

REPORT OF PROCEEDINGS BEFORE

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

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

At Sydney on Monday 30 November 2009

The Committee met at 10.00 a.m.

PRESENT

Mr K. A. Hickey (Chair)

Legislative Council

Ms S. P. Hale
The Hon. Charlie Lynn
The Hon. L. J. Voltz

Legislative Assembly

Mr M. J. Kerr
Mr P. R. Pearce

JOHN WILLIAM PRITCHARD, Commissioner, Police Integrity Commission, of level 3, 111 Elizabeth Street, Sydney, and

ANDREW STEWART NATTRESS, Director of Operations, Police Integrity Commission, of level 3, 111 Elizabeth Street, Sydney, and

ALLAN KEARNEY, Director, Prevention and Information, Police Integrity Commission of level 3, 111 Elizabeth Street, Sydney, and

MICHELLE MARGARET O'BRIEN, Solicitor, Police Integrity Commission, level 3, 111 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: In what capacity do you appear before the Committee?

Mr PRITCHARD: As Commissioner.

Mr NATTRESS: As Director of Operations.

Mr KEARNEY: As Director of Prevention and Information.

Ms O'BRIEN: As Commission Solicitor.

CHAIR: Thank you for your appearance before the Committee. Your appearance before the Committee is to provide information to the General Meeting in relation to a wide range of matters concerned your office in accordance with the Committee's statutory functions. Mr Pritchard, the Committee has received a submission from you dated 19 November 2009. This submission consists of responses provided to questions on notice in relation to the 2008-09 annual report. Do you want that submission to form part of your formal evidence, apart from your answers to questions 9, 10 and 11 which you request to be kept confidential?

Mr PRITCHARD: Yes, I do.

CHAIR: Do you want to make an opening statement?

Mr PRITCHARD: No, I am happy to use the time to answer questions from members.

CHAIR: I propose to deal with your confidential answers to questions on notice in camera at the end of the public hearing.

Mr PAUL PEARCE: I move that way.

Mr MALCOLM KERR: I second it.

CHAIR: Is the Commission planning to report publicly on its research into the NSW Police Force compliance with relevant policies and procedures relating to the conduct of searches?

Mr PRITCHARD: Yes, I imagine that will be the end result. We have commenced a project, as we indicated in the answers to questions on notice, Project Ostara, which is looking into the question of search warrants and issues surrounding them. It is in the early stages at this stage in terms of collecting some information but the ultimate project plan, I think, would—unless Mr Kearney corrects me—involve something of that kind.

Mr KEARNEY: I have nothing to add further there. We are somewhat bound by how long the data collection process takes and then subsequently consultation with NSW Police which can take time, given the numbers of people involved.

CHAIR: Has the Commissioner of Police responded to your correspondence regarding Project Odin, which looked at the capacity of the NSW Police Force to identify and manage high-risk police officers?

Mr PRITCHARD: Mr Kearney just reminded me that we have asked the Commissioner to respond but that was by 1 December so at this stage we have not yet got back a response.

CHAIR: It is a day early?

Mr PRITCHARD: Yes.

Mr PAUL PEARCE: Has the NSW Police Force been receptive to the Commission's suggestion that they work together to develop a NSW Police Force Agency Level Misconduct Prevention Plan?

Mr PRITCHARD: It is in the early stages at the moment but certainly the response from the executive level, and certainly the response I have had from the Commissioner himself, has been very positive. We are in the process of engaging the Professional Standards Command in a little bit more detail on that at the moment. The response we have had so far is encouraging but the nature of this sort of work, given that it is quite a long-term commitment and it is a long-term goal, can often be very hard to get agencies to focus on that sort of project, given particularly an institution such as the NSW Police Force it has a myriad of short-term matters that it constantly has to react to and deal with. I think there is a recognition that there is a lot of this work going on in other jurisdictions where there is engagement between similar bodies and police forces with a view to developing an over-arching plan. It is early days. I am encouraged by the signs so far, but we do not underestimate that there will be a challenge in getting the relevant officers to focus given the commitment and the longer-term aspect that it involves.

Mr PAUL PEARCE: You referred to the data. Are you confident that the data exists and in a form that can be coherently addressed? Are there people in the New South Wales Police Force who have been maintaining this data or will you find that there are many bits and pieces without any real coherence?

Mr KEARNEY: This relates to Project Ostara, which deals with search warrants and police compliance with their own policies and procedures around

search warrants. We have approached it in two stages. In the first stage we went out to police looking at a very small number of searches but gathered a large amount of data—that is, a large number of documents and other data—about each of the searches. From that data we are able to identify those pieces of information that we will need to assess police compliance with procedures. Based on that, we will then go to a wider sample of commands in regard to a larger sample of searches, but with a much smaller data set in mind. We are only at the very preliminary stages at the moment. It is a document rich area in the New South Wales Police Force.

