

REPORT OF PROCEEDINGS BEFORE

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

SIXTH GENERAL MEETING WITH THE INSPECTOR OF THE
POLICE INTEGRITY COMMISSION

At Sydney on Tuesday 7 September 2004

The Committee met at 2.00 p.m.

PRESENT

Mr P. G. Lynch (Chair)

Legislative Council

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

Legislative Assembly

Mr G. Corrigan
Mr M Kerr
Mr M. J. Kerr

MORRIS DAVID IRELAND, Inspector, Inspectorate of the Police Integrity Commission, Sydney, sworn and examined:

Inspector IRELAND: I hold the office of Inspector by appointment from the Government on the advice of the Executive Council.

CHAIR: Inspector, there have been some questions sent to you of which you have notice. I propose to read the questions out and you can respond in a way that you think is appropriate. The first question is:

1. In the Committee's *Report of the Fifth General Meeting with the Inspector of the PIC* (September 2003), it was recommended that:

The *Police Integrity Commission Act 1996* be amended to provide the Inspector with jurisdiction to investigate alleged improprieties by non-PIC officers, in circumstances where:

- the conduct of a PIC officer also is involved; or
- there is a connection between the alleged misconduct and the activities of the PIC; or
- the legality or propriety of the PIC's activities is called into question;

and, the conduct is conduct of a type that would normally fall within the Inspector's jurisdiction.

(a) Have you been consulted concerning this recommendation and what is your understanding of its current status?

(b) Do you continue to hold concerns about the capacity of the Inspector to effectively perform the functions of his office without such an amendment to the Act?

Inspector IRELAND: If it is convenient, I will deal with question 1 (b) first. The answer is yes, I do continue to hold concerns about the capacity of the Inspector to effectively perform the functions of his office without such an amendment to the Act. As to question 1 (a) "Have I been consulted", the answer is yes, I have been consulted concerning this Committee's recommendations and I have met with officers of the Minister's office and the Ministry for Police. Recently, in August 2004, I received from the Minister a request to consider the proposed amendment to the Act recommended by this Committee in light of the advice given to the Minister by the Crown Solicitor on the question of whether there existed within the framework of the present legislation an available mechanism to meet the hiatus in legislation which this Committee's recommendation sought to address.

The Crown Solicitor expressed the opinion that a pathway through the existing legislation could be threaded by alternatively hiving off from an inquiry being undertaken by the Inspector that part which related to non-PIC officers to the ICAC, alternatively passing to the ICAC the whole of an inquiry which required an investigation of the conduct of both PIC officers and non-PIC persons. The further suggestion was made that where a segment of a

particular inquiry had been referred by me to the ICAC under that proposal and dealt with, it could then be referred back to me at any time for matters within the Inspector's jurisdiction to be dealt with.

I advised the Minister of my acceptance, without demur, of the Crown Solicitor's opinion that it was possible to thread a pathway through the legislation to have conduct by PIC officers and non-PIC officers separately investigated by the ICAC and the Inspector of the PIC, but the piecemeal approach of contemplating multiple hearings of alleged misconduct in a single operation or, alternatively, abdicating the functions of the PIC Inspector in favour of the ICAC were devoid of practical efficacy. Apart from the abdication of a principal function of the Inspectorate or, alternatively, the fragmentation of investigations, there is a high degree of risk to the confidentiality and security of PIC operations.

For these reasons, in answer to the Minister's question whether I believed that the Crown Solicitor's advice showed a way of appropriately dealing with investigations into joint investigations involving the PIC, I advised that I did not so believe and that an amendment of the Act as proposed by this Committee is the appropriate remedy for this anomaly. Sections 129 and 130 of the Police Integrity Commission Act are examples of how a simple amendment could bring about the necessary change. As to the current status of the matter, the impression I was left with at the end of my discussion with the lawyers from the Ministry and the office of the Ministry is that we were in agreement.

The Hon. JAN BURNSWOODS: When was that meeting? How long ago?

Inspector IRELAND: It would be within the last three weeks but I do not know the precise date.

The Hon. JAN BURNSWOODS: I just wanted to know approximately.

