFFIN: In the absence of Abelia being a major separate part of what we do, the things that Mr Finlay does in Abelia, I would have done myself. I think that is the difference. We are a tiny organisation and it is sometimes hard to remember because we seem to be constantly on the run. There are only 100 people there. I do not think we have ever not had hearings when we thought we needed to. They are manageable. In Abelia we needed support and because of the nature of our approach, it has taken us some considerable effort and a lot of our resources. If it got to the point in another area where we had to run to lots of

investigations publicly at the same time and had the capacity to do it in the hearing room, the short appointment of an Assistant Commissioner to do just the hearings is perfectly acceptable.

We would fall back into that saving of resources and money that attracted me to this in the first place. The normal management of the rest of it can be done as it is in any event, usually by our people. I would not abandon the management of another operation entirely because there was an Assistant Commissioner running hearings; and I would not need to. To that extent, I think it is different. Abelia is significantly different from anything we have tried. I do not know whether we could try it again. If we did, there may be a really good argument for having an Assistant Commissioner on full time for a year or two years. I could see that argument. Whether I would want one forever is a different matter.

CHAIR: What is glaring from the figures is that if you had Finlay as a permanent Assistant Commissioner it would have been cheaper than what has been done.

Mr GRIFFIN: I think that is true. But Finlay would not have accepted appointment as a permanent Assistant Commissioner, as far as I know, although I have not asked him. I do not think he would be interested in a permanent job. As I said earlier, if someone had been appointed, Finlay brought those skills and people like Finlay who have those skills and standing to do unusual work for the Commission are unlikely to want permanent appointment. The gravamen and whatever he brings is useful for that purpose. If he had taken the job we would have saved \$30,000, which is not huge, with respect, although it is significant to our budget. But you might say that we have not finished yet, so it might be \$50,000.

The Hon. PETER BREEN: You are saying that if you had an Assistant Commissioner who had a particular range of skills, that might not necessarily cover the work you might want that person to do and you might still have to get someone to do a particular inquiry?

Mr GRIFFIN: It seems to me that is open, yes. We can actually pick and choose our skills a bit by engaging the people we want. This is a case in point with Finlay. He has particular skills.

Mr MALCOLM KERR: I am intrigued by your reference to Mr Finlay and the death penalty. Could you repeat what you said, I do not want to verbal you.

Mr GRIFFIN: One of the things I need to do here, and I have not learnt yet, is to leave my sense of humour behind. I was trying to be funny. Mr Finlay is an exceptionally pleasant person to deal with, as I think you would know.

Mr MALCOLM KERR: Yes.

Mr GRIFFIN: There is a saying, which is not restricted to our office, that if you are going to be sentenced to death you would choose Mervyn to do it, because you would thank him afterwards for putting it so nicely. It was an attempt at humour, and I will try not to do it again. I apologise.

Mr MALCOLM KERR: I might commute that comment. On 14 October I asked a number of questions that I had not realised were in camera in relation to Mr Finlay. I do not think they were particularly confidential. Mr Chairman, could I go through those questions again? Perhaps they could be tabled.

CHAIR: As a matter of precedence, I prefer you to go through them. I have a prejudice against releasing material that has been given in confidential session when we have given a witness an assurance that it will be held confidentially. I am not sure about the ones concerning Mr Finlay, some of the others are outside your jurisdiction. The proper way to do it is to proceed question by question.

Mr MALCOLM KERR: Certainly. Commissioner, last time I said:

I say at the outset that to the best of my information, knowledge and belief, Mr Finlay is a man of the highest integrity, as is the present Inspector General. However, we do not know who will be appointed in the future. There is an old saying in Cronulla that justice has to be seen to be done as well as being done, you can appreciate that is what is required of the role of an Inspector General—they should be fearlessly independent because they need to be a critique of the Commissioner or of the Commission if the circumstances warrant it. If there is a situation where somebody serves as an Inspector General and then has an afterlife with the Commission and somebody who is not as principled might be tempted to go soft with the prospect of future employment. Can you see my point?

I think you then answered:

I can and I understand the allusion to Cronulla. When I first contemplated using an Assistant Commissioner in that way in Abelia, I and the Commission gave considerable thought to who it could be.

