

REPORT OF PROCEEDINGS BEFORE

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

**FOURTEENTH GENERAL MEETING WITH THE POLICE
INTEGRITY COMMISSION**

At Sydney on Friday 22 February 2013

The Committee met at 10.40 a.m.

PRESENT

The Hon. C. Cusack (Chair)

Legislative Council
The Hon. S. Mitchell
The Hon. A. Searle

Legislative Assembly
Mr K. J. Anderson
Mr L. J. Evans

BRUCE MEREDITH JAMES, Commissioner, Police Integrity Commission, and

ROY COTTAM, Acting Director, Operations, sworn and examined;

ALLAN GEOFFREY KEARNEY, Director of Prevention and Information, and

MICHELLE MARGARET O'BRIEN, Commission Solicitor, affirmed and examined.

CHAIR: Before proceedings commence I ask everyone to switch off their mobile phones as they can interfere with Hansard's recording equipment. If your phone is on silent, please switch it off completely. I now declare open the Committee's General Meeting with the Police Integrity Commission. In accordance with section 95 (1) of the Police Integrity Commission Act 1996 this Committee monitors and reviews the commission's exercise of its functions, examines the annual report and other reports made by the commission and reports to both Houses of Parliament. On behalf of the Committee I thank you, Commissioner, and your senior officers for appearing here today. Can I clarify this point: You have returned answers to questions on notice from the Committee; are you happy for those answers to be published?

Mr JAMES: Yes, I am.

CHAIR: Thank you. We all know each other, with the exception of Mr Cottam, so I particularly welcome him to our hearing and thank him for coming.

Mr COTTAM: Thank you very much. It is a pleasure to be here.

CHAIR: Can you confirm that you have each received a copy of the Legislative Assembly Standing Orders that relate to examination of witnesses?

The Witnesses: I have.

CHAIR: Commissioner, do you wish to make an opening statement?

Mr JAMES: No, I do not wish to make an opening statement.

CHAIR: In that case we will go directly to questions. Has the relationship between the Police Integrity Commission [PIC] and the Inspector of the Police Integrity Commission remained cooperative and constructive over the past year? Is there anything that has the potential to make the working relationship difficult?

Mr JAMES: It has remained constructive and I am not aware of any current or any likely issues that might arise between the commission and the Inspector.

CHAIR: It sounds like magnificent progress.

Mr KEVIN ANDERSON: The Inspector of the PIC recently reported to the Government regarding his view of Strike Force Emblems. In his letter to the Minister of 23 November last year the Inspector indicated that the Strike Force Emblems report was such an "abstruse and unsatisfactory internal police document that it is not in the public interest for it ... to be made public". A number of matters have also been referred to the Ombudsman. Do you have any comments to make about Strike Force Emblems or the processes and events related to the report?

Mr JAMES: I would prefer not to offer any comment. A matter has been referred by the Inspector of PIC to the Ombudsman and the Ombudsman is conducting an inquiry and I would prefer not to make any comment of my own about that inquiry.

CHAIR: I totally understand the position in relation to the content of the report. The Inspector in his report also recommended legislative changes in relation to the appropriateness of matters that have been referred to him by the Minister for Police. Have you had an opportunity to be aware of that and do you want to comment on it?

Mr JAMES: Yes, the Inspector has spoken to me about that. The Inspector was appointed to conduct an inquiry into the Operation Emblems report and, as I understand it, there were said to be two heads of power for appointing him. One was that he is the Inspector of PIC and the other was that he was appointed pursuant to section 217 of the Police Act, which enables the Minister to appoint any person to conduct an inquiry into any matter affecting the police. I am aware that our Inspector, the Inspector of PIC, has taken the firm view that it is inappropriate to appoint the Inspector of PIC under section 217. I know that the Inspector produced a lengthy document tracing the legislative predecessors of section 217 of the Police Act and arguing, I think cogently, that the Inspector is not an appropriate person to have obligations imposed on him under section 217. I support the position which I understand the Inspector to have adopted.

The Hon. ADAM SEARLE: Could you provide the Committee with updates in relation to Operations Calyx, Binda and Barmouth?

Mr JAMES: The hearings have been concluded for Calyx and we are preparing a report. I have personally spent many hours, and anticipate spending many more hours, on preparation of the report. It will be a big report. There are five limbs to the inquiry. There is an inquiry into the conduct of police officers in the incident. There is an inquiry into the situation reports that were issued by the police. There is an inquiry into the critical incident investigation report conducted by Detective Inspector Oxford. There is an inquiry into the review of that report by Officer Tedder. There is a general inquiry into the response by the Police Force to the criticisms made by the Coroner at the inquest. I can say that we almost have a complete first draft prepared but, that being said, there is still a great deal of work to be done on it.