CHAIR: I should have said logically that at the end of each question if Committee members have issues arising, this is the appropriate time to deal with them.

Mr MALCOLM KERR: On the first question, were the only people who consulted you those you have mentioned from the Minister's office and the Ministry?

Inspector IRELAND: Yes.

CHAIR: Inspector, I understand you wish to deal with questions 2 and 3 in camera?

Inspector IRELAND: Yes. They concern operational issues and I would prefer to deal with them in camera.

CHAIR: We will return to those at the end of these questions. Question 4 states:

The Annual Report notes that it is important that the timeliness of the PIC's procedures should continue to be closely monitored.

(a) Are there any particular matters regarding the timeliness of the PIC's procedures that continue to be of concern?

(b) What sorts of considerations come into play when focusing on the question of timeliness and procedures that are likely to achieve the best and most balanced outcome in terms of the PIC's productivity?

(c) Have you observed any significant trends or matters of concern with respect to the PIC's exercise of its coercive powers, and has the PIC met the requirements of relevant legislation in exercising these powers?

Inspector IRELAND: In answer to question 4 (a), "timeliness in the completion of investigations" is raised from time to time in complaints to my office. However, it is difficult to define how long an investigation should take and each such issue of delay, as raised, can only be dealt with on its merits. Apart from the matters considered in my report on the practices and procedures of the Commission in relation to Operation Malta, particularly those relating to control over proceedings in the hearing rooms, for example, adjournments to suit counsel's convenience and control of the presentation of evidence, I have not had cause to be critical of the Commission's timeliness nor do I have any particular matters of ongoing concern.

As regards to question 4 (b), "What sorts of considerations come into play", from a systemic perspective this is perhaps more a question for a management consultant than a matter squarely within my functions and expertise. However, as my report on the Commission's practices and procedures shows, from the standpoint of an investigative hearing, timeliness can be affected by any number of factors, internal and external to the Commission. For example, the path an investigation takes in terms of evidence which is received, the conduct of representation before a Commission hearing and how the hearing is controlled by the presiding officer and also, of course, by counsel assisting, as well as the limited resources of the Commission and the consequential need to prioritise the workload, they are all factors that bear upon this question.

As to question 4 (c) "Have I observe significant trends", the Commission relies heavily upon the use of listening device and telecommunications interception warrants in its investigations. This is unremarkable given the largely secret nature of police corruption and the consequent need to utilise covert electronic surveillance. I have observed no significant trends or matters of concern.

CHAIR: Question 5:

5. The Annual Report notes that the Inspector may inspect the PIC's written applications made in respect of s.125 of the Act (i.e. applications to obtain information, documents or other things). Did you inspect these records during the last reporting period and did the written applications meet the PIC's internal requirements?

Inspector IRELAND: Assuming that the reference to section 125 is a typographical error and for section 25 to be the provision which was intended to be referred to, during my weekly meetings with the Commissioner I am provided with details of both section 25, public authorities, and section 26, persons other than public authorities, notices issued in relation to Commission investigations, and I am, of course, able to make such further inquiries of the Commission's records as I see fit and all of the requirements have been complied with. It is important to recognise that the people doing this work in the Commission are highly experienced and they know what they are doing when they make applications to issue notices and so the steps, you might say, are second nature to them really—the legalities involved.

CHAIR: Question 6:

6. Recommendation 14 of the Inspector's Report on Practices and Procedures proposes that an internal Practice Guidelines Committee be established, comprising the Commissioner, Assistant Commissioner and the Solicitor to the Commission.
 - (a) What is the current membership of this Committee following the departure of the Assistant Commissioner?
 - (b) Are you satisfied that the PIC observes the procedures referred to in Recommendation 17 in the conduct of proceedings?

Inspector IRELAND: As to Question 6 (a), the current membership, as you mentioned the Committee formerly comprised of the Commissioner, the Assistant Commissioner and the Commission's Solicitor. The Practice Guidelines Committee is presently constituted by the Commissioner and the Commission's solicitor. As to Question 6 (b), since my report no occasion has arisen whereby control by the presiding officer over hearing room procedures has been tested, that is to say, no major long-running hearing, similar to Operation Malta, has been conducted. I am satisfied that those hearings which have been conducted have been appropriately controlled and that Recommendation 17 will be implemented when the occasion arises.