CHAIR: Could I stop you there, Mr Kerr. You cannot read onto the public record answers that were given in confidential session without breaching both the standing orders and the Act. I suggest the way to proceed is simply to ask a question and let the Commissioner answer it.

Mr MALCOLM KERR: Certainly.

Mr GRIFFIN: I am sorry, I was listening to you reading. With respect, would you mind asking the question again?

Mr MALCOLM KERR: Certainly. I say at the outset that to the best of my information, knowledge and belief, Mr Finlay is a man of the highest integrity, as is the present Inspector General. However, we do not know who will be appointed in future. There is an old saying in Cronulla that justice has to be seen to be done as well as being done. You can appreciate that this is what is required of the role of an Inspector General, they should be fearlessly independent because they may need to be a critic of the Commissioner or of the Commission if the circumstances warrant it. If there is a situation where somebody serves as an Inspector General and then has an afterlife with the Commission, somebody who is not as principled might be tempted to go soft with the prospect of future employment. Can you see my point?

Mr GRIFFIN: I understand the point you are trying to make. I do not believe it is an issue.

Mr MALCOLM KERR: Mr Finlay's duties have not been restricted to that inquiry, that is, Abelia. I think you have used him, in effect, to take over from you? Did you give that evidence? He has not been involved simply in Abelia; he did perform the role of Acting Commissioner while you were in New Zealand?

Mr GRIFFIN: That is true. He was appointed Assistant Commissioner, not Acting Commissioner, in my absence in New Zealand for, I think, 10 days. For completeness, in relation to Abelia, part of Operation Alpine, which is a separate operation, is subsumed within Abelia. You need to have that on the record too, that Abelia includes a part of an operation called Alpine. He has been doing hearings which are part of that exercise. We are just trying to clarify the details of the delegation itself. Mr Robson suggests—and I do not know if it is true, but we can check it—that Mr Finlay might have already been appointed as Assistant Commissioner doing Abelia when I went on leave. That corresponds with my recollection but we can check it, if need be, and that he was given a different delegation, to use the powers that I delegated to him in my absence if he needed to. If that needs to be checked, you might let us know. I think the substance of it is that he had, in my absence for that 10 days, additional powers.

Mr MALCOLM KERR: I am content to rest with that answer. I think you appointed Mr Finlay as Assistant Commissioner largely because of concerns expressed by the Committee

relating to concerns about the succession—if you were run over by bus, who takes over the role?

Mr GRIFFIN: I am sure it was a truck when you said it last time, but that is the case. That remains extant. There is the delegation which is contingent upon certain events that would put Finlay in the position of Assistant Commissioner acting with my powers or the powers delegated to him until there was a replacement, which I assume the Government would act on.

CHAIR: The final thing is, there was reference in the written answers to the number of hearing days by Mr Finlay and Commissioner Griffin in the 2004 calendar year. Could someone provide us, not necessarily today, with the number of hearing days, both public and private for the Commissioner and Mr Finlay for the 2003-04 financial year?

Mr GRIFFIN: Sure.

Mr GEOFF CORRIGAN: I have three matters—one comment and two questions. First, I commend the Police Integrity Commission [PIC] on its investigations that brought to attention the activities of Stephen Laycock. We, the Committee that asks questions, should also pass on our commendations. I know I did privately last time but I pass them on publicly today.

Mr GRIFFIN: Thank you, I appreciate that.

Mr GEOFF CORRIGAN: Secondly, in closed committee at the last meeting I asked a question about comments in John Marsden's books that non-evidentiary material which is inherited by the Police Integrity Commission was still in existence. My recollection of your answer at that time was—

CHAIR: Mr Corrigan, you are not supposed to do that.

Mr GEOFF CORRIGAN: Sorry. I would be interested to know your comments. Are you prepared to assure us publicly about what your answer was at that time in relation to those concerns that were raised?

Mr GRIFFIN: Mr Corrigan, I do not recollect my answer at that time but my recollection is there was a discussion about listening device material, is that correct?

Mr GEOFF CORRIGAN: That is right, yes.

