

REPORT OF PROCEEDINGS BEFORE

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

At Sydney on Wednesday, 25 June 2003

The Committee met at 6.30 p.m.

PRESENT

Mr P. G. Lynch (Chair)

Legislative Council

The Hon. P. J. Breen
The Hon. Jan Burnswoods

Legislative Assembly

Mr G. Corrigan
Mr M. J. Kerr

MORRIS DAVID IRELAND, Inspector of the Police Integrity Commission, c/- Inspectorate of the Police Integrity Commission, GPO Box 5215, Sydney, sworn and examined:

CHAIR: Could you please state the capacity in which you appear before the Committee?

The Hon. Mr IRELAND: Yes, I am the Inspector of the Police Integrity Commission appointed by the Governor on the recommendation of the Executive Council. I was appointed on 12 June 2002 for a period of three years.

CHAIR: Did you receive a summons issued under my hand to attend before the Committee?

The Hon. Mr IRELAND: I did, thank you, Mr Chairman.

CHAIR: We have asked some questions on notice. Do you have some answers in writing and is it your wish that they be tabled and become evidence before the Committee?

The Hon. Mr IRELAND: Yes, it is, and I tender my written responses to the questions on notice.

Documents tabled.

CHAIR: Do you wish to make an opening statement?

The Hon. Mr IRELAND: Yes, if I may, thank you. Mr Chairman and members of the Committee, thank you for the opportunity to make these opening remarks. In the hope that it may be helpful to new members of the Joint Committee, I shall take this opportunity to outline very briefly the role of the Inspector and the powers of the office and to very shortly report on the operations of the Inspectorate. I shall also make reference to my recent *Report on the Practices and Procedures of the Police Integrity Commission*, which was tabled in Parliament on 18 June 2003.

The position of the Inspector of the Police Integrity Commission derives its authority from the *Police Integrity Commission Act 1996*. The Inspector is appointed by the Governor with the advice of the Executive Council. The Joint Committee on the Office of the Ombudsman and the Police Integrity Commission is empowered to veto the proposed appointment, which is required to be referred to the Committee by the Minister. The office of the Inspector may be a full-time or part-time office, according to the terms of the appointment. A person is eligible, if otherwise qualified, for reappointment, but may not hold the office of Inspector for terms totalling more than five years.

On 12 June 2002 I was appointed by the Governor as the Inspector of the Police Integrity Commission for a period of three years on a part-time basis effective from date of appointment. My appointment followed the retirement of the Honourable M. D. Finlay QC who had completed a five-year maximum term of office as Inspector and retired in accordance with the provisions of the Act.

The Police Integrity Commission is a statutory body primarily responsible for the detection, investigation and prevention of serious police misconduct and corruption in New South Wales and to complete the work of the Royal Commission into the NSW Police Force (as it then was known, now NSW Police). The Inspector's duty under the Act is "to investigate complaints against Commission staff, to audit its operations, effectiveness and compliance

with the law" and to report to the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission. The Joint Committee has the function of monitoring and reviewing the exercise by the Commission and the Inspector of their functions. The Inspector is required to report annually to Parliament and may make special reports on any matters affecting the Commission or on any administrative or general policy matter relating to the functions of the Inspector. The Inspector's principal functions as provided by statute are (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State and (b) to deal with, by reports and recommendations, complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commissioner or officers of the Commission, and (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities. The Inspector may exercise the functions of the office on the Inspector's own initiative, at the request of the Minister in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the Independent Commission Against Corruption, the New South Wales Crime Commission, the Joint Committee or any other agency. The Inspector is not subject to the Commission in any respect. To perform its functions, the office of the Inspector has been given extensive powers to investigate any aspect of the Commission's operations or any conduct of officers of the Commission. The Inspector is also empowered to make or hold inquiries for that purpose and has the powers, authority, protections and immunities of a Royal Commissioner. I have not found it necessary to hold a formal inquiry involving hearings during the year to date.

The Inspectorate occupies suitable office premises within the Sydney CBD which are separate from the Police Integrity Commission at 111 Elizabeth Street, Sydney. For the purposes of auditing and monitoring the operations and activities of the Commission, I have available to me a designated office at the Commission where I have a computer providing me with electronic access to all material on file at the Commission with the exception of telephone intercept material which is required by law to be dealt with separately.

