

Standing Committee on Parliamentary Privilege and Ethics

**Possible intimidation of
witnesses before General
Purpose Standing
Committee No. 3 and
unauthorised disclosure of
committee evidence**

Ordered to be printed 13 November 2001

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How to contact the Committee

Members of the Standing Committee on Parliamentary Privilege and Ethics can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

The Clerk

Standing Committee on Parliamentary Privilege and Ethics

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email privilege@parliament.nsw.gov.au

Telephone (02) 9230 2024

Facsimile (02) 9230 2761

Terms of Reference

1. That Report No. 6 of General Purpose Standing Committee No. 3 entitled “Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing”, dated June 2001, be referred to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report by 26 October 2001.
2. That for the purposes of this inquiry Mr Breen be appointed as a member of the Standing Committee on Parliamentary Privilege and Ethics in place of Mrs Sham-Ho.

(Minutes of the Proceedings of the Legislative Council, No. 111, 28 June 2001, item 10).

That the reporting date for the Standing Committee on Parliamentary Privilege and Ethics inquiry into the report of General Purpose Standing Committee No. 3 entitled “Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing”, be extended to 15 November 2001.

(Minutes of the Proceedings of the Legislative Council, No. 128, 24 October 2001, item 5).

Committee membership

The Revd the Hon Fred Nile MLC *Chair for this inquiry [from 18 September 2001¹]*

Christian Democratic Party (Fred Nile Group)

The Hon Patricia Forsythe MLC *Deputy Chair*

Liberal Party

The Hon Peter Breen MLC²

Reform the Legal System

The Hon Amanda Fazio MLC

Australian Labor Party

The Hon Jenny Gardiner MLC

National Party

The Hon Tony Kelly MLC

Australian Labor Party

The Hon Peter Primrose MLC *Chair for this inquiry [from 1 August 2001³ to 18 September 2001⁴]*

Australian Labor Party

The Hon Janelle Saffin MLC

Australian Labor Party

¹ *Minutes of the Proceedings of the Legislative Council* No. 118, Tuesday 18 September 2001, item 5.

² Appointed to the Committee for this inquiry: *Minutes of the Proceedings of the Legislative Council* No. 111, Thursday 28 June 2001, items 6 and 10.

³ *Minutes of the Proceedings of the Legislative Council* No. 116, Tuesday 11 September 2001, item 10.

⁴ *Minutes of the Proceedings of the Legislative Council* No. 118, Tuesday 18 September 2001, item 5.

Table of Contents

	Chairman's Foreword	viii
	Summary of Recommendations	x
	Glossary	xi
Chapter 1	Introduction	1
	Origin of the inquiry	1
	GPSC No. 3's conclusions	1
	Referral to this Committee	3
	Change of Committee Chair	3
	Conduct of the inquiry	3
Chapter 2	Background	5
	Parliamentary privilege and contempt of Parliament	5
	Background to the inquiry	7
Chapter 3	Consideration of the evidence	13
	Evidence of Detective Sergeant Francis, Sergeant Byrne and Constable Laird	13
	Evidence of Detective Sergeant Priest	16
	Evidence of Commissioner Ryan	18
	Evidence of Assistant Commissioner Small	19
	Evidence of Mr Holmes	23
	Evidence of Superintendent Hansen	26
	Evidence of Detective Chief Inspector Wallace	28
Chapter 4	Findings	30
	The issue of the memoranda	30
	Was a contempt committed?	32
	Recommendations	34
	Unauthorised publication of in camera evidence	37
Appendix 1	Witnesses and Submissions	41
Appendix 2	Chronology - Use of term "directive memorandum"	45
Appendix 3	Document from Police Service intranet regarding directive memoranda	49
Appendix 4	Minutes of the Committee's Proceedings	53

Appendix 5	Transcript of hearing 11 May 2001 before GPSC No. 3	71
Appendix 6	Transcript of hearing 15 October 2001 before this Committee	95

Chairman's Foreword

The current inquiry arose as a result of events which occurred following an in camera hearing before the Legislative Council's General Purpose Standing Committee No. 3 (GPSC No. 3) during its high profile inquiry into policing at Cabramatta. At the hearing, four police witnesses tendered a written submission to the Committee. The submission was wide-ranging and addressed at one point certain allegations concerning the recruitment of students by criminals from local schools. The day after the hearing, details of the submission were published in a newspaper. Following the publication of this evidence, the four officers each received what they believed to be a "directive memorandum" from their commanding officer, requiring them to provide details of any information they had concerning the published allegation.

The Committee made a Special Report to the House concerning both the publication of the confidential evidence by the newspaper, and the actions of the Police Service with regard to the four officers, identifying both matters as possible breaches of parliamentary privilege. In relation to the first matter, the Special Report concluded that the unauthorised publication was of concern, but expressed the view that further inquiry would not be able to identify the source of the disclosure. In relation to the second matter, the Report concluded that the issue of the treatment of the four officers was sufficiently serious as warranted referral to this Committee for investigation. The Legislative Council subsequently referred the Special Report to this Committee, for inquiry and report.

In the course of its inquiry, the Committee heard evidence from a range of officers from various levels within the Police Service, including three of the four officers who had received the memoranda, the head of the Service's legal branch, and the two senior officers involved in issuing the memoranda, Assistant Commissioner Clive Small and Superintendent Frank Hansen. The Committee also received a number of written submissions, including submissions from all the witnesses who appeared before it.

Having considered all the evidence, this Committee has concluded that the issuing of the memoranda resulted in intimidation of the four officers, and that this had a potential to obstruct GPSC No. 3 in the performance of its functions, by discouraging the officers concerned, and other potential witnesses, from appearing before GPSC No. 3 in future in relation to the Cabramatta inquiry or any future parliamentary inquiries. However, the Committee has accepted that such a result was not intended by Mr Small or Mr Hansen; that the allegations made before GPSC No. 3 were serious; and that both senior officers believed they had been acting in the best interests of the people of Cabramatta. The Committee has therefore found that a contempt, though unintended, was committed in relation to the actions of Mr Small and Mr Hansen, but recommends that no action be taken against these officers in the circumstances.

The Committee's report also includes a number of recommendations designed to ensure that senior officers of the Police Service are clearly aware of their obligations relating to parliamentary committees and parliamentary privilege in future, and to strengthen the protection available to police officers who give evidence to parliamentary inquiries. Those recommendations include the development of clear procedures for management when dealing with officers who give evidence to parliamentary committees, and certain amendments to the Police Service Act 1990. I believe that these recommendations, and the report as a whole, send a clear message to management within the Police Service, and by extension to senior officers in all government agencies, that they must be clearly aware of their obligations in relation to officers who give evidence to parliamentary inquiries, and that any

action which is found to be intimidation or harassment of an officer in respect of such evidence is unacceptable and will be treated most seriously if referred to this Committee.

The final section of the report deals with the issue of the unauthorised disclosure of committee evidence, which, as noted earlier, is raised by the Special Report of GPSC No. 3. While accepting that further inquiry in relation to this particular case would not be worthwhile, the Committee believes that appropriate guidelines should be developed for dealing with unauthorised disclosures in future. The Committee therefore recommends that an inquiry be referred to it by the House in relation to this issue.

I would like to thank all members of the Committee for their co-operation and dedication throughout this inquiry. I would also like to thank the Deputy Clerk and Clerk to the Committee, Ms Lynn Lovelock, and the Clerk of the Parliaments, Mr John Evans, for their advice and assistance in relation to the conduct of the inquiry and in the preparation of the report, as well as the Senior Project Officer, Ms Velia Mignacca, and Committee Officer, Ms Janet Williams for their valuable efforts.

Revd Hon Fred Nile MLC
Committee Chairman

Summary of Recommendations

Recommendation 1 **page 35**

That no action be taken against Assistant Commissioner Small or Superintendent Hansen in relation to the unintended contempt found in connection with the issuing of memoranda on 23 April 2001 and 27 April 2001.

Recommendation 2 **page 36**

That Police Management be reminded that intimidation or coercion of police officers who give evidence before parliamentary committees, whether intended or not, in relation to their evidence constitutes a contempt of Parliament.

Recommendation 3 **page 37**

That the Police Commissioner be advised of the need to develop a clear set of procedures for management when dealing with officers under their command who appear as witnesses before parliamentary inquiries. These procedures should be published and widely circulated to avoid future problems between the Police Service and the Parliament.

Recommendation 4 **page 37**

That section 206 of the *Police Service Act 1990* be amended to provide protection against detrimental action where an allegation is made by a police officer in the course of an inquiry by a parliamentary committee.

Recommendation 5 **page 40**

That the issue of unauthorised disclosure of debates, reports or proceedings of committees be referred by the House to this Committee for inquiry and report on appropriate guidelines for dealing with future unauthorised disclosures.

Glossary

CLS	Court and Legal Services, NSW Police Service
GPSC No. 3	Legislative Council General Purpose Standing Committee No. 3
in camera	Where a committee takes evidence <i>in camera</i> , none of the witness' evidence or submissions is disclosed or published, unless the House orders the material to be laid before it.
PANSW	Police Association of New South Wales

Chapter 1 Introduction

Origin of the inquiry

- 1.1** This inquiry resulted from actions taken within the NSW Police Service following the giving of *in camera* evidence by certain police officers to General Purpose Standing Committee No. 3 (GPSC No. 3) on 23 April 2001 during its inquiry into policing in Cabramatta. At the hearing the officers tendered a written submission which included a reference to the recruiting of students by drug criminals from high schools in the Cabramatta area. The next day an article revealing details of the submission appeared in *The Sydney Morning Herald* newspaper. Following the publication of this evidence in the newspaper the officers concerned received a written memorandum from their commanding officer, which they believed to be a “directive memorandum”, requiring them to provide details of any information they had concerning the published allegation.
- 1.2** GPSC No. 3 viewed with concern both the leaking of the *in camera* evidence, and the action taken by police management in relation to the officers. Unauthorised disclosure of committee evidence clearly constitutes a contempt, while the actions of the police management in requiring the officers to immediately substantiate their evidence could have constituted an attempt to interfere with witnesses before the Committee.
- 1.3** GPSC No. 3 made a Special Report to the Legislative Council concerning both these events, ie:
- the unauthorised publication in *The Sydney Morning Herald* of 24 April 2001 of extracts from a confidential submission received by the Committee which had not been made public at the time; and
 - the issue by the Police Service of “directive memoranda” to officers who had given evidence before the Committee on 23 April 2001 and the subsequent actions of the Police Service in respect of those officers following their having given evidence before the Committee.⁵
- 1.4** The conclusions of GPSC No. 3 in relation to each of these matters and other relevant aspects are noted below.

GPSC No. 3's conclusions

- 1.5** The Special Report states that the Chair of the Committee wrote to the Members and staff of the Committee and relevant Hansard staff, but was unsuccessful in ascertaining the possible source of the unauthorised disclosure.⁶ It further states that, in view of the lack of success of these investigations, and the fact that the confidential submission “was in wide

⁵ GPSC No. 3, *Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing*, Report No. 6, June 2001, p. 1.

⁶ *ibid*, para 1.6.

circulation at the time”, there will be little prospect of the source being identified, and the Committee does not see any value in the Privileges Committee investigating the matter further.⁷ The Committee concluded:

1.17 The Committee regards the unauthorised disclosure of the submission most seriously and potentially interfering with the Committee’s functions. Despite this the Committee does not believe further inquiry will be able to identify the source of the disclosure.

1.6 On the issue of the “directive memoranda”, GPSC No. 3 made the following comments and finding:

1.18 The Committee also regards the actions of the Police Service with regards to the 4 officers who gave evidence to the Committee as potentially constituting interference with the Committee’s functions and jeopardising the integrity of the Committee system.

1.19 The Committee considers this issue of the treatment of the 4 officers as sufficiently serious as might constitute a possible breach of privilege or contempt which warrants the matter being reported to the House for possible reference to the Standing Committee on Privileges and Ethics for inquiry and report.

In line with this, the Committee resolved:

That the Chair’s Special Report be presented to the House, so that the Standing Committee on Privilege and Ethics can be requested to inquire into and report to the House on whether there has been a breach of privilege in relation to the following matter that has occurred following the Committee’s in camera hearing held on 23 April 2001:

the decision of the Police Service to serve “directive memoranda” on the officers who had given evidence on 23 April and the subsequent actions of the Police Service in respect of those officers as a consequence of their having given evidence before the Committee.⁸

1.7 A statement of dissent by the three government Members of the Committee, attached to the Special Report, disagreed with the referral of the inquiry to this Committee and noted a number of matters in support of this view.

1.8 The Special Report recommended that, as the Chair of GPSC No. 3 is also the Chair of the Privileges and Ethics Committee, another Member chair the inquiry on the Special Report.

⁷ *ibid*, para 1.7.

⁸ *ibid*, para 1.16.

Referral to this Committee

- 1.9** On 28 June 2001 the Revd the Hon. Fred Nile MLC moved the following motion in the Legislative Council, on behalf of the Hon. Helen Sham-Ho MLC:

That Report No. 6 of General Purpose Standing Committee No. 3 entitled “Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing”, dated June 2001, be referred to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report by 26 October 2001.

- 1.10** The motion was agreed to by the House, after some debate, with the following additional paragraph, which was moved by the Hon. Dr Arthur Chesterfield-Evans MLC:

That for the purposes of this inquiry Mr Breen be appointed as a member of the Standing Committee on Parliamentary Privilege and Ethics in place of Mrs Sham-Ho.⁹

Change of Committee Chair

- 1.11** As recommended in the Special Report, Mrs Sham-Ho was replaced by Mr Breen as a member of the Committee for this inquiry because she had chaired GPSC No. 3 inquiry into policing in Cabramatta, and was therefore personally involved with the events which had led to this inquiry.
- 1.12** On 1 August 2001 the Leader of the Government in the Legislative Council wrote to the Clerk of the Parliaments nominating the Hon. Peter Primrose as Chair of the Committee for this inquiry. On 11 September, the Hon. Dr Arthur Chesterfield-Evans gave notice of a motion to appoint Mr Breen as Chair for the inquiry. The motion was moved, debated and subsequently withdrawn on 18 September,¹⁰ following the resignation that morning of Mr Primrose as Chair and the subsequent nomination by the Leader of the Government of the Revd Mr Nile to chair the Committee for this inquiry.

Conduct of the inquiry

- 1.13** The Committee held six deliberative meetings in the course of this inquiry. The Minutes of these meetings are reproduced at Appendix 4 to this report.
- 1.14** On Monday 15 October 2001, the Committee heard evidence from the following witnesses: Detective Sergeant Robert Francis, Sergeant Greg Byrne, Constable Christopher Laird, Detective Sergeant Tim Priest, Commissioner Peter Ryan, Assistant Commissioner Clive Small, Superintendent Frank Hansen, Detective Chief Inspector Debra Wallace and Mr Michael Holmes, Manager, Court and Legal Services, NSW Police Service. Mr Small,

⁹ *Minutes of the Proceedings of the Legislative Council*, No. 111, Thursday 28 June 2001, item 10. A subsequent resolution of the House extended the reporting date for the inquiry to 15 November 2001: *Minutes of the Proceedings of the Legislative Council*, No. 128, 24 October 2001, item 5.

¹⁰ *ibid*, No. 118, Tuesday 18 September 2001, item 17.

Mr Hansen, Ms Wallace and Mr Holmes were assisted by Mr Tom Hughes QC, and Mr Glenn Bartley as legal advisers.

- 1.15** The Committee received written submissions from Detective Sergeant Robert Francis, Sergeant Greg Byrne, Constable Christopher Laird, Detective Sergeant Tim Priest, Assistant Commissioner Clive Small, Superintendent Frank Hanson, the Hon. Helen Sham-Ho MLC, Mr TEF Hughes QC and Mr Glenn Bartley on behalf of the officers of the Police Service who may be affected by the current inquiry, and Mr Geoff Schuberg.

