



LEGISLATIVE COUNCIL

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GENERAL PURPOSE STANDING COMMITTEE NO 3

**Report on**

**Inquiry into Contract of Employment of  
Commissioner of Police**

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Ordered to be printed 31 May 2000

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Contract of Employment of  
Commissioner of Police**

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## How to contact the Committee

Members of General Purpose Standing Committee No 3 can be contacted through the committee secretariat. Written correspondence and inquiries should be directed to:

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The Director

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General Purpose Standing Committees

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Legislative Council

---

Parliament House, Macquarie Street

---

Sydney NSW 2000

---

Email [gpscno3@parliament.nsw.gov.au](mailto:gpscno3@parliament.nsw.gov.au)

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Telephone 61-2-9230 3544

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Facsimile 61-2-9230 3416

---

Website [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

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## **Terms of Reference**

That General Purpose Standing Committee No. 3 inquire into and report on:

- (a) the circumstances surrounding the contract of employment between the Commissioner of Police and the Minister for Police, signed on 8 February 2000;
- (b) the circumstances in which the Statutory and Other Offices Remuneration Tribunal came to make a determination on the salary of the Commissioner of Police one day after the salary had been agreed to in the contract.

These terms of reference were adopted by the Committee on the motion of the Hon Don Harwin MLC at a meeting of the Committee held on 18 November 1999.

## **Committee Membership**

The Hon Helen Sham-Ho MLC, *Chair*

Independent

The Hon John Hatzistergos MLC, *Deputy Chairman*

Australian Labor Party

The Hon Don Harwin MLC

Liberal Party

The Hon John Jobling MLC<sup>1</sup>

Liberal Party

The Hon John Johnson MLC

Australian Labor Party

The Hon Andy Manson MLC

Australian Labor Party

Ms Lee Rhiannon MLC

Greens

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<sup>1</sup> The Hon John Jobling MLC represented the Hon Jim Samios MLC for the purposes of this inquiry.

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## **Chair's Foreword**

The announcement by the Premier on 14 February 1999 that the term of appointment of the Commissioner of Police had been extended until 2004 was reported in the press on 15 February 2000. Three weeks later, criticisms of the secrecy provisions contained in the contract which extended the employment of the Commissioner appeared in major Sydney metropolitan newspapers.

In April 1999, the Auditor-General wrote to the Commissioner of Police stating he had directed his staff to examine the contract and whether there were any special reasons to justify its secrecy provisions. Findings of the investigation of the Auditor-General were reported to the Parliament on 10 November 1999.

On 18 November 1999, General Purpose Standing Committee No 3 resolved to inquire into circumstances surrounding the contract of employment. The powers of the Committee to send for and examine persons, papers and records allowed its Members to scrutinise closely the particular concerns raised by the Auditor-General.

The Committee's investigation of the process undertaken during the renegotiation of the contract has identified some flaws in this process. Key issues considered by the Committee relate to: the signing of the contract prior to the Tribunal issuing its determination and legal issues associated with contract negotiations; the role of the Statutory and Other Offices Remuneration Tribunal, which is responsible for determining the remuneration packages of senior public sector managers; the use of secondary employment contracts in the public sector; and whether information about the remuneration of senior public sector managers should be kept confidential. The report contains ten recommendations that address these issues, including suggestions for legislative change.

This inquiry has been successful on a number of levels. The flaws identified in the specific process associated with the contract of employment of the Commissioner of Police have led to the formulation of recommendations with broader application for the consideration of the Government. In addition, the inquiry resulted in the Premier issuing a Memorandum at the end of March controlling the use of secondary employment contracts for Chief and Senior Executive Service Officers. This was a welcome development and provides a tangible demonstration of the value of the scrutiny work of the General Purpose Standing Committees and their influence on government policy.

I thank my fellow Committee Members and the Committee Staff, Director Anna McNicol and Committee Officer Phaedra Parkins, for their assistance in preparing this report. Acknowledgment must also be given to assistance provided by the Clerk Assistant Committees, Warren Cahill and Acting Clerk Assistant Committees, David Blunt.

I commend this report to the Legislative Council.

**The Hon Helen Sham-Ho MLC**

Chair

LEGISLATIVE COUNCIL

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Report on Inquiry into Contract of Employment of Commissioner of Police

# Executive Summary

## Introduction

On 8 February 1999 the Minister for Police and the Commissioner for Police executed a contract providing for the continued employment of the Commissioner until 8 February 2004. On 14 February 1999 the Premier issued a press release announcing the reappointment. The contract of employment was signed one day before the Statutory and Other Offices Remuneration Tribunal (SOORT) issued its determination of the Commissioner's new remuneration package.

In March 1999 a number of media reports were critical of the fact that details of the contract had been kept secret. In April 1999 the Auditor-General made inquiries about the contract, to determine whether there were any special reasons to justify the secrecy. In May 1999 the Auditor-General reported his progress on this matter to the Parliament, indicating that the Commissioner had agreed to facilitate a process that would allow information about his remuneration package to be included in the Police Service Annual Report. On 24 June 1999, the Premier released full details of the contract.

On 15 November 1999 the Auditor-General provided a report to Parliament indicating the Crown Solicitor had advised that a clause contained in the contract, relating to an end of contract payment, was invalid. The Crown Solicitor had further advised that it was possible for the Minister and Commissioner to enter into a separate contract, to the effect of the invalid clause, that would be valid.

The potential for "secondary" contracts was a cause of concern to the Auditor-General. He expressed a view that if the SOORT process was intended to govern all significant payments to senior public sector managers, such contracts provided Ministers and Chief Executive Officers with greater scope than was intended to provide financial rewards to their employees.

## Sequence of events associated with signing of the contract

In late December 1999 the Commissioner of Police, Mr Peter Ryan, wrote to the Minister for Police, the Hon Paul Whelan MP, seeking to renegotiate his contract of employment. Dr Col Gellatly, Director of the Premier's Department, was asked by the Minister to act as his representative in negotiations with Mr Ryan. Mr Gerry Gleeson, who holds the office of the Statutory and Other Offices Remuneration Tribunal, was responsible for making the determination of an appropriate remuneration package for Mr Ryan.

The Tribunal makes annual remuneration package determinations for executive office holders in the public sector, during the period from 1 July to 31 August, which come into effect on 1 October. The Tribunal can also be required to make special determinations, outside of the annual framework, when directed by the relevant Minister (currently the Premier). The Tribunal can only make determinations relating to annual payments. One off payments, such as an end of contract payment, can not be determined by the Tribunal.

In the three weeks leading up to 8 February 1999, Dr Gellatly, Mr Gleeson and Mr Ryan's nominated representative met on a number of occasions to discuss the terms of the new contract. Mr Gleeson had responsibility for determining the annual remuneration package, with Dr Gellatly responsible for all other aspects of the contract. Dr Gellatly also acted in his capacity as an assessor to SOORT, providing advice to Mr Gleeson in relation to the remuneration package.

On 4 February 1999 terms of the contract were settled and communicated to Mr Les Tree, Director General of the Ministry for Police. Dr Gellatly, along with staff of the Premier's Department and the Tribunal, drafted a contract in accordance with the agreed terms, and this was provided to Mr Tree. Using this draft, Mr Tree prepared the contract for signature of the Minister and Commissioner.

The Premier wrote to the Tribunal on 8 February 1999 seeking a special determination of the remuneration package of the Commissioner of Police. On the same day the Minister for Police and Commissioner of Police executed the contract of employment, which included a statement of the remuneration package to be paid to the Commissioner. The Tribunal issued its formal determination of the remuneration package on 9 February 1999

### ***Findings***

Both Mr Gleeson and Dr Gellatly were involved in the negotiations. The Committee finds that Mr Gleeson should not have played any role in the negotiations. The Committee believes that as the Statutory and Other Offices Remuneration Tribunal, Mr Gleeson's role was to receive submissions and hear argument from both the Commissioner and/or his representatives as employee and from the Minister, Government and/or their representatives, and to inform himself as he thought fit, and then make a determination.

#### Recommendation 1

(page 16)

The Committee recommends that the Statutory and Other Offices Remuneration Tribunal play no role in negotiations between the Government and its employees but act rather as an adjudicator on both information gleaned as a result of its own inquiries and submissions placed before it by interested parties.

Mr Tree advised the Minister and Commissioner to sign the contract on 8 February 2000. Mr Tree was aware of the need for a formal determination, but holds the view that the variation of the contract was not linked to the determination.

The Committee is cognisant of the fact there may not have been a legal requirement for the determination to have been issued before the contract was signed. Nevertheless, the Committee is strongly of the view that the Minister and the Commissioner should not have signed the contract until a formal determination had been issued by the Tribunal, and that Mr Tree should have ensured the determination had been made before advising the Minister and the Commissioner to sign.

While the Committee acknowledges that legislative requirements relating to a special determination of the remuneration of the Commissioner of Police were met, the Committee holds the view that where the Statutory and Other Offices Remuneration Tribunal has responsibility for determining the remuneration of a public sector officer, the relevant government representative should ensure a formal determination has been issued by the Tribunal before executing a contract that includes reference to that remuneration.

## Recommendation 2

(page 16)

The Committee recommends that where the Statutory and Other Offices Remuneration Tribunal has responsibility for determining the remuneration of a public sector officer, the relevant government representative ensure a formal determination has been issued by the Tribunal before executing a contract that includes reference to that remuneration.

### **Validity of the contract and subsequent contract variations**

The Auditor-General sought advice from the Crown Solicitor about clause 6 (damages) and clause 22 (end of contract payment) of the contract. The Crown Solicitor indicated that the validity of these clauses hinged on whether they were in fact considered to be remuneration. The only remuneration that can be included in a contract of employment is the annual remuneration package. Both items were one off payments, rather than annual entitlements. The Crown Solicitor's advice was that clause 6 did not provide for remuneration, and hence was valid. However, he considered that the end of contract payment provided for in clause 22 was remuneration, and therefore was invalid.

On 14 March 2000, the Minister and the Commissioner executed a Deed of Variation and Release and a Deed of Agreement, drafted by the Crown Solicitor, both relating to the Commissioner's contract of employment. These documents:

- clarified aspects of the contract relating to the period of appointment to the position and the relevance of the contract to the period prior to the Commissioner's reappointment;
- replaced an inaccurate reference to the *Public Sector Management Act 1988* with a reference to the *Police Service Act 1990*;
- deleted clause 22 from the contract, and released the Minister from certain promises and demands relating to that clause; and
- provided for the Commissioner to be paid an end of contract sum.

### ***Uncertainty about entitlements for chief executive and senior executive officers***

During evidence to the Committee the Crown Solicitor highlighted problems with section 46 of the *Police Service Act 1990*, and its counterpart section (42S) in the *Public Sector Management Act 1988*, relating to entitlements for chief executive and senior executive officers. He suggested that these sections need to be amended to make clear what the entitlements are for these officers.

Recommendation 3

(page 20)

The Committee recommends that the Government consider introducing legislation to amend section 46 of the *Police Service Act 1990* and section 42S of the *Public Sector Management Act 1988* to remove any uncertainty about monetary remuneration and employment benefits for officers covered by provisions contained in those sections.

**Committee findings**

The execution by the Minister and Commissioner, on 14 March 2000, of the Deed of Variation and Release and the Deed of Agreement appears to have addressed specific concerns raised by the Auditor-General and Crown Solicitor relating to clauses 6 and 22 of the contract of employment of the Commissioner of Police.

The inclusion of an invalid clause and a number of poorly drafted clauses in the contract of employment of the Commissioner of the Police is a matter of concern to the Committee. While there was a Crown Solicitor's advice relating to matters contained in clause 6 of the contract, no such advice had been sought from the Crown Solicitor in relation to the inclusion of end of contract payments in employment contracts of senior public sector managers. The poor drafting of clauses 3, 5 and 7 also suggest there was no satisfactory precedent relating to those clauses.

The Director General of the Premier's Department, Dr Col Gellatly, appears to have been primarily responsible for the drafting of the contract of employment of the Commissioner of Police, although the Director General of the Ministry for Police, Mr Les Tree, must take responsibility for advising the Minister and the Commissioner that the contract was in order. Referral of the contract to the Crown Solicitor, either for drafting or checking, by either or both Directors General, would in all likelihood have prevented the need for subsequent amendments.

Recommendation 4

(page 24)

The Committee recommends that where public sector employment contracts differ materially from existing precedents, legal advice be obtained from the Crown Solicitor to ensure that the material differences are valid.

It was not appropriate for Mr Gleeson to propose an end of contract payment for the Commissioner. Under the *Statutory and Other Offices Remuneration Act 1975*, the role of the Tribunal with respect to the determination of remuneration is clearly confined to the determination of the annual amount payable as monetary remuneration and the cost of employment benefits. There is no provision for the Tribunal to suggest the payment of any other form of remuneration, such as an end of contract payment.

Determination of remuneration payments additional to the remuneration package may be made by the relevant Minister, who can direct the Tribunal to take into consideration such payments when making its determination. The proposal for an end of contract payment would have been more properly made by the Commissioner or Dr Gellatly.

### **Secondary contracts**

The Committee shares the Auditor-General's concern about secondary contracts. The Committee welcomes the interim measure taken by the Premier on 31 March 2000, in issuing a memorandum to control the use of secondary contracts. There is a need however, to ensure this matter is addressed via a legislative mechanism. In this regard, the Committee notes that a review of the *Public Sector Management Act 1988* is currently being undertaken, and the issue of secondary contracts will be considered in that review.

Evidence provided to the Committee suggests that the preferred method of removing problems associated with secondary contracts would be to prohibit them, and for relevant legislation to be amended to provide for a single employment contract for Chief Executive Service and Senior Executive Service officers. In addition, the Committee holds the view that the Statutory and Other Offices Remuneration Tribunal should determine all payments (including remuneration and benefits) to Chief Executive Service and Senior Executive Service officers.

Recommendation 5 (page 30)

The Committee recommends that relevant legislation be amended to provide for a single employment contract for Chief Executive Service and Senior Executive Service officers (including Police Service officers).

Recommendation 6 (page 30)

The Committee recommends that relevant legislation be amended to provide for the Statutory and Other Offices Remuneration Tribunal to determine all payments (including remuneration and benefits) to Chief Executive Service and Senior Executive Service officers.

### ***Possible existence of other contracts that include invalid payments***

Dr Gellatly told the Committee that to his knowledge there were no other secondary contracts in existence. Dr Gellatly also told the Committee that clause 22 of the contract of employment of the Commissioner of Police (relating to an end of contract payment) was consistent with the recruitment and retention allowances that were already in existence. Taken together, these statements suggest the possibility that other senior public sector managers may have signed contracts that contain invalid clauses. If provision exists in a clause of a contract of employment of a senior public sector manager for a recruitment and retention allowance, and the allowance is a one off payment that is deemed to be remuneration, then in fact such a clause is invalid.

The Auditor-General advised the Committee that the Audit Office was in the process of looking at Chief Executive Officer contracts and benefits across the board to see if there are any benefits being paid that are not in accordance with either the Tribunal's determination or the contractual arrangements. The Committee is of the view this is a necessary and appropriate way in which to address the Committee's concerns about the possible existence of other contract that include invalid payments. The Committee suggests that Mr Sendt have regard to this report when conducting his inquiries.

## **Participation of an assessor to SOORT in contract negotiations**

### ***Committee findings***

It is apparent to the Committee that the Government has a high regard for the Commissioner and was anxious to come to an agreement with him that would ensure his services were retained.

Dr Gellatly appears to have been instrumental in the negotiating process that led to the signing of a new contract by the Minister and the Commissioner on 8 February 1999. He also acted as an assessor to the Statutory and Other Offices Remuneration Tribunal in the determination of the remuneration package for the Commissioner.

The *Statutory and Other Offices Remuneration Act 1975* does not provide a clear indication of the role of assessors to the Statutory and Other Offices Remuneration Tribunal, providing uncertainty for both the Tribunal and those appointed as assessors.

Dr Gellatly is one of three assessors to the Tribunal. Two other assessors are appointed under the *Statutory and Other Offices Remuneration Act 1975* and could have acted as assessors in this instance. The Tribunal also had scope to inform itself through other means, for example the Committee understands that it is not uncommon for the Tribunal to engage a professional job evaluation company to provide advice about appropriate remuneration packages.

The Committee accepts that it was proper and necessary for Dr Gellatly to represent the Minister and act in his role as Director General of the Premier's Department in contract negotiations. However, it was not necessary for Dr Gellatly to also undertake the role of assessor to the Tribunal.

The Committee heard strong argument from Dr Gellatly and Mr Gleeson that there was no conflict in Dr Gellatly both acting as assessor and participating in contract negotiations. The Committee finds it difficult to reconcile these views with Dr Gellatly's statements that he believed it was crucial to retain the Commissioner to lead the reforms recommended by the Police Royal Commission, and that this was a driving force in pursuing the reappointment of the Commissioner.

Thus, in the Committee's view, Dr Gellatly's conviction that it was essential to retain the services of the Commissioner at least had the potential to impact on his ability to provide impartial advice to the Tribunal about an appropriate quantum of remuneration. Consequently, the Committee finds that it was not appropriate for Dr Gellatly to act as both an assessor to the Statutory and Other Offices Remuneration Tribunal and conduct contract negotiations.

## Recommendation 7

(page 35)

The Committee recommends that the Government introduce legislation to amend the *Statutory and Other Offices Remuneration Act 1975* to include a definition of the role of assessors to the Statutory and Other Offices Remuneration Tribunal.

## Recommendation 8

(page 35)

The Committee recommends that the Statutory and Other Offices Remuneration Tribunal preclude an assessor, as defined under section 7 of the *Statutory and Other Offices Remuneration Act 1975*, from providing advice about remuneration determinations if an assessor is party to contract negotiations relating to that remuneration determination.

### **Amendment to section 24A of the SOOR Act**

Section 24A of the *Statutory and Other Offices Remuneration Act 1975* defines the Commissioner of Police as a chief executive holder for the purposes of Part 3A of the Act (remuneration packages for chief executive and senior executive officers). Section 24A also provides a definition of the term “remuneration package”, which is defined as the annual amount payable under section 42L of the *Public Sector Management Act 1988* as monetary remuneration and the cost of employment benefits.

During the hearing on 17 April 2000, Mr Gleeson highlighted a point made by the Crown Solicitor in his advice to the Auditor-General, that the definition of the term remuneration package contained in section 24A of the *Statutory and Other Offices Remuneration Act 1975* includes a reference to the *Public Sector Management Act 1988* but no reference to the *Police Service Act 1990*.

## Recommendation 9

(page 36)

The Committee recommends that section 24A of the *Statutory and Other Offices Remuneration Act 1975* be amended to include a reference to the *Police Services Act 1990* in the definition of “remuneration package”.

### **Confidentiality of the contract**

One of the factors that influenced the Auditor-General to examine the contract of employment of the Commissioner of Police was that its details were confidential. He expressed a view that secrecy by government is inimical to sound accountability. The Committee concurs with the view of the Auditor-General that secrecy is generally inimical to sound government. While the Committee acknowledges there may be occasions when the public interest is best-served by keeping certain matters confidential,

the Committee can not see how the public interest is best-served by keeping information about the remuneration of public officials confidential.

Annual reports of government department and statutory authorities, including the Police Service, are required to include information about executive positions within these organisations. This information includes the name of, position held by and level of each executive officer of or above level 5 holding office at the end of the reporting year. Thus, there is a legislative requirement that information about the salary range within which the Commissioner of Police's remuneration falls be included in the Annual Report of the Police Service.

It is the Committee's view that the legitimate public interest in the salary determination of the Commissioner of Police warranted release of information about his remuneration at the time of his reappointment, prior to the publication of the Police Service Annual Report. The release of contract information on 24 June 1999, prior to the publication of the Police Service Annual Report, suggests that the government eventually formed a view that release of this information was warranted prior to the publication of the Police Service Annual Report.

Recommendation 10

(page 38)

The Committee recommends that all reports and determinations made under section 24H of the Statutory and Other Officers Remuneration Act 1975 be made public, and that any necessary amendments to the legislation to give effect to this recommendation be made as soon as possible.

## Abbreviations

CEO	Chief Executive Officer
CES	Chief Executive Service
FOI	Freedom of Information
PSM Act	<i>Public Sector Management Act 1988</i>
SOOR Act	<i>Statutory and Other Offices Remuneration Act 1975</i>
SOORT	Statutory and Other Offices Remuneration Tribunal
SES	Senior Executive Service



# Chapter 1 - Introduction

## 1.1 Background to this inquiry

Mr Peter Ryan was first appointed to the position of Commissioner of Police on 30 August 1996, for a period of five years. On 8 February 1999, the Minister for Police and the Commissioner for Police executed an employment contract (the contract), providing for the continued employment of the Commissioner until 8 February 2004. A press release was issued by the Hon Bob Carr MP, Premier, on 14 February 1999 announcing the reappointment.<sup>2</sup> The contract was signed one day before the Statutory and Other Offices Remuneration Tribunal (SOORT) issued its determination of the Commissioner's new remuneration package.

In March 1999 a number of media reports were critical of the fact that details of the contract had been kept secret.<sup>3</sup> These reports speculated about conditions of the contract, including the quantum of the Commissioner's salary. On 10 March 1999, the *Sydney Morning Herald* reported that the NSW Police Service had refused its Freedom of Information application for details of the contract to be disclosed.<sup>4</sup> On the same day the *Daily Telegraph* reported that the Premier had defended the secrecy surrounding the contract, and had stated that the Commissioner had a "right to privacy".<sup>5</sup>

In April 1999, the then Auditor-General, Mr Tony Harris, wrote to the Commissioner stating that he had directed his staff:

... to examine the employment contract and also that he had asked the staff to examine whether there were any special reasons to justify the secrecy provisions.<sup>6</sup>

Volume One of the *New South Wales Auditor-General's Report to Parliament for 1999* was presented to the Speaker of the Legislative Assembly on 19 May 1999. In that report, Mr Harris stated:

In this Volume I had intended to report on issues concerning the Police Commissioner's remuneration, details of which the Government and the Commissioner have agreed not to reveal.

Commissioner Ryan has agreed to seek a variation in his contract with the Minister for Police to allow the Commissioner to include the remuneration figure in the Police Service's annual report. The Commissioner's response is consistent with the Ombudsman's views on disclosure, with the Public Account Committee's 1996 recommendations to Government on related party matters and with practice in other jurisdictions and the private sector. In anticipation of the Minister's agreement, there is no need to canvass the issue further in this Volume.<sup>7</sup>

Arrangements to include information about the Commissioner's remuneration in the Police Service's annual report were pre-empted on 24 June 1999, when the Premier released details of the Police Commissioner's contract. A copy of the contract is provided at Appendix 1.

<sup>2</sup> Premier of New South Wales, 14 February 1999, News Release 'Reappointment of Police Commissioner Peter Ryan'.

<sup>3</sup> *Daily Telegraph*, 9 March 1999, 'Ryan's pay rise veiled in secrecy', p3; *Sydney Morning Herald*, 10 March 1999, 'Hush on Police Commissioner's salary deal earns Audit Office scorn', p7; *Daily Telegraph*, 10 March 1999, 'Premier defends Ryan pay', p2.