Monitoring and related activities include regular—usually weekly—meetings with the Commissioner of the Police Integrity Commission, Mr Terry Griffin, and the Assistant Commissioner, Mr Tim Sage, to discuss the issues of the day, longer term strategies and reviewing representative samples of operational files. As the needs arise, I have separate discussion with senior officers of the Commission. The Commissioner and his staff have been fully cooperative. The Commissioner has provided me with unreserved access to any officer of the Commission whom I may wish to interview.

The operations of the Commission observed by me, with one minor exception to which I shall later refer, have been in compliance with the law of the State. During the current year the Inspectorate has dealt with 22 complaints, of which four are ongoing at the present time; one other has reached reporting stage; two are matters which have previously been concluded and are sought by the complainants to be re-agitated; four have not been proceeded with and 11 have been dealt with by way of preliminary inquiry or resolved by exchange of explanatory correspondence. These matters will be more comprehensively addressed in my annual report for the year ending 30 June 2003.

In December 2002, prior to publication of the Malta report, the Honourable Michael Costa, then Minister for Police, raised with me the question of the practices and procedures of the Police Integrity Commission and the writing of a report directed towards such improvements as might be made. On 12 February 2003 the Minister referred to the office of the Inspectorate this question, noting that the report on the review of the *Police Integrity Commission Act 1996*, which had been conducted by the Police Ministry and tabled in Parliament on 17 December 2002, had referred to "a number of submissions to the review

raised concerns about the timeliness, length and formality of the Police Integrity Commission's investigations and hearings with particular reference being made to the Malta Operation". Terms of reference were established and these are set out commencing at page 3 of my report.

In the executive summary to the report, 24 recommendations contained in the report are extracted. At first blush this may seem to be a large number of proposed changes. However, that is not so. In seven instances no change to current practices is recommended. They rate a mention because they were put forward, sometimes strongly, in submissions to the inquiry and it was necessary to deal with them specifically. In a number of instances several recommendations relate to the method of introduction of the same change. In fact 13 recommendations relate to five recommended changes. Four recommended changes stand alone. So in effect there are nine changes recommended to be effected by 17 of the recommendations.

In formulating the recommendations it is first paramount to recognise that the PIC is a commission of inquiry, not a court. This distinction has ramifications for practically every aspect of the way in which proceedings are conducted, including the outcome and reporting of such proceedings. It is evident from the submissions received in this inquiry that this distinction is not easily understood at times, either by persons called to appear or on occasion by counsel representing those persons. The gravitation towards a courtroom mentality, unhelpful as it is for the purposes of a commission of inquiry, is not easily discouraged. Second, it is recognised that operations which the PIC may be called upon to investigate will break new ground and bring new challenges. Such matters test the existing institutional capacity to control and respond to these challenges. While in some instances the Act will guide the response, in other cases existing internal practices and procedures must be refined or new strategies developed. Operation Malta is just such a case.

The factors which impacted upon the hearing of Operation Malta are set out in the six numbered paragraphs commencing on page (iv) of the executive summary of the report and I shall not repeat them. Operation Malta was a most unusual, perhaps unique, inquiry involving as it did trenchant criticism of the highest echelon of the New South Wales Police administration. The view expressed in some quarters that Operation Malta produced a nil return is erroneous. On the contrary, the conclusion reached was that there was no serious misconduct by senior police regarding the matters complained of. Nevertheless, the gravity of the allegations and the public interest they generated ensured that the complaints could not in any sense have been lightly dealt with.

Two matters should be noted: first, that Operation Malta, by virtue of the nature of the complaints made and the adversarial response generated, seriously strained the relationship between NSW Police and the PIC, which has now been ameliorated by dint of the efforts of those at the highest executive level of both of those crime prevention agencies. Second, a significant number of the recommendations made have been identified by the PIC prior to this inquiry and guidelines have been or are in the course of being formulated to obviate unhelpful practices and procedures.