Chapter 2 Background

Parliamentary privilege and contempt of Parliament

2.1 “Parliamentary privilege” refers to the rights and immunities enjoyed by Members of Parliament individually as Members of Parliament, and the rights, powers and immunities of the Houses of Parliament as collective entities. The Houses and their Members possess a number of miscellaneous statutory privileges, whereas other privileges are recognised by the common law. These statutory privileges include:

- freedom of speech in debate (Article 9 of the Bill of Rights 1688, which applies in NSW by virtue of section 6 and schedule 2 of the *Imperial Acts Applications Act 1969* (NSW); freedom of speech is also recognised by the common law)
- immunity from liability in defamation in respect of the authorised publication of parliamentary debates (*Defamation Act 1974* (NSW))
- immunity from liability in defamation in respect of the authorised publication of parliamentary papers (*Parliamentary Papers (Supplementary Provisions) Act 1975* (NSW))
- immunity of Members from jury service (*Jury Act 1977* (NSW))
- power of the Houses and committees to summon witnesses, and penalties applicable to summoned witnesses who fail to appear or to answer a lawful question (*Parliamentary Evidence Act 1901* (NSW)).

However, there is no legislation in NSW which comprehensively defines the rights and immunities of the Houses.

2.2 The common law privileges are determined by principles which have been laid down by the courts, the most important being:

- the Houses possess such inherent powers and privileges as are “reasonably necessary” for their existence and the proper exercise of their functions;
- those powers which are “reasonably necessary” are those which are protective and defensive of the House and its procedures, not punitive.

2.3 The power of the Houses to deal with contempt is one of the inherent, common law powers. In this regard, the contempt power in NSW is similar to that power in the House of Commons.¹¹ By contrast, the Australian Federal Parliament and other State Parliaments have legislated comprehensively with respect to their privileges, including in some cases with respect to conduct which constitutes contempt.

¹¹ In the Commons the power extends to the punishment of offenders.

2.4 The essential elements of contempt are described by *Erskine May* as follows:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.¹²

2.5 Several principles emerge from this definition:

- The essential feature of contempt is conduct which obstructs or impedes the House (or a committee, as the House's delegate) in the performance of its functions, or a Member in the performance of his or her functions, or has a tendency to produce such result.

It is relevant to note that the House of Commons has resolved that it will exercise its jurisdiction with regard to contempt as sparingly as possible, and only when satisfied that to do so is necessary to provide reasonable protection from improper obstruction or substantial interference with the performance of the House's/Member's functions. In 1989, the Legislative Council's then Standing Committee Upon Parliamentary Privilege endorsed this approach.¹³

- It is not possible to list every act which might be considered a contempt, and acts may be treated as contempt even though there is no precedent for the offence.
- The power to take action in relation to a possible contempt is discretionary.
- Certain principles relating to contempt may be deduced by examining the types of conduct which have been treated as contempt in the past.

2.6 Conduct which has been treated as contempt by the House of Commons in the past includes: disorderly conduct in the presence of a House;¹⁴ the giving of false evidence by a witness;¹⁵ premature publication of committee proceedings;¹⁶ disobedience to an order of a committee;¹⁷ intimidation of a Member in respect of his or her parliamentary conduct;¹⁸ and "molestation" of or threats against witnesses, including censure by an employer.¹⁹

¹² *Erskine May's treatise on the law, privileges, proceedings and usage of Parliament*, 22nd ed, Butterworths, London, 1997, p. 108.

¹³ Standing Committee upon Parliamentary Privilege, Report, *Documents issued by the Reverend the Honourable FJ Nile, MLC*, Session 1988-89, para 57.

¹⁴ *Erskine May*, p. 108.

¹⁵ *ibid*, p. 109.

¹⁶ *ibid*, p. 118.

¹⁷ *ibid*, p. 110.

Background to the inquiry

- 2.7** On 23 February 2001 Detective Sergeant Tim Priest (Mr Priest) gave evidence at a public hearing before GPSC No. 3 in its inquiry in relation to policing in Cabramatta.²⁰ His evidence included certain allegations concerning criminal gangs and the recruitment of children from local schools. He referred to a particular incident which had occurred outside Cabramatta High School in the week of the hearing.²¹
- 2.8** Assistant Commissioner Clive Small (Mr Small) gave evidence to GPSC No. 3 on 27 February 2001. His evidence in relation to this matter conflicted with that of Mr Priest.
- 2.9** At a public hearing of GPSC No. 3 on 12 March 2001, the Chair of the Committee referred to correspondence from the Police Association indicating that the Association would be seeking leave to make an additional submission to the inquiry "in the light of recent evidence before the Committee and subsequent media interest".²² The correspondence stated that the Association would be meeting with a number of police from Cabramatta Local Area Command (LAC) to develop the submission, and establish whether any individual officers would be willing to appear before GPSC No. 3 to give evidence.²³
- 2.10** On 15 March 2001 a 'focus group' of about 10 officers from Cabramatta LAC developed a draft submission for the Committee inquiry.²⁴ Although this draft submission has not been published, it was substantially similar to the version later published at Appendix 2 of the Special Report.²⁵ The submission includes comments to the effect that there was an incident at Cabramatta High School as referred to by Mr Priest, though perhaps not as dramatic as he described. It also asserts the belief that drug criminals take recruits from local schools, and supports Mr Priest's evidence regarding the state of gang and drug activity in the Cabramatta LAC.

¹⁸ *ibid*, p. 123.

¹⁹ *ibid*, p. 127.

²⁰ GPSC No. 3, Inquiry into police resources at Cabramatta, published evidence, 23 February 2001.

²¹ *ibid*, p. 7.

²² GPSC No. 3, Inquiry into police resources at Cabramatta, published evidence, 12 March 2001, p. 1.

²³ *ibid*

²⁴ GPSC No. 3, *Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing*, Report No. 6, June 2001, Appendix 1, evidence, 23 April 2001, p. 4; submission of Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird, October 2001, paras 1.8, 1.9.

²⁵ Submission of Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird, October 2001, paras 1.8 -1.10; GPSC No. 3, *Special Report*, Appendix 2 .

- 2.11** On 3 April the draft submission was put to a meeting of the Cabramatta branch of the Police Association, but was not ultimately endorsed by the branch.²⁶ According to various statements contained in the available evidence, this was because the members at the meeting did not wish to dwell on the past,²⁷ saw the current proposals and response of the Police Service as a positive step,²⁸ and disagreed with some of the content of the submission.²⁹
- 2.12** The following day, Mr Chilvers of the Police Association told the Chair of GPSC No. 3 that, following the rejection of the submission, it would be up to the officers who had participated in its development to decide what they wanted to do with it.³⁰ The Chair asked Mr Chilvers to extend an invitation to the officers to appear before the Committee.³¹
- 2.13** On 18 April, the draft submission was provided to GPSC No. 3 by four police officers from the Cabramatta LAC.³² These four officers then gave evidence to GPSC No. 3 at an in camera hearing on 23 April. The officers were rostered on duty to attend the hearing.³³ During the hearing, the officers made verbal amendments to the draft submission previously provided, substituting references to “the officers at Cabramatta” with “we”, and similar.³⁴ After giving evidence, the officers tendered a signed version of the submission, which incorporated their handwritten amendments.³⁵ After the meeting, the Committee Director received telephone calls from a journalist from *The Sydney Morning Herald* and a journalist from *The Daily Telegraph* indicating they had a copy of the submission.³⁶ The Director advised the journalists that the information was confidential until published by the Committee pursuant to its resolution.

²⁶ GPSC No. 3, *Special Report*, Appendix 1, evidence, 23 April 2001, p. 1.

²⁷ *ibid*, pp. 4, 5.

²⁸ *ibid*, Appendix 10, Letter from CLS to the Chair, 9 May 2001, p. 1.

²⁹ Submission of Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird, October 2001, para 3.4.5.

³⁰ GPSC No. 3, *Special Report*, Appendix 1, evidence, 23 April 2001, p. 1.

³¹ *ibid*

³² *ibid*, para 1.2. The submission given to the Committee on 18 April was the submission developed by the focus group on 15 March: see Submission of Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird to this Committee, October 2001, paras 1.8 - 1.10.

³³ GPSC No. 3, *Special Report*, Appendix 1, evidence, 23 April 2001, p. 20; Appendix 8, letter from CLS to Walter Madden Jenkins, 27 April 2001, p. 1.

³⁴ *ibid*, Appendix 1, evidence, 23 April 2001, p. 3.

³⁵ *ibid*, para 1.2.

³⁶ *ibid*, Appendix 4, Committee Director’s filenote.

2.14 The next morning, 24 April 2001, and before the transcript of evidence and submission had been made public by GPSC No. 3, an article was published in *The Sydney Morning Herald* entitled “Drug Criminals ‘recruiting school students’”.³⁷ The article began:

Drug criminals are recruiting students from high schools in Sydney’s south-west, four Cabramatta police officers told a parliamentary inquiry yesterday.

2.15 It then referred to the evidence of Mr Priest on this issue and comments by Mr Small and the Minister for Education, and continued:

Yesterday, however, the four said in a submission obtained by the Herald: “We confirm that we believe that drug criminals take recruits from local schools”.

2.16 The article also referred to various other matters contained in the submission.

2.17 On the same day, the four officers each received a memorandum from their commanding officer, Superintendent Frank Hansen, which referred to a quotation published in the *Herald* concerning the belief that drug criminals recruit from schools. The memorandum continued:

In order to properly investigate the assertion that drug criminals take recruits from local schools I now direct you to forthwith provide the following:

- Whether the quotation accurately reflects your assertion;
- Any evidence which formed the basis of that assertion and the source of that information; and
- The circumstances under which that information had been previously provided to the Service including any documentation and the identity of any officer to whom that informed (sic) was relayed.

Clearly, the assertion that drug criminals take recruits from local school (sic) raises a serious issue requiring an investigation. To that end your immediate advice on this matter is particularly important.³⁸

2.18 The officers believed that the memorandum was a “directive memorandum”, compliance with which is required under clause 9 of the Police Service Regulation 2000.

2.19 The solicitors for the four police officers, Walter Madden Jenkins, wrote to the Chair of GPSC No. 3 asking whether, if the officers complied with the “directive memoranda,” they would be in contempt of the Committee’s order suppressing their identities.³⁹ The letter also noted that the *Herald* article had quoted from the amended submission given to the Committee at the in camera hearing, not the draft version which “had been circulating in the Police Service”. The solicitors sent a similar letter to Mr Hansen, requesting that the

³⁷ *ibid*, Appendix 5.

³⁸ *ibid*, Appendix 7.

³⁹ *ibid*, Appendix 8, letter from Walter Madden Jenkins to the Chair of GPSC No. 3, 24 April 2001.

four officers not be required to comply with the directive memorandum until advice had been received from the Committee.⁴⁰

- 2.20** On 26 April the Chair replied to the solicitors' correspondence, stating (among other things) that (1) any unauthorised release of the transcript or submission before they are published by the Committee would be a breach of privilege, and (2) in conducting any investigation in relation to the reported assertion on recruitment, the Police Service would need to be conscious of parliamentary privilege and the requirement not to intimidate witnesses etc.⁴¹
- 2.21** The following day Court & Legal Services (CLS) for the Police Service wrote to the Chair of GPSC No. 3 expressing concern that (1) the Police Service's request for a legal representative to be present at the hearing on 23 April had been denied by the Committee, preventing the Police Service from being able to determine (among other things) "what misinformation reflecting adversely on the Service and serving officers needed to be refuted, perhaps urgently"; and (2) the Committee had "failed" to ensure confidentiality of the evidence resulting in the *Herald* article.⁴²
- 2.22** On the same day, 27 April, a further memorandum addressed to the four officers was issued,⁴³ but was only given to one of them ("A") as he was the only one on duty at the time.⁴⁴ The memorandum confirmed the earlier direction, and specifically required the officers to report any knowledge they had in relation to criminal elements recruiting students from schools. It also acknowledged that what the officers said in Parliament is privileged, and stated that the purpose of the direction was to determine whether an investigation is warranted in view of public safety.
- 2.23** The CLS also wrote to the solicitors for the four police officers providing a copy of the further memorandum, and pointing out that the further memorandum indicated that no information was sought as to any evidence which might have been provided to the Committee, and that the Police Service is conscious of the issues of parliamentary privilege involved.⁴⁵
- 2.24** The following day *The Sydney Morning Herald* reported that the Chair of GPSC No. 3 had stated that the officers felt pressured and intimidated when they received the directive memoranda, and now felt very uncomfortable about raising their concerns.⁴⁶ The CLS subsequently wrote to the Chair referring to the reported comments, and stating that the

⁴⁰ *ibid*, Appendix 8, letter from Walter Madden Jenkins to Mr Hansen, 24 April 2001.

⁴¹ *ibid*, Appendix 8, letter from the Chair of GPSC No. 3 to Walter Madden Jenkins, 26 April 2001.

⁴² *ibid*, Appendix 8, letter from CLS to the Chair of GPSC No. 3, 27 April 2001.

⁴³ *ibid*, Appendix 8, memorandum from Superintendent Hansen, 27 April 2001.

⁴⁴ *ibid*, Appendix 11, evidence, 11 May 2001, p. 4.

⁴⁵ *ibid*, Appendix 8, letter from CLS to Walter Madden Jenkins, 27 April 2001.

⁴⁶ "Police told to back up drug claims", *The Sydney Morning Herald*, 28 April 2001, p. 9.

Police Service accepted that it must not intimidate witnesses, had not done so, and would not do so in the future.⁴⁷ The letter further stated that the matters raised in the “directive memoranda” must be pursued in the public interest. The CLS also wrote to the solicitors for the four officers stating that the officers must provide immediately the information which had been sought, and that any delay in doing so was “insubordination of a sort that cannot be tolerated in a disciplined force that is responsible for public safety”.⁴⁸

2.25 On 2 May, the Police Association wrote to the Chair of GPSC No. 3 expressing disquiet about the Committee’s “failure” to protect in camera witnesses.⁴⁹ In particular, the letter stated:

Our initial advice was that these members were not obliged to respond to these memoranda, despite the Police Service Act. As a result of changed circumstances, not the least of which was the publication of the transcripts of evidence, these members are now required to respond under very clear threat from the employer. We believe that the action of the Police Service constitutes a clear contempt of Parliament.

As a result, it is my intention to write to all members and advise them not to voluntarily give evidence to parliamentary inquiries such as yours, as they cannot expect any protection against the standover tactics of an employer unable to culturally change.

2.26 On 3 May, Alan Jones stated on radio that he had been told that the four officers were under “enormous pressure”, and had had their duties changed as a result of giving evidence.⁵⁰

2.27 The Chair of GPSC No. 3 subsequently wrote to the Police Commissioner on 7 May 2001 in relation to the privilege issues raised by the unauthorised publication and the directive memoranda.⁵¹ In relation to the latter issue, the letter states:

... I do have great concerns about the manner in which the Service appears to have gone about investigating these matters on the basis of a media report. It appears that the investigation was initiated by issuing a directive memoranda to only the four officers who gave evidence before the Committee and later a further directive memorandum in similar terms. While I am unsure of the import of a directive memorandum, it could be imputed that the issuing of a directive memorandum is an attempted intimidation of these officers as a result of their evidence before the Committee. In that regard, I refer you to pages 126 - 128 of Erskine May’s *Treaties on the Law, Privileges, Proceedings and Usage of Parliament* which are also attached...

⁴⁷ GPSC No. 3, *Special Report*, Appendix 8, letter from CLS to the Chair of GPSC No. 3, 1 May 2001.

⁴⁸ *ibid*, Appendix 8, letter from CLS to Walter Madden Jenkins, 1 May 2001.

⁴⁹ *ibid*, Appendix 8, letter from Police Association of NSW to the Chair of GPSC No. 3, 2 May 2001.