Mr MALCOLM KERR: How active is the committee?

Inspector IRELAND: They have been very active because they have had to redraft and incorporate all the recommendations I made in my report. They numbered in their twenties. They did not require that many amendments, because a number of the recommendations related to things that should not be changed. I think there might have been some five or six of those. But there were something like 14 recommendations which required nine amendments, all of which had to be drafted or redrawn. That has all been done.

CHAIR: Do you wish to deal with Questions 7 to 9 in camera?

Inspector IRELAND: Yes, they are matters which relate to complaints.

CHAIR: Question 10:

10. Are there adequate resources currently available to the Inspector to enable the performance of his functions?

Inspector IRELAND: The resources available to me are adequate for the performance of my functions. I am pleased to note that that is not a question that relates to my remuneration.

CHAIR: Question 11:

11. The Ministry's report on the review of the PIC Act makes the following two recommendations concerning s.142 of the PIC Act, which requires the concurrence of the Minister for Police in respect of any investigative, surveillance or enforcement functions undertaken by a police officer for the purpose of the Act:

Recommendation 8 was:

Section 142 of the Act should be amended to remove the requirement that the Commission obtain the approval of the Minister for Police where a NSW police officer is required to exercise investigative surveillance or enforcement functions under, or for the purposes of, the Act (whether in connection with joint task force arrangements, or otherwise). A police officer should be able to exercise such functions with the approval of the Commissioners for Police and the Police Integrity Commission.

Recommendation 9 was:

Section 142 of the Act should be amended to require the Commissioner of the Police Integrity Commission—to notify the Minister for Police where a NSW police officer is required to exercise investigative, surveillance or enforcement functions under, or for the purposes of the Act.

At p 20 of the Inspector's Annual Report 2003-4 reference is made to the need to urgently review this section, particularly in the context of controlled operations authorised by the PIC that involve police officers.

- (a) What is your understanding of the purpose of this section and the way in which it currently operates?
- (b) What has occurred in the conduct of PIC's controlled operations to support the need for an urgent review of s.142?
- (c) What did you envisage would be involved in the review of this particular section?

Inspector IRELAND: Section 142 would seem to work in two ways: First, it is consistent with both the general prohibition of section 10 (5) against the appointment, employment or engagement by the Commission of police officers and the Commission's power under section 10 (6) of the PIC

Act to make arrangements for the limited use of police in the setting of joint task forces or in individual investigations. Thus under section 142 (1) the exercise by police officers of investigative surveillance or enforcement functions under the PIC Act is prohibited except where the Commissioner for the Police Integrity Commission gives his specific authorisation.

Second, the requirement that such an authorisation receive the concurrence of the Minister seems to have been intended as a safeguard against the use of the provision in such a way as to subvert the general prohibition of section 10 (5).

What has occurred in the conduct of the PIC's controlled operations to support the need for urgent review of section 142? That is question (b). There have been some recent operations where an urgent need has arisen to engage a police officer in the exercise of investigative or surveillance functions on behalf of the Commission. That is not to say that the Minister has not been forthcoming with his concurrence but in cases of urgency it cannot be guaranteed that the Minister will be available to consider the matter, given the parliamentary and other commitments that he may have. As well, there are matters of operational security. It must be acknowledged that once sensitive information about a Commission investigation leaves the Commission's walls control over the information is lost. Consequently it cannot be guaranteed that the Commission's investigation will not be jeopardised.

Question 11 (c): What do I envisage would be involved in the review of this particular section? The position now adopted by the PIC is that no external agency or individual be involved in expressing concurrence but that notification of the Commissioner granting approval be conveyed to my office. I see no reason why this course of action would not be appropriate. The PIC has made a submission to the Minister in this regard and I support the amendment proposed by the Commission.