Mr Chairman and members of the Committee, in concluding these remarks I would like to emphasise that my report does not address the question of privilege. At paragraph 1.10 on page 5 of my report I note that the review of the Police Integrity Commission Act recommended that investigation of privilege, which impinges upon the operation and function of a number of statutory investigative bodies, should be the subject of a separate inquiry. That passage should not be taken to mean that I share that view. I do not. As presently advised, I consider the provisions of the Act to be appropriate and adequate for the purpose of an

investigative arm of the executive government which the Police Integrity Commission is. The construction placed upon the relevant provisions of the Act by the Commissioner, Judge Urquhart QC, in June 2001 and Mr Tim Sage, Assistant Commissioner, in September 2001 were not the subject of appeal to the Court of Appeal, although this was said to be the intended course. Until the Court of Appeal has considered these or other rulings on the question of legal professional privilege arising under the Police Integrity Commission Act or similar legislation affecting law enforcement agencies, it would, in my view, be inappropriate for consideration of change or amendment by any other body to be undertaken.

Thank you, Mr Chairman.

CHAIR: Just on that last point, in your review of the PIC in your inquiries about Malta, was there any reason proffered as to why the police service did not pursue an appeal?

The Hon. Mr IRELAND: No. It was foreshadowed, but no steps were taken and the hearing then proceeded on the basis of privilege not being available for those documents.

CHAIR: As a matter of principle, it must be a better course to explore all the possible legal avenues before recourse is had to changing legislation almost willy-nilly?

The Hon. Mr IRELAND: Indeed.

CHAIR: Having read the Malta report and your report, I have a sense that part of the problem with Malta stemmed from the inquiry being treated too much as a court and too little as a commission. All the issues about witnesses being called, no control over the evidence and the issues about representation strike me as things that are very reminiscent of a court rather than a commission. Is that an analysis that would find any favour with you?

The Hon. Mr IRELAND: I agree with that analysis, Mr Chairman.

CHAIR: Do you think that the problems in Malta have been seen in other PIC inquiries or is this such a unique set of circumstances that it is unlikely to be replicated?

The Hon. Mr IRELAND: I suspect that seeds of the same malady may be present in other proceedings, but nothing like to the extent experienced in Malta, which was quite unique and I suspect, Mr Chairman, unlikely to ever be repeated again by the very nature of the complaint.

CHAIR: In the section about legal representation in your report you do not indicate whether anything is being done about the counsel who seems to have had a conflict and you have indicated that you would make no other comment for legal reason. As much out of curiosity as anything else, I am wondering what all of that means?

The Hon. Mr IRELAND: There are proceedings, there are complaints on foot, and that is why I considered it inappropriate to go down that path or make any comment which might impinge upon those inquiries.

Mr KERR: As a matter of procedure, Mr Chairman, there were questions and answers given on notice. I wonder if they might be made available for anybody who wants to read those?

CHAIR: They have been tabled as part of the proceedings.

The Hon. Mr IRELAND: They were tabled in multiple copies.

Mr KERR: Thank you. I noticed that you read from a written document earlier. I wonder if I might have a copy of that document?

The Hon. Mr IRELAND: I don't have a copy, they are my notes, my address, but by all means--

Mr KERR: Perhaps they could be made available for copying. You would have no objection to that course?

The Hon. Mr IRELAND: No, I have no objection to it. I may have one - yes, there is a copy that is fit for photocopying.

Mr KERR: Is your report on the practices and procedures of the Police Integrity Commission available on line at any web site?

The Hon. Mr IRELAND: It is not, no, it has not been put up on a web site. Copies of it have been made available to some 20 organisations and individuals who have made application to my office, but I have also furnished to Parliament a copy which is fit for reproduction - I mean a looseleaf copy which is not bound so it can be reproduced - and I understand that that facility is available.

Mr KERR: Well, it might be, but your report is an important document and the public do have a right to know, in the same way that they can go on line and get court cases. Would you be prepared to make it available on line at a web site?

The Hon. Mr IRELAND: Certainly, Mr Kerr, there is no difficulty about that at all.

Mr KERR: I am wondering whether you might have read Peter Ryan's biography?

The Hon. Mr IRELAND: No, I have not. Is that the first edition? I understand there is a second one out. Is that right?

