



Law Enforcement
Conduct Commission

Office of the Chief Commissioner

25 September 2018

43295/174

Ms Sarah Dunn
Budget Estimates Secretariat
Upper House Committees
Parliament of New South Wales

Dear Ms Dunn,

Supplementary questions have been asked from the Hon Shaoquett Moselmane MLC (on behalf of the NSW Labour Opposition). For ease of reading I set out the question then the answer.

1. During the Estimates hearing, the Minister described your evidence that he sought to influence you improperly (issue 1) as 'vexatious' and said it was invented by you - effectively in retaliation for his not approving the overseas travel of a LECC officer (issue 2). Noting that you have denied this, do you have further information or documentation that you can provide to the Committee regarding the relative timings of issues 1 and 2, or any other information the bears on the issues?

As I stated in my answer to the question concerning attempts by the Minister to influence employment by the LECC, this arose shortly after my appointment on 1 February 2017, at a meeting with the Minister in his office. There was some delay between the date of my appointment and the date of commencement of my duties which occurred on 13 February 2017. The transition was well under way at this time and the question of recruitment, in particular of the positions of Director Integrity, Director Oversight, Director Covert Services and the Solicitor of the Commission required determination.

Commissioner Drake, who was appointed on 12 April 2017, was naturally involved in the selection process for these appointments. Commissioner Drake needed to be informed, at all events, of my communications with the Minister, but especially so, given her role in recruitment which included the assessment of the suitability of former PIC employees. When Commissioner Saidi was appointed on 7 June 2017, I discussed this matter also with him in order to apprise him of a possible issue with the Minister, particularly since his Director Oversight was a former PIC employee.

I showed my letter of 4 May 2017 to the Minister to the CEO (with whom I had discussed the problem because she was supervising the transition process),

Commissioner Drake and Commissioner Saidi to ensure that we were agreed on its substance. I also informed the Commission's solicitor of the matter and my decision about it at about this time. Shortly after the Inspector started on 1 July 2017, we had preliminary discussions as to the state of the transition and other organisational issues. During those discussions I informed him, as well, of the Minister's request and my response to it.

It will be obvious from the above that I had disclosed to a number of responsible persons the Minister's request not to employ former PIC staff over an extended period in April/May 2017.

The issue arising from the overseas travel of the Director Covert Services arose only in mid-August 2017 when the Minister declined his approval. I wrote to him on 13 October 2017 (letter enclosed) seeking his confirmation that my interpretation of his silence following verbal communications with his office, connoted consent, and explaining that I had "in the meantime" arranged to pay the expenses myself (I have blacked out the Director's name for security reasons). He did not respond to that letter.

2. From your own knowledge, when did the Minister know that you had sought and/or been reimbursed?

On 3 November 2017 the Commissioners all met with Mr Cappie-Wood, Secretary of the Department of Justice to express our concern with the refusal of the Minister to engage in any kind of communication with the Commission about this matter, which was important as a matter of principle, since it touched on the independence of the Commission from ministerial control of the exercise of its functions. In that meeting the Commissioners expressed the hope that the Minister would reconsider his decision. Again, no response by the Minister was received, although Mr Cappie-Wood later forwarded a copy of the advice of the Crown Solicitor, which was cast in general terms and did not deal specifically with the issue.

As I had foreshadowed to both the Minister and the Secretary of the Department, I provided a lengthy submission to the Parliamentary Joint Committee on the Minister's interference with the Commission's functions on 16 April 2018. Although I did not regard the matter as confidential, I placed the information before the Committee in a way that permitted the Committee to decide whether or not it should be confidential. I consented to the submission being made available to the Minister for his response, as also I consented to the provision to him of my letter concerning attempts to influence employment. I requested that, if the Minister responded with respect to either matter the Committee would inform me of his response. I have no doubt that the Minister was made aware of both documents although I do not know if he responded.

My submission to the Parliamentary Joint Committee stated the following -

"On 3 November 2017, the three Commissioners met with the Secretary of the Department of Justice to explain our concerns. He listened, of course courteously, and informed us that he would raise the matter with the Minister. We heard nothing further. He forwarded an inconclusive advice from the Crown Solicitor, which did not directly deal with the issue raised by

section 22 of the Law Enforcement Conduct Commission Act – having evidently been obtained for other reasons. On 24 November, I responded with a detailed letter discussing the legal issues and explaining why the Minister’s decision was in breach of the statutory independence of the Commission and why, at all events, the Minister’s approach was unprofessional. I was informally advised through his staff that the Secretary intended to seek the advice of the Solicitor General. However, I heard nothing by mid-January and therefore decided to act on my own view of the matter and obtained a reimbursement of the cost.”