Mr GRIFFIN: The position is that the Listening Devices Act requires certain things to be done by the Commission. We do hold, mostly courtesy of the Royal Commission, significant holdings obtained electronically. The Commission has in place a process which is going through the processes outlined in the Act and there is a destruction policy that involves an assessment in each case of whether or not material is caught by the Act and should be destroyed or whether it sensibly needs to be maintained for law enforcement purposes. In relation to a number of matters, that assessment has been made and the destruction process is in place. In relation to another group, a decision has been made on the basis that the material must be kept because it may still be useful or at least required. In the middle, a process has been started whereby cases will be assessed.

I think I said privately, and will say it here, it is a mammoth task for us because on one interpretation—and we think it is the right one—every reference to a particular piece of product from listening devices needs to be dealt with under the Act. In many cases, the Royal Commission material, for instance, the piece of evidence in a listening device may have been used in a briefing note to a counsel who may have made some notes of it for his cross-examination. Those things are difficult to capture and involves somebody, arguably, reading every piece of paper. There are millions of pieces of paper. That process will continue but it

cannot be done quickly. So, we have steps in place. There is a settled plan of action recorded, and the process will continue. The operations meeting that drives the operational area of the Commission will sign off on the various steps as they happen but the first destruction of material of any bulk will happen before Christmas but I would not predict when the last ones will be, but the process is in hand.

Mr GEOFF CORRIGAN: I think you also made the comment that despite all that it is also under the most rigorous security in the PIC anyway?

Mr GRIFFIN: It is. Thank you. I certainly put that on the record. The material is tightly held and is not generally available to anyone. It is not accessible, which goes to the heart of the Act, but we are also trying to deal with the letter.

Mr GEOFF CORRIGAN: My third question relates to research into section 181D. Is it appropriate to ask that now, Mr Chair?

CHAIR: Yes.

Mr GEOFF CORRIGAN: My question is, as some of your officers are aware, I think the Shaw case intervened after you attended the Fifth National Investigation Symposium. Three of us were there. It was interesting to hear the comments from the Police Commissioner or senior police officer from South Australia, and the paper that was delivered on the more societal aspects of why police officers become susceptible to corruption. This seems to be empirical data that you have in the scope of study here. From memory, the two things to look for in the police officers background for susceptibility to corruption that were mentioned at that symposium and that do not seem to be mentioned here are family breakdowns and gambling. Things like alcohol and drugs are mentioned but gambling and family breakdowns do not appear, on the surface, to be mentioned. They are societal aspects versus empirical aspects?

Mr GRIFFIN: I am not sure whether there is a question that specifically needs answering. My view is that those environmental factors or societal factors must have some role in this process, but I am not sure I comprehend entirely the question, if there is one.

Mr GEOFF CORRIGAN: It was probably a comment, but also I was interested in the comments that were made, particularly by the senior police officer from South Australia, that he felt strongly that family breakdown and gambling have a large impact on corruption issues in the police. I was interested in your comments.

Mr GRIFFIN: My difficulty is that I was not there. I heard that Mr Lynch was there.

Mr GEOFF CORRIGAN: And Mr Breen.

Mr GRIFFIN: I heard about Mr Breen too, so that is three. Other than to say they must have some impact—Allan, did you have any discussions about this? I know we had a representative there.

Mr KEARNEY: My initial thoughts are that they may be indicative of problems, indicative perhaps of misconduct or they may contribute to misconduct. So there are probably two aspects to it.

Concerning the paper that has been provided, it is very much an exploratory piece, just looking to the questions specifically asked by the Committee. Given its nature, it raises more questions than it answers. As such, while the paper is not confidential, we would probably prefer that it not be made publicly available, although we might have to have some discussion on that. Is it too late?

Mr GRIFFIN: We just tendered it to a public meeting.

Mr GEOFF CORRIGAN: Could I commend to you that you get a copy of the comments made at the Fifth National Investigation Symposium by the police officer from South Australia—

Mr GRIFFIN: Mr Corrigan, are you saying perhaps that we need to be sure we do not look at this too narrowly?

Mr GEOFF CORRIGAN: That is right, yes.

Mr GRIFFIN: We understand that and we will take that on board. It becomes, then, a very difficult task for a Commission that does what we do to take into account the sociological factors, but it must be done in some form, and we will have to look at the paper.