Operation Binda was an investigation into the activities of a particular officer. It does not, I think, raise any systemic problems and we should be in a position to produce and publish a report in Binda fairly shortly. With regard to Operation Barmouth, there have been hearings this week, as members of the Committee are probably aware. Those hearings will continue next week. After the hearings are concluded, in accordance with the commission's usual practice, the parties will be invited to submit written submissions. The stage of the commission actually commencing and preparing a report will be some weeks off. I do not think I can give any prediction about the further outcome of that investigation.

The Hon. ADAM SEARLE: Are you able to advise us of the status of the investigation into the pursuit and restraint of Roberto Curti?

Mr JAMES: Yes. As the Committee is probably aware, the coroner recommended that the commission undertake an inquiry into the pursuit and restraint of Mr Curti. We have received materials, very voluminous materials. They include the transcript of the hearing before the coroner, all the exhibits before the coroner and all the documents in the brief of the coronial inquest, not all of which were admitted into evidence. I am informed by my officers that we are going through that material. There really is a very large amount. I do not anticipate we will be in a position to decide whether to hold any hearings on our part until April. I can inform the Committee we regard it as a high priority to keep the legal practitioners acting for the Curti family informed. I am informed that they have regularly been kept informed and so far the family seems appreciative that we are doing our best and grappling with a large amount of material, and I am not aware of any complaints made by them. As I say, there is a lot of material.

CHAIR: Do you think April is realistic?

Mr JAMES: I think April is realistic in deciding what course we take. I am afraid I am not suggesting we are going to be able to produce a report in April. It is by no means certain that we would ourselves conduct independent hearings. The matter was, of course, the subject of an inquest. The inquest lasted a number of days. It could be anticipated that any witnesses who gave evidence at a hearing before the commission would exercise their right to object to giving evidence, so that the evidence they gave would not be admissible in any subsequent civil or criminal proceedings. In those circumstances there may be real questions, after a fairly exhaustive coronial inquest, whether there is any point in the Police Integrity Commission having a hearing. But, I repeat, it is too early for us to make a decision on that.

CHAIR: I am not a trained investigator but I am aware there is a sense, after a major incident occurs, the sooner you get on and start gathering and assessing the evidence it gives you a better chance of resolving that. When a matter like this, which has already been through the coronial process and after the lapse of some period of time, comes to you, does that make it more difficult to investigate and is there a loss of opportunity to

gather evidence which, had the Police Integrity Commission been engaged earlier it would have benefited the investigation?

Mr JAMES: It could. I have been asked, not necessarily before this Committee but elsewhere, about this matter. There is no doubt that if some incident occurs, the incident is much better investigated if investigators arrive at the scene of the incident as quickly as possible. By as quickly as possible I mean within minutes. It is highly important that evidence be preserved so that if an incident happens the scene of the incident be marked off and that trained people inspect the scene of the incident for the purpose of collecting evidence. This is something the police should do. I expressed the opinion elsewhere and I adhere to it, the Police Integrity Commission itself has not got the capacity and has not got the specialist capacity to do that sort of thing. The amount of manpower, and woman power, the police bring to bear is rather startling. An incident can occur and within a short time there could be a dozen police officers there, either uniformed or plainclothes. If we were to attempt to do that it would exhaust our resources.

CHAIR: What is the police protocol for investigating a critical incident where there has been a death at the hands of the police, and is that a protocol that you oversight?

Mr JAMES: If there is a death as a result of action taken by a police officer, it is regarded as a critical incident and becomes subject to police critical incident guidelines and the investigation is taken over by the critical incident investigation team. I think it would be true to say that what usually happens, there would have to be a complaint to us before we become actively engaged.

CHAIR: I understand that. In the event that a complaint is made to you down the track, the action taken by the police in the initial investigation will be very significant to what you can do to progress the matter. That is why I am wondering whether the Police Integrity Commission has any role in those protocols, because it can assist you if certain actions are taken in the initial investigation, and I understand the police are the ones who have the resources to do it?

Mr JAMES: We can express views to the Police Force about what should be the content of critical incident investigation guidelines but we do not have any coercive powers.

CHAIR: No, not at all, but it would be in everyone's interest?

Mr JAMES: The critical incident investigation guidelines have been reviewed. Are they still under review?

Mr KEARNEY: No, they have been finalised.

Mr JAMES: They have been finalised, but I am able to say that the Police Integrity Commission and the Ombudsman individually expressed views about draft new critical incident investigation guidelines and have also submitted joint views on the draft critical incident investigation guidelines. We have that kind of informal input.

CHAIR: Have those issues been addressed?

Mr KEARNEY: Yes, they have. We have had lengthy discussions with the police and Ombudsman over the past 12 months in order to effect changes to the guidelines to strengthen dealing with the risk of conflict of interest in critical incident investigations. The object in these investigations is to have independent investigators conducting the investigation to protect from such conflict.

CHAIR: What was the proposal?

Mr KEARNEY: Some of these issues are quite detailed. If are you comfortable, I would like to take that question on notice and give you more detailed feedback on it.

CHAIR: Absolutely. Anything that enhances people's understanding of the independence of the investigations is a positive thing.