CHAIR: Question 12:

12. At p.57 of the report on the review of the PIC Act, the Ministry noted that the then Inspector, the Hon. M. Finlay QC, agreed with the submission made by the PIC that it should be able to resolve with the other agencies in a joint taskforce, without resort to the Minister, the identity of the persons to be attached to the taskforce and the level of their involvement.
 - (a) Do you agree with the PIC's submission on this point?
 - (b) What is your view of the proposal contained in Recommendation 9 of the Ministry's report, and how do you anticipate this notification process would work?
 - (c) Do you consider that Recommendation 9 should apply to joint operations generally, or only in relation to controlled operations previously authorised by the PIC?
 - (d) What problems do you envisage may occur should Recommendations 8 and 9 be adopted?

- (e) Do you have any views on other ways in which this provision might operate so as to not threaten the outcome of PIC investigations?

Inspector IRELAND: I agree with the principle of the Commission's submission that the Minister should not need to be involved in such matters. The Commission's recently expressed position is that no person external to the Commission should have authority to veto its operational decisions. A submission has been made to the Ministry to that effect, and I agree with that point of view. My view of the proposal contained in Recommendation 9 of the Ministry's report is that having expressed my agreement with the Commission's recent proposal I can see no good purpose behind Recommendation 9 of the Ministry's report. It is not clear what notification to the Minister under the Ministry's proposal would achieve. Notification to my office according to the Commission's present proposal would seem a relatively simple matter of providing a copy of the Commission's written authorisation together with any relevant controlled operation authority, and I have complete access to the Commission's records and would be well placed to conduct any further enquiries.

As to (c), do I consider Recommendation 9 should apply to joint operations generally or only in relation to controlled operations previously authorised? Whichever proposal is implemented, section 142 would apply across-the-board to any circumstances where police officers are to exercise investigative surveillance or enforcement functions under or for the purposes of the PIC Act, whether in the context of a joint task force and investigations solely by the Commission or a controlled operation, and I see no reason to draw any distinction between these operations.

As to (d), what problems do I envisage should Recommendations 8 and 9 be adopted? The problems both in practice and in principle have been articulated in some detail in the Commission's submission to the Minister, and at a later time we may go to those, if it is the Committee's wish. I have set out at page 19 of my annual report some of the problems associated with controlled operations that apply, but those considerations apply right across-the-board to all of those three heads of activity of police in conjunction with the PIC.

As to (e), do I have any views on the way in which this provision might operate so as not to threaten the outcome of PIC investigations? As I have intimated, the Commission's present proposal would appear the most appropriate way to achieve the objectives of section 142, while not exposing its investigations to prejudice.

CHAIR: Any questions arising? Question 13:

Recommendation 2 of the report on the review of the (Police Integrity Commission) Act proposes that s.3(a) should be amended to reflect that one of the principal objects of the Act is to establish an independent and accountable body, with the principal function of detecting, investigating and preventing police corruption and

other serious police misconduct. In your opinion does this proposal make any appreciable difference to the terms of the Act, particularly in relation to the accountability scheme provided for by the legislation, which includes the Inspectorate?

Inspector IRELAND: The proposal does not make any appreciable difference to the terms of the Act, which amply provides for the Commission's accountability to Parliament, to this Committee and to my Inspectorate. That is really as much as I can say about that.

CHAIR: Any questions?

Mr MALCOLM KERR: Obviously the objective to establish an independent and accountable body is an admirable one and we also have the Independent Commission Against Corruption—perhaps this might be a question on notice—in the sense that that is a precedent, a body that was also established to be accountable and to be independent. Do the terms of the legislation that govern those bodies differ in terms of their accountability and independence? I wonder if I could get you to perhaps have a look at the legislation and see what distinctions there are?

Inspector IRELAND: Certainly.

Mr MALCOLM KERR: The accountability, I think you have said, is to Parliament, to this Committee and to the Inspectorate. What do you believe the relationship with the Police Minister and the PIC is?

Inspector IRELAND: The Police Minister is the chief executive officer of his ministry and the PIC falls within his direct area of responsibility.

Mr MALCOLM KERR: Does that give the Police Minister any power over the PIC, in your view, to perhaps require them to report to him before reporting to Parliament, if he so wished?

