

REPORT OF PROCEEDINGS BEFORE

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

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

At Sydney on Friday 22 February 2013

The Committee met at 9.30 a.m.

PRESENT

The Hon. C. Cusack (Chair)

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

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

CHAIR: I now declare open the Committee's general meeting with the Inspector of the Police Integrity Commission. In accordance with section 95 (1) of the Police Integrity Commission Act 1996, the Committee monitors and reviews the Inspector's exercise of his functions, examines the annual report and the other reports made by the Inspector and reports to both Houses of Parliament. On behalf of the Committee I thank the Inspector for appearing here today. Can I clarify this point? You have returned answers to questions on notice from the Committee. Are you happy for those answers to be published?

Mr LEVINE: Yes.

CHAIR: I welcome other members of your party who have come with you today.

Mr LEVINE: You have the whole of the inspectorate before you.

CHAIR: Can you please confirm that you have received a copy of the Legislative Assembly standing orders that relate to the examination of witnesses?

Mr LEVINE: Yes.

DAVID DANIEL LEVINE, Inspector of the Police Integrity Commission, Inspectorate of the Police Integrity Commission, affirmed and examined:

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr LEVINE: Yes.

CHAIR: In your answers to questions on notice dated 25 January 2013 you stated your view that neither the Police Integrity Commission nor the inspectorate of the Police Integrity Commission should fall within the ambit of the portfolio of the Minister for Police "as this profoundly derogates from the independence of each entity". You referred to a submission being prepared in due course for the Attorney General on these matters relating to the independence of the inspectorate. In what time frame do you expect this submission to be prepared?

Mr LEVINE: I would hope you would have received it. It is headed "Inspector, Police Integrity Commission" and it is dated 4 February 2013. It is recent but it was sent to this Committee as well as other recipients.

CHAIR: It probably clarifies the purpose of this document for us now, thank you very much. Are there any examples in other jurisdictions of bodies similar to yours that do not sit within ministerial portfolios?

Mr LEVINE: I do not know.

The Hon. ADAM SEARLE: Just in relation to your answers provided on 25 January, and in particular the answer to question five, you stated that you are not satisfied that the review of the Strike Force Emblems matter was within your statutory functions, although it was a matter that was referred to you by the police Minister and you are, obviously, happy to undertake the review. I understand that there will be a submission coming about this, but did you seek or were you provided an indemnity by the Government or by the Minister in undertaking that review, given that it could well have been outside your statutory jurisdiction?

Mr LEVINE: The answer is I neither sought nor was given one, and the candid position is that the penny did not drop, as it were, until well after I had received the communication from the police Minister and I turned my mind gradually when I realised, "No, hang on a minute. Who is my Minister and does the power under which the police Minister purported to refer it to me in fact permit me to deal with it?"

The Hon. ADAM SEARLE: Just to be clear: Was that the only concern, that is, the identity of the Minister referring? Was that the only query about the jurisdiction? That is, assuming the Premier had referred it to you, would you otherwise have been satisfied that the matter was clearly within the ambit of your functions?

Mr LEVINE: If the Premier had referred it to me it would depend upon in what terms he did so. I am taking myself back to May of last year, of course.

The Hon. ADAM SEARLE: Let it be supposed it was in the same terms as the police Minister referred it to you.

Mr LEVINE: I would have to say probably the same amount of time would have passed before the penny dropped.

The Hon. ADAM SEARLE: I understand that and I am not being critical in any way. I am just now seeking to understand the nature of the jurisdictional question mark. Is it simply the identity of the Minister referring or was it the terms, that is, the subject matter in the terms in which it was provided, is there some question mark over that that may need to be remedied in future?

Mr LEVINE: I think there is a question mark. The first component of the question is one I think I addressed in that memorandum, that the inspectorate of the Police Integrity Commission should not fall within the portfolio of the police Minister. Second, the Minister—who presently is the Premier and, I presume, could

otherwise be a Special Minister for State—when a reference is made should either specify the terms of the reference or embark upon an initial process of consultation to settle the terms of reference.

The Hon. ADAM SEARLE: And that would be an enhanced procedure?

Mr LEVINE: Yes.

