SIXTH GENERAL MEETING WITH THE COMMISSIONER FOR THE POLICE INTEGRITY COMMISSION

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

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COMMITTEE MEMBERSHIP

LEGISLATIVE ASSEMBLY

Mr P Lynch MP
Chairperson

The Hon D Grusovin MP
Vice-Chairperson

Mr M Kerr MP

Mr W Smith MP

LEGISLATIVE COUNCIL

The Hon P Breen MLC

The Hon R Colless MLC

The Hon J Hatzistergos MLC

Secretariat

Ms H Minnican - Committee Manager
Mr S Frappell - Project Officer
Ms J McVeigh - Assistant Committee Officer
Ms P Sheaves - Project Officer
Ms H Parker - Committee Officer

FUNCTIONS OF THE COMMITTEE

The Committee on the Office of the Ombudsman and the Police Integrity Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the *Ombudsman Act 1974* are set out in s.31B(1) of the Act as follows:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;
- to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

These functions may be exercised in respect of matters occurring before or after the commencement of this section of the Act.

Section 31B(2) of the *Ombudsman Act* specifies that the Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- to exercise any function referred to in subsection (1) in relation to any report under section 27; or
- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or

- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.

The Committee also has the following functions under the *Police Integrity Commission Act 1996*:

- to monitor and review the exercise by the Commission and the Inspector of their functions;

- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;

- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and

- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Act further specifies that the Joint Committee is not authorised:

- to investigate a matter relating to particular conduct; or

- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or

- to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The *Statutory Appointments (Parliamentary Veto) Amendment Act*, assented to on 19 May 1992, amended the *Ombudsman Act* by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the *Ombudsman Act* provides:

"(1) The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.

(2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

(3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.

(4) A referral or notification under this section is to be in writing.

(5) In this section, a reference to the Minister is;

(a) in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
(b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and
(c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*."

CHAIRMAN'S FOREWORD

The Committee's Sixth General Meeting with the Commissioner for the PIC was the first occasion on which the Committee took evidence from the current Commissioner, Mr Terry Griffin.

In the time which has elapsed since the last General Meeting with representatives of the PIC, a number of important developments have occurred which hold significant implications for the operations and jurisdiction of the PIC.

For instance, a statutory review of the PIC Act is being conducted to determine whether the policy objectives of the Act remain valid. The review goes to the heart of the PIC's jurisdiction and the way in which it performs its functions and relates to other oversight bodies. This report records the Committee's consultations on the review and its views on key issues, such as, rationalisation of the police oversight system and the employment embargo preventing the PIC from employing NSW police officers.

Other matters raised in the commentary include the process by which the reform of the Police Service is audited (QSARP), police education, police secondary employment, media reporting on PIC's Operation Florida and legal professional privilege as it relates to the PIC.

These issues involve a degree of public interest and are complex issues which will require further consultation with key parties and ongoing monitoring by the Committee. The views expressed in the commentary are consensus views shared by the Committee.

Finally, I would like to thank the Commissioner and his staff for their participation in the General Meeting, which is the principal means by which the Committee is able to fulfil its monitoring and review functions under the *Police Integrity Commission Act 1996*.

Paul Lynch MP
Chairperson

COMMENTARY

The external oversight system for police misconduct and corruption that operates in New South Wales is composed of two parts. The first is the Police Integrity Commission, established by the *Police Integrity Commission Act 1996*, which delivers a targeted, covert investigative approach to police corruption and serious misconduct. The second comprises the police complaints system established by Part 8A of the *Police Service Act 1990*: largely a police investigation process oversighted by the Office of the Ombudsman, and incorporating the capacity for direct investigation by the Ombudsman, where necessary in the public interest. Complaints may be made to the Police Service, the Ombudsman or the PIC. A fuller description of the police complaints system is provided in the next section of the commentary which deals with the role of the PIC.

The Committee on the Office of the Ombudsman and the Police Integrity Commission has had a long-standing oversight role in relation to this system. The former Committee on the Office of the Ombudsman, under the then Chairman Mr Andrew Tink MP, conducted a comprehensive inquiry in 1992 into the police complaints system. The recommendations contained in that Committee's report formed the basis for the legislative package of reforms introduced in the *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993*.[1] The Committee later acquired additional responsibility for oversight of the PIC and the PIC Inspector following their establishment in 1996.

Based on its combined oversight role in relation to the Ombudsman, PIC and the PIC Inspector, this Committee has monitored and evaluated the development of the system for dealing with police misconduct in New South Wales on an ongoing basis. The Committee serves as the external accountability mechanism for these three statutory bodies and has sought to balance accountability with their independence. The Committee, therefore, brings an informed perspective to discussions about the current state of the system for dealing with misconduct by NSW police officers and remains supportive of the Ombudsman, PIC and PIC Inspector in the performance of their respective statutory functions.

In this report the Committee has drawn the attention of the Parliament to a number of issues concerning the functions and operations of the PIC which are outlined in the following commentary. Certain of these issues also involve the Office of the Ombudsman and will receive attention in the Committee's forthcoming report on the Tenth General Meeting with the Ombudsman, to be held on 12 June 2002.

The Committee's Sixth General Meeting with the Commissioner for the Police Integrity Commission (PIC) marked the first occasion on which the new Commissioner, Mr Terry Griffin, participated in a General Meeting with the Committee. Mr Griffin succeeded the Hon P.D. Urquhart QC as Commissioner and commenced his term on 15 October 2001.

[1] The police complaints system subsequently was amended further by the *Police Legislation Amendment Act 1996* (since repealed), the *Police Service Amendment (Complaints and Management Reform) Act 1998* and the *Police Service Amendment (Complaints) Act 2001*.

As is the usual practice for General Meetings, the PIC provided answers to Questions on Notice from the Committee which were tabled at the public hearing. During the proceedings Committee Members asked questions without notice of the Commissioner who was accompanied by the Assistant Commissioner, Acting Commission Solicitor and the Manager (Intelligence). The transcript of the public hearing is included at page 25 of this report.

The role of the PIC within the current system for dealing with police misconduct

The legislative framework for the system of investigating police misconduct is established by the *Police Integrity Commission Act 1996* and Part 8A of the *Police Service Act 1990.*

Police misconduct is classified into two categories. Category 1 matters concerning corruption and serious police misconduct are classified under a “class or kind” agreement between the Ombudsman and the Commissioner for the PIC, on request of the PIC or by regulation.[2] This Category includes misconduct such as perverting the course of justice, malicious wounding, grievous bodily harm, accepting bribes, improper interference in a police investigation of a complaint, and manufacturing prohibited drugs. The “class or kind” agreement is a flexible administrative mechanism through which the parties can regulate the scheduling of those matters which must be referred to the PIC.

All other police misconduct not classified as a Category 1 complaint are Category 2 matters. Section 122(1) of the *Police Service Act* provides that certain Category 2 complaints are required to be notified to the Ombudsman, in accordance with guidelines agreed between the Ombudsman and the PIC, in consultation with the Commissioner of Police. Under s.122(2) of the Act, certain complaints of a kind specified in guidelines between the Ombudsman and the PIC, in consultation with the Commissioner, need not be dealt with as complaints. The Ombudsman conducts audits of police records which would include those matters that fall within the guidelines.[3]

The PIC’s principal functions, as provided for by s.13 of the *Police Integrity Commission Act 1996,* are:

(a) to prevent serious police misconduct and other police misconduct,

(b) to detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct,

(c) to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit,

(d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such

[2] Category 1 schedule of matters covered by the agreement which was first made on 20 December 1996 was revised and the schedule updated on 15 January 1998, effective from 1 February 1998.

[3] A fuller explanation of the current agreement structure can be found in the Minister’s second reading speech on the Police Service Amendment (Complaints) Bill 2001, Legislative Assembly Hansard, 19 September 2001, p.16875.

matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.

Part 8A of the *Police Service Act 1990* essentially provides for a police complaints system largely owned and operated by the Police Service but incorporating oversight by the Ombudsman's Office through the following important safeguards:

- the power of the Ombudsman to require police investigation of misconduct where the Police Commissioner has decided not to investigate allegations - s.139(5);
- monitoring by the Ombudsman of police investigations, where considered necessary in the public interest (eg as observers present at interviews) - s.146;
- review by the Ombudsman of the results of the police investigation and the power to seek additional information on the complaint and the police investigation - ss.151-2;
- the Ombudsman's ability to request further police investigation (not obligatory for the Commissioner to investigate further but he must provide reasons) - s.153;
- the Ombudsman's ability to request a review of the Police Commissioner's decision concerning any action resulting from an investigation (not obligatory for the Commissioner to change the decision but he must provide reasons) - s.154;
- option for the Ombudsman to report on the Commissioner's decision in response to an Ombudsman request under ss.152-4; provision for the Ombudsman to make a special report to Parliament on the matter - s.155;
- direct investigation of a complaint by the Ombudsman under the *Ombudsman Act 1974*, where considered necessary in the public interest, at any stage of the police investigation or before its commencement (this includes a re-investigation) - s.156;
- provision for the Ombudsman to make a report on any action not taken by the Commissioner following an Ombudsman investigation in accordance with s.156; option to report on unresolved issues to Parliament - s.158;
- audit power: statutory requirement for the Ombudsman to conduct an annual inspection of Police Service records, for the purpose of ensuring compliance with the police complaints legislation, and to scrutinise the Police Service's systems for dealing with complaints; provision for random audit of records by the Ombudsman at any time - s.160.

At present, the PIC investigates only a very low percentage of Category 1 matters. For the 2000-1 annual reporting period, the PIC received a total of 628 Category 1 complaints and 110 Category 2 complaints. It conducted 11 ongoing full investigations, closed 2 full investigations and audited 11 Category 1 complaints. The PIC may elect not to investigate a Category 1 matter and can refer these matters to the Ombudsman or the Police Service. In 2000-1 in relation to Category 1

matters, the PIC referred 233 complaints to the Ombudsman and elected not to take over 74 matters. It did not monitor any Category 1 complaints.[4]

Under the current system, the Office of the Ombudsman retains a significant investigation role in relation to complaints of serious police misconduct, including those Category 1 complaints referred to it by the PIC. During the 2000-1 reporting year, the Office directly monitored 28 police investigations and completed 14 direct investigations.[5] In the same reporting period, the Office conducted an audit into the police investigation of 330 serious Category 2 matters by each region (includes allegations of assault, mistakes leading to death or serious injury, deliberate breaches of privacy and other conduct with potentially grave consequences).[6] The Office received a total of 8,732 police complaints for the year (includes both written and oral complaints), some of which were made direct to the Office, others that were received through the Police Service. These complaints are dealt with by the Police Service and overseen by the Ombudsman.[7]

The roles performed by the PIC and the Office of the Ombudsman clearly differ in function and in terms of the proportion of complaint matters examined. PIC focuses on investigating a select number of Category 1 corruption and serious misconduct matters in a proactive, targeted strategy. Only a small amount of the PIC's investigations originate from Category 1 complaints. Corruption often will not be revealed through complaints but is detected through proactive strategies involving the use of "police rollovers" and covert investigative techniques, for example telecommunications interception and listening devices. This is quite distinct from the role performed by the Office of the Ombudsman, which is complaints driven and focuses on oversight in conjunction with direct investigation of serious misconduct. An appreciation of this distinction is a necessary prerequisite for any evaluation of the respective roles performed by the Office of the Ombudsman and PIC. A fuller treatment of the Ombudsman's role in the police complaints system is contained in the Committee's forthcoming report on the Tenth General Meeting with the Ombudsman.

Review of the *Police Integrity Commission Act 1996*

Part 13, s.146 of the *Police Integrity Commission Act 1996* provides:

1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
2) The review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to this Act.[8]
3) A report on the outcome of the review is to be tabled in each House of parliament within 12 months after the end of the period of 5 years.

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[4] PIC *Annual Report 2000-2001*, pp.40, 71.
[5] NSW Ombudsman, *Annual Report 2000-2001*, pp.25, 31.
[6] ibid, p.24.
[7] ibid, p.20.
[8] The *PIC Act* received assent on 21 June 1996.

The principal objects of the Act are contained in Part 1, s.3 as follows:

(a) to establish a body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct, and

(b) to provide special mechanisms for the detection, investigation and prevention of serious police misconduct and other police misconduct, and

(c) to protect the public interest by preventing and dealing with police misconduct, and

(d) to provide for the auditing and monitoring of particular aspects of the operations and procedures of the Police Service.

The review is being conducted on behalf of the Minister for Police by the Ministry for Police and commenced on the appointment of Mr Terry Griffin to the position of Commissioner for the PIC on 15 October 2001. The statutory timeframe for the review requires the Minister to table a report on the outcome of the review to both Houses of Parliament by 21 June 2002.

Consultation with the Committee
Submissions to the review were called for through newspaper advertisement and by invitation to key stakeholders and interest groups. The closing date for submissions was 31 December 2001. The Committee considered that it would be inappropriate for it to make a submission to the review but as the oversight body for the PIC it should be consulted about the review process. On 29 November 2001, Mr Les Tree, Director-General of the Ministry, and Mr David Hunt, Executive Officer to the Review, representing the Ministry attended a meeting with the Committee and provided a briefing on the progress of the review. At that stage no significant issues had been raised and the Ministry undertook to update the Committee at a later date on further submissions received.

Early in April 2002, the Committee sought an update on the status of the review, its conduct and a likely timeframe for its conclusion. In correspondence to the Committee, dated 16 May 2002, Mr Tree advised that submissions had been received from key stakeholders, including the PIC, Inspector of the PIC and the Ombudsman. The submissions were generally supportive of the *PIC Act* and the continued operation of the PIC, although certain legislative changes of “a technical and procedural nature” had been proposed. Further meetings were held between the Ministry and relevant bodies to discuss possible options for legislative reform and the Minister intended to refer the report to the Committee for consideration and advice, immediately upon its tabling. Any approved legislative changes would be progressed during the next parliamentary session.

The Chairman of the Committee subsequently advised the Ministry that Members of the Committee understood significant issues had been raised since the initial briefing in 2001 and held concerns that the arrangements would not enable further consultation on these issues prior to publication of the report.[9] The Committee requested another briefing from the Ministry and arrangements were made with Mr Tree and Mr Hunt to brief the Committee on the progress of the review and the

9 Letter from P. Lynch MP to L. Tree, Director-General, Ministry for Police, dated 22 May 2002.

proposed changes. In preparation for the briefing, the Ministry provided the Committee with a schedule outlining the proposals raised in the submissions.

The Committee made its views clear on a number of proposals during the briefing, which was held on 29 May 2002. In particular, Committee Members advised that:

- they were concerned about proposals to remove the prohibition on employment of serving and former NSW Police officers by the PIC;
- any proposal for substantial changes to the system for overseeing police and investigating police misconduct should involve a thorough evaluation of the existing oversight mechanisms and their effectiveness;
- any evaluation of the system for dealing with police misconduct needs to distinguish between the investigation of complaints, targeted investigation of corruption, and oversight: all of which are very different functions;
- they consider the Committee's functions to be appropriate, in particular, the preclusion from investigating particular conduct, reconsidering decisions on whether or not to investigate, and reconsidering findings and recommendations made in relation to a particular complaint.

Rationalisation of the system for police oversight
The Committee notes that proper evaluation of the legislative framework for the system of investigating police misconduct would involve a comprehensive review of the relevant provisions of both the *Police Service Act 1990* and the *Police Integrity Commission Act 1996*, the scope of which would be wider than the review of the *PIC Act*.

On the basis of the material presented to the Committee, it is apparent that there is some scope for streamlining the existing system for the investigation of police complaints, while retaining the essential elements of the police oversight system presently in place. For instance, the Committee understands that implementation of the c@ts.i and PODS systems may facilitate streamlining by their combined effect on the statutory notification processes currently in place between the Ombudsman's Office, PIC and the Police Service. However, the Committee considers that any proposed streamlining of the police complaints system should not substantially change the existing structure of police oversight, the safeguards built into the complaints system, or the respective roles of the PIC and the Office of the Ombudsman. Furthermore, the Committee would strongly oppose any changes that substantially increase the PIC's jurisdiction in such a way that would compromise its targeted corruption investigation focus.

The Committee's view on rationalisation, and the importance of maintaining the PIC's targeted investigative focus is supported by evidence taken previously from the former Commissioner for the PIC, the Hon P.D. Urquhart QC, and the former Inspector of the PIC, the Hon M. D. Finlay QC. Both office holders were responding to reported criticisms of the level of police oversight and proposals for the removal of the Ombudsman's police jurisdiction.

The then Inspector gave evidence to the Committee that:

I am extremely conscious that the legislation concerning the Police Integrity Commission is tailor-made legislation for it to be free to deal with matters of serious police corruption, serious police misconduct and, even then, necessarily has to be limited to investigate those ones in which it feels there is a public interest involved. Otherwise the volume of work just makes it impossible for it to effectively carry out its custom-made role. The Commissioner will speak for himself in this respect, but I would not think that he would suggest that his body requires any extension of this area of responsibility. It deals with those matters that it considers in the public interest to be very serious that it should personally take over.

Mr Finlay agreed that transferring the Ombudsman's work to the PIC would overwhelm the PIC with a substantial number of less serious matters, thereby, deflecting it from investigating the serious aspects of police misconduct.

Judge Urquhart gave evidence that:

If all of the matters relating to police were taken away from the Ombudsman and moved across to the Police Integrity Commission, the Commission would not be able to carry out its principal function to the extent to which it was created. There would be more than a blunting, so I do share what the Inspector said, although I am not privy to the actual words that he used, and it would be my view, based on experience, that what the Ombudsman's office does in relation to its area of responsibility, it does very well. I would not wish anyone to think that the Police Integrity Commission could do it better or worse, but I would not wish anyone to think that by taking on board those other activities it would sharpen the Commission's ability to attend to what it attends to now.

Judge Urquhart also had not seen any evidence of inconvenience or difficulty as a result of the existing level of police oversight. [10]

The Committee considers that streamlining of the current system of police oversight, for example, in the area of complaint notification, may be accommodated without compromising the system and would serve to clarify how the system works in practice. The Committee would be willing to undertake a review of the police oversight system with a view to recommending legislative and administrative proposals for a streamlined system. Such a role for the Committee would fall within its statutory functions and, given the independent status of both the Ombudsman and the PIC, would appropriately distance any review of the police oversight system from the Executive arm of Government.

Employment by the PIC of current and former NSW police officers
Section 10 of the *PIC Act* provides:

Staff of the Commission
10(4) **Use of staff, facilities or certain police**
The Commission may arrange:
(a) for the use of the services of any staff or facilities of a government department or a local or public authority, or
(b) for:

[10] Committee on the Office of the Ombudsman and the Police Integrity Commission, *Fifth General Meeting with the Commissioner for the PIC*, February 2001, pp.32-33; *Fourth General Meeting with the Inspector of the Police Integrity Commission*, February 2001, p.21.

(i) a member of the Australian Federal police, or
(ii) a member of the Police Force of another State or Territory, or
(iii) a member of the Police Force of any country prescribed by the regulations for the purposes of this Act, to be seconded or otherwise engaged to assist the Commission.

10(5) **Police**

Police officers[11] and former police officers cannot be appointed to, employed or engaged by, or seconded to the service of, the Commission, nor (without limiting the foregoing provisions of this subsection) can arrangements be made under subsection (4) for the use of their services.

10(6) **Limited use of police**

Subsection (5) does not, however, prevent arrangements being made by the Commission for police officers (in their capacity as police officers) to be involved in:

(a) the work of task forces with which the Commission is involved, or
(b) carrying out or participating in investigations for or on behalf of or under the direction of the Commission.

10(7) **Former police of other jurisdictions**

The Commission may designate an officer of the Commission as an approved former police officer for the purposes of this Act, if:

(a) the officer has served for at least 5 years in one or more of the following capacities:
  (i) a member of the Australian Federal Police,
  (ii) a member of the Police Force of another State or Territory,
  (iii) a member of the Police Force of any country prescribed by the regulations for the purposes of this Act, and
(b) the Commission is satisfied after inquiry that the officer's service in any such capacity was satisfactory, and
(c) the officer is not a police officer or former police officer of New South Wales.

While s.10(5) of the Act prohibits the PIC from employing, seconding, or engaging serving and former NSW police officers, the PIC can still utilise police services. In effect, s.10 provides for the PIC to:

- second or engage police from any jurisdiction other than NSW, including the AFP who have a large operational presence in NSW;
- use NSW police officers to work on joint task forces involving the PIC, such as Operation Florida, and to participate in investigations on behalf of the PIC or under the PIC's direction eg serving a summons;
- designate any officer of the PIC possessing 5 or more years of satisfactory service with any police force other than NSW as "an approved former police officer".

The principles behind the prohibition are found in the Interim Report of the Royal Commission into the New South Wales Police Service[12] that noted the following arguments in favour of seconding police to work as investigators at the ICAC:

- police are best able to improve policing and put their house in order;

[11] "police officer" as defined in the *PIC Act* is "a member of the Police Service of New South Wales holding a position which is designated under the *Police Service Act 1990* as a position to be held by a police officer".
[12] Wood, J.R.T. 1996. *Royal Commission into the New South Wales Police Service: Interim Report,* p.67.

- police who have been seconded to a multi-disciplinary external agency are exposed to broader views, ethics and investigative techniques, and are more likely to understand and accept the role of the agency, and communicate that acceptance after they return to their service;
- knowledge of current investigative techniques, policies, procedures, practices, reputations and associations are advantages; and
- non-police investigators may have difficulty interrogating detectives.[13]

Wood concluded that the difficulties in employing NSW police to investigate NSW police were substantial because of:

- the negative features of police culture, with 'mates' protecting 'mates' through leaks and cover-ups;
- reluctance to embarrass the Service of which the investigator is a member; and
- concern for subsequent career prospects, particularly if the targeted officer holds a senior rank.[14]

Wood further noted that these factors are at their most potent in the context of corruption investigations. He observed that the perceived advantages of using NSW Police as investigators can be achieved by using investigators who have been seconded from other police services, or who are former members of other police services. According to Wood,

> The dangers for a corruption investigation body far outweigh (the) advantages, and their (NSW police) use in the past may have effected the quality of the ICAC's investigative work in this area.[15]

A number of arguments have been put forward in support of removing the prohibition on employing former and serving NSW police and include:

- only police can investigate police;
- as it is acknowledged that most police are not corrupt, it is unreasonable not to allow NSW Police to investigate NSW Police; and
- NSW Police possess special insider knowledge that would make them more effective anti-corruption investigators than officers from other jurisdictions.

