



Parliament of Tasmania

LEGISLATIVE COUNCIL

SELECT COMMITTEE

SECOND INTERIM REPORT ON

PUBLIC SECTOR EXECUTIVE APPOINTMENTS

Members of the Committee

Hon Paul Harriss MLC (Chair)

Hon Greg Hall MLC

Hon Jim Wilkinson MLC

Secretary: Dr Colin Huntly

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INTRODUCTION

APPOINTMENT AND TERMS OF REFERENCE

On Tuesday, 4 May 2010 the Legislative Council resolved that this Select Committee, originally appointed on Wednesday, 11 June 2008 to inquire into and report, *inter alia* upon Public Sector Executive Appointments, be re-established, and that the Minutes of Proceedings of, and evidence received by that Committee be referred to the re-established Committee with power to send for persons and papers, with leave to sit during any adjournment of the Council, and with leave to adjourn from place to place, with particular reference to -

- (1) Best practice for the appointment of individuals to fill senior Tasmanian public sector executive positions and that the circumstances surrounding the appointment of a magistrate in Tasmania in 2007 be examined; and
- (2) any other matters incidental thereto

The re-established Committee membership as determined by Order of the Legislative Council is Hon. Paul Harriss MLC (Chair), Hon. Greg Hall MLC; and, Hon. Jim Wilkinson MLC.

PROCEEDINGS

At a regularly constituted meeting held on Wednesday, 28 October 2009 the Committee met to consider recent commentary in the public domain relating to the purported appointment and termination of Mr Richard McCreadie as Secretary and Acting Commissioner of Police and Emergency Management. The Committee determined that the matter was clearly of public interest, fell within the Committee's Terms of Reference and touched upon certain evidence already gathered by the Committee.

After taking appropriate advice from the Director of Public Prosecutions at a private meeting of the Committee on the potential for such inquiries to prejudice certain pending matters before the courts, the Committee resolved that evidence be taken from the following persons at a public hearing to be held on Friday, 6 November 2009:

- Mr Richard McCreadie
- Sgt Randolph Weirenga
- A/Commissioner Darren Hine
- Mr Mark Miller
- Commander Colin Little
- Mr Tim Ellis SC
- Mr Rhys Edwards
- Mr Terry Field

Summonses to attend were issued to the following witnesses:

- Mr Richard McCreadie
- A/Commissioner Darren Hine
- Mr Mark Miller
- Commander Colin Little
- Mr Tim Ellis SC

At the request of witnesses, invitations to attend were extended to the following persons:

- Sgt Randolph Weirenga
- Mr Rhys Edwards
- Mr Terry Field

Pursuant to a standing resolution of this Committee, transcripts of the public hearings held on Friday, 6 November 2009 were placed on the Committee's website on Monday, 9 November 2009.

The Committee has considered the evidence it has gathered to this point in time and has determined that the evidence before it requires the holding of further hearings, either in public or in-camera before making any further report to the Legislative Council.

Nevertheless, the Committee has resolved to make a second Interim Report on a matter about which the Committee has already made a number of findings.

PURPORTED APPOINTMENT OF MR RICHARD McCREADIE

It is a matter of public record that on Thursday, 16 October 2008, the Premier, Hon David Bartlett MP announced his intention to appoint Mr Richard McCreadie to the joint office of Secretary and Acting Commissioner of Police and Emergency Management *pro tem*.

It is equally a matter of public record that, in a Media Release issued at 8.02pm on Monday, 20 October 2008, the Premier, Hon David Bartlett MP announced that he was not; "*able to progress the appointment of Mr Richard McCreadie.*"

According to sworn evidence to this Committee by Mr McCreadie and Mr Rhys Edwards, Mr McCreadie was asked to consider this temporary appointment at a meeting with the Premier on Wednesday, 15 October 2008.

This was at a time in which Mr McCreadie was caring for his family following the loss of a near relative.

It appears likely to this Committee that Mr McCreadie was instructed to report for duty on Monday, 20 October 2008.