⁵⁰ *ibid*, Appendix 9, transcript of Jones comments.

⁵¹ *ibid*, Appendix 9, letter from Chair of GPSC No. 3 to Police Commissioner, 7 May 2001.

I am most concerned by correspondence I have received from the Police Association, a copy of which is attached, which states in part [from section quoted above]. I am also most disturbed by a media report that two officers who gave evidence before the Committee on 23 April have now had their duties changed...

2.28 The letter concludes by expressing hope that at the next hearing GPSC No. 3 can be informed that the matter has been resolved. On 9 May 2001 the CLS replied to the Chair's letter of 7 May.⁵² Among the points raised were:

- (1) Before issuing the direction to the four officers, inquiries had been made as to what if any intelligence reports etc had been filed with respect to the allegations of criminal activity in local schools, but no such records had been found.
- (2) Failure to issue the memoranda and/or to make the inquiries would have been "tantamount to a neglect of duty" by the Region and Local Area Commanders, in that they would have failed to take appropriate steps to investigate serious allegations of criminal activity in schools.
- (3) Directives were not served on all officers attached to Cabramatta because it was clear that no records existed of any other reports of these allegations and there was no material to suggest that other officers had any knowledge of these allegations.
- (4) The fact that the officers attended the hearing on duty and on full pay, and that Mr Hansen subsequently met with staff at Cabramatta to emphasise that they are free to attend and give evidence before the Committee, is inconsistent with any suggestion that there was an attempt to intimidate or harass the officers concerned.

2.29 Two days later, on 11 May, several senior officers gave evidence to GPSC No. 3 in relation to the hearing of 23 April 2001 and subsequent events. These were Debra Wallace, Detective Chief Inspector and Crime Manager, Cabramatta Local Area Command; Clive Small, Assistant Commissioner and Commander, Greater Hume Region; and Frank Hansen, Superintendent of Police, Cabramatta Police Station.⁵³ The evidence given is attached at Appendix 5.

2.30 On 21 June 2001 GPSC No. 3 tabled a Special Report detailing the events surrounding the appearance of the four officers before the Committee, and requesting that the Standing Committee on Parliamentary Privilege and Ethics inquire into and report on whether a breach of privilege in relation to the serving of the "directive memoranda" and subsequent actions of the Police Service in this matter constituted a contempt of the Parliament.

⁵² *ibid*, Appendix 10.

⁵³ *ibid*, Appendix 11.

Chapter 3 Consideration of the evidence

Evidence of Detective Sergeant Francis, Sergeant Byrne and Constable Laird⁵⁴

3.1 In a submission provided to the Committee prior to the hearing on Monday 15 October, the four officers outlined the response by senior management to the article published in *The Sydney Morning Herald* on 24 April, which refers to their evidence given in camera before GPSC No. 3 the previous day. They maintain that a memorandum served on each of the four was a 'directive memorandum', designed to silence them and deter other officers from appearing before and giving evidence in relation to the inquiry in to policing in Cabramatta. Specifically they claim that:

Directive Memoranda are a managerial instrument (sic) used by the police service to illicit (sic) information from serving police officers under direction. There is clear inference at the time any directive memorandum is issued, that a failure to comply with such a direction places the officer in direct contravention of clause 9 of the Police Service Regulation 2000.⁵⁵

3.2 Furthermore they claim that:

when a managerial instrument that is traditionally regarded as intrusive and a signal that you have done something wrong is "thrown" into the environment that was Cabramatta at the time, it becomes a very sinister document. It is clear that it was designed to do nothing more than:

- Intimidate and Censure us,
- Deter prospective police witnesses from giving evidence before the committee, and;
- Regain control of the station and the environment, which was at the time basically "out of control".⁵⁶

3.3 In their oral evidence they confirmed these opinions, expressing the view that receiving the directive memorandum was "like being hit between the eyes"⁵⁷ and that it had left them with a feeling of being "totally ill"⁵⁸. They also claimed that following the unauthorised disclosure of their evidence, "...it was alluded to later on that we were untrustworthy. We were treated, as we have indicated in our submission, as though we were a disgrace."⁵⁹

⁵⁴ Sergeant Fusca was unable to attend the hearing as he was not in Australia at the time.

⁵⁵ Submission, October 2001, para 2.3, p. 8.

⁵⁶ *ibid*, p. 18.

⁵⁷ Evidence, 15 October 2001, p. 4.

⁵⁸ *ibid*, p. 5.

⁵⁹ *ibid*, p. 4.

Three of the four officers found it necessary to take sick leave for anxiety and stress related illnesses.⁶⁰

- 3.4** Following communications between the four officers and their legal representatives, the New South Wales Police Association (PANSW), the police Court and Legal Services, and GPSC No. 3, there was according to the officers, an offer by Assistant Commissioner Small to withdraw the memorandum. In their evidence however, they claim that this offer was made on the proviso that they admitted that their evidence before GPSC No. 3 was baseless:

...he (Mr Small) indicated to Ian Ball, who is the President of the Police Association, that provided we supplied him written confirmation that what we said at the parliamentary inquiry was absolutely baseless then he would withdraw it and further I think there was something about it also in writing that we understood the obligations under clause 9 of the Police Service Regulation 2000, which is complying with directions of senior police.⁶¹

- 3.5** The belief by these officers that the memorandum was indeed a directive memorandum, and that failure to comply could lead eventually to dismissal, is supported by the actions of CLS in writing to both the Committee and the solicitors for the officers. On 1 May 2001 Mr Holmes, Manager, CLS, wrote to Walter Madden Jenkins, Solicitors, stating:

There have been two Directive Memoranda which have gone to four officers at Cabramatta LAC...

The present situation cannot be permitted to continue. Your clients must provide the information that has been sought from them and must do so immediately. Any delay in providing information pursuant to a directive memorandum is insubordination of a sort that cannot be tolerated in a disciplined force that is responsible for public safety.⁶²

- 3.6** Several other letters from CLS also refer to “directive memoranda” from Superintendent Hansen.⁶³ Further, in evidence before GPSC No. 3 on 11 May, Assistant Commissioner Small answered several questions in relation to the memoranda referred to as “directive memoranda”, indicating that at that time he did not appear to have an issue with them being considered as such. On the face of it, there seems little doubt that whether or not the

⁶⁰ Submission of Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird, October 2001, para 1.20, p. 5.

⁶¹ Evidence, 15 October 2001, p. 6.

⁶² GPSC No. 3, *Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing*, Report No. 6, June 2001, Appendix 8; also quoted in Submission of Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird, October 2001, para 2.2, p. 8.

⁶³ Faxed letter from Mr Paul Akon (Solicitor, Special Projects, CLS) to Mr Madden, dated 27 April, and copied to Mrs Sham Ho and Superintendent Hansen; letter from Mr Holmes to Hon. Helen Sham Ho MLC, 1 May 2001. These letters are reproduced in GPSC No. 3, *Special Report*, Appendix 8.

memoranda were intended as “directive memoranda”, no action was taken by the police to clarify with the officers concerned that they were not “directive memoranda”.

- 3.7** The officers confirmed in their evidence that their respective transfers away from Cabramatta LAC were undertaken voluntarily, and assisted by the PANSW. The reasons given indicate however that they felt compelled to transfer. According to Detective Sergeant Francis:

I felt it was unworkable to stay there. I think the other three officers felt the same. We approached the association. The association then negotiated with the Police Service for us to transfer away from Cabramatta, and we did that voluntarily.⁶⁴

- 3.8** Sergeant Byrne confirmed this, claiming:

...the mood changed like the way senior police would interact with us. I am not saying Mr Hansen at all. In fact, he is the person who served the directive memorandum, but I had absolutely no problem with him at all. You could tell other people were not very happy about it. They seemed like we had broken ranks. This is the impression we were given.⁶⁵

- 3.9** Constable Laird also agreed that the mood change towards them had resulted in him seeking a transfer, although he indicated that he also received support from his colleagues:

I have felt the same, just general mood change, being unwelcome in the command, particularly just by some of the managers. However I have gained a lot of support from the team members of the general duties team I was in. So that was my sort of saving grace.⁶⁶

- 3.10** Since their transfers all the officers agree that they have been well received by their colleagues, and the problems they experienced at Cabramatta have not continued.

- 3.11** The officers have indicated in both their submission and their oral evidence to this Committee their belief that senior management was aware of the contents of their submission to GPSC No. 3, including claims of recruitment of school children in Cabramatta. In particular they claim that Detective Chief Inspector Debra Wallace was not only present during a meeting of the Cabramatta branch of the PANSW on 3 April where the submission was tabled then debated, but had been handed a copy of the draft submission several days earlier. According to their submission to this Committee, Ms Wallace had indicated to Sergeant Byrne prior to the meeting that other than the parts supporting Tim Priest, she did not have a problem with the draft submission and had shown it to a number of other people.⁶⁷

⁶⁴ Evidence, 15 October 2001, p. 8.

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ Submission of Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird, October 2001, p. 13.

3.12 In his oral evidence, Sergeant Byrne claims that Superintendent Hansen was invited to the focus group on 15 March which was set up to draft the submission. Although Mr Hansen was unable to attend he had sent Ms Wallace in his place.

She was there the whole time, while we compiled the submission and spoke about all the points in the submission document, including recruitment from schools. So, they were fully aware of that. This is what makes me so angry, that they knew everything we said in that submission in relation to recruiting from schools and they were told that many times.⁶⁸

3.13 A little later in his evidence he claims:

Chief Inspector Wallace was in the room when we spoke about it at that focus group. On 3 May we had a meeting at the police station and she was in that meeting where we discussed it again. The morning of 3 May—I gave her a copy of the submission a couple of weeks before 3 May—she said to me "Greg, I have read this. There are no dramas with it. I have shown it to other people and they do not have any problems with it either". There is a bit in the submission about Tim Priest, and I think they blamed him for these media dramas and there was a bit of undercurrent towards him. She said "I do not think they will be too happy with the support for Tim, but there is certainly nothing else in there they have any problems with".⁶⁹

3.14 In summary, the officers indicated through their submission and in evidence before this Committee that they felt intimidated by the receipt of the directive memorandum, something which they had not expected in view of the evidence they gave to GPSC No. 3. They believe they were subjected to harassment by some officers in the Cabramatta LAC because of the evidence they gave, the content of which they believe was known by senior management before they appeared and gave their evidence. Their treatment was so altered from that previously, that three of the four officers went on sick leave for anxiety and stress related illnesses. Although they sought voluntary transfers, they did so because they were no longer able to remain within Cabramatta LAC. Since transferring, their treatment by their managers and co-workers has improved, and they no longer feel subjected to harassment.

Evidence of Detective Sergeant Priest

3.15 In his evidence before this Committee Detective Sergeant Priest maintained that as a result of evidence he gave to GPSC No. 3 in relation to policing in Cabramatta, he became the victim of an unprecedented attack upon him personally and professionally. The attack effectively destroyed his career in the Police Service and caused both him and his family great anguish and damage.⁷⁰ He claims that his health has deteriorated, and he believes that he has no future within the Service.

⁶⁸ Evidence, 15 October 2001, p. 11.

⁶⁹ *ibid*, p. 12.

⁷⁰ Submission, 12 October 2001, pp 2-3.

3.16 Specifically, he claimed that these attacks were designed to deter other witnesses from coming forward and giving evidence before GPSC No. 3:

Mr Small's evidence on 28 February was a litany of personal attacks and alleged causes for my evidence, which he said was distortions of truth and malicious lies and so forth. That in itself showed every other policeman in New South Wales that if you come before a committee and you make allegations against a senior officer, that you will be repaid in kind and then some. It showed to every cop that if we go before a committee and we happened to criticise someone of a senior rank, they will come back bigger and better than ever. ..⁷¹

3.17 When asked why he believes he did not receive a directive memorandum following his appearance before GPSC No. 3, he indicated that he believed it was because senior police feared that he could back up his claims, whereas they considered that the four officers subject to the directive memoranda were simply supporting him and therefore unable to substantiate their claims:

Had I been given an opportunity to compile a report into my allegations it probably would have been more horrific than the evidence I gave before that Committee and I think they were aware that I have been around a long time, I have a lot of experience in Asian organised crime and in Cabramatta. I do not think they were prepared to run the risk that maybe I could not (sic) back up what I said, whereas they were under the illusion that the other four officers were merely supporting me rather than actually genuinely saying, "Well, these guys do know what they are talking about." They were attacked on the basis that they supported me not on any evidence they may have.⁷²

3.18 Mr Priest agreed that it would be reasonable to have a fear of dismissal if you did not respond to a directive memorandum⁷³ and that it has disciplinary status with implications.⁷⁴ He indicated that a directive memorandum is almost always issued as "...a result of a disciplinary investigation..." and that he had "...never seen it really used for anything else..."⁷⁵

3.19 He concluded that while he was treated very differently following his appearance GPSC No. 3 to the four officers who are the subject of this inquiry, the intended result was the same—to silence police who may otherwise have come forward and given evidence to the Committee inquiry:

CHAIR: You said earlier that you did not get one. You have just made the point that other officers did not get one but knowing that the other four did get one was enough to send them a warning and in the same way, without sending you one, sent you a warning. Is that how you interpret it?

⁷¹ Evidence, 15 October 2001, p. 19.

⁷² *ibid*, p. 22.

⁷³ *ibid*

⁷⁴ *ibid*, p. 23.

⁷⁵ *ibid*

Mr PRIEST: That is right. I think they thought they had handled me by the way I was attacked by Commander Small and I was attacked by people outside of Parliament. My feeling is they thought they had effectively knee-capped me. With the four officers, I think they did not want to go through the same sort of procedure where they had been criticised in the media over their treatment of me, I think that they thought they would do it a different way and that was the directive memorandum.⁷⁶

Evidence of Commissioner Ryan

3.20 In his evidence before the Committee Commissioner Ryan indicated that in his opinion the directive memoranda in question were not in fact directive memoranda at all under clause 9 of the Police Service Regulations 2000. When asked how he would describe them he said:

They were a memorandum. I would not like to describe them in any way. I did not issue them. I did not authorise them. I had no part at all in their composition. I was not even here in Sydney when those things were issued. So I think that that has made that quite clear. I knew nothing about them until at least a month or so afterwards. I would describe them as a memorandum asking officers for information. But I can understand how one could be drawn to the conclusion that they were a directive.⁷⁷

3.21 The Commissioner further stated that, as the memoranda in this case were not directive memoranda, a failure to comply with them would not have been a basis on which he could have exercised the power of dismissal under section 181D of the *Police Service Act (1990)* NSW. However, he indicated that, if it were proved that the conduct of the officers who received the memoranda amounted to insubordination of an intolerable kind, the officers could be considered under section 181D:

The Hon. PETER BREEN: I have a letter from Michael Holmes, the solicitor for the service. The letter, which is addressed to the solicitors for these four officers—Walter Madden Jenkins—is dated 1 May. In that letter the solicitor for the service states:

Your clients must provide the information that has been sought from them and must do so immediately. Any delay in providing information pursuant to a directive memorandum is insubordination of the sort that cannot be tolerated in a disciplined force that is responsible for public safety.

If that were proved, I am suggesting to you that you would have power, under section 181D, to dismiss those officers. If they were aware, in any sense, of that power and of their vulnerability, that would cause them great concern to receive such a directive memorandum. Would you agree with that?

Mr RYAN: I would agree that, if it could be proved that they did behave in such an intolerable way, I could consider them under section 181D. I could not give

⁷⁶ *ibid*, pp 23-24.