Mr NATTRESS: My take on what you said seems to indicate that we were not aware that these sorts of issues arise. There have been three, if not more, significant investigations that the Commission has conducted, and is conducting this calendar year, which will show very starkly how those particular issues do affect corrupt officers. We will be reporting on those particular cases and instances in those reports.

Mr GEOFF CORRIGAN: I am sorry to interrupt, but it seemed to me that the Laycock affair certainly exposed that.

Mr NATTRESS: Correct.

Mr GRIFFIN: The problem is that you open up that whole cause and effect problem, but we are aware. It is just that when we do a single hearing or even a handful of them they are still only anecdotal things, and you run the risk of drawing—you do it at your peril, I think, draw big conclusions from those things. But, I mean, the paper—I am interested to see what was said and whether there was some substantial research to support the conclusions that were made.

Mr MALCOLM KERR: Just in relation to question 10 of the questions on notice, "Have NSW Police implemented the recommendations made following Operation Florida?" The answer was, "No, the Commission will be engaging with the NSW Police shortly regarding the Commissioner of Police's response to the recommendations contained in the report on Operation Florida." Has that engagement taken place as yet?

Mr GRIFFIN: It is ongoing, but I might ask Mr Kearney to tell us the latest stage. He told me about two hours before we came here and I have now forgotten it.

Mr KEARNEY: The police response is currently being considered and we are expecting to finalise our position on that response shortly. We will then need to respond to Police.

Mr MALCOLM KERR: Mr Chairman, I was going to ask some other questions that I had asked earlier. Perhaps I might show the Commissioner a record of those questions so that he has them before him when I read them.

CHAIR: That might be helpful.

Mr GRIFFIN: Thank you.

Mr MALCOLM KERR: Going to them, there is a question about one-third of the way down, "I believe the Leader of the Opposition wrote to you on 28 June." Do you have that, Commissioner? I am sorry, page 11.

Mr GRIFFIN: I have page 11, thank you.

Mr MALCOLM KERR: The question is, "I believe the Leader of the Opposition wrote to you on 28 June. Referring to Operation Florida, he said that he had received information that the Minister of Police had received a copy of the report on 25 June." You wrote back saying, "I refer to your letter dated 28 June in which you query whether copies of the Commissioner's Operation Florida report were provided to the Government prior to the presentation of the report to Parliament this past Monday. I confirm that a copy of the report was provided to the Hon. John Watkins and the director general of the Ministry of Police prior to its presentation to Parliament on the understanding that the report remained strictly confidential until it had been presented to Parliament. No advance copies of the report were provided to any other members of the Government." Does the Minister of Police normally receive an advance copy of PIC reports?

Mr GRIFFIN: Are you asking me that question again?

Mr MALCOLM KERR: Yes, I am.

Mr GRIFFIN: The answer is yes, but maybe I should also respond by putting on the record something similar to what I said before, and that is that I find the way that the issue has been dealt with to be regrettable. The letter has been quoted out of context—my answer to the letter was quoted out of context repeatedly, to the detriment of the Commission, and I believe that is really unfair. I think that the Commission is fiercely independent, demonstrates that on a regular basis, is never interfered with, has not been interfered with that I know of—certainly has not been in my time—and allegations or suggestions that it is either not independent or is incompetent for purposes that do not answer anything that this Committee does are unfortunate. Perhaps the Committee is in a position to do something about that process, but as I asked you before, I ask you to table the letter and the response to it so that that is public.

Mr MALCOLM KERR: Well, I think that—are those documents available? They are on the public record in any event.

Mr GRIFFIN: Well, they have been published in the press.

Mr MALCOLM KERR: They have. That is what I meant by that.

Mr GRIFFIN: Well, half of them.

CHAIR: On the last occasion, there were things tabled in camera.

Mr GRIFFIN: Yes, I understand that, and what I am asking is that, if Mr Kerr wants to go on with the question in public, then he should table the entirety of the correspondence, being his letter and my letter, and if he is not able to do that, the Commission is in a position to provide those, if the Committee wants them.

CHAIR: I think that we should probably table both of them.

Mr MALCOLM KERR: Both of them, that is right.

CHAIR: In open session, right now.