Inspector IRELAND: I do not believe so. The PIC is independent. It is designed to be independent and it functions in an independent fashion.

Mr MALCOLM KERR: So in terms of reporting procedure you would expect the PIC simply to report to Parliament?

Inspector IRELAND: The report of the PIC should be, and to my observation is, directed to Parliament, certainly.

Mr MALCOLM KERR: And you would not expect that any report that the PIC did would be made available to the Minister first before Parliament, would you?

Inspector IRELAND: That, in my view, would depend on the terms of the availability. If the Minister has available to him an embargoed copy of a report which is concluded, I would see no problem with that at all. But if he

were to be provided with a draft report, the inference being that it was open to amendment to reflect any view the Minister may hold on some matter raised in the report, that would be an entirely different matter.

Mr MALCOLM KERR: In terms of that embargoed report, would it be for the Minister's eyes only, in your view, or could it be made available to people in the Ministry?

Inspector IRELAND: I do not really know the mechanics of a Minister's office.

Mr MALCOLM KERR: Perhaps just in terms of principle that is involved?

Inspector IRELAND: If it is embargoed then I would expect it would only be shown to persons who can honour that embargo, and if that meant nobody past the Minister then it would be the Minister.

Mr MALCOLM KERR: It does seem to put the Minister in perhaps a different position to Parliament in the sense that he receives an embargoed copy before the people's representatives do. Do you see any problem with that?

Inspector IRELAND: Not if the embargo is honoured.

Mr MALCOLM KERR: What would be the meaning of an embargo in that context?

Inspector IRELAND: That he would not disclose or in any way publish the contents prior to tabling in Parliament. The purpose, I would think, of such a procedure—

Mr MALCOLM KERR: That is what I am leading to really.

Inspector IRELAND: —would be that he would be in a position to answer questions without the need for notice, if he was in a position to do so, that might arise when the report is tabled and people would spring to their feet and ask him questions as the head of the executive division, of which the Commission is a part.

Mr MALCOLM KERR: But it could, of course, then be argued that the ICAC could give an embargoed copy to the Premier before tabling it in Parliament on the same basis that the Premier would be asked questions about something in the ICAC report?

Inspector IRELAND: Yes, that would follow.

CHAIR: Any further questions? Just on that, I take it one of the matters that would be in issue is how long in advance of release of a report the

embargoed copy was given; that there would be far less objection in principle if it was given two days before release rather than given three weeks before release?

Inspector IRELAND: Quite so. The longer the period the more the risk that the embargo would be broken.

CHAIR: And the more likely it would be that there might be some pressure brought to bear to change the contents of the report?

Inspector IRELAND: Yes. If there were any risk of that then, in my view, there should be no release of an embargoed report. It would have to be on the undertaking, and the acceptance of the undertaking, that it not be disclosed.

CHAIR: Any further questions?

Mr MALCOLM KERR: Just on that, in terms of an embargoed document, it really serves the purpose of, in effect, a briefing paper so the Police Minister is capable of giving an informed answer to questions?

Inspector IRELAND: Well, yes, if he has sufficient prescience to foretell what the questions are likely to be.

Mr MALCOLM KERR: But if the questions are about the report, obviously, having read the report, he is in a position to?

Inspector IRELAND: I would hate to take on the task of being so well-informed about an annual report that I could handle any question on it in advance. You never know what is coming out of left field unless you actually are in left field.

Mr MALCOLM KERR: But I mean if you have read a brief you would be in a better position to answer questions in relation to that brief?

Inspector IRELAND: True. And I think that, in a commonsense way, is the sole purpose of that.

Mr MALCOLM KERR: That would be the sole purpose?

Inspector IRELAND: I believe so.

Mr MALCOLM KERR: Do you know if there is any protocol in existence in relation to that between the PIC and the Minister?

Inspector IRELAND: I am not aware.

Mr MALCOLM KERR: But it might be desirable that there was a protocol?