Mr KEARNEY: Sure.

CHAIR: Is it fair to say that the discussion with the police service was positive in respect of taking on board your suggestions?

Mr KEARNEY: I think it is fair to say there was some reluctance, but both the Ombudsman and ourselves have had a fairly consistent view in this matter. Police have come around. The protocol, as it exists now, reflects our input. I might add that the Police Integrity Commission does not have a role in that protocol. We may have a role when a complaint arises some time down the track. We also can conceivably have a role much earlier if substantial misconduct is alleged at the time. That may come about through material referred to us by NSW Police. They may lodge internal complaints themselves under the complaints management system. It may be material that is referred to in the media and in other forums. If there is something substantial in terms of misconduct, there is a capacity for us to become involved earlier. The Ombudsman has much more significant experience in oversighting critical incident investigations. You will have seen on a number of occasions that they have become involved in a more detailed way in matters where there appears to be a public interest in doing so.

CHAIR: My line of questioning relates to the fact that you are being given matters that have obviously have gone array; they would not be coming to you in the first place unless they had gone array. Obviously the first thing that you look at is the evidence and the effectiveness of the initial investigation. It is important that your potential needs in reviewing a matter are being addressed at that early stage of investigation. I am wondering whether that can be strengthened?

Mr JAMES: There are a large number of critical incidents each year. Last year there were about 40. I would say this: I have spoken earlier today about Operation Calyx. Two of the limbs of the investigation in Calyx are an investigation into the critical incident investigation by Officer Oxford. Another limb is an investigation into the review by Officer Tedder of the critical incident investigation. I do anticipate that in our Calyx report we will be saying some things about critical incident investigations and reviews of critical incident investigations. There might be advantages in becoming involved at an earlier stage, but there are very serious problems of resourcing.

CHAIR: I understand that. My question relates to the procedures of the critical incident investigation and whether the Police Integrity Commission is satisfied that those procedures are effective. The rationale is that, down the track, you might be dealing with the matter and it would really be helpful to you that those procedures were effective in the first place and then you can see if they have been adhered to.

Mr JAMES: Yes.

CHAIR: It must be challenging to investigate on a cold-case basis what happened in the first place. Even though you cannot be there, your needs need to be anticipated.

Mr JAMES: The draft critical investigation guidelines, which I have seen and which have been the subject of comment from the Police Integrity Commission and the Ombudsman, are quite lengthy and detailed. We have sought to make comments and endeavour to persuade the police force to adopt our comments. We have not had complete success but we have had some success.

Mr KEARNEY: If I may revisit the earlier question on our feedback to police, the annual report canvasses the three or four issues that we raised and pressed quite strongly. One of them was the omission of public interest from the considerations by a commander whether to call a critical incident or not. Inadequate, as we saw it, identification of conflicts of interest. Police did not have a formal mechanism for determining whether there was a conflict of interest in a critical incident investigation. They do, of course, have a quite extensive process for addressing potential conflicts of interest within a normal complaint investigation. There was a revised definition of serious injury that seemed to exclude some matters from getting over the threshold and causing a critical incident to be called. There was also another issue to do with dealing with misconduct issues as they arise. Critical incidents tend to focus on whether there was a crime committed: A serious assault, or potentially a manslaughter, or even a murder.

CHAIR: A crime committed by a police officer?

Mr KEARNEY: Yes, indeed, during whatever duty they were performing at the time.

CHAIR: Yes, I understand.

Mr KEARNEY: Misconduct issues come up during those investigations. However, they tend to hold off acting on them until such time as the coronial inquest has occurred, on the basis that something may arise from the inquest that they ought to also take into consideration. Our view has been that if there are substantive matters they ought to be dealt with along the way. I think we have tentative agreement on that, but it remains to be seen.

CHAIR: Who actually is responsible for making the decisions regarding those critical incident guidelines?

Mr KEARNEY: The owners of the guidelines are the Professional Standards Command in NSW Police. Those who call a critical incident are regional commanders, so officers at the assistant commissioner level.

CHAIR: Stepping back to the ownership of the procedures, would you see a need or would it be beneficial for the Police Integrity Commission to play a role beyond advising, perhaps a more formal role in determining what are those guidelines?

Mr KEARNEY: I am comfortable that the police policies in many areas, including critical incidents, are quite good. The problem comes when the policies and procedures hit the ground. Compliance can often be an issue, the exercise of judgement.

Mr KEVIN ANDERSON: An interpretation.

Mr KEARNEY: Indeed. That is where the issues arise. The policies are pretty good.

Mr LEE EVANS: Thank you for appearing before the Committee today. In your opinion, do you have adequate resources to execute your functions?

Mr JAMES: Would we like more?

Mr LEE EVANS: It is a bit like Oliver.

Mr JAMES: Yes. I think we have adequate resources. We have to be careful and we have to look closely at whether we fill an employment position that becomes vacant. However, for the conception that we presently have of our function, our funding is adequate.

