

REPORT OF PROCEEDINGS BEFORE

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

**NINTH GENERAL MEETING WITH
THE INSPECTOR OF THE POLICE INTEGRITY COMMISSION**

At Sydney on Wednesday 19 November 2008

The Committee met at 3.10 p.m.

PRESENT

The Hon. K. A. Hickey (Chair)

Legislative Council

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

Legislative Assembly

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

Transcript provided by Pacific Solutions

PETER JAMES MOSS Q.C., Inspector of the Police Integrity Commission, 105 Pitt Street, Sydney, affirmed and examined:

CHAIR: Thank you Inspector Moss for appearing before the Committee. Your appearance before the Committee is to provide information regarding the Ninth General Meeting with the PIC Inspector. The Committee is pleased to hear your evidence.

CHAIR: We have received your answers to questions on notice. Would you like your answers to questions 1 to 10 to be made public and included as part of our sworn evidence?

The Hon. PETER MOSS: Thank you Mr Chairman.

CHAIR: Do you wish to make an opening statement?

The Hon. PETER MOSS: Not unless the Committee wishes me to, but I think most of the members here today were here when I appeared on the last occasion.

CHAIR: I will start by throwing it open to the Committee for questions.

Mr PEARCE: We have got confidential material here, is it appropriate to discuss that at this point?

CHAIR: Can we do the general part first.

Mr KERR: I think you work two days a week, is that right?

The Hon. PETER MOSS: When I was offered the position or role, Mr Kerr, it was made plain to me that it was anticipated that typically I would work two days a week and that has been the case, except on a few occasions, when I might have worked three days a week.

Mr KERR: What about the workload, do you think that the two days is sufficient to discharge the workload?

The Hon. PETER MOSS: Well, I have been rather surprised at the number of complaints that I have received and am currently dealing with. Perhaps I have been more surprised, rather than as to the number, as to the content of the complaints which have required considerable investigation on my part, not only of the parties, but on occasions of the Director of Public Prosecutions, of Professional Standards Command and of other third parties. To some extent, of course, I am in the hands of these third parties as to when they respond to my correspondence. So at the moment there is a fairly heavy workload, particularly in terms of dealing with complaints.

Mr KERR: Are you able to do any more than two days a week?

The Hon. PETER MOSS: Yes, I do not think that would be a problem so far as the Ministry is concerned. In other words, I would not expect any problems there but nevertheless, I have tried typically to confine it to two days a week.

Mr KERR: Have you ever had to explain to a complainant that you only have two days a week available?

The Hon. PETER MOSS: Yes I have, I have occasionally in responding to a complainant in the first instance and perhaps seeking further and better particulars, I have pointed out that it is a part time position. I do not know that I have gone into how many days a week, but I certainly have stressed that it is a part time position.

CHAIR: Inspector, are you aware of when Operation Alford is likely to conclude and will all outstanding matters be finalised?

The Hon. PETER MOSS: I am sorry Mr Chairman?

CHAIR: Are you aware of when Operation Alford is likely to conclude and will all of the outstanding matters be finalised?

The Hon. PETER MOSS: You mean in relation to Briggs and other complaints, well, I could not say that for one moment, Mr Chairman, not only because it is not my operation, I am not the Commission of course and I cannot and do not speak on their behalf, but given the history of the matter to date, I am afraid that I take the view that one will just have to wait and see what happens there.

I am comforted by the fact that they have, I understand, briefed Mr Robberds QC and I would think therefore they are in good hands. He will be Counsel Assisting as I understand it, but nevertheless, to some extent I think that there is new ground being broken here, in that an administrative decision making body such as the Police Integrity Commission having dealt with a particular investigation, is now purporting to enter upon the same investigation for a second time and there is High Court authority about that. Whether they can bring themselves within that authority I suppose one day will have to be determined.

As I say, my attitude is I think one will just have to wait and see what happens. I do hope it is not going to be another Whistler, but we will just have to wait and see.

Mr PEARCE: Chair, I have actually got a number of questions in relation to that but I will hold back until we go into the confidential section, because I do not see how we can deal with this thoroughly while we are sort of skimming over the surface.

Mr KERR: I would be interested to know the effect of that High Court authority though.

The Hon. PETER MOSS: It is an immigration case, Mr Kerr. It is about 2002. I do not know if it is reported but I have got a copy of it and because it is an immigration case, it follows that the legislation does not bear any detailed resemblance to the PIC legislation, but basically an applicant for a student's visa or some such thing went before that Tribunal and was given a hearing date, and on the eve of the hearing date became ill.

The migration agent faxed or sent a letter to the Tribunal asking for an adjournment because of the illness, the Tribunal did not get the letter, held some sort of a proceeding – this is very much subject to reading the High Court decision as to what you make of the procedure – and in the absence of any evidence from the student, revoked or cancelled the visa.