However, the Committee holds a number of concerns about any proposal for removal of the prohibition on employment by the PIC of former and serving NSW police, especially in relation to the security and integrity of PIC investigations. The Committee notes that in the past, other organisations using seconded NSW Police as investigators have had problems with security leaks. For instance, in 1998 an ICAC investigation into corruption at Liverpool City Council was compromised because a police officer seconded to the ICAC leaked information that alerted one of

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[13] ibid, p.68.
[14] ibid.
[15] ibid.

the targets, Roger Rogerson. This matter was ultimately investigated by the PIC in Operation Oslo. Such compromises to security raise broader issues, especially in relation to risk management and the credibility of the PIC.

Another argument against lifting the employment prohibition is that PIC investigations already benefit from NSW police who know the corrupt practices of other NSW police. Such information can be accessed through NSW police as members of joint task forces, and through “police roll-overs”, such as M5. Also, the current system for investigating police misconduct already provides for NSW Police to investigate NSW Police: this is a role performed by Special Crime and Internal Affairs (SCIA). These methods provide an investigative mechanism for accessing insider knowledge about corrupt NSW police officers without creating unnecessary risks with the potential to compromise the PIC’s independence from NSW police and result in internal security risks.

One of the issues that would be associated with employing NSW police relates to the ongoing need for PIC officers to be designated as approved former police officers if they have more than five years of satisfactory service with a police force other than the NSW Police Service. During the General Meeting it was put to the PIC that the provision to designate PIC officers as police officers would need to be reassessed if the embargo on employing NSW police was lifted.

The Committee considers that the current staffing arrangements are satisfactory and allow the PIC the advantage of accessing NSW police officers for various investigations without the inherent risks involved in seconding or employing former or serving police officers. In the view of the Committee any decision to remove the employment embargo in s.10(5) of the Act would need to be supported by evidence that clearly demonstrates PIC investigations have been significantly impeded by the application of the embargo.

The Committee is of the view that in only the most exceptional circumstances should consideration be given to lifting the employment prohibition contained in s.10, and it has not been persuaded that these circumstances have arisen.

Qualitative and Strategic Audit of the Reform Process (QSARP)

The Wood Royal Commission into the NSW Police Service issued its Final Report in May 1997. Prior to finalising this Report, a group of management experts developed an audit framework to measure the Commission’s recommended reform of the Police Service. This audit framework forms Appendix 31 in Volume III of the Royal Commission’s Final Report.

The audit framework consists of ten Key Result Areas (KRAs) and various threshold activities necessary for reform to take place. These KRAs include:

- Effective Leadership and Management
- Changing Culture and Values
- An Honest Service Which Repels Corruption
- Effective Planning

- Performance Management
- Focus on Staff and Teamwork
- Building a New Human Resource System
- Breaking Down Outmoded Systems
- The Local Area Command as the Service Hub
- Implementation of Effective Structural Change.

Section 14a of the *PIC Act* provides for the PIC to engage auditors to run the QSARP annually over a three year period. The Hay Group were selected to conduct to conduct QSARP.

At the time of the Fifth General Meeting with the Commissioner for the PIC, the report on the first year of the QSARP had been provided by the Auditors to the PIC and had been furnished to the Minister for Police on 30 October 2000. The report on year 2 of the QSARP was released publicly on 7 January 2001 and provides the most recent evaluation of the progress of reform in NSW Police.

This is the final reporting year for QSARP, and while the final report has yet to be released, there are signs from the previous two QSARP reports that the reform process in NSW Police is incomplete. QSARP 2 noted that many of the obstacles to reform identified in QSARP 1 remain. It further recommended that a consultant be engaged to assist the NSW Police Service in prioritising reform initiatives and planning their implementation. At the time of this report, the consultancy is ongoing.

The Police Integrity Commissioner advised the Committee during the Sixth General Meeting that “the Commission does believe that there is a need to maintain some form of procedure that will provide a measure of the reform process within the Police Service… it is important there is a clear message that the need for reform continues”. According to the former PIC Inspector Mr Finlay, QSARP is a fundamental and enormously important recommendation of the Wood Royal Commission into the NSW Police Service.[16]

The Committee is of the view that QSARP is an extremely important measure of the rate of reform in the NSW Police Service. Given that initiatives from QSARP are ongoing, the Committee is supportive of continued monitoring of reform in the Police Service, especially if that monitoring can assist in maintaining the momentum of reform. As such, the Committee will be taking an active interest in proposals to continue QSARP in some form and will be following up such proposals with both the Police Integrity Commission as well as the Office of the Ombudsman.

Diploma of Policing Practice

During February 2002 the Minister for Police announced a sweeping restructure of recruit education. The review was prompted partly by the imbalance between officers leaving the Service and probationary constables entering the Service, as well as high failure rates amongst student police in core academic subjects. The Ministerial

[16] Committee on the Office of the Ombudsman and the Police Integrity Commission, *Fourth General Meeting with the PIC Inspector*, February 2001, p.22.

review recommended decreasing training time from approximately one year to 31 weeks, as well as reducing the amount of subjects to be studied. The latter recommendation resulted in confusion about the retention of ethics and accountability subjects.

Part 3 s.14 of the *Police Integrity Commission Act 1996* allows for the Commission "to make recommendations concerning police corruption education programs, police corruption prevention programs, and similar programs, conducted within the Police Service or by the Ombudsman or the Independent Commission Against Corruption for the Police Service".

Accordingly, the Committee raised the changes to the Diploma of Policing Practice with the Police Integrity Commissioner, who stated that on hearing of the changes to the education program he sought advice from the Service on the status of the ethics and accountability courses. Service advice indicated the ethics components had been spread across some courses so that there was no net content loss.

The Commissioner further advised the Committee that he, the Assistant Commissioner Mr Sage, and the Commission's Executive Officer would be visiting the Police College at Goulburn the following day to inquire further into the changes to the Diploma in Policing Practice.

The Committee has noted the results of a number of studies into the importance of recruit education in setting ethical values. For example, a recent study of NSW probationary constables by Dr Janet Chan indicates that probationary constables who were educated under the previous, year long version of the Diploma of Policing Practice, are resistant to some of the worst features of the 'old ' police culture.[17]

The Committee commends the Police Integrity Commission's active interest in probationary constable education, and will be seeking further advice from the Commissioner on the results of his visit to Goulburn. The Committee is also very supportive of any role the Police Integrity Commission will be playing to ensure that recruits receive an appropriate level of education and training in ethics and accountability.

NSW Police Trial of Secondary Employment

In January 2002 the Minister for Police announced a trial of off-duty, uniformed and armed police working second jobs as police. Flemington Markets, Rockdale and Hurstville were proposed as areas for the trial. There have also been media reports of Strathfield Council paying $50 000 for off duty police to guard local shops.

Secondary employment, especially in security, liquor and transport industries has long been a problematic area for the Police Service. A number of approaches have been adopted:

- 1987 - the ban on police seeking secondary employment was lifted, but executive approval for secondary employment was required.

[17] Chan, J. 2001. Negotiating the Field: New Observations on the Making of Police Officers, in *The Australian and New Zealand of Criminology*, **34**(2) 114 - 133.

- 1991 - the Service again banned all secondary employment in the security and liquor industries by police, but this ban was lifted after two weeks, following intervention by the Police Association.
- 1992 - the Ombudsman advocated reinstating this ban, and the ICAC released a report recommending a far more detailed approval process for police in secondary employment in the security and liquor industries.
- 1993 - the Service released a new Secondary Employment Policy which specified that secondary employment must not be undertaken by officers if there is a conflict of interest. Furthermore, secondary employment must not be approved in the security, liquor or transport industries, as police have specific duties in regulating those areas.
- 1995 - this policy was reinforced in the Commissioner's Instructions on secondary employment.
- 1994 to 1997 - Wood Royal Commission hearings showed a number of instances of police officers 'moonlighting' in security and liquor industries, and using opportunities arising from this work to engage in corrupt behaviour.
- 1997 - Wood recommends that secondary employment be prohibited in areas where police play regulatory roles such as commercial and private inquiry agents, transport, liquor, security and gaming and racing.
- 1997 - new Code of Conduct and Ethics introduced.
- 2001 - Secondary Employment Policy and Guidelines introduced, emphasising that secondary employment in the security, liquor, commercial and private inquiry agents, gaming and racing and the transport industry is high risk and approval for secondary employment in these industries will only be granted in those cases where it can be clearly demonstrated that there is no conflict of interest.

Section 14(a) of the *Police Integrity Commission Act 1996* authorises the Commission to "undertake inquiries into or audits of any aspect of police activities for the purpose of ascertaining whether there is police misconduct or <u>any circumstances that may be conducive to police misconduct</u>" (emphasis added).

The Commission evidently recognised the importance of this function in relation to the secondary employment of police officers when it initiated Operation Genesis, an examination of police officers' secondary employment in the licensing industry. Unfortunately, this Operation was suspended and the Commissioner gave evidence at the Sixth General Meeting that Operation Genesis would not be reactivated.

The Police Integrity Commissioner also informed the Committee that the Commission has not been involved in any aspect of the trial and has not provided the Police Service with any advice on appropriate risk management or corruption prevention measures for the trial.

The Committee is most concerned that the well documented risks for officers participating in secondary employment, especially in the security and licensing industries, need to be adequately addressed in the trial of secondary employment.

The Committee considered that it would be appropriate for the Police Integrity Commission to have an advisory role in relation to strategies for managing such risk and anti-corruption education initiatives specific to the trial. However, the Committee recognises that such a role is not the primary function of the Commission and in practical terms could effectively detract from the Commission's investigative focus.

The Committee considers that the Ombudsman may be the best placed oversight agency to provide such advice. The Ombudsman already provides advisory services in a number of other areas such as public administration, operation of Freedom of Information legislation, complaint handling and protected disclosures. The Committee will be raising this matter with the Ombudsman during the Tenth General Meeting with the Ombudsman in June 2002.

Police Oversight Data Storage (PODS) and customer assistance tracking system (c@ts.i)
These two information technology systems will enhance the way in which Special Crime and Internal Affairs (SCIA, NSW Police Service), the Police Integrity Commission and the Ombudsman will work together on police complaints and police oversight.

c@ts.i will replace the Police Service Complaints Information System (CIS) in September 2002. c@ts.i will enable easier tracking of complaints by the Police Service and will also allow the Commission to receive complaints and monitor the progress of complaints while they progress through the Police Service complaints system. The strength of this system for the Commission is that specific complaints or persons of interest can be monitored without alerting the Police Service. At the moment, the Commission relies on the Police Service for referrals and notifications about the status of complaints.

PODS will soon be implemented by the Commission, the Ombudsman and Special Crime and Internal Affairs. PODS extracts data from both c@ts.i and the police computerised operational system (COPS) which allows the Commission, the Ombudsman and Special Crime and Internal Affairs to search both data systems. The advantages of PODS for the Commission is that, like c@ts.i it can be used to access particular information about complaints or incidents without alerting the Police Service. PODS also allows for the Commission to draw on the information contained in two separate data systems.

Clearly the implementation of PODS and c@ts.i means that the need for the old system of formal referrals between the Ombudsman, the Commission and the Police Service is no longer necessary. As such, the Committee considers that some form of rationalisation of the complaints referral system between the three agencies would be appropriate once implementation of PODS and c@ts.i is finalised.

Media reporting on Operation Florida
Background - On 8 October 2001, the ABC "Four Corners" program broadcast a story on Operation Florida, the PIC's investigation into allegations of corruption and misconduct by members of the New South Wales Police Service attached to Manly-Davidson and Northern Beaches Local Area Commands. The broadcast included evidence which at the time it was provided to the program's producer, Mr Chris

Masters, and at the time of the broadcast, had not been introduced in evidence to the PIC at a hearing.

Relevant legislation - The legislation relevant to the PIC's communication of information to Chris Masters is the *PIC Act*, the *Telecommunications (Interception) Act 1979 (Cth) (TI Act)* and the *Listening Devices Act 1984 (LD Act)*.

Section 56(4)(c) of the *PIC Act* provides for divulging information obtained for the purposes of the Act if the Commissioner or Inspector certifies it is necessary in the public interest:

> 56(4). Despite this section, a person to whom this section applies may divulge any such information:
> (a) for the purposes of and in accordance with the Act, or
> (b) for the purposes of:
> (i) a prosecution, or
> (ii) disciplinary proceedings, or
> (iii) the making of an order under section 173 or 181D of the *Police Services Act 1990*, or
> (iv) proceedings under Division 1A or 1C of Part 9 of that Act, arising out of an investigation conducted by the Commission in the exercise of its functions, or
> (c) in accordance with a direction of the Commissioner or the Inspector, if the Commissioner or Inspector certifies that it is necessary to do so in the public interest, or
> (d) to any prescribed authority or person.

The decision to disseminate material obtained under the *LD Act* was taken pursuant to s.56(4)(c) of the *PIC Act*.[18]

Section 67 of the *TI Act* provides:

> **Dealing for permitted purpose in relation to agency**
> An officer or staff member of an agency may, for a permitted purpose, or permitted purposes, in relation to the agency, and for no other purpose, communicate to another person, make use of, or make a record of the following:
> (a) lawfully obtained information other than foreign intelligence information;
> (b) designated warrant information.

The then Acting Commissioner for the PIC considered that the dissemination of TI product to Mr Masters, was for a valid permitted purpose in accordance with s.67 of the *TI Act*.[19]

The PIC held that the *Listening Devices Act* is silent on the question of further dissemination of information obtained through the use of listening devices otherwise in contravention of s.5 of the Act[20]. The PIC Inspector did not accept that because the *LD Act* is silent on the question of further dissemination that the PIC was justified in permitting the broadcast of the LD material by the ABC. Inspector Finlay was of

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[18] Report by the Inspector of the Police Integrity Commission of Preliminary Investigation dated 8th November 2001 re: "Four Corners" program: 8th October 2001, p.10.

[19] ibid, p.9.

[20] ibid, p.13.

the view that procedural fairness required that the broadcast should not have occurred.[21]

Section 7(1) of that Act provides that:

7 Prohibition on communication or publication of records of private conversations by parties thereto

1) A person who has been a party to a private conversation and has used, or caused to be used, a listening device to record the conversation (whether in contravention of section 5 or not), shall not subsequently communicate or publish to any other person any record of the conversation made, directly or indirectly, by the use of the device.
2) Subsection (1) does not apply where the communication or publication:
   (a) is made to another party to the private conversation or with the consent, express or implied, of all of the principal parties to the conversation,
   (b) is made in the course of legal proceedings,
   (c) is not more than is reasonably necessary for the protection of the lawful interests of the person making the communication or publication,
   (d) is made to a person who has, or is, on reasonable grounds, by the person making the communication or publication, believed to have, such an interest in the private conversation as to make the communication or publication reasonable under the circumstances in which it is made, or
   (e) is made by a person who used the listening device to record the private conversation pursuant to a warrant granted under Part 4 or pursuant to an authority granted by or under the *Telecommunications (Interception) Act 1979* of the Commonwealth or any other law of the Commonwealth.

The Acting Commissioner for the PIC determined that the dissemination of the listening device information and evidence to Mr Masters was reasonable under the circumstances.[22]

Role of the Inspector - Section 89 of the *PIC Act* provides the Inspector with the following functions:

89 Principal functions of Inspector

1) The principal functions of the Inspector are:
   (a) to audit the operations of the Commission for the purpose of monitor compliance with the law of the State, and
   (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
   (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

The Inspector may exercise his or her functions on their own initiative at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency.

[21] ibid, p.17.

[22] ibid, p.12.

The Inspector has powers to:

- investigate any aspect of the PIC's operations or any conduct of its officers
- access all the records of the PIC and to take or have copies made of any of them
- require PIC officers to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the PIC's operations or any conduct of its officers
- require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the PIC's operations or any conduct of its officers
- investigate and assess complaints about the PIC and its officers
- refer matters relating to the PIC or its officers to other agencies for consideration or action
- recommend disciplinary action or criminal prosecution against officers of the PIC. (s.90)

The Inspector has Royal Commission powers and may make or hold inquiries in order to carry out his functions.

The Inspector's statutory role and powers mean he is the appropriate independent body to review matters such as the disclosure of evidence by the PIC to the "Four Corners" program. It is not appropriate for the Committee to review such matters when they fall within the Inspector's jurisdiction nor would such a role be in keeping with Parliament's original intentions when establishing the Committee. The Committee performs a general monitoring and review role in relation to the PIC and is specifically precluded from acting as an appeal mechanism. The Committee is not an investigative body in the same sense as the Inspector who possesses wide-ranging powers that he can exercise independent of the PIC.

Report by the Inspector - This matter subsequently became the subject of a censure motion by Mr Andrew Tink MP in the NSW Legislative Assembly on 16 October 2001. The following day upon receiving advice from Mr Les Tree regarding the censure motion, the Inspector exercised his functions on his own initiative, in accordance s.89 of the Act, and wrote to the PIC regarding his concerns about the release by "Four Corners" of material, including secretly taped evidence.

The PIC's response to the Inspector, dated 8 November 2001, addresses four main areas of the censure motion:

1. the Commission provided "Four Corners" with information obtained under the *TI Act* and the *LD Act* prior to its adduction into evidence at the Commission's hearing;
2. the information was provided exclusively to "Four Corners";
3. the Commission allowed material to be broadcast which had not been presented in evidence at the public hearing; and

4. the Commission allowed the broadcasting on 8 October 2001 of a taped conversation between a solicitor and B5 which was not tendered in evidence until 9 October 2001.

The Inspector completed his preliminary investigation report on 8 November 2001. In his introduction to the Report, the Inspector discussed how principles of natural justice and procedural fairness should apply to PIC inquiries and what the duty to act fairly requires in the circumstances of a particular case. A copy of the Inspector's report containing his conclusions and recommendations can be found at Appendix 3.

The Committee notes that it was the Inspector's opinion that the application of the principles of natural justice and procedural fairness "required the Commission to ensure that any arrangement it entered into with the media for publication of material, proposed to be tendered in evidence at a Public Hearing of its investigation, effectively precluded any risk of the material being published by the media before it was tendered in evidence at the Public Hearing". The Inspector further considered that "the media is only at liberty to report lawfully obtained intercepted telephone conversations when such material has been given in evidence at a Public Hearing (an 'exempt proceeding' under the *Telecommunications (Interception) Act 1979*).[23]

The Inspector drew the following conclusions:

- There were valid strategic purposes for the Commission to release material to "Four Corners" and it was a discretionary judgment to exclude other media outlets.
- The Commission obtained appropriate undertakings that material would not be put to air which had not been introduced into evidence. However, the system which should have prevented this happening failed. Although not deliberate, the failure was the Commission's responsibility and should not have happened.

He recommended:

1) That the Commission review the events leading to the publication of the material on the "Four Corners" program on the night of 8 October 2001.
2) That from such review it formulate a mechanism to be put into operation on any such future occasion to reduce the risk of a recurrence of the problem the subject of this report.
3) That such consideration and proposals be advised to the Inspector.[24]

PIC's evidence for the General Meeting

It became obvious during the General Meeting that the PIC's views differed to those of the Inspector on a number of points, including the interpretation of certain legislative provisions. The PIC took on notice to outline the exact nature of those differences and a copy of the PIC's advice is attached at Appendix 2.

[23] ibid, p.4.

[24] ibid, p.18.

The PIC Commissioner referred to the "Four Corners" report in his opening address and indicated that the decision to release the material to the program had been given considerable thought and greatly enhanced the capacity of the law enforcement agencies involved to gather evidence and information. The Commissioner acknowledged the regrettable nature of what he regarded to be administrative mistakes and referred the Committee to the Inspector's report for a full exposition of the issue.

Individual members of the Committee specifically asked questions about:

- decision-making that preceded the disclosure of evidence to the ABC program;
- the application of procedural fairness to the PIC's operations and activities;
- areas of disagreement on the part of the PIC with the report made by the Inspector, particularly in relation to statutory interpretation of the provisions of the *Telecommunications (Interception) Act (Cth)* and the *Listening Devices Act (NSW)* as they relate to disclosure of information;
- implications of any statutory ambiguities created by the provisions of the *Telecommunications (Interception) Act (Cth)* and the *Listening Devices Act (NSW)* for the operations of the PIC;
- the level of preparation and consultation with the producers of "Four Corners";
- measures taken to ensure security of the disseminated information and knowledge of its existence;
- the extent of any internal investigation by the PIC into the disclosure;
- existing administrative practices and record-keeping in relation to the dissemination of evidence and information. (see pages 30-42 of the transcript)

The PIC also referred the Committee to the Ombudsman's statutory role in auditing compliance with the Commonwealth TI legislation and stated that the PIC should be in a position to implement any recommendations by the Ombudsman shortly after the Ombudsman's report is made (due to report by 30 June 2002). The Commissioner also accepted that evidence which has not been put before the PIC at a hearing should not have been broadcast and that it was never the intention of the PIC for this to have occurred.

Current situation - In recent correspondence to the Committee, dated 29 May 2002, the Inspector advised that he is seeking the Crown Solicitor's advice so as to resolve the difference in legal views concerning the dissemination by public broadcast of material obtained under the *LD Act* before it is led in evidence at a hearing of the PIC. The Committee will consider any further information or reports from the Inspector as a result of the legal advice sought.

The Committee acknowledges that the PIC makes such decisions to disclose evidence on a case by case basis as an exercise of discretionary judgement, in consideration of many factors in an investigation. However, the Committee is of the

view that until the Inspector has obtained the Crown Solicitor's advice he has requested on the interpretation of legislation relevant to this matter, the PIC should continue to operate as recommended by the Inspector. The Committee notes that the PIC has already advised the Inspector formally that they will do so.