Inspector IRELAND: Do you mean if a procedure were laid down whereby an embargoed report would not be presented longer than 48 hours or so before—

Mr MALCOLM KERR: I was also thinking in terms of the use that could be made of the embargoed report, that it is desirable to ensure that the Minister or members of the Ministry who have access to it are aware of their responsibility, and it is only for the purpose that you have mentioned here today?

Inspector IRELAND: Yes, that would be an acceptable measure, I am sure.

CHAIR: Question 14:

Recommendation 3 of the report on the review (of the Police Integrity Commission Act) suggests that further consultation should occur between all interested parties as to the merits of the Police Integrity Commission's jurisdiction being extended to cover the corrupt conduct of civilian employees of NSW Police. Have you been involved in any consultation for this purpose and does the proposed extension have any implications for the workload of the Inspector?

Inspector IRELAND: I have not been involved in any consultation regarding this proposal. The widening of the jurisdiction of the PIC to encompass civilian employees of NSW Police would not, per se, increase the workload of the Inspector. However, amendment of the powers of the Inspector may be required to embrace the complaints by and with respect to persons included in the PIC's wider jurisdiction.

CHAIR: Any questions arising? Question 15:

Recommendation 4 of the report (on the review of the Police Integrity Commission Act) concerned submissions for the removal of s.10(5) of the Act, which prohibits the PIC from engaging current or former NSW Police. As you would be aware, this particular provision is the subject of a current inquiry by the Committee. At p.49 of the report the Ministry notes that the previous Inspector of the PIC supported the lifting of the ban preventing the PIC from engaging current or former NSW Police. Do you support the removal of s.10(5) of the Act?

Inspector IRELAND: I do not support removal of section 10(5), prohibition, which extends to the Inspector as well as to the PIC. My discussions from time to time with my predecessor, the Hon. M D Finlay, QC, caused me to doubt that he continues to hold the view previously held by him. The weight of contrary opinion has also persuaded the Commissioner to change the position that he previously contended for.

CHAIR: Question 16 states:

Recommendation 5 of the Ministry's report states that section 92(5) of the Act, which contains a similar prohibition in relation to the Inspectorate, should remain in place. Do you consider that the proposal to remove section 10(5) of the Act while retaining

section 92(5), would have any significant implications for the performance of the Inspector's functions?

Inspector IRELAND: Thank you. I do not support the removal of either section. The removal of section 10(5), while retaining section 92(5), would not have any significant implications for the performance of the Inspector's functions; it would, however, appear to create an unnecessary anomaly.

CHAIR: No questions arising. Question 17 states:

The Ministry's report recommended that the flexibility of clause 3(1) of Schedule 2 to the Act should be maintained, thereby allowing for either the full-time or part-time appointment of the Inspector. Is there any particular view you would like to express on this recommendation?

Inspector IRELAND: Well, Mr Chairman, whilst the duties and functions of the Inspector remain as prescribed by the *Police Integrity Commission Act 1996*, the flexibility of clause 3(1) of Schedule 2 should be retained. The alternative is a full-time appointment for a function that has now been performed on a part-time basis for seven years. There does not seem to be any reason for change.

CHAIR: No questions arising. Question 18 states:

Recommendation 11 of the Ministry's report proposes amendment to section 23(3) of the Act to require the PIC to consider the public interest when deciding whether to conduct, continue or discontinue an investigation.

- (a) Do you have any specific comments to make on this recommendation?
- (b) If adopted, do you consider that this proposal would impact on the performance of the Inspector's functions?

Inspector IRELAND: In answer to (a), the Commission's functions are aimed at protecting the public interest by preventing and dealing with police misconduct. To suggest that section 23(3) should especially require consideration by the Commission of any matters of public interest when deciding whether an investigation should be conducted or discontinued is really no more than the statement of a prominent and well-recognised consideration. Such an amendment would seem to serve no more than to state the obvious.

As to (b), if adopted do I consider that this proposal would impact on the performance of the Inspector's functions? The concept of the public interest can mean different things to different people. Not infrequently private interests are confused with the public interest. While it is for the Commission to determine what the public interest requires in any particular circumstance, the proposed amendment may have the effect of inviting ill-formed challenges to the Commission's jurisdiction. Be that as it may, presently it is not uncommon for challenges to decisions of the Commission to be made on the basis of the complainant's personal view as to what the decision should have been. Such issues are governed by settled principles concerning

administrative decision-making. I cannot say that the proposed amendment would have any beneficial, or for that matter adverse, impact upon the performance of the Inspector's functions.