Mr KEVIN ANDERSON: That obviously does not relate to critical incidents. There have been media reports about the Police Integrity Commission seeking further funding to be able to get to the front line more quickly.

Mr JAMES: Yes, I have seen media reports suggesting that there is a power grab by the Police Integrity Commission. That is not based on any substance.

CHAIR: So you continue to take the view that you do not seek an expanded role for the commission into critical incidents and you are comfortable with the situation at the moment?

Mr JAMES: Yes, that is my position. If the commission were to have any substantially enhanced role, it would need extra funding.

The Hon. SARAH MITCHELL: I note in the annual report the reference to preliminary investigations and that 76 per cent resulted to no further action. Is that an unusually high number or is it similar to previous years?

Mr JAMES: I think it is in accordance with what has happened in previous years. Complaints are assessed, but our resources are limited and we investigate only a fairly small proportion of the total number of complaints that we receive.

The Hon. SARAH MITCHELL: Is that determined based on the seriousness of the complaints, or is no further action taken on some complaints because there is not enough evidence or they are too minor in nature? What is the process?

Mr JAMES: The commission has developed quite an elaborate set of criteria to determine whether to investigate a complaint. I have it in front of me. There are five principal criteria and they have a number of subheadings. They refer to the nature of the activity, and, of course, that goes largely to seriousness. The currency of the activity is also an issue. For example, is it something that appears to be ongoing or is it likely to recur? We also have a separate criterion dealing with relative seriousness and one with public confidence; that is, would it be likely to weaken public confidence in the Police Integrity Commission or in the Police Force if we did not undertake an investigation?

A further matter is what is compendiously described as a strategic outcome, which is partly how an investigation of this particular complaint fits in with the larger picture of what the Police Integrity Commission is trying to do. Under those five criteria, there are, I think, roughly 30 to 40 subheadings, and loadings are given to subheadings. In other words, some factors are regarded as having greater weight than others. We can provide the Committee with a copy of our complaint management guidelines. It is an assessment process based on a large number of criteria, the different criteria are given different weights and we look at the overall score.

Mr KEARNEY: I would like to elaborate on the issue of the number of preliminary investigations and the number that cease. They are ceased for a number of reasons. It may be because we reach a point at which we have conducted all reasonable inquiries and there is no prospect of taking it any further. Alternatively—and this is often the case—we might find that the complaint is ultimately spurious or based on a misunderstanding of the facts by the complainant. Those complaints are set aside because no misconduct has occurred. We get a proportion of those. There are other matters that go on to become full investigations and run through the entire process.

The Hon. SARAH MITCHELL: For my benefit and for the benefit of other members, it would be useful if you could provide the Committee with a copy of the criteria so that we can more fully understand the process. If the matter is determined after having been through that very rigorous process not to be serious enough to be investigated by your organisation, is it then referred back to the Police Force for an internal review, or is that the end of the matter?

Mr KEARNEY: It depends on the source of the complaint. If the complaint came directly to us and we got to a point in the assessment process of deciding that it was not a matter we should investigate, we would refer it to the NSW Police Force or, if appropriate, to the Ombudsman. We normally take into account the views of the complainant before doing so. He or she may prefer that some matters not be provided to the police and we will take that into consideration. It does not mean it will not be referred if there is an overriding public interest in doing so. If there is an overriding public interest in referring it, it will be referred. If the complaint has been sourced from the police complaints management system, there is no need for a referral. In that case, the police go about their business not being aware that we have conducted a separate assessment. In some circumstances we might provide the outcome of that assessment to the police to assist them in their own decision-making.

CHAIR: There is a lot of interest in the complaints that are not being pursued by the Police Integrity Commission. What is the nature of those complaints, how many are there and why are they not pursued? What percentage of the complaints you receive have been inappropriately referred and what percentage are not serious enough to be investigated? I acknowledge that we all have a list of priorities and the line must be drawn at some point. I thank the member for her question because it is an interesting issue. The Committee would like to know more about the nature of those complaints.

Mr JAMES: Are you seeking more information about the complaints we decide not to investigate?

CHAIR: Yes, and what percentage that is of all complaints.

Mr KEARNEY: We have tried to provide some figures about that in response to the questions on notice. The Police Integrity Commission investigates about 7 per cent of the complaints that it assesses. We assess between 1,000 and 1,200 complaints a year out of a pool of about 3,000 to 4,000. That is 7 per cent of the complaints that we assess and about 3 per cent of all complaints. I think we are talking about roughly 150 or 160 full and preliminary investigations conducted each year. That is a relatively small number. Some of those matters considered serious might fall below the line.

For simplicity's sake they are referred back to the New South Wales police. The police undertake those investigations. The top proportion of those ones we will oversight ourselves and we will oversight a range of others that might be of a lower level but because we have a particular interest in an area we take them on as well, or they will be oversighted by the Ombudsman. By and large the vast majority are oversighted by the Ombudsman.