<sup>4</sup> *Sydney Morning Herald*, 10 March 1999, 'Hush on Police Commissioner's salary deal earns Audit Office scorn', p7.

<sup>5</sup> *Daily Telegraph*, 10 March 2000, 'Premier defends Ryan pay', p2.

<sup>6</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p49.

<sup>7</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume One, Audit Office of New South Wales, 1999, p1.

The current Auditor-General, Mr Bob Sendt, advised the Committee that:

The Commissioner made the contract available for my staff's review, after a number of requests, in late August 1999. Following on from our review of that document, I then sought the Crown Solicitor's opinion regarding the validity of clauses 6 and 22, namely, the clauses governing damages for early termination and the payment of the end of contract sum. This is standard Audit Office procedure where important questions of law arise.<sup>8</sup>

Volume Two of the *New South Wales Auditor-General's Report to Parliament 1999*, tabled in the Legislative Assembly on 10 November 1999, mentioned briefly that the Auditor-General had sought advice from the Crown Solicitor on the employment contract entered into by the Government with the Commissioner of Police. In this report, the Auditor-General stated:

The Audit Office has recently been given access to the Commissioner's current (and previous) contracts of employment with the Minister. More recently, the current contract was also released publicly following a media FOI request.

The current contract includes some terms and conditions (including the payment of an end of contract sum and damages claims in the event of early termination of the Commissioner's contract) that are not standard in contracts in the public sector.

In order to ensure that terms and conditions of this type are within the power of the Government to enter into, this Office has sought an opinion from the Crown Solicitor. At the time of writing, an advice had not been received.<sup>9</sup>

The Crown Solicitor's advice was received by the Auditor-General on 11 November 1999. Given the degree of interest associated with the issue, the Auditor-General chose to present an addendum to Volume Two of his report to the Clerk of the Legislative Assembly on 15 November 1999.<sup>10</sup> The addendum dealt with the employment contract of the Commissioner of Police, and another unrelated matter.

The Auditor-General had sought advice from the Crown Solicitor about the validity of two clauses of the Police Commissioner's contract, clause 6 (relating to damages for early termination) and clause 22 (end of contract payment). The Crown Solicitor, in his advice to the Auditor-General, concluded that while clause 6 is a valid and enforceable contract provision, clause 22 was invalid and unenforceable.<sup>11</sup> The Crown Solicitor further advised that the Minister and Commissioner could enter into a separate contract, to the effect of Clause 22, that would be valid.<sup>12</sup>

In his report to the Parliament, the Auditor-General concluded:

The terms and conditions contained within the contract of the Commissioner of Police have not been a feature of contracts elsewhere in the New South Wales public sector.

Those provisions presumably intended to put into effect the agreed result of negotiations between the Government and the Commissioner. It was the Government's responsibility to ensure that its negotiated

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<sup>8</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p49.

<sup>9</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two, Audit Office of New South Wales, 1999, p243.

<sup>10</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, p1.

<sup>11</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, p5.

<sup>12</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, p5.

position did not breach legislation. It was also its responsibility to draw up the contract to conform with the legislation.

This did not happen. Clause 22 of the contract, dealing with the end of contract payment, is invalid.

The Crown Solicitor's advice, both as to the validity of Clause 6 type arrangements and as to the ability to overcome the Clause 22 invalidity through a separate contract, creates issues that need to be addressed.

If the SOORT process is intended to govern all (or at least all significant) payments to senior public sector managers, then there is a shortcoming in the Public Sector Management Act and kindred legislation. It would seem that Ministers (in respect of Chief Executive Officers) and Chief Executive Officers (in respect of Senior Executive Officers) now have greater scope than was intended in providing financial rewards to their employees.

The Government should give urgent consideration to this matter.<sup>13</sup>

When giving evidence to the Committee in relation to the inquiry on 17 April 2000, the Auditor-General explained why the contract of employment of the Commissioner of Police had attracted the attention of the Audit Office:

I should make it perfectly clear that it was not the level of the Police Commissioner's remuneration, nor was it the type or quantum of benefits making up his total package. Neither of these, per se, is of interest to the office.

There are three aspects of this issue that did concern us. First was the secrecy aspect. As a general principle, Auditors-General generally believe that secrecy by government is inimical to sound accountability. It erodes Parliament's capacity to make informed judgements as to the actions of the Government of the day. It can also limit the capacity of auditors to form opinions as to the veracity of agencies' financial statements if part of the transactions contributing to those statements is not available.

Second was the aspect of the legality of certain clauses of the contract. This particularly interested us as we were not aware of any other contracts for CEOs or SES officers that contained clauses such as clause 6 and clause 22 of the Commissioner's contract.

Third was our concern at the possibly more widespread availability of clauses similar to this in employment contracts in the public sector. We needed to review what this contract covered and what the Statutory and Other Offices Remuneration Act and the Public Sector Management Act or other relevant employing legislation allowed in order to understand what may be occurring elsewhere.

This aspect became even more of a concern to us with the advice of the Crown Solicitor indicating the potential for separate secondary contracts to be entered into. I note the capacity for Ministers and CEOs to enter such secondary contracts has now been limited by the Premier in his memorandum 2000-5 of 31 March 2000.<sup>14</sup>

## 1.2 Conduct of the inquiry

On 11 November 1999, in accordance with paragraph 4 of the resolution of the House of 13 May 1999 establishing the General Purpose Standing Committees, three Members of General Purpose Standing Committee No 3 wrote to the Director of the Committee requesting that a meeting be convened to consider the following proposed terms of reference:

<sup>13</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, pp5-6.

<sup>14</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, pp48-49.

That General Purpose Standing Committee No. 3 inquire into and report on:

- (a) the circumstances surrounding the contract of employment between the Commissioner of Police and the Minister for Police, signed on 8 February 2000;
- (b) the circumstances in which the Statutory and Other Offices Remuneration Tribunal came to make a determination on the salary of the Commissioner of Police one day after the salary had been agreed to in the contract.

The Committee met to consider the proposed terms of reference on 18 November 1999. At that meeting the Committee adopted the terms of reference, and resolved to invite written submissions from the Hon Paul Whelan MP, Minister for Police, Mr Peter Ryan, Commissioner of Police, Mr Les Tree, Director-General of the Ministry for Police, and Mr Gerry Gleeson, who holds office as the Statutory and Other Offices Remuneration Tribunal (SOORT).<sup>15</sup> The Committee requested that submissions be provided by 6 December 1999.

Submissions were received from all persons invited to make them on 6 December 1999, along with a submission from Dr Col Gellatly, Director-General of the Premier's Department. A list of submissions received is provided at Appendix 3.

On 8 December 1999 the Committee met to consider the submissions received. At that meeting the Committee resolved to write to Dr Gellatly requesting further information. In addition, the Committee resolved to forward copies of all five submissions received to Mr Sendt, the Auditor-General, for comment.<sup>16</sup> Dr Gellatly and Mr Sendt were asked to respond to the Committee by 31 January 2000.

The Auditor-General wrote to the Committee on 13 January 2000, highlighting two matters that might be further pursued by the Committee. These related to secondary contracts and the role of SOORT.

The Committee acceded to a request made on behalf of Dr Gellatly seeking an extension of time to respond to the Committee's request for further information, due to conflicting work demands. Dr Gellatly's response to specific information requested by the Committee was received on 18 February 2000. Additional briefing material was forwarded to the Committee on 8 February 2000 by Mr Alex Smith, Director of the Office of the Director General of the Premier's Department.

The Committee held a meeting on 15 March 2000. The Committee understood that the Minister and the Commissioner had executed an additional contract and resolved to request the Minister to provide the Committee with a copy of that contract. In addition, as a result of the additional information provided by Dr Gellatly and Mr Sendt, the Committee resolved to request further information from Mr Gleeson and Dr Gellatly.<sup>17</sup>

The Committee also resolved to hold a public hearing on 17 April 2000, at which Mr Sendt, Dr Gellatly, Mr Tree, Mr Gleeson, and Mr Ian Knight, the Crown Solicitor, were requested to appear as witnesses to answer questions relating to the terms of reference.<sup>18</sup>

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<sup>15</sup> Minutes of meeting no 8, reproduced in full at end of report.

<sup>16</sup> Minutes of meeting no 9, reproduced in full at end of report.

<sup>17</sup> Minutes of meeting no 10, reproduced in full at end of report.

<sup>18</sup> Minutes of meeting no 10, reproduced in full at end of report.

On 30 and 31 March 2000 respectively, Mr Gleeson and Dr Gellatly responded to the Committee's requests of 15 March for additional information. The Minister for Police provided the Committee with secondary contract documents by letter dated 3 April 2000.

The Committee held a public hearing at Parliament House, Sydney, on 17 April 2000. Mr Knight, Mr Tree, Mr Gleeson, Mr Sendt (and two senior officers from the Audit Office) and Dr Gellatly all appeared as witnesses before the Committee at the hearing (see Appendix 4). At the conclusion of the hearing the Committee resolved to meet on 18 May 2000 to deliberate on the Chair's draft report on the inquiry.

Additional deliberative meetings to finalise the draft report were held on 25 May 2000.

## **1.3 Relevant legislation**

### **1.3.1 Police Service Act 1990**

The *Police Service Act 1990* establishes the Police Service of New South Wales, and provides for the management of the Police Service and for the employment of its members.

Section 27(1) of the *Police Service Act 1990* states that the employment of the Commissioner is to be governed by a contract of employment between the Commissioner and the Minister. Section 27(2) states that sections 41 to 47, 59 and 61 apply to the Commissioner in the same way as they apply to Executive Officers. Of these sections, sections 41, 42 and 46 are of particular relevance to the current inquiry, as are sections 30, 32 and 53.

#### *Section 30*

Section 30 relates to the vacation of office by the Commissioner. Sub-section 30(1) sets out the circumstances under which the office of Commissioner becomes vacant. Sub-section 30(2) provides that the retirement or resignation of a Commissioner does not take effect until:

- (a) the Minister accepts the retirement or resignation, or
- (b) the Commissioner has given the Minister at least 4 weeks' notice in writing of the day on which the Commissioner intends to retire or resign and the Commissioner is not on that day under official investigation for misbehaviour.

Sub-section 30(3) states that the Commissioner is under official investigation for misbehaviour if the Minister so certifies.

#### *Section 32*

Section 32 includes definitions of a number of terms used in Part 5 of the *Police Service Act 1990*. "Remuneration package" is defined as meaning "the remuneration package for an executive officer determined for the time being under the Statutory and Other Offices Remuneration Act 1975."

#### *Section 41*

Section 41 provides that the employment of an executive officer (or the Commissioner) shall be governed by a contract of employment between the officer and the Commissioner (or the Minister and

the Commissioner). Such a contract may be made before or after the appointment of the officer concerned, but an officer is not appointed by, nor is an officer's term of office fixed by, the contract of employment. Sub-section 41(4) states that a contract of employment may be varied at any time by a further contract between the parties.

*Section 42*

Section 42 deals with matters to be regulated by a contract of employment. Sub-section 42(1) sets out matters to be dealt with in a contract of employment between an executive officer and the Commissioner (and between the Minister and the Commissioner). These include:

- the duties of the officer's position (including performance criteria for the purpose of reviews of the officer's performance);
- the monetary remuneration and employment benefits for the officer as referred to in sections 45, 46 and 47 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package); and
- any election by the officer to retain a right of return to the public sector under section 52.

Sub-section 42(2) provides that a contract of employment may provide for any matter to be determined by further agreement between the parties, or by further agreement between the executive officer (or Commissioner of Police) and some other person specified in the contract, or by the Commissioner (or Minister) or other person or body specified in the contract.

*Section 46*

Section 46 deals with monetary remuneration and employment benefits for executive officers (and the Commissioner). Sub-section 46(1) provides that these officers are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contracts of employment. Sub-section 46(2) states that the amount of the remuneration package for an officer equals the total amount of the annual rate of monetary remuneration for that officer, and the annual cost of employment benefits provided for the officer under the contract of employment.

Sub-section 46(4) specifically states that section 46 does not affect any approved performance-related incentive payments made to an executive officer (or the Commissioner), or any remuneration or benefits to which an executive officer (or the Commissioner) is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like).

*Section 53*

Section 53 relates to compensation where an executive officer (including the Commissioner) has no right to return to the public sector, with sub-section 53(2) providing for the Statutory and Other Offices Remuneration Tribunal to determine compensation entitlements. Sub-section 53(3) provides that the Statutory and Other Offices Remuneration Tribunal may determine that compensation is payable for the failure to re-appoint an executive officer (or the Commissioner) only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed. Sub-section 53(3) states further that the Tribunal must have regard to any general directions given to the Tribunal by the Minister administering the *Statutory and Other Offices Remuneration Act 1975* as to the matters to be taken

into consideration when it makes determinations under this section. Sub-section 53(4) specifies that the maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks, with sub-section 53 (5) providing that the person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).

Sections 41, 42, 46 and 53 of the *Police Service Act 1990* are set out in their entirety at Appendix 5.

### **1.3.2 Public Sector Management Act 1988**

A number of references are made in this report to section 42 of the *Public Sector Management Act 1998* (PSM Act). Section 42S of the PSM Act relates to compensation where an executive officer has no right to return to the public sector. Its provisions generally mirror those of section 53 of the *Police Service Act 1990*, which are detailed in the previous section.

Section 42S of the PSM Act is set out in its entirety at Appendix 6.

### **1.3.3 Statutory and Other Offices Remuneration Act 1975**

The *Statutory and Other Offices Remuneration Act 1975* (SOOR Act) provides for the establishment of a Statutory and Other Offices Remuneration Tribunal (SOORT), whose role and powers are set out in the SOOR Act. These relate primarily to the determination of remuneration packages for statutory officers (including, amongst many others, members of the judiciary, the Auditor-General, the Ombudsman, the Director of Public Prosecutions, the Valuer General and the Public Trustee), chief executive officers and senior executive officers.

Section 7 of the SOOR Act relates to the role of assessors for the Tribunal. Sub-section 7(1) provides for three assessors; the Secretary of the Department of Industrial Relations and Employment, Mr Warwick McDonald,<sup>19</sup> the Director General of the Premier's Department, Dr Col Gellatly, and another person with relevant special knowledge not in the service of the State, Ms Ann Sherry, Head of Group Human Resources, Westpac Banking Corporation. Sub-section 7(2) states that the Tribunal shall be assisted by the assessors and take into consideration their views and recommendations.

Section 24A of the SOOR Act defines the Commissioner of Police as a chief executive holder for the purposes of Part 3A of the Act (remuneration packages for chief executive and senior executive officers). Section 24A also provides a definition of the term "remuneration package", which is defined as the annual amount payable under section 42L of the PSM Act as monetary remuneration and the cost of employment benefits. Section 42L of the PSM Act is of no relevance to the Commissioner of Police, as he is not employed under provisions of that Act. The lack of reference to the *Police Service Act 1990* in the definition of "remuneration package" contained in section 24A of the SOOR Act is considered further in section 4.3 of this report.

Section 24C of the SOOR Act requires the Tribunal to make an annual determination of the remuneration packages for executive office holders. Section 24D allows the Minister to direct the

<sup>19</sup> Mr McDonald is in fact the Director General of the Department of Industrial Relations. There is no longer a Department of Industrial Relations and Employment.

Tribunal to make a special determination outside of the regular annual determination process, as to whether, and how, any determination already made should be altered. Under sub-section 24E(2), when the tribunal is making a determination, the Tribunal must take into consideration any such matters the Minister deems should be taken into consideration, as well as such other matters as the Tribunal thinks fit. Section 24F provides that when making a determination the Tribunal may fix, as a remuneration package, a specified amount of any amount that is within a specified range of amounts.

Under section 24G of the SOOR Act, the Tribunal may make such inquiry as the Tribunal thinks necessary before making a determination. Under sub-section 24G(3) the Tribunal may inform himself or herself as he or she thinks fit, may receive written or oral submissions, must take into consideration submissions received, is not required to conduct any proceedings in a formal manner, and is not bound by the rules of evidence. Sub-section 24G(4) provides that the Tribunal may invite submissions from executive office holders, Ministers of the Crown, members and officers of statutory bodies and Departments of the Government and any other person.

Sub-section 24J(1)(c) provides that determinations made under section 24D (special determinations) come into force, or are taken to have come into force, on the day specified in the determination as the day on which the determination is, or is to be taken, to come into force. Sub-section 24J(4) states that determinations may not be challenged, reviewed, quashed or called into question before any court in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

Section 7 and Part 3A (comprising sections 24A to 24L) of the SOOR Act are set out in their entirety at Appendix 7.

leave.<sup>22</sup>

Gellatly on 18 January 1999, following his return from

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<sup>20</sup> Submission No 2, Mr Peter Ryan, Commissioner of Police, dated 6 December 1999.

<sup>21</sup> Correspondence from Dr Col Gellatly, Director General, Premier's Department, dated 18 February 2000, Annexure A (correspondence from P J Ryan, Commissioner, to Mr Paul Whelan LLB MP, dated 23 December 1998).

<sup>22</sup> Submission No 3, Mr Les Tree, Director General, Ministry of Police, dated 6 December 1999.

The Committee notes that neither the Minister, nor the Director General of the Ministry for Police, were involved in contract negotiations.<sup>23</sup>

In his submission to the Committee, Dr Gellatly confirmed that he was asked by Mr Tree to conduct the contract negotiations.<sup>24</sup> Dr Gellatly further stated:

I indicated to Mr Tree that I would involve Mr G Gleeson, the Statutory and Other Offices Remuneration Tribunal (SOORT) in the negotiations with the Commissioner. This was necessary as while I could negotiate with Commissioner Ryan SOORT had to make any decision on the remuneration applicable to the position of Commissioner of Police. ...

Accordingly, while SOORT would have to make a formal determination under the Act it was logical that both the Tribunal and myself be involved in the negotiations.<sup>25</sup>

Dr Gellatly advised the Committee that it was agreed between himself and SOORT that the Tribunal would have preliminary discussions with Commissioner Ryan and his advisers on a new contract, with these discussions occurring in late January 1999.<sup>26</sup>

Mr Gleeson confirmed he undertook these discussions, first with the Commissioner, and subsequently with the Commissioner's representative, Mr Lyn Anderson (who had been involved in originally recruiting Mr Ryan).<sup>27</sup> Mr Gleeson stated in his submission to the Committee:

... it was essential that the Tribunal and the Director General of the Premier's Department worked jointly on the contract in order to ensure that each party was aware of what the other was concluding.<sup>28</sup>

Dr Gellatly was also of the view that it was essential for the Tribunal to be involved in contract negotiations, telling the Committee that this followed normal practice:

... there are always negotiations with statutory officers and the tribunal about the remuneration. They may make a case that they feel it needs to be increased by so much and their relativities and so on. So in that context there are always discussions between the tribunal and the statutory officers about where the tribunal is making decisions, so in that case, it always happens.

... With the special determination, I guess that, to me, it is not unusual, and given there was a contract to be negotiated, that the tribunal would be involved in the negotiations, and it is really the same context of being involved with the other statutory officers.<sup>29</sup>

Mr Gleeson and Dr Gellatly provided the Committee with a copy of a letter from Mr Gleeson to Dr Gellatly, dated 29 January 1999, detailing key features of the draft contract.<sup>30</sup> Mr Gleeson states in that letter that he had had several conversations with Mr Anderson, and would be seeing him again on 1 February 1999.

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<sup>23</sup> Submission No 1, Hon Paul Whelan MP, Minister for Police, and Submission No 3, Mr Les Tree, Director General, Ministry for Police, both dated 6 December 1999.

<sup>24</sup> Submission No 5, Dr Col Gellatly, Director General, Premier's Department, dated 6 December 1999.

<sup>25</sup> Submission No 5, Dr Col Gellatly, Director General, Premier's Department, dated 6 December 1999.

<sup>26</sup> Submission No 5, Dr Col Gellatly, Director General, Premier's Department, dated 6 December 1999.

<sup>27</sup> Submission No 4, Mr Gerry Gleeson, SOORT, dated 6 December 1999.

<sup>28</sup> Submission No 4, Mr Gerry Gleeson, SOORT, dated 6 December 1999.

<sup>29</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p69.

<sup>30</sup> Correspondence from Dr Col Gellatly, Director General, Premier's Department, dated 18 February 2000, Annexure B (correspondence from Gerald Gleeson to Dr C Gellatly, dated 29 January 1999); correspondence from Mr Gerry Gleeson, SOORT, dated 30 March 2000, Attachment 3 (correspondence from Gerald Gleeson to Dr C Gellatly, dated 29 January 1999).

In giving his evidence to the Committee, Mr Gleeson addressed the nature of his discussions with the Commissioner and the Commissioner's representative, Mr Anderson. Mr Gleeson made the point that these discussions formed part of his inquiry process, rather than being part of a negotiation process:

... this tribunal is empowered to make inquiries as it sees fit. Now, I have heard that the word "negotiation" has been thrown around by somebody. I do not know where I got it but I heard it, and I reject that negotiation concept, that I negotiated anything. Now, I know that "negotiation", according to the dictionary, means that you meet to arrive at a decision.

In no way did I negotiate with the Commissioner or his representative to reach a decision. I negotiated to do what I felt was for the best in the circumstances. As a matter of fact, I would be regarded as a pretty poor negotiator if you look at the result because I did not actually accede to anything he requested, except for the spouse travel.

But I want to point this out, that the inquiries that I make are wide, and the word is "inquiry". I know negotiation has crept in but really it is discussion or inquiry. You can see even in section 4 that the tribunal may invite submissions from whoever and even the Ministers and others.<sup>31</sup>

Dr Gellatly, when asked the question "You worked with him [Mr Gleeson] and you are negotiating together?" replied "Yes".<sup>32</sup> In his submission to the Committee, Dr Gellatly repeatedly referred to Mr Gleeson's involvement in the negotiations and wrote:

... it was logical that both the tribunal and myself be involved in the negotiations.<sup>33</sup>

The Committee also notes that in a letter dated 29 January 1999 to Dr Gellatly, Mr Gleeson wrote:

We can not have Ryan pushing us to the brink and then putting pressure on the Minister.<sup>34</sup>

When asked about this, and in particular the use of the word "we", Dr Gellatly told the Committee:

'We' I would regard as Mr Gleeson and myself because we were working together in negotiating the contract and setting the remuneration.<sup>35</sup>

Mr Gleeson's reply when asked about this letter was:

Mr Lyn Anderson, on behalf of the Commissioner, saw it as a responsibility to try to convince me that he deserved to be treated a lot better in terms of remuneration and benefits and so on, and so there was some pretty hard toing and froing in these discussions, and, remember, the contract finally is signed by the Minister and all he does is that he includes my bit but the rest of it is up to him.<sup>36</sup>

The Committee was advised that final discussions about the remuneration package and overall contract were held on 4 February, with Dr Gellatly, Mr Gleeson and Commissioner Ryan present at that meeting. In his submission to the Committee, the Commissioner stated:

On 4 February 1999 I met with Dr Gellatly, and Mr Gerry Gleeson to discuss remuneration. The Statutory and Other Offices Remuneration Tribunal resolved the level of remuneration and I was notified verbally of the determination.<sup>37</sup>

<sup>31</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p40.