CHAIR: Earlier I asked you a question referring to an answer that you gave on notice. It concerns the review that you undertook of the Emblems matter for the Minister for Police and Emergency Services. I think in your answer you suggested—we take on board your comments that the Act is very broad and it is undesirable that the Minister for Police and Emergency Services be making references to you direct. My understanding is that you said that you will take this another step beyond reporting back to the Minister for Police and Emergency Services; that you will go another step and make a submission to the Attorney General—

Mr LEVINE: I have done that. That is that document. That document went to the police Minister. It went to the Premier. It went to the Attorney General in his capacity as the person to refer it to the Law Reform Commission. It went to the Ombudsman, who was the recipient of the Emblems reference, and it also went, as a matter of courtesy, to the Hon. James Wood, Chairman of the Law Reform Commission.

CHAIR: I understand that. Have you written separately to the Attorney General to ask him to push that issue?

Mr LEVINE: Yes. Each received a separate communication. I do not have my letter to the Attorney General but it was written to him and I feel certain I made it clear that I would do so, inviting him to consider referring it to the Law Reform Commission.

CHAIR: Is that a letter that could be appropriate to share with the Committee?

Mr LEVINE: Yes, happy to.

CHAIR: Thank you. Do you see any role for the Committee in pursuing this issue? Particularly in relation to legislative change, the Committee can play a role in examining those issues and making them progress. I think you are probably aware that there are a number of legislative reforms proposed that seem to take many years to do.

Mr LEVINE: I think there is certainly a role for this Committee in relation to what I am suggesting should be the amendment to the Police Act section 217, or any new substituting legislation, to avoid what I perceive to be the embarrassing position where the police Minister can ask the Inspector of the Police Integrity Commission to deal with matters that essentially relate to the administration of the Police Force. That is not the purpose for which I exist or the office exists.

CHAIR: Yes, I understand. This has been a pretty unique situation. I think the Minister for Police and Emergency Services was just wondering who could assist him on this matter. I am sure that your response to him has alerted him to those issues which he probably had not considered before.

Mr LEE EVANS: In relation to relationships with other bodies, has the relationship between the PIC and the inspectorate been cooperative and constructive over the past year? Is there anything that can make working together difficult?

Mr LEVINE: The answer to the first part is that it has been cordial and cooperative since we last met. There has been nothing yet to provoke any other state of affairs. It is really only since I was able to be rid of Emblems that I was able to commence the establishment of a series of protocols or regimes for auditing the procedures of the commissioner and that is still ongoing. No, nothing has exploded or anything like that. It is all very cordial.

The Hon. SARAH MITCHELL: My question relates to complaints and anonymous complaints which you spoke about in your answers provided to us in January. There were the two incidents that you mentioned, one where it fell outside your jurisdiction and another one where it went to the Commissioner of the Independent Commission Against Corruption. Given that they are anonymous complaints, you say that there is no way of informing the complainant of what has happened with the matter. Do they ever contact you again or is

there ever any process where they can do that by trying to find out as an individual if they want to know where it has gone?

Mr LEVINE: There is nothing to stop them from getting in contact again. It is futile if they keep maintaining their anonymity except in the second instance where something could in fact be done by ICAC because it involved an active police investigation, which came to a conclusion but the conclusion could not be communicated to the original anonymous complainant to Crime Stoppers. As to the other one, I can expand on that as an example.

The Hon. SARAH MITCHELL: That would be great.

Mr LEVINE: That was a letter without signature but addressed to the professional standards command, PSC, of the police, raising matters beyond my understanding, apparently beyond my jurisdiction. I came to the view that I would do nothing because I suspect that the complainant had merely provided PIC or my inspectorate with a copy of the letter that he had sent to the professional standards command, and that is where it has rested.

Mr KEVIN ANDERSON: In relation to audits, can you elaborate on your auditing of the Police Integrity Commission in relation to the investigation into the shooting of Adam Salter?

Mr LEVINE: That is the current Calyx.

The Hon. ADAM SEARLE: Operation Calyx.