PIC Recommendations

The Committee has held the view that the extent to which PIC recommendations are accepted and implemented is one of the key indicators of the PIC's performance and effectiveness. In its report on the Fifth General Meeting with the PIC the Committee commented:

> Of overriding concern to the Committee is the implementation by the Police Service of PIC recommendations, particularly those which address policy issues and practice and procedures. During the General Meeting Commissioner Urquhart expressed concern and disappointment at the Police Service response to year 2000 report recommendations. However he reported that, as a result of a Commission initiative, Deputy Commissioner Moroney will track all recommendations and inform the Commission of the Service's responses.[25]

The Committee is pleased to note that significant improvements subsequently have been made in relation to Police Service implementation of the PIC's recommendations. The PIC considers that the formation of the External Agencies Response Unit (EARU) to assist in the timely implementation of PIC recommendations has been "a very positive development".[26] The EARU has assisted the PIC to track and monitor police progress in implementing PIC recommendations. It has led to improvements in the timeliness with which recommendations are considered by the Police Service and the PIC now receives detailed progress reports on a quarterly basis. The PIC evaluates the Police Service responses and corresponds and meets with the Police Service on issues arising from the progress reports. There have been few occasions where PIC recommendations were not accepted by the Police Service and the PIC advised that where this has occurred:

- the matter has been discussed and been the subject of formal correspondence between the two agencies; and
- the Commission has been satisfied that the Police's reasons for not accepting the recommendation have been reasonable and valid.[27]

There are a number of further steps for the PIC to take where the Police Service does not agree as the course to be taken in relation to a recommendation. These include reporting on the matter in the PIC's Annual Report, in accordance with obligations under s.99(2)(c) of the Act, and possible referral of the matter to the Minister for Police. The Committee is satisfied that the current framework for monitoring and tracking the implementation of PIC recommendations is adequate.

Information concerning the implementation of specific PIC recommendations is provided at section 3 of the Questions on Notice in this report.

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[25] Committee on the Office of the Ombudsman and the Police Integrity Commission, *Fifth General Meeting with the Commissioner for the Police Integrity Commission*, February 2001, p.6.

[26] see PIC's answer to Question 3.1.

[27] see PIC's answer to Question 3.4.

Legal Professional Privilege

Briefly put, legal professional privilege is the right of a person not to divulge in legal proceedings communications between that person and his or her legal advisers, that are made to enable the person to obtain legal advice or that are prepared in relation to actual of contemplated legal proceedings. It is a long standing common law principle that is intended to aid the administration of justice by encouraging full and frank disclosure between clients and their lawyers. Without legal professional privilege, parties to litigation would be concerned that matters they have raised with their lawyers could end up being used in proceedings against them.

The legislation which establishes investigative bodies often limits or restricts legal professional privilege, and other forms of legal privilege, which would otherwise be available to refuse to provide information or documents, because of the public interest in such bodies being able to obtain relevant information. Often, however, there are limitations then placed on the use that can be made of such material in any subsequent court proceedings.

This situation applies under the *PIC Act.*

Section 27(3) of the *PIC Act* provides that where the PIC requires the production of any statement of information, or any document or other thing, in exercising its powers under ss.25 and 26, the person must comply with the requirement, despite:

(a) any rule that in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest, or
(b) any privilege of a public authority or public official in that capacity that the authority or official could have claimed in a court of law, or
(c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

Section 40(2) of the Act provides that a witness summoned to attend or appear before the PIC at a hearing is not excused from answering any question, or producing any document or other thing, on the ground that to do so may incriminate or tend to incriminate the witness, or on any other ground of privilege, duty of secrecy or restriction on disclosure, or on any other ground. The Act further provides at s.40(3) that an answer made, or document or other thing produced, by a witness at a hearing is not admissible in evidence against the person in any civil or criminal proceedings with certain exceptions eg proceedings for an offence against the *PIC Act* or a contempt of the PIC, proceedings in respect of any right or liability conferred or imposed by the document or thing, or where the witness does not object to admission.

Section 40(5) enables a legal practitioner or other person, appearing at a PIC hearing to refuse to comply with a requirement to answer a question or produce a document or other thing, on grounds of legal professional privilege unless privilege is waived by a person having authority to do so.

The issue of legal professional privilege has been raised recently following two rulings handed down in PIC hearings in 2001. The first ruling was handed down in hearings on Operation Malta on 25 June 2001 by then Commissioner Urquhart:

> I have concluded that legal professional privilege cannot be relied upon by the Commissioner of Police in relation to compliance with the notice . . .

The second ruling was handed down by Acting Commissioner Sage on 10 September 2001, requiring the Commissioner of Police to produce documents brought into existence by the Service's legal team, in otherwise privileged situations, because the Commissioner of Police was a public official.

In light of the ruling of Acting Commissioner Sage on 10 September 2001, the Police Service sought legal advice on the matter from Robert McDougall QC, who indicated that there were proper grounds to challenge the decision. The Police Service also sought the advice of Barry Toomey QC, who advised that the two rulings effectively shut off free and open communications between lawyers and their public official clients under the terms of both the *PIC Act* and the *ICAC Act*. The Police Service did not chose to exercise their right of appeal.

In response to the ICAC Committee's issues paper, which dealt in part with legal professional privilege, the Police Service submitted that it was not Parliament's intention to abrogate the availability of legal professional privilege to public officials under the PIC or ICAC Acts, except in instances where the client and legal adviser are involved in corrupt or criminal conduct.

To rectify this perceived anomaly, NSW Police recommended that s.24(3)(b) of the *ICAC Act* (and s.27(3)(b) of the *PIC Act*), dealing with production of any statement or information regardless of privilege of a public authority or public official, be amended specifically to allow legal professional privilege or its statutory equivalent. This proposal was aimed at making it clear that the abrogation of legal professional privilege is limited to communications in connection with the activities the subject of the inquiry.

Evidence was taken during the Sixth General Meeting with the PIC Commissioner, about the submission made by NSW Police and the proposed amendment. The Acting Commission Solicitor outlined the distinction made in the *PIC Act* and gave evidence that:

> The Act in s.27(3)(b) abrogates the privilege of a public authority or a public official in that capacity, and that is consistent with that policy. It does not abrogate the private privilege of a natural person or a private corporation: those persons may still claim privilege in relation to a notice that is issued by the Commission.

The position under the above provisions seems to be that privilege cannot be claimed by a public authority, or by a public official, in respect of that public official's capacity as an official, to refuse to provide information or documents to the PIC. However, an individual can claim privilege in a personal capacity. The distinction would appear to be between being unable to exercise the privilege for or on behalf of a public authority, but being able to claim it where it can be asserted on a personal basis (such as where personal misconduct outside the scope of official duties might be involved).

At times, particularly with heads of agencies who might be seen as having personal responsibilities for the management and control of those agencies, the line between official and personal conduct can become blurred. It follows that particular questions of whether privilege is being claimed officially or personally can only be resolved on a case by case basis.

The principle underlying s.27(3)(b) of the *PIC Act* seems sound enough. The proposal that the relevant provisions should be changed is not persuasive and may act to place new constraints on the PIC's ability to gather information. Under the present approach, where personal liability or jeopardy may be involved an individual can claim privilege, including legal professional privilege. But the PIC's capacity to investigate official conduct should not be reduced by allowing privilege to be claimed by public officials acting in that capacity.

In conclusion, the Committee is of the view that the principles on which the legislative provisions concerning legal professional privilege is based are sound. Practice is affected on a case by case basis and there is some available case law at Federal level[28] which gives guidance as to how these provisions should be applied in practice.

The PIC's jurisdiction over unsworn members of the Police Service

Following the enactment of the *PIC Act* in 1996, the ICAC retained jurisdiction in relation to corrupt conduct by unsworn, administrative members of the Police Service and the PIC exercised jurisdiction in relation to corruption and serious misconduct by sworn police officers. The Police Service has submitted to the ICAC Committee's review of the ICAC that an amendment should be enacted to provide the PIC with jurisdiction over all NSW Police employees, both sworn and unsworn, in relation to the reporting and investigation of corruption or serious misconduct.

According to the Police Service, the benefits of this proposal are: consistency of approach in the examination of policies and procedures applicable to employees of NSW Police; consistency in rulings and recommendations about changes to NSW Police policies and procedures; a one-stop shop for the investigation of serious misconduct or corruption within NSW Police.

The ICAC deals with a very small number of matters involving administrative officers of NSW Police: in 2000-1 it received 15 notifications under s.10 of the *ICAC Act* and 34 notifications under s.11 regarding possible corrupt conduct by unsworn officers.

Transferring jurisdiction for investigating the conduct of administrative officers with NSW Police to the PIC seems a reasonable option, consistent with the PIC's role and posing few disadvantages, especially given the small number of cases likely to be involved. The Committee notes that this proposal has the support of both the Commissioner of the ICAC and the Commissioner for the PIC (see transcript p.54).

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[28] Corporate Affairs Commission (NSW) v Yuill (1991) 172 CLR 319; Esso Australia Resources Ltd v Federal Commissioner of Taxation (1990) 168 ALR 123; NCA v S (1991) 100 ALR 151; see S. Donaghue, *Royal Commissions and Permanent Commissions of Inquiry*, (Butterworths, Australia), 2001.

Organisational Performance

The PIC reported in response to Question on Notice 4.1 that the implementation of the Investigations Performance Framework (IPF) has been deferred to allow the incoming Commissioner an opportunity to comment on the proposal. The IPF will now be included in work being done in the Corporate Planning process. The Committee is interested in the IPF and will be monitoring its progress in future meetings with the Commissioner.

PODS was demonstrated to the Committee following the General Meeting. The Committee feels that once PODS becomes fully operational in September 2002, it will greatly enhance the ability of the PIC to conduct covert research and complaints investigation.

QUESTIONS ON NOTICE

SIXTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSIONER

RESPONSES TO QUESTIONS ON NOTICE

1. INVESTIGATIONS

1.1 **Project Oracle**
Which recommendations from Project Oracle have NSW Police implemented, and to what extent?

The NSW Police has recently reported that the following Project Oracle recommendations have been implemented:

- The provision of clear instructions to police with regard to off-duty policing responsibilities and alcohol consumption (page 86).
- The audit of training and education programs delivered to police regarding the use of force (pages 96, 97, 105 & 108).
- The conduct of investigations into Category 1 assault complaints by officers outside the Local Area Command of the involved officer (page 123).
- The conducting of an assessment of the most recent 12 months of assault-related complaints associated with off-duty officers (page 87).
- The assessment of the feasibility of a 'use of force' register.

As to the fourth and fifth dot points above, the Commission has recently corresponded with the NSW Police and further action may need to be taken by the two agencies with regard to these matters before the Commission is prepared to regard these recommendations as satisfactorily implemented.

A NSW Police progress report received by the PIC on 19 April 2002 indicates that a number of recommendations are awaiting the roll-out of c@ts.i (the Customer Assistance Tracking System) before they can be fully implemented. The NSW Police reports that the roll-out of this system, planned for September this year, is the final step required for their implementation and that other action, such as the development of policies and procedures, is complete. c@ts.i is a computer-based system for the management of complaints and local management issues. It enables the user to complete the whole task of complaint management, recording, investigation and action, on one system. It will replace the CIS and local management databases as the tool for complaint management. The Project Oracle recommendations that will be finalised following the roll-out of c@ts.i are:

- The exclusion of Category 1 complaints involving grievous bodily harm and other serious assault matters involving significant forms of actual bodily harm from conciliation and informal resolution processes (page 61).

- The review of minor categories used for classifying allegations on the police complaints system (page 61).

- The training of investigators with regard to the application of minor categories to allegations and complaints (page 62).

- The review by supervisors to ensure that a matter has been correctly classified and is consistent with the evidence and complaint narrative (page 62).

- The review of categories allocated to causation of assault complaints (page 71).

- The equipping of Local Area Commanders with information for reviewing, assessing and managing the level of risk of assault within their commands (page 87).

The NSW Police has listed one recommendation from Project Oracle as 'pending'. This recommendation relates to the initiation of a discrete project using the SCIA threat assessment model to identify, on an ongoing basis, officers with multiple complaints of assault. Some work has been done by NSW Police in relation to this matter. The NSW Police has provided the Commission with information on a proposed model entitled "The Corruption Identification and Management Process", which will meet the requirements of this recommendation. The Commission has indicated its support and sought advice as to when it will be implemented.

1.2 What is the current status of Operation Mosaic, Operation Jetz, Operation Rosella, and Operation Malta and when does the PIC anticipate reporting on these inquiries?

As to Operation Mosaic, at the time of writing, a referral under s.77 of the *Police Integrity Commission Act 1996* was largely finalised. It is expected that this referral will be furnished to the NSW Police either before the meeting or soon thereafter. This referral will not be made public.

As to Operation Jetz, the Commission has concluded taking evidence in relation to this matter. Submissions will be made shortly and a report under s.96(2) of the Act will follow soon after.

As to Operation Rosella:

- Of the four individuals charged with conspiring to supply a large commercial quantity of cocaine and heroin, two men have pleaded guilty, whilst the committal of the other two men is presently being heard at Burwood Court. A

brief of evidence has also been forwarded to the DPP concerning the activity of a former commissioned officer of police.

- The other matters reported in last year's Annual Report, including the proceedings under s.181D of the *Police Service Act* and the dissemination of evidence to other NSW Police Strike Forces, are still continuing.

As to Operation Malta, the Commission has concluded taking evidence in relation to this matter. Submissions from Counsel Assisting the Commission were sent to the legal representatives of other relevant parties on 29 April 2002. A timetable has been set under which the Commission is aiming to have the submissions phase concluded by early June. A report to Parliament under s.96(2) of the Act will be prepared as soon as possible thereafter.

1.3 <u>Operation Alabama</u>
Have NSW Police responded to the Commission's concerns about inadequate statement and brief of evidence preparation?

The Commission wrote to the NSW Police on 20 September 2001. The letter indicated that while changes to statement preparation and brief handling were being implemented as a consequence of the Copper, Nickel & Triton reports published by the Commission, the events investigated in Operation Alabama showed that there was no place for complacency in the Police response to those issues. Officers remained unaware of proper procedures. The Commission disseminated material from the hearing to the Commissioner for the training and education of officers.

As brief preparation had been the subject of formal recommendations in the Copper, Nickel & Triton reports, the Commission did not seek a formal response in relation to this issue in the context of Operation Alabama.

NSW Police responded on 29 November 2001 setting out measures taken to more closely monitor brief handling by a particular officer. In a NSW Police organisation-wide context, the Commission continues to monitor the issue through its regular recommendation implementation liaison process.

1.4 <u>Operation Malta</u>
Has there been any progress regarding a matter of contempt of the Commission that arose during Operation Malta?

This is assumed to be in reference to allegations arising from a series of broadcasts by Mr Alan Jones on 12, 13, 14 and 15 March 2002 in which he made statements critical of Mr Ryan and his performance in evidence before the Commission.

Under the *Police Integrity Commission Act 1996* , contempt proceedings are initiated by the Commissioner's presentation of a certificate to the Supreme Court, setting out the details of the alleged contempt: s.119(2). The Supreme Court is then required to inquire into the alleged contempt and a person is not liable to be punished for contempt where they establish a 'reasonable excuse' for the act concerned: s.119(6).

The Crown Solicitor's advice has been sought as to whether Mr Jones's comments potentially constitute contempt. Once the advice is to hand the Commissioner will consider whether a certificate should be presented to the Supreme Court.

1.5 Will the Commission be making any public report of its assessment of the discharge of police firearms during 2000-2001?

In its Annual Report for 2000-2001, the Commission noted that it had conducted an assessment of the discharge of firearms during the course of that reporting year. That assessment was furnished in its final form to the Police in February 2002. The Commission's present intention is not to make that assessment public. The assessment identified no instances of misconduct and made no recommendations related to the Commission's functions of detection, prevention and investigation of police misconduct. The Commission believes that the issues raised and the recommendations made can be dealt with satisfactorily between the two agencies.

2. QUALITATIVE AND STRATEGIC AUDIT OF THE REFORM PROCESS (QSARP)

2.1 The PIC's Annual Report for 2000-2001 refers to certain recommendations made by the PIC to NSW Police in response to QSARP 1, the implementation of which is a measure of PIC's performance. Has the PIC made any recommendations to NSW Police in response to QSARP 2? If so, what were the recommendations and what action has NSW Police taken on the recommendations?

It might be noted that the Commission regards 'acceptance' of its recommendations as a direct measure of its performance. 'Implementation' of a recommendation by another agency is something that the Commission can only influence through consultation and negotiation. 'Implementation' might be regarded as an indirect measure of the Commission's performance in terms of the practicality of its recommendations, the extent of consultation and the persuasiveness of arguments during negotiation. In the end though, circumstances of which the Commission cannot be aware, or, which are beyond the influence of the Commission, may adversely impact on 'implementation'. The Commission considers all such circumstances when agreeing to variations to its recommendations or accepting lesser standards.

Following consideration of QSARP 2, the Commission was somewhat concerned by the continuing existence of impediments to reform and a reported absence of evidence of solid foundational changes such as the Police leadership clearly and consistently driving reform. However, the Commission also noted demonstrable progress in reform since Year One of the Audit, following specific progress made in:

- scoping out the nature of the reform required;
- developing a sound framework consistent with the intent of Appendix 31 in which to cluster and prioritise reform initiatives;
- identifying a suite of clearly relevant initiatives to be undertaken, particularly those focused on identifying what the Police leadership expects of its leaders and culture;
- taking action to secure external expertise; and,
- centralising coordination of reform with a member of the CET.

It is the view of the Commission that these activities represented credible steps by the Police in progressing reform during the second year of the Audit. These activities occurred directly in response to the Commission's recommendations following QSARP 1. On this basis, the Commission made no further recommendations following QSARP 2. The Commission continues to monitor the implementation of its recommendations.

2.2 The Annual Report 2000-2001 notes the formation of the Appendix 31 Reforms Advisory Committee. How often has this Committee met? What work has the Committee undertaken?

The Committee has met around 18 times since it commenced on 22 February 2001. In early to mid 2001 meetings were held weekly and then fortnightly. During these meetings the Committee:

- developed a common understanding of the nature of the reform contemplated by the Royal Commission;
- developed a broad transformational change model which the Police could use to guide their own development of a conceptual framework in which to cluster and prioritise reform activity;
- provided detailed assistance to Police in the development of their conceptual framework, scoping the reform to be undertaken and identifying and prioritising relevant reform activity;
- sought advice from individuals and organisations with transformational change management experience and provided advice to the Commissioner for Police on the kinds of skills, experience and approach necessary to assist in reform; and,
- advised Police in the initial development of a specification which they used when preparing a tender document, seeking tenderers to:

  Provide a detailed 3 year reform Program for endorsement by the Commissioner's Executive Team.

  Develop systems, processes and practices to manage the reform Program.

  Developing strategies to support and enhance the leadership in the reform of the Service.

The Police sought tenders for this work in September/October 2001 and have advised the A31 Committee that they subsequently engaged Australian Pacific Projects, and their specialist sub-contractors: St James Ethics Centre; Marlowe Hampshire; and, Change Works.

The Committee now intends meeting at key points in the project for progress reports and to consider and advise the Commissioner of Police on the quality of major deliverables.

2.3 One of the Advisory Committee's main tasks was to help identify services needed for effective reform of NSW Police which were to be provided by an external agency. Will the Committee be managing this contract and how will the outcomes of the tender be assessed?

The Committee is advisory in nature, and, other than in assisting in the initial development of specifications, was not involved in the tender/contracting process.

NSW Police are managing the contract and the Committee is considering and advising the Commissioner of Police on the requirements of major deliverables and expectations of outcomes.

The outcomes of the contract are to be assessed on the basis of the quality of deliverables detailed in the contract specification, which, in summary, include:

- the Reform Program Plan;
- a pilot implementation of the infrastructure to manage the Reform Program and an evaluation report;
- implementation of the Reform Program infrastructure;
- pilot implementation and evaluation of strategies to deliver improvements in leadership; and,
- support necessary for each of the endorsed strategies.

The Committee has membership from the QSARP auditors who will examine progress of the reform work under contract up until the completion of the QSARP data collection in June 2002.

2.4 The Minister for Police's press release concerning QSARP 2 says that the Police Integrity Commissioner said that the new structure of the Police Service addressed many of the issues raised by QSARP 2. In your opinion, does the new structure of NSW Police address issues of reform as examined in QSARP 2?

It might be noted that the Minister of Police's press release is quoting the Minister rather than the Commissioner for the PIC in regard to "the new structure ….. address(ing) many of the issues raised by the Qualitative and Strategic Audit of the Reform Process 2 Report".

A number of issues raised in QSARP 2 appear to be associated with structure which could be improved with an application of appropriately skilled resources which might be released following a restructure. However, other issues reported by the Auditors relate to "counter-productive" behaviours[29] exhibited within the Police Service. So, while the Auditors report, amongst other things.[30]

> Poor or inadequate levels of resourcing (*to reform related activity*)
>
> and
>
> Fragmentation of energy and focus across too many initiatives, putting at risk the successful completion of any.

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[29] Hay Group Consulting Consortium, *Qualitative and Strategic Audit of the Reform Process (QSARP) of the NSW Police Service: Report for Year 2*, October 2001, p.249.

[30] The QSARP Year 2 Report is quite substantial with a significant number of issues raised for consideration by Police.

they also report:

> Poor management of cross-functional relationships which are critical to securing buy-in and ultimately the success of the initiative.
>
> Lack of ability to focus on qualitative measures of reform outcomes which impact on culture, behaviour and performance; a reluctance to move from assessment of performance against quantitative measures such as crime rates.
>
> An obsession with counting the number of initiatives undertaken, rather than the quality of their impact.
>
> A failure to sustain energy, focus and resources over the long term to give new initiatives the chance to be successful.

These are issues which relate to an understanding of, a commitment to, and a capacity to undertake, reform. While additional appropriate resources, should they be made available for reform, will no doubt assist in that process, an unswerving commitment to reform by the Police leadership and the work being done by the Police in planning and working with external contractors to implement reform, are, in the Commission's opinion, more critical to the overall reform process.

2.5 Does the Commission consider that recent legislative increases in police powers have increased the potential for police corruption?

Generally, most of the new legislative changes relate to extending or clarifying police search powers. For example the powers to: search for knives in public places; stop and search vehicles where indictable offence suspected; move on persons where obstruction occurring, potential exists to cause fear or where drug related; power to obtain samples, etc. Given this, it is more likely that changes will increase the potential for single instances of misconduct, or of complaints of misconduct, relating to abuse of powers or harassment rather than corruption.

3. TRACKING PIC RECOMMENDATIONS

3.1 Has the establishment of the External Agencies Response Unit assisted in the timely implementation of PIC recommendations by NSW Police and in the PIC's ability to monitor implementation?

The Commission noted in its Annual Report for 2000-2001 that, notwithstanding the delays that had been experienced during the course of that reporting year in relation to obtaining responses to PIC recommendations, it considered the formation of the External Agencies Response Unit a very positive development. It has led to improvements in the timeliness with which recommendations are considered by the NSW Police, responded to, and, if accepted, implemented. The formation of the EARU has assisted the Commission considerably in its ability to track and monitor the progress of the NSW Police with regard to its recommendations. The Commission receives detailed progress reports approximately quarterly from the NSW Police.