<sup>32</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p77.

<sup>33</sup> Submission No 5, Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, dated 6 December 1999.

<sup>34</sup> Correspondence from Dr Col Gellatly, Director General, Premier's Department, dated 18 February 2000, Annexure B (correspondence from Gerald Gleeson to Dr C Gellatly, dated 29 January 1999).

<sup>35</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p77.

<sup>36</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p43.

<sup>37</sup> Submission No 2, Mr Peter Ryan, Commissioner of Police, dated 6 December 1999.

In response to questioning by the Committee about why terms of the contract were determined relatively quickly, Dr Gellatly expressed a view that:

In these sorts of matters it is important that they are swiftly considered so that the uncertainty that is involved in them does not cause any issues. ...

... my view is always that once you start negotiations you want to wrap them up quickly so they do not drag on and you do not have that uncertainty appearing.<sup>38</sup>

### **2.3 Preparation of contract**

Mr Tree advised the Committee that Dr Gellatly provided him with a draft contract on 4 February 1999, on the same day Dr Gellatly had verbally advised him that the matter had been resolved and the amount had been settled.<sup>39</sup> Mr Tree then prepared the final contract on 5 February 1999, which did not differ from the draft provided by Dr Gellatly.<sup>40</sup>

In response to questioning by the Committee about who prepared the draft contract, Dr Gellatly told the Committee that officers of the Premier's Department and the Director of the SOORT had drafted the contract.<sup>41</sup> He further stated that no separate legal advice was sought in the drafting of the contract.<sup>42</sup>

Mr Tree was questioned by the Committee about whether he sought legal advice about the contents of the contract.<sup>43</sup> Mr Tree's response suggest he sought no such advice:

... I had been given a copy of the contract by Dr Gellatly. I do not have a formal relationship with the Police Service solicitor. It would not have been appropriate to have got their advice.<sup>44</sup>

The validity of the contract is discussed in detail in chapter three of this report.

### **2.4 Direction from Premier for SOORT determination**

Dr Gellatly provided the Committee with a copy of the formal direction from the Hon Bob Carr MP, Premier, to Mr Gleeson, dated 8 February 1999.<sup>45</sup> In that direction, the Premier stated:

In making your determination you should have regard to the inclusion of an end of contract sum payable to the Commissioner on completion of the contract and that the Commissioner's spouse accompanies him when he is travelling on official duty in New South Wales and outside New South Wales, including overseas, with the Minister's approval.<sup>46</sup>

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<sup>38</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p66.

<sup>39</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p17.

<sup>40</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p17 and p20.

<sup>41</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p71.

<sup>42</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p72.

<sup>43</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, pp17-18.

<sup>44</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p18.

<sup>45</sup> Submission No 5, Dr Col Gellatly, Director General, Premier's Department, dated 6 December 1999, Annexure B (correspondence from Bob Carr, Premier, to Mr Gerry Gleeson, dated 8 February 1999).

<sup>46</sup> Submission No 5, Dr Col Gellatly, Director General, Premier's Department, dated 6 December 1999, Annexure B (correspondence from Bob Carr, Premier, to Mr Gerry Gleeson, dated 8 February 1999).

The Committee questioned Dr Gellatly about why the determination was requested at such a late stage. In response, Dr Gellatly told the Committee:

... that is normally the way SOORT operates. There is informal discussions, negotiations in these sorts of matters and when you are at the conclusion of the matter, the actual letter requesting it and the final determination is formally sent back, so it was not an unusual circumstance.<sup>47</sup>

Mr Gleeson was also asked by the Committee about the timing of the request from the Premier. Mr Gleeson indicated it was usual practice for an informal approach to be made to him prior to a formal request for a determination.<sup>48</sup> However, Mr Gleeson also commented that:

It would have been beneficial, frankly, if I had had it [the formal request] a week earlier, but I did not have it, but it did not impact on anything I was doing.

When I asked the officers they said, "We have still got to get it." So they got it, I think, on the Monday. I signed it on the Tuesday.<sup>49</sup>

## 2.5 Signing of contract

Mr Tree advised the Committee that the contract was submitted to the Minister and the Commissioner for signing on 8 February 1999:

It was submitted on Monday, the 8th, the next working day, which is the day that the Minister and the Commissioner had a scheduled meeting, and it was signed on that day. It was submitted to the Minister - he is a party - and a copy was given to the Commissioner, of course, because he is the other party to the contract.<sup>50</sup>

In his submission to the Committee, the Minister stated:

... I signed the new contract with the Commissioner at a scheduled meeting on 8 February 1999, based on advice from the Director General of the Ministry, that the details of the contract and the level of remuneration had been settled and agreed upon by the Statutory and Other Offices Remuneration Tribunal.<sup>51</sup>

The Commissioner provided identical advice to the Committee, stating that the contract was signed at a regular fortnightly meeting that day:

The contract was subsequently provided to me and signed by the Minister and myself at one of our fortnightly meetings on 8 February 1999.<sup>52</sup>

## 2.6 Issuing of SOORT determination

The SOORT report and determination on the remuneration for the Commissioner for Police was signed by Mr Gleeson on 9 February 1999. A copy of the report and determination is provided at Appendix 8.

<sup>47</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p65.

<sup>48</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p36.

<sup>49</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, pp36-37.

<sup>50</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p17.

<sup>51</sup> Submission No 1, Hon Paul Whelan MP, Minister for Police, dated 6 December 1999.

<sup>52</sup> Submission No 2, Mr Peter Ryan, Commissioner of Police, dated 6 December 1999.

The report stated that that the remuneration determined by the Tribunal is applicable only while Mr Peter Ryan holds the office of Commissioner of Police. The report also noted that the Commissioner has a performance agreement with the Minister for Police, with key elements of that agreement relating to the reform process taking place within the Police Service, the security of athletes and spectators in the conduct of the 2000 Olympics and the development of a succession plan. Further, the report stated that the Tribunal had regard to the payment of an end of contract sum on the completion of the contract, and to spouse travel.

The Tribunal determined that the remuneration of the Commissioner for Police, Mr Peter Ryan, shall be \$425,000pa effective from the date of commencement of his new contract.

## **2.7 Evidence relating to whether SOORT needed to issue its determination before the contract was signed**

Dr Gellatly, in his submission to the Committee, stated that he advised Mr Tree of the need for SOORT to make its determination:

I indicated that the formal processes for a direction under section 24D of the Act would need to occur, however, as the inclusions had been agreed with the process was essentially a formal one to complete the statutory requirements of the Act.<sup>53</sup>

The Committee questioned Mr Tree about whether there was a need for SOORT to have issued its determination before the contract was signed. Mr Tree drew the Committee's attention to sub-sections 41(2) and 41(4) of the *Police Service Act 1990*, that respectively provide that a contract can be made before or after an appointment, and that a contract may be varied at any time.<sup>54</sup> Mr Tree expressed the view that the variation of a contract is not linked to a SOORT determination.<sup>55</sup>

In response to a question from the Committee as to whether Mr Tree had advised the Minister and the Commissioner to sign the contract, Mr Tree stated:

... I said that it was appropriate to sign it because the contract can be varied at any time and it says also that a contract of employment may be made before or after the appointment.<sup>56</sup>

The Committee also questioned Mr Gleeson about whether there was a need for SOORT to have issued its determination before the contract was signed. Mr Gleeson stated that:

... there is no unlawfulness so far as I am concerned because I made the decision, conveyed it orally, which I do, signed the letter as soon as I got it, or the day after, so there is nothing unlawful in what I have done.

My expectation, you are asking me - and I do not think I should answer the other question about there being something unlawful - would have been that nobody would sign a contract until they had the formal approval. That is a normal expectation of anybody who has been around the public service. You do not run around signing things. But I would not like to comment on whether that was lawful or unlawful. That is not for me.<sup>57</sup>

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<sup>53</sup> Submission No 3, Dr Col Gellatly, Director General, Premier's Department, dated 6 December 1999.

<sup>54</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p16 and p17.

<sup>55</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p16.

<sup>56</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p27.

<sup>57</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p37.

Dr Gellatly acknowledged to the Committee that, in hindsight, the SOORT determination should have been issued prior to the contract being signed.<sup>58</sup> However, Dr Gellatly also stated:

... the reality of the situation was that it made no difference because that clause in the contract did not have any effect until the determination was made. The legislation says that you can vary a contract before and after an appointment. So there were a number of steps that had to be gone through before that clause and the whole contract had effect.

... the remuneration clause had no effect until the tribunal had made its determination.<sup>59</sup>

## 2.8 Committee findings

The Committee has established that:

- the renegotiation of the contract of the Commissioner of Police and the extension of the term of his appointment was precipitated by the Commissioner's correspondence to the Minister of Police dated 23 December 1998. There is no evidence of any person or party prompting or inviting the Commissioner to make the request. Accordingly, it is clear the renegotiation of the contract was done at the bequest of the Commissioner and not the Government.
- both Dr Gellatly and Mr Gleeson were involved in the negotiations.
- Mr Gleeson advised Dr Gellatly of how he saw the remuneration fit into the contract on 29 January 1999. The Tribunal's decision was finalised on 5 February 1999 and conveyed to Dr Gellatly who then finalised the contractual provisions for the draft contract. The Tribunal determination however could not be signed until a formal request came from the Premier.
- the Premier wrote to the Statutory and Other Offices Remuneration Tribunal on 8 February 1999 seeking a special determination of the remuneration package of the Commissioner of Police;
- the Minister for Police and Commissioner of Police executed a contract of employment on 8 February 1999, stating the remuneration package to be paid to the Commissioner; and
- the Statutory and Other Offices Remuneration Tribunal issued its formal determination of the remuneration package on 9 February 1999.

The Committee finds that Mr Gleeson should not have played any role in the negotiations. The Committee believes that as the Statutory and Other Offices Remuneration Tribunal, Mr Gleeson's role was to receive submissions and hear argument from both the Commissioner and/or his representatives as employee and from the Minister, Government and/or their representatives, and to inform himself as he thought fit, and then make a determination.

<sup>58</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p72.

<sup>59</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p72.

Recommendation 1

The Committee recommends that the Statutory and Other Offices Remuneration Tribunal play no role in negotiations between the Government and its employees but act rather as an adjudicator on both information gleaned as a result of its own inquiries and submissions placed before it by interested parties.

The Committee has further established that as Director General of the Ministry for Police, Mr Tree advised the Minister and Commissioner to sign the contract on 8 February 2000. Mr Tree was aware of the need for a formal determination, but holds the view that the variation of the contract was not linked to the determination.

The Committee concurs with the statement made by Mr Gleeson, that it would have been beneficial for the Tribunal to have received a request for a special determination from the Premier early than 8 February 1999. The Committee also concurs with Mr Gleeson's sentiment that a normal expectation would have been that the determination of the remuneration of the Commissioner of Police should have been issued before the contract of employment of the Commissioner of Police was signed.

The Committee is cognisant of the fact there may not have been a legal requirement for the determination to have been issued before the contract was signed. Nevertheless, the Committee is strongly of the view that the Minister and the Commissioner should not have signed the contract until a formal determination had been issued by the Tribunal, and that Mr Tree should have ensured the determination had been made before advising the Minister and the Commissioner to sign.

While the Committee acknowledges that legislative requirements relating to a special determination of the remuneration of the Commissioner of Police were met, the Committee holds the view that where the Statutory and Other Offices Remuneration Tribunal has responsibility for determining the remuneration of a public sector officer, the relevant government representative should ensure a formal determination has been issued by the Tribunal before executing a contract that includes reference to that remuneration.

Recommendation 2

The Committee recommends that where the Statutory and Other Offices Remuneration Tribunal has responsibility for determining the remuneration of a public sector officer, the relevant government representative ensure a formal determination has been issued by the Tribunal before executing a contract that includes reference to that remuneration.

## Chapter 3

# Validity of the contract and subsequent contract variations

### 3.1 Overview of the contract

The contract executed by the Minister and the Commissioner on 8 February 1999 comprises 33 clauses, grouped under eight headings: interpretation (clause 1); appointment (clauses 2 to 5); damages (clause 6); duties (clauses 7 to 9); performance review (clauses 10 to 14); remuneration (clauses 15 to 24); general provisions (clauses 25 to 32); and confidentiality (clause 33). There are three schedules to the contract: a performance agreement (schedule A); a list of benefit options (schedule B) and the amount of the remuneration package (schedule C). A copy of the contract is provided at Appendix 1.

Of particular interest to the current inquiry are clauses 6 and 22. Given the contents of the Deed of Variation and Release, executed by the Minister and the Commissioner on 14 March 2000 (discussed in detail in section 3.3, below), clauses 3, 5 and 7 are also of interest.

#### 3.1.1 Clause 6 (Damages)

The Auditor-General, in his report to Parliament, provided a description of the effect of clause 6:

Clause 6 –Damages for Early termination

This clause requires the Minister for Police to give one year's notice in the event of terminating the

It provides that, if a shorter period of notice is given, damages equivalent to 15 months remuneration are payable. This amount is agreed by the Minister and the Commissioner in the contract as being '... a reasonable estimate of the damages that would be suffered by the Commissioner in these circumstances ...'

The clause also provides that if the required one year's notice is given, the Minister and the Commissioner may nevertheless agree on a shorter period. To the extent that the shorter period is less than the one year, the Commissioner is entitled to the 15 months damages reduced pro rata to that extent. ...<sup>60</sup>

#### 3.1.2 Clause 22 (End of contract payment)

Clause 22 provides that:

The Commissioner will be paid an end of contract sum which will equate to 12 months to be paid in the most tax efficient manner subject to completing the period of this contract.

<sup>60</sup> *New South Wales Auditor-General's Report to Parliament for 1999, Volume Two –Addendum, Audit Office of New South Wales, 1999, p3.*

### **3.1.3 Clauses 3, 5 and 7**

Clause 3 relates to the period of the appointment to the position. Clause 5 relates to the period of time for which the contract applies. Clause 7 relates to the duties of the Commissioner for the period covered by the contract.

## **3.2 Areas of concern highlighted by the Auditor-General**

Section 1.1 of this report details the action taken by the Auditor-General to determine whether clauses 6 and 22 of the contract were valid.

The Auditor-General sought advice from the Crown Solicitor about the validity of two clauses of the Police Commissioner's contract, clause 6 (relating to damages for early termination) and clause 22 (end of contract payment). The Crown Solicitor, in his advice to the Auditor-General, concluded that while clause 6 is a valid and enforceable contract provision, clause 22 was invalid and unenforceable.<sup>61</sup> The Crown Solicitor further advised that the Minister and Commissioner could enter into a separate contract, to the effect of clause 22, that would be valid.<sup>62</sup>

### **3.2.1 Clause 6 (Damages)**

Reference is made in clause 6 to section 42(2) (sic) of the PSM Act. The Committee notes that the Crown Solicitor, in his advice to the Auditor-General, indicated a belief that this should have been a reference to section 53 of the *Police Service Act 1990*. The Committee notes further that an amendment to clause 6, made in the Deed of Variation and Release, executed by the Minister and the Commissioner on 14 March 2000 (discussed in detail in section 3.3.1, below), supports this view.

The Crown Solicitor provided advice to the Auditor-General about the validity of clause 6. The Crown-Solicitor considered in some detail the impact of section 46 of the *Police Service Act 1990* on clause 6 of the contract. His advice to the Auditor-General states:

I have concluded ... that there is a strong argument that s. 46(1) is intended to be exhaustive as to the entitlement of an officer to remuneration and benefits but that s. 46(4) preserves an entitlement to the payments, remuneration and benefits referred to therein which may be additional to the remuneration package.

Having reached this conclusion, I do not consider, however, that the payments provided for in cl. 6 of the contract constitute remuneration or benefits, with the consequence they may be contained in the contract of employment and be in addition to the remuneration package.

Even if I am wrong in this conclusion and the payments in clause 6 are at risk from s. 46(1) because they are considered to be remuneration or benefits, it would be open to the Minister to confer an entitlement to them by entering into a contract with the Commissioner which is separate from the contract of employment. ...

I think there is a strong argument that remuneration or benefits in a separate contract would be remuneration or benefits to which an executive officer was "otherwise entitled by law" with the result s.

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<sup>61</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, p5.

<sup>62</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, p5.

46 would not stand in the way of a separate contract providing remuneration or benefits additional to the monetary remuneration and employment benefits provided in the contract of employment.<sup>63</sup>

The Committee notes there is an argument that section 53 of the *Police Service Act 1990* precludes the Commissioner being paid an amount greater than that equal to his remuneration package for a period of 38 weeks where he is given less than 12 months notice. The Crown Solicitor argues, however, that the limit placed on compensation in section 53 only relates to compensation for “loss of benefits”<sup>64</sup> His view is that compensation for “lost opportunities flowing from the failure to provide the agreed notice” is not covered by section 53, and so he concludes that section 53 does not render clause 6 void or unenforceable.<sup>65</sup>

The Crown Solicitor concluded that clause 6 is a valid and enforceable contract provision. However, if contrary to his view,

clause 6 is invalid for the reason that being in the contract of employment it provides remuneration or a benefit contrary to s. 46, it would be open to the Minister to make a separate contract with the Commissioner to provide for the payments presently in clause 6.

In evidence to the Committee, the Crown Solicitor indicated that uncertainty about the intent of section 46 of the *Police Service Act 1990* could be removed by an amendment to that section:

I would like 46(1) to say definitively whether these are exhaustive entitlements or not, these are the only entitlements one has. The problem is that when you draft a provision which says so and so is entitled to A, you do not know whether that means they are entitled to A and nothing else or they are entitled to A and anything else that they may be entitled to. You need to specify, in effect, whether it is an exhaustive entitlement or not. ...

... It says nothing in 46(1) affects a remuneration or benefit in a separate or in an otherwise lawful way. So you are left to imply, 46(1) must be exhaustive as to all remuneration and all benefits because they are saving some in 46(4).

So that encourages you to think that 46(1) sets out exhaustively the remuneration and benefits of an executive officer, and those are monetary remuneration and employment benefits which together total the remuneration package. But then you go to 46(4) and what is saved is any remuneration or any benefit which is otherwise agreed to in law. So it is just unsatisfactory to try to work out, and I can understand why people may be somewhat confused as to what the precise regime is.<sup>66</sup>

The Committee is anxious to see any uncertainty about entitlements for chief executive officers and senior executive officers removed, and supports the Crown Solicitor in his suggestions that section 46 of the *Police Service Act 1990* be amended to make clear what the entitlements are for these officers. The Committee is of the view that any amendment to section 46 of the *Police Service Act 1990* ought also be mirrored by an amendment to section 42S of the *Public Sector Management Act 1988*.

<sup>63</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, Appendix, pp22-23.

<sup>64</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, Appendix, p21.

<sup>65</sup> *New South Wales Auditor-General's Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, Appendix, p21.

<sup>66</sup> Evidence of Mr Ian Knight, Crown Solicitor, 17 April 2000, pp8-9.

### Recommendation 3

The Committee recommends that the Government consider introducing legislation to amend section 46 of the *Police Service Act 1990* and section 42S of the *Public Sector Management Act 1988* to remove any uncertainty about monetary remuneration and employment benefits for officers covered by provisions contained in those sections.

#### **3.2.2 Clause 22 (End of contract payment)**

In his advice to the Auditor-General, the Crown Solicitor identified section 46 of the *Police Service Act 1990* as being “the only statutory risk to the validity of clause 22”.<sup>67</sup> In his report, the Auditor-General stated:

The key issue here is whether the end of contract payment is ‘remuneration’. If it is not, then by the same logic as applied to the damages payment under Clause 6, Clause 22 does not offend against section 46.<sup>68</sup>

As the Crown Solicitor found that the end of contract payment is, in effect, remuneration, he therefore concluded that clause 22 was invalid and unenforceable.<sup>69</sup> However, as stated previously, the Crown Solicitor further advised that the Minister and Commissioner could enter into a separate contract, to the effect of Clause 22, that would be valid. The Minister and Commissioner have in fact entered into such a contract, which is discussed in section 3.3.2, below.

### **3.3 Subsequent variations to the contract**

On 14 March 2000, the Minister and Commissioner executed two documents relating to the Commissioner’s contract of employment, a Deed of Variation and Release and a Deed of Agreement. In evidence to the Committee, the Crown Solicitor indicated he drafted these documents.<sup>70</sup> Copies of the Deeds were provided to the Committee by the Minister on 3 April 2000, and are reproduced at Appendix 2.

#### **3.3.1 Deed of Variation and Release**

The Deed of Variation and Release varies clauses 3, 5, 6 and 7 of the contract, deletes clause 22 and contains a number of provisions relating to the deletion of clause 22.

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<sup>67</sup> *New South Wales Auditor-General’s Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, Appendix, p24.

<sup>68</sup> *New South Wales Auditor-General’s Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, p5.

<sup>69</sup> *New South Wales Auditor-General’s Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, Appendix, p25.

<sup>70</sup> Evidence of Mr Ian Knight, Crown Solicitor, 17 April 2000, p2.

*Clauses 3, 5 and 7*

Variations of clauses 3, 5 and 7 clarify aspects of the contract relating to the period of appointment to the position, and relevance of the contract to current terms of employment.

Clause 3 was amended by changing the period of appointment from:

... five (5) years, commencing on the 8<sup>th</sup> February 1999 and (unless sooner terminated) ending on the 8<sup>th</sup> February 2004.

to:

... the period commencing immediately after the expiration of the Commissioner's current term on 29 August 2001 and ending on 16 February 2004.

Clause 5 was amended to explicitly state that provisions in the new contract governed the entire period of employment from 8 February 1999 to 16 February 2004.

Clause 7 was amended to include a reference to the period referred to in clause 5.

*Clause 6*

Clause 6 was amended to replace the reference in that clause to section 42(2) of the PSM Act to section 53 of the *Police Service Act 1990*.

*Clause 22*

Clause 22 was deleted from the contract. In addition, the Deed of Variation and Release contains a number of clauses releasing the Minister from certain promises and demands relating to clause 22.