Mr GRIFFIN: I do not have a copy with me now. If the private copies are available, I think perhaps the simple way would be to declare them public, but that is a matter for you, Chair.

CHAIR: Yes.

Documents tabled.

Mr MALCOLM KERR: On page 12, four-fifths of the way down—you may want to take this question on notice—"Has the Minister been given an advance copy of every report?"

Mr GRIFFIN: I think that was taken on notice, and we would take it on notice, if I may. I do not know the answer.

Mr KEARNEY: I think we responded.

Mr GRIFFIN: Well, yes, but in private. Now, I take it this is a public request?

Mr MALCOLM KERR: Yes.

Mr GRIFFIN: Or did we respond publicly?

Mr KEARNEY: No, we responded by letter of 8 November.

Mr GRIFFIN: To the Committee?

Mr KEARNEY: To the Committee.

Mr GRIFFIN: Maybe we will table that document, if it suits the Chair, and then it is either private or public, depending on how the Chair feels

CHAIR: Yes.

Mr GRIFFIN: Does that suit you?

CHAIR: That is the easiest way of doing it.

Mr GRIFFIN: I table the response.

CHAIR: What was the date of that?

Mr GRIFFIN: It is 8 November. I can hand a copy of that document up, if that is suitable.

CHAIR: Yes.

Document tabled.

Mr GRIFFIN: Mr Kerr, am I in a position to ask you a question?

Mr MALCOLM KERR: No.

Mr GRIFFIN: That would have been my answer, were I on the bench, too, but I thought I might ask.

CHAIR: I could always suggest that you might want to conduct a separate inquiry and summons him.

The Hon. JAN BURNSWOODS: You might suggest to one of us that we ask him.

Mr GRIFFIN: I am in the Committee's hands. We, a creature of the Committee, need the help of the Committee from time to time.

CHAIR: Are there any further questions?

Mr MALCOLM KERR: Yes. On page 15, Commissioner, I asked, "Could you describe the Commission's relationship with the police at the present time in the sense that there are good communications that exist or there are no communications that exist." How would you describe the relationship with the police at the present time?

Mr GRIFFIN: I would describe the communications with the police as adequate for our purposes, for the management of the business the Commission needs to do.

Mr MALCOLM KERR: What is your assessment of how police are identifying and dealing with corruption?

Mr GRIFFIN: I think the difficulty with the answer is in the question. We have talked about short questions and long answers before, of course.

Mr MALCOLM KERR: Yes.

Mr GRIFFIN: The position of the police, if you refer to the executive and management, I think they are operating effectively and efficiently. What I do not know is whether that, because of my personal lack of knowledge, extends to the 17,000 police that are also encompassed in the question. I do not feel I can answer that.

Mr MALCOLM KERR: At page 17, I asked this question, "Given the exposures of the Florida investigation in regard to police corruption involving rip-offs of drug dealers and search warrants, you mentioned earlier about being "a good bloke" in relation to what was happening there. Is there any indication that the lessons in relation to the corruption from the Royal Commission and your reports have not in fact filtered, and changed the police culture?" I think, Commissioner, there has been some public discussion about there still being a mateship ethos operating in the police that might protect them. My question really goes to how effective your reports have been in changing the culture that is undesirable in the police service.

Mr GRIFFIN: Thank you. I am just struggling with the reference to "good bloke", given the private hearings, and I wonder whether that ought be something that is not referred to.

Mr MALCOLM KERR: Perhaps we can substitute—

Mr GRIFFIN: We will just take that out, perhaps?

Mr MALCOLM KERR: Yes, certainly. Perhaps we could substitute what I said in a supplementary way, "a mateship culture".

Mr GRIFFIN: I am sorry, Mr Chairman, I am just trying to read the question again, if you will excuse me. Mr Kerr, do you think we could take this question on notice?

Mr MALCOLM KERR: Yes, certainly. Any of these questions can be taken on notice.

Mr GRIFFIN: Thank you. The reason that I ask that is that it is actually I think quite complex and probably the Commission is forming its views more or less from what we are doing at the moment.

Mr MALCOLM KERR: I see.

Mr GRIFFIN: I mean, the Laycock investigation has shown us things that do not fit with the pattern that you might describe as mateship, I think, but I would like to be able to look at what the rest of the investigations are giving us in relation to that. If we can take that on notice, I think the answer would be much more satisfactory for all concerned.