CHAIR: That in itself could create a problem for the Commission in going through all those documents and collating them to get to the end result.

Mr KEARNEY: It will take some time. However, I am expecting to see a lot of documents that look the same—for example, the name of the independent officer or the command that they come from will be in the same kind of location within the same documentation. While there will be a lot of data, we should be able to get to the bits we need reasonably easily.

Mr PAUL PEARCE: You said earlier that you are encouraged by the police response. I presume that is at a senior level. Has there been any indication that a senior officer will be given a brief to work with you on this?

Mr PRITCHARD: A dedicated officer has not been allocated yet. However, we anticipate from how we have engaged so far that the Professional Standards Command, and therefore Assistant Commissioner Carey, who is in charge, would take the running. The idea is that it would also operate at the higher level between the Commissioner and me. At this stage, in terms of progressing further with the detail, we have not had any formal announcement along those lines. That is whom we have engaged and it is our understanding of where the running would be taken.

CHAIR: Are you are happy with the way that the New South Wales Police Force is making progress with early intervention systems?

Mr PRITCHARD: It has stalled a bit at the moment. As this Committee would know from its own inquiry, some significant progress has been made. An application has been made for supplementary funding to develop the necessary systems to capture the information that the EIS relies upon very heavily. We have not had any word about the outcome of that. There were some other hiccups along the way with a change in the project manager. These things could always be done faster, but we have not encountered any resistance, if I can put it that way. There is a strong commitment to do it and to advance it. Like everything else and as was anticipated, it will come at a price. That is where we are a bit held up at the moment.

Mr MALCOLM KERR: Have the police made an application for further funding?

Mr PRITCHARD: I stand corrected. Mr Kearney advises me that the application is internal as opposed to any bid to Treasury. It is an internal application seeking funding within the existing police resources.

Mr PAUL PEARCE: From what level in the Police Force would that application have come?

Mr KEARNEY: I do not think we can say specifically. The originating agent was the Professional Standards Command, and I know it has the support of the Assistant Commissioner responsible. As to whether it has been taken any further, I cannot say.

Mr PAUL PEARCE: Anything of this nature needs to be pushed from above and at a very senior level. Unless it is being pushed at that senior level it will simply not progress, particularly if we are talking about movement of moneys within the department.

Mr PRITCHARD: I agree entirely. That has always been a concern. While the commitment is there and all the right things are said, and given the prevailing budgetary environment across the sector as a whole, it could be the sort of matter that falls by the wayside. From my dealings with the Commissioner I know there is a commitment, but there is also an obligation on the Commission as the other interested party to ensure there is no backsliding, if I can put it that way. So far we are keeping an eye on it and we are waiting to see what happens.

Ms SYLVIA HALE: Unfortunately I received a copy of the report on Operation Manta only on Friday, so I have had an opportunity only to skim it in the most superficial way. I was struck by the sheer diversity of the commands and the different influences that could be brought to bear on officers. This is a very roundabout way of getting to the question. One of things that I have been conscious of while I have been in this Parliament is complaints about infractions of rules by fairly junior officers. A consistent theme in those complaints has been, for example, the failure to wear identification tags. I am wondering, given that if you have this preparedness to turn a blind eye to the rules at that very junior level, should there be a focus at some time to emphasise the importance of acting in accordance with the rules at that very junior level, when people are first starting out their careers? Would that in some way overcome that preparedness to breach the rules and regulations when people arrive at a more senior level?

Mr PRITCHARD: As a general principle, I do not think there is any doubt, particularly for younger officers who join, that it is very important that there not be slippage, if I can put it that way, in the sense that the minor matters that you referred to, in certain situations and for certain officers I suppose, can lead to, I suppose, more serious misconduct if not checked or reined in at that time. I do not know whether there is anything particular in relation to Project Manta in the sense of some sort of uneven or ad hoc compliance or enforcement of minor infractions across commands that came out. I do not think anything suggested that.

Mr KEARNEY: The emphasis in Manta was more on what was special about commands, what was unique about them. Corporate policies and the like tend to deal with agency-wide risks in misconduct; inappropriate use of phones and motor vehicles, those kinds of things. Current policies do not take into account significantly those risks that are unique to a command. What is it about its environment—where the command is located, the nature of its population, the nature of its staffing levels

and what not—that make it unique, that present special risks that need to be communicated to staff so that they can identify them when they occur and deal with them appropriately.