Mr LEVINE: Yes. Working backwards in terms of time, we are supplied with transcript of all the hearings, public and private. We have volumes of surveillance warrant applications that have been issued—all forms of surveillance warrants. That is all. Calyx was the first opportunity we had, post the Emblems, to put in place some arrangement between the inspectorate and the commission as to how we would be provided with information or go up and get it in relation to evidence and investigation material. But I have not examined it yet with a view to coming to a view as to whether it is flawed or so full of faults. It just has not reached that point.

Mr KEVIN ANDERSON: In relation to the process, as you say, post Emblems and a new way of doing things, how is that process being facilitated?

Mr LEVINE: Without any difficulty at all. Most of the public material—for example, transcript—I think is sent electronically. If not electronically, surveillance device material is sent in hard copy or can be collected—it is not just sent via the mail or anything; it is securely delivered from one to the other—and we have now just got in place a system whereby I and my staff can use the inspector's room at the PIC premises that my predecessor used. For the first time we have availed ourselves of access and will be continuing to use that access, which gives direct access to their electronic databases.

Mr KEVIN ANDERSON: Have you found any impediments in relation to accessing that?

Mr LEVINE: Not yet, no

Mr KEVIN ANDERSON: Do you foreshadow any?

Mr LEVINE: Unless someone in the Police Integrity Commission is unsatisfied with the security status of my two carefully chosen employees I do not think there will be any problems.

The Hon. ADAM SEARLE: In the Strike Force Emblems report that you provided to the Minister you indicated that the document was unsatisfactory and that it was not in the public interest to make it public. Can you elucidate the kinds of features that the document exhibited that made it not in the public interest for it to be published in full?

Mr LEVINE: My communication with the Minister was in two parts. There was an open letter which enclosed a closed—if I can put it that way—report. I wrote to him on 23 November 2012. Copies of that letter went to the Premier, the police commissioner and the Ombudsman. I think the safest thing for me to do is to quote from it rather than drift into forbidden territory. What I said was:

The report of Strike Force Emblems I have found to be such an abstruse and unsatisfactory internal police document that it is not in the public interest for it, its findings (such as they are) and its recommendations (such as they are) to be made public.

With the utmost respect to those involved in the preparation of the Strike Force Emblems Report it is severely wanting in sound reasoning and logical exposition of investigations said to have been undertaken. Its findings and recommendations on my reading of accompanying internal police communications do not enjoy support or confidence among police commentators of high rank.

...

I acknowledge that the subject of NSWCC LD Warrant 266 of 2000 by naming so many people and by correlation of those names with references to them or the absence of references to them in the supporting affidavit could understandably give rise to concern. I did not consider, and do not consider, it part of my function under S.217 of the *Police Act NSW 1990* in accordance with your letter to pursue any question of suspected or perceived criminal misconduct or the motivation if any therefore in the application for the warrant in the form it was made. I make no finding in that regard.

I interpolate that I make a reference to the fact of the referral to the Ombudsman and go on to say:

This is not a question of the avoidance of public scrutiny but rather of the operation of a transcending public interest in the fair and considered protection of the good name of the NSW Police, or those who serve in it and of other members of the community.

The reality has to be acknowledged that it is unfortunate that so much time has elapsed and that these issues are still the subject of concern to members of the police and others and are subject to what I consider to have been often the unfair agitation of issues in the media in circumstances where the source of the material for that agitation can only be found in the criminal misconduct of someone at some time.

Finality and closure will be the best outcome in the interests of the public and of the Police Force of this State which the Police has the privilege to serve.

Do you want me to go on? I then answer precisely the four questions the Minister asked.

The Hon. ADAM SEARLE: No, that is fine. In short, it was such a rubbish document it would have just been embarrassing to the institution if it was made public?

Mr LEVINE: Yes. It was a document so wanting in the requisite qualities to make it public.

The Hon. ADAM SEARLE: Would it be appropriate for us to see the report at some point?

Mr LEVINE: That is a matter for the Minister.

CHAIR: I think that our seeking to see the document would completely compound the problems mentioned by the inspector.

The Hon. ADAM SEARLE: I was just asking. I am entitled to be nosy.