Mr MALCOLM KERR: Yes, certainly. Any of these can be taken on notice, Commissioner.

Mr GRIFFIN: Thank you.

Ms NOREEN HAY: Commissioner, I just want to get some clarification of a comment you may just a few moments ago. You said that the way it has been handled is unfortunate, and taken out of context time after time. Can you clarify for me the way that what has been handled, and what has been taken out of context?

Mr GRIFFIN: I am sorry, in relation to the letter from Mr Brogden? Is that what you are talking about?

Ms NOREEN HAY: I am not sure. I am just trying to get clear on that. Is that what your comments referred to?

Mr GRIFFIN: When I said it has been taken out of context, I was referring to the suggestion arising from the publication—surrounding the publication—of the Florida reports, yes, and it came from Mr Brogden's response—a letter to me and my response to him—part only of which has ever been used in the public domain.

CHAIR: Are there any further questions?

The Hon. PETER BREEN: Can I just ask a question about Operation Tower? I think, Mr Robson, on the last occasion we spoke about this, you indicated that you dealt with Operation Tower?

Mr ROBSON: I have knowledge of it, but a number of Commission officers and counsel assisting were involved in that matter, yes.

The Hon. PETER BREEN: There has been a question raised with me about the reporting of Operation Tower in the annual report. The bulk of it comes from the report itself, but then the final two paragraphs contain additional material that was not in the report and which seemed to suggest that the report is being used by the Commission to further the knowledge of the police force as to how the Commission operates. That is my paraphrase.

Mr ROBSON: I do not have those passages in mind at the moment.

The Hon. PETER BREEN: I am happy to put the question on notice but the question has been raised with me as to whether or not in doing that the annual report does reflect adversely on Mr Marsden, who was the subject of the Operation Tower report.

Mr ROBSON: I was not the author of the passages in the annual report but I vaguely recollect that there was a comment about the fact that Tower was somewhat unique in that it was the first occasion on which the Commission had effectively reviewed a police investigation and considered whether any issues of misconduct or impropriety arose from the circumstances of that investigation. It is unique in the sense that the police, as we probably all know, have many discretions at their disposal in how they conduct their investigations and go about their inquiries. You will see from the report that a few sections set out the parameters for the Commission's consideration of the allegations of misconduct that were raised by Mr Marsden—comments to the effect that the police do have broad discretions and it would not be appropriate for the Commission in a later investigation with the benefit of hindsight to cast aspersions or negative comments on what the police should have done in the heat at the moment during the investigation. I think personally it would inhibit the proper exercise of police discretions in an investigation. There were comments of that nature made in the report. I think the comments in the annual report reflect that aspect of the Tower report.

The Hon. PETER BREEN: I only raise the issue because Mr Marsden wrote to me about it and said that the last two paragraphs were not in the Operation Tower report and in his view reflected adversely on him. I would be interested to have someone's comments about that. I do not know whether it reflect adversely on him or not.

Mr ROBSON: I think it was a comment about the potential usefulness of the Commission's investigation and report in the realm of police investigations. That is all it was.

The Hon. PETER BREEN: Is it normal practice to quote an operational report in the way that it is done in the annual report? I do not know whether the other reports are word for word from the reports. Is it normal practice to add additional material, additional commentary if you like?

Mr KEARNEY: It is normal practice to précis the contents of a report. However, you will find that a number of investigations are discussed there where no public report is produced. So it is a summary of investigation material that is appropriate to be included. There will, however, be other descriptive material there on what we regard as key outcomes from the investigation. There will be extra material.

The Hon. PETER BREEN: So you would describe key outcomes as additional material that you would have in the annual report that might not have been in the report itself?

Mr KEARNEY: Certainly. But it is really, I suppose, a succinct statement as to what we feel we have achieved through that investigation or that report.

Mr GRIFFIN: It is a fact that the report, and all the reports, are only our views on something. In the annual report—in this case I just read it briefly while you were talking—there was a comment about why and where the matter, around those edges, about why it had proceeded. We would always reserve the right to say in relation to anything we did that we did this and this is why we did it, or this is what we drew from it. I would have thought that is what the annual report is supposed to do: tell you and the public what we did and why we did it, and what we achieved from it. I cannot read anything more than that in it. I do not know whether you have the words before you.