**3.3.2 Deed of Agreement**

The Deed of Agreement provides for the Commissioner to be paid an end of contract sum, in the most tax efficient manner and equal to the annual amount of his remuneration package at the time, subject to the Commissioner remaining in the position of Commissioner of Police for the whole period commencing 8 February 1999 and ending on 16 February 2004. Mr Knight stressed to the Committee that:

... the end of contract sum is only payable in the event that Mr Ryan completes the whole of that period from 1999 to 2004 ... He does not get a penny of that end of contract sum if he does not complete all of that five years.<sup>71</sup>

**3.3.3 Effect of the Deeds**

The Crown Solicitor advised the Committee that, with respect to the amendments relating to the period of appointment of the Commissioner, and the relevance of the contract to the period prior to the Commissioner's reappointment:

... the contract originally was incorrectly framed in terms of the periods ... the contract does two things. It governs the balance of his present contract, roughly two years, and it also governs the reappointment

<sup>71</sup> Evidence of Mr Ian Knight, Crown Solicitor, 17 April 2000, pp11-12.

from 2001 to 2004 and when I saw the contract, I needed to make it clear in this variation that that was the effect that it was supposed to be having.<sup>72</sup>

With respect to the validity of the end of contract payment, the Crown Solicitor advised the Committee that:

Those deeds would have, hopefully, removed any doubt relating to the validity of the payments ...<sup>73</sup>

### **3.4 Explanations of why clauses were included that later required amendment**

The Committee questioned a number of the witnesses about why clauses that later required amendment were included in the contract. Given the invalidity of clause 22 and the need to amend clauses 3, 5, 6 and 7 the Committee wished to establish what advice had been sought in the drafting of the contract.

#### **3.4.1 Clause 6**

The Committee questioned Mr Tree about the inclusion of the reference to the PSM Act in clause 6. In response, Mr Tree indicated:

... that is a reference to the Public Sector Management Act. There is a similar provision in the Police Service Act but that is an error. It should have been transposed. It is exactly the same provision. It should have been transposed into the Police Service Act provision.

When asked who bore the responsibility for the error, Mr Tree told the Committee:

It was in the original draft. I suppose, to an extent, I do, because I prepared the final document.<sup>74</sup>

#### **3.4.2 Clause 22**

Mr Gleeson was asked by the Committee whether the proposal for an end of contract payment (clause 22) had come from the Commissioner or Mr Gleeson. Mr Gleeson responded:

Well, it has been criticised, but I am admitting it. Yes, it came from me. I felt we had to have some way of trying to retain the Commissioner and I have done this in my more recent determinations for chief executive officers. In those determinations I have introduced what is called a recruitment and retention allowance. In other words, if a Minister feels that the current rates are not sufficient for him to attract some outstanding person with special qualities, there is an extra \$20,000 or \$30,000 he can pay them.

Likewise, if he, through the fellow's contract, becomes concerned that he is going to lose that man, I have introduced what is called a retention allowance and that, indeed, is very similar to what has been done here for Ryan.<sup>75</sup>

Dr Gellatly expressed the view that it was more desirable to provide an incentive, through an end of contract payment, than a deterrent, through the requirement of a period of notice:

... what we undertook in the contract was ... that we provide an incentive for him to stay for the period of time rather than require a period of notice, because, the practice, if you have to give an amount of notice and it is a legal amount and the person wants to go and is not happy with the job, then they can

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<sup>72</sup> Evidence of Mr Ian Knight, Crown Solicitor, 17 April 2000, p7.

<sup>73</sup> Evidence of Mr Ian Knight, Crown Solicitor, 17 April 2000, p2.

<sup>74</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p21.

<sup>75</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, pp45-46.

become ineffective. So we thought the better approach was to provide the incentive by way of getting him to want to stay at the end of it rather than forcing him to give a period of notice.<sup>76</sup>

When asked whether the consideration of the end of contract payment was necessary in making his determination, Mr Gleeson replied:

I believe that this was part of the total remuneration package that we should conclude with Ryan and that is not only this annual sum but this retention sum as well. It then became an issue of, is that in the SOORT determination or is it outside it. Dr Gellatly and I formed the view that it probably should be outside it ... and Dr Gellatly put it into the general contract.

Now, the Crown Solicitor has advised that such a benefit should not be in the general contract, it ought to be in a special contract. Now, it is part of my recommendation to you earlier, and right at the outset, that that is not a desirable course of action, that the SOORT tribunal should be responsible for all benefits and they should all just go into the one determination, into the one contract.<sup>77</sup>

In response to questioning by the Committee about why he had not sought comprehensive advice from the Crown Solicitor about the new contract, Dr Gellatly replied:

Because the contract that was signed this time was based on his previous contract. There were some variations, but the final contract was a continuation of a number of clauses in his first contract. Clauses 6 and 22 subsequently have become issues. At that time I had already had previous advice from the Crown Solicitor that clauses like clause 6 could be included in a contract ...

... from our operations in those areas in previous years we have always assumed the wording in the Act about what could be in a contract that said monetary remuneration and employment benefits, so we already had a clearance on clause 6 from previous Crown Solicitor's advice.

Clause 22 we took as being an employment benefit, the end of contract payment, so, therefore, in my judgement at the time, given that it was based on his previous contract, which had been subject to a lot of scrutiny, clause 6, which was previously okayed, similar provisions by the Crown Solicitor, and clause 22 was considered to fall into employee benefits, so on that basis at the time I did not see any need to seek the Crown Solicitor's advice. Everything had been following a number of previous ones where there did not seem to be issues.<sup>78</sup>

Dr Gellatly further stated those people involved in drafting the contract (from the Premier's Department and the SOORT):

... were people who had had years of experience in drafting contracts and dealing with these sorts of issues, so I did not feel, given ... the consistency with the earlier contract which had been scrutinised, that there was a need for any considered legal advice at that time.

... The previous contract on which it was based had been extensively reviewed by the Crown Solicitor and the additions and changes to the contract were not considered. Clause 6 had already been endorsed by the Crown Solicitor. Clause 22 was consistent with the recruitment and retention allowances that were already in existence. There were no issues that appeared at the time to require separate legal advice.<sup>79</sup>

Dr Gellatly told the Committee:

... I take responsibility for not seeking the Crown Solicitor's advice at that time.<sup>80</sup>

<sup>76</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p74.

<sup>77</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p46.

<sup>78</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, pp70-71.

<sup>79</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, pp71-72.

<sup>80</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p71.

### 3.5 Committee findings

The execution by the Minister and Commissioner, on 14 March 2000, of the Deed of Variation and Release and the Deed of Agreement appears to have addressed specific concerns raised by the Auditor-General and Crown Solicitor relating to clauses 6 and 22 of the contract of employment of the Commissioner of Police. This was necessary not only because of the advice of the Crown Solicitor but because of the limitations on the Statutory and Other Offices Remuneration Tribunal's powers provided pursuant to section 46(2) of the *Police Service Act 1988*. The Commissioner is now entitled to an end of contract payment if he remains in the position of Commissioner of Police for the whole period commencing 8 February 1999 and ending on 16 February 2004. In addition, the Deed of Variation and Release rectified problems relating to the period of appointment of the Commissioner, and the relevance of the contract to the period prior to the Commissioner's reappointment.

The inclusion of an invalid clause and a number of poorly drafted clauses in the contract of employment of the Commissioner of the Police is a matter of concern to the Committee. While there was a Crown Solicitor's advice relating to matters contained in clause 6 of the contract, no such advice had been sought from the Crown Solicitor in relation to the inclusion of end of contract payments in employment contracts of senior public sector managers. The poor drafting of clauses 3, 5 and 7 also suggest there was no satisfactory precedent relating to those clauses.

The Director General of the Premier's Department, Dr Col Gellatly, appears to have been primarily responsible for the drafting of the contract, although the Director General of the Ministry for Police, Mr Les Tree, must take responsibility for advising the Minister and the Commissioner that the contract was in order. Referral of the contract to the Crown Solicitor, either for drafting or checking, by either or both Directors General, would in all likelihood have prevented the need for subsequent amendments.

#### Recommendation 4

The Committee recommends that where public sector employment contracts differ materially from existing precedents, legal advice be obtained from the Crown Solicitor to ensure that the material differences are valid.

Mr Gleeson's statement that he proposed an end of contract payment for the Commissioner and:

... felt we had to have some way of trying to retain the Commissioner ...<sup>81</sup>

is a cause of some concern to the Committee. Under the *Statutory and Other Offices Remuneration Act 1975*, the role of the Tribunal with respect to the determination of remuneration is clearly confined to the determination of the annual amount payable as monetary remuneration and the cost of employment benefits. There is no provision for the Tribunal to suggest the payment of any other form of remuneration, such as an end of contract payment. Determination of remuneration payments

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<sup>81</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p45.

additional to the remuneration package may be made by the relevant Minister, who can direct the Tribunal to take into consideration such payments when making its determination.

The Committee finds it was not appropriate for Mr Gleeson to propose an end of contract payment for the Commissioner. This was a proposal that would have been more properly made by the Commissioner or Dr Gellatly.

The ramifications of Dr Gellatly's comment that:

Clause 22 was consistent with the recruitment and retention allowances that were already in existence.<sup>82</sup>

is considered in conjunction with evidence received about secondary contracts, detailed in section 4.1.3 below.

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<sup>82</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p72.

## Chapter 4

### Other matters arising out of the inquiry

Given the Auditor-General's interest in issues being investigated by the Committee, the Committee provided copies of submissions received to Mr Sendt on 9 December 1999, requesting further advice or views about certain matters arising out of the Committee's deliberations. The Auditor-General responded to the Committee by letter dated 13 January 2000, highlighting two matters that might be further pursued by the Committee. These related to secondary contracts and the role of SOORT. Another matter raised by Mr Gleeson in evidence to the Committee was a need to amend section 24A of the SOOR Act to include a reference to the *Police Service Act 1990*. These matters are discussed below.

#### 4.1 Secondary contracts

During the course of the inquiry, the Committee explored concerns of the Auditor-General arising from the advice from the Crown Solicitor that separate contracts are a legitimate way to provide for remuneration additional to a remuneration package determination by SOORT.

##### 4.1.1 Evidence provided to the Committee

In his letter to the Committee of 13 January 2000, Mr Sendt stated:

... my Report ... raised the broader (and more important) concern that separate employment contracts could apparently be validly entered into with CES/SES employees outside the provisions of the Statutory and Other Offices Remuneration Act. It is not clear to me whether the Government understood the potential for that to happen. It is also not clear that Parliament, when passing the Act, appreciated that potential.

"Secondary" contracts increase the risk that important information may not be readily accessed by third parties, such as the external auditors, due to a lack of knowledge about their existence. I cannot give any assurance whether other secondary employment contracts currently exist within the NSW public sector or that the circumstances involving the Commissioner of Police are unique. Transparency of arrangements can be compromised when information is held in more than one location.

It is not clear to me what benefits are derived from splitting information about employment and remuneration for CES/SES employees into more than one contract. Equally, the existence of more than one employee contract would not appear to be a practice within the private sector despite there being many more forms of remuneration, such as share option schemes.

If these secondary contracts are viewed by the Government as desirable, it should propose appropriate amendments to the Act to reflect that view. Such amendments might describe the types of arrangements to be covered by these secondary contracts. If secondary contracts are not viewed as desirable, amendments should proscribe them but broaden, if necessary, the types of benefits that SOORT could determine.<sup>83</sup>

The Committee raised the issue of secondary contracts with witnesses at the public hearing held on 17 April 2000.

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<sup>83</sup> Correspondence from Mr Bob Sendt, Auditor-General, dated 13 January 2000.

The Crown Solicitor's view on the matter was:

... that is a matter of policy, to some extent, but for convenience as a lawyer, it would be more convenient if all of the entitlements were in one document so that one knew at any point in time that this was the document that covered all of the entitlements. I guess minds may differ on whether there should be the ability to agree in another contract, and it would depend how accessible that other contract was as to whether that was desirable.

... I think there may be some merit in having the ability by some means to provide in exceptional cases for additional entitlements. Now, whether they should be in the main contract of employment or in some separate contract with the Crown, I guess does not really matter in terms of law, but I guess in terms of policy and for public scrutiny and so forth, there may be different issues. ...

From an audit point of view I guess it would be much more convenient and more appropriate to have it all in one document.<sup>84</sup>

During his opening remarks to the Committee, Mr Gleeson of the SOORT tendered a document expressing his view that secondary contracts should be prohibited. The document stated:

To overcome the defects in current legislation it is recommended that ...

There be a prohibition on secondary contracts. Consideration be given to amending Section 46 of the Police Services Act and Section 42 of the Public Sector Management Act to ensure that SOORT determines all payments to SES and CES officers.<sup>85</sup>

Expanding on his recommendation, Mr Gleeson stated:

My personal opinion is that all benefits and entitlements should be set by the tribunal, by one person, and that has actually been the assumption for 12 years until this matter arose. It has just been assumed that that is how it was done. And my opinion is, per se, that that is how it should be done.

I do not believe that Ministers or chief executive officers should be permitted to take my determination and then start to build something else on to it, which they can do under that section of the Act, which I have suggested to you that you might consider recommending should be abolished. ...

... should there be some special provision in the Act? I would argue against that very strongly because it would mean that we would then have to define whatever benefits we think SOORT can give and whatever benefits we think this other mythical person - it may be the Minister, I do not know - should give.

Now, that would lead to cross-over, it would lead to conflict, and you would not really be able to specify precisely what you wanted done here and wanted done there. I could just see it being a complete mess, and it is not the case in other tribunals. Remember that it is not the case.

If you look at the Commonwealth Act, they do not run around trying to say you can tick off this benefit or that benefit or that benefit, and I do not think, frankly, the Parliament would be wise to endeavour to define it when the simplest thing to do is simply to ensure that there are none of these secondary contracts and let SOORT do it while they are doing everything else.<sup>86</sup>

In response to questioning at the hearing, Mr Sendt stated his preference for a single contract to cover all aspects of employment:

<sup>84</sup> Evidence of Mr Ian Knight, Crown Solicitor, 17 April 2000, pp3-4.

<sup>85</sup> Document tendered by Mr Gerry Gleeson, SOORT, 17 April 2000, 'Supplementary Submission by SOORT -Defects in

<sup>86</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, pp37-38.

I certainly think that is very desirable. We were unaware, until the Crown Solicitor's advice, that there was even a potential for secondary or further contracts of employment. It is most desirable that everything be available in the one contract or, if there is to be some regime of secondary contracts for some good reason, that those be clearly identified, be available and be subject to the normal perusal arrangements by auditors, by Parliament, et cetera.<sup>87</sup>

Mr Sendt pointed out the danger that where a secondary contract exists, even if it is not:

held to be confidential by anybody ... its existence may not be known to anybody outside the parties.<sup>88</sup>

Mr Sendt also expressed the view that he thought:

... the general perception would be that SOORT determines the total remuneration package available to individuals in the senior executive service or chief executive service. If there are mechanisms whereby additional components of remuneration or benefits can be made available to those officers outside of the SOORT process, I think that is certainly a matter for concern. I am not aware that Parliament, in passing the SOORT legislation, would have contemplated such an act arising as secondary contracts.<sup>89</sup>

He stated:

The relationship of SOORT or the role of SOORT in relation to primary and secondary contracts should probably be reviewed, given what has happened.<sup>90</sup>

With respect to possible legislative changes, Mr Sendt supported Mr Gleeson's recommendation that secondary contracts be prohibited:

If there was a prohibition on secondary contracts and, therefore, that all provisions relating to the employment of an officer were included in one document, that would certainly overcome one of our concerns that there may be second, third, fourth contracts in relation to an individual that we would not be aware of unless we came across those by either sampling and discovering that way or by some other accidental means almost.<sup>91</sup>

However, Mr Sendt conceded:

... it could perhaps be equally well addressed by ensuring that within any primary contract there was a reference to the existence of a secondary contract or there were legislative provisions governing what could or could not be in a secondary contract. I think that would be another way of addressing the same issue...<sup>92</sup>

Dr Gellatly expressed the view that:

... it would be preferable to have everything in one contract. That is why originally I included everything in the Commissioner's contract because it is all in one place rather than having separate contracts.

The issue that the tribunal and Mr Gleeson has raised that SOORT determines all payments to SES and CES officers I think is one worthy of consideration. We are currently doing a review of the Public Sector Management Act, and this will be taken into account in that review.<sup>93</sup>

When asked whether any secondary contracts (other than that relating to the Commissioner of Police) exist within the New South Wales public sector, Dr Gellatly replied:

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<sup>87</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p50.

<sup>88</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p59.

<sup>89</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p50.

<sup>90</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p50.

<sup>91</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p53.

<sup>92</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p53.

<sup>93</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, pp63-64.

To my knowledge, no, and I think I would probably be aware of it. I negotiate most of the CEO contracts and remuneration levels across the sector, and I know of no others.<sup>94</sup>

#### **4.1.2 Premier's Memorandum**

The Committee notes that on 31 March 1999, the Premier issued a memorandum to all Ministers and Chief Executive Officers stating:

The Statutory and Other Offices Remuneration Tribunal's (SOORT) annual determination for the Chief and Senior Executive Service (CES and SES) provides the rates of remuneration which are to apply from 1 October each year. Since 1998 the determination has also included a separate performance pay scheme which provides the opportunity to reward officers based on the level of performance. CES and SES officers' remuneration is generally limited to what is determined by SOORT.

No additional inclusions in the contractual arrangements for CES and SES officers relating to remuneration or benefits may be entered into via a separate contract without the approval of the Premier's Department.<sup>95</sup>

The Committee questioned the Crown Solicitor about the legal status of the memorandum, particularly whether it would invalidate a secondary contract. The Crown Solicitor advised that:

It is a lawful direction which must be obeyed by the public sector. It, of itself, does not invalidate anything and, presumably, if a separate contract were to be entered into despite the Premier's direction, it would probably still be a binding contract but, presumably, it operates on the basis that all public servants would comply with the direction and no-one would make a recommendation contrary to it.<sup>96</sup>

#### **4.1.3 Recommended action**

The Committee welcomes the interim measure taken by the Premier, in issuing a memorandum, to control the use of secondary contracts. There is a need, however, to ensure this matter is addressed via a legislative mechanism. In this regard, the Committee notes the comment by Dr Gellatly that a review of the *Public Sector Management Act 1988* is currently being undertaken, and the issue of secondary contracts will be considered in that review.

Evidence provided to the Committee suggests that the preferred method of removing problems associated with secondary contracts would be to prohibit them, and for relevant legislation to be amended to provide for a single employment contract for Chief Executive Service and Senior Executive Service officers.

In addition, the Committee supports the view of Mr Gleeson that the Statutory and Other Offices Remuneration Tribunal determine all payments (including remuneration and benefits) to Chief Executive Service and Senior Executive Service officers.

<sup>94</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p62.

<sup>95</sup> Premier of New South Wales, 31 March 2000, *Memorandum No. 2000 - 5 (Memorandum to all Ministers and CEOs) Remuneration and Contracts of Employment for CES & SES Officers*.

<sup>96</sup> Evidence of Mr Ian Knight, Crown Solicitor, 17 April 2000, p14.

Recommendation 5

The Committee recommends that relevant legislation be amended to provide for a single employment contract for Chief Executive Service and Senior Executive Service officers (including Police Service officers).

Recommendation 6

The Committee recommends that relevant legislation be amended to provide for the Statutory and Other Offices Remuneration Tribunal to determine all payments (including remuneration and benefits) to Chief Executive Service and Senior Executive Service officers.

**4.1.4 Possible existence of other contracts that include invalid payments**

Dr Gellatly told the Committee that to his knowledge there were no other secondary contracts in existence.<sup>97</sup> In addition, earlier in this report (see section 3.5) the Committee noted Dr Gellatly's comment that:

Clause 22 was consistent with the recruitment and retention allowances that were already in existence.<sup>98</sup>

It can perhaps be inferred from Dr Gellatly's statement that the end of contract payment agreed to for the Commissioner of Police is framed in the same terms as retention allowances that are paid to other chief executive and/or senior executive officers. It might logically be assumed then, that the retention allowances that are in existence are contained in contracts of employment of the officers to whom they apply.

The advice from the Crown Solicitor in relation to clause 22 of the contract of employment of the Commissioner of Police would also apply to similar clauses in other contracts of employment. That is, only remuneration that can be determined by the Statutory and Other Offices Remuneration Tribunal (annual remuneration and benefits) can be included in a contract of employment.

If retention allowances paid to other chief executive and/or senior executive officers are a one-off payment that occurs at the satisfactory completion of a contract by that officer (rather than part of an

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<sup>97</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p62.

<sup>98</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p72.

annual payment), and if provision for the payment of such a retention allowance is made in a clause contained in an employment contract, then in fact such a clause is invalid.

While the Committee does not know whether the retention allowances referred to by Dr Gellatly do in fact fall outside the definition of “remuneration package”, it is possible this is the case. In addition, if there has been a view on the part of the government and the Statutory and Other Offices Remuneration Tribunal that all payments to be made to an officer should be detailed in the one employment contract, it is possible that other payments that fall outside the definition of “remuneration package” may have been included in employment contracts.

At the hearing on 17 April, Mr Sendt told the Committee that the Audit Office was in the process of:

... looking at CEO contracts and benefits across the board to see if there are any benefits being paid that are not in accordance with either the tribunal's determination or the contractual arrangements. But I do not have the results of those inquiries at this stage. That is something that we would be reporting to Parliament in a future volume.<sup>99</sup>

The Committee is of the view this is a necessary and appropriate way in which to address the Committee's concerns about the possible existence of other contract that include invalid payments. The Committee suggests that Mr Sendt have regard to this report when conducting his inquiries.

## **4.2 Participation of an assessor to SOORT in contract negotiations**

In his submission to the Committee, Dr Gellatly advised that, in his capacity as Director General of the Premier's Office and Commissioner for the Public Employment Office, he was involved in the negotiations surrounding the Commissioner's employment contract.<sup>100</sup> Dr Gellatly also advised that he is an assessor to SOORT under section 7 of the SOOR Act.

### **4.2.1 Role of assessor**

As outlined in section 1.3.3 of this report, section 7 of the SOOR Act provides for three assessors (the Secretary of the Department of Industrial Relations and Employment, the Director General of the Premier's Department, and another person with relevant special knowledge not in the service of the State), and states that the Tribunal shall be assisted by the assessors and take into consideration their views and recommendations.

The Act does not specifically define the role of assessors. The Committee asked Dr Gellatly whether it would be beneficial to define the role of assessors. In response, Dr Gellatly stated:

I think there would be some benefit ... it is better to have it spelt out.<sup>101</sup>

### **4.2.2 Factors impacting on agreed terms of the contract**

The Committee notes there were a number of factors that would have impacted on the terms agreed to in the contract of employment of the Commissioner of Police. These include the desire of the Commissioner to receive increased remuneration, the importance of retaining the services of the

<sup>99</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p54.

<sup>100</sup> Submission No 5, Dr Col Gellatly, Director General, Premier's Department, dated 6 December 1999.

<sup>101</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p64.

Commissioner, and the need to ensure that the remuneration agreed upon was determined independently.

*Request by the Commissioner*

The Commissioner of Police sought an increase in remuneration and certain benefits in his letter to the Minister of 23 December 1999.<sup>102</sup> The letter set out justifications for this request.