CHAIR: Are there any matters arising?

Mr MALCOLM KERR: Yes. Having regard to what you have said, Mr Inspector, it may well have adverse consequences because the term "public interest" is open to interpretation—that is a subjective term—and what one person considers is in the public interest another person may not. On that basis, as you say, it may provide a further basis for litigation or dispute, which is not in the public interest.

Inspector IRELAND: I agree with that analysis. As a practical matter, if it is a question open to debate in a hearing, for example, and time has to be taken in determination of whether some matter raised is in the public interest, what you say would be likely to cause substantial delay while that issue is dealt with as a hearing within a hearing. To open that Pandora's box would be ill-advised.

Mr MALCOLM KERR: I cannot think of an argument for, given this amendment would really give a considerable degree of potency to that consideration of public interest. As you say it would certainly be an issue that would be argued, and a consequence may well be that the PIC would not continue because it thought something was not in the public interest. It would certainly be worth arguing if you did not want the investigation to continue.

Inspector IRELAND: You mean if it might be successfully argued?

Mr MALCOLM KERR: Yes, because the legislation would give it a high degree of potency.

Inspector IRELAND: Yes. I think there is that risk, certainly.

CHAIR: Question 19 states:

On the question of legal professional privilege and the proceedings of the PIC, the Ministry recommended that the Government conduct a review into the manner in which legal professional privilege might be appropriately claimed in respect to the investigations and hearings of the PIC and other relevant statutory investigative bodies. The Committee understands that the Cabinet Office has commenced this review. Have you been consulted concerning the review and would any changes to the current statutory provisions within the PIC Act concerning legal professional privilege have any impact upon the Inspectorate?

Inspector IRELAND: I have not been consulted in relation to this review. While I previously expressed the view that unless and until the Commission's construction of the effect of the PIC Act in abrogating legal professional privilege is found to be incorrect in appropriate proceedings for a judicial review, there should be no need for this matter to be the subject of

policy review. I cannot see how any changes to the PIC Act in this regard would impact on my office. As is presently the case questions about the treatment of legal professional privilege under the PIC Act come down to matters of statutory construction. The Commission ought to be able to construe the PIC Act as it considers its meaning to be, subject to the right of affected persons to seek judicial review of that construction.

CHAIR: Question 20 states:

Recommendation 24 of the report on the review proposed that the PIC Act be amended to enable the Inspector to exercise the PIC's jurisdiction, where the Commission and Inspector so agree, in circumstances where there is a conflict of interest or a perception of conflict of interest in the PIC exercising its own jurisdiction.

- (a) Are you aware as to how it is proposed that such an arrangement would work and in what sort of circumstances do you think this would occur?
- (b) What are your views on the proposal?

Inspector IRELAND: In answer to (a), Recommendation 24 deals with circumstances similar to, if not identical, with those envisaged by this Committee's proposal for the jurisdiction of the Inspectorate to be extended to cover alleged improprieties by non-Commission officers, where conduct by an officer of the Commission is also involved. That is the issue we dealt with in Question 1. In the case of Recommendation 24, the concern, as I understand it, arises where the Commission is involved in joint operations with NSW Police and it is alleged that police misconduct has occurred. In such circumstances it would be inappropriate for the Commission to investigate the allegations involving police, given the participation of its own officers in the investigation in which that alleged misconduct took place.

In answer to (b), in my view this Committee's proposed amendment would be sufficient to deal with the circumstances envisaged by Recommendation 24, and represents the better approach. That is, where misconduct is alleged against police officers or other public officials in circumstances which also involved the conduct of officers of the PIC, the matter should be looked at in its entirety in a single inquiry. Even though an allegation may be directed solely at an involved police officer or public official, in the majority of instances it would be difficult to quarantine the conduct of officers of the Commission from that of police or other officers with whom they had been working. Any investigation should have sufficient jurisdiction to examine the conduct of all those involved or potentially involved.