⁷⁷ *ibid*, p. 28.

you a decision as to what the outcome of that deliberation might be, other than that it could be considered.⁷⁸

3.22 The Commissioner was unable to indicate the number of memoranda issued in any given period, nor the typical circumstances which might lead to the issuing of a directive memorandum. However he did say that the responsibility for issuing directive memoranda rests with officers responsible for police conduct:

Those officers who are charged with the responsibility of examining whether or not a police officer has acted improperly—and improperly means a whole range of activities in breach of the police code of conduct or regulations or the criminal law or whatever—they can issue a directive memorandum. However, there are very clear guidelines on the Police Service Intranet and on papers already issued to the Service through the special crime and internal affairs department which gives very point by point, step by step indications to people how they should proceed with an investigation, particularly in the use of directive memoranda.⁷⁹

3.23 While stating that the issuing of the memorandum was in his opinion a genuine attempt to find out what had been said, he agreed that the officers who received the memorandum “probably thought they were being put under a lot of pressure”.⁸⁰ He also agreed that the four officers appeared to provide the information in good faith, and in response to a suggestion that there was a general air of intimidation about at that time, concluded:

There was a whole range of things happening at the time. I think in hindsight many things could have been handled by everybody just that little bit more sensitively to try to eliminate people polarising the issue.⁸¹

Evidence of Assistant Commissioner Small

3.24 Assistant Commissioner Small, in a statement to the Committee at the beginning of his evidence, claimed responsibility for the decision to issue the memorandum to the four police officers. He maintained that Commissioner Ryan was in no way involved in the matter, and that neither Mr Holmes nor Chief Inspector Wallace were involved in nor informed of his decision to issue the first memorandum.⁸²

3.25 In relation to the submission from the four officers to GPSC No. 3, he maintains that while he was broadly aware of the issues raised in the draft submission from the focus group, he was not aware of the specific details it contained:

⁷⁸ *ibid*, pp. 28-9.

⁷⁹ *ibid*, p. 30.

⁸⁰ *ibid*, p. 32.

⁸¹ *ibid*.

⁸² *ibid*, p. 34.

I was broadly aware of the issues raised in the draft although I was not aware of its details or of the claimed recruitment of students in schools by drug criminals contained in the draft.⁸³

3.26 Later in his evidence he states:

My understanding was a draft submission was presented to the police at Cabramatta. It was rejected due to content. I had not been told the details of that submission. I was certainly not aware of any reference to the issue of school children being recruited by drug gangs, though I did have, if you like, the broadest of awareness of the type of material that was in it. I was told virtually nothing more than it related, for the greater part, to issues in Cabramatta during 1999-2000 when I was not there.⁸⁴

3.27 When the draft submission was rejected by the members present at a meeting of the Cabramatta branch of the Police Association, he says he took it to mean “that the substance of the claims contained in the draft was rejected.”⁸⁵ He was also aware “that a motion critical of the ‘unsubstantiated’ comments of Alan Jones and Ross Treyvaud had been passed at the meeting.”⁸⁶ Throughout his evidence he maintained that he was unaware of what the four officers’ submission to GPSC No. 3 would be.

3.28 When the unauthorised disclosure of material from the submission appeared in the media the day after the in camera hearing, Mr Small claims he spoke with Superintendent Hansen about his concerns. He stated that he “had previously caused inquiries to be made into this specific allegation and found no evidence to support it.”⁸⁷ His concern, he maintains:

was that, according to the newspaper report, schoolchildren were at risk in the school environment and some police under our command had knowledge of that activity. We did not. Our concern was at all times the safety of the young people of Cabramatta.⁸⁸

3.29 Furthermore he was of the view that:

the purpose of the leak was malicious and was done for the purpose of causing damage to the police management in Cabramatta and to me specifically.⁸⁹

⁸³ *ibid.*

⁸⁴ *ibid.*, p. 37.

⁸⁵ *ibid.*, p. 34.

⁸⁶ *ibid.*

⁸⁷ *ibid.*, p. 35.

⁸⁸ *ibid.*

⁸⁹ *ibid.*

3.30 In explaining his response to the media report, Mr Small canvassed some of the issues which in his opinion contributed to the issuing of the memorandum:

Additionally, it is important to understand that the "memorandum affair", if I can use that term, would not have arisen if any of the following had occurred. One, there had not been a leak to the media immediately following the giving of in-camera evidence by the four police. Two, the Police Service had been allowed legal representation at the in-camera hearing. Three, the Police Service had been debriefed on the in-camera evidence shortly after it had been given and before it had been leaked to the media and, four, any one or more of the four police had come forward to management and said "We have a concern about this issue, and this is the basis for our concern". It was in this context that the memoranda were issued.⁹⁰

3.31 When responding to questioning as to why the Police Service did not issue a directive memorandum to Mr Priest following his initial evidence to the inquiry, Mr Small indicated that:

following that claim being made I caused extensive inquiries to be made to see if that could be verified. I gave evidence before the Committee subsequently that we found no evidence to support those claims. The particular incident that was referred to was clarified during my evidence on the second occasion. So there was no need to do it.⁹¹

3.32 In reference to the confusion over the issue of whether the memoranda were directive memoranda, Mr Small explained that in reality every piece of correspondence issued by him falls into the category of a direction. He explained to the Committee that there are basically three levels of correspondence. Firstly, there is general correspondence of a routine nature. It is open-ended, non-urgent, and according to police guidelines, a person has about 14 days to respond. Secondly there is correspondence of a more urgent nature. Such correspondence would include a timeframe for response – such as “by close of business today”. The third category of correspondence is of a higher, more formal level, and applies during the course of internal investigation. These are commonly termed “directive memoranda” and involve a whole range of formal processes.

3.33 The memorandum issued to the four police officers, according to Mr Small, falls into the second category; that is, it was a request to provide the information forthwith. The first time he heard the term “directive memoranda” used in relation to the memoranda was when Alan Jones referred to them as such in a radio broadcast.⁹² Since then others have continued to refer to the memoranda as directive memoranda, even though the formal processes attached to directive memoranda had not been complied with. As he indicated:

⁹⁰ *ibid*

⁹¹ *ibid*, p. 41.

⁹² *ibid*, p. 36.

All we did on this occasion was include a timeframe. We wanted the answer now because of the importance of the issue. It was not a directive memorandum in the terms that is applied to internal investigations.⁹³

3.34 Further on he claimed:

We never described them as directive memoranda. They were directive in the sense that we wanted an answer now, but the term "internal investigations, disciplinary action" directive memoranda in the context of internal investigations was never used.⁹⁴

3.35 Finally he maintained that under the *Police Service Act* there is a legislative requirement that police register complaints of wrongdoing or suspected wrongdoing. If disciplinary action had been the basis for the memoranda, a formal complaint would have had to have been registered and a formal procedure followed. Since no complaint was registered, and the formal complaint process was not followed, he maintained the memoranda could not be described as directive memoranda. Rather:

the purpose of the memoranda was to obtain operational information from the police in order that the best protection practicable could be provided to the young people of Cabramatta, and for no other purpose.⁹⁵

3.36 In denying that any intimidation of the four officers had occurred, Mr Small maintained that while the first memorandum was issued without seeking advice from CLS, subsequent actions were taken on the basis of their advice and reportedly that of the GPSC Secretariat.⁹⁶ As he informed the Committee:

Following the issue of the memoranda I advised Court and Legal Services of the action I had taken. They suggested that I should have spoken with them and obtained advice prior to taking action. Perhaps that is so. However, on being advised, Court and Legal Services made contact with the committee's secretariat and was subsequently advised that Superintendent Hansen and I could proceed with our inquiry subject to, one, the inquiry being done in a sensitive and circumspect manner; two, no questions being asked about what was said in Parliament to the committee and, three, there be no sense of punishment or vilification of the police in the action.⁹⁷

3.37 The subsequent memorandum was issued, he maintained, to ensure there was no misunderstanding about the purpose of the first memorandum. Both memoranda, he claimed, fall within the parameters of action allowed by the Committee. Furthermore, he maintains that the treatment of the four officers following their appearance before GPSC

⁹³ *ibid*, p. 39.

⁹⁴ *ibid*, p. 39.

⁹⁵ *ibid*, p. 36.

⁹⁶ This issue is discussed further in Chapter 4, para 4.14.

⁹⁷ *ibid*, p. 35.

No. 3 was both proper and fair, as evidenced by various positive endorsements from management concerning unrelated matters made in support of 2 of the officers.

3.38 Referring to the unauthorised publication of the in camera evidence, Mr Small suggested that the leak could only have come from the Committee or one of the four officers:

It is clear that the media leak was based on the written submission presented by the four police to the Committee just a couple of hours before the leak occurred. I base this assertion on the claim by the *Herald* and the *Daily Telegraph* that they had a copy of the submission, and the quote in the *Herald* article:

We confirm that we believe that drug criminals take recruits from local schools.

That quote appears at page 9 of the draft minute rejected by the police at Cabramatta. However, in the draft the words "Officers at Cabramatta" appear in place of the word "we". The word "we" was inserted during the in-camera hearings. Given the short time frame involved, the leak could therefore have originated only from someone who participated in the in-camera hearings and who had access to the altered document.⁹⁸

3.39 In summary, Mr Small takes responsibility for the issuing of the memoranda to the four police officers, but maintains that they were not directive memoranda in the formal sense of such documents, but merely directions to provide information. They were issued because the evidence given by the officers, and subsequently published by the media, was given in camera, and not open to investigation by the Police Service. Senior police were not aware of the allegations prior to the publication of the article in the media. It would have been a dereliction in duty on the part of senior police to fail to follow up on the matter. No such action was taken with Mr Priest because his evidence was given in a public hearing, and as such was open to investigation.

3.40 According to Mr Small, the leaking of the in camera evidence had to have come from someone present at the in camera hearing since the article refers to the submission as it was amended during the hearing. The actions taken in relation to the issuing of the directive memoranda was to obtain operational information from the police in order that the best protection practicable could be provided to the young people of Cabramatta, and for no other purpose.

Evidence of Mr Holmes

3.41 Mr Holmes' evidence before the Committee centred on the issue of "directive memoranda" and the status of the memorandum issued to the four police officers directing them to provide information. Mr Holmes tendered a document from the Police intranet site setting out the requirements for issuing "Directive Memoranda", and, quoting from the document, stated:

"directive memoranda should only be used for non-criminal matters, with the following requirements: multiple issues may be addressed, with significant information to identify the incident/s surrounding the complaint but should not

⁹⁸ *ibid*, p. 37.

identify the complainant; should be in writing, with the date and time of service recorded”—so there is a formal requirement for service—as far as practicable, the service of directives should be contemporary and the police officers should be separated until each has completed their report. This, from the evidence to date, was not the case in this case. The “investigating officer should properly supervise all police who are served with directive memoranda to ensure there is no collaboration between police in the submission of their reports.” Again, from the evidence before the Committee to date—I do not think it is in dispute—that was not the case. “Any response to a directive memorandum should be accepted, regardless of whether it contains irrelevant information, spelling mistakes, et cetera”.⁹⁹

3.42 A copy of the document is provided at Appendix 3.

3.43 He continued to explain that a directive memorandum should contain the name of the local area command at the top, should have the date and time when the document was served, and should be addressed to the name and rank of the officer upon whom it is being served. It would not be served on multiple officers, as was the case with the memorandum in question. In his opinion a more accurate term for the document would be “memorandum involving management action.”¹⁰⁰

3.44 Explaining why CLS had issued correspondence using the term “Directive Memorandum” he stated:

An assistant solicitor prepared the letter in consultation with Mr Temby, QC, and, unfortunately, they continued to use a phrase, which was coined in a letter from the Police Association, as directive memorandum and this mistake continued to compound by referring to it as directive memorandum.¹⁰¹

3.45 When questioned as to why he had signed the document he explained that he signs all significant correspondence from his office, but in this case the use of the term did not catch his attention.

The Hon. PATRICIA FORSYTHE: I seek clarification. Is the signature on the letter of 1 May your signature?

Mr HOLMES: That is my signature. I am the head solicitor for the service. It was a significant matter and all significant matters should be signed by the head solicitor for the service, not that I was the wordsmith for the letter.

CHAIR: It did not catch your attention?

Mr HOLMES: It did not catch my attention, no. If I was signing it today, it would catch my attention but it was just one of those matters.¹⁰²

⁹⁹ *ibid*, pp 45-46.

¹⁰⁰ *ibid*, p. 47.

¹⁰¹ *ibid*, p. 46.

¹⁰² *ibid*

3.46 He also disagreed that the officers involved would have been intimidated by the use of the term “directive memorandum” in correspondence concerning this matter.

CHAIR: Do you agree that the officers involved in this matter, because you used that term, either accidentally now as it appears, could appear to be intimidation or harassment of the witnesses in their minds?

Mr HOLMES: I would be very surprised. I would not think so.

CHAIR: You do not think they would see it as a serious matter, a directive memorandum?

Mr HOLMES: No.

CHAIR: You have said how serious directive memoranda are.

Mr HOLMES: They would have regard to the memorandum that was put before them on 24 April and there is no mention of the words “directive memoranda”.

CHAIR: We understand that is what they believed those documents to be?

Mr HOLMES: I really cannot speak for the officers concerned but I would be surprised if they would have those sorts of implications that would arise.¹⁰³

3.47 He also denied that the correspondence issued under his signature on 1 May 2001 referring to insubordination being a matter which the Police Service could not tolerate, would have suggested to the officers concerned that it was a matter for which they may be dismissed.

The Hon. PETER BREEN: In relation to that letter of 1 May, after the words “directive memorandum”, you also used the words “insubordination of this sort cannot be tolerated in a disciplined force”. Do you think those words would have an impact on the officers?

Mr HOLMES: Again, it is a letter from a solicitor's office to another solicitor's office. If the solicitors show them that letter it may be a matter that may focus their minds on the problems facing the service in that particular matter.

The Hon. PETER BREEN: Is it possible that they might think they could be dismissed as a result?

Mr HOLMES: Anything would be possible but I do not think that could be drawn.¹⁰⁴

3.48 A little later in his evidence he sought to clarify the issue of the use of the term “intolerable”:

Mr HOLMES: ... I wish to clarify an earlier question. Mr Breen referred earlier to intolerable behaviour. The word “intolerable” was not included in the letter that he was referring to earlier, that is, the letter of 1 May to Walter Madden Jenkins.

¹⁰³ *ibid*, p. 48.

¹⁰⁴ *ibid*, p. 48.

The Hon. PETER BREEN: I do not wish to be pedantic about it but the words "insubordination of the sort that cannot be tolerated", with respect, I do not think mean anything different from the words "intolerable insubordination".

Mr HOLMES: With respect, I think that it has an entirely different meaning.¹⁰⁵

3.49 Finally in response to the issue of why he did not believe it was his obligation to reassure the officers that the document was not a "directive memorandum" he commented:

It only came to my attention in the last few days when I turned my mind to the matter that, clearly, it was not a proper directive memorandum. The letter of 1 May 2001 (sic) which was referred to this morning was not a proper directive memorandum. It was a memorandum seeking advice.¹⁰⁶

Evidence of Superintendent Hansen

3.50 Superintendent Hansen confirmed earlier evidence from Assistant Commissioner Small that the memorandum to the four officers was issued on Mr Small's initiative, following a conversation between himself and Mr Small on the morning of 24 April.¹⁰⁷ He maintains that it was not a directive memorandum, and was not designed to intimidate or discourage them or others from providing information to the parliamentary inquiry.

The memoranda sought through a normal administrative process to provide me with information which I believed was fundamental to issues of public safety within my command. To have done otherwise would have been a breach of my responsibilities. Neither of these memoranda was associated in any way with a disciplinary or similar investigation.

Furthermore, the distribution of the memoranda to the involved officers was never intended to intimidate or otherwise discourage them from providing additional information and/or evidence to the parliamentary inquiry, nor was it intended to discourage others from doing so. I suggest the contents of the memoranda, the manner in which they were delivered and the subsequent action I took to encourage other police to also provide evidence to the inquiry supports this proposition.¹⁰⁸

3.51 Despite the fact that the term "directive memorandum" was being widely used, he did not think it was necessary to take any steps to assure the officers that it was not a directive memorandum because it was:

Clearly not a directive memorandum in this sense that I know a directive memorandum and I would have thought what they would have known as a directive memorandum. The fact that the word "direct" appears in the document

¹⁰⁵ *ibid*, p. 49.