Mr KERR: Well, I will show it to the witness. That is the document I am referring to.

The Hon. Mr IRELAND: Yes, I identify the picture on the front of it.

Mr KERR: At page 288 the book states:

"In March 2001 the PIC began its Operation Malta public hearings into the affair. It was scheduled to last eight days",

and in fact it says in the book that it ended up lasting a year, but I think it in fact lasted two years, didn't it?

The Hon. Mr IRELAND: I think that is more accurate.

Mr KERR: "Generating nearly 5,833 pages of transcript; 7,000 documents; 51 witnesses and costing an estimated \$8 million." It would have to be said that the estimation of eight days was unduly modest, I think, and the matter did considerably go off the rails.

The Hon. Mr IRELAND: Is that a question?

Mr KERR: Yes, it would be correct to say that the matter did considerably go off the rails?

The Hon. Mr IRELAND: Yes, I think that view is open, certainly.

Mr KERR: Do you know Judge Paul Urquhart?

The Hon. Mr IRELAND: I have met him only on two occasions, and that only since I was requested to undertake the report.

Mr KERR: Was that for the purposes of obtaining his views on the report?

The Hon. Mr IRELAND: Yes. Well, to give him an opportunity to express his views.

Mr KERR: Are you able to say what his views were?

The Hon. Mr IRELAND: He was one of the parties who made submissions.

Mr KERR: Was there a viewpoint in his submission?

The Hon. Mr IRELAND: Well, no doubt there were many viewpoints.

Mr KERR: What were some of those viewpoints?

The Hon. Mr IRELAND: Well, I couldn't - I wouldn't carry them in my head. There were 20 submissions and some of them ran to more than 100 pages.

Mr KERR: I am happy to put some of these questions on notice. Would you be prepared to supply the Committee with the submission?

The Hon. Mr IRELAND: No. I wouldn't have thought that that is something that I am authorised to do. I would have thought that section 56 of the Police Integrity Commission Act would have application.

Mr KERR: It may, but in any event that is something you might consider.

The Hon. Mr IRELAND: Well, I will give consideration to it, certainly, but the distribution of the submissions would not be something that would ordinarily be done.

CHAIR: Could I perhaps intervene and say I am not necessarily sure we fulfil our functions by pursuing that. Having said that, if the Inspector wants to consider it--

Mr KERR: Yes, I am only asking for the witness to give consideration to it and to act in the public interest.

The Hon. Mr IRELAND: Yes. It would be appropriate, I think, if you were to make that request of me, it should be done in writing.

Mr KERR: I think we can attend to that.

CHAIR: We can consider that after the hearing.

The Hon. Mr IRELAND: Yes.

Mr KERR: But you can appreciate the public interest in knowing the views of the person that conducted the inquiry?

The Hon. Mr IRELAND: Yes, but whether or not the whole of the views of a person making submissions are expressed in their submissions or whether they go to specific aspects that require answering by that person is a good point, I think, and an important factor in determining whether, seen in isolation as a document standing on its own feet, the person in question should be required to adopt it as a comprehensive appreciation of the matter in question.

Mr KERR: Well, it would only be taken as a submission and added to the totality of an immense public record on this subject.

The Hon. Mr IRELAND: Yes.

Mr KERR: The book says:

"While Police Minister Paul Whelan later told Parliament that Ryan had spoken out of frustration, Ryan claims that Urquhart called him directly. 'I'll never forget how his voice was shaking with rage', says Ryan. 'He said, "How dare you? You say we couldn't organise a chook raffle". I suggested he get a transcript of the radio interview. I hadn't mentioned the PIC in that comment, but he said, "You make a retraction". I said, "Is that a threat?" He said, "You do it, Commissioner, or you will see".'

Now there is a well-known saying that justice not only has to be done but has to be seen to be done - well, a well-known saying in the Cronulla electorate. Would it have been better in your view for Judge Urquhart to perhaps appoint another Commissioner to hear this hearing?

The Hon. Mr IRELAND: I haven't given any consideration to that question, Mr Kerr, and I would want to know much more detail and factual foundation before I accepted or expressed a view about that subject.

Mr KERR: Certainly, but you can see why it would perhaps cause concern?