Mr McCreadie dutifully reported for work on the morning of Monday, 20 October 2008. Uncontroverted evidence to this Committee indicates that he was provided with much of the indicia of appointment at this time. It appears that he had a briefing with the Minister for Police and Emergency Management, Hon Jim Cox MP, followed by a briefing with A/Commissioner Darren Hine at Police Headquarters. Thereafter he departed to attend the important family business of a funeral.¹

According to Mr Rhys Edwards, Mr McCreadie was telephoned at home on the evening of Monday, 20 October 2008 by the Solicitor-General, Mr Leigh Sealy who advised that the Premier was; “unable to progress the appointment”.²

Since that time, according to Mr McCreadie, he has not been contacted by any member of the Government concerning the events of 15-20 October 2008.

Finding 1

Regardless of any other remedy that might be available to Mr McCreadie, this Committee has formed the view that he is, at the very least owed an unconditional apology for the unconscionable way in which he has been treated in this matter by Government, in addition to the unnecessary and avoidable hurt, embarrassment and reputational harm that has been suffered by himself and, indirectly by his family. That these events should have overtaken Mr McCreadie during a time of bereavement was unnecessary and

1

http://www.parliament.tas.gov.au/ctee/Council/Transcripts/6%20November%2009%20McCreadie,Wierenga,Hine,Miller,Little,Ellis,Edwards,Field_.pdf at pg 12 (accessed 9 November, 2009).

2

http://www.parliament.tas.gov.au/ctee/Council/Transcripts/6%20November%2009%20McCreadie,Wierenga,Hine,Miller,Little,Ellis,Edwards,Field_.pdf at pg 70 (accessed 9 November, 2009).

most insensitive. It is remarkable that it should take the effluxion of more than a year, and require a Parliamentary Committee inquiry for such a finding to have been suggested to the Government.

Recommendation 1

The Committee recommends that Government should immediately issue an unconditional apology, in terms acceptable to Mr McCreadie, for any unnecessary and avoidable hurt, embarrassment or reputational harm that has been suffered by himself and, indirectly by his family owing to the events of October, 2008.

CHRONOLOGY OF EVENTS

The Committee presents the following tabular chronology of events derived from evidence it has received, to assist the Legislative Council in its interpretation of the Transcripts of evidence taken in Hobart on Friday, 6 November 2009. Unless otherwise specified, page references relate to page numbers of the on-line Transcripts of evidence for that day which are available at the Committee's website at:

<http://www.parliament.tas.gov.au/ctee/Council/psea.htm>

October 2008

Mon	Tue	Wed	Thur	Fri	Sat	Sun
		1	2	3	4	5
			Committee served Confidential Summons for non-operational Police Files on A/Comr Darren HINE.	Mark MILLER sought S-G advice about releasing the files (p28).		
6	7	8	9	10	11	12
S-G replied to MILLER & claimed technical deficiencies in the Summons (p29).			Operational and Commonwealth related material purged from Summonsed files (p29).	On advice from MILLER, A/C HINE released files to the Committee (p28).		
13	14	15	16	17	18	19
Rhys EDWARDS advised PREMIER to replace A/C HINE with R. McCREADIE (p80).	EDWARDS phoned or met McCREADIE to ascertain interest (p3, 61). Cmr Jack JOHNSTON was formally charged with two counts of disclosing official secrets.	McCREADIE met PREMIER David BARTLETT & discussed position. Agreed that McCREADIE to start on Monday, 20 th . McCREADIE told PREMIER; "the association would not be excited and that Mr Ellis probably wouldn't be excited." (p6, 8) Victorian Cmr Christine NIXON told senior Tas Police officers that McCREADIE returning (p10, 22, 33, 34). Gerald JONES from Minister Jim Cox's Office asked A/C HINE if McCREADIE was returning (p18, 32)	7.00am A/C HINE was asked to meet with PREMIER (p33). A/C HINE phoned MILLER to ask if he could inform PREMIER of potential charges against McCREADIE. MILLER told HINE that he should tell the PREMIER and that he should encourage the PREMIER to speak to the DPP (p34). 8.00am A/C HINE met PREMIER. PREMIER told A/C HINE that he intended to appoint McCREADIE. A/C HINE asked PREMIER if he had spoken with the DPP. PREMIER said he had decided not to. A/C HINE	Police Assn asked how the interim appointment of McCREADIE is possible given s9 of the Police Service Act. Widely reported. AM MILLER sought S-G's opinion on the Police Service Act question (p31). PM Legal opinion on Police Service Act question from S-G delivered to MILLER. Opinion jointly addressed to MILLER & a DPAC officer (p32). EDWARDS phoned A/C HINE and instructed him to continue as A/Comr over the Weekend (p38).	MILLER produced a contrary opinion on the Police Service Act question over this weekend (p43).	McCREADIE took possession of Govt Car after contacting asset management to arrange delivery (p7, 41).