Mr PRITCHARD: What came out of it too, as Mr Kearney touched on, was that there was not a uniform understanding of misconduct. Officers, commanders or local area commanders tended to have, I suppose, their own individual personal ideas of what was a misconduct threat. There were similarities across commands, as Mr Kearney said, with the misuse of phones or cars. But they did not say in what way that would be a misconduct risk. Perhaps there was a bit of an inability to articulate how that manifested itself in some way. That was something in particular that was highlighted and there was some suggestion, or emphasis, on the need to even define basic terms such as that across the force as a whole. That may be a reflection of the geographical or particular features of a particular command: rural, urban, specialised, things like that.

I thought that was very stark as a result of the project—at least it could lead to the force being able to give some thought to, well, when it is said to be misconduct, there appears to be perhaps not an agreed position as regards misconduct of what. Things like that were very helpful. Coming back to your question, no. As Mr Kearney said, we did not identify or pinpoint anything like that that would suggest that it could lead to greater or higher levels of misconduct that was not checked or brought under control at that level straight away.

Mr KEARNEY: So, not to do with the slippery slope, more to do with special risks, the unique risks.

Ms SYLVIA HALE: One point in the report was that officers in country commands, particularly long-serving officers, may exert great influence that is not reflected in their level of seniority. How do you overcome something like that? In those areas people have been in the job for a long time and are obviously incredibly well known and influential within their communities.

Mr PRITCHARD: I suppose it is a two-edged sword, in a sense, in that it can have the benefit of the local officers' experience. They know the particular features, or the particular demographics and so on, of a particular command, which can feed into effective policing. The message is the same one that goes to the Police Force as a whole: awareness of those sorts of risks. We have seen that in a couple of investigations where that very matter has come to the fore, because an officer has been seen in that way and it is almost expected—not by other police officers—by other members of the community that somehow or other that is a benefit that can be bestowed that otherwise would not be. The same messages that go out in terms of preventing misconduct generally would have the same application to that particular circumstance as well.

Ms SYLVIA HALE: How will you build on the research you have undertaken for research of Project Manta? How will that direct your efforts in future?

Mr KEARNEY: There are three parts to Manta. There are two reports and three parts. The first two parts have been dealt with in the first report; that is the

identification of misconduct risks and the communication of those risks. The next part will concern how police manage those risks, and whether there is any scope for some improvement based on the analysis of the material we have obtained. Once that second report has been published, we will work with police in a fairly ongoing way to assist them in the development of policies, potentially even training material. We are probably in a position to commit resources to produce product for them: information sheets for commands, or for communication purposes, and those kinds of things. We will maintain a fairly close involvement with police.

Ms SYLVIA HALE: When do you expect that second report to be published?

Mr KEARNEY: Again, we are somewhat bound by the consultation process, which can take time. Next year definitely, whether towards the end of the financial year or later I cannot say at this stage. But definitely next year.

CHAIR: Commissioner, a few times you have raised the issue of reporting and the amount of reports you have to work with as Commissioner. Do you think the Police Force reports too much? Or do you think the level of reporting is adequate?

Mr PRITCHARD: Sorry, Mr Chair, I might ask you to clarify that. Do you mean reporting by police?

CHAIR: Yes, reporting by the police. We seem to be tying up your officers for quite considerable lengths of time, when they are doing their job.

Mr PRITCHARD: Well, a balance always has to be struck. At the moment it is not a complaint from my position, given the level of officer that my position gets exposed to in terms of the Commission's activities. Police officers are bound by, or bogged down in, red tape or fighting crime with one hand tied behind their backs, those sorts of shorthand expressions if I can use those. No, I do not think so. I do not think there is any doubt that there is an argument that if putting in place prevention measures or building capacity can be an administrative burden. The balance for commissions like these is to understand the sole purpose of the existence of the New South Wales Police Force is not to be investigated and that we deal with a specific aspect of what is a very large range of functions that the Police Force does.

At the moment, as I said, the cost of having oversight is that it can be seen—and I think it is probably more of a perception rather than anything real—as bogging down or tying up people, or putting people through red tape. The flipside of that, which we may come to in the in-camera session, I suppose, is what came out in the Rhodium review with the Crime Commission, which may be the other extreme, if I can put it that way. But there is a balance. I suppose there are a lot of police officers out there operationally who would put that as an argument. We are mindful of it when we make recommendations or we see misconduct. I think there is a need for agencies of this kind not to rush to judgement or think that merely because misconduct has been exposed, therefore some elaborate regime of checking has to be put in place to deal with it. You have to be sensible about that. However, I do not think at the same time you could say that the balance that you do strike is not going to have some sort of effect in tying or getting officers bogged down in some degree of red tape. But, at the moment, as I said, to the extent that I come into contact with

officers in the field, as it were, yes, it is a complaint you hear but it is not a refrain that we hear a lot of.

