

REPORT TO PARLIAMENT

OPERATION IBIS

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SEPTEMBER 2003

ISBN 1 74003 125 3
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ABN 22 870 745 340

The Hon Dr Meredith Burgmann MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon John Aquilina MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker

In accordance with section 96 of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a Report regarding Operation Ibis, being a Report in relation to a matter as to which the Commission has conducted an investigation.

I draw your attention to section 103(2) of the *Police Integrity Commission Act 1996*, pursuant to which I recommend that this Report be made public forthwith.

Yours faithfully



T P Griffin
Commissioner

September 2003

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INTRODUCTION

1. On 28 May 2003 the Commission received a letter from the Hon Charlie Lynn MLC with copies of the following documents attached:

   (a) an edited NSW Police statement dated 16 March 1998;

   (b) an edited letter on NSW Police letterhead dated 13 October 1998; and

   (c) an extract from Hansard of an address to the Legislative Council on 27 May 2003 by the Hon Charlie Lynn MLC regarding the Crimes Amendment (Sexual Offences) Bill 2003.

2. The letter requested the Commission to assess whether the police documents had been appropriately investigated and, if not, to ensure that they were properly investigated.

3. Examination of the documents provided by Mr Lynn disclosed the following:

   (a) The police statement dated 16 March 1998 contained an allegation by a prison inmate (the "first inmate") that he had been told by another inmate whose name he could not remember (the "second inmate") that at the age of 15 the second inmate had been a "victim" of [a Minister in the NSW Cabinet]. According to the statement, in a conversation between the two inmates at Silverwater Gaol in January 1998, the second inmate told the first inmate words to the effect that when he was 15 he had had sexual intercourse with the Minister and not been paid.[1]

   (b) The letter on NSW Police letterhead dated 13 October 1998 was addressed to an inmate at Junee Correctional Centre by a Detective Superintendent of NSW Police.[2] The letter referred to various matters in respect of which the inmate had provided information to the officer. The letter contained a sentence that read: "The information that you provided about [the Minister] was corroborated by [name edited]".[3]

4. Following receipt of the above material the Commission commenced a preliminary investigation pursuant to section 24(2) of the *Police Integrity Commission Act 1996* with the following purpose:

> To determine whether the matters referred to in papers provided to the Commission by The Hon. Charlie Lynn MLC on 28 May 2003 disclose conduct by police that might be made the subject of a more complete investigation.

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1 The name of the first inmate was edited from the copy of the statement supplied to the Commission however the name of the Minister was not.

2 The name of the inmate was edited from the copy of the letter however the name of the Superintendent was not.

3 The name of the "corroborator" was edited from the letter but the name of the Minister, the same Minister named in the statement mentioned above, was not.

5. The Commission has completed its preliminary investigation. The investigation included the conduct of a number of private hearings and the examination of a quantity of documents obtained from various sources.

THIS REPORT

6. This Report summarises the principal aspects of the Commission's investigation and its conclusions. It was not considered necessary or desirable in the public interest to publish a detailed report or the name of any individual involved in the matter.

7. Initial inquiries established that:

- the allegation by the first inmate was initially raised by him in correspondence which came to the Minister's attention in February 1998. The Minister referred the allegation to the Commissioner of Police and requested that it be investigated;
- between March and May 1998 NSW Police conducted an investigation into the allegation set out in the statement dated 16 March 1998;
- police officers from Strike Force Cori made contact with the first inmate and attended Junee Correctional Centre on 16 March 1998 to interview him;
- the second inmate referred to in the first inmate's statement of 16 March 1998 was identified by the police with the assistance of the first inmate;
- the Superintendent who wrote the letter dated 13 October 1998 was the officer in charge of the investigation;
- the first inmate was the recipient of the letter dated 13 October 1998; and
- the second inmate referred to in the statement was the alleged "corroborator" referred to in the letter.

8. The Commission established that the second inmate and the Minister were interviewed by the investigating officer within two months of the statement being taken from the first inmate on 16 March 1998.