The Hon. Mr IRELAND: Well, first of all, the integrity of the proposition that you are putting - it is not a transcript we are looking at here.

Mr KERR: No, it is not.

The Hon. Mr IRELAND: It is a publication of an autobiography, did you say?

Mr KERR: No, biography.

The Hon. Mr IRELAND: I see, so it is not even signed by the author, which seems to give some concern to some people.

CHAIR: Written by a journalist.

Mr KERR: That is not necessarily adverse to its credibility. This is also on page 289:

"Ryan was forced to sit and fume for an astonishing sixteen months after the press

conference first aired damning allegations."

Well, that is clearly a statement of fact; it is corroborated by other material.

The Hon. JAN BURNSWOODS: Apart from it being a physical impossibility to fume for 16 months without blowing up.

The Hon. Mr IRELAND: Perhaps without evaporating.

Mr KERR: That may be a substantial point, but if I might continue:

"Until he was finally invited to have his say at the PIC on 4 March 2002. Even then he was alerted by a journalist as to the date he was to appear; he hadn't even been told".

Simply asking a general question, witnesses should be afforded courtesy in terms of when they are to appear and given notice before any Commission inquiry. Would that be your view?

The Hon. Mr IRELAND: Certainly. Mr Kerr, I wouldn't like to be held to this view, but my recollection seems to be that one long adjournment was in fact at the request of Mr Ryan.

Mr KERR: Yes, but I am simply going to the aspect of advice as to when you would appear before a commission.

The Hon. Mr IRELAND: Yes, I agree with that.

Mr KERR: Finally, on page 290 this appears:

"The damage Ryan felt had been done ever since that 'chook raffle' comment: 'I think there'd been certain elements within the PIC - not Judge Urquhart, I never thought he was involved, but other people there who had been out to get me. This Malta inquiry is a payback'."

Did you see any evidence that the Malta inquiry was a payback?

The Hon. Mr IRELAND: Nothing comes to mind.

Mr KERR: Just turning to your report, at page 78, 4.94, "In terms of the PIC's reporting obligations under the Act it is clear there is nothing in the Act that would require the Commissioner alone or the presiding officer to prepare the report". It is also conversely true that there is no prohibition in the Act that would prevent the Commissioner or the presiding officer from preparing it and being responsible for it. Would that be the case?

The Hon. Mr IRELAND: Well, that is a rolled-up question. There are two aspects of it. There is certainly nothing in the Act that precludes the presiding officer from writing a report, no.

Mr KERR: That is the question I wanted answered, thank you. At page 102, 5.69, "Most notable in terms of additional delays were the number of adjournments that were granted to suit counsel's convenience and on occasion to suit witnesses", and then you go through an analysis of those. Those delays were quite substantial, but nevertheless the basis of those delays would be encountered in Royal Commissions and a number of other inquiries and has not led to the extent of delay that we saw in Malta. Would that be correct in your observation?

The Hon. Mr IRELAND: Well, my experience with other inquiries is, I must say, very limited, but I wouldn't be at all surprised if that were true, Mr Kerr.

Mr KERR: Also I think in answer to the Chairman's question you said that this had been conducted too much like a court-based action rather than a commission of inquiry, and I think in your introductory remarks you were at length to say there was a distinction between the proceedings. On page 104, 5.74 states that "it is apparent from the submissions received by this inquiry what little regard was had to section 20 of the Act insofar as it relates to the non-adversarial nature of proceedings", and in fact it was the Commission that conducted those proceedings, wasn't it?

The Hon. Mr IRELAND: Yes.

Mr KERR: In effect, you would be saying that they should have had far more regard to section 20 of the legislation in the conduct of that inquiry?

The Hon. Mr IRELAND: I would agree with that, and reasons of course are given.

Mr KERR: Yes, I appreciate that. At page 106 of the report in 5.83:

"It is apparent that although his Honour had returned to the Bench of the District Court by the time the Malta report was drafted there was ample opportunity for his Honour to have input into the Malta report".

From your discussions and from the submission you received from Judge Urquhart, did he in fact have an input into the Malta report?