CHAIR: Question 25 states:

Recommendation 25 of the review report proposes that the PIC Act be amended to provide that the Inspector is required to give a reasonable opportunity for a person giving evidence to an inquiry under section 91 to be legally represented.

- (a) What is your opinion of this proposal?

- (b) In particular, if adopted, what impact do you consider this proposal would have on the length of time it takes you to investigate a matter?

Inspector IRELAND: In answer to (a) the proposed amendment is unnecessary in my view. Section 91(2) of the PIC Act provides that the *Royal Commissions Act 1923* applies to any witness summoned to appear before an inquiry under section 91 in the same way as it applies to a witness who is summoned to appear before a Royal Commissioner. Section 7(2) of the *Royal Commissions Act 1923* relevantly provides as follows:

7. Right of Appearance

- (2) Where it is shown to the satisfaction of the Chairperson or of the sole Commissioner, as the case may be, that any person is substantially and directly interested in any subject matter of the inquiry or that the person's conduct in relation to any such matter has been challenged to the person's detriment, the Chairperson or sole Commissioner may authorise such person to appear at the inquiry and may allow the person to be represented by counsel or solicitor.

Accordingly, a witness whose circumstances fit the requirements of section 7(2) may be granted leave to be legally represented before an inquiry constituted under section 91 of the PIC Act. As to (b), the suggested amendment would seem to add nothing of substance to the existing situation and would not impact upon the length of an investigation.

CHAIR: Question 22 states:

Recommendation 26 of the report suggested that section 146 of the PIC Act should be amended to require a further five-year review of the validity of the policy objectives of the Act, and the appropriateness of the terms of the Act for securing those objectives.

- (a) Do you consider that another five-year legislative review in such terms should be undertaken?
- (b) In view of the findings of your June 2003 review of the PIC's practices and procedures, would there be any comment you would wish to make on the direction of such a review, should it proceed?

Inspector IRELAND: Yes, thank you. The idea that the PIC Act should be reviewed at five-yearly intervals suggests a qualified commitment to the existence of the Commission as an independent watchdog on police corruption. Overseas studies and experience have, of course, underscored the need for a permanent commitment to independent oversight of police, lest corruption occur on a cyclical basis, dependent upon whether such an oversight body exists at any particular juncture. In my view, to the extent that the PIC Act may require amendment from time to time to ensure that the Commission is appropriately equipped to deal with police corruption, review and amendment should occur as and when needed rather than at five yearly intervals.

There is nothing to prevent the Commission, this Committee or the Inspectorate from raising the need for review and amendment to the PIC Act at any time, noting further that section 98 of the PIC Act also empowers the Commission to make a special report to Parliament "on any administrative or general policy matter relating to the functions of the Commission". With regard to the findings of my review of the PIC's practices and procedures, and whether there is any direction I would suggest, nothing comes to mind. I certainly would not see it as appropriate for any legislative review to consider matters involving the Commission's internal management or policy or procedures. Apart from that, it is difficult to predict what legislative issues might exist five years from now.

CHAIR: If there are no questions arising from that, the only questions remaining to be dealt with are the ones to be dealt with in camera. Before moving into in camera are there any matters Committee members wish to put to the Inspector?

Mr MALCOLM KERR: I would like a clarification referring to question 13 on notice, which refers to embargoed reports. Mr Inspector, I think you mention the Annual Report. My question in terms of embargoed reports was more general. For example, you would not see anything wrong if the Minister were to receive an embargoed report on Malta before it was presented to Parliament?

Inspector IRELAND: Subject to the qualifications that I made plain before: that it is a concluded report, that it is not something which is open to review or even to suggestion, that it is the document ready to be tabled and that, as the Chairman made the significant point, it is not something that is available for a lengthy period in advance and that it is secure in the brief period prior to tabling, I cannot see any problem with that.

Mr MALCOLM KERR: Right. I just wanted clarification that it was more general than simply the Annual Report.

Inspector IRELAND: Yes.

(Evidence continued in camera)