CHAIR: Could you take on notice and produce more information about the complaints that are falling outside that assessment, the ones that are not being assessed, so we can have a feeling for what they are?

Mr KEARNEY: You are interested in the categories of complaints that fall below the line?

CHAIR: Yes. Not the ones that are assessed but more the ones that failed. We are interested in understanding why they are failing.

Mr JAMES: We can do that.

Mr KEVIN ANDERSON: I believe that 76 per cent of those preliminary investigations resulted in no further action. Could they have been dealt with at a lower level prior to being elevated to your office?

CHAIR: We are interested in the characteristics of those, if you have collected information, and can advise the committee on any patterns.

Mr KEARNEY: There might be some information we can gather from the systems that we have.

Mr KEVIN ANDERSON: If we can look at perhaps freeing up some of those enquiries and your resources it might allow you to do other things.

Mr JAMES: Yes.

Mr KEVIN ANDERSON: Mr James, just in relation to Project Harlequin: In line with the project's aims can you describe what some of the misconduct risks might be that the NSW Police Force is managing and how they are going about that?

Mr JAMES: I may refer it to Mr Kearney.

Mr KEARNEY: I am going to duck it as well. It is very early. As you may have picked up from some of our responses we have had some resourcing issues, having lost the researcher that started this piece of work. I can advise that we have since recruited and we have a researcher fully engaged as of two days ago.

The Hon. ADAM SEARLE: Early days.

Mr KEARNEY: Some work has been done. We have managed to secure access to over 80 critical incident investigation files on the New South Wales police systems, which will be quite useful. We have managed to obtain a lot of publicly available research and a range of other material that is quite useful. We are speaking to relevant academics that have written on these matters before.

Mr KEVIN ANDERSON: In your experience of misconduct risk, Mr Kearney, given the body of work yet to be completed and it being early days, what would that be?

Mr KEARNEY: I think the biggest one is going to be conflict of interest whether through actual knowledge of the individuals involved, potentially even friendship, or a conflict of interest that arises through an exercise of poor judgement because "we are all part of the same club". The culture still has those kinds of issues. I expect those sorts of things will come out of the research.

Mr KEVIN ANDERSON: In your experience is that increasing?

Mr KEARNEY: I could not possibly comment on that. I am afraid, I do not know.

CHAIR: Can I thank you for sending me a copy of the commission's corporate plan. Is that the entire corporate plan? Is there a more detailed document?

Mr JAMES: Yes, there is one with performance indicators in it. I have to say it is not a very much larger document than what you have got. The corporate plan states our goals at a very high level of generality and I believe that what we try to do is include it in the corporate plan but it is a statement of goals.

CHAIR: With respect, Commissioner, this is not a corporate plan, other than it has "Corporate Plan" written on the cover.

Mr JAMES: Yes. It is called "Corporate Plan".

Mr KEARNEY: Underpinning that document there are detailed plans at branch level. We are a very small organisation, so much of the planning occurs at that level—they are quite detailed.

CHAIR: Is there a genuine corporate plan?

Mr KEARNEY: We would say this is our corporate plan at that high level.

CHAIR: I do not accept that the document with the words "Corporate Plan" written on the cover is a corporate plan.

Mr JAMES: We could produce a more detailed document. I certainly accept that it is at a very high level of generality.

CHAIR: If you could provide the committee with a more detailed document. Obviously in terms of oversighting the organisation it is beneficial to our Committee to know what the corporate plan is, what the performance indicators are, how you are performing against those performance indicators, whether you do have a genuine corporate plan and whether that corporate plan is effective in demonstrating that you are achieving your goals. From the Committee's perspective that is a key document. I would appreciate if more could be provided and we can revisit that issue.

Mr JAMES: Yes.

The Hon. ADAM SEARLE: Just on that, if there are more detailed documents at a branch level, perhaps we could see those, if that is appropriate?

CHAIR: It sounds to me like the commission is going to review the documentation and pull something together.

The Hon. ADAM SEARLE: That sounds like they are creating a new document, I would like to see the original documentation.

Mr KEARNEY: I think we could provide existing documentation, however, it might need to be redacted and there will be some specific matters raised in some plans, particularly the investigations unit plan, which are too early to raise publicly.

CHAIR: Every agency is required to have a corporate plan, is it not?

Mr JAMES: Yes.

CHAIR: Are you given guidance as to what constitutes a corporate plan?

Mr KEARNEY: Treasury provides some guidance.

Mr JAMES: I believe we understand your comments and we will endeavour to implement them.

Mr KEVIN ANDERSON: I note the date on this one is 2012-15, was there one prior to that?

Mr JAMES: Yes, there was, it covered a span of years.

Mr KEARNEY: Yes. It covered the three preceding years. You will see it reflected in the opening part of the annual report.

Mr KEVIN ANDERSON: Of the previous corporate plan?

Mr KEARNEY: Yes.

Mr KEVIN ANDERSON: Is it a separate document not included in the annual report?