*The importance placed on retaining the services of the Commissioner*

The Government's strong desire to retain the services of the Commissioner was confirmed at the Committee hearing. In evidence to the Committee, the Director General of the Ministry for Police attested to the Government's high regard for the Commissioner, stating:

... I think the Government's view is that he is integral to the police reform process.<sup>103</sup>

Mr Tree also expressed his agreement with the view that the Government might be prepared to enter into somewhat better conditions than have applied to police commissioners in the past given the enormity and importance of the task facing the Commissioner.<sup>104</sup>

Dr Gellatly told the Committee that it was crucial for the Commissioner to be retained, and this was a major factor during contract negotiations:

From the work I had seen, an interdepartmental committee was reviewing the implementation of the royal commission and from my observations of the number of areas in which he is working, the integrity, professionalism, the civilian skills, the improvement in the actual policing, the business-like approach with budgeting, financial skills, right across the whole gamut of it, I thought from a public sector point of view it was crucial that we retain the Commissioner to lead the reforms. He is certainly a key element in it, and that was my driving force in pursuing the reappointment and renegotiation of the contract. I think he was integral to that reform occurring.<sup>105</sup>

*The independence of the remuneration determination process*

In correspondence to the Committee, the Auditor-General raised the issue of how the practice of employer/employee remunerations can exist within a Tribunal-based determination system:

A second issue that might be worth pursuing by the Committee is whether the practice of employer/employee remuneration negotiations is desirable and whether they can exist within a Tribunal-based determination system and, if so, how this might best be handled. In any event, it is not clear to me that the Act currently envisages the Tribunal being involved in negotiations. There may or may not be benefits to such involvement, but the role would need to be clarified.<sup>106</sup>

When asked to expand on this statement at the Committee hearing, Mr Sendt told the Committee:

... the difficulty that I saw, as, to some extent, an outsider to that process, was understanding the role of the tribunal when that tribunal seemed to be involved, perhaps not from a negotiating stance, but

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<sup>102</sup> Correspondence from Dr Col Gellatly, Director General, Premier's Department, dated 18 February 2000, Annexure A (correspondence from PJ Ryan to Mr Paul Whelan LLB MP, dated 23 December 1999).

<sup>103</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, p21.

<sup>104</sup> Evidence of Mr Les Tree, Director General, Ministry for Police, 17 April 2000, pp21-22.

<sup>105</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p74.

<sup>106</sup> Correspondence from Mr Bob Sendt, Auditor-General, dated 13 January 2000.

certainly seemed to be involved in the discussions that took place involving negotiations between the employer, through Dr Gellatly, and Commissioner Ryan or his representatives.<sup>107</sup>

It was put to Dr Gellatly by the Committee that the SOORT process was a 'mere formality' or 'rubber stamp', given that SOORT appeared to adopt the outcome of contract negotiations with senior officers. In response, Dr Gellatly stated:

SOORT is independent of the Government. In this particular case SOORT made its decision. The decision was conveyed to me in order to prepare the contract. The use of words 'formality' and 'rubber

<sup>108</sup>

Mr Gleeson held a similar view:

... there is no rubber stamp in what I have done. I came to my view about this matter and I conveyed it to the Director-General. I did. Now where is the rubber stamp in that, I might ask?<sup>109</sup>

In response to questioning about the role of the Tribunal in determining the remuneration for the Commissioner for Police, Mr Gleeson indicated he had discussions with the Commissioner and the Commissioner's representative, but did not discuss the matter with the Minister, the Premier, or either of their representatives:

... I had discussions with Mr Anderson, who represented the police commissioner, in an endeavour to determine what I believed was to be the just and reasonable remuneration package, and having regard to the fact that that package needed to include the benefits, that is under the Act, that I believed he was entitled to.<sup>110</sup>

From the day that I became involved, which was late January, I have had no discussions with either the Minister or anyone on his behalf or the Premier or anyone on his behalf. I did speak with the Commissioner and I said to him that I needed to talk to him about this matter. That, of course, is as provided ...<sup>111</sup>

#### **4.2.3 Evidence relating to dual role of Dr Gellatly**

The Committee asked Dr Gellatly whether he saw a conflict in the same person conducting contract negotiations and providing advice to SOORT about the remuneration package. Dr Gellatly answered:

I just cannot see where there is a conflict. I have a role as an assessor to the tribunal. The tribunal is very clear that the tribunal makes the decisions and the assessors are there to provide advice.

I have a role as the Director General of the Premier's Department and a role across the public sector, so a good overview of what is going on in the public sector, and negotiate the CEO's contracts and their remuneration levels within the bands that are available to CEOs, so I think it is quite logical that I would be involved in the negotiation of the Commissioner's contract. I cannot see how that is in conflict with the role of an assessor providing advice to the tribunal about my knowledge of the public sector, so I am just not sure what the actual conflict is.<sup>112</sup>

Dr Gellatly later stated:

<sup>107</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p56.

<sup>108</sup> Correspondence from Dr Col Gellatly, Director General, Premier's Department, dated 18 February 2000.

<sup>109</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p36.

<sup>110</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p35.

<sup>111</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p40.

<sup>112</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, pp62-63.

... it is quite evident that Mr Gleeson makes his own decisions. We provide him with advice, but he makes his own decisions and ... there are precedents in the other forms of law where you have assessors and determination authorities.<sup>113</sup>

Mr Gleeson was also of the view there was no conflict:

... we are dealing with two different matters. I mean, the function of the tribunal is quite clear. It has to determine the remuneration package, which includes the monetary plus the benefits. Now that is not what the Director-General of the Premier's Department is ... recommending in the rest of the contract. They are two distinct areas of responsibility but they come together in the contract.

That happens with every other contract for a CEO. I mean, some people seem to think that this is something out of the ordinary that is going on. This is happening every time there is a determination and, that is, the Remuneration Tribunal makes its determination, publicises it and then the Minister forms the contract with the head of his department, setting out performance, objectives and other things.<sup>114</sup>

Mr Sendt, noting that the role of assessors was not defined, told the Committee:

If an assessor is part of a semi-judicial or judicial process, it would seem to me that that is not generally the way such processes work, to have that person also involved in direct negotiations.<sup>115</sup>

While not stating there was a conflict, Mr Sendt suggested there was perhaps the possibility of one:

... what I am suggesting is that if someone who is involved in negotiating a contract and coming to some agreed position with the other party and then has the responsibility of advising the tribunal on what is an appropriate quantum of benefit, may be in a position of conflict.<sup>116</sup>

... I would not want to in any way impugn Dr Gellatly's action or behaviour. I have no reason whatsoever to suspect that if there was a conflict of interest that he in any way acted inappropriately.<sup>117</sup>

#### **4.2.4 Committee findings**

It is apparent to the Committee that the Government has a high regard for the Commissioner and was anxious to come to an agreement with him that would ensure his services were retained.

Dr Gellatly appears to have been instrumental in the negotiating process that led to the signing of a new contract by the Minister and the Commissioner on 8 February 1999. He also acted as an assessor to the Statutory and Other Offices Remuneration Tribunal in the determination of the remuneration package for the Commissioner.

The *Statutory and Other Offices Remuneration Act 1975* does not provide a clear indication of the role of assessors to the Statutory and Other Offices Remuneration Tribunal, providing uncertainty for both the Tribunal and those appointed as assessors.

Dr Gellatly is one of three assessors to the Tribunal. Two other assessors are appointed under the *Statutory and Other Offices Remuneration Act 1975* and could possibly have acted as assessors in this instance. The Tribunal also had scope to inform itself through other means, for example the

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<sup>113</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p73.

<sup>114</sup> Evidence of Mr Gerry Gleeson, SOORT, 17 April 2000, p36.

<sup>115</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p57.

<sup>116</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p58.

<sup>117</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p58.

Committee understands that it is possible for the Tribunal to engage a professional job evaluation company to provide advice about appropriate remuneration packages.

The Committee accepts that it was proper and necessary for Dr Gellatly to represent the Minister and act in his role as Director General of the Premier's Department in contract negotiations. However, it was not necessary for Dr Gellatly to also undertake the role of assessor to the Tribunal.

The Committee heard strong argument from Dr Gellatly and Mr Gleeson that there was no conflict in Dr Gellatly both acting as assessor and participating in contract negotiations. The Committee finds it difficult to reconcile these views with Dr Gellatly's statement that:

I thought from a public sector point of view it was crucial that we retain the Commissioner to lead the reforms. He is certainly a key element in it, and that was my driving force in pursuing the reappointment and renegotiation of the contract. I think he was integral to that reform occurring.<sup>118</sup>

Thus, in the Committee's view, Dr Gellatly's conviction that it was essential to retain the services of the Commissioner at least had the potential to impact on his ability to provide impartial advice to the Tribunal about an appropriate quantum of remuneration. Consequently, the Committee finds that it was not appropriate for Dr Gellatly to act as both an assessor to the Statutory and Other Offices Remuneration Tribunal and conduct contract negotiations.

#### Recommendation 7

The Committee recommends that the Government introduce legislation to amend the *Statutory and Other Offices Remuneration Act 1975* to include a definition of the role of assessors to the Statutory and Other Offices Remuneration Tribunal.

#### Recommendation 8

The Committee recommends that the Statutory and Other Offices Remuneration Tribunal preclude an assessor, as defined under section 7 of the *Statutory and Other Offices Remuneration Act 1975*, from providing advice about remuneration determinations if an assessor is party to contract negotiations relating to that remuneration determination.

<sup>118</sup> Evidence of Dr Col Gellatly, Director General, Premier's Department, 17 April 2000, p74.

### 4.3 Amendment to section 24A of the SOOR Act

Section 24A of the SOOR Act defines the Commissioner of Police as a chief executive holder for the purposes of Part 3A of the Act (remuneration packages for chief executive and senior executive officers). Section 24A also provides a definition of the term “remuneration package”, which is defined as the annual amount payable under section 42L of the PSM Act as monetary remuneration and the cost of employment benefits.

During the hearing on 17 April 2000, Mr Gleeson highlighted a point made by the Crown Solicitor in his advice to the Auditor-General, that the definition of the term remuneration package contained in section 24A of the SOOR Act includes a reference to the PSM Act, but no reference to the *Police Service Act 1990*.

The Crown Solicitor in his advice stated:

I note that “remuneration package” is defined in s.24A to mean “the annual amount payable under section 42L of the Public Sector Management Act 1988 ....” In the case of the Commissioner it should be the annual amount payable under s.46 of the Act [Police Services Act 1990]. It would seem that the definition of “remuneration package” in S.24A was not appropriately amended when the Commissioner was included in the definition of “chief executive office holder”.<sup>119</sup>

Mr Gleeson suggested to the Committee that:

Section 24A of the SOOR Act be amended to ensure that remuneration package also refers to Section 46 of the Police Services Act.<sup>120</sup>

The Committee accepts Mr Gleeson’s suggestion.

#### Recommendation 9

The Committee recommends that section 24A of the *Statutory and Other Offices Remuneration Act 1975* be amended to include a reference to the *Police Services Act 1990* in the definition of “remuneration package”.

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<sup>119</sup> *New South Wales Auditor-General’s Report to Parliament for 1999*, Volume Two –Addendum, Audit Office of New South Wales, 1999, Appendix, p18.

<sup>120</sup> Document tendered by Mr Gerry Gleeson, SOORT, 17 April 2000, ‘Supplementary Submission by SOORT –Defects in

#### 4.4 Confidentiality of the contract

The Committee notes that one of the factors that influenced the Auditor-General to examine the contract of employment of the Commissioner of Police was that its details were confidential. Mr Sendt told the Committee:

As a general principle, Auditors-General generally believe that secrecy by government is inimical to sound accountability. It erodes Parliament's capacity to make informed judgements as to the actions of the Government of the day. It can also limit the capacity of auditors to form opinions as to the veracity of agencies' financial statements if part of the transactions contributing to those statements is not available.<sup>121</sup>

The Committee concurs with the view of the Auditor-General that secrecy is generally inimical to sound government. While the Committee acknowledges there may be occasions when the public interest is best served by keeping certain matters confidential, the Committee can not see how the public interest is best served by keeping information about the remuneration of public officials confidential.

The Committee notes that the annual reports of government department and statutory authorities, including the Police Service, are required to include information about executive positions within these organisations.<sup>122</sup> This information includes:

- the number of executive positions at each level at the end of the reporting year, compared with the number at the end of the previous reporting year,
- the number of female executive officers at the end of the reporting year, compared with the number at the end of the previous reporting year,
- the name of, position held by and level of each executive officer of or above level 5 holding office at the end of the reporting year.

Knowledge of the level of an executive officer provides information about the salary range within which that officer's remuneration falls.

Thus, there is a legislative requirement that information about the salary range within which the Commissioner of Police's remuneration falls be included in the Annual Report of the Police Service.

While the Committee acknowledges such a requirement exists, it is the Committee's view that the legitimate public interest in the salary determination of the Commissioner of Police warranted release of information about his remuneration at the time of his reappointment. The release of contract information on 24 June 1999, prior to the publication of the Police Service Annual Report, suggests that the government eventually formed a view that release of this information was warranted prior to the publication of the Police Service Annual Report.

<sup>121</sup> Evidence of Mr Bob Sendt, Auditor-General, 17 April 2000, p48.

<sup>122</sup> *Annual Reports (Departments) Regulation 1995*, sections 3 and 8; *Annual Reports (Statutory Bodies) Regulation 1995*, sections 3 and 14.

Recommendation 10

The Committee recommends that all reports and determinations made under section 24H of the Statutory and Other Officers Remuneration Act 1975 be made public, and that any necessary amendments to the legislation to give effect to this recommendation be made as soon as possible.

## **Statement of dissent by**

**Hon John Hatzistergos MLC, Deputy Chair**  
**Hon John Johnson MLC**  
**Hon Andy Manson MLC**

The majority report criticises the Head of the Statutory and other Offices Remuneration Tribunal (SOORT) for having played a role in the negotiation of the contract of the Commissioner of Police and takes the view that the role of the Tribunal should be to hear submissions and argument from relevant parties and then make a determination. Mr Gleeson clearly indicated in his evidence that he negotiated to reach a decision and do what he felt was best in the circumstances. The Committee rejected any suggestions that his evidence was not to be accepted.

It is clear that the first recommendation of the Committee seeks to confine SOORT to acting as an adjudicator on the submissions of interested parties.

This is an approach, which is puristic, excessively legalistic, impractical and seeks to deny the tribunal the necessary flexibility to carry out its function in a proper context and in the public interest.

In our view bearing in mind the nature of the contract and the role of SOORT, it is important that SOORT's role should not be straightjacketed in the way sought by the majority. To the contrary we see a danger that if SOORT is not broadly involved it will be unable to make its determination after proper inquiry and accordingly the proposed contract could be piecemeal and disjointed.

With respect to the second recommendation, we believe that it is important to highlight that the inquiry did not disclose any evidence of the public interest being actually or potentially adversely affected by the signing of the contract one-day before the formal written determination had been issued. It was clear that the determination had been finalised by the Tribunal four days earlier but could not be formally issued before the written request for determination came from the Premier. Furthermore the contract itself was subject to the formal determination being made.

For similar reasons to those previously advanced we do not accept that it was not appropriate for Mr Gleeson to propose an end of contract payment for the Commissioner on the grounds that it falls outside the jurisdiction of SOORT. On the contrary we believe that all remuneration and benefits proposed to be included into the contract should be the subject of SOORT's consideration and support as part of its inquiry function. Indeed it is contradictory to criticise Mr Gleeson for his involvement in proposing the payment and then make a recommendation such as that in Recommendation 4. The end of contract payment is a realistic way of trying to ensure that the Commissioner will see out his contract. This provision which will gain effect as time progresses.

We also do not accept the reasons given in the report critical of the involvement of the Assessor. In particular we part support from the report in suggesting that Dr Gellatly's view that "it was essential to retain the services of the Commissioner at least had the potential to impact on his ability to provide impartial advice about the appropriate quantum of remuneration." Certainly Dr Gellatly said that it was crucial from a public sector point of view to try and retain the services of the Commissioner. This was a view disclosed to and even shared by the Tribunal. We regard this as integral to the Assessor's advice function on the appropriate remuneration range. In our view a person in Dr Gellatly's position is uniquely qualified to give advice in this area. We reject the proposal by the majority to deny SOORT the benefit of such advice and to replace it with potentially less informed opinion particularly when SOORT is ultimately required to make its own determination. It follows that we do not accept Recommendation 8.

Finally we do not associate ourselves with the comments in paragraph 4.1.4 as to the possible existence of other contracts that include invalid payments. The comments contained therein are speculative and outside the terms of reference of the Committee.

# **APPENDIX 1**

## **CONTRACT OF EMPLOYMENT AND PERFORMANCE AGREEMENT OF COMMISSIONER OF POLICE**

*Confidential*

CONTRACT OF EMPLOYMENT

*Between*

THE HON. PAUL WHELAN, LL.B, M.P.  
MINISTER FOR POLICE

*And*

MR P.J. RYAN  
COMMISSIONER OF POLICE

Contract of Employment

This *Contract of Employment* is made

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between the Minister for Police  
the Hon. Paul Whelan, LL.B., M.P.  
(hereinafter referred to as "the Minister")

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of Level 20, Police Headquarters, Avery Building, 14-24 College  
Street, Darlington 2010

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and the Commissioner of Police, Peter James Ryan (hereinafter  
referred to as "the Commissioner")

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of Level 18, Police Headquarters, Avery Building, 14-24 College  
Street, Darlington 2010

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## Interpretation

1. In this contract, unless otherwise stated or the context otherwise indicates:

"the Act" - means the Police Service Act 1990, (N.S.W.);

"Employer" - means the person who is, for the time being, the Minister for Police;

"Employment Benefit Cost" - in relation to an employment benefit provided to the officer under the contract, means the cost to the employer of providing that benefit, being the approved amount of that cost, or the amount of that cost calculated in the approved manner, within the meaning of Division 5 of Part 5 of the Act;

"Month" means a calendar month;

"Performance Criteria" - means the performance criteria to which the employer must have regard when conducting a performance review;

"Performance Review" - means a review of the officer's performance as is required by s.43 of the Act as applied by s.27(2) of the Act;

"the position" - means the position referred to in Clause 2 of the contract;

"the Tribunal" - means the Statutory and Other Offices Remuneration Tribunal

Expressions corresponding to expressions that are defined in Part 5 of the Act shall have the meaning so defined.

## Appointment

2. The position to which this contract applies is Commissioner of Police.
3. The period of the appointment to this position is five (5) years commencing on the 8<sup>th</sup> February 1999 and (unless sooner terminated) ending on the 8<sup>th</sup> February 2004.
4. Subject to Clause 5:
  - (a) at least 9 months prior to the expiration of the period of appointment specified in Clause 3, the Minister and the Commissioner shall confer with the view of reaching agreement as to whether the Commissioner shall be re-appointed for a further period and, if so, on what terms.
  - (b) Each party shall advise the other no later than 6 months (or such other period as they may agree in writing) prior to the expiration of the period of appointment specified in Clause 3 of their decision regarding the matters referred to in Clause 4(a).
5. This contract constitutes a contract of employment for the purposes of s.27(1) of the Act, and governs the employment of the Commissioner while employed in the position referred to in Clause 2.
6. Damages

The Minister shall give the Commissioner one year's notice before the employment of the Commissioner is terminated. In the event that the employment is terminated and the notice required by this clause has not been given the Minister and the Commissioner agree that the sum equal to fifteen months remuneration package is a reasonable estimate of the damages that would be suffered by the Commissioner in these circumstances and the Commissioner shall be entitled to be paid such sum.

In the event that one year's notice is given the Minister and the Commissioner may agree on a period of less than one year. In this case the damages will be paid on a pro-rata basis for the unexpired period of the year's notice. (That is, if it is agreed on a termination date that leaves an unexpired period of seven months then the payment shall be seven twelfths of fifteen months remuneration package).

5

These damages payments apply only if the employment is terminated for any reasons other than a criminal conviction or proven misconduct.

This sum is in addition to any compensation for removal from the position which the Statutory and Other Offices Remuneration Tribunal determines pursuant to Section 42(2) of the Public Sector Management Act.

Duties of the Commissioner

7. During the term of the appointment, the Commissioner shall carry out any duties imposed by law with respect to the position. He shall also provide to the Minister and the Government, advice on police matters.
8. The Commissioner will furnish a Statement of Private Interests and Assets, including interests held by his immediate family to the Minister for Police and update that statement in the future particularly where a significant change to his circumstances occurs.
9. As Commissioner of Police, he is required to report any charge and/or convictions against him regardless of the nature of the offence, to the Minister.

### Performance Review

10. The performance agreement agreed to by the Commissioner and the Minister is specified in Schedule A of the contract.
11. The performance agreement specified in Schedule A may be varied by agreement between the Commissioner and the Minister.
12. The Minister shall give the Commissioner at least 7 days' notice in writing that a Performance review is to be conducted.
13. Within one month of the conclusion of a performance review, or as soon as is practicable thereafter, the Minister shall prepare and send to the Commissioner a statement which sets out:
  - (a) the Minister's conclusions about the Commissioner's performance during the period of the performance review;
  - (b) any proposal by the Minister to vary the performance agreement as a consequence of the performance review; and
  - (c) any directions or recommendations made by the Minister to the Commissioner in relation to the Commissioner's future performance of the duties of the position.
14. The Minister undertakes that the fact a performance review is not held within the time contemplated by s.43(1) of the Act shall not operate to the prejudice of the Commissioner in any decision made by the Minister in relation to the Commissioner unless the failure to hold the performance review within that time was the fault of the Commissioner.

## Remuneration of the Commissioner

15. In consideration of the Commissioner performing the duties of the position, the Commissioner shall be entitled to the monetary remuneration and to the employment benefits options specified in Schedule 8.
16. The total amount of the monetary remuneration and the employment benefit cost of the benefits must equal the amount of the remuneration package determined by the Statutory and Other Offices Remuneration Tribunal (SOORT) at least annually and this amount shall be specified in Schedule C.
17. The Statutory and Other Offices Remuneration Tribunal (SOORT) will review the total amount of the remuneration package specified in Schedule C not later than the thirty first day of August in each year of contract and make a determination to take effect from the first day of October of that year.
18. Motor Vehicle:  
An executive level motor vehicle will be made available for use by the Commissioner and, in the course of official duties, a driver will be provided. This vehicle will be available for private use by the Commissioner at no cost. Fringe benefits tax does not apply because of the on call duties of the Commissioner and the special fitting out of the vehicle
19. Leave:  
The Commissioner is entitled to the same leave entitlements as a CEO.
20. Expenses:  
The Commissioner is to be reimbursed for travelling and subsistence costs and any other expenses incurred in the discharge of the Commissioner's duties. Uniform to the appropriate standard will also be provided.
21. Security:  
An appropriate security system will be installed in any premises owned or occupied by the Commissioner. Appropriate personal security will be provided on the basis of a threat assessment.
22. End of Contract Payment:  
The Commissioner will be paid an end of contract sum which will equate to 12 months to be paid in the most tax efficient manner subject to completing the period of this contract.

23. Conferences:  
The Commissioner may attend such courses, programs, conferences and other relevant opportunities to improve his personal and professional development and the effective discharge of his duties. Costs to be met by the Police Service.
24. Compensation:  
In addition to the damages paid under-Clause 6 the Commissioner shall be entitled to compensation for early termination for the unexpired period of the contract up to a maximum of 38 weeks.