CHAIR: Absolutely. I appreciate that. Inspector, I thank you for the copy of the advice that you provided to the Minister because this matter has been very perplexing to many people and we really have not had anything given to us with the sort of clarity which you have given. I think that has assisted the matter immeasurably. As much as I can understand the awkwardness you felt at it being referred to you in the first place, I thank you for the role that you played. It has certainly brought a lot of reassurance to my mind. I also note your endorsement of the referral to the Ombudsman. I hope that he is able to achieve the closure that you are proposing. In any event, this is the first thing I have seen on this matter that has actually been of assistance.

Mr LEVINE: You are welcome. Thank you.

The Hon. ADAM SEARLE: I have one further question about the Roberto Curti matter and the status of that investigation.

CHAIR: Before that may I ask a further question in relation to Emblems. This question does not actually deal with the Emblems investigation and the report but rather it relates to an issue that has arisen for me; that is, the situation where police officers seek a warrant from a judge. Is the veracity of the information they put before that judge open to any form of scrutiny or testing? If the information that was put before the judge was flawed or incompetent or misleading, are there any means by which that could be detected and addressed?

Mr LEVINE: The first means would be some internal flaw or inconsistency in the form of the warrant or in the affidavit in support of it. From my own experience—it is now about eight years ago when I last was a duty judge issuing such warrants—I, like any other judge, developed an idiosyncratic methodology for reading this material, which at times would come in inundating waves one after the other. I do not want to diminish the process, but I said, "I am going to look to see if there is someone named in this warrant who is named as 'M. Mouse' or 'D. Duck'"—I did that. That is one way.

The second is, for the system then to work and still to work—I think there have been changes—the judicial officers who can now issue all these surveillance warrants must have confidence in the integrity of the applying body. That is the area of difficulty that has evolved since, for example, the Emblems matter. I would like to think that since the re-exposure of Emblems last year, if not before—remember it was 2002, then 2006 and then 2012—other protocols and procedures are in place. I know of one instance—I am sorry, that is all I can say because I cannot remember by which judge or in what context—where the judge rejected an application, after examining the officers.

In one instance I had such reservations about the merits of the application that I made it clear that, unless something of substance was obtained on the issue of warrant, they should not come back asking to try again. Otherwise, there still is, fundamentally, the reliance that has to be placed upon the integrity of the officers from the respective bodies who are entitled to approach a judge or a magistrate. That is about as far as I can take it.

CHAIR: It concerns me. I remember, when phone taps were introduced, when I was a lot younger, there was the idea that there would be a few of them a year. However, there seems to be such a volume now and so many agencies tapping phones and undertaking that sort of surveillance that I wonder if that system that might have initially been appropriate, is still appropriate. It once made sense for a judge to review the material but now it is coming in such volumes and, as you said, inundating people at times. It is an important point in any investigation because if something has gone wrong at that point, then everything that happens after that is going to be contaminated. If it went wrong, with the best will in the world, aside from the fact that it is exposed to abuse, if people feel that it is not accountable—and it concerns me that any judge would be searching for M. Mouse and D. Duck. It seems to reflect a lack of confidence or it seems there is a vulnerability that you feel in issuing these warrants.

Mr LEVINE: Yes, I would not place great weight on my particular choice of M. Mouse and D. Duck. It was one of several criteria that I applied to determine whether or not I would issue a warrant. I think there is a legitimate complaint, or area for complaint to be made—and this is perhaps more for the courts than for my own office—of the number of institutions that now have the power, under so many statutes, particularly in the last decade, to apply for all these forms of surveillance. The ultimate sanction which is, I suppose, not satisfactory in moral terms, is that the courts would still have the power to say: No, the evidence will not get in. That is the ultimate position. But that takes a lot of time, expense and worry, to get to that.

The Hon. ADAM SEARLE: I hesitate to ask—did you ever find an M. Mouse or a D. Duck?

Mr LEVINE: No, I think I had to discontinue looking for D. Duck after a very well-known member of the legal profession by that surname was appointed a judge of the Workers Compensation Commission.

The Hon. ADAM SEARLE: On a more serious note, I wanted to ask whether you could advise us as to the status of the investigation into whether there was any police misconduct or criminal conduct in the pursuit and restraint of Roberto Curti?

Mr LEVINE: That is the tasering one, is it?