Mr KEARNEY: We do have a separate document, yes. If I can refer you to the annual report, the overview section contains the details of our corporate plan and includes the indicators and the results for that current year and the preceding two years.

Mr KEVIN ANDERSON: I am sorry, Mr Kearney, the previous corporate plan, did it look much different than this?

Mr KEARNEY: It canvassed similar matters, it might have been physically larger.

Mr KEVIN ANDERSON: And more explanatory?

Mr KEARNEY: There may have been more detail, yes.

CHAIR: Which page of the annual report are you referring to?

Mr KEARNEY: Section three, which starts on page seven.

Mr KEVIN ANDERSON: Key directives, achieving key goals, it is almost like a vision statement.

Mr KEARNEY: It starts on page six.

CHAIR: I do not want to canvass what is and is not in the document, but from a management process do you sit down with the commissioner every year and go through what is stated in the corporate plan and advise of your progression in accomplishing it? Is that fair to say?

Mr KEARNEY: It is. As part of our annual reporting process we touch on each of those matters, yes.

CHAIR: Each year do you specifically go through the corporate plan and advise the progress against each requirement of it? Do you review it and advise on how you are accomplishing its outcome?

Mr KEARNEY: I am sorry, I do not understand the distinction that you are trying to make.

CHAIR: I am not talking about an annual report but I am talking about a corporate plan as a management tool that you work through with the commissioner on an annual basis so that the commissioner can be comfortable with how things are going in a management sense.

Mr KEARNEY: The corporate plan is our statement of goals and objectives and it provides the basis upon which we measure our performance. It is also the basis upon which we report our performance so as part of the review process that we undertake to report we are also reviewing. You may have seen in the past that measures have changed when we have found that they are not necessarily useful and better measures become available. The corporate plan has been an evolving process over many years.

CHAIR: Yes, but have you reported against the corporate plan?

Mr KEARNEY: Every year, yes.

CHAIR: Will you provide the most recent report?

Mr KEARNEY: This annual report is our report against the corporate plan.

CHAIR: Is there a separate plan that addresses each aspect of the corporate plan?

Mr KEARNEY: It does.

Mr JAMES: Separate from this.

CHAIR: Will you take further questions on notice? We have further questions that would be more appropriate to put them onto the notice paper.

Mr JAMES: Yes.

CHAIR: Do you want to draw anything further to the committee's attention today?

Mr JAMES: No.

CHAIR: A matter arose from our earlier inquiries with the inspector in relation to the issue of complaints from the Crime Commission about the Police Integrity Commission. Do those types of complaints go to the Inspector of the Police Integrity Commission or does the Inspector of the Crime Commission have a role? There is some confusion when there is a complaint made against the Crime Commission, is that complaint better directed to the Inspector of the Crime Commission or to the Police Integrity Commission? It is not clear to the committee what is the flow charter for that type of complaint. The Inspector of the Police Integrity Commission has commented that puts him in a very perplexing situation as well as he is technically overlooking agencies that can be making complaints about the agency he overlooks. It seems very circular.

Mr JAMES: There is not as yet a person appointed as the Inspector of the Crime Commission.

CHAIR: Correct, no person has been appointed, but the Government has foreshadowed that it will make an appointment.

Mr JAMES: Yes. I have previously referred to the relations between the various agencies. Mr Patten prepared that report into the Crime Commission and recommended that the Police Integrity Commission continue to have some oversight of the Crime Commission but he also recommended that there be an inspector for the Crime Commission. As I understand his report, Mr Patten appreciated that difficulties could arise about the line of demarcation between the Police Integrity Commission and the inspector of the Crime Commission with respect to the Crime Commission. I understand Mr Patten to have said the Police Integrity Commission should concentrate on allegations of serious misconduct by Crime Commission employees but the inspector of the Crime Commission should have a fairly continuous role of monitoring almost the daily activities of the Crime Commission, and that is in his report. We have not yet had an opportunity to see how that will work out in practice because there has not been any inspector of the Crime Commission.

You referred to complaints made by the Crime Commission against the Police Integrity Commission to our Inspector. My understanding is that all the complaints of which I am aware were made by the Crime Commission in regard to the conduct by the Police Integrity Commission of Operation Winjana which was that long investigation into the systems used by the Crime Commission in criminal assets recovery actions. The complaints of which I am aware go back to the hearings in Winjana to 2010 and early 2011 and they do not relate to anything current. I was not here then but my impression certainly is that relations between the Police Integrity Commission and the Crime Commission sometimes became tense during Operation Winjana which went on for a long time. I do not think, or at least I am not aware, that there are any more complaints by the Crime Commission to our Inspector about the Police Integrity Commission.

CHAIR: It is really the complaints against the Crime Commission and how they are directed. You have answered that very well, thank you. Do you imagine once an Inspector of the Crime Commission is announced that there will be some sort of liaison between the Police Integrity Commission and the inspector?