¹⁰⁶ *ibid*, p. 50.

¹⁰⁷ *ibid*, p. 56.

¹⁰⁸ *ibid*, p. 53.

would be the only relationship between a normal memorandum and a directive memorandum. Clearly a directive memorandum takes on an entirely different format to that which was provided to those police officers.¹⁰⁹

3.52 The memorandum itself was sealed in an envelope, addressed to each officer and arrangements made to have it delivered personally as it was convenient. Mr Hansen confirmed that this is not the normal or usual way in which memoranda are delivered. The normal process would have been to place it in a pigeon hole and mark it out as a piece of routine correspondence. The reason for adopting a different approach was in order to protect the identity of the officers concerned, which at that time had not been revealed.

Mr HANSEN: It was treated differently on this occasion because I was aware that I knew who the four police were who gave evidence at the inquiry. I knew the sensitivity of disclosing. Obviously I did not want to disclose their identity publicly so the only means I had to do that, other than to place—the normal process would have been to place it in a pigeon hole, mark it out in the normal course as a piece of routine correspondence, but clearly that would not have been a satisfactory process on this occasion, bearing in mind the nature of those officers having given evidence the day before.

CHAIR: So you were protecting their identity?

Mr HANSEN: Absolutely, and it was upper most in my mind to ensure that this did not enter the public forum or that their identities were not disclosed. I was very conscious of that and as a consequence I used the method that I did.¹¹⁰

3.53 Referring to the evidence given to GPSC No. 3 by the four officers, Superintendent Hansen stated that although he had arranged for them to be rostered on duty for the day, he did not know what they were intending to say at the parliamentary inquiry. He was also not aware that the original submission discussed at the Police Association branch meeting was going to form part of their evidence.¹¹¹ In relation to that submission, while he was aware of its existence, he was unaware of its contents in detail¹¹² and believed that it had been rejected by the branch.¹¹³

3.54 When asked whether he would agree, with the benefit of hindsight, that the memorandum might have intimidated and upset the officers, he replied:

Again, I cannot place myself in their position. To me, it is a document not dissimilar to a request that any police officer could have received. Perhaps the words "direct" and "forthwith" may have an edge to them. Maybe had I put, in hindsight, bearing in mind where we are at this stage, "request" or "require", we

¹⁰⁹ *ibid*, p. 54.

¹¹⁰ *ibid*, p. 55.

¹¹¹ *ibid*

¹¹² *ibid*, p. 57.

¹¹³ *ibid*, p. 55.

may well have not ended up with this misinterpretation of what the document was.¹¹⁴

3.55 However:

...with the media attention that was being focused on Cabramatta and the article in the *Sydney Morning Herald* asserting what was asserted, I was not going to be backward in asking and those words were used, "direct" and "forthwith", because I needed to know. It was a matter of a serious nature and I do not resile from those words.¹¹⁵

Evidence of Detective Chief Inspector Wallace

3.56 In evidence to this Committee Detective Chief Inspector Wallace explained that the reason for the preparation of the original draft submission was that the officers at Cabramatta were under the impression that they were required to make a submission as a branch. At the branch meeting, there was no agreement on the contents of the submission, so when it was indicated that they were not required to present a submission, it was left up to individual officers whether or not they attended the parliamentary inquiry:

Conversations around the command at the time were that the staff were under the impression—I do not know where they got it; it proved not to be correct—that they had to make a submission as a branch; otherwise every member of the command would be subpoenaed to give evidence. They felt in that case it would be better to give one submission so that 100 police would not be called. When that impression was refuted, I believe they said it was up to the individual to go.¹¹⁶

3.57 She confirmed that she had been aware of the draft branch submission, but had not read it in great detail:

On the morning it was to be tendered to the branch one of the branch officials came into my office and said, "We finally have the submission." I believe he passed his copy to me to look at and I remember reading the first few pages, which were about moving forward in the future. I thought it looked fairly positive but I did not take note of the contents per se because it was not my document to comment on.¹¹⁷

3.58 During the meeting, which she attended as an observer, the issue of recruitment by gangs was discussed but was rejected by the membership.

Yes, I recall that part was definitely rejected—I do not know by how many. When someone raised the issue and said "I disagree"—I do not know the exact contents that he disagreed with—the administrator asked the youth liaison officer whether

¹¹⁴ *ibid*, p. 56.

¹¹⁵ *ibid*, p. 57.

¹¹⁶ *ibid*, p. 63.

¹¹⁷ *ibid*, p. 62.

the officer had knowledge of it because when that officer had spoken to the administrator about it, the person was quite vague. That did not sway some of the group to reject it. So many components of the document were rejected that the branch official, to his credit, said, "Well, it's your document and if you don't want to submit it then we don't have to." I recall that he collected it from them and that was the end.¹¹⁸

3.59 Later in her evidence she indicated in response to a question as to whether the issue of so-called gang recruitment at Cabramatta High School had been discussed at the meeting:

Not that I recall. The discussion was mainly about past issues—for example, the 1999-2000 period, which is what the inquiry was to focus on, and addressing moving forward. The meeting took quite a positive direction. I do not recall anything specific being said about recruiting.¹¹⁹

¹¹⁸ *ibid*, p. 62.

¹¹⁹ *ibid*, p. 63.

Chapter 4 Findings

The issue of the memoranda

4.1 There has been much discussion concerning the status of the memoranda issued to the four officers by Superintendent Hansen on 24 May 2001, and the further memorandum issued to one of those officers by Superintendent Hansen on 27 May 2001. The use of the term “directive” in relation to the memoranda first occurred on the day the initial memorandum was issued.¹²⁰ The term “directive” continued to be used widely throughout by all concerned, including senior police, CLS and even correspondence which was sent to senior counsel for settling.¹²¹ It was not until Monday 15 October, in evidence before this Committee, that the term was publicly called into question and a case mounted explaining that the memoranda did not meet the requirements of “directive memoranda” within the Police Service.¹²²

4.2 It is difficult to accept the proposition that the four police officers would not have considered the memorandum to be a “directive memorandum” in the circumstances. Even in evidence before this Committee both Commissioner Ryan and Assistant Commissioner Small agreed that there is confusion as to what a “directive memorandum” actually entails:

CHAIR: It now appears from what the Commissioner has just said, and your submission, that there is some confusion as to what is a directive memorandum?

Mr SMALL: There are, sir. The fact of the matter is that every request I make, no matter how nice or how roughly I make it is, in fact, a direction. If I say to Superintendent Hansen "Can you please provide me with this information by 5.00 o'clock tonight?" that is a direction, so every bit of correspondence is a direction. All we did on this occasion was put in a timeframe. We wanted the answer now because of the importance of the issue. It was not a directive memorandum in the terms that is applied to internal investigations.¹²³

4.3 Furthermore, Assistant Commissioner Small agreed that the officers may have thought that the memorandum was a “directive memorandum”, with the consequences which that would have entailed:

CHAIR: Can you understand how the officers who received that type of correspondence would understand it was a directive memorandum, even though that was not your intention?

Mr SMALL: I can understand that sir, but by that time a number of sections of the media had been describing these as directive memoranda and talking about the police being sacked and all of that sort of thing. It was becoming quiet emotional.

¹²⁰ A chronology of the use of the term "directive memorandum" appears at Appendix 2.

¹²¹ Evidence, 15 October 2001, pp. 49 - 50.

¹²² *ibid*, p. 46.

¹²³ *ibid*, pp. 38-9.

I cannot recall whether any politicians had raised it publicly at that time but I am aware also that there was correspondence, either written or verbal, between court and legal services and the committee, about it. The Police Association itself either before or after that date had written correspondence referring to it as a directive memorandum.¹²⁴

4.4 Later in evidence Superintendent Hansen confirmed that “directive memoranda” are serious matters for police:

CHAIR: Do you understand that the police officers themselves understand that directive memorandum are often used in regard to corrupt police, serious matters like that?

Mr HANSEN: As part of an investigation, yes, an internal investigation, yes.

CHAIR: So if they got one then they would obviously feel threatened by it if they believed it to be one?

Mr HANSEN: A police officer receiving a directive memorandum where they were an involved officer and they were the subject of the complaint, I suppose that would raise some concerns with them. However, directive memorandums are also served on police who are not the subject of the complaint but simply may be witnesses or on the periphery of the complaint, so it depends on where you would be in that investigative process.¹²⁵

4.5 If the memoranda were not “directive memoranda”, the question remains as to why the term continued to be used, even by Assistant Commissioner Small and CLS until 15 October 2001.

4.6 It is also questionable as to why no action was taken on the part of Assistant Commissioner Small and Superintendent Hansen to assure the four officers that they were not subject to disciplinary action. From the evidence given to this Committee by Assistant Commissioner Small, Superintendent Hansen and Mr Holmes, it appears that despite the widespread use of the term “directive memoranda”, the acknowledged confusion as to what constitutes a “directive memorandum”, and the very real possibility that the officers believed that they had been served with a “directive memorandum”, no-one felt it was necessary to clarify with them that this was not, in fact, the case. In response to this question, Superintendent Hansen replied that the memorandum was “clearly not a directive memorandum”.¹²⁶ However, this assertion does not stand up under the weight of the evidence.

4.7 Furthermore, in evidence before GPSC No. 3 Assistant Commissioner Small appears to suggest that there is really very little difference between “directive memoranda” and any other memoranda in relation to the consequences which would result from a failure to respond:

¹²⁴ *ibid*, p. 40.

¹²⁵ *ibid*, p. 54.

¹²⁶ *ibid*.

Generally speaking, a directive memorandum is issued during internal investigations not only to suspects in the investigation but to all witnesses in the investigation. However, a directive memorandum has very little difference in its implications to any other correspondence that is issued. For example, if I were to say to Mr Hansen, "Please provide information about this", the fact of the matter is that that is a direction, whether it is implicit or explicit...

...Failure to comply on either count could involve disciplinary action of failing to obey a lawful direction of an officer.¹²⁷

- 4.8** This is confirmed by the correspondence of 1 May 2001 from Mr Holmes to Walter Madden Jenkins, solicitors for the four officers. Statements such as "The present situation cannot be permitted to continue" and "Any delay...is insubordination of a sort that cannot be tolerated in a disciplined force..."¹²⁸ suggest quite strongly that the officers could be facing disciplinary action if they failed to satisfy written demands for information.
- 4.9** Given this, the issue of concern to this Committee is whether in serving the memoranda, "directive" or otherwise, together with subsequent actions, police management intimidated, or had a tendency to intimidate, not only the four officers in relation to their particular appearance before GPSC No. 3, but other potential witnesses.

Was a contempt committed?

- 4.10** As Assistant Commissioner Small indicated, under clause 9 of the Police Service Regulation 2000, police officers are required to comply with directions from senior officers. Failure to do so can lead to disciplinary action. The memorandum issued on 24 April is specific in its intent. It clearly directs the four officers to provide information regarding their evidence before a parliamentary inquiry. This information was required, according to Assistant Commissioner Small and Superintendent Hansen, because "the assertion that drug criminals recruit from local school (sic) raises a serious issue requiring investigation".¹²⁹ In his evidence to this Committee, Assistant Commissioner Small confirms that his actions arose as a direct response to the unauthorised publication of an article in *The Sydney Morning Herald* relating to the evidence before GPSC No. 3.
- 4.11** Despite assertions from CLS that the "Police Service accepts that it must not intimidate witnesses, it has not done so, and will not do so in future"¹³⁰ the very nature of the memorandum, its tone and the language used, suggest that no effort was made to ensure that the officers would not feel intimidated. Given the highly charged atmosphere at this time surrounding the inquiry into policing at Cabramatta, it seems insensitive of Assistant Commissioner Small and Superintendent Hansen to have ignored the possibility of a threat of intimidation arising out of their action in issuing the memorandum.

¹²⁷ GPSC No. 3, *Special Report on possible breaches of privilege arising from the inquiry into Cabramatta policing*, Report No. 6, June 2001, Appendix 11, evidence, 11 May 2001, p.2.

¹²⁸ *ibid*, Appendix 8, letter, 1 May 2001.

¹²⁹ *ibid*, Appendix 7, memorandum, 24 April 2001, from Superintendent Hansen.

¹³⁰ *ibid*, Appendix 8, letter from CLS to the Chair of GPSC No. 3, 1 May 2001.

4.12 This is compounded by subsequent events. Despite advice from GPSC No. 3 Secretariat concerning the issue of parliamentary privilege and the danger of committing a contempt of Parliament, Assistant Commissioner Small and Superintendent Hansen continued to pursue the officers in relation to their evidence before GPSC No. 3. The paragraph in the second memorandum, dated 27 April 2001, confirming that “this directive is not to be read as me inquiring as to what you said at Parliament on 23.4.01. I acknowledge that what you said is privileged” is at odds with evidence from Assistant Commissioner Small, in response to why memoranda had been issued to the four officers but not to Mr Priest, when Mr Small claims:

Mr Priest was not issued with a memorandum, because of the inquiries I made. His allegations were, if you like, in open hearings. We knew what was being said, they were checked out and no evidence was found to support them. That is quite different to a part of an allegation being contained in the newspaper report. But we did not know whether there was information we had missed, whether there was some other information of which we were not aware, or whatever. All we did was sought to clarify it.¹³¹

4.13 It would follow from this that at least one purpose of the memorandum was to discover what the officers had said to GPSC No. 3 during an in camera session. Asking for information from an in camera session before the information is made public could in itself amount to a contempt.

4.14 Furthermore, the assumption by Assistant Commissioner Small that the actions of police management in issuing the memoranda were somehow endorsed by GPSC No. 3 or its Secretariat seems at variance with the evidence, both in the file note written by the Committee Director Mr David Blunt,¹³² and in correspondence from the Chair of GPSC No. 3 to Walter Madden Jenkins.¹³³ This correspondence was made available to CLS on 27 April 2001. It is this Committee’s view that police management should have been, in consequence, well aware that any attempt to follow up evidence given before a parliamentary committee would need to be conducted sensitively and with due regard to the avoidance of any sense of intimidation or threat against the witnesses.

4.15 Whatever arguments might be advanced in support of the reasons for the issue of the memoranda, this Committee is of the opinion from the evidence of the four police officers that they did feel intimidated or harassed because of the actions taken by Assistant Commissioner Small and Superintendent Hansen. These actions were taken on account of the evidence given by the four officers before GPSC No. 3 on 24 April 2001. The issuing of the memoranda therefore did result in the direct intimidation of the officers concerned. Furthermore, in intimidating these officers, there was a potential to obstruct the Committee in the performance of its functions by discouraging not only these officers, but other potential witnesses from appearing before the Committee in the future in relation to this or to any future inquiry.

¹³¹ Evidence, 15 October 2001, p. 42.

¹³² Hon Helen Sham-Ho MLC, submission, 18 October 2001, Appendix 2.

¹³³ GPSC No. 3, *Special Report*, Appendix 8, letter , 26 April 2001.

- 4.16** While the actions of Assistant Commissioner Small and Superintendent Hansen may not have been intended to intimidate, intention is not the measure when determining contempt. By its very nature, contempt may occur even if there is no knowledge, actual or imputed, that the contempt has occurred.
- 4.17** Mr TEF Hughes QC and Mr Glenn Bartley, made a submission to this Committee on behalf of the police officers who may be adversely affected by this inquiry. Their submission suggested that under its terms of reference this Committee only has power to inquire and report on whether the “Police Service” has committed a contempt¹³⁴ and that since the Police Service is not a legal entity it cannot therefore be found guilty of contempt.¹³⁵ They also suggested that the “criminal offence of contempt of Parliament” must be proved in the same way as a criminal offence¹³⁶ and that it would be inappropriate for this Committee to make any finding of guilt without the opportunity for cross examination.¹³⁷
- 4.18** As noted above at paragraphs 1.9 and 1.10, the House has referred to this Committee for inquiry and report the Special Report of GPSC No. 3 on possible breaches of privilege. That report identifies in its conclusion, among other things, “the actions of the Police Service with regard to the 4 officers who gave evidence” and “the treatment of the 4 officers as sufficiently serious as might constitute a possible breach of privilege or contempt”.¹³⁸ Without revisiting arguments outlined in previous committee reports, this Committee notes that it is within the powers of this Committee to make an adverse finding, such as contempt, against the Police Service in general or individual officers.