#### General Provisions as to the Operation of the Contract

25. A reference in the contract to a Schedule refers to the Schedule then in force, and applies whether or not the Schedule has been physically attached to all or any counterparts of the contract.
26. A reference in the contract to the singular number includes the plural and vice versa.
27. The headings used in the contract are for convenience of reference only, and are not intended to be resorted to for the interpretation of the contract.
28. Where the Minister lawfully authorises a person to act as his delegate and carry out any of the Minister's duties, obligations or actions required to be carried out under the contract, the contract shall be construed as if any relevant reference to the Minister included a reference to that delegate.
29. This contract shall be governed by the law of New South Wales and shall be deemed to be made in New South Wales.
30. All notices, consents, approvals, agreements or other communications by or to the respective parties to this contract shall be in writing and shall be deemed to be duly given or made:
- (i) (in the case of delivery in person or by post) when delivered; or
  - (ii) (in the case of a facsimile transmission) on receipt by the sender of a written transmission report from the sending facsimile machine indicating successful transmission to the recipient's facsimile machine indicating successful transmission to the recipient's facsimile number (provided that if the time of dispatch is not before 4.00 p.m. (local time) on a day on which business is generally carried on in the place to which such communication is sent, it shall be deemed to have been received at the commencement of business on the next day in that place);

to the party to whom such communication is required or permitted or to be given under this contract addressed to his address as shown in this contract or at such address as the relevant addressee may specify for such purpose to the other by notice in writing.

31. A written communication includes a notice by facsimile transmission.
32. The parties acknowledge that the employment of the Commissioner is affected by Acts of Parliament and Regulations made under such Acts, including the Police Service Act 1990, the Police Regulation (Superannuation) Act 1906 and the Statutory and Other Offices Remuneration Act 1975.

Confidentiality:

33. The Minister and the Commissioner expressly agree that all the terms and conditions of the contract and the schedules thereto shall be confidential between the parties and will not be disclosed by any means, either in whole or in part, without the written consent of both the Minister and the Commissioner.

Signed by the Minister on the  
8th Day of February 1999 David Miliband

In the presence of:

Mr. T...

Signed by the Commissioner on the  
8th Day of February 1999 P. J. Ryan

In the presence of:

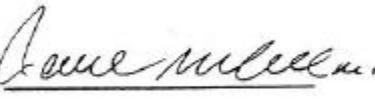
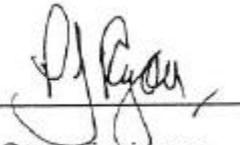
Mr. T...

**Schedule B**

**BENEFIT OPTIONS**

1. A second motor vehicle will be provided for 100% private use with the cost being met by the Commissioner.
2. The total remuneration package is as indicated at Schedule C.
3. The Commissioner shall contribute to an approved superannuation fund an amount at least equivalent to the superannuation guarantee levy.

This document is Schedule 8 of the contract of employment between the Commissioner of Police and the Minister for Police made on this 8th Day of February 1999.

Signed <u></u>	Signed <u></u>
Minister	Commissioner
Date <u>8.2.99.</u>	Date <u>8.2.99.</u>

**Schedule C**

**REMUNERATION PACKAGE**

**From**

**1999**

The Remuneration Package for the position of Commissioner of Police is \$425,000.

This page is Schedule C of the contract of employment between the Commissioner of Police and the Minister for Police made on this 8th day of February 1999.

Signed <u></u>	Signed <u></u>
Minister	Commissioner
Date <u>8. 2. 99.</u>	Date <u>8. 2. 99.</u>



**CHIEF EXECUTIVE OFFICER  
PERFORMANCE AGREEMENT**

**Name : Peter Ryan**

**Position : Commissioner of Police**

**22 February 1999**

**NSW POLICE CHIEF EXECUTIVE OFFICER**  
**PERFORMANCE AGREEMENT**

**Between:**

Peter Ryan, Commissioner of Police and Paul Whelan, Minister for Police

for the period from 8.2.99 to 8.2.2000

The purpose of this agreement is to allow monitoring and review of the Commissioner's performance against agreed accountabilities. It also confirms agency priorities and provides a framework for the executive team of the NSW Police Service.

The agreement has been prepared in accordance with the guidelines set out in the paper *Guidelines for Developing Performance Agreements for Chief Executive Officers*, Strategic Policy and Reform, Public Sector Management Office, December 1998. It is supplementary to the Contract of Employment which covers the generic responsibilities of the Commissioner, as set out on page 2 of the above document. It should also be noted that this performance agreement does not attempt to aggregate the many statutory responsibilities of the Commissioner.

The agreement is in four parts covering Police Service Operations, Staff Management and Human Resources, Business Administration and Government Priority Areas for 1999. Within each section there are five elements Key Accountabilities, Objective, Strategic Initiatives and Performance Measures. These elements within the agreement are consistent with the NSW Police Service Act, 1990, the NSW Police Service Corporate Plan 1998-2001, and all relevant government policy documents.

It is noted that the agreement is based on the assumptions of no significant change to the Service's resources other than those which have been announced previously, or change in the Service's role and responsibilities. It is acknowledged that sudden changes such as the emergence of a community concern may require a re-ordering of priorities.

This agreement may be varied by mutual consent and will be the basis on which management performance is reviewed. Reviews will be conducted after six and twelve months.

Signed:  
Peter Ryan, Commissioner of Police



Signed:  
Paul Whelan, Minister for Police



## INTRODUCTION

This agreement takes up the themes and key priorities in the corporate plan (1998 - 2000) and places the greatest emphasis on crime reduction and public safety. It highlights the most important of many initiatives which are underway to intensify our crime fighting effort over the next year.

In the next twelve months we will be making use of new police powers to control weapons in the community, to search vehicles and when necessary to set up roadblocks. We will be increasing our use of sophisticated methods in our management of criminal investigations and making sure the quality of our briefs of evidence leads to successful prosecution of offenders

In the coming year there will be an increasing focus on maximising the resources of the Service at the front line to ensure the crime reduction effort is increased and the community feel safer and more secure. Wherever possible, police will be released from 'backroom' tasks to full operational policing tasks.

During the period of the agreement, we will be placing; a high priority on our work to provide a secure environment for the Olympic and Paralympic games in the year 2000. We are already well advanced in our planning for these events and will now put the resources in place to ensure the effectiveness of the security response for the Games. With the eyes of the world upon us during this time and the security risks apparent at previous Games it is impossible to exaggerate the importance of the success of the policing operation for Sydney 2000.

Finally, the agreement addresses our commitment to the ongoing development of corporate and administrative practices. This will ensure the performance improvements made now will be secured in the future. Part of this commitment is to introduce succession planning for the most senior positions in the Service. By identifying our highest achievers, encouraging and nurturing them through executive development programs, we will make sure the Service is well stocked with able officers to take up the leadership and management challenges of the Service in the years to come.

When implemented, the strategic initiatives outlined in this agreement will represent substantial progress towards the achievement of the NSW Police Service mission **'to have the police and the community working together to establish a safer environment by reducing violence, crime and fear'**.

## POLICE SERVICE OPERATIONS

<b>Key Accountability</b>	<b>Objective</b>	<b>Strategy</b>	<b>Strategic Initiatives- 1999</b>	<b>Performance measures</b>
<b>Community safety and crime reduction</b>	To achieve the mission of the Police Service according to the Police Service Act 1990 s6 (1) <i>to have the police and the community working together to establish a safer environment by reducing violence crime and fear.</i>	To continue the development of a targeted and intelligence led approach to combat, prevent and contain all levels of crime, particularly serious and organised crime.		Crime trends.  Measures of community fear and concern about safety and social disorder
<b>Customer service</b>	To provide the community of NSW with access to police services and timely and appropriate responses to requests for police assistance.	To ensure service delivery systems for the NSW Police provide the community with most appropriate and cost effective policing services.	Police Assistance Line  Computerised Incident Despatch System enhancements integrated with COPS	Service outputs  Community response  Response time
<b>Maximum resources at the front line</b>	To maximise resources directly dedicated to combating crime in the community.	Continue to review police operations to ensure the best possible use of available resources.	Develop a model to measure frontline police hours delivered to the community.  Structural review of Field Operations.  Progress civilianisation program (subject to funding)	Proportion of police assigned to the frontline.
<b>Ethical and professional practice</b>	To ensure the NSW Police Service is at the leading edge in policing practice and performance.	To continue to research and learn from national and international benchmarks of good and best practice in policing.	Open communication systems.	Corporate email and Internet access Numbers of improvement initiatives commenced, improvement in performance in subject areas.

<b>Key Accountability</b>	<b>Objective</b>	<b>Strategy</b>	<b>Strategic Initiatives- 1999</b>	<b>Performance measures</b>
<b>Ethical and professional practice (cont.)</b>	To provide a police service where the danger of corruption is minimised and corruption is detected and punished.	To provide leadership in the fight against corruption by ensuring corruption resistant systems are in place and by use of the <i>Commissioner's confidence</i> powers against corrupt police.		Numbers of corrupt police detected and punished.  Community Confidence
<b>Olympic security</b>	To deliver an effective security response which fulfils IOC Olympic bid, Paralympic bid and contractual requirements.	Drawing on international experience, ensure management plans and resources are in place to deliver effective security for all Olympic venues, precincts and villages.		Existence of effective risk management plans, integrated with the overall command and control structure for the Games, approved by the key stakeholders.

<b>Key Accountability</b>	<b>Objective</b>	<b>Strategy</b>	<b>Strategic Initiatives- 1999</b>	<b>Performance measures</b>
<b>Good people management practices</b>	Provide a well trained, equitable and harmonious workforce.	Lead the continuous development of a fair, equitable, safe and productive workplace and provide a role model for senior managers for sound staff management.	Assessment based selections Employee management scheme	Number of employee grievances, disputes. Response to employee climate surveys.
<b>Employee communication, motivation and morale</b>	Ensure staff are aware of the direction of the service, the priorities and the importance of individual contributions to our achievements.	Provide regular and informative communications, using various media, to provide staff with direction to solicit feedback and build confidence in Service leadership.	Performance management scheme – Level 1 (Practitioners) Special Edition – Police Service Weekly Police TV Corporate Intranet and enhance electronic mail	Response through employee surveys. Measures of morale. Staff attrition rate Open access to information
<b>Cultural change</b>	Create a learning organisation where employees treat each other with respect and fairness.	Lead policy on the training and development of all staff and ensure that learning is linked with reward.	Cultural Change Workshop Competency based training	Development of the overall level of competency of the organisation as measured by the Service's educational profile.
		Ensure policy and systems are in place to protect staff from unfair treatment.	Internal Witness Support	Number of complaints and grievances from staff. Survey results.
<b>Service management continuity</b>	Secure the ability of the Service to provide competent management in the future	Succession planning	Executive Development Programs for high achievers	Implementation of program and evaluation of its effectiveness

<b>Key Accountability</b>	<b>Objective</b>	<b>Strategy</b>	<b>Strategic Initiatives- 1999</b>	<b>Performance measures</b>
<b>Sound resource management</b>	Ensure the Service budget reflects the priorities of the organisation and budget targets are met.	Continue to develop systems which improve business efficiency, resource allocation and expenditure control.	Activity Based Costing and Business Planning  Enterprise data warehouse	Availability of accurate and timely information for the preparation and monitoring of the budget.  Priority areas and programs adequately resourced.
	Ensure the Service is getting value for money.	Continue to expose internal services, particularly corporate services to competition, in accordance with government competition policy.	Purchasing and Supply Branch, Infringement Processing Bureau, Parking Patrol operations will be subject to direct and indirect competition.	Functions reviewed Efficiency savings. Benchmarking with other Police Services and other organisations.
<b>Risk Management</b>	Ensure the Service manages its assets in an effective manner and minimises risk.	Continued emphasis on risk management initiatives in accordance with government policy		Outperform Treasury Manage Fund benchmark in Workers' Compensation and Motor Vehicles claims and premiums.
<b>Business efficiency</b>	Drive business efficiency improvements	Develop integrated business information systems to measure efficiency	Implementation of SAP	Ability to quickly and effectively meet requests for business costing information.

<b>Key Accountability</b>	<b>Objective</b>	<b>Strategy</b>	<b>Strategic Initiatives- 1999</b>	<b>Performance measures</b>
<b>Development of a Y2K strategy in accordance with established guidelines</b>	Ensure critical information and communication systems can operate at the turn of the century	NSW Police Service Y2K Risk Assessment	Implement ITS Y2K plan  Implement Enterprise Y2K Plan	Critical systems Y2K compliant
<b>Improve the management of Occupational Health and Safety</b>	Create a safer workplace by reducing the frequency and severity of claims relating to workplace injuries	Achieve the percentage reductions agreed between the Service and Premier's Department	Stringent review of injury met processes  Increased local management accountability  regular monitoring of OH&S and rehabilitation systems	- 3% reduction in claims frequency 1998/99  - 5% reduction in claims severity 1998/99
<b>Focus on the responsibility for equitable management of the staff of the Service</b>	Ensure a fair and harmonious workplace	Provide support for equity and diversity of programs by endorsement at the highest level and by setting the example in management style and behaviours.	Employee management systems initiatives	Change in staff profiles  Evaluation of achievement against HR plans
<b>Introduce a whole of government perspective by collaborating with other agencies where the Service could not achieve its objectives alone</b>	Promote the practice of working cooperatively and collaboratively with other agencies.	Actively support and encourage whole of government and cross-agency initiatives.	Joint Investigation Teams (CPEA)  Joint projects with Attorney General's Crime Prevention Division.  NEPI/National DNA database.  Justice Agencies Data Exchange (JADE) 1999 strategic initiatives.	Number and success of projects

Key Accountability	Objective	Strategy	Strategic Initiatives- 1999	Performance measures
<b>Manage credit card usage and compliance with government rules</b>	Ensure all Service issued credit cards are used in accordance with Police Service and NSW Government rules.	a) Introduce Visa purchasing cards as a replacement for small purchase orders.  b) Re Corporate Cards. Re evaluate procedures to reimburse costs on approved expenditure rather than on total costs charged to the card.	Implement via a pilot project. Evaluate effectiveness before general roll out. Keep Audit office in the evaluation loop.  Establish controls before implementation.	Quantify savings in workload. Audit comments (if any).  Audit comments (if any).

## **APPENDIX 2**

### **DEEDS AMENDING THE CONTRACT**

**DATED** 14 March 2000

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THE HONOURABLE PAUL WHELAN,  
MP, Minister for Police

and

PETER JAMES RYAN, Commissioner of  
Police

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**DEED OF VARIATION AND RELEASE**

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**I V KNIGHT**

Crown Solicitor  
60-70 Elizabeth Street  
SYDNEY NSW 2000

DX 19 SYDNEY

Tel: 9224-5238  
Fax: 9224-5244  
Ref: PRE128.276  
Ian Knight

**THIS DEED OF AGREEMENT** is made the 14th day of March, 2000.

**BETWEEN:** The Honourable Paul Whelan, MP, Minister for Police (hereinafter referred to as “the Minister”), of Level 20, Police Headquarters, Avery Building, 14-24 College Street, Darlinghurst 2010.

**AND:** Peter James Ryan, Commissioner of Police (hereinafter referred to as “the Commissioner”) of Level 18, Police Headquarters, Avery Building, 14-24 College Street, Darlinghurst 2010.

**WHEREAS:**

- A.** On 8 February 1999 (“the date of the Contract”), the Minister and the Commissioner (“the parties”) entered into a contract of employment (“the Contract”) pursuant to s.27 of the Police Service Act 1990
- B.** On 10 February 1999 the Governor re-appointed the Commissioner as Commissioner of Police for the period commencing immediately after the expiration of his current term on 29 August 2001 and ending on 16 February 2004.
- C.** Sections 41-47, 59 and 61 of the Act apply to the Commissioner in the same way as they apply to an executive officer.
- D.** Section 46 of the Act provides for the entitlement of executive officers to monetary remuneration and employment benefits.
- E.** Clause 22 of the Contract provides: “The Commissioner will be paid an end of contract sum which will equate to 12 months to be paid in the most tax efficient manner subject to completing the period of this contract”.
- F.** Doubt has arisen as to whether clause 22 of the Contract may be included in a contract of employment entered into pursuant to s.27 of the Act.
- G.** Section 41(4) of the Act provides that a contract of employment may be varied at any time by a further contract between the parties.
- H.** The parties now wish to vary the Contract in the manner referred to in this Deed.

**NOW THIS DEED WITNESSES THAT:**

- 1.** The parties agree that the Contract shall be varied by replacing clauses 3, 5 and 7 thereof with the following respectively, such variations to take effect from the date of the Contract:

“3. The period of the appointment to this position is the period commencing immediately after the expiration of the Commissioner's current term on 29 August 2001 and ending on 16 February 2004.”

“5. This contract constitutes a contract of employment for the purposes of s.27(1) of the Act, and governs the employment of the Commissioner while employed in the position referred to in clause 2 during the period 8 February 1999 to 16 February 2004. The Contract of Employment governing the employment during the current term of appointment is varied accordingly.”

During the period referred to in c1.5, the Commissioner shall carry out any duties imposed by law with respect to the position. He shall also provide to the Minister and the Government advice on police matters.”

2. The parties agree that the Contract shall be varied by deleting the words “Section 42(2) of the Public Sector Management Act” in clause 6 of the Contract and replacing them with the words “Section 53 of the Act”, such variation to take effect from the date of the Contract.
3. The parties agree that the Contract shall be varied by deleting clause 22, such variation to take effect from the date of the Contract.
4. The Commissioner hereby releases the Minister from the promise made by the Minister and contained in clause 22 of the Contract and from all actions, suits, causes of action, claims, proceedings and demands whatsoever for or in respect of or howsoever arising out of or in relation to any failure by the Minister to comply with clause 22 of the Contract.
5. The Commissioner hereby covenants with the Minister that the Commissioner will not at any time hereafter bring or take any action, suit, claim or proceedings or make any demand whatsoever against the Minister for or in respect of or howsoever arising out of or in relation to any failure by the Minister to comply with clause 22 of the Contract.
6. The Minister may plead the release in clause 4 and the covenant in clause 5 in bar absolute to any and all actions, suits, claims, proceedings and demands whatsoever by the Commissioner against the Minister for or in respect of or howsoever arising out of or in relation to any failure by the Minister to comply with clause 22 of the Contract.
7. The Commissioner hereby releases the Minister, and any servant, employee or agent of the Crown in right of the State of New South Wales from all actions, suits, causes of action, claims, proceedings and demands whatsoever both at law and at equity which the Commissioner now has or at any time heretofore had or at any time hereafter may have or but for the execution of this Deed could or might have against the Minister or any servant, employee or agent of the Crown in right of the State of New South Wales, for or in respect of or howsoever arising out of or in relation to the making of the promise contained in clause 22 of the Contract, the inclusion of clause 22 in the Contract or any variation of the Contract referred to in this Deed.
8. The Commissioner hereby covenants with the Minister that the Commissioner will not at any time hereafter bring or take any action, suit, claim or proceedings or make any demand whatsoever against the Minister or any servant, employee or agent of the Crown in right of the State of New South Wales for or in respect of or howsoever arising out of or in relation to the making of the promise contained in clause 22 of the Contract, the inclusion of clause 22 in the Contract or any variation of the Contract referred to in this Deed.

LEGISLATIVE COUNCIL

Report on Inquiry into Contract of Employment of Commissioner of Police

- 9. The Minister and any servant, employee or agent of the Crown in right of the State of New South Wales may plead the release in clause 7 and the covenant in clause 8 in bar absolute to any and all actions, suits, claims, proceedings and demands whatsoever by the Commissioner for or in respect of or howsoever arising out of or in relation to the making of the promise contained in clause 22 of the Contract, the inclusion of clause 22 in the Contract or any variation of the Contract referred to in this Deed.
- 10. This Deed shall be governed by and construed in accordance with the laws of New South Wales.

**IN WITNESS WHEREOF** the parties hereto have set their hands and affixed their seals the day and year first hereinbefore written.

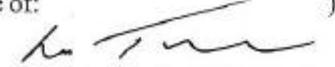
SIGNED SEALED AND DELIVERED )  
by the said PAUL WHELAN in the )  
presence of: )

  
.....  
Paul Whelan

Witness:   
Address: L19, 14-24 College St  
Darlinghurst

SIGNED SEALED AND DELIVERED )  
by the said PETER JAMES RYAN )  
in the presence of: )

  
.....  
Peter James Ryan

Witness:   
Address: L19, 14-24 College St  
Darlinghurst

**DATED** 14 March 2000

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THE CROWN IN RIGHT OF THE STATE  
OF NEW SOUTH WALES

and

PETER JAMES RYAN, Commissioner of  
Police

---

**DEED OF AGREEMENT**

---

**I V KNIGHT**

Crown Solicitor  
60-70 Elizabeth Street  
SYDNEY NSW 2000

DX 19 SYDNEY

Tel: 9224-5238  
Fax: 9224-5244  
Ref: PRE128.276  
Ian Knight

**THIS DEED OF AGREEMENT** is made the 14th day of March, 2000.

**BETWEEN:** The Crown in right of the State of New South Wales C/- The Honourable Paul Whelan, MP, Minister for Police, of Level 20, Police Headquarters, Avery Building, 14-24 College Street, Darlinghurst 2010.

**AND:** Peter James Ryan, Commissioner of Police (hereinafter referred to as "the Commissioner") of Level 18, Police Headquarters, Avery Building, 14-24 College Street, Darlinghurst 2010.

**WHEREAS:**

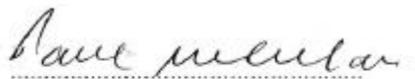
- A.** On 8 February 1999 the Minister for Police and the Commissioner entered into a contract of employment pursuant to s.27 of the *Police Service Act 1990* to govern the Commissioner's employment in the position of Commissioner of Police.
- B.** On 10 February 1999 the Governor re-appointed the Commissioner as Commissioner of Police for the period commencing immediately after the expiration of his current term on 29 August 2001 and ending on 16 February 2004.

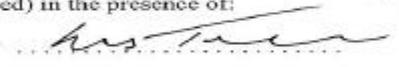
**NOW THIS DEED WITNESSES THAT:**

- 1.** The parties hereto agree that the Crown in right of the State of New South Wales will pay to the Commissioner an end of contract sum to be paid in the most tax efficient manner subject to the Commissioner remaining in the position of Commissioner of Police for the whole of the period commencing on 8 February 1999 and ending on 16 February 2004.
- 2.** The end of contract sum referred to in clause 1 shall be equal to the annual amount of the remuneration package contained in the determination of the Statutory and Other Officers Remuneration Tribunal in relation to the Commissioner which is in force immediately prior to the expiration of the period of his re-appointment.
- 3.** The Crown in right of the State of New South Wales covenants that it will not in any proceedings whatsoever plead, submit or otherwise assert that this Deed of Agreement is invalid or unenforceable.

**IN WITNESS WHEREOF** the parties hereto have set their hands and affixed their seals the day and year first hereinbefore written.