The next day the Tribunal discovered its error and revoked the previous day's decision and then made a new decision. The Minister appealed saying that he could not have a second decision, it had already made its decision, it was functus officio.

It got all the way to the High Court and the High Court decided that there had been a jurisdictional error, a denial of natural justice and in the circumstances of that case, the Tribunal did have jurisdiction to revoke and to enter into the second decision.

I think the important factual situation there was that it was a very simple slip, as the High Court used the word 'slip', a very simple slip and it was rectified the next day.

Just how far that particular principle extends remains to be seen.

Mr PEARCE: That differs very significantly to Operation Whistler and the subsequent proposals I would have thought.

The Hon. PETER MOSS: As I say, Mr Pearce, I think there were different views about it and I do not know when it will be tested.

CHAIR: If I may, before we go any further, are there any general questions? If we can get those general questions unrelated to the Briggs matter out of the way, then we can go into confidentiality and probably get down to where we want to be.

Mr KERR: I think in your annual report Inspector at page 15, there is a complaint 16/06. This complainant was an informant in the Wood Royal Commission.

The Hon. PETER MOSS: I have not got a copy of my report with me.

Mr KERR: It says this complainant was an informant with the Wood Royal Commission and through his lawyers he complained to the Inspector alleging breaches by the Commission.

The Hon. PETER MOSS: I am with you, sorry.

Mr KERR: I was just wondering in relation to the Wood Royal Commission and matters before the PIC, are there still outstanding matters where people have made complaints in relation to that?

The Hon. PETER MOSS: Funny you should mention that. I do not want to identify the complainants, and I hope I do not, but shall I say three former police officers who appeared before the Wood Royal Commission, about four or five months ago made a complaint to me concerning the Police Integrity Commission, so in that sense, yes, the Wood Royal Commission still has some legs, if you like, and in that particular complaint I have just delivered, a couple of days ago, a draft report to both the complainants and the PIC.

As you know, it is my practice before publishing a report, to deliver a draft to the complainant and the Commission, await their response, take their response into account and then publish.

Ms SYLVIA HALE: Mr Moss, as you know, the High Court has ruled that the conduct of the Crime Commission was illegal in relation to Operation

Mocha.

The Hon. PETER MOSS: Yes.

Ms SYLVIA HALE: How extensive an investigation will you be conducting into the Commission in relation to that?

The Hon. PETER MOSS: Ms Hale, I do not think I have any jurisdiction at all in relation to that matter.

The first question in the questions on notice dealt with that and as I said in that response, the amendments to the PIC Act concerning the Crime Commission are very limited and in effect, those amendments empower and require the PIC to detect and investigate misconduct of Crime Commission officers and prevent such conduct.

But as I attempted to say in that response of mine, the only way that I see the Inspector's jurisdiction could be affected, is (a) by having the audit duties enlarged and (b) by enlarging the class of people who is a proper case could make a complaint to the Inspector.

Ms SYLVIA HALE: Presumably you have made those suggestions to the Government?

The Hon. PETER MOSS: No, this is what I think follows from the amending legislation.

Ms SYLVIA HALE: What concerns me is we have a case where Hugh Macken described the Crime Commission as acting like a pack of cowboys, acted contrary to both State and Federal legislation and then there is subsequently the behaviour of Mark Standen.

The Hon. PETER MOSS: That has to be proved yet.

Ms SYLVIA HALE: Yes, alleged behaviour, but there seems to be no mechanism whereby, other than the appointment of yourself as the Inspector, this behaviour can be examined and looked at in terms of the connections between the Crime Commission and the Ombudsman, the relationships between State and Federal Police and the use of telephone intercept powers.

There seems to be no mechanism whereby this can be subsequently examined.

The Hon. PETER MOSS: As I said also in that answer, an Assistant Commissioner has been appointed to the PIC and his specific brief is to assess the capacity of the Crime Commission to identify and manage risks of serious misconduct involving Crime Commission officers.

I think until we have his report – which I think is due in a couple of months – it is difficult to know what the problem is, if any, and it is difficult to know what will be the involvement of the Police Integrity Commission and the depth of that involvement, at least until we get this Assistant Commissioner's report.

Ms SYLVIA HALE: That report will presumably go to yourself.

The Hon. PETER MOSS: No, as I understand it, it will go to the Police Integrity Commission and presumably they will then present it before

Parliament, but it will not go to me. I may get a copy, but it will be out of courtesy.

Ms SYLVIA HALE: We are depending upon the PIC making some recommendations arising out of that report.

The Hon. PETER MOSS: I think the Assistant Commissioner will make the recommendations. He is a very experienced senior counsel and he has been much involved in crime fighting bodies, Mr Clarke SC from Victoria. He was on the National Crime Authority and various other bodies. He is very experienced.