The Hon. Mr IRELAND: I am unable to answer that question; I really don't know. I do reiterate that the draft report was forwarded to him and I observed the timeframe when that took place, when the draft report was furnished to him and when it was finally published, and it was a considerable period of time.

Mr KERR: Yes, but we don't know whether he in fact did avail himself of that opportunity. Is that the situation?

The Hon. Mr IRELAND: That is correct.

CHAIR: I would just interpose: The reality is that the only way to answer the question is to ask Judge Urquhart.

Mr KERR: Yes, I think we have taken it as far as we can here. Just turning to the executive summary (i) and your recommendations--

The Hon. Mr IRELAND: I believe your copy of the report would have a typographical error there. I think the spelling of "Malta" shows a slight area of dyslexia, but it is amazing how these things don't strike the eye.

Mr KERR: Certainly. On recommendation (i), of course it is important that, as you say, the PIC has a broad mandate to investigate police conduct.

The Hon. Mr IRELAND: I'm sorry, I thought you were referring to (i).

Mr KERR: The executive summary.

The Hon. Mr IRELAND: I note we have two numbered (i), one in the table of contents and one in the executive summary.

Mr KERR: In recommendation (i) you talk about the mandate and the freedom from interference, but of course it has to be, so far as possible, given the public interest and given what it does, as transparent and accountable as possible?

The Hon. Mr IRELAND: Yes, I agree with that.

Mr KERR: I was wondering if you could provide the Committee with the foundation for recommendations (ii) and (iii)?

The Hon. Mr IRELAND: Yes. There were suggestions - they will appear from the report in the part of the report immediately preceding the recommendation, but there were recommendations which called for the presence of members of external bodies to be part of the OAG, in fact, the Operations Advisory Group which determines the activities, the investigations, of the PIC.

Mr KERR: Recommendations (viii), (ix) and (x) concern the conflict of interest with counsel which was, I think, on the report, a substantial reason for the delay in Malta?

The Hon. Mr IRELAND: Yes.

Mr KERR: Did your inquiries reveal when the PIC should have first been aware that that conflict was going to arise?

The Hon. Mr IRELAND: I think very early in proceedings. The date doesn't really come to mind, but I think at least before the hearing actually commenced.

CHAIR: Could I interpose and say that I think in the report you said that Mr Brammer wrote to the Commission in March 2001.

The Hon. Mr IRELAND: Yes, I had in mind April, but March 2001. Certainly he wrote.

Mr KERR: He did, but just in terms of trying to place it, before the public hearing commenced there were private hearings?

The Hon. Mr IRELAND: Yes.

Mr KERR: Would that conflict have been apparent in terms of those proceedings?

The Hon. Mr IRELAND: Well, it was certainly apparent to Mr Brammer and he brought it to the attention of the Commission and the Commissioner took the view, as I understand it, that this was a matter which should be dealt with by counsel, who have Bar rules which govern such situations. He relied on counsel, and I believe in that regard counsel assisting as well as counsel representing, to resolve that issue. As events transpired that was not a good decision.

Mr KERR: And, as you say, that was apparent at a very early stage?

The Hon. Mr IRELAND: I believe so.

Mr KERR: In relation to recommendation (xv), the PIC should formulate practice guidelines for, amongst other things, legal representation, conflict of interest, placement of evidence before the PIC and the production of documents. That seems to be a basic commonsense recommendation.

The Hon. Mr IRELAND: I am glad it gets such a blessing.

Mr KERR: I don't claim to be an expert, but I have to say that the PIC has now been operating for some years and that seems so basic that it should have turned its mind to it at the commencement of its career. Would you agree with that?

The Hon. Mr IRELAND: Yes, but when things are going along smoothly you do those things which you consider to be necessary and when the stormy seas arise you have to deal with those conditions and I think that that is why Malta, being such a unique case, was redolent with occasions when problems, which previously didn't have to be dealt with, suddenly had to be dealt with.

Mr KERR: Problems of legal representation, conflict of interest, placement of evidence and production of documents are not unique problems to any commission or court and I would have thought they were fairly well charted waters.

The Hon. Mr IRELAND: Well then you weren't sitting on the Bench with Judge Urquhart.