The Hon. PETER BREEN: Yes, I have.

Mr GRIFFIN: They seem to me to go no further than that, but if it will help—

Mr ROBSON: We can provide something in more detail in writing but I suggest if you look at Part 2 of the report beginning on page 5, which is headed "The Commission's Approach" there are a number of issues and policy matters discussed which I think the comments in the annual report were adverting to—matters such as police investigative discretions and assessments and opinions of police misconduct in that context, duty versus discretion, the so-called duty of police to investigate crime and the discretions they have in the discharge of those functions, matters of whether a complainant or victim of alleged criminal conduct might be regarded as an informer in a certain context. These issues all arose from complaints that Mr Marsden had made about the investigations.

There were also references by Mr Marsden in his allegations to the outcome of civil proceedings, the defamation proceedings, and the Commission needed to state the relevance, if any, of the evidence obtained in those proceedings, being civil proceedings and not a criminal prosecution of any kind. There were issues of thoroughness in the investigation—Mr Marsden was asserting that the investigation had not been thorough enough—and corroboration issues. All those issues arose from Mr Marsden's allegations. So predominantly the comments in the annual report were referring to, I guess, the usefulness of the Commission's views on those matters to operational policing. They were not additional

material to the report; they were simply the Commission's comments on the potential usefulness of the Commission's views on those matters, that is all.

The Hon. PETER BREEN: And in your view those additional comments do not reflect adversely on Mr Marsden?

Mr ROBSON: I do not see how they can because allegations were made—over 100 separate allegations were made. They were investigated and the Commission explained the parameters of its investigation, the proper parameters of the investigation, and in so doing expressed a number of views on how it approached those matters. No, I do not think they could reasonably be taken to reflect adversely on Mr Marsden. They were not intended to, I can say that.

Mr GRIFFIN: Mr Breen, the other thing is that you would probably be aware that the Tower matter took up considerable resources of the Commission. It may well be that the issues raised individually would never have found their way into an annual report of a Commission like the PIC but it was a considerable matter for us and it therefore needed the space and time in the report in our view and also the comments that perhaps throw a bit of light on how we ended up where we were. Do you seek some sort of formal response?

The Hon. PETER BREEN: No, I think that explanation is quite adequate and I thank you very much for it.

Mr MALCOLM KERR: I refer to page 21 of the in-camera evidence, two thirds of the way down. In your estimate, Commissioner, how effective do you think the New South Wales Professional Standards Command has been in its approach to corruption investigation?

Mr GRIFFIN: I put on the record that it seems to be a very professional operation.

Mr MALCOLM KERR: And how did you arrive at that assessment?

Mr GRIFFIN: We have regular meetings with the senior officers of the command. By regular I mean weekly. We have a continuing update of what they are doing in relation to the matters and how they are going about that. I think that is sufficient to make an assessment of how they are going about their business.

Mr MALCOLM KERR: In your Dresden report there was a suggestion that the Special Crime and Internal Affairs Unit was not using technology to the extent it should have been. Are you satisfied that the Professional Standards Command is using all available resources?

Mr GRIFFIN: Once again, I think the answer to that is that from what I see they use the resources as they are available. There are times, I am sure, when they, like this Commission and the Crime Commission and every other investigative agency, do not have enough resources to do at a particular minute all they would wish to do. But they frequently deploy the normal investigative tools that we all use.

CHAIR: I am told, Mr Kearney, that only one copy of the new 181D report has actually been handed out. If you wish to keep it confidential we can withdraw the earlier tender and mark it confidential if that is what you wish.

Mr KEARNEY: Given the exploratory nature and the questions that are raised I think I would prefer that it be regarded as confidential. We are considering doing some further work in this area amongst a range of other projects. A decision is yet to be made. But if we choose to do further work in that area we would like to clarify some of the questions that have been raised before expressing a view publicly. So I would prefer if we could keep it confidential for the time being.

Mr GRIFFIN: Thank you for that offer and I thank the Committee for its time.

(The witnesses withdrew)

(The Committee adjourned at 5.10 p.m.)