Recommendations

- 4.19** The Committee finds that a contempt, although unintended, was committed in relation to the actions of Assistant Commissioner Small and Superintendent Hansen. The Committee is of the opinion, however, that no action should be taken against these officers in view of the circumstances of the contempt and subsequent actions taken by police management.
- 4.20** While the memoranda did intimidate the four police officers, it is apparent that neither Assistant Commissioner Small nor Superintendent Hansen intended such. The Committee agrees that the allegations made before GPSC No. 3 were serious, and as such worthy of being dealt with seriously. In issuing the initial memorandum to the officers, Assistant Commissioner Small and Superintendent Hansen believed they were acting in the best interests of the people of Cabramatta. It is apparent that Mr Hansen sought to protect the identity of the officers. This in itself is commendable, and affirms the view that he was not

¹³⁴ Submission, 18 October 2001, paras 1, 2.

¹³⁵ *ibid*, paras 4, 5.

¹³⁶ *ibid*, paras 6-8.

¹³⁷ *ibid*, para 13.

¹³⁸ GPSC No. 3, *Special Report*, paras 1.18, 1.19.

seeking redress against the officers for their evidence. Nor was he attempting to warn off other officers from giving evidence.

- 4.21** As Constable Laird indicated, he received a lot of support from the team members.¹³⁹ Commissioner Ryan indicated that he had met with the officers to discuss their concerns and issues, and has taken on board many of the things they had to say.¹⁴⁰
- 4.22** Furthermore, since transferring from Cabramatta LAC none of the officers has continued to feel harassed or intimidated. This is encouraging, and supports the view that police management was simply seeking to establish the facts behind the allegations made before GPSC No. 3, rather than attempting to intimidate or punish the officers concerned.
- 4.23** The Committee therefore recommends:

Recommendation 1

That no action be taken against Assistant Commissioner Small or Superintendent Hansen in relation to the unintended contempt found in connection with the issuing of memoranda on 23 April 2001 and 27 April 2001.

- 4.24** However, it is equally apparent that the issuing of the memorandum was in itself a rather hasty but understandable attempt to determine the information available for policing purposes, and as was obvious from the evidence given to this Committee, open to misinterpretation. This has been acknowledged by both Superintendent Hansen and Commissioner Ryan. As both officers indicated to this Committee, in hindsight the matter could have been handled more sensitively.¹⁴¹
- 4.25** The Committee remains concerned that no-one in senior management felt that it was necessary to address the issue of whether the memoranda were “directive memoranda” nor to reassure the officers that they were not subject to internal investigation or disciplinary action in relation to their appearance before the GPSC No. 3.
- 4.26** The concept of intimidation or harassment of witnesses before inquiries is not new to those involved in public sector management in NSW, including the Police Service. Indeed section 206 of the *Police Service Act 1990* (NSW) provides that a police officer who takes detrimental action against another police officer or former police officer (being action that is substantially in reprisal for the other police officer or former police officer making a protected allegation) is guilty of an offence. Detrimental action includes intimidation or harassment, disadvantage or adverse treatment in relation to employment, or disciplinary proceedings.¹⁴²

¹³⁹ Evidence, 15 October 2001, p. 8.

¹⁴⁰ *ibid*, p. 31.

¹⁴¹ *ibid*, p.32; p.56.

¹⁴² Section 206, *Police Service Act 1990* (NSW).

- 4.27** Similarly, the *Protected Disclosures Act 1994* (NSW) provides protection for whistleblowers against allegations made to the Independent Commission Against Corruption, the Ombudsman, the Auditor-General, public officials and Members of Parliament. When prosecuting someone for an offence under this Act “it lies on the defendant to prove that detrimental action shown to be taken against a person was not substantially in reprisal for the person making a protected disclosure”.¹⁴³
- 4.28** Provisions in such analogous law would suggest that police management should have been well aware of the potential consequences of the intimidation or harassment of witnesses before a parliamentary inquiry. That some officers appear not to have been aware, or did not see that the action being taken could be seen as intimidation, is of concern to this Committee.
- 4.29** It is clear that the Police Service needs to develop a more constructive approach to dealing with parliamentary committees. Senior police officers need to be aware that evidence given to parliamentary committees by officers within their command is privileged, and any action against such witnesses could amount to contempt of Parliament.
- 4.30** The danger of allowing such action to go unchecked is also clear. If committees cannot guarantee to witnesses who come forward to give evidence that their privacy and personal and legal rights will be protected, then potential witnesses may be reluctant to give evidence before committees. This could jeopardise the processes and integrity of the committee system as a whole.
- 4.31** For this reason this Committee strongly recommends to the Commissioner of Police that the Police Service develop a clear set of procedures for management when dealing with officers under their command who appear as witnesses before parliamentary inquiries. These procedures should be published and widely circulated to avoid future problems of this nature between the Police Service and the Parliament. It is also considered appropriate that the Parliament consider amending section 206 of the *Police Service Act*, to provide protection to witnesses before committees.
- 4.32** Therefore the Committee recommends:

Recommendation 2

That Police Management be reminded that intimidation or coercion of police officers who give evidence before parliamentary committees, whether intended or not, in relation to their evidence constitutes a contempt of Parliament.

¹⁴³ Section 20, *Protected Disclosures Act 1994* (NSW).

Recommendation 3

That the Police Commissioner be advised of the need to develop a clear set of procedures for management when dealing with officers under their command who appear as witnesses before parliamentary inquiries. These procedures should be published and widely circulated to avoid future problems between the Police Service and the Parliament.

Recommendation 4

That section 206 of the *Police Service Act 1990* be amended to provide protection against detrimental action where an allegation is made by a police officer in the course of an inquiry by a parliamentary committee.

Unauthorised publication of in camera evidence

4.33 While accepting the conclusion of GPSC No. 3 that further inquiry will be unable to identify the source of the disclosure, this Committee views with concern the unauthorised publication in *The Sydney Morning Herald* of 24 April 2001 of extracts from the confidential submission to GPSC No. 3.

4.34 In a previous inquiry this Committee made the following recommendations:

That the Legislative Council resolve that the President issue a statement informing all members of the Press Gallery that the disclosure or publication of any details of evidence which is given in camera before a parliamentary committee, may constitute a breach of privilege and a contempt of Parliament...

That all media editors, and all new members of the Press Gallery be issued with guidelines regarding the reporting of the proceedings of Parliament and its committees, at the time when they receive security passes granting access to Parliament House....

That committees of the Parliament adopt stringent procedures for protecting the confidentiality of in camera evidence.¹⁴⁴

4.35 Despite the implementation of these recommendations, the issue of unauthorised publication by the media has continued. If the Parliament is unable, or unwilling, to take action to deal with these unauthorised publications, there is a real possibility that witnesses may be reluctant in the future to provide sensitive information to parliamentary inquiries for fear of recriminations.

¹⁴⁴ Standing Committee upon Parliamentary Privilege, *Report concerning the publication of an article appearing in the Sun Herald newspaper containing details of in camera evidence*, October 1993, paras 3.40, 3.41 and 3.46.

- 4.36** A standard procedure for dealing with improper disclosures was introduced in the British House of Commons in the 1985-6 session. Under this procedure, the committee concerned first seeks to discover the source of the leak and assess whether it constitutes or is likely to constitute a substantial interference with its work, the select committee system, or the functions of the House (ie whether there is prima facie evidence that the essential elements of contempt are present). If the committee considers that there has been or is likely to be such interference, it reports to the House accordingly, and a report of this character stands automatically referred to the Committee on Standards and Privileges.¹⁴⁵ Under a later amendment to the procedure, the original committee must inform the Liaison Committee¹⁴⁶ of the unauthorised disclosure, and take that Committee's views into account when making a special report to the House.¹⁴⁷
- 4.37** Although any unauthorised disclosure is prima facie a contempt, when the Committee of Privileges investigates particular cases involving such disclosures it looks at the circumstances of the individual case to determine whether in fact there has been a substantial interference with the workings of the House/committee/committee system, or an act tending to produce this effect.
- 4.38** Most of the modern cases which have arisen have involved disclosure of draft reports, and in most of these cases it has not been possible to identify the person responsible for the original disclosure. In the absence of such information, Committees of Privileges have usually not been willing to recommend exercise of the House's penal powers against those who gave wider publicity to the disclosure. When they have done so, the House has not been prepared to agree.¹⁴⁸
- 4.39** The Australian Senate Privilege Resolutions of 25 February 1988 state that the unauthorised disclosure of any of the following may be treated as a contempt:
- a document submitted to a committee which has been directed by the committee to be treated as evidence taken in private session or as confidential;
 - oral evidence taken by a committee in private session or report of such oral evidence; or
 - proceedings in private session or a report of such proceedings.¹⁴⁹
- 4.40** Similar types of conduct may be prosecuted as an offence under section 13 of the Commonwealth *Parliamentary Privileges Act 1987*.

¹⁴⁵ *Erskine May's treatise on the law, privileges, proceedings and usage of Parliament*, 22nd ed, Butterworths, London, 1997, p. 119.

¹⁴⁶ The Liaison Committee considers general matters relating to the work of committees: see *Erskine May*, p. 679.

¹⁴⁷ *ibid*, p. 670.

¹⁴⁸ *ibid*.

¹⁴⁹ Resolution 6(16); *Odgers' Australian Senate Practice*, 9th ed, 1999, p. 559.

- 4.41** Section 4 of the *Parliamentary Privileges Act 1987* establishes a threshold test for a finding of contempt in either House of the federal Parliament.¹⁵⁰ Under that section, conduct does not constitute an offence unless “it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or a committee of its authority or functions, or with the free performance by a member of the member’s duties...”
- 4.42** A resolution of the Senate of 20 June 1996 sets out the procedure to be followed in cases of unauthorised disclosure.¹⁵¹ As in the House of Commons, the resolution states that the relevant committee should seek advice from its members and staff about the possible source of the improper disclosure, and come to a conclusion as to whether the disclosure caused, or had a tendency to cause, substantial interference with the work of the committee or of the Senate. However, the resolution preserves the right of any individual Senator to raise the matter of the unauthorised disclosure as a matter of privilege under the Standing Orders.
- 4.43** In the past, the Senate Committee of Privileges has been reluctant to recommend punishment of media recipients of leaked information without satisfying itself as to the source of the information.¹⁵² However, in its 74th Report published in 1998, the Committee warned that it may not be so restrained in future,¹⁵³ and set out guidelines as to its future approach to improper disclosure of committee material:

In camera evidence

All persons within the jurisdiction of the Senate who are party to disclosure of in camera evidence may be expected to face severe findings of contempt, with attendant penalties, and a possible prosecution under the criminal provisions of the *Parliamentary Privileges Act 1987*. Publishers and authors within the media, **regardless of whether the source of the documents is discovered**, can similarly expect to face severe sanctions. [emphasis added]

Committee documents or proceedings not authorised for disclosure

Unauthorised disclosure of documents or proceedings of a committee can be expected to be examined by the Committee of Privileges on an assumption that a contempt is likely to be found.

Premature release of committee reports

This committee does not welcome any references of this nature, and is particularly concerned at the betrayal of trust and one-upmanship which deliberate, premature release of reports, at whatever stage of their preparation, represents. The committee does not subscribe to the fiction, either, that sanctions against

¹⁵⁰ House of Representatives Standing Committee of Privileges, *Report concerning the possible unauthorised disclosure of evidence to the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade*, June 2001, Appendix C, Clerk’s memorandum, p. 4.

¹⁵¹ 20 June 1996, J 361.

¹⁵² Senate Committee of Privileges, 74th Report, *Possible Unauthorised Disclosure of Parliamentary Committee Proceedings*, December 1998, para 1.20.

¹⁵³ *ibid.*

improper disclosure of the material to the media may be evaded by phrases such as “it is believed that” or “the committee is expected to” or similar devices. If any such matters are referred to the committee in the future, both the discloser, if discovered, and the media, can be expected to receive severe treatment.

Investigations by relevant committee

In determining this approach, the Committee of Privileges points out that it is predicated on an assumption that a committee has undertaken its own investigations in accordance with the Order of the Senate of 20 June 1996. The committee assumes that adherence to this order will ensure that the relevant committees will deliberate seriously on a matter before a reference is sought from the Senate...¹⁵⁴

4.44 The 74th Report also states:

1.18 The primary reason for the sanction against improper disclosure is, as with all other matters of privilege, the protection of witnesses. Additional reasons, particularly when the question arises as to premature disclosure of an already-completed report, relate to the integrity of committee proceedings, and the relationship of trust between committee members which must exist for a committee to function constructively and productively.

1.19 These principles are underpinned by the duty imposed on the Senate, when considering whether to exercise its contempt power, to have regard to:

The principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate. [9]

4.45 Given the potential damage which could occur to the parliamentary inquiry process if the unauthorised publication of committee reports, oral evidence, submissions and proceedings in private session remains unchecked, it is recommended that this Committee develop an appropriate series of guidelines to deal with future unauthorised disclosures.

4.46 The Committee therefore recommends:

Recommendation 5

That the issue of unauthorised disclosure of debates, reports or proceedings of committees be referred by the House to this Committee for inquiry and report on appropriate guidelines for dealing with future unauthorised disclosures.

¹⁵⁴ *ibid*, paras 1.47 – 1.51.

Appendix 1

Witnesses and submissions

Witnesses

The following witnesses appeared and gave evidence before the Committee on 15 October 2001:

Detective Sergeant Robert Francis	NSW Police Service
Sergeant Gregory Byrne	NSW Police Service
Constable Christopher Laird	NSW Police Service
Detective Sergeant Tim Priest	NSW Police Service
Mr Peter Ryan	Commissioner NSW Police Service
Mr Clive Small	Assistant Commissioner NSW Police Service
Mr Michael Holmes	General Manager, Court and Legal Services NSW Police Service
Mr Frank Hansen	Superintendent NSW Police
Ms Deborah Wallace	Detective Chief Inspector NSW Police

Submissions received by the Committee

Date	Author
October 2001	Detective Sergeant Robert Francis, Sergeant Gregory Byrne, Sergeant Vince Fusca and Constable Christopher Laird
12 October 2001	Detective Sergeant Tim Priest
15 October 2001	The Hon Helen Sham-Ho MLC
15 October 2001	Assistant Commissioner Clive Small
15 October 2001	Superintendent Frank Hansen
18 October 2001	Mr TEF Hughes QC and Mr Glenn Bartely, on behalf of officers of the Police Service who may be affected by the current inquiry
18 October 2001	The Hon Helen Sham-Ho MLC
6 November 2001	Mr Geoff Schuberg

Appendix 2

Chronology - Use of term “directive memorandum”

Chronology – Use of term “directive memorandum”

Note: all documents referred to are included in the attachments to the Special Report of GPSC No. 3, except the transcript of hearing 15 October 2001 before this Committee.

24 April

- Letter from Walter Madden Jenkins (WMJ), solicitors for the four officers, to the Chair of GPSC No. 3 (the Chair): “... Attached hereto is a copy of a **Directive Memorandum** that has been served on them by the Commander, Superintendent Frank Hansen...”
- Letter from WMJ to Superintendent Hansen: “...We have been asked to advise the abovenamed officers in relation to a **Directive Memorandum** that was served on each of them today...”