3.2 Is PIC monitoring the ongoing implementation of recommendations from the following specific operations: Algiers, Bangkok, Belfast, Copper, Nickel, Triton, Glacier, Projects Dresden and Oracle? To what extent have these recommendations been implemented?

In response to the first part of the question, the Commission continues to:

- receive progress reports (approximately quarterly) from the NSW Police as to responses to and implementation of recommendations;
- evaluate those responses; and
- meet with and correspond with the NSW Police on issues arising from the progress reports.

As to the second part of the question, Operation Algiers contained recommendations that consideration be given to disciplinary and prosecutorial action against former Superintendent David Care and prosecutorial action against Peter Sim. While disciplinary action against former Superintendent David Care was initiated under s.181D of the *Police Service Act 1990*, he resigned before the action was finalised. In relation to the recommendation of four criminal charges against former Superintendent Care, the Office of the Director of Public Prosecutions (DPP) wrote to the Commission on 2 October 2001 advising that the matter had been considered but that there was insufficient evidence to proceed. Mr Sim, who was living abroad at the time of the PIC's investigation, has not been prosecuted.

As to Operation Bangkok, the Commission noted in the 2000-2001 Annual Report that of the eight recommendations contained in the Commission's report, one had been accepted and seven supported in principle. In a progress report provided to the Commission on 19 April 2002, the NSW Police reported no change; seven recommendations were supported in principle and one was supported. No

recommendations have been implemented. The NSW Police has indicated, however, that in relation to the Bangkok recommendations:

- a review of NSW Police Council of Sport Constitution, which pertains to the recommendations, is currently underway;
- legislative changes to the *Police Service Act 1990* relating to sporting bodies have been proposed and will be considered in the autumn session of Parliament; and
- some strategies related to the recommendations - such as an audit of sporting bodies and changes to the NSW Police Sponsorship and Endorsement Policy - have been completed.

The NSW Police position is that the review of the NSW Police Council of Sport Constitution needs to be completed and the legislative amendments need to take place before it can change the 'supported-in-principle' status of these seven recommendations. The Commission considers this position reasonable.

The Commission will, as a matter of course, be meeting with members of the NSW Police to discuss progress regarding these recommendations.

The Commission noted in its last Annual Report that former Sergeant Terry Gardiner, who was the Cricket Association's president until March 2000 had been charged with 15 contraventions of s.178A of the *Crimes Act* for fraudulently misappropriating over $60,000 from the Cricket Association. Gardiner pleaded guilty to 15 contraventions of s.178A of the *Crimes Act (Fraudulent Misappropriation)* and one contravention of the *PIC Act (False Testimony)*. He received fixed custodial sentences from Judge Stewart on 22 February 2002 and is eligible for release on 21 May 2004. A Sentence Appeal has been lodged by Gardiner to the Court of Criminal Appeal.

Also noted in the 2000-2001 Annual Report was that the Commission had commenced confiscation proceedings in the NSW Supreme Court against Mr Gardiner under the *Criminal Assets Recovery Act 1990*. On 22 October 2001, the Supreme Court made orders under s.27 of the *Criminal Assets Recovery Act* requiring Gardiner to pay to the NSW Treasurer the sum of $59,255.60 within 150 days. Payment in full was made to the NSW Treasurer by 29 November 2001, in compliance with these orders.

As to Operations Copper, Nickel, Triton, there were three recommendations relating to policies, procedures and the like and three relating to disciplinary action to be considered against police. The first recommendation[31] from the Report regarding the training and education of police officers in the new brief preparation and management systems and procedures has been fully implemented. In relation to the

[31] In the report concerning Operations Copper, Nickel and Triton, this was not expressed as a recommendation. However, insofar as the Commission communicated an expectation that police officers be fully educated and trained in relation to new procedures in the preparation and handling of brief management, it has, with the support of the Commission, been treated as a recommendation by the NSW Police.

other two PIC recommendations concerning policies, procedures and the like, the NSW Police reports that:

- they have not been fully implemented yet;
- their finalisation has been delayed while other policy issues were resolved;
- action is currently in train to implement them; and
- it is anticipated they will be implemented by mid 2002.

Concerning the three recommendations for disciplinary action, the NSW Police has reported that:

- two recommendations are now fully implemented (notices under s.173 of the *Police Service Act 1990* have been served on two officers); and
- one recommendation is pending (a recommendation for removal of an officer under s.181D of the *Police Service Act 1990* is currently before the Commissioner).

As to Operation Glacier, all recommendations have been implemented. The Commission noted in its last Annual Report that:

- acting Sergeant Nemeth-Laky had been found guilty of the criminal offence of obtaining access to data stored in a computer without authority or lawful excuse and given a 12 months good behaviour bond with no conviction recorded; and
- three civilians were also charged and convicted of criminal offences following the Commission's investigation.

The Commission's report concerning Project Dresden contained 19 recommendations relating to policies, procedures and the like. In a progress report furnished to the Commission on 19 April, the NSW Police reported that: 4 recommendations had been implemented; 14 recommendations were pending; and one was suspended in light of, amongst other things, policy advice identifying impediments to its implementation.

As to those recommendations listed as pending, full implementation is, for the most part, dependent upon the completion of long term and large scale projects, such as the roll-out of c@ts.i, the development of a new Internal Investigators Training Course and the review of the SCIA command.

As to Project Oracle, please see the Commission's response in relation to question 1.1.

3.3 The 2000-2001 Annual Report notes on page 5 that of 33 recommendations made by the PIC to the Police, 28 have been accepted. What action has been taken following NSW police acceptance of these recommendations? What response has been given in relation to the remaining five recommendations? How does the PIC monitor the response by NSW Police to recommendations accepted "in principle"?

Page five of the 2000-2001 Annual Report notes that during the reporting year, the Commission had made 33 recommendations concerning Police policies and practices. It further noted that formal responses had been received by the Commission in relation to 28 of those recommendations. As to the action that has been taken following the NSW Police acceptance of these 28 recommendations, it is noted that:

- five recommendations were made in the Commission's report concerning Operation Belfast;
- twelve were made in the Project Oracle Report;
- eight were made in the Operation Bangkok report; and
- three were made by the Commission in relation to the QSARP year 1 report.

Progress as to the implementation of recommendations made in the Project Oracle Report is discussed in the response to question 1.1. Progress as to the implementation of recommendations made in Operation Bangkok is discussed in the response to question 3.2. As to action that has been taken in relation to the recommendations from Operation Belfast, the NSW Police has reported that all recommendations have been implemented and finalised. As to the three recommendations made by the Commission in relation to the QSARP year 1 report, the Commission reported in its 2000-2001 Annual Report that all three had been accepted and were being actioned.

The second part of question 3.3 asks what response has been given in relation to the remaining five recommendations referred to on page five of the 2000-2001 Annual Report. These recommendations were contained in the Commission's report concerning Operation Saigon. While the Commission had received a response from the NSW Police concerning this report, there was insufficient time before the Annual Report had to be sent to the printers to evaluate the NSW Police response.

The response from the NSW Police as to these five recommendations is that two have been supported and three have not. Under correspondence dated 8 January 2002, the Commission informed the NSW Police that, after consideration, it (the Commission) was persuaded as to the NSW Police's reasons for not implementing three recommendations. It is noted that question 3.3 seeks information only as to the response of the NSW Police on these recommendations. Further information as to the Operation Saigon recommendations can be provided to the Committee if required.

As to the last part of the question regarding how the Commission monitors recommendations that have been accepted by the NSW Police in principle, please see response in relation to question 3.5.

3.4 What mechanisms are in place for addressing those recommendations not accepted by NSW Police?

A process is in place whereby all issues concerning PIC recommendations are formally discussed between the NSW Police and the Commission, and if necessary debated, including matters where the NSW Police seeks to vary the nature of the recommendation or is disinclined to accept it.

On the few occasions where the NSW Police has not accepted a Commission recommendation:

- the matter has been discussed and been the subject of formal correspondence between the two agencies; and
- the Commission has been satisfied that the Police's reasons for not accepting the recommendation have been reasonable and valid.

The Commission accepts that it does not have the power to direct the NSW Police to implement a recommendation. It also recognises that there may be circumstances where its recommended course of action may not be appropriate or where the same outcome may be achieved through an alternative strategy. Of course, the Commission attempts to identify such things before a recommendation is made. The Commission, where possible, consults with the NSW Police as to its recommendations prior to releasing its reports.

If a circumstance were to arise where the Commission and the NSW Police could not agree as to the action to be taken in relation to a recommendation, the Commission would be obliged under s.99(2)(c) to report its position in its Annual Report. Depending on the matter, it may consider referring the matter to the Minister for Police.

3.5 What processes are in place for tracking responses to and implementation of recommendations that are accepted 'in principle' by NSW Police?

The Commission's experience has been that where a recommendation has been accepted 'in principle', the NSW Police has deferred making a final decision while it conducts further research or inquiries. It is not intended to be a final position on a recommendation merely an initial indication of support. The Commission's approach to dealing with recommendations that are accepted 'in principle' are the same as for all other recommendations. The Commission receives progress reports on these matters on an approximately quarterly basis from the External Agencies Response Unit.

3.6 Has the PIC evaluated the NSW Police response to Operations Saigon and Oslo?

Yes. The Commission received formal responses from the NSW Police in relation to recommendations made in its reports on Operations Oslo and Saigon on 21 September 2001. These responses were evaluated by Commission staff and were the subject of discussions between the two agencies. The Commission provided comments back to the NSW Police in correspondence dated 8 January 2002.

It is noted that question 3.7 seeks information only as to whether the Commission has evaluated the NSW Police response regarding these reports. Further information as to the Operation Saigon recommendations can be provided to the Committee if required.

3.7 Is the PIC continuing with NSW Police wide audits concerning the quality and standard of internal Police investigations, like Project Dresden? If not, will the Commission re-instigate its 1999-2000 policy of auditing individual Police investigations?

The Commission's present intention is to continue with organisation-wide audits of internal police investigations, like Project Dresden, as opposed to the auditing of individual investigations.

The PIC has almost completed its second NSW Police wide audit (Dresden II). The audit covers a three-year period (01/07/98 to 30/06/01) and is an assessment of approximately 25 percent (444) of all category 1 complaints referred back by the Commission to the NSW Police, during the specified period.

3.8 The Commission indicated in its response to Questions on Notice for the 5th Annual Meeting with the Parliamentary Committee that further audits of Category 1 complaint investigations were being benchmarked against Project Dresden. Has this occurred and will the Commission be reporting on the audit results?

The first part of this question asks whether future audits will be benchmarked against Project Dresden. The aim of the second audit is to replicate much of the methodology applied during the first Dresden audit, so as to acquire an understanding of the current standard and quality of Category One investigations, and to also accurately compare the results to those of the first Dresden audit. Such a comparison will allow the Commission to measure improvements, to consider questions of the effectiveness of any new policies or guidelines that were activated in response to the first Dresden audit, and to detect any new emerging trends or patterns regarding the quality and standard of investigations of Category One complaints.

The only significant departure from the approach used in the first Dresden audit was the process used to select the Category One complaints to be assessed. In the first Dresden audit the Commission used a variety of techniques and varying time

periods. There are problems with the reliability and validity of such an inconsistent approach therefore in response to this problem the Commission was vigilant in applying one sampling technique throughout the three-year period of this second audit.

As to the second part of the question, it is the Commission's present intention to issue a special report to Parliament on the results of Dresden II as soon as possible after its completion.

4. ORGANISATIONAL PERFORMANCE

4.1 Is the implementation of the Investigations Performance Framework complete?

The implementation of the Investigations Performance Framework has been deferred for the time being. Implementation was deferred in order to provide the incoming Commissioner an opportunity to comment on the proposed process. It was further deferred pending a review by the Commissioner of the PIC's investigations structures and processes. Given these delays it was decided that the framework would benefit from the work being done in the Corporate Planning process which is currently underway in the Commission. The Corporate Plan is due for publication early 2002/03.

4.2 Have steps been taken to improve the participation level in the Performance Development System?

A system of 'reminders' as to when performance reviews are due has been implemented within the Commission's Payroll system in order to assist in improving the participation level. Reminders are sent to managers one month before the due date for each performance review. It is expected that the participation level will improve this year over the 85% achieved during 2001/02. The target for this year is 100%.

4.3 How is the development of the Police Oversight Data Store (PODS) progressing?

The development of PODS has progressed very well with Phase II of the system due to be implemented across the Police, Ombudsman and PIC sites at the end of May 2002. Work on the final phase (Phase III) of the development, which includes the extraction and incorporation of data from the new police complaints management system (c@ts.i) and additional data from the key police operational system (COPS), has begun and is progressing well. Minor delays have been experienced in Phase III due to the unexpected complexity of some source data/systems and delays in sourcing critical hardware components. Phase III is due for implementation in September 2002.

The Commission proposes, subject to agreement, to demonstrate PODS to the PJC at the Annual General meeting.

5. STAKEHOLDER AND OTHER EXTERNAL RELATIONS

5.1 What is the PIC's ongoing role in, and current contribution to the following Committee meetings:

b) PIC - Special Crime and Internal Affairs Weekly Liaison Meeting
c) Police Complaints - Case Management Program Review Group
d) PIC - NSW Police - ODPP - Ombudsman liaison meeting
e) Protected Disclosures Steering Committee

The ***Special Crime and Internal Affairs Weekly Liaison Meetings*** continue with matters relevant to the functions of both the Commission and SCIA being discussed including internal investigations, policies, practices and associated matters. The Commission receives and provides relevant information during these meetings and provides feedback on proposed action by the Police. The Meeting is attended by the Commissioner for the PIC and/or the Assistant Commissioner, the Director Operations PIC, the Commander SCIA, the SCIA Chief Investigator and, until recently, A/Commissioner Moroney in his capacity as Senior Deputy Commissioner.

The ***Police Complaints Case Management (PCCM) Program Review Group*** is currently meeting every 4 weeks. The PCCM is made up of a police complaints management system (c@ts.i), an investigations case management system (e@gle.i) and the Police Oversight Data Store (PODS).

The Program Review Group, which is chaired by the Premier's Department, is a high level committee charged with providing broad oversight for PCCM development. The Commission's representative on the Group is the Assistant Commissioner. The Commission reports to the Group in its capacity as the lead agency responsible for the development and implementation of PODS, as a key user of the c@ts.i system and a consumer of e@gle.i data.

PIC - NSW Police - ODPP - Ombudsman liaison meetings occur quarterly in order to discuss matters of mutual interest, such as ODPP advices, relevant issues and policy, and prosecutions arising from investigations of police corruption. The Assistant Commissioner represents the Commission at these meetings, presenting Commission views and negotiating agreed positions. Also attending are the Commander SCIA, the Assistant Ombudsman and the Managing Lawyer (Special Crime) ODPP.

The function of the ***Protected Disclosures Steering Committee*** is to oversight the implementation of the protected disclosures scheme in government agencies. The Commission Solicitor serves as the Commission's representative on the Committee and participates in discussions on a variety of strategies associated with raising awareness of the scheme and encouraging compliance. The Committee is chaired by the Ombudsman and meets approximately every three months.

5.2 Is the recent joint-investigations undertaken by PIC, IA and CC a trend that is likely to continue and what protocols developed between the participating investigative agencies?

From time to time, where there is a mutual benefit, it is likely that the Commission will continue to conduct joint investigations with SCIA and the Crime Commission. In addition, it is possible that the Commission will work in future with other agencies, such as the ICAC, NSW Police Crime Agencies, other areas of the Police, or the Ombudsman. Opportunities for potential joint investigations will be assessed on the particular circumstances at the time. Naturally, the Commission will also continue to conduct completely independent investigations.

Where the Commission establishes a joint task force, it does so under s.17 of the *Police Integrity Commission Act 1996*. The Commission works in cooperation with other agencies under s.18 of the Act. It is also common for the Commission to enter into Memoranda of Understanding (MOU) with other agencies for the purpose of working in cooperation. MOUs outline, amongst other things, respective roles, responsibilities, relevant accountabilities and specify the manner in which information is exchanged/handled.

5.3 Arising from Operation Florida, there was an investigation by the PIC Inspector of media coverage using material from Operation Florida that had not been introduced as evidence in public hearings. The Inspector made a number of recommendations about protocols for dealing with information passed on to other agencies. Have these recommendations been implemented?

In the report on his preliminary investigation regarding the "Four Corners" program dated 8 November 2001, the Inspector made three recommendations to the Commission:

- That the Commission review the events leading to the publication of the material on the "Four Corners" program on the night of 8 October 2001.
- That from such a review it formulate a mechanism to be put into operation on any such future occasion to reduce the risk of a recurrence of the problem the subject of this report.
- That such consideration and proposals be advised to the Inspector.

The Commission has conducted a review of the events preceding the "Four Corners" broadcast on 8 October 2001. Amongst other things the review sought to identify systems failures and areas where Commission procedures and systems could be strengthened or improved. A report on the review was furnished to Commissioner Griffin on 3 April 2002. The findings and recommendations have now been accepted and will be implemented in the near future. In line with the Inspector's second recommendation, this will include strategies to reduce the risk of a recurrence of the problems the subject of his report. In line with the Inspector's third recommendation, these matters will be communicated to him when complete.

5.4 The Minister for Police has announced that the Police Minister's Advisory Council (PMAC) will be helping him ensure that the reform process

continues. To what extent has the PIC liaised with the PMAC on reform issues?

There are two aspects to the Commission's role in the reform of the NSW Police. The Commission is responsible for the oversight of the Qualitative and Strategic Audit of the Reform of the NSW Police Service (the 'QSARP'). There is provision for the Commission to make "such comments and recommendations as it sees fit" in response to each QSARP Report.[32] The QSARP considers the progress made by the Police in 10 key reform areas outlined by the Royal Commission in Appendix 31 of its Final Report. The key reform areas can largely be categorised as relating to the leadership, culture and systems of the Police.

The second aspect of the role in reform arises from the Commission's response to one of its principal functions, the prevention of serious police misconduct. The Commission conducts investigations and research projects, one purpose of which is to identify causal factors relating to, and opportunities for, serious police misconduct. The Commission may then liaise with a range of agencies, and individual specialists with expertise relevant to this aspect of reform, in the development of its advice concerning improvements in practices aimed at reducing such opportunities. The Commission provides this advice to agencies, the Commissioner of Police, the Minister and/or the Parliament.

Therefore, in general terms, the Commission has a role in the reform of the Police which relates to:

- oversighting, and commenting on and/or making recommendations in respect of leadership, culture or systems issues arising from the QSARP; and,

- the prevention of serious police misconduct.

The PMAC is concerned with quite different aspects of policing reform. The PMAC's Terms of Reference relate to "operational policing" reform issues, such as more effective local policing and crime prevention, maximising frontline police deployment, the efficacy of police powers and the integration of new technologies.

The Commission does not see a need to liaise with the PMAC at this time.

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[32] Section 14A(5) *Police Integrity Commission Act 1996.*

6. POLICE SECONDARY EMPLOYMENT

6.1 Operation Algiers, which concerned unapproved secondary employment in the licensing industry by a Superintendent, supported the Royal Commission recommendation that stated:

> *secondary employment must be prohibited in those areas which the police have a regulatory role such as commercial and private inquiry agents, transport, liquor, security, and gaming and racing (Final Report para 3.288).*

Has the PIC been involved in the establishment of the parameters for the secondary employment trial and has it provided any advice on appropriate risk management and corruption prevention measures for the trial?

No. The Commission has not been involved in the establishment of the parameters for the secondary employment trial and has not provided advice on risk management and corruption prevention measures for the trial.

6.2 Does the PIC consider there to be any corruption risks associated with the trial of uniformed officers in secondary employment, such as security guards and licensing?

The Commission has not considered this issue and is unable to offer any comment.

6.3 Does the PIC intend to monitor the conduct of police officers involved in these areas of secondary employment?

It is not the Commission's present intention to monitor the conduct of police officers involved in these areas of secondary employment.

6.4 Will the PIC have any role in relation to educational programs for police officers involved in the secondary employment trial?

It is not the Commission's present intention to play a role in educational programs for police officers involved in the secondary employment trial.

6.5 For the Fifth General Meeting the PIC advised that work on Operation Genesis had been suspended for reasons of investigative priorities and changes to licensing laws. Will the Commission be reactivating Operation Genesis, which was examining police officers' secondary employment in licensing, as a result of the trial of secondary employment for uniformed police?

The Commission does not intend reactivating its work in relation to Operation Genesis. It is currently considering a number of different projects of a thematic nature which it has assessed are of a higher priority.

7. POLICE CORRUPTION EDUCATION AND PREVENTION PROGRAMS

7.1 Section 14(c) of the Police Integrity Commission Act 1996 states that the Commission has the power to

> *make recommendations concerning police corruption education programs, police corruption prevention programs, and similar programs, conducted within the Police Service*

Has the Commission made any recommendations concerning police corruption education programs, including ethics and accountability courses, conducted within the NSW Police?

Yes. In its report to Parliament concerning Operation Warsaw (February 1999), the Commission recommended that:

> the Commissioner of Police undertake a review of current training and procedures relating to conflict of interest recognition, avoidance and management, especially in terms of the senior ranks, with a view to developing training and procedures that accord with world's best practice.

A recommendation was made in the Commission's report concerning Project Oracle (August 2000) that:

> The Police Service should undertake an audit of the content of training and education programs currently delivered to police officers regarding use of force.
>
> - Conducted over the following six to nine months, this audit should focus on decision-making regarding use of force, use of verbal skills and tactics such as de-escalating conflict and alternatives to the use of force.
> - This audit should also consider whether education and training is directed at officers facing an increased risk associated with their age, inexperience and/or rank and whether training is focused at reducing the risk when officers come into physical contact with juveniles, youths, and Aboriginals and Torres Strait Islanders and persons affected by alcohol. It should also consider the off-duty behaviour of officers, in particular those with a domestic or alcohol-related causation and those incidents arising in licensed premises.
> - The Commission also recommends that this audit should consider the provision of remedial training. Remedial training should be provided to officers stationed at LACs identified as having an increased risk due to a high number of assault complaints.
> - Suitable remedial training should also be provided to those officers identified by Local Area Commanders, supervisors and/or the Internal Affairs Unit, as facing an increased risk of attracting allegations of assault.

7.2 NSW Police has recently restructured its constable education program. This has included reducing the amount of time spent training recruits by half and dropping some subjects from the curriculum, including an ethics and accountability course and a course that considered the history of NSW Police with a view to eliminating the negative aspects of police culture. Does the PIC consider the proposed level of corruption education for new recruits to be appropriate?