**SIGNED SEALED AND DELIVERED**  
by the said PAUL WHELAN for and on behalf  
of the Crown in right of the State of New South  
Wales (and so as to not incur any personal liability  
under this Deed) in the presence of:

  
Paul Whelan

Witness:   
Address: *Level 19, 14-24 College St*  
*Darlinghurst*

**SIGNED SEALED AND DELIVERED** )  
by the said **PETER JAMES RYAN** )  
in the presence of: )

  
.....  
Peter James Ryan

Witness:   
.....

Address: *L 19, 14-24 Collage St*  
.....  
*Dashington St*  
.....

## **APPENDIX 3**

### **LIST OF SUBMISSIONS**

1. The Hon Paul Whelan MP, Minister for Police
2. Mr Peter Ryan, Commissioner of Police
3. Mr Les Tree, Director General, Ministry for Police
4. Mr Gerry Gleeson, Statutory and Other Offices Remuneration Tribunal
5. Dr Col Gellatly, Director General, Premier's Department

## **APPENDIX 4**

### **LIST OF WITNESSES**

Mr Ian Knight	Crown Solicitor 17 April 2000
Mr Les Tree	Director General, Ministry for Police 17 April 2000
Mr Gerry Gleeson	Statutory and Other Offices Remuneration Tribunal 17 April 2000
Mr Bob Sendt	Auditor-General 17 April 2000
Mr Lee White	Assistant Auditor-General, Audit Office of New South Wales 17 April 2000
Mr Jack Kheir	Director of Audit, Audit Office of New South Wales 17 April 2000
Dr Col Gellatly	Director General, Premier's Department 17 April 2000

## APPENDIX 5

### RELEVANT SECTIONS OF THE POLICE SERVICE ACT 1990

#### **Section 41 (Employment of executive officers to be governed by contract of employment)**

- (1) The employment of an executive officer shall be governed by a contract of employment between the officer and the Commissioner.
- (2) A contract of employment may be made before or after the appointment of the executive officer concerned.
- (3) An executive officer is not appointed by, nor is an executive officer's term of office fixed by, the contract of employment.
- (4) A contract of employment may be varied at any time by a further contract between the parties.
- (5) A contract of employment may not vary or exclude a provision of this Act or the regulations.
- (6) The Commissioner acts for and on behalf of the Crown in any contract of employment between the officer and the Commissioner.

#### **Section 42 (Matters regulated by contract of employment)**

- (1) The matters to be dealt with in a contract of employment between an executive officer and the Commissioner include the following:
  - (a) the duties of the executive officer's position (including performance criteria for the purpose of reviews of the officer's performance),
  - (b) the monetary remuneration and employment benefits for the executive officer as referred to in Division 5 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package),
  - (c) any election by the executive officer to retain a right of return to the public sector under

section 52.

- (2) A contract of employment may provide for any matter to be determined:
- (a) by further agreement between the parties, or
  - (b) by further agreement between the executive officer and some other person specified in the contract, or
  - (c) by the Commissioner or other person or body specified in the contract.

**Section 46 (Monetary remuneration and employment benefits for executive officers)**

- (1) Executive officers are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contracts of employment.
- (1A) Contributions payable to a superannuation scheme by an executive officer's employer in respect of the officer that are required to be made by the employer under a law of the State relating to superannuation are, until provided for by the officer's contract of employment, taken to be an employment benefit provided in the contract.
- (2) The total amount of:
- (a) the annual rate of monetary remuneration for an executive officer, and
  - (b) the annual cost of employment benefits provided for the executive officer under the contract of employment,
- is to be equal to the amount of the remuneration package for the executive officer.
- (3) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (4) This section does not affect:
- (a) any approved performance-related incentive payments made to an executive officer, or
  - (b) any remuneration or benefits to which an executive officer is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like).
- (5) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading.
- (6) An executive officer is entitled to be paid an amount equivalent to the cost of a part of any entitlement to take annual or extended leave with pay if:
- (a) the officer forgoes with the approval of the Commissioner the right to take that part of that leave, and

- (b) the cost of that part of that leave has been included in the officer's contract of employment as an employment benefit.
- (7) Subsection (6) has effect despite anything to the contrary in the Annual Holidays Act 1944 or any other Act.
- (8) During any period when the monetary remuneration and employment benefits for an executive officer cannot be determined under subsection (1), the officer is entitled to monetary remuneration at the rate of the amount of the remuneration package for the officer, subject to any subsequent adjustment of payments in accordance with the officer's contract of employment.

If the remuneration package for an executive officer is varied, the officer is entitled to monetary remuneration and employment benefits in accordance with the officer's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.<sup>123</sup>

**Section 53 (Compensation where executive officer has no right to return to public sector)**

- (1) This section applies to:
  - (a) an executive officer who is removed from office under section 51 and who ceases to be an executive officer as referred to in section 51 (4), or
  - (b) an executive officer who is otherwise removed from office (except for misbehaviour after due inquiry), or
  - (c) (Repealed)
  - (d) an executive officer who was employed in the public sector when first appointed as an executive officer, whose term of office as an executive officer expires and who is not re-appointed, being a person who is not entitled to be engaged in the public sector under section 52.
- (2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.
- (3) The Statutory and Other Offices Remuneration Tribunal:
  - (a) may determine that compensation is payable for the failure to re-appoint an executive officer only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed, and

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<sup>123</sup> Definitions of the terms “approved”, “employment benefit”, “monetary remuneration” and “superannuation scheme”, where used in section 46, are set out in section 45 of the Police Service Act 1990.

- (b) must have regard to any general directions given to the Tribunal by the Minister administering the Statutory and Other Offices Remuneration Act 1975 as to the matters to be taken into consideration when it makes determinations under this section.
- (4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks.
- (5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).
- (6) An executive officer who is removed from office or not re-appointed is not entitled to compensation under this section if:
  - (a) the person is appointed on that removal or expiry of the term of office to another executive position, and
  - (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.
- (7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.
- (8) The person may not be engaged in the public sector during the period so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

## APPENDIX 6

### RELEVANT SECTION OF THE PUBLIC SECTOR MANAGEMENT ACT 1988

#### **Section 42S (Compensation etc where executive officer has no right to return to public sector)**

- (1) This section applies to:
  - (a) an executive officer who is removed from office under section 42Q and who ceases to be an executive officer as referred to in section 42Q (4), or
  - (b) an executive officer who is otherwise removed from office (except for misbehaviour after due inquiry), or
  - (c) (Repealed)
  - (d) an executive officer who was employed in the public sector when first appointed as an executive officer, whose term of office as an executive officer expires and who is not re-appointed, being a person who is not entitled to be engaged in the public sector under section 42R. However, this section does not apply to an executive officer who consents to a transfer at a lower level of remuneration.
- (2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.
- (3) The Statutory and Other Offices Remuneration Tribunal:
  - (a) may determine that compensation is payable for the failure to re-appoint an executive officer only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed, and
  - (b) must have regard to any general directions given to the Tribunal by the Minister as to the matters to be taken into consideration when it makes determinations under this section.

- (4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks.
- (5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).
- (6) An executive officer who is removed from office or not re-appointed is not entitled to compensation under this section if:
  - (a) the person is appointed on that removal or expiry of the term of office to another executive position, and
  - (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.
- (7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.
- (8) The person may not be engaged in the public sector or employed in the service of a State owned corporation established under the State Owned Corporations Act 1989 or a subsidiary of such a State owned corporation during the period so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

## APPENDIX 7

### RELEVANT SECTIONS OF THE STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

#### Section 7 (Assessors)

- (1) For the purposes of this Act, there shall be 3 assessors:
  - (a) one of whom shall be the Secretary of the Department of Industrial Relations and Employment, and
  - (a1) another of whom shall be the Director-General of the Premier's Department, and
  - (b) the other of whom shall be a person appointed by the Governor on the nomination of the Minister, being a person who:
    - (i) has, in the opinion of the Minister, special knowledge relating to salaries payable to persons engaged in commercial, banking, insurance, industrial or other activities at executive or management level, and
    - (ii) is not, apart from this Act, in the service of the State.
- (2) In exercising or performing the Tribunal's powers, authorities, duties and functions under this or any other Act, the Tribunal shall:
  - (a) be assisted by the assessors, and
  - (b) take into consideration the views and recommendations tendered to the Tribunal by the assessors.
- (3) Subject to this Act, the assessor appointed under subsection (1) (b) shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment and shall be eligible for re-appointment.
- (4) An assessor referred to in subsection (1) (a) or (a1) may appoint a deputy and, in the absence of the assessor, the deputy may act as an assessor.

## **Part 3A Remuneration packages for chief executive and senior executive office holders**

### **Section 24A (Definitions)**

In this Part:

( *chief executive office holder* ) means the holder of a position referred to in Schedule 3A to the *Public Sector Management Act 1988* or the Commissioner of Police.

( *determination* ) means a determination made by the Tribunal under section 24B, 24C or 24D.

( *executive office holder* ) means a chief executive office holder or a senior executive office holder.

( *remuneration package* ) means the annual amount payable under section 42L of the *Public Sector Management Act 1988*:

- (a) as monetary remuneration for the executive office holder, or
- (b) partly as that remuneration and partly as the cost to the employer of the executive office holder of employment benefits.

( *senior executive office holder* ) means the holder of a position referred to in Schedule 3B to the *Public Sector Management Act 1988* or the holder of a position referred to in Schedule 2 to the *Police Service Act 1990*.

### **Section 24B (Initial determinations)**

- (1) The Tribunal is required to make, as soon as practicable after the commencement of this Part, a determination of the remuneration packages for executive office holders.
- (2) The Tribunal is required to make, as occasion requires, a determination of the remuneration package for an executive office holder not included in any previous determination.
- (3) The Tribunal may make a determination under this section in respect of a prospective executive office holder notified to the Tribunal by the Minister.

### **Section 24C (Annual determinations)**

The Tribunal is required to make, not earlier than 1 July and not later than 31 August in each year, a determination of the remuneration packages for executive office holders as on and from 1 October in that year.

**Section 24D (Special determinations)**

- (1) If the Minister so directs, the Tribunal is required to make (not later than the day specified in the direction as the day on or before which the determination is to be made) a determination as to whether, and (if so) how, any determination already made should be altered in relation to such executive office holders as are referred to in the direction.
- (2) A reference in subsection (1) to an executive office holder includes a reference to an executive office holder whose remuneration package is not fixed by the determination to which the determination made under this section relates.

**Section 24E (Directions by Minister)**

- (1) The Minister may give the Tribunal directions as to matters which the Tribunal should take into consideration when making determinations of the remuneration packages for executive office holders or for any of them or for any class of them.
- (2) In making a determination, the Tribunal must take into consideration any such matters and such other matters as the Tribunal thinks fit.

**Section 24F (General provisions relating to determinations)**

- (1) In making a determination, the Tribunal may:
  - (a) fix, as a remuneration package, a specified amount or any amount that is within a specified range of amounts, or
  - (b) provide that a different remuneration package applies in the case of an executive office holder who is named in the determination, or
  - (c) increase, reduce or not change any remuneration package, or
  - (d) fix remuneration packages for particular executive office holders or for classes of executive office holders.
- (2) A remuneration package determined by the Tribunal for an executive office holder may not be less than the remuneration package which the Tribunal considers appropriate for a clerk (grade 12) in the Public Service with general administrative duties.
- (3) The Tribunal may make a determination that applies in relation to an executive office holder even though no person holds the office for the time being.

**Section 24G (Inquiries)**

- (1) Before making a determination, the Tribunal may make such inquiry as the Tribunal thinks necessary.
- (2) An inquiry for the purpose of a determination to be made under section 24C (Annual determinations) may not be commenced before 1 April in the year in which the determination is to be made.
- (3) In the exercise or performance of the Tribunal's powers, authorities, duties and functions under this Part:
  - (a) the Tribunal may inform himself or herself in such manner as he or she thinks fit,
  - (b) the Tribunal may receive written or oral submissions,
  - (c) the Tribunal must take into consideration submissions received by him or her relating to the remuneration packages for executive office holders, whether or not those submissions were received in response to an invitation under subsection (4),
  - (d) the Tribunal is not required to conduct any proceedings in a formal manner, and
  - (e) the Tribunal is not bound by the rules of evidence.
- (4) Without affecting the generality of subsection (3), the Tribunal may invite submissions from executive office holders, Ministers of the Crown, members and officers of statutory bodies and Departments of the Government and any other persons.

**Section 24H (Tribunal's reports)**

- (1) The Tribunal must, as soon as practicable after making a determination under section 24B (Initial determinations), make a report to the Minister of the Tribunal's determination.
- (2) The Tribunal must, not earlier than 1 July and not later than 31 August in each year, make a report to the Minister of the Tribunal's determination under section 24C (Annual determinations).
- (3) The Tribunal must, not later than the day specified in a direction referred to in section 24D (Special determinations) as the day on or before which the determination is to be made, make a report to the Minister of the Tribunal's determination made in consequence of that direction.

**Section 24I (Publication of determinations)**

The report of a determination may be published by the Minister in the Gazette and in such other manner as the Minister thinks fit.

**Section 24J (Operation of determinations)**

- (1) Subject to this Part, a determination which was made under:
  - (a) section 24B (Initial determinations) - is to be taken to have come into force on the date that the first appointment is made to the office concerned, and
  - (b) section 24C (Annual determinations) - comes into force, or is to be taken to have come into force, on 1 October in the year in which it is made, and
  - (c) section 24D (Special determinations) - comes into force, or is to be taken to have come into force, on the day specified in the determination as the day on which the determination is, or is to be taken, to come into force.
- (2) Subject to this Part, a determination continues in force until and including 30 September next following the day on which it comes into force.
- (3) Subject to this Part, a determination has effect subject to any determination that was made under section 24D (Special determinations) and that is in force.
- (4) A determination may not be challenged, reviewed, quashed or called into question before any court in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

**Section 24K (Remuneration package during period before making of report)**

- (1) If the report of a determination under section 24C (Annual determinations) is made to the Minister after 1 October in any year, the remuneration package for each executive office holder is (for the period commencing on and including that day and ending on and including the day preceding the date the report is made) the remuneration package that would have been applicable had the determination in force on the preceding 30 September continued in force (subject to any adjustment necessary because of the making of the report).
- (2) Despite anything in this Part, if a determination takes effect on a date (the *effective date*) that is earlier than the date that the report of the determination is made to the Minister, a person who:
  - (a) was an executive office holder at or at any time before the effective date, and
  - (b) was not an executive office holder at the date that the report is made,

is not, in relation to any period before the date the report is made, affected by the determination, unless:

- (c) the determination would, if the person had continued in office, operate to increase the remuneration package for the person in relation to that period, and
- (d) the person ceased to hold office otherwise than because of the resignation of his or her office (except by way of retirement) or because of his or her removal from office.

**Section 24L (Remuneration packages for executive office holders not dealt with)**

- (1) If, but for this section, no remuneration package would be applicable to an executive office holder in respect of any period during which he or she is an executive office holder, the Minister may, from time to time, fix the remuneration package for the executive office holder in respect of that period.
- (2) The remuneration package for an executive office holder under this section applies until a determination applicable to the person comes into force.

## **APPENDIX 8**

### **REPORT AND DETERMINATION ON THE REMUNERATION FOR THE COMMISSIONER OF POLICE**

REPORT AND DETERMINATION ON THE REMUNERATION FOR THE COMMISSIONER FOR POLICE

1. On 8th February 1999 the Minister requested the Tribunal review the remuneration of the Commissioner for Police. The Minister advised that at the request of the Commissioner, the Government had agreed to re-negotiate his contract for a further five year period.
  
2. significantly increased responsibilities for implementing major reform resulting from the Police Royal Commission. The Tribunal also had regard to the personal skills, qualifications and experience that the prospective commissioner brought to the position and determined a remuneration package amount of 315,000 pa. Subsequent increases, in line with increases determined for the Chief and Senior Executive Services have increased the commissioner's remuneration to \$372,000.
  
3. The remuneration determined by the Tribunal is applicable only while Mr Peter Ryan holds this office.
  
4. The Commissioner has entered into a performance agreement with the Minister for Police requiring him to:
  - i) continue the reform process and the requirements of the Government in relation to policing in this State including the implementation of the recommendations of the recent Royal Commissions;
  
  - ii) ensuring security of athletes and spectators in the conduct of the 2000 Olympics, a duty for which he has ultimate responsibility, and

iii) nurturing staff so that at the end of the contract period there is a fully worked through succession plan to enable the Government of New South Wales to select a new Commissioner and Senior Executive from a list of motivated, enthusiastic and capable police officers.

5. The Tribunal has also had regard to the payment of an end of contract sum on the completion of the contract and that the Commissioner's spouse accompanies him when he is travelling on official duty in New South Wales and outside New South Wales, including overseas, with the Minister's approval.

6. The Tribunal makes clear that the total remuneration package is expressed a total cost of employment. All benefits, such as superannuation, cost of spouse travel and cost of motor vehicle for private use and taxes, including fringe benefits tax, are deducted from the package amount.

**DETERMINATION:**

The Tribunal determines that the remuneration of the Commissioner for Police, Mr Peter Ryan shall be \$425,000pa effected from the date of commencement of his new contract.

**Statutory and Other Offices  
Remuneration Tribunal**



Gerry Gleeson  
9 FEB 1999

# PROCEEDINGS OF THE COMMITTEE

## Minutes No. 8

Thursday 18 November 1999  
At Parliament House at 3.00 pm

### 1. Members Present

Ms Helen Sham-Ho (in the Chair)  
Mr Hatzistergos  
Mr Harwin  
Mr Jobling (Samios)  
Mr Johnson  
Mr Manson  
Ms Rhiannon

### 2. Apologies

Nil

### 3. Confirmation of minutes

Resolved, on motion of Mr Harwin, that the minutes of meeting number 7 be confirmed.

### 4. Contract of employment of Commissioner of Police

The Committee noted correspondence from Mr Harwin, Mr Samios and Ms Rhiannon, dated 11 November 1999, requesting a meeting of the Committee to be convened to consider proposed terms of reference for an inquiry into the contract of employment of the Police Commissioner.

The Committee noted correspondence from the Hon John Jobling MLC, dated 17 November 1999, noting that he will replace Mr Samios for the purpose of all meetings and hearings of the Committee in relation to the inquiry into the contract of employment of the Police Commissioner.

The Committee deliberated.

Resolved, on the motion of Mr Harwin:

That General Purpose Standing Committee No 3 inquire into and report on:

- (a) the circumstances surrounding the contract of employment between the Commissioner of Police and the Minister for Police, signed on 8 February 1999.
- (b) the circumstances in which the Statutory and Other Offices Remuneration Tribunal came to make a determination on the salary of the Commissioner of Police one day after the salary had been agreed to in the contract.

Resolved, on the motion of Mr Jobling, that submissions be invited from Mr Les Tree, Director General of the Ministry for Police, and Mr Gerry Gleeson, of the Statutory and Other Offices Remuneration Tribunal.

Resolved, on the motion of Mr Jobling, that the Police Commissioner and the Minister for Police be informed of the Committee's terms of reference and asked whether they would like to make a submission.

Resolved, on the motion of Mr Harwin, that the closing date for submissions be Monday, 6 December 1999.

Resolved, on the motion of Mr Johnson, that the Committee meet at 10.30 am on Wednesday, 8 December 1999 to consider the submissions and the steps to be taken to complete the inquiry.

## **6. Adjournment**

The meeting adjourned at 3.30 pm until 10.30 am on Wednesday 8 December 1999.

David Blunt  
A/Clerk Assistant Committees

## **Minutes No. 9**

Wednesday 8 December 1999  
At Parliament House at 10.30 am

### **1. Members Present**

Ms Helen Sham-Ho (in the Chair)  
Mr Harwin  
Mr Jobling (Samios)  
Mr Johnson  
Mr Manson  
Ms Saffin (Hatzistergos)

### **2. Apologies**

Ms Rhiannon

### **3. Confirmation of minutes**

Resolved, on motion of Mr Harwin, that the minutes of meeting number 8 be confirmed.

### **4. Correspondence**

The Committee noted correspondence from the Hon Andy Manson MLC, Deputy Government Whip, indicating that Ms Saffin would substitute for Mr Hatzistergos at today's meeting.

### **5. Contract of employment of Commissioner of Police**

The Committee noted the submissions, dated 6 December 1999, received from:

- The Hon Paul Whelan MP, Minister for Police
- Mr Peter Ryan, Commissioner of Police
- Mr Les Tree, Director General, Ministry for Police
- Mr Gerry Gleeson, Statutory and Other Offices Remuneration Tribunal
- Dr Col Gellatly, Director General, Premier's Department

The Committee deliberated.

Resolved, on the motion of MR Harwin, that under the provisions of section 4(2) of the Parliamentary Papers (Supplementary Provisions) Act 1975 the Committee authorise the publication of the submissions received to date in this inquiry.

Resolved, on the motion of Mr Johnson, that the Committee write to Dr Gellatly, requesting a further submission which addresses the following issues:

- how the public servants involved in negotiating Commissioner Ryan's contract made the mistake of including an illegal clause (clause 22) in the contract [see *Auditor General's Report to Parliament for 1999 Volume Two – Addendum*, page 5];
- the Auditor General's concerns that the provisions of the *Public Sector Management Act* and the *Statutory and Other Offices Remuneration (SOOR) Act* are being circumvented, so that senior public servants (such as the Police Commissioner) are receiving financial rewards greater in scope than envisaged under that legislation [see *Auditor General's Report to Parliament for 1999 Volume Two – Addendum*, page 6];
- the possible conflict of interest / conflict of roles for the Director General of the Premier's Department in both negotiating the contract and also acting as an assessor for SOORT; and
- the apparent treatment of the SOORT process as a "mere formality" or "rubber stamp" - if this is generally the case and SOORT merely adopts the outcome of contract negotiations between Ministers and CEOs then it would appear timely to review the ongoing existence of SOORT.

Resolved, on the motion of Mr Jobling, that the Committee include in the letter to Dr Gellatly a request for the following documents:

- any documents submitted to SOORT in support of the increase in Commissioner Ryan's remuneration and the contents of the new contract;
- letters and memoranda passing between the following individuals in relation to this matter:
  - The Hon Paul Whelan MP, Minister for Police;
  - Mr Peter Ryan, Commissioner of Police;
  - Mr Les Tree, Director-General, Ministry for Police;
  - Mr Gerry Gleeson, Statutory and Other Offices Remuneration Tribunal; and
  - Dr Col Gellatly, Director General, Premier's Department
- the SOORT file on this matter;
- all draft contracts and draft clauses for the contract;
- legal advice received by SOORT or those negotiating the contract in relation to this matter;
- any other Police Service, Ministry for Police or Premier's Department files on the matter which the Director General believes would assist the Committee in its consideration of this matter.

Resolved, on the motion of Mr Jobling, that the submissions received to date be referred to the Auditor-General with a request for any advice which the Auditor-General can provide to the Committee in relation to unresolved issues upon which a further submission is being sought from Dr Gellatly.