A/C HINE rang EDWARDS and asked if he knew anything about McCREADIE returning. EDWARDS said "No".(p32) (Transcript 17/11/08 p26)

Sgt Randolph WEIRENGA, President of the Police Assn called A/C HINE & expressed concern about the rumors of McCREADIE's return. Told HINE the Assn's concerns.

WEIRENGA rang MINISTER's Office & was told they would try to find out if McCREADIE was returning (p18).

Sir Max BINGHAM called EDWARDS. McCREADIE appointment discussed.

Terry FIELD texted McCREADIE stating Premier's Cabinet colleagues delighted at McCREADIE's appointment (p7, 82).

told PREMIER that the DPP was considering charges against McCREADIE & that the Police Assn have expressed opposition. PREMIER told A/C HINE he "was not dissuaded" and was informing Parliament that day (p36).

FIELD denies that A/C HINE advised the PREMIER to speak to the DPP. He referred to a one line note of the meeting "the investigation [into McCREADIE] being hearsay, it might be hearsay". FIELD denies that A/C HINE told the Premier to contact DPP (p84).

8.30am Police Assn told MINISTER their views about McCREADIE returning (p23).

8.45am A/C HINE phoned McCREADIE to discuss the hand-over (p37). McCREADIE's evidence was that "I had no discussion at all with Mr Hine until I left the minister's office" on Monday 20/10 (p11).

9.25am MILLER phoned DPP and relayed HINE's meeting with PREMIER (p38).

9.30am DPP phoned FIELD and left an urgent

			<p>message (p48).</p> <p>Prior to Question time in the House of Assembly, R WEIRENGA attempted to phone the PREMIER ahead of the announcement.</p> <p>WEIRENGA spoke to the MINISTER about the appointment and conveyed concerns held by the Polics Assn (p22).</p> <p><u>10.35-39am</u> PREMIER advises House of Assembly that Mr McCREADIE; “has accepted an invitation to return to the role” of Police Commissioner (Hansard HA 16/11/08, p9).</p> <p><u>10.42am</u> FIELD returned DPP’s phone call. DPP advised FIELD that possible charges and Code of Conduct issues were pending against McCREADIE. FIELD states that the DPP was “robust” but did not “elaborate” on his concerns. Shortly after this discussion FIELD related the details to the PREMIER (p49, 88).</p> <p>Following question time, the PREMIER met with Police Assn Reps at Parliament House and tells them he is resolute (p24).</p>		
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20	21	22	23	24	25	26
<p>8.00am McCREADIE reported for work at Police Minister's Office for a commencement briefing. Security passes handed to McCREADIE (p7).</p> <p>MILLER provided his contrary Opinion on the Police Service Act question to A/C HINE and S-G & requests the S-G to review his opinion (p32).</p> <p>Police photographer told WEIRENGA that a prior appt to photograph McCREADIE at Government House that afternoon had been cancelled (p24).</p> <p><u>9or10.00am</u> Police Assn met with Minister COX and he confirmed McCREADIE's return (p24).</p> <p>McCREADIE reported to Police HQ, met senior staff, took some briefings & called in the Police Assn. Police Assn informed McCREADIE of impending no-confidence motion (p11, 39, 44).</p> <p>McCREADIE left Police HQ to attend a family funeral (p15, 26).</p> <p>S-G gave DPP a written, closed question asking if the DPP knows any reason why it might be inappropriate to recommend the appointment of McCREADIE to the Governor (p50).</p>	<p>S-G wrote a critical "please explain" letter to DPP in response to the latter's response of the previous day (p53).</p> <p><u>10.15am</u> PREMIER was asked in Question time why the DPP believed it was inappropriate to install McCREADIE & advises Assembly "I do not have the advice. He has not provided me with the advice. I do not know why he has not provided me with the advice." PREMIER also advised the Assembly that he now has received S-G legal advice indicating that the attempt to replace A/C HINE was not contrary to the Police Service Act (Hansard HA 21/10/08, p3).</p> <p>DPP was concerned that he had been misrepresented by PREMIER and sent Opposition Leaders copies of S-G/DPP letters of 20/10 "so that the Parliamentary record can be corrected" (p54).</p>	<p>S-G met with DPP in DPP's Office. DPP claims EDWARDS was in S-G's Office next door (p54). EDWARDS denies being there (p74). DPP & S-G discuss a form of words that would clarify what the DPP inferred by "links" in his letter of 20/10. Form of words agreed and translated to EDWARDS prior to 10.05am. EDWARDS walked to Parliament and waited till after Question time (p55, 75).</p> <p>Robust debate in the Assembly relating to the letters released by the DPP (Hansard, HA, 22/10/08).</p> <p>EDWARDS handed the DPP's clarification to PREMIER after Question time. EDWARDS is dismissive of the clarification (p75).</p>		<p>S-G organized a meeting between the PREMIER and the DPP to "clear the air". Present were the Premier, Mr Edwards, the S-G and the DPP (p55, 56, 78). EDWARDS confirmed that he had sought the views of BINGHAM and former DPP BUGG prior to recommending the appointment of McCREADIE (p78-9).</p>		