Mr KERR: No. Could I turn to recommendation (xvii)? That recommendation, of course, will depend on the quality of control by the presiding officer at any inquiry I take it?

The Hon. Mr IRELAND: I think that the inquiry really is in the hands of two people rather than one and that is the presiding officer and counsel assisting, so that both of them really need to keep the hearing on track.

Mr KERR: Yes. The State Parliament has been told that Operation Malta was probably the most important inquiry undertaken by the Commission since its inception. Would you agree with that on the knowledge that you have?

The Hon. Mr IRELAND: I doubt the assessment, I must say, but it depends entirely on your point of view. It was a very important matter. It was very high profile. It was structured that way by the complainants. It was never going to be allowed to be dealt with in any quiet and controlled manner, so it was important certainly - very important - but then police integrity, which wasn't really in issue here, is a very, very important public interest also and I wouldn't like to make a comparison because it is like comparing apples and oranges.

Mr KERR: I appreciate that it may not have been the most important; it was certainly very important.

The Hon. Mr IRELAND: I agree with that.

Mr KERR: These allegations, had they been sustained by the Commission, would have touched on police integrity, I take it?

The Hon. Mr IRELAND: Well, that is perhaps one view.

Mr KERR: Yes, but obviously a person of integrity doesn't try to prevent a reform

process that the government of the day undertakes?

The Hon. Mr IRELAND: Yes.

Mr KERR: State Parliament has been told that the whole process has devastated the lives of many people who appeared before the Commission and it has also been put in State Parliament that surely there is a basic principle that, when a person sits in judgment or reaches conclusions about allegations and picks and chooses which witnesses to believe in, in whole or in part, the person's identity in making the judgment should be revealed.

CHAIR: Could I ask that you identify the source of that?

Mr KERR: Yes, I am relying on a speech that was given by the member for Epping in State Parliament in relation to a second reading of the Police Integrity Commission Amendment Reports Bill.

The Hon. Mr IRELAND: It is the very beginning of that statement I think that is significant. It refers to sitting in judgment, which is what the PIC doesn't do.

Mr KERR: When you say it doesn't sit in judgment, didn't it make a judgment in relation to those allegations?

The Hon. Mr IRELAND: No, it didn't. You see, what--

Mr KERR: Well, the word "judgment" we perhaps should define first.

CHAIR: Perhaps the Inspector could answer the question.

The Hon. Mr IRELAND: You see, you are touching on one of the significant distinctions that has to be drawn with regard to the Police Integrity Commission and, by contrast, a judge sitting in trial or a court and that is that the PIC does not make binding findings of fact or impose penalties. It is required by the Act to form opinions and to, at best, make recommendations. Now that is a significant and important distinction and it is the distinction which runs right through the procedures of the Police Integrity Commission, and that is why questions such as privilege are so different when you are dealing with an inquiry rather than when you are dealing with a court where consequences are so different.

Mr KERR: Well, what do you say is the difference between an opinion and a judgment in relation to these proceedings?

The Hon. Mr IRELAND: Well, one is the expression which does no more than found a recommendation. The other is a binding finding of fact which effects penalties upon people.

Mr KERR: Well, in terms of the consequences to people, consequences can be devastating. I mean the opinion that the Commission expressed in relation to Mr Brammer was detrimental to his reputation. Would you agree with that?

The Hon. Mr IRELAND: Certainly that is one view, yes.

Mr KERR: And the opinion that these allegations were without substance was devastating to the reputation and credibility of the complainants, wasn't it, by an ordinary person forming a decision?

The Hon. Mr IRELAND: That also is one view.

Mr KERR: Certainly the view was expressed by the member for Epping that many reputations were trashed during the hearing and in the final report, and that is an opinion that is on the public record now. Mr Urquhart's term was extended by Parliament so that he could complete the inquiry. That is your understanding, isn't it?

The Hon. Mr IRELAND: Yes.

CHAIR: I don't think that is right. I think it wasn't parliamentary action at all; it was an appointment as an Assistant Commissioner.

Mr KERR: In any event, the instrument was executed by the then Acting Commissioner, Mr Sage, which gave Mr Urquhart the power to continue the hearing. Were you aware that that instrument specifically excluded the power of Judge Urquhart to write the report?