The Hon. ADAM SEARLE: Among other things, yes—tasering and physical restraint.

CHAIR: The Brazilian student who ran down Pitt Street.

Mr LEVINE: Nothing has happened in our inspectorate. The two that have been prominent in the media and, as far as I am aware, are prominent in receiving attention from the Police Integrity Commission, are the matter we have already talked about, Calyx, and the one involving the events alleged to have taken place at Ballina, in the Ballina police station which the Hon. Bruce Jones is presently dealing with. In that, we have also

initiated the auditing process of getting the transcript. But in relation to that other matter involving the tasering and whatever, nothing has happened as far as the inspectorate is concerned.

Mr KEVIN ANDERSON: We have had the pleasure, at the start, to speak with you when you took up the office. It has been a little while now. Have there been any moments or any eyebrow-raising occasions where it has not been as you thought and parts of it that perhaps you thought you needed to deal with the process a little differently?

Mr LEVINE: Having got rid of Emblems, the answer is no, everything is just fine at the moment.

CHAIR: In relation to these two documents—Inspector Police Integrity Commission Memorandum S. 217 Police Act 1900 and the letter of 20 November 2012 to Minister Gallagher on the Emblems issue—are you happy for us to use those as part of your evidence? The implication of that is that they would be published on our website as forming part of the evidence given to this Committee.

Mr LEVINE: In relation to the memorandum on section 217, that is a public plea from me for law reform, so anyone can read it. I just restricted its distribution on an initial basis but I have no problem with that. The other letter is the letter that accompanied my report to the Police Minister, the last sentence of which says that I have no objection to the letter being made public. Is that the letter that you have?

CHAIR: Yes, that is the one.

Mr LEVINE: Then I have no objection to that either.

CHAIR: Are there any other issues that you would like to draw to the attention of the Committee?

Mr LEVINE: No. I will repeat something that I think I might have adverted to on our first meeting last year. Speaking for myself, and I think I can speak for the Police Integrity Commissioner, our objective is to get rid of all the old stuff. There is one major matter—and I am not diminishing it by referring to it as "stuff"—there is a major complaint made in 2011 by the NSW Crime Commission that ended up in the Supreme Court. That is the one major matter, under the old regime, if I may so describe it, that I have to dispose of. Once that is done, which I hope to do by the end of this reporting year, then we will be able to concentrate on the new regime. The additional factor—this has just occurred to me and I do not know what the effect of it will be—is if an appointment is made to the Office of Inspector of the NSW Crime Commission. What effect that will have, I do not know. I do not know if that has been made or will be made, or what.

CHAIR: Could you expand of what you mean by what effect it will have? Are you saying what effect it will have on the other inspectorates?

Mr LEVINE: On my inspectorate in particular because there is this circularity where I oversight the Police Integrity Commission, which can oversight the Crime Commission. So if I have to oversight the Police Integrity Commission's oversighting of the Crime Commission, where in all of that is the Inspector of the Crime Commission? That office is still vacant, if it has been legislated.

CHAIR: Complaints about the Crime Commission would be made to the Police Integrity Commission. Is that correct?

Mr LEVINE: Yes, they can be.

CHAIR: Rather than to the inspector?

Mr LEVINE: Of the Crime Commission—I do not know.

The Hon. ADAM SEARLE: That was certainly one of the controversies in the past between the two bodies, which now may or may not be solved by the appointment of an inspector.

CHAIR: Yes, I take the point. It is not really relevant now because the legislation has changed, but the major matter that you referred to that you are trying to dispose of, the pathway for that under the new arrangement is not really clear, is it? I mean, if someone made a complaint about the Crime Commission, what

sort of complaint should go to the Inspector of the Crime Commission and what sort of complaint should go to the Police Integrity Commission?

Mr LEVINE: Consistently, it should be the same type of matters that the Inspector of Police Integrity Commission deals with, namely, the conduct of the Police Integrity Commission, the commissioner or his officers, not the police. The Inspector of the Crime Commission, I would imagine, will deal with the conduct of the Crime Commission, the commissioner, the acting commissioners and its personnel. But the Crime Commission also has a board of management.