Some time later DPP gave S-G a written "yes" answer with an observation that he would not disclose anything further to the present Government because of certain "links" (p51).

UNKNOWN

Some time during this day Cabinet met (p84) – did it consider and/or approve the proposed appointment?

UNKNOWN

After Cabinet, S-G gave PREMIER advice that the appointment of McCREADIE should not be pursued. (Hansard HA 21/10, 10.10am, p2).

6or7.00pm Police Assn advised that McCreadie's appointment abandoned (p25).

EDWARDS phoned HINE to advise that the McCREADIE appointment had been abandoned (p39).

Btwn 7-9.00pm S-G phoned McCREADIE to inform him that the PREMIER; "would not proceed with the appointment" (p15).

GENERAL DISCUSSION

Friday, 10 October 2008

On Friday, 10 October 2008 the Acting Commissioner for Police and Emergency Management (the Acting Commissioner), Mr Daren Hine provided certain confidential files to this Committee pursuant to a confidential summons served on him on Thursday, 2 October 2008.

Monday, 13 October 2008

Based on evidence received to date, it appears to the Committee that it was Mr Rhys Edwards, Secretary for the Department of Premier and Cabinet who advised the Premier, Hon David Bartlett MP to replace Acting Commissioner Hine with former Commissioner Richard McCreadie. This occurred on or about Monday, 13 October 2008. Prior to providing this advice, Mr Edwards has confirmed to the Committee that he consulted with persons including former DPP, Mr Damien Bugg QC. There is reason to believe that the Hon Minister for Police and Emergency Management was not consulted about this matter prior the Premier's subsequent meeting with Mr McCreadie.

Committee Comment

The Committee notes the nearness in time between the provision of certain non-operational police files, and the advice from the Secretary for the Department of Premier and Cabinet that the Premier replace Acting Commissioner Hine with former Commissioner Richard McCreadie. This, together with the extent to which the Government's response to the Committee's first Interim Report is dominated by criticism of its resort to the use of lawful summonses might raise questions in the mind of a reasonable person about the true motivations behind the decision, almost immediately afterwards, to replace Acting Commissioner Hine with Mr McCreadie. Based on the sworn evidence of the Premier's Chief of Staff, Mr Edwards' advice was also provided to the Premier prior to Mr Johnston being formally charged the following day.

Tuesday, 14 October 2008

On Tuesday, 14 October 2008, Commissioner for Police and Emergency Management, Mr Jack Johnston was formally charged with certain offences under the Criminal Code. On this day Mr McCreadie was contacted by Mr Edwards about the possibility of a temporary appointment as an Acting Commissioner of Police and Emergency Management, and it was agreed that Mr McCreadie would meet with the Premier the following day. News of Mr McCreadie's impending return as Acting Commissioner entered the public domain at a function for senior police officers held in Victoria that night or early the following day. The Committee is satisfied that the Premier tasked Mr Edwards to make all the necessary arrangements to facilitate the installation of Mr McCreadie as Acting Commissioner.