9. The second inmate gave a statement dated 20 April 1998. The statement said that the second inmate had a sexual encounter with the Minister but that he was aged 20 at the time it occurred. The statement said that the second inmate told the Minister he was 20. The statement said that the second inmate was born in 1970. This would have meant that his alleged encounter with the Minster occurred in 1990 or 1991. The statement said that the Minister paid the second inmate an agreed fee of $40.00.

10. The investigating officer concluded that there could be no prosecution, based on the evidence of the second inmate. Nevertheless, the Minister was formally

interviewed by the investigating officer. The Minister denied the allegations and denied ever having a homosexual encounter with anyone.

11. A report about the allegation was prepared by the investigating officer on 14 May 1998. It summarised the information given by those concerned and concluded, correctly in the Commission's opinion, that in view of the statement by the second inmate as to his age at the time of the incident, there could be no criminal prosecution.

12. The investigating officer told the first inmate on a number of occasions between May and October 1998 that the allegation was not substantiated and that the first inmate should not continue to repeat it.

13. The Commission located and interviewed both inmates. Subsequently they were both examined on oath in private hearings conducted at the Commission.

14. The Minister and the investigating officer were also examined on oath in private hearings conducted at the Commission.

15. The second inmate and the Minister maintained the versions given to the police in 1998, albeit there were discrepancies in the detail which the second inmate was able to recall.

16. In the Commission's opinion the second inmate's identification of the Minister was, and remains, dubious.

17. The first inmate said in his police statement that he thought the second inmate was about 19 to 22 years old when they spoke in January 1998. In his evidence before the Commission the first inmate said he believed the second inmate was 19 to 21. In fact the second inmate was 27 at that time.

ASSESSMENTS AND OPINIONS

18. A major issue in this matter arises from the wording of the letter written by the investigating officer to the first inmate on 13 October 1998. In particular, from the words "the information that you have provided about [the Minister] was corroborated by [the second inmate]."

19. While the fact of an allegation of sexual activity between the persons concerned was "corroborated" to the extent that the second inmate said it took place, his evidence to the police was that he was not underage at the relevant time. There was no support for the "underage" aspect of the allegation. Nor was there corroboration for the allegation that the second inmate had not been paid. The investigating officer gave evidence before the Commission that when he used the word "corroborated" in the letter he did not intend to convey that the allegation of criminal conduct had been corroborated.

20. The investigating officer told the Commission that the letter was not a formal notification to the first inmate of the outcome of his investigation into the allegation against the Minister, as the outcome had already been reported to the first inmate on a number of occasions. According to the investigating officer, the letter was "a shorthand response" to a letter the previous day from the first inmate seeking information about various matters in respect of which he had supplied information.

21. The passage in the letter from the investigating officer to the first inmate which mentions "corroboration" of the information about the Minister was clearly misleading. The letter should not have said what it did in this respect. However, it appears simply to have been a careless use of language which unfortunately was capable of creating a false impression about the result of the investigation.

22. In the Commission's opinion, the police investigation was conducted in a timely and acceptable manner. It disclosed no prosecutable offence and it was appropriate to terminate the police investigation when it was terminated.

"AFFECTED" PERSONS

23. Subsection 97(2) of the *Police Integrity Commission Act 1996* ("the Act") requires the Commission to include in a Report to Parliament a statement in respect of each affected person as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

> (a) the prosecution of a person for a specified criminal offence,
>
> (b) the taking of action against the person for a specified disciplinary offence,
>
> (c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,
>
> (d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer.

24. An "affected" person is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation: subsection 97(3).

25. The Minister is an affected person for the purposes of section 97 of the Act.

26. There is no evidence that the Minister was involved in any criminal conduct. The Commission is of the opinion that consideration **should not** be given to the prosecution of the Minister for any criminal offence. As the Minister is not an officer of NSW Police the question of taking action pursuant to subsections 97(2)(b), (c) and (d) of the Act does not arise.

27. The Commission has concluded that there is no evidence to support any allegation or implication of police misconduct or conduct by police that ought be made the subject of a more complete investigation.