Mr JAMES: I would hope so, yes. I would certainly like co-operation and consultation between the Police Integrity Commission, myself and the new Inspector of the Crime Commission. This is not directly relevant, but I might say that I have had informal meetings with Mr Hastings since he became Commissioner of the Crime Commission and I am confident that I can have a courteous working relationship with Mr Hastings. I would hope to have the same with whoever becomes the new Inspector of the Crime Commission.

Mr Patten said in his report that much would depend on the personalities involved by which I take him to mean that whether the system works well will depend on whether the Commissioner and senior officers of the Police Integrity Commission and the new Inspector of the Crime Commission are compatible. I would hope that that will happen.

CHAIR: You are probably aware that the Crime Commission and the inspector report to Parliament for our Committee as well?

Mr JAMES: Yes.

CHAIR: Can I ask that you keep our Committee informed on how that matter is progressing? We will put the same request to the inspector when he is appointed and the Crime Commission because if there is going to be any problem in that regard we would really appreciate early warning of that.

Mr JAMES: Yes.

Mr KEVIN ANDERSON: Mr James, you just highlighted some personalities in terms of the harmonisation across and the processes needed. Do you have a view of how it might be better set up to alleviate the fact that there may be some personalities to prevent what we saw with Winjana in relation to expensive, unnecessary and undignified litigation in the Supreme Court and that personalities may or may not been involved in getting it to that point?

Mr JAMES: My knowledge is very indirect—about third or fourth hand. I think personalities did have something to do with it. A matter that my predecessor, Mr Cripps, referred to is that when problems arose between PIC and the Crime Commission, the Crime Commission came, to use a neutral word, to be represented by the Crown Solicitor. Mr Cripps regarded that as quite inappropriate, that when a dispute had arisen between PIC and the Crime Commission, particularly where PIC has oversight of the Crime Commission, that the Crown Solicitor would then act for the Crime Commission against PIC.

It had the unfortunate consequence too that the Crown Solicitor was thereby excluded as a possible arbitrator between PIC and the Crime Commission. I also understand that it made it difficult to ask the Solicitor General, through the Crown Solicitor, for an opinion. Mr Cripps said that PIC would abide by a ruling by the Solicitor General even if PIC disagreed with it. If that happened there would not be any litigation between two government bodies. The costs of the litigation between PIC and the Crime Commission were quite substantial.

I suppose what I am putting is I have actually spoken to the Solicitor General about this informally and it would be my hope that if any dispute arose between PIC and the Crime Commission that could not be amicably resolved, it simply be submitted for arbitrament to the Crown Solicitor or the Solicitor General and there be no litigation.

CHAIR: It is your submission that that is how the process should occur?

Mr JAMES: Yes. I would hope that it would not get to that stage. I would hope it could simply be resolved between the two bodies but if it could not be resolved between the two bodies, it should be submitted to a government lawyer to determine the issue.

Mr KEVIN ANDERSON: To arbitrate?

Mr JAMES: Yes.

Mr KEVIN ANDERSON: Excellent, thank you very much.

CHAIR: Did you have anything further on that?

Mr KEVIN ANDERSON: No, that is okay. It is fine, thank you.

CHAIR: Can I ask that you also keep us apprised of the response to that proposal, that that be the means of resolving legal disputes?

Mr KEVIN ANDERSON: It was only an informal discussion where you expressed that view.

Mr JAMES: I spoke informally to the Solicitor General. I do not think I am betraying any confidence but it was an informal discussion by me with the Solicitor General. I have not spoken to anybody in the Crown Solicitor's about it partly because it has been difficult to speak to someone in the Crown Solicitor's. There is an issue about whether guidelines governing the Crown Solicitor for acting were observed by the Crown Solicitor in his deciding to act for the Crime Commission.

CHAIR: Who assesses the compliance of the Crown Solicitor with their guidelines?

Mr JAMES: One goes to the Attorney General or the Department of Premier or Cabinet.

CHAIR: It is a very positive proposal that you have put forward which takes on board the lessons of the past.

Mr KEVIN ANDERSON: Yes, absolutely. Is it something that you would like to propose in a formal sense, Mr James?

Mr JAMES: Yes, I would.

CHAIR: But it needs to be done in the context of discussions?

Mr JAMES: Yes.

CHAIR: So that it goes forward, as you have said. A consensus proposal between the agencies would be a wonderful thing.

Mr KEVIN ANDERSON: Absolutely.

The Hon. ADAM SEARLE: Yes, that would be preferable.

CHAIR: I comment also that I think the Government very appropriately has really stringent requirements on the qualifications of people being appointed to positions such as yours—the commissioner of the Crime Commission and the inspector. As a result not many people are qualified to take on these jobs and overwhelmingly they are eminent people who have other commitments or other experiences, which is terrific. There obviously needs to be some flexibility given the time commitments of those people. If you want people of that calibre to take on those positions, I can see there needs to be some flexibility in how they manage their time otherwise you would end up not getting the quality of person you are hoping for in the first place. This is a roundabout way of saying that although I understand the Government has not yet made the appointment of the inspector of the Crime Commission, it will vary according to each individual and who gets the position and that will impact on how the work is flowing between other agencies.