CHAIR: These questions were posed to me over the weekend when I ran into an off-duty officer. The other issue is work hours. Do you think that the 12-hour shift has any bearing because of the high level of turnover of police and them working three days on, four days off, four days on, three days off? Do you think that in any way inhibits an officer or helps an officer do his job without getting involved in secondary job issues, which could create some corruption down the track? It is a long bow?

Mr PRITCHARD: I do not think there is any doubt that the block rostering system, as it is referred to, which allows for those sorts of periods of long shift work followed by extended days off, in terms of it providing opportunity for secondary employment for other officers, which they are entitled to do, raises risks; from a customer service point of view too, if I can use that term. There is a complaint that is often heard that people who wish to contact an officer who may have been assigned to a matter is often not available.

But from the point of view of the Commission and its interest in things like secondary employment, yes, I do think that having that amount of time off does mean that there is greater scope for not only secondary employment issues but idle hands. I suppose in those areas where we have seen secondary employment is creating risks or where complaints of misconduct have come to our notice as a result of secondary employment activities, it is usually associated with those officers who are participating and gain from the benefits of the block rostering. Other than that sort of perspective, I probably could not comment any more on that, sorry, Mr Chair.

Mr KEARNEY: We are doing a little bit of work at the moment on secondary employment and improper associations. We will probably get a paper out in the near future.

The Hon. LYNDIA VOLTZ: I ask a follow-up question. When you are looking at those issues of secondary employment, are you looking at other police forces that work on more stable rosters, eight-hour shifts, five days a week and doing comparisons?

Mr KEARNEY: We are not looking at the shift arrangement. We are more focused on the associations that arise from secondary employment. I think, as the Commissioner has pointed out, there may be a relationship between the block rostering system and the capacity of an officer to engage in secondary employment but we are not focused on that but rather the next step—what are the relationships that are formed because of the secondary employment? Are they with people who you might think it would be inappropriate for an officer to have an association with?

The Hon. LYNDIA VOLTZ: I am wondering if other police forces with different models of employment, five day a week employment, have a higher incidence of secondary employment than police forces that work on these large 12-hour shift rosters?

Mr PRITCHARD: I suppose the short answer to your question is not at the moment and I imagine that Commissioner Scipione would say that the number of officers who do benefit from the block rostering given the overall number of police numbers in New South Wales is not huge, but certainly to the extent that we see it in that it has manifested itself in the form of complaints about officers with secondary employment, as Mr Kearney said, our interest tends to relate to the industry or the area: licensing, the motor vehicle trade, things of that nature where there is high risk associated with the activity, for a police officer at least any way, bringing them into contract with, say motor vehicle rebirthing, undesirables, if I can put it that way.

That is probably, I suppose, the only angle at which we come from it, and those officers that we do see tend to be those who benefit from the block rostering. You do not see many detectives, as it were, having complaints made about their secondary employment activities, if only because, as you pointed out, they are not in a position really to benefit from it. Most of the secondary employment we do see tends to be with officers who have trades, I suppose, and therefore can carry out the trade as it suits them when they are not working, whereas detectives, who work on a set roster, are not really in a position to pursue another job, as it were, outside of the main one they have.

Mr PAUL PEARCE: Has the Commission received a response from the Professional Standards Command about the implementation of the Commission's strategies regarding the unauthorised disclosure of confidential information?

Mr KEARNEY: This one is a bit complicated. We approached this issue with police a little bit differently than we would normally. In most of our matters we do research, we produce a report that contains recommendations, we might consult with the police in regard to the recommendations, finalise the report and publish. We approached this one a little bit differently. We had a roundtable with police and with the Ombudsman. We came up with essentially what is an agreement about how these matters should be dealt with. The agreement addressed issues such as clarifying the terminology, for example, what is confidential information and what is not; clarifying circumstances when that information may be communicated and when it may not—those kinds of things.

That agreement has been essentially implemented; we are all as one. I am not sure whether we expect a formal response from police supporting the agreement. We have not asked for one. Police have agreed at appropriate officer level and are proceeding to get on with the work that needs to be done.

Ms SYLVIA HALE: You were talking about the New South Wales Police Force being document rich. Apart from someone's notebook, are all documents consistent across all commands and are all documents in electronic form so that the data contained within them can be readily accessed?

Mr KEARNEY: There is a wide range of documents held by police for a number of purposes, some administrative, some operational. Many documents, mostly operational, are not held centrally whereas many documents of an administrative nature may well be held centrally. Many documents, particularly operational ones, are held locally within the command, which means if you want to

get a hold of those documents or the information they contain, you need to go to the command.

(Evidence continued in camera)

(Public hearing resumed)

(The witnesses withdrew)

(The Committee adjourned at 11.22 a.m.)