The Commission has taken an interest in some of the recent changes to the recruit training for police, particularly the removal of the unit relating to ethics and accountability.

In mid-March a representative of the Commission met with the Commander, Education Services regarding the removal of the unit. Correspondence has also been exchanged between the two agencies on the issue. Most recently on 23 April, Commissioner Griffin wrote to Deputy Commissioner Scipione seeking his views on the matter.

At this point in time, the Commission's concerns are unresolved. On 17 May, Commissioner Griffin, Assistant Commissioner Sage and the Commissioner's Executive Officer will travel to the Goulburn Academy to discuss this amongst other things.

7.3 Dr Janet Chan found in her 1997 study of 150 NSW student police officers that nearly half of them reported that police culture had changed. These student officers reported that what they regarded as the old culture of heavy drinking and criminal cover-ups no longer exists. Does the PIC agree with this perception? Does the PIC consider there to be any corruption education and prevention elements essential to the education program for new probationary constables?

The Commission has not collected any information specifically on this issue and cannot comment directly on the findings of this study. It is prepared to accept that the perceptions of the 150 student police officers were as they have been reported. However, a question which arises is: while a student police officer may be in a position to observe whether or not there is an overt culture of heavy drinking, they would be unlikely to be able to observe whether or not there is a culture of criminal cover-ups. Such activities are unlikely in the post-Wood Royal Commission era to be overt.

As noted above, the Commission is currently having discussions with the NSW Police concerning education issues.

8. OTHER MATTERS

8.1 Has the Police Integrity Commission investigated who is responsible for giving Herald journalist Les Kennedy false information that Mr Ken Seddon had been criminally charged?

Consistent with the public interest in preventing prejudice, or potential prejudice, to its investigations it is the Commission's policy to refrain from discussing operational matters. This includes discussing whether it is, or is not investigating any particular matter unless it is specifically in the public interest to do so.

QUESTIONS WITHOUT NOTICE

REPORT OF PROCEEDINGS BEFORE

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

———

At Sydney on Thursday 16 May 2002

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The Committee met at 2.00 pm.

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PRESENT

Mr P. G. Lynch (Chair)

Legislative Council	Legislative Assembly
The Hon. Peter Breen	The Hon. Deirdre Grusovin
The Hon. Rick Colless	Mr M. J. Kerr
The Hon. John Hatzistergos	

TERENCE PETER GRIFFIN, Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

GEOFFREY (TIM) ERNEST SAGE, Assistant Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

ALLAN GEOFFREY KEARNEY, Manager, Intelligence, Police Integrity Commission, 111 Elizabeth Street, Sydney,

STEPHEN ALLAN ROBSON, Acting Commission Solicitor, Police Integrity Commission, 111 Elizabeth Street, Sydney, sworn and examined:

CHAIR: Have you received a summons issued under my hand to attend before the Committee?

Mr GRIFFIN: Yes.

Mr SAGE: I have.

Mr ROBSON: Yes.

Mr KEARNEY: Yes.

CHAIR: The Commission has provided some written answers to questions that we put on notice. I take it you seek to have the answers incorporated as part of your evidence?

Mr GRIFFIN: I do.

CHAIR: Would you care to make an opening statement?

Mr GRIFFIN: Yes, if it suits the Committee. First, I would like to thank the Committee for the opportunity to make an opening statement. As you are aware, the Police Integrity Commission is accountable in a number of ways to Parliament and chief amongst them is through this Committee. This is a responsibility that the Commission takes most seriously. It will, within its powers and the constraints imposed by operational considerations, provide whatever information it can to members of the Committee. Members should find that approach fully reflected in the answers to the questions on notice that have already been provided. If there are any areas that need clarification, hopefully that can be done through this meeting. It is for that purpose that senior members of the staff of the Commission are in attendance. However, if there are any matters that cannot be satisfactorily resolved today the best efforts of the Commission will go towards providing additional material as soon as possible.

This, the Sixth General Meeting with the PIC, occurs almost seven months into my appointment. Those months have been both challenging and rewarding. I have not yet learned everything about the organisation, the people in it, its practices and procedures, and its place in the greater scheme of things. However, on the

whole, I believe that the transition from Commissioner Urquhart to myself has been achieved without any real difficulty.

Almost inevitably there have been changes. Even in a small agency such changes are unsettling and I would like to record my gratitude to the staff. To date they have been patient, helpful and, above all, supportive.

On my arrival I sought written submissions from the senior staff about their strengths and weaknesses, what opportunities they saw for improving results and performance and where they perceived threats to their effectiveness and efficiency. Subsequent to receiving responses from the senior staff, I sought similar information from most, if not all, of the key staff within the Commission.

Primarily driven by the information obtained from that process, we made some significant changes to the structure of the Commission, reducing the layers of management, reorganising some reporting arrangements and bolstering the resources of the investigative area. As a consequence of those changes, and perhaps also because of my view about the role of the Commissioner, adjustments were also made to the operational decision-making process.

Principally, I joined the management group making operational decisions and we all became more involved in the detail of each operational matter. Of course throughout the period, the work already under way in the Commission continued and in relation to current issues I would like to note the following. Operation Malta has concluded its hearings. Lengthy submissions prepared by counsel assisting the Commission have been forwarded to the legal representatives of the interested parties. Under the current timetable the submission process will be finalised by June. A Commission report will follow as soon as possible thereafter, although it is difficult to provide any accurate estimate for its completion. That is driven, to some extent, by the toing and froing in the submission process, which you would appreciate.

Operation Jetz has also concluded its hearing. It may be useful to reiterate that Operation Jetz is an inquiry with a very limited scope and purpose. That is to investigate whether or not Inspector Robert Gordon Menzies and other serving New South Wales police officers are involved in police misconduct with respect to the New South Wales promotional system. It is not, and never has been, an inquiry into the police promotions system per se and it should not be so represented. It is hoped that the report of Operation Jetz will be finalised by around the end of the year.

Operation Florida continues to gather evidence in the hearing room. This matter - which, as you are aware, is a joint effort between the Commission, the New South Wales police and the Crime Commission - is an active investigation. It is not possible to offer any timetable for its completion and that is due as much to the quantity and quality of the evidence that is being obtained and the increasing number of police officers who are rolling over as the matter develops, as it is to the size and complexity of the operation as a whole.

Operation Florida is absorbing considerable resources of all the agencies concerned and it certainly constrains the work of the Commission. However, the significance and reach of the operation cannot be ignored and it will continue for

some time yet. In my view, Operation Florida is the most widely known example of the Commission's activities in the investigative area. As the evidence mounts, police officers who are known to be unlikely to assist internal inquiries have thrown up their hands. They continue to do so. In the face of the information coming to the Commission from these rollovers, no corrupt officer can be sure of when he or she will be the subject of direct inquiries by the Commission.

Whilst mentioning Operation Florida, I believe that it would be remiss of me not to touch on the "Four Corners" matter. As you are aware, immediately prior to the first day of hearing in the Florida matter, the ABC television program "Four Corners" ran a feature broadly based on the Florida matter. The program, and more particularly I think the fact that "Four Corners" came to have access to the law enforcement material, generated considerable interest.

The first point I would like to make about the "Four Corners" matter is that the "Four Corners" program did not eventuate because of some unauthorised leak to the media; it arose after considerable thought and a great deal of hard work. The initiative taken by the three agencies in the matter was groundbreaking. The particular use of a high-profile current affairs program as part of an investigative strategy was a bold stroke and it proved to be even more effective than the architects of the process had hoped. The combination of the program and the subsequent hearing process generated unprecedented interest and greatly enhanced the capacity of the agencies to gather evidence and information.

We believe that the success of Operation Florida, including the large number of rollovers that continue to this day, owes a lot to the public process that commenced with the "Four Corners" program. Most of the debate about the issue is very narrow and appears to ignore the overwhelming success and public benefit of the process. I have difficulty understanding why the initiatives generated such a negative reaction in some sections of the media. I have no doubt that if the public was fully informed it would applaud the success of the strategy. Certainly there were some difficult decisions along the way. In some areas, such as the use that can be made of lawfully obtained listening device material and the exact meaning of parts of the telephone interception legislation, the law is complex. I believe that the Commission made reasoned decisions about those issues. I consider that while informed minds might disagree, the conclusions reached by the Commission were both arguable and correct.

In other areas the administrative processes and logistics for handling the massive amount of material in a limited time frame failed. My inquiries within the Commission indicate that the few failures that did occur did not arise from inadequacy of the Commission procedures. Some administrative mistakes were made but they did not go to the lawfulness or appropriateness of the Commission making material available to "Four Corners". The mistakes were regrettable, yet fixable, but they were also understandable given the pressures of the times, pressures that are remote and difficult to imagine in the comfort and controlled atmosphere of this committee room.

The Office of the Inspector of the Police Integrity Commission was set up by Parliament to provide an independent avenue of review for the Commission. It is one

of the tiers in the scheme of supervision for the Commission. That position is occupied by an eminent jurist who commands the highest personal and professional respect. The Inspector, of his own volition, conducted an inquiry into the “Four Corners” matter. I understand that his report, which is not a public document, was disseminated to members of this Committee. If you have not seen it, I commend it to you. It answers most of the questions that have been raised about the issue and puts the paper-handling failures into proper perspective.

I would like now to turn to the QSARP. As you are no doubt aware, this year marks the final audit under the qualitative and strategic audit of the reform process, which is known as QSARP. In my view, the foresight shown by the Royal Commissioner in recommending such an audit has been vindicated. The report of the second audit was publicly released by the Minister, Mr Costa, on 7 January 2002. The report noted a continuing need for more effective integration of reform and the critical role of leadership in the reform process. The report noted also that many of the impediments to reform identified during the first audit still remained. However, the police have, with the assistance of the Appendix 31 Reforms Advisory Committee - which you will recall is mentioned in the response to your questions on notice - made creditable process in planning, identifying initiatives and securing external expertise to assist reform.

It is important to note that the final QSARP report has not been produced. I trust that the Committee will understand that I cannot comment on the contents or thrust of the final report at this stage. However, the Commission does believe that there is a need to maintain some form of procedure that will provide a measure of the reform process within the Police Service. While such interest by the Commission may not be popular with some, it is important that there is a clear message that the need for reform continues, that the independent body, the Police Integrity Commission, will be watching and it cannot be outweighted like a fixed-term Royal Commission.

I would like to touch now on some significant changes in information technology that should greatly assist the work of the Commission, the Police and the Ombudsman. The customer assistance tracking system, or c@ts.i, is the first I would like to mention. That is in the process of being implemented. The system has been introduced to replace the old Complaints Information System, known as CIS, within the Police Service. It should be operational later this year, and September is the target at the moment. Although c@ts.i is said to be more effective than the Complaints Information System in the general sense, it is of particular assistance to the Commission. We will be able to receive complaints as soon as they have been registered by the New South Wales police, and we will be able to check on progress of a complaint investigation or its outcome. We can do that without alerting anyone of our interest. The Commission is not able to do any of those things under the present paper-based system.

In addition, a system called the Police Oversight Data Store, known as PODS, is shortly to be introduced to the Commission, Ombudsman and the Special Crime and Internal Affairs Unit of the police. With your concurrence, I would like to have David Grigor provide an outline of this new development. I understand that that might

happen at a later stage. Mr Grigor and the project manager, Mr Hendry, will be available to answer questions in relation to the system.

Finally, I would like to make some comment on the future direction of the Commission. Yesterday marked five years to the day since the Royal Commission reported to Government on corruption in the New South Wales Police Service. As effective as that Commission was in identifying the need and some avenues for change in the New South Wales police, we must remain alive to the need to develop contemporary solutions to today's problems. We cannot, and should not, rely on the Royal Commission as a sole reference point for identifying and remedying police corruption in New South Wales.

One area that will need consideration has already been mentioned: that is the path forward after the end of the regime of the QSARP reports. Another area is analysis of trends. I note that in last year's annual report the Commission indicated that it had decided not to continue with its attempts to analyse trends in serious police misconduct. Apparently, issues had emerged which brought into question the reliability of the methodology used. It is my view that this is a matter that cannot be abandoned lightly. It seems to need to be a fundamental endeavour for an organisation such as the Police Integrity Commission to seek answers to the principal questions: How big is the corruption problem; is it getting bigger or is it getting better?

I accept that we may never be able to come to a satisfactory answer. The fact is that many forms of corruption are consensual and will remain unreported. Bribery is a simple example. It means that the true picture may evade us, but it does not mean that we should stop looking. I believe that it is too early in my term to provide a blueprint for the future of the Commission. Given the constant changing nature of society, perhaps that cannot ever be done with any confidence. However, I can say that I see the role of the Commission as identifying and developing strategies that will have a lasting and positive organisation-wide effect on the police.

Beyond helping to expose, prosecute and discipline corrupt police officers, there is a preventive role for the Commission that I see as critical. Two specific issues currently under consideration are the role of education in producing officers who have a well-developed ethical framework capable of resisting the temptation to engage in acts of corruption, and establishing the Commission as an organisation that has a professional reputation such that all individuals will feel free to approach it if they have concerns about police corruption in this State.

CHAIR: In your opening statement you referred to Operation Florida. What strikes me, and I suspect many other people, about Operation Florida is that the extent of corruption that has been revealed there must pose the question: How widespread is corruption and are we winning the battle?

Mr GRIFFIN: I am sure that that is right, and that is why I mentioned in the opening that we see a need to try to work out a way to measure the problem. I do not believe that there exists an adequate measure of corruption in law enforcement agencies. If it does, we have not found it. The difficulty of consensual corruption will always provide an underbelly of immeasurable corruption as far as we can tell.

Having said that, we feel we have to keep pursuing the issue. Last week I spoke with Mr Weatherburn in relation to trying to crank up some form of statistical approach to it. It does not mean that that will work either. Anecdotally, I think the position from the Commission's point of view is that when we look at areas where there are complaints, we are finding corruption. Whether that means that it is everywhere, or it is only where we are looking in relation to complaints, there is no way of judging. But certainly this is not a corruption-free State in the Police Service, and probably it is equally fair to say that the impact of Operation Florida has been immense and there have been some changes.

Mr KERR: Having taken over from Commissioner Urquhart - and you mentioned a number of changes that were made - did you detect a philosophy that Commissioner Urquhart had in terms of the Commissioner?

Mr GRIFFIN: I think that Commissioner Urquhart's role was different to mine, predominantly to the extent that he descended into the arena, if you like. It is my view that this Commission is an investigative body and that the Commissioner ought to be the head investigator. I have no background on the bench. I think Commissioner Urquhart approached it on the basis that the investigation could be done by his lieutenant, and Assistant Commissioner Sage was perfectly across that process so that it was working quite well. He looked at the matters when they were closer to having been fully investigated. That is the predominant difference, I think.

Mr KERR: You said that you do not know when Operation Malta concluded? How long did the Commission estimate Operation Malta would take?

Mr GRIFFIN: I would have to seek some advice, because you would appreciate that it was before my time. But it was a very short time; I understand a matter of weeks. Mr Sage advises me that the first period of evidence was to be two weeks. But that was always seen as an assessment period, and at that stage it would have been difficult to estimate how long it would go. However, I think it is fair to say that it went on a lot longer than anyone expected or hoped.

Mr KERR: Why was that?

Mr GRIFFIN: Predominantly, I think, by the number of counsel involved in the matter and the inability for the hearing room and an inability that courts face every day, of getting all counsel in the same place at the same time. A lot of the time when adjournments were sought, it was to suit the capacity of counsel to appear for their clients. On one notable occasion, a member of the bar was appearing for several people, there was a conflict of interest, that member of the bar could no longer appear, and therefore well into the proceedings new counsel had to be briefed and a six-week adjournment was given for that. Those sorts of things become almost unmanageable if they are to have procedural fairness, and so on, apply.

Mr KERR: With the benefit of hindsight, would anything have been done differently to stop that?

Mr GRIFFIN: Judge Urquhart would be the only person who could answer that sensibly. I assume that he dealt with each of the applications on its merits. The

procedural fairness requirements tie the hands of any public hearing to some extent, but I do not feel qualified to answer that.

Mr KERR: But you would think it is important to observe that procedural fairness?

Mr GRIFFIN: It is the essence of an agency with the powers of a Commission such as the Police Integrity Commission that it is, and is seen to be, fair, yes.

Mr KERR: You mentioned the "Four Corners" program and you mentioned there had been media criticism of that that you could not understand. Is that correct?

Mr GRIFFIN: Yes.

Mr KERR: I also understand that Mr Tink, the shadow Minister for Police, made a speech in Parliament in relation to that. Was your attention ever drawn to that speech?

Mr GRIFFIN: I did read some time ago the speech that Mr Tink made, yes.

Mr KERR: Did you want to make any comment in relation to the matters he raised?

Mr GRIFFIN: No, I do not think so, sir. Some of the problem with the "Four Corners" media view, if I can put it that way, was that one person appeared to have preferment. That was done deliberately. In similar circumstances it may well be done again. I do not think that it needs to be defended in view of the success of the process. But I think there are a number of ways it could be defended if it became an issue.

Mr KERR: What was the basis of that preferment?

Mr GRIFFIN: Again, sir, I was not there and I did not make the decision. My understanding of it was that the program is a flagship program. Mr Masters had a proven record of producing programs that go to material of that nature. The problem with the whole process was the security of information. It was imperative that that information was held secretly and Masters, as I understand it, had a record of having done that. For my own part, and I was not party to the process, I would have thought the fact that it was a public broadcaster was an important part of the agenda or the program. It would not seem to me to be reasonable to provide the same sort of information to a commercial television program that would be interested perhaps in the commercial aspect of it as opposed to the public aspect of it.

Mr KERR: But there is no suggestion that programs such as *60 minutes*, for example, that have a national broadcast do not have ethical standards or would not take the public interest into account?

Mr GRIFFIN: Not by me, no.

Mr KERR: I think you drew the Committee's attention to the Inspector's report. That is a document you are in agreement with, is it?

Mr GRIFFIN: Not entirely, sir, but the Inspector has a statutory duty and right to investigate matters from the Commission and he took his duty seriously.

Mr KERR: What are the areas of disagreement?

Mr GRIFFIN: The interpretation of the process is, I believe, legally arguable. In fact, my understanding is that there have been a number of different views of the law put from different sides. I take a view of the process under s.67 of the *Telephone Interception Act* that is different to the view taken by the Inspector, and I also take a different view to him on the listening device material. It is my view that the dissemination under our Act of that material was certainly proper. I understand that he has a different view about the timing of that dissemination.

Mr KERR: Yes, I think he said in that regard, "I note further that the *Listening Devices Act* is silent on the question of further dissemination of information and evidence obtained by use of a listening device otherwise in contravention of s.5 of the Act. Were the Act to be interpreted as prohibiting such further communication it would have the effect, for example, that other law enforcement agencies using listening device information divulged by the Commission could not publish the information, say, to a suspect during the course of the interview." In relation to those disagreements, it is not satisfactory that those matters have not as yet been resolved, is it? There should be a resolution of the two arguments.

Mr GRIFFIN: Perhaps it depends on whether the view that the Commission believes is right is found to be right in another place. It seems to me that in all areas of statutory interpretation the question of the interpretation can vary from court to court and step to step in the process. Our interpretation, or any interpretation, could be challenged if it was a useful step for an individual. I do not think as it stands that there is a need for clarification of that particular point, although the Act could be improved, I believe.

Mr KERR: In what way could it be improved?

Mr GRIFFIN: I think that having specific areas such as dissemination of lawfully obtained material dealt with in the Act would be useful because it would prevent or at least avoid the sort of debate that might go on that we are having now.

Mr KERR: Yes, it is important as to whether there is a justification for permitting the product of listening devices to be broadcast before being tendered into evidence. If your justification is correct then that is significant in relation to your role as a Commission. If the Inspector's interpretation is correct that also has an impact on the way the Commission can operate.

Mr GRIFFIN: That is true, sir. My understanding of the Inspector's interpretation is that it is a matter of procedural fairness that touches on the issue. My understanding of the procedural fairness issue is that as long as the opportunity to be heard is dealt with appropriately then it does not creep into the interpretation of

the *Listening Devices Act*. If you wish to take this to a detailed discussion Mr Robson is our leading expert on this and we can go on with it. But it seems to me that there are different issues between the attitude taken by the Inspector about procedural fairness and the interpretation of the *Listening Devices Act*, where we in the Commission think that we are entitled under our Act, as we are with all information that comes to us, to consider the public interest carefully and then disseminate the information if in our view it is in the public interest.

Mr KERR: Procedural fairness is not simply an academic argument between lawyers; it goes to the whole essence of the role of the State.

Mr GRIFFIN: Certainly.

Mr KERR: I do not want to take the time of the Committee today on this matter but I would be grateful for written advice from the Commission because it is an important matter.

Mr GRIFFIN: Could we clarify the question, sir? Your question is whether in dealing with the dissemination of that information we considered procedural fairness?

Mr KERR: Yes, and what your response is to the Inspector's arguments in relation to this matter.

Mr GRIFFIN: We would be happy to provide something as quickly as we can.

The Hon. JOHN HATZISTERGOS: What level of preparation and engagement went into that "Four Corners" production on the part of the Commission and the producers?

Mr GRIFFIN: Would you mind if I deferred to Mr Sage, on the basis that I was not at the Commission when it happened and he can best answer your question in relation to that process at least?

Mr SAGE: In relation to the strategy that was developed, it had been discussed amongst the agencies at the senior level for some months as a strategy and it started to take some shape in early September of last year. In relation to the dissemination, I made the decision in September to disseminate both the listening device product and the telephone intercept product. I think it was around 17 September. Certainly my reasons were published within the Commission on 24 September. Immediately I made the decision the product was disseminated to Mr Masters and some members of his staff, who had an office separate from the operational area of the Police Integrity Commission but within the building.

In addition to disseminating the material, certain undertakings were obtained from Mr Masters and his nominated staff. In relation to the preparation of the program, the Commission and, to my knowledge, the other agencies - they can speak for themselves, but this is my knowledge of what they did - had no part in the preparation of the program. That was exclusively within Mr Masters' control. The material was provided and he went about preparing his program within the confines

of the conditions that we released the material to him. One of the conditions under which he was provided with the material was that there would be no publication of any of that product until the conclusion of the first day of the public hearings, which happened to be 8 October. His program went to air that night. So there was no involvement in the development or preparation, no contribution all, apart from the provision of the product.

The Hon. JOHN HATZISTERGOS: No backgrounding?

Mr SAGE: There was some backgrounding.