Mr JAMES: Yes.

CHAIR: I hope I have not said that in too complex a way but I acknowledge the need to have flexibility in order to attract and keep the best possible people in those roles.

Mr JAMES: Yes.

CHAIR: I flag that we would like to follow up with you progress being made on resolving conflicts in legal opinions between the Crime Commission and PIC.

Mr KEVIN ANDERSON: And how Mr James would like to formally put that proposal in relation to that.

CHAIR: Yes, or whether, indeed, joint proposals could be developed. How that matter will be progressed.

Mr LEE EVANS: Does our Committee have a role?

CHAIR: Not really but I think we are interested in seeing it resolved.

The Hon. ADAM SEARLE: It is a conflict that will arise again if it is not resolved.

Mr KEVIN ANDERSON: That is right and I think Mr James' suggestion is an excellent one.

CHAIR: An elegant one, yes, thank you.

Mr JAMES: It does not originate with me.

Mr KEVIN ANDERSON: I would claim it if I were you.

The Hon. SARAH MITCHELL: Take credit for it.

The Hon. ADAM SEARLE: They are more complicated than they seem at first, I am sure.

CHAIR: I think you can say, though, with great certainty that given the nature of your work there are going to be disagreements in the future and the sooner a means of resolving it efficiently is put in place the better?

Mr JAMES: As I understand, it happens in other areas of government. There is a dispute between government departments or government agencies and they do not sue each other. It is resolved by getting either advice or a ruling from government lawyers.

The Hon. ADAM SEARLE: Although this is a little bit different, because one apprehends the difficulties that are likely to arise between the Police Integrity Commission and the Crime Commission will not be of a bureaucratic nature; they will be to do with allegations made to your organisation of misconduct or unsatisfactory conduct by the Crime Commission?

Mr JAMES: Yes.

The Hon. ADAM SEARLE: So in that situation the Department of Premier and Cabinet or the Crown Solicitor may not be in a position to adjudicate, given the nature of the issues involved?

Mr JAMES: What sort of complaints?

The Hon. ADAM SEARLE: Complaints of the kind that arose in the litigation as between the different agencies. So, as I was apprehending, the solution may be a little bit more complicated.

CHAIR: I agree.

Mr JAMES: Yes.

The Hon. ADAM SEARLE: Although I join with my colleagues on the Committee in saying that a joint protocol between the agencies would be welcomed.

CHAIR: There are lots of examples of government agencies regulating other government agencies. I think the most common one is probably the Environment Protection Authority [EPA], which has to regulate environmental standards for a host of agencies. We do not like to see the Government wasting taxpayers' money fighting itself in court but, on the other hand, we need to have confidence that the Environment Protection Authority is able to ensure high standards and compliance. Suing each other is not a desirable situation, but there are obviously cases where government agencies need to see the matters through in court to have them resolved.

Mr JAMES: Yes.

Mr KEVIN ANDERSON: And, as Mr James alluded to earlier, questions in relation to the adherence to the guidelines of the Crown Solicitor in that matter that he referred to earlier.

CHAIR: Yes. Have you made a complaint about that?

Mr JAMES: We have not made a complaint. We have talked about it within the Police Integrity Commission but, as far as I am aware, we have not actually made a complaint.

CHAIR: Are you satisfied with the guidelines?

Mr JAMES: I have not looked at the guidelines closely. Not having actually read the guidelines carefully, perhaps I had better not make any further comment.

CHAIR: I ask on notice that the Committee be given some more background on, firstly, whether the guidelines are satisfactory, and, secondly, whether the process of ensuring compliance with the guidelines is satisfactory?

Mr JAMES: Yes.

CHAIR: Does anyone want to say anything further?

Mr JAMES: I just wanted to say one thing. I would like to thank the Committee for its support on the statutory amendments to enable Police Integrity Commission employees to have additional methods under the firearms and weapons control. It is appreciated by the Police Integrity Commission.

CHAIR: Given that the Committee is only in a position to make recommendations, is that being followed up appropriately?

Mr JAMES: I think it is still happening, is it not?

Ms O'BRIEN: Yes, it is proceeding.

Mr JAMES: It is actually proceeding, and I use that expression advisedly.

CHAIR: The Committee made some fairly strong remarks in the report. In fairness now to the Government perhaps we should wait and review progress in a more reasonable period of time, but I hope the pace has quickened as a result of the inquiry.

Mr JAMES: Yes. Thank you.

CHAIR: Thank you for appearing before the Committee today and for the issues we have traversed. Thank you also for the great progress that has been made in strengthening relations with the other organisations, including the Crime Commission and the Inspector. That position has improved to what it was a year ago and I thank you for your efforts in making that happen.

(The witnesses withdrew)

The Committee adjourned at 11.55 a.m.