It follows that the Minister has been aware of the relevant reimbursement since shortly after 16 April 2018.

Yours faithfully.

The Hon M F Adams QC
Chief Commissioner

LECC

Law, Enforcement
Conduct Commission

Office of the Chief Commissioner

13 October 2017

40463/181

The Hon Troy Grant MP
Minister for Police and Minister for Emergency Services
52 Martin Place
Sydney NSW 2000

Dear Minister,

I am writing this letter in connection with your refusal to approve overseas travel for the Commission's Director, [name redacted] to attend the 2017 annual conference of an international covert services forum hosted by a major US law enforcement agency in Washington DC from 16 to 20 October 2017.

On 10 August 2017 your approval for the cost of the Director's attendance was sought in a comprehensive memorandum which explained the purpose of the conference and the importance of the Director's attendance at it. I do not intend to reprise those reasons. An additional feature, not earlier mentioned because it was not envisaged that you would refuse consent, is that attendance at the conference is by invitation only and limited to particular nominated organisations of which this Commission is one, following on from the Police Integrity Commission and there is a risk that, unless the Commission is represented at the conference, its membership of the [redacted] Forum would not be renewed and is unlikely to be reoffered. This would entail, as well, removal of access to online learning platforms and secure discussion groups such as the European Panel of Experts. As you were informed in the earlier memorandum, with recent changes to delegate nominations from the NSWPF and the AFP, the Commission's Director, [name redacted], will be the only Australian nominated member with recent consistent and established relationships with the [redacted] Forum Delegates attending the conference. You will readily appreciate that the consistency of delegates' attendance is a vital component of membership, since the sharing of covert methodologies is based on trust and subject matter knowledge.

Although the memorandum of 10 August 2017 explained the importance to the Commission of [redacted] the Director's attendance at the conference and indicated that the cost could be funded within the Commission's budget allocation for travel, it did not, I acknowledge, specifically advert to the possible impact on the Commission of his absence for eight days. Naturally, it was assumed that you would understand that the proposal would not have been made if it was thought that his absence would negatively impact the Commission's functioning.

SENSITIVE: NSW GOVERNMENT

On 15 August 2017 you refused approval, giving as your reason -

“Establishment of LECC being in its infancy travel not supported at this time. Operating priorities should be the focus at this time.”

Approximately two months ago or so I sought through Mr Clapin a meeting with you to discuss this matter. I explained to Mr Clapin that I considered [REDACTED] the Director's attendance at the conference to be a high priority aspect of the Commission's functions. Covert surveillance is a rapidly developing field in which criminals are acquiring sophisticated methods of avoidance and concealment and it is vitally important that the Commission's functions not be impeded by a lack of expertise in this area. I reminded him that s 22 of the *Law Enforcement Conduct Commission Act 2016* gave statutory protection to the Commission in the exercise of its functions and that, as participation in the conference was directly related to the ability of the Commission to investigate misconduct and hence part of the exercise of its functions, the decision that the Director should attend the conference was therefore protected by s 22.

I told Mr Clapin that, if you were not minded to change your decision refusing consent to [REDACTED] the Director's travel, I wished to discuss the matter with you and asked him to arrange for a date for this purpose. I informed Mr Clapin that the Commission's operating priorities included the Director's participation in the conference and asked him to pass on my assurance that his absence would not impede the Commission's work.

I was initially of the view that, as no meeting has been arranged, I could take it that you had decided to consent to [REDACTED] the Director's travel. On reflection, I consider that the better approach is that I should formally request your consent, having now added the assurance about the operations of the Commission about which you were concerned. Accordingly, I request that you now agree to the expenditure of the necessary funds.

To avoid any delay and any suggested non-compliance with the relevant Treasury delegation I have, in the meantime, arranged to pay [REDACTED] the Director's expenses myself.

Yours faithfully.

The Hon M F Adams QC
Chief Commissioner