The Hon. JOHN HATZISTERGOS: By whom?

Mr SAGE: By Commission staff and by New South Wales Crime Commission staff, including police of the Special Crime and Internal Affairs Unit who were working out of the Crime Commission and were part of the Operation Mascot team that was working in the Crime Commission.

The Hon. JOHN HATZISTERGOS: What action did you take to ensure the security of that information at the time it was provided up until it was released?

Mr SAGE: It was provided to him and not taken from the building. It was within our secure perimeter. But, as with any material that is disseminated, it is incumbent upon the person who receives the material to maintain the security of it.

The Hon. JOHN HATZISTERGOS: So you delegated that responsibility to him?

Mr SAGE: Delegated is not the right word. The material was -

The Hon. JOHN HATZISTERGOS: I am asking you what action was taken to ensure the security of the material before it was released.

Mr SAGE: The material was disseminated to him and it was incumbent upon him to maintain the security of the material.

The Hon. JOHN HATZISTERGOS: So you took no action yourself to ensure that the material was not otherwise disseminated to someone else, a staff member or a member of the production team or whatever?

Mr SAGE: Apart from the condition that he keep the material within our building, it -

Mr GRIFFIN: I think it is fair to say that the perimeter security of the Commission - you may well know it - is extremely secure. Masters' use of the material, which did not leave that perimeter, was within the secure perimeter and we have cameras and guards and locks and keys.

The Hon. JOHN HATZISTERGOS: It is not just the material that concerns me; it is the knowledge of the material and its existence and its content. It seems to

me that there has been a high-risk strategy taken by the Commission, which may have paid off. But if we are going to repeat this sort of conduct what security are you going to have in place to ensure that that material does not fall into the hands of people that should not have it?

Mr GRIFFIN: I appreciate that it is a concern, and that is rightly the case, but -

The Hon. JOHN HATZISTERGOS: I am even more concerned by the absence of any reassurance from the Commission at the moment that anything was done on this occasion.

Mr GRIFFIN: Can I develop that for a moment? The physical material was secured within our perimeter. The only time any of it - the telephone intercept material in particular - left our possession, it was accompanied by Commission officers, I am instructed. The people on Masters' staff and Masters were obliged, and had the statutory obligation, not to disseminate, except as Mr Sage had directed. They signed agreements to that effect. Given that if you tell somebody something or they find out they have a statutory obligation not to do anything with it and the material itself is kept within locked doors, I do not know what else could be done.

There is always a risk that people will breach security. There are gaols full of spies. But you cannot control that. I do not believe that there was anything available to the Commission - or to anyone else - that would actually control what people have learned if they are going to go on with their business. The only way we could do that was not to tell him and/or the staff. The fact that the controls worked to some extent justify what you would call a high risk strategy and what I think the Commission would call a sound tactical decision.

CHAIR: Is it fair to conclude, after having read the Inspector's report, that all those issues were argued out with some enthusiasm and some heat before the decision was actually taken? My reading of the Finlay report suggests that there was a quite active and enthusiastic debate within the Commission?

Mr GRIFFIN: I think there was a robust debate. I tried to inform myself, when I arrived at the Commission, on this debate. I was surprised at the amount of heat that was generated in the internal debate. It was a seriously thrashed-out issue before the decisions were made.

CHAIR: Mr Kerr interjected to ask whether it was a violent debate.

Mr GRIFFIN: I do not think violence crept into it. But it was robust, certainly.

CHAIR: I guess in a sense the point I am trying to elicit is whether all the concerns that have been expressed were well and truly in the minds of the Commission before it went down that path and turned its mind to the risk of that happening.

Mr SAGE: Yes. I will take the matter a little further. Of course, the *Listening Devices Act* is silent on this issue, but the *Telecommunications (Interception) (Cth) Act* provides for dissemination for permitted purposes under s.67. It does not require

any conditions to be put on that dissemination once the foundational issues have been addressed. But there has to be a permitted purpose for the purpose of the agency. Once that decision was made there was no requirement to put any conditions on the dissemination of the material. But I did because of the nature of the dissemination - the unusual nature of it - in that it was a unique situation that we were facing. It was a unique strategy that had been developed. Maybe it had in some respects been used by the Royal Commission and again Mr Masters was using it in that particular case.

But I decided, because of the sensitivities and the uniqueness of the strategy that was being used, to put some conditions on the dissemination of that material to Mr Masters. Those conditions were, first, that Mr Masters agreed to provide the full names of his team to the Commission so that we could vet them if we chose to vet them; second, to abide by all orders, directions and requests of the PIC in relation to telephone intercept product supplied by the Commission; third, not to further disseminate any product supplied other than with the express leave of the Commission; fourth, not to copy any product without the express permission of the Commission; and, fifth, to acknowledge in writing the undertakings required. They acknowledged in writing those undertakings.

Going back to the decision to disseminate to Mr Masters and to use his program in the strategy, that was a decision, as it has been said, that was debated and discussed. Advice was sought and I took quite some time, to the concern of the other agencies, to make my decision about the dissemination of the product to Mr Masters. So it was a very long and detailed process that we undertook, and long consideration was given to the integrity of Mr Masters and his program. Some research was done, including my own personal inquiries, about Mr Masters.

Contrary to what has been said in the press about my relationship or my participation in committees with Mr Masters, to this day I have only met Mr Masters and been in his presence on one occasion. So I relied on the assessment of others, the experience of the past, in coming to the decision that Mr Masters and his program could be trusted to do what we wanted them to do in furthering the strategy of the Commission. I must say, in fairness to Mr Masters, that as far as I know there has been no breach of the conditions under which the material was provided to him.

The Hon. JOHN HATZISTERGOS: I take it that you do not resile from what you have done. You have said that here today. Do I take it from that statement that this is going to be a regular feature of Commission practice on the occasions that you feel it is appropriate?

Mr SAGE: Absolutely not. It had been a very long investigation using a co-operating police officer who had been recruited by an agency other than ours. Certainly we had knowledge of him participating in investigations as an undercover operative shortly after he was recruited. We participated in a long-term investigation, very intrusive in its nature and quite a unique and a difficult and dangerous investigation. We also knew something about the ambit of the criminal activity and corruption that he had uncovered and the investigation had revealed at the time that the decision was made in September 2001 to release the material, to disseminate material and to use this strategy. We were only going to get one good opportunity

publicly to make a hit with the revelation of the extent of the corruption that was involved.

Part of the strategy was to reveal the extent of our knowledge at the time in the best way, in the most effective and the most efficient way, that we could in an attempt to further the investigation. We did not have a complete knowledge at the time - on 8 October last year or in early October - of the full extent of the corrupt activity. But we knew that there was more than what we had identified. Certainly there was a risk in doing that, but it was considered to be - and I certainly agree - a strategy that may work. I was confident that it would work to advance the investigation in quite a dramatic way. The proof was in the pudding. What has happened is beyond my expectations and beyond the expectations of others. In the first week, the very next day, we started to get contact with detectives who we thought may be under some pressure by the revelations of the program. But the number that has come forward is far in excess of what we expected.

It is not a strategy that we will adopt in the majority of investigations. It will be an exceptional investigation where such a strategy will be used in the future. To put a calculated trust with such detail, such sensitive information and such strong information and evidence into the hands of someone out of the law enforcement agencies that were participating in this joint investigation, as I have said, is a decision that took a lot of soul searching, a lot of research and a lot of deep consideration. It will be a very unusual case - and that is not to say that it will not happen or that it will not be considered in the future - if it does happen in the future. I do not know - none of us knows - whether there is a group of New South Wales police of the size and the magnitude of the group that we looked at in the northern suburbs currently involved in corrupt activity. We do not know that. There may be, but again, strategies are developed to be used as a tool to get the best gains for an investigation. That is some of the background to it.

The Hon. JOHN HATZISTERGOS: Does the Commission have a web site?

Mr GRIFFIN: For about the last three weeks it has been up and running.

The Hon. JOHN HATZISTERGOS: Have you considered putting transcripts of evidence on your web site as did the Royal Commission and as does the Building Royal Commission?

Mr SAGE: They are going to be put on the web site.

Mr GRIFFIN: It is still in its trial mode. It has had some hiccups, but it is working. It will work.

The Hon. RICK COLLESS: Mr Griffin, have any other media outlets approached you since the “Four Corners” program with a view to getting information such as the information that you gave “Four Corners”?

Mr GRIFFIN: Not in that way. I understand that there was anecdotal complaint by individual reporters to our media people about the fact that they had not been approached in relation to the “Four Corners” matter. The questions of our staff and

our media people is a constant thing in relation to the day-to-day work of the Commission, but there has been no suggestion that I am aware of that we should be giving some other media outlet a similar opportunity. As Mr Sage has said, that was an extraordinarily unusual event. It is unlikely that it will happen again in the lifetime of the Commission. That is not to say that it will not. But it is extreme and unconventional and unusual in law enforcement anywhere in the world. I do not expect to see it happen again.

The Hon. RICK COLLESS: Will it not create a precedent next time such a difficult issue comes before the Commission?

Mr GRIFFIN: I do not think that it will be a problem. I would be amazed if we ever had the combination of facts that would make it such a useful tool. The fact is that it may have only been useful once. The impact of that event may not ever be the same again for law enforcement agencies. It is a combination of having done it in such extraordinary circumstances I think.

The Hon. RICK COLLESS: Towards the end of the Finlay report is the following statement:

> The Commission failed to ensure that all material which it had disseminated to the ABC and which was broadcast that night had in fact been introduced into evidence during the day.

It goes on to state:

> The system introduced by the Commission to avoid this problem failed.

How seriously do you take those comments? How serious do you consider those statements to be?

Mr GRIFFIN: I took them seriously enough then and I still do. Nothing even remotely similar would happen until I was convinced that the systems were foolproof. The failure, I am told, was generated by the complexity and the mass of stuff that was coming into the Commission and the inability just to register it and make the deadlines that had been set up. Now that is not an adequate reason for it to fail, but I believe and accept that that is what happened. The processes have been investigated internally in great depth since. I have a report on my desk at the moment. The recommendations from that report are basically that the systems that are in place are adequate. They were not followed perfectly and, therefore, they broke down. To that extent I am reassured that the systems are not faulty. I doubt that an event of that same sort of magnitude will happen again, and we learnt a lot from it, in any event.

Mr KERR: Did I understand you to say that Mr Masters was under a statutory obligation not to broadcast material that had not been entered into evidence?

Mr GRIFFIN: I do not accept that.

Mr KERR: I thought you may have said that, and that is why I asked you. You did not say that?

Mr GRIFFIN: I do not think so.

Mr KERR: I am not trying to verbal you.

Mr GRIFFIN: It has been done.

Mr KERR: That is why I asked the question. Did you conduct an investigation into how this happened?

Mr GRIFFIN: There has been an internal investigation in the PIC as to the failure of the paper-handling procedures, yes.

Mr KERR: But you did not personally take any part in any investigation?

Mr GRIFFIN: No, I did not. It was conducted by a senior officer. It has been done in great detail and I had no doubt about the quality of the investigation but I have not done it myself.

Mr KERR: Do you know if he spoke to Mr Masters or the New South Wales Crime Commission?

Mr GRIFFIN: No, I do not, but my understanding is that he did not go outside the Commission because our interest was in finding out how or if the Commission procedures failed the process.

Mr KERR: You do not think Mr Masters could have assisted in terms of how it came to be broadcast?

Mr GRIFFIN: We know that it came to be broadcast because it was disseminated to him and the difficulty that I perceive within the Commission is the paper handling process that recorded it. I do not think that Mr Masters could add to our knowledge in that regard.

Mr KERR: In your opening statement I understood you to say this occurred as a result of mistakes.

Mr GRIFFIN: Yes, that is true.

Mr KERR: What were the mistakes?

Mr GRIFFIN: The mistakes were primarily paper-handling mistakes. For instance, the material that was brought to the Commission by the investigating body, be it Crime Commission people or whoever, came in massive quantities and the receipting process failed at times, where the documents came in - and I am summarising the series of events - in boxes and the contents of the boxes were noted but the receipts were not formally filled out and signed and dated until a subsequent time. It was things of that nature where the process was adequate as to

the handling of the actual material but the record-keeping was not sufficient. In fact, there was a document of some moment, the original of which cannot be found, so that is another mistake.

We had no doubt from our record system, which is electronic, that it was created, when it was signed but what happened to it is something that we cannot determine. It was a paper handling mistake.

Mr KERR: Given that the Inspector's report revealed incomplete record-keeping by the PIC in relation to its written record of reasons given for Mr Masters exclusive access to the tape will appear in evidence and the public disclosure certificate by Miss Tracy Ellison, would it be a good idea to submit the PIC to an independent audit of its tape records to assist the audit office?

Mr GRIFFIN: The Inspector has a complete capacity, and does, to look at, examine and require information from the PIC in every area so that power is there. I must say that within my experience with the Inspector, he exercises it fairly freely if he feels there is a need. The failure to produce a piece of paper in an area where there were thousands of pieces the paper is not excusable but it is not hard to understand. The fact of the reasons has not been lost; it is just that the original document, I understand, has not been found. It may well be.

Mr ROBSON: In relation to Ms Tracy Ellison, whilst it is correct to say there is no record of the actual decision to disseminate information to her, there is an actual signed document evidencing her receipt of it and her undertakings given at that time, so in a sense it evidences the making of the decision to provide it because it provides the undertaking that she entered into upon receiving it and that is the particular document that Mr Tink made reference to in a recent speech.

Mr GRIFFIN: We can tender that or a copy of it.

Mr ROBSON: That is an electronic copy, so you can have that. The other thing that might be worth noting is that the Inspector in his report, in setting out the deficiencies in the record-keeping process, was informed of that by the Commission and we give nothing but the utmost disclosure to the Inspector. He has unfettered access to our records and electronically may access them as well. We certainly did not seek to hide anything from the Inspector.

Mr KERR: My question was really whether an independent audit of the situation that now exists would be helpful in restoring public confidence in the matter.

Mr ROBSON: In relation to telecommunications interception material the Ombudsman has a statutory function to audit our compliance with the Commonwealth Act and in fact is in the process of doing that at the moment, so in that sense there is already a process in place. Also, the Inspector has a function to audit our procedures and so on.

Mr KERR: The Inspector made a number of recommendations to review the events leading up to the publication of the material on “Four Corners” formulating such a review of mechanisms to be brought in operation on any future occasion to

reduce the risk of a recurrence of the problem the subject of the Inspector's report and advise the Inspector of the mechanism. What is the progress in relation to those recommendations?

Mr GRIFFIN: The first step was to get the internal report, and that has been done. It has been done for some weeks. Because the Ombudsman is conducting an audit of the process and has been in the throes of doing that since February, I thought it would be appropriate to wait for his response or views of the process before we changed anything, if anything needed changing. The matter, whilst important, did not seem to me to be urgent because there was no suggestion that we would be doing any of this again and it did not assist particularly.

Mr KERR: You said in evidence that it could arise tomorrow.

Mr GRIFFIN: It will not be done until our processes are settled within the Commission in accordance with what the Ombudsman says, if the Ombudsman has any complaints and the Inspector has had a chance to look at it.

Mr KERR: The Inspector's report was dated 8 November, and it is now May. When do you think you would be in a position to comply with his recommendations?

Mr GRIFFIN: The Ombudsman has a duty to report by 30 June. I expect we would get his copy of a report some time before then. The steps that we would need to take once we had that would take next to no time because we have in mind our report and I think we ought to wait until we see whether he has anything to add to it. The Inspector is aware of that and has agreed to that process.

Mr KERR: Would you anticipate that you would be in a position to implement those recommendations by the middle of July?

Mr GRIFFIN: I would think so. As I was trying to say earlier, and I probably did not put it plainly, the report that I have recommends that we review how the staff apply the processes that are already in place. In other words, we train and recommend again the processes that are in place, not that we change the processes, so there is not a great deal of effort involved unless the Ombudsman says "There is something here that you have not seen" and then we would talk about it. It is not an issue that would take long once we have the Ombudsman's view.

Mr KERR: I think you have mentioned the success of what occurred.

Mr GRIFFIN: Yes.

Mr KERR: What actually is that success?

Mr GRIFFIN: It is a difficult thing, and when Mr Sage was answering an earlier question I wanted to say something like it did not really matter whether it worked or not because the essence of what we were talking about or what Mr Sage was talking about was considered very carefully before it was done, so I think that is an important issue. What was done was done after very careful consideration and with

some awareness that it was a high risk, or at least a risk, that needed to be taken or not on the facts.

My view is that the number of rollovers, police officers who are known to be not given to helping internal inquiries coming forward, is greater than you would expect in anything I have seen in any other case. They continue to come, I believe, because of the pressure put on by the weight of the evidence. That started with "Four Corners". Mr Masters told Bradley of the Crime Commission, from Mr Bradley's mouth, that there were over 700 hits - whatever a hit is - on his web site on the evening of the "Four Corners" program. That translates, I believe, into the sort of people who are knocking on our doors saying, "We give up", and there have been a number of them, and you would be aware because some of them are very significant.

Mr KERR: Hits do not always translate into home runs, of course.

Mr GRIFFIN: No. However, there was interest in the process.

Mr KERR: There is no argument that broadcasting material that had not been put into evidence was wrong?

Mr GRIFFIN: I do not accept that.

Mr KERR: It was never the intention of the Commission for that material that had not been entered into evidence to be broadcast?

Mr GRIFFIN: I accept that.

The Hon. PETER BREEN: Was the evidence lost as a result of it being broadcast?

Mr GRIFFIN: No. This is an inquiry and it is one of the things that seems to be troubling the media and others a lot. What we are doing is investigating things. We are not determining rights. We are going to find out, if we can, the facts and like all investigators, we do what we can that is fair to achieve that end. There was no question of it being lost and it has not been.

Mrs GRUSOVIN: You made some comments about various operations, one of which was Operation Jetz. You said that it was narrowly focused on the question of certain police officers in relation to the promotional system and not an investigation of the promotional system itself. Would you like to make some comments on the views of the Commission with regard to the promotional system, because there are those who have very little confidence still in what is occurring within the Force?

Mr GRIFFIN: I do not have a view that goes outside our investigation because it is the only matter that the Commission has any knowledge of. I had noted as a matter of public knowledge that the promotional system has been altered recently. I do not know anything more about it than it has been altered. The fact that the Jetz inquiry in relation to the individuals that we looked at exposed practices that nobody

would have been comfortable with is regrettable, but to take it any further than that would be difficult from the Commission's point of view.

Mrs GRUSOVIN: So there are no views held within the Commission that perhaps there needs to be an assessment and review of the promotional system, even though some changes have been put in place?

Mr GRIFFIN: I do not know whether there are views held within the Commission or not. The Jetz report, which should be out at least by the end of the year hopefully, will cover the specific issues of the individuals concerned and if there is enough from that material to draw a slightly wider bow, then the Commission would do it, but I do not think I am in a position to take it any further at this stage.

Mr KERR: There was also what is loosely termed the Cabramatta report, which was a report of a committee by the Legislative Council and a statement was made by two members of that committee, who said:

> During the course of the Committee's hearing of evidence, a number of matters were brought to our notice.
>
> Witnesses specifically drew to our attention the effect of:
>
> - speaking out or expressing criticism on their future and, in the case of serving police, possible promotion within the Police Service;
> - the question of practical policing knowledge being of less value than academic achievement in the process of promotion;
> - the apparent lack of senior management positions held by those officers who have come through the detective ranks;
> - the effect of complaints, both formal and anonymous, against front line police and the lack of knowledge as to how these may or may not effect their promotion potential
> - the general service police officers' concerns about promotional systems; and
> - the stress experienced by LAC commanders when attending OCR meetings and discussing operational targets.

I take it that that evidence would be of concern to the Commission?

Mr GRIFFIN: Yes.

Mr KERR: In terms of general subject matter.

Mr GRIFFIN: Those things sound like they ought not to be the case.

Mr KERR: That is exactly right.

The Hon. JOHN HATZISTERGOS: It was a dissenting statement, was it not?

Mr KERR: It was a minority report but expressed not as a minority opinion but as a statement of evidence presented to the committee.

CHAIR: This is a question-and-answer process, not a debate across the table.

Mr KERR: So that should not be the case in any reputable police service?

Mr GRIFFIN: No. Given that I know nothing of the nature of it, it is a motherhood statement that I doubt anybody would disagree with.

Mr KERR: That evidence may well be Commission evidence that was on record in that committee's deliberations.

Mr GRIFFIN: Anything is possible.

CHAIR: We will now turn to the first category of questions, "Investigations". Commissioner, I take you to some of the comments you make about Operation Mosaic, which is an investigation concerning Motorola. You comment in your answers that there will be no public report by the PIC in relation to its private hearings and investigations into the Motorola affair. Why is that, granted that the amounts of public money involved are quite substantial and it is clearly a matter of considerable community interest? There are ICAC precedents in that ICAC has held private inquiries and then released public reports. In that context I am interested in teasing out why there is no public report about Mosaic and perhaps the general principles that led you to that position.

Mr GRIFFIN: The basic issues that arise from the Motorola matter went to management issues within the New South Wales police. The Mosaic inquiry - and you will appreciate that it was before my time and, although I have read the report, I do not know the substance of the evidence except as it is caught by the report - did not seem to contain matters that could be usefully furthered by public debate. Yet there were clearly some areas where police management practices might benefit from having a report. As I understand it, the process that is followed is that it will go to the Commissioner in a form and we are in a position to put requirements on his use and acceptance of what we say.

If the Commissioner or the service does not accept the process or the recommendations - if there are recommendations - about specific matters, we can then report to Parliament to have it dealt with in an appropriate way. Whilst it is a management issue going to past practices that have been fixed, the individuals concerned - I think almost to a person - are no longer in the service. It did not seem that it needed the added expense of a public report - which adds somewhat to the expense of the process.

Mr ROBSON: I would like to add some comments to the Commissioner's remarks. Mr Chairman, I think you noted that there is a discretion whether the Commission makes a report to Parliament in relation to a private hearing, and certainly in this case we have exercised that discretion to the contrary. However, we have done that by preferring to exercise the powers under s.77 of our Act, which is a

referral of matters for action by essentially the Commissioner of Police and a report back by the Commissioner. As Commissioner Griffin mentioned, the issues went to systems and process issues within the service. It is a very useful tool for this Commission to be part of perhaps fixing the problem rather than just stating the problem in a report to Parliament.