27 April

Letter from Court and Legal Services, NSW Police Service (CLS) to WMJ:

Re: **Directive memoranda** served upon officers attached to the Cabramatta Local Area Command

We understand that Mr I Ball, President of the Police Association of New South Wales, has been in contact with Commander Clive Small and has indicated that you propose to contact the Parliamentary Inquiry in relation to the further **directive memorandum** that has been served....

...I attach for your information a copy of the further **directive memorandum** of today's date. You will see that the memorandum specifically requests information that Police Officers may have in relation to serious criminal allegations that require immediate consideration....

1 May

- Letter from CLS to the Chair: “... I am sure you will understand that the matters raised in the **Directive Memoranda** from Superintendent Hansen must be pursued, the public interest so require...”
- Letter from CLS to WMJ: “... There have been two **Directive Memoranda** which have gone to four officers at Cabramatta LAC.... Any delay in providing information pursuant to a **Directive Memorandum** is insubordination ...”

3 May

Alan Jones: “... I am told that these four blokes are now under enormous pressure. They have had **directive memorandums** served on them within 24 hours of giving evidence ...” (further use of the term occurs in the transcript)

7 May

Letter from the Chair to Commissioner Ryan: "...The second issue relates directly to the Police Service and the two **directive memoranda** that have been served on the witnesses by Commander Hansen..." (further use of the term occurs in the letter)

9 May

Letter from CLS to the Chair:

...I note the indication on page 3 of that letter that issues surrounding whether or not the **Directive Memoranda** ... constitutes a contempt of Parliament will, 'need to be explored in detail'..... (p. 1)

The **Directive Memoranda** served upon the officers deal exclusively with serious allegations of criminal conduct....(p. 2)

...With these duties ... in mind, the Commander of Cabramatta, with the concurrence of the Region Commander, issued the appropriate **Directive Memoranda** seeking relevant information....(p. 2) (further use of the term occurs in the letter)

11 May

Transcript of hearing before GPSC No. 3:

Mr SMALL: As soon as I put a time requirement on it, for example, "Please provide this information by five o'clock today", no matter what the wording or language, it is a **directive memorandum**. ...In this case we used the words, I think, "You are directed to provide forthwith", which means that we want an answer now. If we had not included the word "forthwith" it would have implied that they had up to a fortnight or so but at least a week or so to respond. What we are seeking now was an answer to a matter that we regarded as operationally urgent the fact is that whenever we put a condition on a memorandum it becomes a directive, implicitly or explicitly....(p. 2) (further use of the term by Mr Small occurs in the transcript)

I am quite prepared to agree to withdraw the **directive memorandum** against three of the four officers... (p. 20)

Mr HANSEN: ...I wanted them to receive a **directive memorandum**, to respond to it and then it would have been between the four of them and me... (p. 15).

15 October

Transcript of hearing before this Committee:

The Hon. PATRICIA FORSYTHE: Prior to 1 May had you met with Michael Holmes in relation to the matter?.....

Mr SMALL: To the best of my recollection I had not spoken to Michael Holmes direct about this matter....

CHAIR: Can you understand how the officers who received that type of correspondence would understand it was a directive memorandum, even though that was not your intention?

Mr SMALL: I can understand that sir, but by that time a number of sections of the media had been describing these as directive memoranda and talking about the police being sacked and all of that sort of thing..... The Police Association itself either before or after that date had written correspondence referring to it as a **directive memorandum**. (p. 40)

Mr HOLMES: ...In relation to the solicitor's letter between Walter Madden Jenkins, Solicitors, dated 1 May 2001, that had been settled on the basis of advice from Senior Counsel, Mr Temby, QC, with one of my assistant solicitors. As you are probably aware, Court and Legal Services is a big organisation with many solicitors and many Police Service prosecutors. An assistant solicitor prepared the letter in consultation with Mr Temby, QC, and, unfortunately, they continued to use a phrase, which was coined in a letter from the Police Association, as **directive memorandum** and this mistake continued to compound by referring to it as directive memorandum. My respectful submission and my legal viewpoint is it is not a directive memorandum but rather a memorandum prepared for management purposes, not the traditional investigative memorandum. (p. 46)

Appendix 3

Document from Police Service intranet regarding directive memoranda

Tendered to the Committee
by Mr M Holmes, General Manager,
Court and Legal Services,
Police Service,
on 15 October 2001

Document from Police Service intranet regarding directive memoranda (extract)

Record the police officer's response. **Ensure that the officer understands completely that it is a directed interview.** This is especially important if the interview changes to a directed interview from a conventional criminal investigation interview.

Section 355(3) of the *Crimes Act* provides that a person is not to be taken to be under arrest because of subsection (2) (the 'deemed arrest') merely because an investigating officer is exercising a power under some other law to require the person to provide information or to answer questions. This relates to the situation where a police officer is responding to questions under direction pursuant to clause 9(1) of the *Police Service Regulation* and the investigation relates to a police management complaint under Part 8A or 9 of the *Police Service Act* and not a criminal investigation.

This means that for the purposes of a directed interview you do not place a police officer in custody.

Proceed to conduct the directed interview as above (*see point 7.3*).

While the directed interview should generally take place after the criminal investigation is finalised, if at the conclusion of the directed interview, you wish to continue with the criminal line of investigation, the officer should be returned to custody. Alternatively, if at that time, should you have completed your line of questioning in relation to the criminal investigation and your reasonable cause to suspect remains but you are uncertain whether there is sufficient evidence to warrant proceedings, the officer should be released from custody and further advice sought.

8. Directive memoranda

Clause 9(1) of the *Police Service Regulation* 1990 requires police officers to promptly comply with all lawful orders from those in authority over them. This includes **a direction to submit a report and answer questions**.

The appropriateness of using directive memoranda and their quality, have at times been the subject of valid criticism by review agencies. These have included situations where police used computer discs or saved hard drive documents to collaborate with their responses to directive memoranda. Responses to directive memoranda must be made independently and without consultation with other persons.

*Remember, in all investigations, the integrity of the investigation is paramount and **must not** be compromised.*

Prior to using directive memoranda investigators **must** consider whether it is a suitable approach, given that they provide greater scope to compromise the security of an investigation by forewarning other officers and the limited scope to identify and immediately pursue a line of inquiry. The use of directive memoranda is a flawed process when there are contentious issues or when the issues are not properly clarified.

Directive Memoranda should only be used for non-criminal matters, with the following requirements:

- multiple issues may be addressed, with sufficient information to identify the incident/s surrounding the complaint, but should not identify the complainant;
- should be in writing, with the date and time of service recorded;
- as far as practicable, the service of directives should be contemporary and the
- police officers should be separated until each has completed their report;
- investigating officer should properly supervise all police who are served directive memoranda to ensure there is no collaboration between police in the submission of their reports; and
- any response to a directive memorandum should be accepted, regardless of whether it contains irrelevant information, spelling mistakes, etc.

8.1 How should a directive memorandum be set out ?

The following is a draft directive memorandum proforma:

..... Local Area Command
 Date served:
 Time served:.....

..... (Name and rank of the officer upon which the Directive Memorandum is served)

.....Local Area Command

MEMORANDUM

I am currently conducting an investigation concerning

You are directed to immediately submit a comprehensive report detailing your knowledge of this matter.

You are directed not to disclose any information in respect of this memorandum to any other person, without my authority, until the completion of this inquiry. You are directed to respond to this memorandum and are not to collaborate with any other officer or officer's response. You are directed to retain and adequately secure any copies of your response to this memorandum, including hard copies and electronic copies, and not show your response to any other officer, without my authority .

.....(Name & rank of the officer serving the Directive Memorandum)

Appendix 4

Minutes of the Committee's proceedings

Minutes of the Proceedings

Note: Asterisks indicate text which has been deleted as not relevant to the current inquiry.

Meeting No. 7

(Inquiry on Special Report of General Purpose Standing Committee No. 3)

Wednesday 12 September 2001

at Parliament House, Sydney at 9.15 am

MEMBERS PRESENT

Mr Primrose (in the Chair)

Mr Breen	Mr Kelly
Ms Fazio	Revd Mr Nile
Ms Forsythe	Ms Saffin
Ms Gardiner	

In attendance: Lynn Lovelock, Velia Mignacca.

The Chair tabled the following correspondence relating to the Inquiry on the Special Report from General Purpose Standing Committee No. 3:

Correspondence received:

- (i) Letter dated 11 September 2001 from the Hon John Jobling MLC to the Clerk of the Committee, setting out a number of questions in relation to the inquiry.

The Committee deliberated.

The Clerk highlighted the main features of the terms of reference for the inquiry on the Special Report of General Purpose Standing Committee No. 3, and of the background paper on breach of privilege and contempt previously distributed to the Committee.

The Clerk distributed copies of Senate privilege resolution No. 6 entitled "Matters constituting contempt".

The Committee deliberated.

The Committee agreed that the Clerk prepare and distribute to Members of the Committee:

- (a) a series of principles relating to contempt based on those which apply in the Senate;

- (b) a copy of the report of the Senate Committee of Privileges concerning Brewarrina Council which is referred to in the background paper on breach of privilege and contempt.

The Committee adjourned at 10.18 a.m. sine die.

Lynn Lovelock
Clerk to the Committee

Meeting No. 8

(Inquiry on Special Report of General Purpose Standing Committee No. 3)

Thursday 11 October 2001

at Parliament House, Sydney at 2.00 pm

MEMBERS PRESENT

Revd Mr Nile (in the Chair)

Mr Breen	Mr Primrose
Ms Fazio	Ms Saffin
Ms Gardiner	

Apologies were received from Ms Forsythe and Mr Kelly.

In attendance: Lynn Lovelock, Janet Williams.

Minutes of Meeting No. 7 were confirmed on motion of Ms Saffin.

The Chair tabled the following correspondence relating to the Inquiry on the Special Report from General Purpose Standing Committee No. 3:

Correspondence received:

- (i) Letter dated 28 September 2001 to the Clerk to the Committee from the Chair to the Committee regarding proposed meeting dates and items for the agenda.
- (ii) Submission to the Committee dated 8 October 2001 from Sergeant G P Byrne, Detective Sergeant R Francis, Sergeant V Fusca and Constable C Laird.
- (iii) Letter dated 7 August 2001 to the Hon Peter Breen (forwarded to the Chair on 8 October 2001) from Sergeant G Byrne on behalf of himself and three other police officers requesting an opportunity to appear as witnesses to give evidence or to make a submission to the committee.

Correspondence sent:

- (i) Letter dated 8 October 2001 from the Clerk of the Parliaments to the Chair of the Committee regarding “contempt”.

The Committee deliberated.

The Committee discussed the proposed meeting schedule and hearing timetable.

Resolved, on motion of Ms Saffin: That the schedule of meetings and hearings be adopted.

The Committee continued to deliberate.

Resolved, on motion of Mr Breen: That the Chair summons Sergeant Greg Byrne, Sergeant Robert Francis, Constable Christopher Laird and Detective Sergeant Tim Priest, to appear before the Committee to give evidence in relation to the inquiry on Monday 15 October 2001, from 10.00 am.

The Committee continued to deliberate.

Resolved, on motion of Mr Breen: That the Chair summons Commissioner Peter Ryan, Assistant Commissioner Clive Small, Detective Chief Inspector Deborah Wallace, Superintendent Frank Hansen and Mr Michael Holmes, to appear before the Committee to give evidence in relation to the inquiry on Monday 15 October 2001, from 2.00 pm.

The Committee continued to deliberate.

The Committee agreed that the Clerk prepare an opening address and series of questions in relation to “Directive Memoranda” for the hearing on Monday.

Resolved, on motion of Mr Breen: That the Committee adopt the following principles in relation to contempt, as outlined in correspondence from the Clerk of the Parliaments on 8 October 2001:

1. The essential feature of contempt is conduct which *obstructs* or *impedes* the House (or a committee, as the House’s delegate) in the performance of its *functions*, or a Member in the performance of his or her functions, or has a tendency to produce such result.
2. It is not possible to list every act which might be considered a contempt, and acts may be treated as contempt even though there is no precedent for the offence.
3. The power to take action in relation to contempt is discretionary.
4. Subject to paragraphs 2 and 3, certain principles relating to contempt may be deduced by examining the types of conduct which have been treated as contempt in the past.

The Committee continued to deliberate.

The Committee agreed that the Clerk prepare and distribute to Members of the Committee a summary of the Council’s powers to deal with contempt, together with a list of options available to the Council for dealing with contempts committed against it.

The Committee adjourned at 3.06 pm until Monday 15 October 2001 at 9.45 am.

Lynn Lovelock
Clerk to the Committee

Meeting No. 9

(Inquiry on Special Report of General Purpose Standing Committee No. 3)

Monday 15 October 2001

at Parliament House, Sydney at 9.45 am

MEMBERS PRESENT

Revd Mr Nile (in the Chair)

Mr Breen	Ms Gardiner
Ms Fazio	Mr Primrose
Ms Forsythe	Ms Saffin

Apologies were received from Mr Kelly.

In attendance: Lynn Lovelock, Velia Mignacca and Janet Williams.

Minutes of Meeting No. 8 were confirmed on motion of Ms Saffin.

The Chair tabled the following correspondence relating to the Inquiry on the Special Report from General Purpose Standing Committee No. 3:

Correspondence received:

- (i) *****
- (ii) Letter dated 15 October 2001 from Mr M Holmes (Solicitor for the Police Service) to the Clerk to the Committee, related to the hearing to be held this day.

Correspondence sent:

- (i) Summonses issued to:

Commissioner Peter Ryan
Assistant Commissioner Clive Small
Superintendent Frank Hansen
Detective Chief Inspector Debra Wallace

Mr Michael Holmes
Sergeant Greg Byrne
Detective Sergeant Robert Francis
Constable Christopher Laird
Detective Sergeant Tim Priest

The Committee deliberated.

The Committee considered correspondence, dated 15 October 2001, from Mr M Holmes requesting certain documents from the committee.

Resolved, on motion of Ms Saffin: That the Background Paper requested by Court and Legal Services, NSW Police Service, is an internal working document prepared for the Committee by the Clerk, and as such is not to be released.

The Committee continued to deliberate.

Resolved, on motion of Ms Saffin: That the submission from the four police officers received by the Committee is not to be made public at this stage, at the request of the witnesses.

The Committee continued to deliberate.

Members of the public and the media were admitted.

Detective Sergeant Robert Francis, Sergeant Greg Byrne and Constable Christopher Laird were sworn and examined.

Evidence concluded, the witnesses withdrew.

Detective Sergeant Tim Priest was sworn and examined.

The Chair informed the Committee that copies of a submission from Mr Priest had been received in his office late last Friday. The Clerk distributed copies of the submission.

Evidence continued.

Evidence concluded, the witness withdrew.

Members of the public and the media withdrew.

The Chair left the Chair at 12.05 pm.

The Committee resumed at 2.00 pm.

The Committee deliberated.

The Committee considered a request for legal advisers to be present during the examination of Assistant Commissioner Clive Small, Detective Chief Inspector Debra Wallace, Superintendent Frank Hansen and Mr Michael Holmes.

Resolved, on motion of Mr Breen: That legal advisers be allowed to be present during the examination of Assistant Commissioner Clive Small, Detective Chief Inspector Debra Wallace, Superintendent Frank Hansen and Mr Michael Holmes.

Members of the public and the media were admitted.

Commissioner Peter Ryan was sworn and examined.

Evidence concluded, the witness withdrew.

Assistant Commissioner Clive Small was sworn and examined.

Mr Tom Hughes, QC and Mr Glenn Bartley, legal advisers to the NSW Police Service, were admitted.

Mr Small presented a submission and made a statement to the Committee.

Evidence continued.

Mr Small submitted a copy of Crime and Justice Bulletin No. 59, from the Bureau of Crime Statistics and Research.

Evidence continued.

Evidence concluded, the witness withdrew.