Mr KERR: You mentioned in relation to your draft reports that you forward a copy of the draft report to the complainant and to the Police Integrity Commission. How long do you give them to respond to those reports? Is there a set time?

The Hon. PETER MOSS: No, I have never set a time Mr Kerr. Obviously, I would not wait for an undue length of time, but generally speaking they have responded within a reasonable time.

Mr KERR: You do not set a deadline for them?

The Hon. PETER MOSS: No. As a matter of fact, the complainants emailed me today I see asking could they have fourteen days or something and I have not responded, but of course I will. I think that is perfectly reasonable that they have fourteen days or longer for that matter.

I have not had any problem in that regard, not from the parties, Mr Kerr, but from third parties sometimes it takes a while to get a response.

CHAIR: No further general business? We can go in camera now.

(Evidence continued in camera)

(Public hearing resumed)

CHAIR: Inspector, can you advise the Committee whether you are considering making the investigative reports you compiled in relation to Briggs into a special report to Parliament?

The Hon. PETER MOSS: I had not thought to do that, Mr Chairman. Once again, as you know, I take the view of my powers in that regard as somewhat limited and indeed, I have responded to one of the questions about that.

No, I thought all I could do there, apart from having delivered the reports to the limited number of people who received them, was to summarise it in my annual report, as I attempted to do, although, of course, a summary does not replace the full report.

CHAIR: What considerations would you weigh up in deciding whether or not a complaint investigation should be reported to Parliament?

The Hon. PETER MOSS: For the reasons set out in that response that I made, I think to question six, and annexed in annexure B, I think, the previous correspondence between myself and the previous Chair of this

Committee, I simply take the view for the reasons set out in the correspondence and briefly in the answer to question six, that I do not have the power to do other than publish such reports to a very limited audience, sometimes confined to the complainant and the Commission and this Committee. I was asked what I thought about an amendment and I have also responded to that in the response to question eight.

CHAIR: That comes down to a fundamental change of the Committee's operations though, does not it, the amended functions?

The Hon. PETER MOSS: Are you speaking about my reports into complaints, Mr Chairman?

CHAIR: Yes.

The Hon. PETER MOSS: No, they deal precisely with reports into complaints received by the inspector concerning the Police Integrity Commission.

CHAIR: But the amendments you were proposing would be a change to the functions?

The Hon. PETER MOSS: Well, as I have said, yes. I have suggested that what is needed is to deal with three issues. This is the answer to question six. First, who, if anyone, is entitled to receive a copy of the report? This is on page eight. Second, what discretion, if any, does the inspector possess to distribute copies of the report to particular persons? Third, what status is to be accorded to the report once it has been provided by the inspector to a particular person? If those three issues are desired to be covered in an amendment, then obviously the amendment would have to take those three issues into account.

I might say, as I have pointed out before, the ICAC inspector is governed by almost identical legislation and his latest report also refers to this and I think to the effect that if the problem that I have identified is seen as being correct, then that inspector agrees that an amendment is necessary. That appears in his latest report, his 2008 annual report.

CHAIR: It is something we are going to come back to the Committee with and we will go into finite detail with the Committee to see where we actually move forward on this. That is something that the Committee really needs to get its head around. I think doing it right now may not be the best time for any of us.

The Hon. PETER MOSS: I do not know, Mr Chairman, whether the counterpart committee for the ICAC inspector is also taking an interest in this.

CHAIR: We probably need to have a chat to the Chairman of the ICAC Committee too.

Mr KERR: Having mentioned the Inspector for the ICAC have you read all of his reports?

The Hon. PETER MOSS: I have not read all of his reports, Mr Kerr.

Mr KERR: There was a report in relation to the inquiry into Peter Breen.

The Hon. PETER MOSS: I have not seen that report. I have not been provided with a copy of that. Once again, that is the problem. He feels that he is limited into the recipients that may see a copy of that and I am not one of them.

Mr KERR: This is a report that was tabled in Parliament, so it is on the public record. Perhaps that might be supplied to the Inspector.

The Hon. PETER MOSS: I appreciate that, Mr Kerr. I had not seen that and I had not realised it had been tabled.

Mr KERR: Mr Pritchard gets a mention in it.

The Hon. PETER MOSS: I had heard that on the grapevine that that might be so.

The Hon. LYNDA VOLTZ: Maybe we should make sure that the Inspector gets any copies of the ICAC reports tabled in the House.

CHAIR: If there are any questions that come out of our deliberations can we put them on notice to you?

The Hon. PETER MOSS: Of course, Mr Chairman. I would be only too pleased to answer any further questions that come up.

(The witness withdrew)

(The Committee adjourned at 3.43 p.m.)