The matters are referred for recommendation for action, we supervise that process and get a report back from the Commissioner of Police. If we are not happy with that we are bound to communicate that view to the Minister and to consider anything that the Minister might have to say about it. However, we can nevertheless proceed to publish a special report to Parliament under s.98 if we decide that that is appropriate in the end. It is a question of balancing the discretion under the private hearing power: whether to publish a report directly to Parliament or to exercise that referral power. I think it is a very useful tool in appropriate cases to deal with matters that do not give rise to specific allegations of criminality but rather to management and systems and process issues because it puts responsibility for fixing the problem back on the Police Service, where ultimately it must reside. That is the reasoning in relation to Mosaic.

CHAIR: Turning to one side aspect of Malta, I notice in your answers that you are seeking the Crown Solicitor's advice as to whether the comments by Alan Jones constitute contempt of the Commission and therefore whether Supreme Court proceedings should be pursued against him. Is there any indication of the time line in relation to this matter?

Mr GRIFFIN: I will refer that question to Mr Robson as he briefed the Crown Solicitor.

Mr ROBSON: I am expecting the Crown Solicitor's advice any day now. In considering that advice, it is a question of whether there is a proper basis to submit a certificate to the Supreme Court for it to undertake an inquiry into the matter. That is where the matter presently rests.

CHAIR: I wish to raise another issue in this section of the answers. The answer to question 1.5 refers to your intentions regarding a public report on the assessment of the discharge of police firearms during 2000-2001. The PIC's position is that you do not wish to make the assessment public but wish to deal with the Police Service regarding the issues raised. I have two questions arising out of that. First, how do you propose to deal with the police; what will happen in relation to some pretty serious issues? Second, is there not perhaps some virtue in having a public report in view of a number of police shootings of people who suffered from mental illnesses of various sorts, for example, Roni Levi and Jimmy Hallinan?

Mr GRIFFIN: On the basis that Mr Kearney has not yet said anything, I will refer the matter to him. He is not at the office working.

Mr KEARNEY: The particular examples that you have given are not common. Examples that typically occur involve discharges of firearms involving people in vehicles who are evading capture. The Police Service handbook handles these matters and we have made certain recommendations concerning them. We have

provided those recommendations to the Commissioner for comment and I expect some response in the near future. Following that, I expect either some changes to the handbook providing further guidance to officers involved in such incidents or negotiation and discussion as to any changes that might occur.

CHAIR: Has the Commission had any involvement in investigating the circumstances of the shooting of Hallinan?

Mr SAGE: We kept a watch on what the police were doing to the extent that we had an officer attend the re-enactment. We continued to liaise weekly with the commander of Special Crime and Internal Affairs at my level. We received weekly reports. At the point in time when we were satisfied that there was no need for the Police Integrity Commission to conduct an investigation and we were satisfied with the police investigation and the brief that went to the Coroner, we decided to take no further part in the matter apart from having provided to us any material additional to the brief that we saw that went to the Coroner. The inquest concluded last week with a finding that the officer discharged the firearm in the course of the execution of his duties. That has been our involvement in the matter: oversight of investigation. It is somewhat more than we have done in the past to the extent that we had someone present during parts of that investigation.

CHAIR: Were there any aspects of police behaviour that caused the Commission concern?

Mr SAGE: No, there were not.

The Hon. JOHN HATZISTERGOS: I have some questions arising from Malta. During Malta I think Commissioner Urquhart gave a ruling that legal professional privilege could not be relied upon by the Commissioner of Police in relation to compliances with notice. That ruling, although disputed by the Police Service, was accepted by Mr Sage on 10 September 2001, precipitating the Police Service obtaining its own legal advice in relation to that matter. The New South Wales police have now expressed some concern about these two rulings handed down by the Police Integrity Commission on 25 June and 10 September, which they claim effectively abrogate the availability of legal professional privilege before the New South Wales Police Integrity Commission. Are you aware of any steps that have been taken to address those concerns? Are you aware also that they are now arguing that s.27(3)(b) of the *Police Integrity Commission Act* dealing with the production of a statement of information regardless of privilege of a public authority or public official should be amended specifically to allow legal professional privilege or its statutory equivalent? Would you support such an amendment?

Mr SAGE: We are certainly aware of it. In the last few days we have received a copy of the Police Service's submission in relation to its recommendations and proposals in the context of the review of the *Police Integrity Commission Act*. Those comments have been referred to the Commission for its response. They are presently with Mr Robson, who has had the carriage of this matter from the time it arose in the context of Malta proceedings through till today, as he prepares a submission for the Commissioner's signature in relation to that proposal by the Police Service.

Mr GRIFFIN: Would it be helpful if Mr Robson ran through where we stand?

The Hon. JOHN HATZISTERGOS: Yes.

Mr ROBSON: My view is that the Act manifests a clear intention by Parliament that no public authority, including the New South Wales police, would stand in the way of the Commission gaining access to information and documents, given the very important public interest nature of what it does. The Act in s.27(3)(b) abrogates the privilege of a public authority or a public official in that capacity, and that is consistent with that policy. It does not abrogate the private privilege of a natural person or a private corporation: those persons may still claim privilege in relation to a notice that is issued by the Commission. There is some confusion, at least sometimes, between the Commission's notice power and the power of the Commission to compel testimony and the production of documents at a hearing. They are two different things.

At the moment we are dealing with the notice power, which is an investigative tool - an information-gathering tool, if you like. As I said, Parliament has manifested a very clear intention that no arm of the executive government will keep documents from the Commission that are relevant to its inquiries. If there were a basis to claim privilege on the part of a public authority or public official, it is quite easy to see how the Commission's powers could be frustrated and its investigations could be undermined because all you need to do at the time an inquiry is launched is direct, perhaps embarrassing, documents through to the legal department or the lawyers and then privilege is claimed in relation to those documents, preventing the Commission from having them. In my view that is not the intention of the Parliament as manifested in the powers under our Act. It is a very important issue for the Commission.

The Hon. JOHN HATZISTERGOS: Is that the case even if the documents or the information you are seeking do not involve corruption?

Mr ROBSON: We do not know until we get the documents whether that is the case. It is within our power to do it, and I think we should do it rather than erring on the side of saying that maybe they will not be of any use. It really is not how an investigation can or should be conducted. We recognise the sensitivity of otherwise privileged documents produced on the part of the Police Service or any other authority in the sense that, if used, they may become a confidential exhibit in the hearing room or otherwise maintained in even stricter terms or conditions of secrecy than might otherwise be the case. We respect the sanctity of the privilege that might otherwise exist in any other forum, but it does not exist in relation to the Commission, and cannot exist if the Commission is going to perform its functions to the best of its ability and to serve the public interest.

Mr GRIFFIN: It is difficult for us to accept that a body, like the Commission, set up by Parliament to inquire into a particular State agency, in this case the police, could be thwarted or frustrated by legal device taken out by that body. In my view we ought to do the same thing. As a very basic matter of principle, it is difficult to understand why privilege would apply.

The Hon. JOHN HATZISTERGOS: I am at a bit of a loss. Are we not talking about information between the Police Service and its legal advisers?

Mr GRIFFIN: We may be.

Mr ROBSON: It is not just conversations that occurred between members of the Police Service and legal advisers that attract privilege, it is what is communicated and the circumstances of communication. That means that documents that previously would not have attracted legal professional privilege if copied or in their original form are handed to the legal team or the Police Service lawyers, they then attract privilege. It is not merely discussions for the purposes of representation before the inquiry itself that are potentially within the ambit of a claim of privilege; it is the fact that documents are communicated at a particular time and in a particular circumstance and that would cover -

The Hon. JOHN HATZISTERGOS: I would be staggered if they were privileged.

Mr ROBSON: The law recognises that they are, with respect.

The Hon. JOHN HATZISTERGOS: If they came into existence before communication with the -

Mr ROBSON: It is the circumstances of the communication that give rise to the privilege. It is not the documents themselves, it is the communication that attracts the privilege, the confidential communication, and sometimes it is apt to mislead us when we talk about documents attracting privilege. It is the communication contained in the document that attracts the privilege. That means that documents that previously were not created for the purpose of privilege, if communicated for the dominant purpose of obtaining legal advice or representation, thereby attract the privilege. The High Court has held that in relation to copy documents, which is essentially what I am talking about, documents that, perhaps, served a different purpose at a different time but, copied and provided to legal advisers subsequently, thereby take the privilege because their contents are communicated in those particular circumstances.

It is on public record that privilege was claimed over witness statements that were prepared by the Police Service for the purposes of Operation Malta. That is the difficulty you get into when you start to claim that a public authority can claim privilege because documents that manifestly are of relevance to a Commission inquiry would attract privilege. That is the major concern of the Commission at the present time in relation to the submission that we should not have the power to compel the Police Service documents to be produced to the Commission by virtue of the privilege that is claimed over them. Section 27 (3) subsection (a) abrogates also any claim of public interest. That can be made by any person at law. That certainly reinforces the notion that very important public interest functions of the Commission take precedence over any other kind of public interest, including legal professional privilege.

Mr KERR: In relation to question on notice 1.4 the question was asked whether there has been any progress regarding the matter of contempt of the Commission that arose during Operation Malta. The answer was that this is assumed to be in reference to allegations arising from a series of broadcasts by Alan Jones on 12, 13, 14 and 15 March 2002, in which he made statements critical of Mr Ryan and his performance before the Commission. The answer then goes on to say that you are awaiting Crown Solicitor's advice as to whether Mr Jones's comments potentially constitute contempt. Has that advice been received as yet?

Mr ROBSON: As I just now indicated, I am expecting it any day now.

Mr KERR: I was outside, I am sorry. Is there a replay?

Mr GRIFFIN: Yes, there can be a replay. We are expecting the advice any moment.

Mr KERR: When was the advice sought?

Mr ROBSON: It would have been a couple of weeks ago. Instructing the Crown Solicitor required a great deal of time and actually going through the transcript of the Commission's proceedings, which were referred to by Mr Jones, to extricate those areas of evidence to which he referred.

Mr KERR: What are the elements for the offence of committing a contempt of the Commission?

Mr ROBSON: In this case if it is a contempt it is a contempt, obviously, by publication. Generally at law the contempt arises where there is an actual prejudice to the conduct of the proceedings. It would have to prevent the Commission from being able to properly assess and a deal with the matters before it and present at the end of the day a fair and balanced report. A recent decision by the Court of Appeal at the end of 2000, I think it was, Attorney General and X, recognised in relation to matters of high public interest that there was a defence available, even if a contempt is committed, of publication of matters in the public interest. That recognises that people can engage in debate and opinion, whether sound or not, on matters of public interest. Those principles certainly apply in relation to Mr Jones's comments, and the Crown Solicitor will advise on those matters.

Mr KERR: Debates can be robust both within and outside the Commission?

Mr ROBSON: Certainly. They are.

Mr GRIFFIN: We think the Commission should be slow to take umbrage at public debate of that nature as a starting point.

CHAIR: I turn to the Qualitative and Strategic Audit Reform Process [QSARP]. We are coming to the end of the QSARP process. Three years has expired. Is there merit in extending the process? That is, having external auditors continue to assist in the resource process. What confidence is there about the expertise in the Police Service in the absence of external auditors?

Mr GRIFFIN: At least within the Commission we believe there is a need to remain cautious, observant and careful about that. Left entirely to their own devices the New South Wales Police might not give it the attention that the Commission thinks. Having said that, and I will refer to Mr Kearney in a moment, it seems that the process in place is not one that should be followed precisely. I will ask Mr Kearney to deal with it in general terms, because he is the guru on the whole process.

Mr KEARNEY: It is probably fair to say that the QSARP in the minds of some may have been seen as some kind of driver of reform, but clearly it is not a driver of reform; it is just an audit of the process. It may be that some kind of audit in some form needs to follow in order to inform stakeholders, external stakeholders and government, about the progress of reform. But if we are looking for a driver, something to keep reform moving, we are going to have to look at something else, something more innovative. In the next few months, as we receive the QSARP report and consult with the service and other experts in the area, we will look to come up with some sort of following activity, some sort of approach to ensure that reform continues, and it continues to remain a priority of the Service.

CHAIR: What is your view of the Police Service response to the PIC recommendation about QSARP so far?

Mr KEARNEY: QSARP too pointed out that some of the impediments to reform still remain in the Service, similar to those reported in the year one report. However, following year one and recommendations by the PIC a number of steps were taken, and the Commission indicated in its response the sorts of things that have occurred in the Service. They have actively gone out and scoped out the kind of reform that is necessary. They have developed a framework in which to identify activities that need to be undertaken and to prioritise those activities; to identify activities that will have impacts on other activities. Those activities which need to occur first for subsequent activities.

CHAIR: The answer the Commission has provided said that it set up the framework and did all that. The interesting question is, are they doing things they say they are going to do in the framework? How far is it going?

Mr KEARNEY: We are at a point now where some outside experts have been brought on board to assist the Service in developing a plan. A draft plan has been provided to the Commission for comment. We are expecting to comment on that within the next month or so. That plan will describe the reform activity in the Service for the next three years. It will outline the sort of skills and knowledge that will be required, the extent to which those skills and knowledge are available within the Service and the extent to which they would need to look elsewhere. It will look at costs, managing risks and go into quite a bit of detail about what is going to happen. There should also be some quite extensive qualitative indicators of how they are going to measure their own progress. Quite a bit of work has been done, particularly over the last six months.

Mr SAGE: The advisory committee that the Commission recommended be established, and we have mentioned in the report, I represented the Commission on

that committee. I must say that under the leadership or chairmanship of Senior Deputy Commissioner Moroney, now Acting Commissioner Moroney, my conclusion is that the Service now has embraced the need to develop a reform plan. Mr Moroney, in our assessment, has really embraced the reform program development, and is driving it. So we are confident that things are going to happen and the funding of the contractors has been a very positive step and we met with them last weekend and, as Allan said, their draft plan that they say is about 40 percent complete, in the next few weeks they will complete it; it is taking shape and it looks to be an impressive document. It has integrated into it a lot of the programs that are already underway in the police service by way of reform and it has included a number of new initiatives and it has prioritised them and it will be a document from which the service can manage the reforms through the contractor. So there are some very positive things happening.

Mr KEARNEY: If I may just add, the plan represents one aspect of the work that is being done by the service and their contractors in that period from January of this year through to July, the plan is the first part: The second part is the development of a practical project management framework within the service and the piloting of that framework. That framework has been developed and it is in place within the service and is being used to assist with the restructure that is being undertaken at the moment. There is quite a lot of work going on in that particular area. The third aspect relates to leadership development. There is a portion of work which focused on doing, some development work within the CET, the Commissioner's executive team, and also local area commands.

The Hon. RICK COLLESS: Mr Kearney just made a statement, or it could have been Mr Sage, about Mr Moroney. Do you see that the way the Minister and the Premier have endorsed Mr Moroney is going to cloud the issues there, particularly given the fact that there are others in that race for the Commissioner's position?

Mr SAGE: No. Whether Mr Moroney stays in the position he presently holds or he moves on to be Commissioner, I do not think it will affect the progress at all. His commitment is both personal and corporate to the reform of the service.

The Hon. RICK COLLESS: I will refer you to the ICAC guidelines for public sector recruitment which states that decision-makers need to be careful to ensure that potential applicants are not deterred because of any perceived partiality to internal applicants; ensuring this by not giving internal applicants any expectation of success or failure and not deterring potential applicants because of perceived partiality to those internal applicants. You are not concerned that the Minister's endorsement of Mr Moroney breaches those ICAC guidelines?

Mr SAGE: Well, whether this Commission be concerned or I personally be concerned I do not think matters because those matters do not fall within the functions of the Police Integrity Commission, they all fit within the functions of ICAC and the conduct of the government and of the members of government is a matter that should be of concern to ICAC.

The Hon. RICK COLLESS: Would it be true then the DPP has come out and stated that the police Minister's intervention is potentially corrupting the process of selecting a new Police Commissioner? If that is the case, would it then fall under the provisions of your Commission?

Mr GRIFFIN: The fact is that it would not and if I might, I would like to suggest this is not an arena that we can enter into from this side, nor probably should it be something that be put to us from that side. If there is an issue with the selection process of a public servant, even if it is a police officer in this case, it is not a matter for us to comment either officially or unofficially.

CHAIR: I think that has to be right. I am always reluctant to shut down committee members. If this was ICAC such questioning would be appropriate. I think it is a jurisdictional matter outside the scope of this committee.

Mr KERR: In relation to s.23 subsection 6 of the *Police Service Act*, it does provide a statutory duty in relation to the PIC, does it not?

Mr GRIFFIN: In relation to the process of the selection, if it gets to the point where there is a person who has been selected and it goes through other promotions as well, as you are aware, then the PIC will report in relation to any issues that it is aware of concerning integrity but it does not take the process any further.

Mr KERR: I understand there is some late breaking news that Mr Costa seems to have selected some candidates that have gone forward for vetting. Now Malta will not be completed for some time. Mr Moroney and Mr Small were both witnesses in that hearing, were they not?

Mr ROBSON: That is correct.

Mr KERR: Are there any questions as to their credibility that have to be determined from that hearing?

Mr GRIFFIN: Any questions that arose in relation to that would be dealt with in the vetting process

Mr KERR: Will be?

Mr GRIFFIN: Will be or has been.

The Hon. JOHN HATZISTERGOS: I would like to ask a question about the jurisdiction, as it has been raised. At the moment you people have the power to deal with corruption in the Police Service amongst sworn officers but unsworn officers fall within the jurisdiction of ICAC. Have you considered the benefits of your jurisdiction being expanded so that, in effect, all the Police Service employees could come under your jurisdiction? Would you support such a proposal?

Mr GRIFFIN: Yes, we have. There seems to be some logical consistency in having the unsworn members of the police subject to the jurisdiction of the Police Integrity Commission, though given that the activity that is likely to be looked at will

require X number of people to investigate it and the resources probably are the same vaguely - with some administrative differences - whether or not it is dealt with by the ICAC or by the PIC, it just seems, to me at least, that there is a slight aberration in having individuals who might be sitting across a desk doing something of a conspiratorial nature hypothetically, and one agency would have jurisdiction over one of them and another agency over another. So that I do not understand why there has been the distinction and it would seem to me unexceptional if that distinction was removed. I understand there is not a huge number of cases of people who fall into that category anyway. Mr Kearney has probably got the figures.

Mr KEARNEY: Between 20 and 30 annually.

Mr GRIFFIN: So that is not a big issue for us but it would not be unreasonable, I think, to have them within one agency - given that we do the police - the extra 20 or 30 cases probably would not make any difference to us. I do not know that it is a big issue though. We have not yet been hamstrung. Our relationships with the ICAC are good and it has not arisen as a problem.

Mr ROBSON: I might just add to that, the Commission can commence an investigation even though there is no sworn member of the police service directly in its sights at that time and we can, in a sense, investigate non-sworn members to the end of getting to the heart of any suspicion or allegation, if you like, of police misconduct. But we cannot investigate per se an unsworn member for misconduct that does not go to police misconduct, if you like. So that is the distinction. I was trying to find the provision in the Act but you can never seem to find these things when you want them.

Mr GRIFFIN: I thought you had memorised them.

The Hon. JOHN HATZISTERGOS: I understand that. That is sort of an incidental power you have, as you can also investigate non police officers.

Mr GRIFFIN: As long as we have that core.

The Hon. JOHN HATZISTERGOS: As long as there is that connection.

CHAIR: If there are no further questions arising out of that issue we might go on to tracking recommendations, which is the next part.

Mr KERR: Did I understand correctly that the selection of the Police Commissioner is encompassed in that section, or will that be dealt with later?

CHAIR: If you are referring to the selection of the Police Commissioner from our point of view, it would seem to be a series of questions outside jurisdiction, but if you have any questions that are within the jurisdiction we can deal with them now.

Mr KERR: One of the candidates for Police Commissioner is Mr Small. An article on 24 August 2001 stated that one of the State's most senior police, Commander Clive Small yesterday asked the Police Minister's inquiry into corruption if the Police Integrity Commission could investigate a 60 page dossier claiming that

there was corruption. The article then went on to state that Mr Ryan, the former police Minister, supported the matter being referred to the PIC. Has that matter been dealt with? First of all, was it referred to the PIC?

Mr GRIFFIN: Will you excuse us just briefly? We might seek some operational help. This is starting to get into the operational area and it may well be, depending how this falls out, that it might be appropriate to deal with it in a private session rather than a public one, if you wish to pursue it . The operational director will have, hopefully, the answer.

Mr SAGE: It was referred to us. We just need to check. If we could take part of the question on notice to check what we did with it. We believe we referred it back to the police service for investigation as they were already in possession of the document and had conducted some inquiries, but if we can take that on notice we will just clarify that issue on what happened with it.

CHAIR: Returning to the section referring to tracking recommendations, in your answer to 3.3 you note that after considering the police response to certain recommendations arising from Operation Saigon, which dealt with associations between police officers and drug dealers, the Commission was persuaded as to the reasons for police not moving on the recommendations. What I am interested in is what were the reasons given by the police for not moving on the recommendations and why were they not persuaded by them.

Mr KEARNEY: I have some detailed notes here. If I could just refer to those. There were three recommendations: The first recommendation related to the testing using blood rather than urine as it provides for more accurate data about performance impairment. Now while the Service accepted that blood testing provides more accurate information, their position was that blood testing requires greater staff expertise, is more invasive and has more risks than urine testing, without providing a quantifiable benefit. There are two purposes for testing: Firstly, to detect prohibited drugs and secondly, to detect the level of impairment. As any trace of a prohibited drug is sufficient to establish a lack of probity, blood samples provide absolutely no benefit in respect of that first purpose.

Traffic legislation enables testing for Schedule 4 medications which include benzodiazepines such as Valium, analgesics such as Panadeine Forte and other common drugs such as antidepressants. The advice of the Service is that there is no established level at which clinicians agree such medications impair functioning. Indeed they may improve functioning, for example by alleviating pain or a disordered mood. That seems quite a reasonable position and the Commission has since accepted that position.

The second recommendation concerned the range of substances tested for after critical incidents and the suggestion was that it be extended in line with traffic legislation. The Commission sought advice as to why medications could be tested for under traffic legislation if results were functionally meaningless, based on their earlier advice. The External Agency Response Unit responsible for coordinating responses to the PIC responded that the inclusion served two purposes: Firstly to ensure uniformity between the States - apparently that is quite common - and secondly, the

legislation enables testing to support subjective assessment that the driver of a vehicle is impaired by a drug. That is, the result is not, in itself, sufficient evidence of impairment.

The Service has noted a willingness to reconsider this issue, should levels be established, and clinicians agree on what levels are appropriate, which indicate that a person is impaired. But the Commission regards that position as reasonable at this time.