The Hon. Mr IRELAND: I was made aware of that when I read the Hansard of Mr Tink's second reading speech.

Mr KERR: You have read that?

The Hon. Mr IRELAND: Yes.

Mr KERR: Did you have any opinion, having read it, of that speech and the matters raised?

The Hon. JAN BURNSWOODS: Should we ask him to leave the room?

The Hon. Mr IRELAND: I decline to answer that question. If I did, it was a personal opinion. I do not agree with the amendment, if that is what you are asking me.

Mr KERR: No. I withdraw the question. In relation to commissions of inquiry, a former judge of the Supreme Court was the Honourable Michael Helsham. Did you know the judge?

The Hon. Mr IRELAND: I did.

Mr KERR: He conducted an ICAC inquiry and gave evidence before the Parliamentary Committee in relation to his conduct of it and he suggested that it would have been better having a three-tiered approach for the commission he conducted. Perhaps I might give you a document to have a look at at your convenience and you might indicate whether any of the material raised there would be of assistance in terms of conduct by the PIC. Could I do that?

The Hon. Mr IRELAND: In what regard? I think you ought to confine the ambit of your question really. I mean let me assure you the office of the Inspector is a busy place, and especially when one has to write reports, and this looks like quite a weighty document you have there. I just don't know what it is you are asking me to draw from what has fallen from Justice Helsham.

Mr KERR: What I would be asking would be if there was any application?

The Hon. Mr IRELAND: Any application for anything--

Mr KERR: No, his views in relation to the conduct of the PIC.

The Hon. Mr IRELAND: Well, I think you should - I would never accept submission from counsel in court on that basis, Mr Kerr.

Mr KERR: There is a difference.

The Hon. Mr IRELAND: Yes, but if you want me to answer then you've got to tell me the question. I am not going to take hold of a document and search through it and try and rack up something helpful from the views expressed by the late judge. If you would care to formulate a question and support it with the document, I would be more than happy to give it consideration.

Mr KERR: Well, perhaps I might provide it to you on that basis.

The Hon. Mr IRELAND: I think that would be a good idea.

Mr KERR: In relation to the PIC, the public perception is that the PIC was set up to deal with serious allegations about police conduct and to have those dealt with--

The Hon. Mr IRELAND: Well, perhaps misconduct.

Mr KERR: I am sorry, yes, misconduct, and to have those dealt with speedily as an ongoing Royal Commission. That is still, in your view, an obtainable goal?

The Hon. Mr IRELAND: I would hope so, yes.

Mr CORRIGAN: I think I know what the answer to this question is, but I would appreciate it if you would tell me: On page 4 of your opening statement, your address to us tonight, you said "The operations of the Commission observed by me, with one minor exception to which I shall later refer, have been in compliance with the law of the State". Could you just crystallise what that minor exception is?

The Hon. Mr IRELAND: Yes, that is a matter that I think should be dealt with in private.

CHAIR: We will do that at the conclusion of the meeting. The submission from the Police about the Operational Advisory Group is I think one of the two things that are outstanding from your recommendations that have not been accepted by the Police Service and the PIC, and I think it is the Police Service rather than the PIC that is the problem. Do you perceive that the Police Service suggestion that there be external assistance to the OAG was a knee-jerk reaction to the worsening of conditions between the Police and the PIC or do you think there is a substantive argument that the Police want to pursue?

The Hon. Mr IRELAND: I can't identify a substantive argument and my observations of the operation of the PIC lead me to the view that such a procedure would be anathema to the conduct of the Police Integrity Commission. The introduction of an outside person in the group which is really focusing the whole thrust of the PIC has this obvious disadvantage: That person can never be on top of all of the matters that the group considers, and unless you are on top of the whole of the matters then your opinion is greatly depreciated, so the introduction of outside observation or participation by somebody who does not know precisely what is going on in every detail is dangerous in the extreme in an activity such as the investigations conducted by the PIC.

CHAIR: And it flows logically from that that your concerns do not relate just to a police

person being an external element but to any person?

The Hon. Mr IRELAND: Quite so.

(Evidence continued in camera)

(The witness withdrew)

(The Committee adjourned at 7.40 p.m.)