The Committee agreed to hear from Mr Michael Holmes before proceeding to hear evidence from Detective Chief Inspector Debra Wallace and Superintendent Frank Hansen.

Mr Michael Holmes was sworn and examined.

Mr Holmes submitted a copy of an extract from an internal Police manual entitled Policing Issues and Practising Guidelines, detailing Directive Memoranda.

Evidence continued.

Evidence concluded, the witness withdrew.

Superintendent Frank Hansen was sworn and examined.

Evidence concluded, the witness withdrew.

Detective Chief Inspector Debra Wallace was sworn and examined.

Evidence concluded, the witness withdrew.

Legal advisers to the Police Service withdrew.

Members of the public and the media withdrew.

The Committee deliberated.

Ms Gardiner moved: That the written submission, as amended today, of Police Officers Byrne, Francis and Laird be published forthwith, with the exception – until there is further deliberation by the Committee – of those officers’ responses to the Directive Memoranda, and, similarly, that the written submission of Detective Sergeant Priest be published forthwith (except paragraph 2 on page 4, as requested by DS Priest).

Debate ensued.

Mr Primrose moved: That the question be amended by omitting the word “forthwith” wherever occurring, and inserting at the end “subject to the Committee deliberating on the advice of the Clerk”.

Debate continued.

Question: That the amendment of Mr Primrose be agreed to—put and passed.

Original question, as amended: That the written submission, as amended today, of Police Officers Byrne, Francis and Laird be published, with the exception – until there is further deliberation by the Committee – of those officers’ responses to the Directive Memoranda, and, similarly, that the written submission of Detective Sergeant Priest be published (except paragraph 2 on page 4, as requested by DS Priest), subject to the Committee deliberating on the advice of the Clerk.

The Committee continued to deliberate.

The Clerk distributed copies of a submission received from the Hon Helen Sham Ho received earlier that day.

The Committee continued to deliberate.

Resolved, on motion of Mr Breen: That Mrs Sham Ho be advised that she would not be required to appear before the Committee in relation to this inquiry.

Resolved, on motion of Ms Fazio: That, according to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the transcript of evidence of Monday 15 October 2001 from Detective Sergeant Robert Francis, Sergeant Greg Byrne, Constable Christopher Laird, Detective Sergeant Tim Priest, Commissioner Peter Ryan, Assistant Commissioner Clive Small, Mr Michael Holmes, Superintendent Frank Hansen and Detective Chief Inspector Debra Wallace.

The Committee adjourned at 4.54 pm until Friday 19 October 2001 at 10.00 am.

Lynn Lovelock
Clerk to the Committee

Meeting No. 10

(Inquiry on Special Report of General Purpose Standing Committee No. 3)

Friday 19 October 2001

at Parliament House, Sydney at 10.00 am

MEMBERS PRESENT

Revd Mr Nile (in the Chair)

Mr Breen	Mr Kelly
Ms Fazio	Mr Primrose
Ms Forsythe	Ms Saffin
Ms Gardiner	

In attendance: Lynn Lovelock, Velia Mignacca and Janet Williams.

Minutes of Meeting No. 9 were confirmed on motion of Ms Saffin.

The Chair tabled the following correspondence relating to the Inquiry on the Special Report from General Purpose Standing Committee No. 3:

Correspondence received:

- (i) Email message to the Clerk dated 16 October 2001 with two attachments, from Mr Peter Torning, Inspector of Police, concerning the current inquiry.
- (ii) Letters to the Clerk dated 17 October 2001 from Detective Sergeant Francis and Mr Michael Holmes enclosing amended proofs of transcripts.
- (iii) Facsimile to the Clerk dated 18 October 2001 from Constable Christopher Laird concerning the uncorrected transcript previously sent to him.
- (iv) Letter to the Chair dated 18 October 2001 from Mr Michael Holmes, General Manager, Court and Legal Services, requesting a copy of the evidentiary material to be considered by the Committee in relation to the inquiry.
- (v) Letter to the Chair dated 18 October 2001 from Mr Michael Holmes, General Manager, Court and Legal Services, forwarding a submission by Mr T E F Hughes QC, and Mr Glenn Bartley.
- (vi) Supplementary submission dated 18 October 2001 from the Hon Helen Sham-Ho MLC.
- (vii) Unamended transcript received from Sergeant Byrne on 19 October 2001.

Correspondence sent:

- (i) Letters from the Clerk dated 16 October 2001 to the following witnesses forwarding uncorrected transcripts of their evidence given on 15 October 2001, for any necessary corrections:

Commissioner Peter Ryan
Assistant Commissioner Clive Small
Superintendent Frank Hansen
Detective Chief Inspector Wallace
Mr Michael Holmes
Sergeant Greg Byrne
Detective Sergeant Robert Francis
Constable Christopher Laird
Detective Sergeant Tim Priest

- (ii) Letter from the Clerk dated 17 October 2001 to Sergeant Vince Fusca advising that the Committee would be willing to consider any evidence pertinent to the current inquiry.

The Committee deliberated.

Resolved, on motion of Ms Fazio: That the Committee notes the email message from Peter Torning dated 16 October 2001.

The Committee continued to deliberate.

Resolved, on motion of Mr Breen: That the Clerk advise Court and Legal Services that the Committee is considering their request for a copy of all evidentiary material before the Committee in relation to this inquiry.

The Committee continued to deliberate.

Resolved, on motion of Ms Fazio: That the Committee note the submission from Mr T.E.F. Hughes QC and Mr Glenn Bartley on behalf of the Police Service.

The Committee continued to deliberate.

Resolved, on motion of Ms Saffin: That the Committee note submissions received by the Committee from the following:

Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca, and Constable Laird, dated October 2001.
Detective Sergeant Tim Priest, dated 12 October 2001.
Hon Helen Sham-Ho MLC, dated 15 October 2001.
Assistant Commissioner Clive Small, dated 15 October 2001.
Mr T E F Hughes QC and Mr Glenn Bartley on behalf of the Police Association, dated 18 October 2001.
Hon Helen Sham-Ho MLC, dated 18 October 2001

The Committee continued to deliberate.

Resolved, on motion of Mr Primrose: That the Chair prepare and submit a draft report on the inquiry on the Special Report of General Purpose Standing Committee No. 3.

The Committee continued to deliberate.

Resolved, on motion of Mr Breen: That copies of the submissions received by the Committee, indicating proposed suppressions, be distributed to Committee Members for consideration at the next meeting.

The Committee considered the draft report.

Resolved, on motion of Ms Saffin: That paragraph 2.5 be amended by omitting “There may be reasons why no action should be taken in relation to a possible contempt, for example if it appears that an inquiry would lead to no useful result.”.

Resolved, on motion of Ms Forsythe: That paragraph 2.29 be amended by:

- (a) omitting “main issues raised in the” and
- (b) omitting “are summarised” and inserting instead “given by these officers is attached”.

Resolved, on motion of Ms Fazio: That paragraph 3.16 be amended by omitting the second and third paragraphs of the quotation.

Resolved, on motion of Ms Fazio: That paragraph 3.17 be omitted.

Resolved, on motion of Ms Forsythe: That paragraph 3.20 be amended by omitting the first part of the evidence quoted, up to and including “I have strong suspicions as to why it occurred.”.

Resolved, on motion of Mr Breen: That a reference to the exercise of power under s. 181D of the Police Service Act be inserted in the section headed “Evidence of Commissioner Ryan”.

Resolved, on motion of Ms Saffin: That paragraph 3.32 be omitted.

Resolved, on motion of Ms Saffin: That an amended copy of Chapters 1-3 of the draft report be forwarded to Committee Members for confirmation at the next meeting.

The Committee continued to deliberate.

Resolved, on motion of Ms Saffin: That the Clerk draft a paper outlining possible options based on the evidence received by the Committee to date.

The Committee continued to deliberate.

Resolved, on motion of Ms Gardiner: That an extension of the reporting date for this inquiry be sought to 15 November 2001.

The Committee adjourned at 12.08 pm until Friday 26 October 2001 at 10.00 am.

Lynn Lovelock
Clerk to the Committee

Meeting No. 11

(Inquiry on Special Report of General Purpose Standing Committee No. 3)

Friday 26 October 2001

at Parliament House, Sydney at 10.00 am

MEMBERS PRESENT

Revd Mr Nile (in the Chair)

Mr Breen	Mr Primrose
Ms Fazio	Ms Saffin
Ms Forsythe	

Apologies were received from Ms Gardiner and Mr Kelly.

In attendance: Lynn Lovelock, Velia Mignacca and Janet Williams.

Minutes of Meeting No. 10 were confirmed on motion of Ms Fazio.

The Chair tabled the following correspondence relating to the Inquiry on the Special Report from General Purpose Standing Committee No. 3:

Correspondence received:

- (i) Email message dated 19 October 2001, with one attachment, from Mr Peter Torning, Inspector of Police, seeking assistance with a complaint.
- (ii) Letter dated 22 October 2001 from Mr Terry O'Brien, on behalf of Commissioner Ryan, indicating that he had no changes to the uncorrected transcript of the hearing held on 15 October 2001.
- (iii) Unamended transcript received from Superintendent Hansen on 23 October 2001.
- (iv) Amended transcript received from Assistant Commissioner Small on 23 October 2001
- (v) Unamended transcript received from Detective Sergeant Priest on 24 October 2001.

Correspondence sent:

- (i) Letter dated 22 October 2001 to Mr Michael Holmes, General Manager, Court and Legal Services, replying to requests for a copy of the Committee's background paper and of all evidentiary material in relation to the inquiry.
- (ii) Letters dated 22 October 2001 to the following acknowledging receipt of submissions:

Superintendent Frank Hansen
Mr Michael Holmes
Sergeant Greg Byrne
Detective Sergeant Robert Francis
Constable Christopher Laird
Mr Paul Kenny (on behalf of Detective Sergeant Tim Priest)
Sergeant Vince Fusca

The Committee deliberated.

The Committee noted that the Clerk had informed Mr Torning that the matter raised in his email dated 19 October 2001 was not relevant to the Committee's inquiry, and that she had referred him to the Police Integrity Commission.

The Committee considered the draft report.

Resolved, on motion of Ms Forsythe: That paragraph 4.15 be amended by omitting "real tendency" and inserting instead "potential".

Ms Forsythe moved: That paragraph 4.18 be omitted.

Debate ensued.

Ms Forsythe suggested that the Committee obtain legal advice in relation to the matters raised in the submission of Mr TEF Hughes QC and Mr Glenn Bartley.

Question: That paragraph 4.18 be omitted -- put and passed.

Resolved, on motion of Ms Saffin: That a new paragraph 4.18 be inserted.

Mr Primrose moved: That paragraph 4.20 be amended by inserting after the words "The Committee finds that a contempt" the words "although unintended".

Debate ensued.

Ms Forsythe asked that it be noted in the Minutes that the words used by Assistant Commissioner Small at the hearing on 11 May 2001 suggested that there had been an intention to intimidate, and that she did not agree with the insertion of the words "although unintended".

Question put and passed.

Resolved, on motion of Mr Primrose: That paragraph 4.21 be amended by inserting after the words “In issuing the initial memorandum to the officers,” the words “Assistant Commissioner Small and”.

Ms Saffin moved: That Recommendation 1 be amended by inserting after the words “in relation to” the word “unintended”.

Debate ensued.

Ms Forsythe asked that it be noted in the Minutes that she did not agree with the proposed amendment, for the reason outlined above.

Question put and passed.

Ms Fazio moved: That paragraph 4.25 be amended by:

- (a) omitting “clumsy” and inserting instead “hasty but understandable”; and
- (b) inserting after the words “determine the information available” the words “for policing purposes”.

Ms Forsythe asked that it be noted in the Minutes that Assistant Commissioner Small’s evidence on 11 May 2001 suggested that there had been further motives for the issuing of the memoranda, and that she did not agree with the insertion of the words “but understandable”.

Question put and passed.

Resolved, on motion of Ms Saffin: That an amended copy of chapter 4 of the draft report be forward to Committee Members for confirmation at the next meeting.

The Committee continued to deliberate.

The Committee adjourned at 11.48 am until Thursday 8 November 2001 at 10.00 am.

Lynn Lovelock
Clerk to the Committee

Meeting No. 12

(Inquiry on Special Report of General Purpose Standing Committee No. 3)

Thursday 8 November 2001

at Parliament House, Sydney at 10.00 am

MEMBERS PRESENT

Revd Mr Nile (in the Chair)

Mr Breen	Mr Primrose
Ms Fazio	Ms Saffin
Ms Forsythe	

Apologies were received from Ms Gardiner and Mr Kelly.

In attendance: John Evans, Velia Mignacca and Janet Williams.

The Chair made a statement concerning an award made by the Festival of Light to Detective Sergeant Tim Priest.

Minutes of Meeting No. 11 were confirmed on motion of Ms Fazio.

The Chair tabled the following correspondence relating to the Inquiry on the Special Report from General Purpose Standing Committee No. 3:

Correspondence received

- (i) Submission dated 6 November 2001 from Mr Geoff Schuberg addressed to the Chairman.
- (ii) Amended transcript received from Detective Chief Inspector Deborah Wallace on 7 November 2001.
- (iii) Facsimile message dated 7 November 2001 from Mr Geoff Schuberg to the Chairman concerning an error in his submission.

The Committee noted the correspondence received.

The Committee considered the amended draft report.

Chapter 4 read.

Paragraph 4.9 read, debated and agreed to.

Mr Breen moved: That paragraph 4.18 be omitted.

Debate ensued.

Question put and passed.

Paragraph 4.25 read, debated and agreed to.

Recommendation 2 read.

Mr Breen moved: That Recommendation 2 be amended by inserting after the word “Committees” the words “whether intended or not”.

Debate ensued.

Question put and passed.

Mr Primrose moved: That Recommendation 2 be amended by omitting the words “any attempt to intimidate or coerce” and inserting instead “intimidation or coercion of”.

Debate ensued.

Question put and passed.

Recommendation 2, as amended, agreed to.

Chapter 4, as amended, agreed to.

Resolved, on motion of Ms Fazio: That chapters 1, 2, and 3, as previously amended, be agreed to.

Resolved, on motion of Mr Primrose: That the report, as amended, be adopted.

Resolved, on motion of Mr Primrose: That the Report be signed by the Chair and presented to the Clerk of the House.

The Committee deliberated.

Resolved, on motion of Mr Breen: That pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the submissions received by the Committee from the following:

1. Detective Sergeant Francis, Sergeant Byrne, Sergeant Fusca and Constable Laird dated October 2001, with proposed suppressions previously circulated to the Committee.
2. The Hon Helen Sham-Ho MLC, dated 15 October 2001.
3. Detective Sergeant Tim Priest dated 12 October 2001, with the exception of the sections indicated by Mr Priest to the Committee during evidence on 15 October 2001.
4. Assistant Commissioner Clive Small, tendered to the Committee on 15 October 2001, except attachments 10 and 11.

5. Superintendent Frank Hansen, tendered to the Committee on 15 October 2001.
6. Mr T.E.F. Hughes QC and Mr Glenn Bartley on behalf of the Police Service dated 18 October 2001.
7. Supplementary submission from The Hon Helen Sham-Ho dated 18 October 2001.
8. Mr Geoff Schuberg dated 6 November 2001.

The Committee continued to deliberate.

Resolved, on motion of Ms Saffin: That, in view of the Committee's recommendation that no action be taken against the officers concerned, the Committee does not believe it is necessary to forward a copy of the report to the officers for comment before tabling.

The Committee continued to deliberate.

Members of the Committee thanked Revd Nile for his chairmanship of the inquiry, and thanked Ms Lynn Lovelock, Clerk to the Committee, Ms Velia Mignacca, Senior Project Officer, and Ms Janet Williams, Committee Officer, for their efforts.

The Committee adjourned at 10.58 am sine die.

John Evans
Clerk of the Parliaments