It was recommended that testing after critical incidents be via blood rather than urine. This recommendation was accepted by the Service, with the proviso that it be limited to officers who are directly involved in the incident. Unlike a random or targeted test, the level of a prohibited drug present may be a relevant consideration in a critical incident investigation.

The Commission sought clarification from the Service, and was advised that the officer in charge of the investigation of a critical incident will be responsible for determining which officers are sufficiently close to or involved in the investigation to be tested. Critical incident standard operating procedures will indicate that officers should be tested if they could have affected the outcome, as to any action or omission by them. This outcome is considered satisfactory.

The third recommendation related to refusal to provide a sample. It was our recommendation that that should constitute a criminal offence. The Service responded that, as there was no criminal sanction for returning a positive sample, it was unreasonable that there should be a greater penalty for failing to return a sample. Failure to return a sample results in action being taken as if a positive sample were returned. Again, the Commission accepts that as a reasonable position to take.

CHAIR: In paragraph 3.8 you refer to Dresden 2. Are there any preliminary conclusions arising from that which you can share with us?

Mr KEARNEY: I am afraid it is a little too early. The data has all been collected and is being pushed through the software now, but we will not be in a position to make an assessment for at least another month.

CHAIR: A number of members of the Committee are very interested in Dresden 2 because we found Dresden 1 to be a very useful document.

Mr KEARNEY: We would be quite happy to organise a presentation following its release.

CHAIR: With regard to paragraph 6.1, does the Police Integrity Commission think it is appropriate that it has an advisory role in corruption prevention measures for police secondary employment?

Mr GRIFFIN: My difficulty with the proposition is that we have not been involved in the process at all at this stage, and it is a policy decision made by the Government, I assume having considered the issues that were raised before by the

Royal Commission about the secondary employment, particularly in the security industry. At this stage we do not have any specific interest in that. If it were the subject of complaint and/or it became known to us that there were problems with it, we would obviously look at it, but not at this stage, on the basis that there are identifiable problems with the processes as they did exist and at least to some extent we are entitled to assume that they had been dealt with, considered and at least are being looked at. So at this stage we do not propose to go any further down the track.

CHAIR: In paragraph 6.5 you mention Operation Genesis. I understand you do not propose to reactivate that because you are considering a number of other projects. I am interested in what those other projects might be.

Mr KEARNEY: We are doing Dresden right now; that is one that is on our plate. We are considering a further four projects. No firm decisions have been made at this stage. Each of the four projects is seen as valid and appropriate.

Mr GRIFFIN: In relation to a couple of these, it would not be our preference that they were made public, because they go to areas where we would like to sneak up on people, if I could use that term. We would be happy to deal with that in private session, if that could be done. Alternatively, we could skate around the edges and provide information about two projects. Would it be acceptable to the Committee if we provided that information in writing, as Mr Kearney suggests, and it would then avoid the problems we have with operational matters.

CHAIR: Yes, that is fine. With regard to police corruption education and prevention programs, the Police Integrity Commission states that it has some concerns about the restructure of the constable education program. I wonder what those concerns are.

Mr GRIFFIN: I have to say that we are not yet well enough advised. However, it stemmed principally from media speculation or reports that some part of the ethics training had been withdrawn to facilitate the shorter course. I made some initial and immediate inquiries when I read that, and was told that whilst it was true that a couple of components of the course related to ethics had been withdrawn formally, the content of those courses had been spread through the other segments of the course and there had been no net loss. However, Mr Sage, my executive officer and I are going down to Goulburn tomorrow, and that is the starting point for a little probe into that area. As I said in the opening, it is one of the areas where we feel there is a legitimate and important role for the PIC to play and we will be looking into that immediately - not in an operational sense, but on a "How is it going and how can we help" basis.

The Hon. RICK COLLESS: I would like to ask about the Commission's role in the resignation of Mr Ryan. Firstly, given the public comments by Mr Dennis Oswald of the IOC that Mr Ryan had agreed to take the Athens Olympic security job on or about 3 April 2002, are you concerned that Mr Ryan's solicitors, Clayton Utz, represented to the head of the Premier's Department some days later, on about 8 April, that Mr Ryan was keen to continue the reform process knowing full well that he had already accepted a job overseas?

Mr GRIFFIN: I think you have perhaps anticipated where the Commission would like to go in relation to this. It is the case that we have received a formal complaint in relation to the matter. That being the case, I would not propose to comment further in the public session. In relation to comments in private session, there are some very minor comments I could make to take it slightly further, but not much. But I would be happy to deal with that in private session, if it will take it any further for you.

The Hon. RICK COLLESS: Further, do you consider that the circumstances surrounding Mr Ryan's departure from the police force, in particular the alleged non-disclosure of the fact that he already had another job, possibly gives rise to a suspicion that he received his termination benefits by deception?

Mr GRIFFIN: Would it be possible if I referred to my earlier answer in relation to all questions about Mr Ryan's departure, because that is the position of the Commission?

CHAIR: The Committee will go into private session at the conclusion of the public hearing.

Mr KERR: With regard to newspaper articles that appeared this morning in relation to a person named James, who was a witness before the Cabramatta inquiry, had the PIC been in receipt of a complaint from a senior police officer employed by the Police Minister about the way in which a police inquiry which found that key parts of James' submission were false, was conducted?

Mr GRIFFIN: Mr Sage tells me that we have received a complaint of that nature.

Mr KERR: You may not wish to answer this question in public. Is the then commander of the Greater Hume Region, Assistant Commissioner Clive Small, one of the people complained about by a senior police officer?

Mr GRIFFIN: It will come as no surprise that if it suits the Committee, that would be appropriately dealt with in private hearing.

Mr KERR: An article written by Miranda Devine in today's *Sydney Morning Herald* states that the police inquiry report was leaked to the media. Would that matter be of concern to the Commission? I do not know whether you have seen the article.

Mr GRIFFIN: I have not. Again, in broad terms, if material were unlawfully leaked to the media by police officers, it would be of concern to the Commission. Further than that, I would prefer not to go into the matter in public session.

Mr KERR: A number of police officers were named in a warrant; in fact, more than 100 people were named. Are you aware of that?

Mr GRIFFIN: I have heard that, yes.

Mr KERR: Do you know how that came to be on the public record?

Mr GRIFFIN: Perhaps I should put on record that the warrant in question has been referred to as instigated by the Police Integrity Commission. That is not the fact. This Commission had nothing to do with the affidavits supporting or the issue of the warrant. I am not in a position to comment.

Mr KERR: What may be of concern is a *Sydney Morning Herald* report dated 16 April 2002 which contains the names of three commanders of the elite Crime Agency squad regarded as untouchable and retired police officers regarded as brilliant, honest detectives who solve difficult investigations. The article then goes on to say that a number of people named in the warrant would not be guilty of any wrongdoing. With regard to the fact that the warrant has come into the public domain, I think you appear for people who have been charged with offences in private practice, is that correct?

Mr GRIFFIN: No, that is not correct.

Mr KERR: Nevertheless, a defence counsel who received a brief in relation to such a warrant would be able, perhaps in cross-examination of a police officer, to affect their credibility somewhat unfairly?

Mr GRIFFIN: Perhaps it would depend on what view you took of the appearance of names on warrants. It would also depend on the person presiding, whether or not the material got into evidence. But I do not think it takes it any further to speculate.

Mr KERR: I think most people would take a prejudicial view about people's names appearing on such a warrant, particularly if offences are also referred to in the warrant. Would you agree with that?

Mr GRIFFIN: No, sir, I would not.

Mr KERR: You would not?

Mr GRIFFIN: But I would like to reiterate: the warrant in question has nothing to do with the Commission. It was issued in relation to a matter that has proceeded to the Commission. But the Commission cannot comment on the processes. Any broad comments I make about the law or the use that might be made of that warrant, whether it is lawfully obtained or unlawfully obtained, cannot possibly assist the Committee, with respect.

Mr KERR: Are you aware of any inquiries being conducted in relation to the lawfulness of obtaining warrants, as to whether there was sufficient information to obtain certain warrants?

Mr GRIFFIN: I am not aware of any.

Mr ROBSON: By the Commission?

Mr KERR: In general.

Mr ROBSON: No, but the principle in law is that it is the function of the eligible judge of the Supreme Court to weigh the merits of the application and to make that decision, and that decision is only reviewable by the Supreme Court. The validity of a warrant can only be challenged in the lower court on its face inasmuch as it does not demonstrate jurisdiction. There would be difficulties with any agency conducting inquiries to assess whether there was proper merit behind a warrant, because that is a decision vested in the eligible judge and reasonable minds might differ on the exercise. But simply because a person or another Commission may disagree with the eligible judge as to whether there was a reasonable basis on which to issue a warrant I do not think would prove any point, with respect.

Mr KERR: But the judge who issued the warrant is not in a position to determine the veracity of the evidence that is placed before that judge.

Mr ROBSON: No, that is the function of the officer who is called upon to conduct that exercise. In my former life as a chamber magistrate I issued quite a few search warrants. Where the information provided on affidavit was not in my mind sufficient for me to assess whether there was a reasonable belief to ground a warrant I certainly asked questions on oath from the applicant officer. That process would also apply, if need be, in any other forum.

Mr KERR: But you have to rely on the assurances of the officer in charge, do you not?

Mr ROBSON: To an extent, yes. The affidavits are presented and the practice of the Commission is to have the applicant officer who swears the affidavits to be at least in the precincts of the chambers of the judge who is considering the warrant to answer questions if need be.

Mr GRIFFIN: With respect, sir, neither Mr Robson's dissertation nor the questions can possibly help this Committee. It just becomes conjecture and speculation in the hands of broad public statements. It does not help the Commission or the Committee to speculate about what might have been done in a hypothetical case or by some other authority.

Mr KERR: I think it is better for the Committee to determine that.

Mr GRIFFIN: I am submitting that that is the case. I would ask the Chairman perhaps to consider whether any good purpose can be served by pursuing this.

CHAIR: I am not sure whether any good purpose can be served by pursuing it, but I am not going to stop Mr Kerr.

Mr GRIFFIN: Thank you, sir.

Mr KERR: Are you aware of any investigation being conducted in terms of warrants that have emanated from the Police Service?

Mr ROBSON: No, sir, I am not.

Mr GRIFFIN: In relation to listening devices?

Mr KERR: In relation to any matter.

Mr ROBSON: Being conducted by the Police Service?

Mr KERR: No, being conducted by any agency or Commission.

Mr ROBSON: There was an investigation by the Police Service into allegations that misleading evidence was contained in affidavits presented to authorised justices in relation to search warrants, and I think an eligible judge in relation to a listening device warrant. That is of historical relevance perhaps but -

Mr KERR: Is that ongoing or has it been concluded?

Mr ROBSON: To my knowledge that matter has been concluded and the Police Service, arising from the initial investigation, established a strike force to deal with some issues arising. But I do not think there was any basis to lay criminal charges against anybody for committing a breach of the *Search Warrants Act* or any other law in relation to the applications for warrants. I guess there is a fine line - perhaps not a fine line - between telling an outright lie in an affidavit in support of an application and stating what you believe in the application. The application is predicated on the reasonableness or otherwise of the belief of the person who seeks the warrant and the function of the justice who is called upon to issue the warrant, or decide the application, is to assess whether that belief or suspicion is reasonable. So it is not an easy task, I suggest, to look into those issues. But if an outright lie was established that would be something for the relevant legislation. As I said, I am not sure whether the *Listening Devices Act* contains a specific provision but clearly there would be criminality involved in an outright lie in an affidavit.

Mr KERR: Unless the outright lie was self-evident the judicial officer would go along with issuing the warrant?

Mr GRIFFIN: It would be indeterminable. I am sure that is right.

Mr KERR: Absolutely, so the presumption would have to be that the evidence was correct?

Mr ROBSON: That is right, and that is why it can only be reviewed on the merits by the appropriate court, being the Supreme Court.

Mr KERR: Reverting to the “Four Corners” matter, a warrant no doubt was sought for the listening devices in that case.

Mr SAGE: Yes. All the conversations, both listening device and telephone interceptions, were obtained pursuant to warrant.

Mr KERR: Is the judicial officer who issued that a matter of public record?

Mr SAGE: Yes, it would be.

Mr KERR: Who is that?

Mr SAGE: It was probably various. There were a large number of warrants.

Mr KERR: Can you think of any of the judges involved?

Mr SAGE: Right now I cannot. It would not be safe for me to speculate.

Mr KERR: No, I did not want you to unless you have actual knowledge. But if it is a matter of public record perhaps the Committee could be advised of that in the fullness of time.

Mr SAGE: They are not Integrity Commission warrants.

Mr KERR: Who applied for them?

Mr SAGE: The officers of Special Crime and Internal Affairs attached to the New South Wales Crime Commission.

Mr KERR: Did you see the applications for warrants or were you involved in the preparation?

Mr SAGE: No. As the Commissioner said earlier in relation to the warrant that you specifically mentioned - likewise with the others - we were not party to the drafting of the affidavit, the swearing of the affidavit and the application for the warrant. That was done independent of the Commission.

Mr KERR: And the purposes for which the warrants were being sought would have been provided to the judicial officer?

Mr SAGE: I would assume so, yes.

Mr KERR: Would the fact that the tapes were to be broadcast be one of those purposes that was brought to the judicial officer?

Mr SAGE: It would be highly unlikely.

Mr ROBSON: The requirement to report is within a certain time set by the eligible judge and the report is provided in terms of what is intended as the use of the material at that time. Six months down the track the use may be different.

Mr KERR: Commissioner, in terms of the warrant that named large numbers of police officers, would the Commission be concerned if their effectiveness in relation to giving evidence and investigating matters was affected?

Mr GRIFFIN: In broad terms, as a member of the community, of course. But otherwise it is a matter I would have thought for argument in relation to each case on

the day before the evidence. It is so hypothetical. I can only make the broad statement: Yes, if the effectiveness of good officers was reduced of course we would be concerned. If it was lawful and inevitable, so be it.

Mr KERR: If it was lawful it is always open to Parliament to change the law if it affects good government in this State.

Mr GRIFFIN: Certainly.

Mr KERR: Are you aware of the officers who were named in that warrant?

Mr GRIFFIN: No, I am not. I have not seen the warrant or the affidavits. I have heard some names from third parties but I have no idea whether the information is right or wrong.

(Evidence continued in camera)

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APPENDICES

Appendix 1: Committee Minutes

Appendix 2: Response to Matters Taken on Notice

Appendix 3: Report by Inspector of the Police Integrity Commission of Preliminary Investigation dated 8th November 2001 re: "Four Corners" program: 8th October 2001

Appendix 1: Minutes

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

MINUTES

Meeting held 2.00pm, Thursday 16 May 2002
Jubilee Room, Parliament House

MEMBERS PRESENT

Legislative Assembly	Legislative Council
Mr Lynch MP	Hon P Breen MLC
Mrs Grusovin MP	Hon R Colless MLC
Mr Kerr MP	Hon J Hatzistergos MLC

Apologies: Mr Smith MP

Also in attendance: Ms H Minnican, Ms P Sheaves, Mr S Frappell, Ms H Parker and Ms J McVeigh.

SIXTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSIONER

The Chairman opened the public hearing at 2.00pm.

Mr Terence Peter Griffin, Commissioner; Mr Geoffrey (Tim) Ernest Sage, Assistant Commissioner; Mr Allan Geoffrey Kearney, Manager, Intelligence; and Mr Stephen Allan Robson, Acting Commission Solicitor, Police Integrity Commission, took the oath and acknowledged receipt of summons. The Commissioner made an opening statement. The Commission's answers to questions on notice were tabled as part of the sworn evidence. The Chairman questioned the Commissioner and PIC executive officers, followed by other Members of the Committee. The Commissioner distributed to Committee Members a document relating to the "Four Corners" program on Operation Florida.

The meeting went in camera at 4.25pm. Questioning concluded, the Chairman thanked the witnesses. The closed session of the hearing concluded at 4.40pm.

DELIBERATIVE SESSION

The Committee commenced a deliberative session at 4.45pm.

…

The deliberative session concluded at 5.20pm.

Appendix 2: Response to Matters Taken on Notice

SIXTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSIONER

RESPONSES TO QUESTIONS ARISING

1. OPERATION FLORIDA

In dealing with the listening device information communicated to the staff of the 4 Corners program, did the Commission consider procedural fairness?

As previously discussed, the Commission, in providing the material to "Four Corners" for airing in the program was pursuing a strategy aimed at increasing the effectiveness of its investigation. The Commission always considers questions of procedural fairness in the development of investigative strategies surrounding a public hearing.

What is the Commission's response to the Inspector's arguments in relation to the communication of listening device information prior to it being tendered in evidence?

In his Report dated 8 November 2002 the Inspector stated:

> *"I consider that the application of these principles [to observe procedural fairness] required the Commission to ensure that any arrangement it entered into with the media for publication of material, proposed to be tendered in evidence at a public hearing of its investigation, effectively precluded any risk of the material being published by the media before it was tendered in evidence at the public hearing"*

By letter dated 28 May 2002 the Inspector has more recently indicated that he considered the particular aspect of procedural fairness involved in the tender into evidence of the tapes prior to the broadcast to be the enlivenment of an opportunity for witnesses to object to their tender, or to make submissions that publication of the material should be suppressed.

The Commission accepts that in a given circumstance it may be necessary and appropriate for a person to be afforded an opportunity to be heard on whether any particular material in the Commission's possession should be admitted into evidence or otherwise made public. But the Commission does not understand that to be a strict requirement to be applied in every case regardless of the investigative strategies being pursued.

On the Commission's understanding of relevant principles, procedural fairness requires that, before the Commission makes a report upon an investigation which contains assessments, opinions or recommendations adverse to the interests of a person, that person must be afforded an opportunity to respond to the evidence

against them and (if need be) make submissions as to the appropriateness of the Commission adversely reporting.

Within those broad parameters the *content* of the rules as they apply day-to-day during the conduct of a hearing vary according to the circumstances of the particular inquiry. Because of the special nature of investigations undertaken by bodies such as the Commission, the courts have recognised that flexibility must be allowed to mould procedural fairness as the circumstances of the investigation require, so long as at some stage of the process persons affected by the evidence are able to make a response. In this regard Commission hearings have been distinguished from the adversarial proceedings of the kind conducted by the courts, where the rules of evidence apply, the issues are more clearly defined from the outset, and therefore relatively rigid rules of procedural fairness apply at each stage of the hearing.

Insofar as what the rules of procedural fairness might require in future circumstances similar to Operation Florida, the Commission has the highest regard for the views expressed by the Inspector. That is why the Commission wrote to the Inspector on 29 May 2002 confirming that until any doubt about the relevant principles is settled to the satisfaction of himself or his successor in office and the Commission, it would conduct its procedures and activities in conformity with the views expressed in his Report.

Is the Commission aware of the names of the Judges who issued listening device warrants in respect of Operation Florida?

The material used by the Commission in its Operation Florida hearings was derived from listening device information obtained by the NSW Crime Commission under warrants obtained by that agency for Operation Mascot. The Commission is only aware of the names of the issuing Judges for a small proportion of the Mascot warrants. Such enquiries might best be directed to the Crime Commission who will have all relevant details.

When is the Ombudsman's report of its inspection of the Commission's compliance with the provisions of the Telecommunications (Interception) (New South Wales) Act 1987 due to be provided to the Attorney-General?

The Ombudsman's audit of compliance with the provisions of the Act for this year is due to be completed by the end of June 2002. The Report of the audit must be furnished to the Attorney-General by the end of September 2002.

2. COMMISSION WEBSITE

What is the Commission's web address?

The Commission's web address is www.pic.nsw.gov.au.

What is the Commission's intention regarding transcript for hearings being available on the website?

Currently transcripts of public proceedings are edited in accordance with non-publication orders made during the course of a hearing and made available to interested parties in hard copy or electronically by email. It is the Commission's intent to make public transcript available on its website and is presently considering a number of associated procedural and technical issues.

3. POSSIBLE COMPLAINT BY ASSISTANT COMMISSIONER C SMALL

Has the Commission received a complaint from Assistant Commissioner Small regarding the existence of a 60 page dossier concerning him and possible allegations of corruption? If so, how has the Commission dealt with the complaint?

Ordinarily the Commission prefers not to respond to questions of this nature as they can touch on operationally sensitive matters or impact adversely on the privacy of individuals. However, while these specific questions do touch on some operational matters, responding to them is unlikely to jeopardise an investigation. In addition, Mr Small has chosen to make public the existence of a 'dossier' and the fact that he had referred material to the Commission.

Last year the Commission received from Assistant Commissioner Small material which might be termed a '60 page dossier' containing allegations of serious police misconduct by Mr Small. The Commission had, on a previous occasion, assessed allegations concerning Mr Small, some of which were identical to those raised in the 'dossier'. The 'dossier' was provided by Mr Small for the Commission's 'information', and nothing more, in the knowledge that the Commission was aware of the allegations. The Commission assessed the material provided by Mr Small and was satisfied that no further investigation was warranted.

4. POSSIBLE PROJECTS

What projects is the Commission currently considering undertaking?

The 'Dresden' audit of the quality of complaint investigations undertaken by Police for the period 1/7/98 to 30/6/01 is currently underway. Dresden involves an assessment of approximately 25 percent (444) of all Category 1 complaints and the Report is due to be released around August 2002.

The Commission is also currently scoping out a further four projects for consideration. Some, or all of these projects may commence during the 2002-2003 and will be conducted by Assessments and Reports Team staff on a part-time basis.[33]

[33] Team members involved also being responsible for preparing s.96(2) reports, s.77 referrals, the Annual Report and for the target development function.

Audit of the 181D Process - Is it working? The s181D process is the most potent disciplinary mechanism available to Police. Anecdotally it may not be as effective as it could be, police seem to be removed from the list for no apparent reason or find some other means to separate from Service, eg medical discharge. The Audit would consider the effectiveness of the process.

Audit on the use of informants - Relationships between police and informants are widely recognised as a key area of risk in terms of corruption. Audit will consider compliance by police with current policies and procedures.

Specific misconduct in a Command - an assessment of specific misconduct in a particular Command following a spate of complaints.

Joint Profiling Project - Joint work with SCIA to develop a series of indicators and a system for identifying suspect officers. The project might consider such areas as high-risk associations, complaint history, kinds of charges laid, and other matters.

Appendix 3:

Report by Inspector of the Police Integrity Commission of Preliminary Investigation dated 8th November 2001 re: “Four Corners” program: 8th October 2001