CHAIR: Just to be clear, does the Police Integrity Commission retain its oversight role for the Crime Commission?

Mr LEVINE: Yes. Are you referring, Madam Chair, to someone making a complaint to Police Integrity Commission, that is the commission, about the Crime Commission?

CHAIR: Yes.

Mr LEVINE: Yes. How Police Integrity Commission handles that complaint is something I oversee. If we introduce another inspector internally to the Crime Commission, a bipartite state of affairs has suddenly become a tripartite state of affairs.

Mr KEVIN ANDERSON: I was looking back to see if you were looking back at me.

Mr LEE EVANS: It is extraordinary.

The Hon. ADAM SEARLE: What if the inspectors take a different view?

CHAIR: Then of course the problem is that when something goes awry, there is nobody left to look at it.

Mr LEVINE: Yes.

The Hon. ADAM SEARLE: Or the alternative problem.

CHAIR: That was the Emblems problem in the sense that everybody was doing things jointly, which meant that nobody was able to—

Mr LEE EVANS: Oversee.

Mr KEVIN ANDERSON: There is more than that.

CHAIR: Okay.

The Hon. ADAM SEARLE: I think the more likely situation you have here is that you have two inspectors overseeing the handling by the Police Integrity Commission of a matter, and what if there is a disagreement, and what if it is a controversy of the kind of Emblems? It is a bit of a problem.

CHAIR: I do not think the Crime Commission inspector would have a role at all in overseeing the Police Integrity Commission review.

The Hon. ADAM SEARLE: No, but you can see how they could become involved. If the complaint was to the Police Integrity Commission about something that the Crime Commission did, that would be a matter properly within the remit of both the current inspectors.

CHAIR: We know how these things work. The person who is complaining will send a letter to the Crime Commission inspector, to the Police Integrity Commission, to our Committee—

Mr LEE EVANS: The Ombudsman.

CHAIR: And to the Ombudsman. You know, it gets photocopied and emailed to everybody.

The Hon. ADAM SEARLE: Sure.

CHAIR: What is the clarity and certainty in how such a matter would be pursued?

Mr LEVINE: It is so opaque at the moment, I do not know. I just do not know.

The Hon. ADAM SEARLE: It is a live issue that will eventually rear its head.

CHAIR: Thank you. Are there further questions from other members of the Committee?

The Hon. SARAH MITCHELL: No.

Mr KEVIN ANDERSON: While we are speaking about complaints, in your annual report, Mr Levine, you noted that one potentially quite major complaint had been initiated by one of the most senior officers in the NSW Police Force.

Mr LEVINE: Yes.

Mr KEVIN ANDERSON: While we are talking about complaints, what progress has been made in that investigation?

Mr LEVINE: That complaint was integral to, collateral to, and a major part of Emblems and thus has been bundled up and sent down to the Ombudsman. To the extent that it was a complaint to me, it has been closed.

Mr KEVIN ANDERSON: From your office.

Mr LEVINE: In my office, yes. But all the material relating to it has been referred to the Ombudsman.

Mr KEVIN ANDERSON: Are you comfortable with that process?

Mr LEVINE: Oh, indeed yes.

CHAIR: It is a satisfying moment when it leaves.

Mr LEVINE: Yes.

CHAIR: Mr Levine, I more broadly reiterate our thanks to you and to your staff who are working with you. It seems to me that a great deal of progress has been made during your first full year and that you are, in everything that you have done and provided to us, bringing greater clarity to things that have been, to use your word, opaque. There is still a distance to be travelled, but I really feel that the best progress that has been perhaps ever has been made in the last 12 months.

Mr LEVINE: Thank you.

CHAIR: I can only thank you on behalf of the public. That has really been a great service.

Mr LEVINE: Thank you very much. If that point has been achieved, it would not have been achieved without Ms Rogers' and Ms Raice's assistance, which has been invaluable.

CHAIR: Often agency struggles with governance, but it appears to me that you are quite comfortable with the level of resources that you have and also that your needs were addressed in a timely way.

Mr LEVINE: Yes.

CHAIR: We are also gratified to hear that as well. Thank you very much.

(The witness withdrew)

The Committee adjourned at 10.17 a.m.