Committee Comment

It is regrettable that news of Mr McCreadie's impending return was made public at an official function in another State prior to it being announced by the Premier.

Wednesday, 15 October 2008

On the morning of Wednesday, 15 October 2008 Mr McCreadie met with the Premier and agreed to take over as Acting Commissioner effective Monday, 20 October 2008. During this meeting Mr McCreadie claims to have alerted the Premier that the Police Association and the DPP "*wouldn't be excited*" about his return. During this day Sir Max Bingham QC telephoned Mr EDWARDS and the replacement of Acting Commissioner HINE with Mr McCREADIE was discussed. By the afternoon, rumours were circulating that Mr McCreadie was about to return as Acting Commissioner. Staff in the office of the Minister for Police and Emergency Management contacted Acting Commissioner Hine to determine if those rumours were well founded. Independently, the Police Association contacted the office of the Minister for Police and Emergency Management to ask the same question and were informed that the Minister's Office did not know if the rumours were well founded. Later in the evening, Acting Commissioner Hine called Mr Edwards

and asked if he knew what the Government's intention regarding Mr McCreadie was. Mr Edwards denied any knowledge of these matters.

Committee Comment

The Committee notes that Mr Edwards appears to have deliberately misled Acting Commissioner Hine on this occasion. The Committee further notes that evidence currently before the Committee is at odds with sworn testimony of Mr Edwards before this Committee on Monday, 17 October 2008 as follows:

Mr EDWARDS - *It is set out in the act in terms of making a recommendation about the appointment of a commissioner or temporary acting commissioner or whatever. The Government has those opportunities available to it. Flexibility, when we were talking about it earlier, is about me and my work force. The Commissioner of Police or Assistant Commissioner of Police are not part of my work force.*

CHAIR - *So you knew nothing about the intended return of Richard McCreadie?*

Mr EDWARDS - *No. I think I would have known about discussions about appointing an acting commissioner, whether or not Richard McCreadie was one of the options, but that didn't mean it was my job to tell the acting commissioner, Darren Hine, of that.*

CHAIR - *So you did know that there was an intention to bring somebody in over the top of the then acting commissioner Darren Hine?*

Mr EDWARDS - *I knew there were discussions that one of the options available to the Government was to appoint someone in that role, other than have the acting commissioner stepping up.*

As the Committee is now aware that the appointment of Mr McCreadie was originally suggested to the Premier by Mr Edwards and he appears

to have been tasked with administering the abortive appointment process, the Committee questions the extent to which Mr Edwards' evidence on Monday, 18 November 2008 constituted an appropriate level of disclosure to this Committee in light of the questions put to him at that time.

Thursday, 16 October 2008

The Committee is satisfied that, at 8.00am on the following morning, Acting Commissioner Hine was called to the Premier's Office. The Premier confirmed that he would advise the House of Assembly that morning of his intention to replace Mr Hine with Mr McCreadie. Having taken legal advice prior to this meeting as to his duty of disclosure to the Premier, Acting Commissioner Hine advised the Premier that the DPP was considering criminal charges against Mr McCreadie and that the Police Association had expressed concerns to him about the return of Mr McCreadie. The Premier advised Mr Hine that he had determined not to consult with the DPP, and that nothing he had heard from Mr Hine dissuaded him from his expressed intention. Around the same time, Sgt Randolph Weirenga, President of the Police Association was attempting to contact the Premier to express the Association's concerns at the proposed appointment. Failing in this attempt, Sgt Weirenga telephoned the Minister for Police and Emergency Services and advised him accordingly of the Association's views.

On returning to Police Headquarters, Acting Commissioner Hine set about advising the organisation of Mr McCreadie's imminent return. On receiving this information, Mr Mark Miller, Principal Legal Advisor for Tasmania Police contacted the DPP at 9.25am and advised him accordingly. The DPP immediately telephoned Mr Terry Field, Chief of Staff in the Office of the Premier, in order to ensure that the Premier was appropriately advised before any public announcement was made.