Resolved, on the motion of Mr Jobling, that 31 January 2000 be the closing dated for further submissions in this inquiry, with the Committee to meet again after that dated to consider the responses received.

**6. Adjournment**

The meeting adjourned at 11.30 am.

David Blunt  
A/Clerk Assistant Committees

## **Minutes No. 10**

Wednesday 15 March 2000  
At Parliament House at 10.00 am

### **1. Members Present**

Mrs Helen Sham-Ho (in the Chair)  
Mr Hatzistergos  
Mr Harwin  
Mr Johnson  
Mr Dyer (Manson)  
Ms Rhiannon  
Mr Samios

### **2. Apologies**

Nil

### **3. Confirmation of minutes**

Resolved, on motion of Mr Harwin, that the minutes of meeting number 9 be confirmed.

### **4. Correspondence**

Letter from Mr Alex Smith, Director, Officer of the Director General, Premier's Department, to Chair, dated 21 January 2000, seeking an extension of time for the Director General to respond to the Committee's request of 9 December 2000 for additional information.

Letter from Mr Alex Smith, Director, Officer of the Director General, Premier's Department, to Chair, dated 8 February 2000, providing a briefing note on issues around the Police Commissioner's contract negotiations.

Letter from Mr Col Gellatly, Director General, Premier's Department, to Chair, dated 18 February 2000, responding to issues raised by the Committee in correspondence of 9 December 2000.

### **5. Inquiry into the contract of employment of the Police Commissioner**

The Committee deliberated.

Resolved, on motion of Mr Harwin, that pursuant to the provisions of section 4 of the

*Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the letter from Mr Alex Smith, Director, Officer of the Director General, Premier's Department, to Chair, dated 8 February 2000.

Resolved, on motion of Mr Harwin, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the letter from Mr Alex Smith, Director, Officer of the Director General, Premier's Department, to Chair, dated 21 January 2000.

Mr Harwin moved: that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the letter from Mr Col Gellatly, Director General, Premier's Department, to Chair, dated 18 February 2000.

Debate ensued.

Mr Dyer moved: that the motion be amended by the addition of the following words at the end of the motion: "excluding the two page letter from Commissioner Ryan to the Minister for Police provided at annexure A to Mr Gellatly's letter".

Question – that the amendment of Mr Dyer be agreed to – put.

The Committee divided.

Ayes: Mrs Sham-Ho  
Mr Dyer  
Mr Hatzistergos  
Mr Johnson

Nos: Mr Harwin  
Ms Rhiannon  
Mr Samios

Question resolved in the affirmative.

Original question, as amended: that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the letter from Mr Col Gellatly, Director General, Premier's Department, to Chair, dated 18 February 2000, excluding the two page letter from Commissioner Ryan to the Minister for Police provided at annexure A to Mr Gellatly's letter. – put and passed.

The Committee deliberated.

Resolved, on motion of Mr Dyer, that the:

1. The Hon Paul Whelan MP, Minister for Police be asked to provide to the Committee by 31 March 2000 a copy of the additional contract relating to the Commissioner's employment signed by the Minister and the Commissioner for Police signed an additional contract earlier this week;
2. Mr Gerry Gleeson, from the Statutory and Other Officers Remuneration Tribunal be asked to provide to the Committee by 31 March 2000 a copy of all documents held by SOORT relating to the determination of the remuneration of the Commissioner of Police issued on 9 February 1999;
3. Mr Col Gellatly, Director General, Premier's Department, be asked to advise the Committee by 31 March 2000 of the status of the Premier's Memorandum referred to by Mr Gellatly on page one of his letter of 18 February 2000, and to request a copy to be forwarded to the Committee once it has been finalised.

The Committee deliberated.

Resolved, on motion of Mr Samios, that the Committee hold a public hearing in relation to the inquiry on Monday, 17 April 2000 from 10am to 5pm, at which the following persons be asked to appear as witnesses before the Committee:

Bob Sendt, Auditor General  
Col Gellatly, Director General, Premiers Department  
Les Tree, Director General, Ministry for Police  
Gerry Gleeson, Statutory and Other Officers Remuneration Tribunal  
Ian Knight, Crown Solicitor.

## **6. Adjournment**

The meeting adjourned at 11.10 am until 9.00am on Monday, 17 April 2000.

Anna McNicol  
Director, General Purpose Standing Committees

## **Minutes No. 11**

Monday 17 April March 2000  
At Parliament House at 9.00 am

### **1. Members Present**

Mrs Helen Sham-Ho (in the Chair)  
Mr Dyer (Manson)  
Mr Hatzistergos  
Mr Jobling (Samios)  
Mr Johnson  
Ms Rhiannon  
Mr Samios (Harwin)

The Committee noted that Mr Harwin was unable to attend the meeting as he had been admitted to hospital.

### **2. Apologies**

Nil

### **3. Confirmation of minutes**

Resolved, on motion of Ms Rhiannon, that the minutes of meeting number 10 be confirmed.

### **4. Correspondence**

The Chair tabled ten items of correspondence received.

Letter from Mr Bob Sendt, Auditor-General, to Chair, dated 13 January 2000, responding to the Committee's letter of 9 December 1999.

Letter from the Hon Peter Primrose MLC, Government Whip, to Director, dated 7 March 2000, advising that the Hon Ron Dyer will be replacing the Hon Andy Manson MLC at the meeting on 15 March 2000.

Memo from the Hon John Jobling MLC, Opposition Whip, to Director, dated 9 March 2000, advising that the Hon Jim Samios MLC will be replacing the Hon John Jobling MLC at the meeting on 15 March 2000.

Letter from Gerry Gleeson, Statutory and Other Officers Tribunal, to Chair, dated 30 March 2000, providing information requested by the Committee in correspondence dated 15 March 2000.

Letter from Col Gellatly, Director General, Premier's Department, to Director, dated 3

April 2000, relating to arrangements for the 17 April hearing.

Letter from Col Gellatly, Director General, Premier's Department, to Chair, dated 31 March 2000, providing information requested by the Committee in correspondence dated 15 March 2000.

Letter from the Hon Paul Whelan MP, Minister for Police, to Chair, dated 3 April 2000, providing information requested by the Committee in correspondence dated 15 March 2000.

Facsimile from Jan Briggs, Secretary to Bob Sendt, Auditor-General, to Director, dated 11 April 2000, relating to arrangements for the 17 April hearing.

Letter from the Hon Peter Primrose MLC, Government Whip, to Director, dated 12 April 2000, advising the Hon Ron Dyer MLC will be representing the Hon Andy Manson MLC at the hearing on 17 April 2000.

Memo from the Hon John Jobling MLC, Opposition Whip, to Director, dated 17 April 2000, advising that the Hon Jim Samios MLC will be replacing the Hon Don Harwin MLC at the meeting on 17 April 2000.

## **5. Inquiry into the contract of employment of the Police Commissioner**

The Committee deliberated.

Resolved, on motion of Mr Jobling, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the letter from Mr Bob Sendt, Auditor-General, to Chair, dated 13 January 2000.

Resolved, on motion of Mr Samios, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish correspondence from Mr Gerry Gleeson of the Statutory and Other Officers Remuneration Tribunal dated 30 March 2000, and correspondence from the Hon Paul Whelan MP, Minister for Police, dated 3 April 2000.

Short adjournment.

The media and the public were admitted.

Mr Ian Knight, Crown Solicitor, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr Les Tree, Director General, Ministry for Police, was sworn and examined.

Mr Jobling tabled three documents.

The media and public withdrew.

The Committee deliberated.

The media and the public were re-admitted.

Evidence concluded and the witness withdrew.

Mr Gerry Gleeson of the Statutory and Other Offices Remuneration Tribunal was sworn and examined.

Mr Gleeson tendered two documents to support his evidence.

Resolved, on motion of Mr Jobling, to accept the documents.

Mr Jobling tabled a document.

Mr Bob Sendt, Auditor General, Mr Lee White, Assistant Auditor-General, and Mr Jack Kheir, Director of Audit, all of the Audit Office of New South Wales, were sworn and examined.

Resolved, on motion of Mr Jobling, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the document tendered by Mr Gleeson today.

Evidence concluded and the witnesses withdrew.

Dr Col Gellatly, Director General, Premiers Department, was sworn and examined.

Evidence concluded and the witness withdrew.

The media and the public withdrew.

Resolved, on motion of Mr Dyer, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish the transcript of evidence of today's proceedings.

Resolved, on motion of Mr Samios, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and the authority of Standing Order 252, the Committee authorises the Committee Director to publish all documents tendered by witnesses and tabled by Members of the Committee at the hearing today.

The Committee deliberated.

Resolved, on motion of Mr Samios, that the Committee meet on Thursday, 18 May 2000 from 10am to 1pm, and (if required) Thursday, 25 May 2000 from 10am to 11am, to deliberate on the Chair's draft report.

**6. Adjournment**

The meeting adjourned at 4.20 pm until 10.00am on Thursday, 18 May 2000.

Anna McNicol  
Director, General Purpose Standing Committees

## **Minutes No. 12**

Thursday, 18 May 2000  
At Parliament House at 10.00am

### **1. Members Present**

Mrs Helen Sham-Ho (Chair)  
Mr Harwin  
Mr Hatzistergos  
Mr Jobling (Samios)  
Mr Johnson  
Mr Manson  
Ms Rhiannon

### **2. Apologies**

Nil

### **3. Confirmation of minutes**

Resolved, on motion of Mr Jobling that minutes number 11 be amended by noting under Members Present that Mr Harwin's absence on 17 April 2000 was a result of his being admitted to hospital.

Resolved, on motion of Mr Jobling, that the minutes of meeting number 11 be confirmed, as amended.

### **4. Inquiry into the contract of employment of the Police Commissioner**

The Chair submitted her draft report entitled "Report on Inquiry into Contract of Employment of Commissioner of Police", which having been circulated to each Member of the Committee, was accepted as being read.

The Committee considered the draft report.

Mr Hatzistergos moved: that section 1.1, paragraph one, be amended by deleting "The contract was signed one day before the Statutory and Other Offices Remuneration Tribunal (SOORT) issued its determination of the Commissioner's new remuneration package." and inserting instead "The contract was signed four days after the Statutory and Other Offices Remuneration Tribunal (SOORT) had orally advised its proposed determination and one day before the Tribunal issued its determination of the Commissioner's new remuneration package."

Debate ensued.

Question put.

The Committee divided.

Ayes: Mr Hatzistergos  
Mr Johnson  
Mr Manson

Nos: Ms Sham-Ho  
Mr Harwin  
Mr Jobling  
Ms Rhiannon

Question resolved in the negative.

Resolved, on the motion of Ms Rhiannon, that section 2.2, paragraph 8, be amended by deleting the word “clarified” in the sentence commencing “In giving his evidence to the Committee, Mr Gleeson clarified the nature of his discussions ...” and instead inserting

Resolved, on the motion of Mr Jobling, that section 2.2 be amended by inserting the following paragraphs at the end of paragraph 8:

“Dr Gellatly, when asked the question “You worked with him [Mr Gleeson] and you are negotiating together?” replied “Yes”.

In his submission to the Committee, Dr Gellatly repeatedly referred to Mr Gleeson’s involvement in the negotiations and wrote:

... it was logical that both the tribunal and myself be involved in the negotiations.

The Committee also notes that in a letter dated 29 January 1999 to Dr Gellatly, Mr Gleeson wrote:

We can not have Ryan pushing us to the brink and then putting pressure on the Minister.

When asked about this, and in particular the use of the word “we”, Dr Gellatly told the Committee:

‘We’ I would regard as Mr Gleeson and myself because we were working together in negotiating the contract and setting the remuneration.

Mr Gleeson's reply when asked about this letter was:

Mr Lyn Anderson, on behalf of the Commissioner, saw it as a responsibility to try to convince me that he deserved to be treated a lot better in terms of remuneration and benefits and so on, and so there was some pretty hard toing and froing in these discussions, and, remember, the contract finally is signed by the Minister and all he does is that he includes my bit but the rest of it is up to him."

Resolved, on the motion of Mr Hatzistergos, that section 2.8, first paragraph, be amended by inserting as the first dot point "The renegotiation of the contract of the Commissioner of Police and the extension of the term of his appointment was precipitated by the Commissioner's correspondence to the Minister of Police dated 23 December 1998. There is no evidence of any person or party prompting or inviting the Commissioner to make the request. Accordingly, it is clear the renegotiation of the contract was done at the bequest of the Commissioner and not the Government."

Resolved, on the motion of Mr Harwin, that section 2.8, first paragraph, be amended by inserting as the second dot point "both Dr Gellatly and Mr Gleeson were involved in the negotiations."

Resolved, on motion of Mr Hatzistergos, that section 2.8, first paragraph, be amended by inserting as the third dot point "Mr Gleeson advised Dr Gellatly of how he saw the remuneration fit into the contract on 29 January 1999. The Tribunal's decision was finalised on 5 February 1999 and conveyed to Dr Gellatly who then finalised the contractual provisions for the draft contract. The Tribunal determination however could not be signed until a formal request came from the Premier."

Ms Rhiannon moved: that section 2.8 be amended by including the sentence "The Committee found that Mr Gleeson's evidence relating to contractual negotiations was contradicted by Dr Gellatly's evidence."

Debate ensued.

Question put.

The Committee divided.

Ayes: Mr Harwin  
Mr Jobling  
Ms Rhiannon

Nos: Ms Sham-Ho  
Mr Hatzistergos  
Mr Johnson  
Mr Manson

Question resolved in the negative.

Ms Rhiannon moved: that section 2.8 be amended by including the sentence “Dr Gellatly’s evidence was accepted over that of Mr Gleeson as reflecting a correct record of the proceedings associated with the contract negotiations.”

Debate ensued.

Question put.

The Committee divided.

Ayes: Mr Harwin  
Mr Jobling  
Ms Rhiannon

Nos: Ms Sham-Ho  
Mr Hatzistergos  
Mr Johnson  
Mr Manson

Question resolved in the negative.

Mr Jobling moved: that section 2.8 be amended by inserting after paragraph 1, the paragraph: “The Committee finds that Mr Gleeson should not have played any role in the negotiations. The Committee believes that as the Statutory and Other Offices Remuneration Tribunal, Mr Gleeson’s role was to receive submissions and hear argument from both the Commissioner and/or his representatives as employee and the Minister, Government and/or their representatives, and to inform himself as he thought fit, and then make a determination.”

Debate ensued.

Question put.

The Committee divided.

Ayes: Ms Sham-Ho  
Mr Harwin  
Mr Jobling  
Ms Rhiannon

Nos: Mr Hatzistergos  
Mr Johnson  
Mr Manson

Question resolved in the affirmative.

Mr Jobling moved: that section 2.8 of the report be amended by inserting after paragraph 2, the recommendation “The Committee recommends that the Statutory and Other Offices Remuneration Tribunal play no role in negotiations between the Government and its employees but act rather as an adjudicator on submissions placed before it by those parties.”

Debate ensued.

Question put.

The Committee divided.

Ayes: Ms Sham-Ho  
Mr Harwin  
Mr Jobling  
Ms Rhiannon

Nos: Mr Hatzistergos  
Mr Johnson  
Mr Manson

Question resolved in the affirmative.

Mr Hatzistergos moved: that section 2.8 of the report be amended by inserting at the end of paragraph 5, sentence 1 (commencing “The Committee is congisant ...”) “and there is no evidence of any actual adverse impact on the public interest in this instance.”

Debate ensued.

Question put.

The Committee divided.

Ayes: Mr Hatzistergos  
Mr Johnsonn  
Mr Manson

Nos: Ms Sham-Ho  
Mr Harwin  
Mr Jobling  
Ms Rhiannon

Question resolved in the negative.

Resolved, on the motion of Mr Hatzistergos, that section 3.5, paragraph 1, sentence 1, be amended by inserting “and Crown Solicitor” after “Auditor-General”.

Resolved, on the motion of Mr Hatzistergos, that section 3.5, paragraph 1, be amended by inserting as the second sentence “This was necessary not only because of the advice of the Crown Solicitor but because of the limitations on the Statutory and Other Offices Remuneration Tribunal’s powers provided pursuant to section 46(2) of the

Resolved, on the motion of Mr Jobling, that section 3.5, paragraph 2 be amended by inserting after the first sentence “While there was a Crown Solicitor’s advice relating to matters contained in clause 6 of the contract, no such advice had been sought from the Crown Solicitor in relation to the inclusion of end of contract payments in employment contracts of senior public sector managers. The poor drafting of clauses 3, 5 and 7 also suggest there was no satisfactory precedent relating to those clauses.”

Resolved, on the motion of Mr Jobling, that section 3.5 be amended by inserting the recommendation “The Committee recommends that where public sector employment contracts differ materially from existing precedents, independent legal advice be obtained to ensure that the material differences are valid.”

Mr Hatzistergos moved: that the third and fourth paragraphs in section 2.8 be deleted.

Debate ensued.

Question put.

The Committee divided.

Ayes: Mr Hatzistergos  
Mr Johnsonn  
Mr Manson

Nos: Ms Sham-Ho  
Mr Harwin  
Mr Jobling  
Ms Rhiannon

Question resolved in the negative.

Resolved, on motion of Ms Rhiannon, that Members reserve from 1.00 pm to 2.00 pm on Thursday, 25 May 2000 for an additional deliberative meeting, if required.

**5. Adjournment**

The meeting adjourned at 1.00 pm until 10.00am on Thursday, 25 May 2000.

Anna McNicol  
Director, General Purpose Standing Committees

## **Minutes No. 13**

Thursday 25 May 2000  
At Parliament House at 10.00 am

### **1. Members Present**

Mrs Helen Sham-Ho (Chair)  
Mrs Forsythe (Harwin) (until 10.10am)  
Mr Harwin (after 10.10am)  
Mr Hatzistergos  
Mr Jobling (Samios)  
Mr Johnson  
Mr Manson  
Ms Rhiannon

### **2. Apologies**

Nil

### **3. Confirmation of minutes**

Resolved, on motion of Mr Jobling, that the minutes of meeting number 12 be confirmed.

### **4. Correspondence**

Memo from the Hon John Jobling MLC, Opposition Whip, to Director, received 25 May 2000, advising that the Hon Patricia Forsythe MLC will be replacing the Hon Don Harwin MLC for the purposes of the meeting to be held on 25 May 2000.

### **5. Inquiry into the contract of employment of the Police Commissioner**

The Committee continued its consideration of the Chair's draft report.

Resolved, on the motion of Mr Jobling, that section 2.8, recommendation one, be amended by inserting after the words "an adjudicator on" the words "both information gleaned as a result of its own inquiries and" and by replacing the word "those" by the word "interested".

Resolved, on the motion of Mr Jobling, that section 3.5, recommendation four, be amended by deleting the word "independent" from the phrase "independent legal advice" and inserting the words "from the Crown Solicitor" after the words "be obtained".

Resolved, on the motion of Mr Hatzistergos, that section 4.2.4, paragraph four, be amended by

inserting the word “possibly” immediately before the words “have acted as assessors”.

Resolved, on the motion of Mr Hatzistergos, that section 4.2.4, paragraph four, be amended by deleting the words “not uncommon” from the phrase “it is not uncommon for the Tribunal to engage” and instead inserting the word “possible”.

Mr Hatzistergos moved: that section 4.2.4 be amended by deleting paragraphs five, six and seven and recommendation eight.

Debate ensued.

Question put.

The Committee divided.

Ayes: Mr Hatzistergos  
Mr Johnson  
Mr Manson

Nos: Ms Sham-Ho  
Mr Harwin  
Mr Jobling  
Ms Rhiannon

Question resolved in the negative.

Resolved, on the motion of Mr Jobling, that section 4.4 be amended by inserting at the end of the section the recommendation “The Committee recommends that all reports and determinations made under section 24H of the Statutory and Other Offices Remuneration Act 1975 be made public and that any necessary amendments to the legislation to give effect to this be made as soon as possible.”

Resolved, on the motion of Mr Jobling, that a new section 4.5 be inserted as follows:

“4.5 Notice

Recommendation

The Committee recommends that all contracts of employment with officers who come within the jurisdiction of the Statutory and Other Offices Remuneration Tribunal contain a specific requirement that a minimum period of four weeks notice be given by the officer.”

Lunch adjournment.

Committee resumed at 2.05 pm.

The Committee deliberated.

Mr Hatzistergos moved: that section 4.5 be deleted.

Debate ensued.

Question put.

The Committee divided.

Ayes: Ms Sham-Ho  
Mr Hatzistergos  
Mr Johnson  
Mr Manson

Nos: Mr Harwin  
Mr Jobling  
Ms Rhiannon

Question resolved in the affirmative.

Resolved, on the motion of Mr Jobling, that section 1.3.1, paragraph two, be amended by inserting “30” immediately prior to “32 and 53”, and that section 1.3.1 be amended by inserting immediately prior to the sub-heading “Section 32”:

Section 30 relates to the vacation of office by the Commissioner. Sub-section 30(1) sets out the circumstances under which the office of Commissioner becomes vacant. Sub-section 30(2) provides that:

The retirement or resignation of a Commissioner does not take effect until:

- (a) the Minister accepts the retirement or resignation, or
- (b) the Commissioner has given the Minister at least 4 weeks' notice in writing of the day on which the Commissioner intends to retire or resign and the Commissioner is not on that day under official investigation for misbehaviour.

Sub-section 30(3) states that the Commissioner is under official investigation for misbehaviour if the Minister so certifies.”

Resolved, on the motion of Ms Rhiannon, that the report, as amended, be the report of the Committee.

**6. Adjournment**

The meeting adjourned at 2.33 pm *sine die*.

Anna McNicol  
Director, General Purpose Standing Committees

## **Minutes No. 14**

Friday 26 May 2000  
At Parliament House at 10.45 am

### **1. Members Present**

Mrs Helen Sham-Ho (Chair)  
Mr Harwin  
Mr Hatzistergos  
Mr Johnson  
Mr Manson  
Ms Rhiannon

### **2. Apologies**

Mr Jobling (Samios)

### **3. Confirmation of minutes**

Resolved, on motion of Ms Rhiannon, that the minutes of meeting number 13 be confirmed.

### **4. Inquiry into the contract of employment of the Police Commissioner**

The Committee deliberated.

Resolved, on the motion of Ms Rhiannon, that the transcripts of evidence, submissions, and documents and correspondence received, excepting only those parts of those documents that identify the home address of the Commissioner of Police, be made public and tabled with the report.

Resolved, on the motion of Mr Hatzistergos, that 10.00 am on Tuesday, 30 May 2000 be the deadline for Members to lodge any dissenting statement to the Committee's report with the Committee Secretariat.

The Chair asked that the minutes note the Committee's appreciation for the Secretariat's assistance with the inquiry.

**5. Adjournment**

The meeting adjourned at 10.58 am *sine die*.

Anna McNicol  
Director, General Purpose Standing Committees

## REFERENCES

Auditor-General, 1999. *New South Wales Auditor-General's Report to Parliament for 1999*, Volume One, Sydney, the Audit Office of New South Wales.

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