Between 10.35am and 10.39am on Thursday, 16 October 2008, during Question Time, Hansard records that the Premier advised the House of

Assembly that Mr McCreadie had: “*accepted an invitation to return to the role*” of Police Commissioner for an interim period. The Premier made the following remarks at that time:

Yesterday I told the House that the State Government was determined to ensure certainty in relation to the strong leadership of the Tasmanian police service. My priority is to ensure the community has full confidence in its police service. We live in the safest State in the nation and we also have Australia's highest police force satisfaction rating. That is exactly the confidence I am determined to maintain. I also want our serving police officers to go about their work in the knowledge that the Government has put in place proper arrangements to support them during this unsettling period.

At the outset, I would like to place on record the Government's sincere thanks to Darren Hine, Deputy Commissioner of Police, who has done an excellent job as acting commissioner over recent months. The Government is grateful for the role he has played and he has done great credit to himself and to the service he has been leading during this challenging time. In these difficult circumstances, however, I believe it would be imposing undue stress on Mr Hine to ask him to continue as acting commissioner.

In a media release later that day, the Premier also stated that:

These arrangements will be put in place quickly to provide the certainty the situation requires.

I trust that there will be broad political support for this interim arrangement to enable the community to have continued confidence in its police service.

Following the Premier's announcement, at 10.42am, Mr Terry Field returned the DPP's telephone call. The Committee is satisfied that during this telephone call, the DPP advised Mr Field that possible charges and Code of Conduct issues were being considered against Mr McCreadie. Mr Field describes the conversation as: “*fairly robust, one way*”. Shortly thereafter Mr Field related the details of his conversation with the DPP to the Premier. At the conclusion of Question Time, the Premier met with representatives of the Police Association at Parliament House and informed them of his resolution in the matter.

Committee Comment

The Committee notes with concern that the Premier's announced intention to appoint Mr McCreadie as Acting Commissioner was made without any prior consultation with the Police Association, and appears to have been agreed with Mr McCreadie himself before even seeking the input of the office of the Minister for Police and Emergency Management. Indeed, it is an open question as to whether the matter had been agreed by Cabinet prior to the public announcement.

More concerning however is the fact that, immediately prior to the announcement, in response to advice from Acting Commissioner Hine that the DPP was considering possible criminal charges against Mr McCreadie, the Premier appears to have indicated that he had; "*determined not to consult with the DPP*" and "*was not dissuaded from his intention*" based on anything that Acting Commissioner Hine had said. However, one of the most concerning aspects from the perspective of proper process in the appointment of a Senior Public Sector Officer is the fact that the Premier did not immediately seek to perform any due diligence on this matter. Rather, having reason to believe that the person whom he had determined to announce as his choice as Acting Commissioner may be facing undisclosed criminal charges, the Premier made no further inquiry before announcing his intention to the Parliament. At the very least, such a reckless course of conduct is almost entirely at odds with the Premier's stated intention to ensure that; "*proper arrangements to support [serving police officers] during this unsettling period.*"

The Premier's Office was so determined on this course of action that, when the DPP himself attempted to contact the Premier approximately an hour prior to his announcement in Parliament, his call was not returned until immediately after the announcement was made. On being told by his Chief of Staff that the DPP was trying to speak to him

about the matter following his public announcement, the Premier still made no attempt to contact the DPP.

Friday, 17 October 2008

On Friday, 17 October 2008, media outlets reported Police Association concerns that the intended appointment of Mr McCreadie may be inconsistent with the *Police Services Act 2003*. This question was also raised by Mr Mark Miller who sought advice from the Solicitor-General that morning. That afternoon, the Solicitor-General answered indicating that on his construction, the intended appointment was not inconsistent with the provisions of this Act. The Solicitor-General's written opinion was jointly addressed to both Mr Miller at Tasmania Police and the Department of Premier and Cabinet and was requested earlier the same day. Late on this day, Mr Edwards contacted Acting Commissioner Hine and instructed him to continue as Acting Commissioner over the weekend.

Weekend, 18-19 October 2008

On Sunday, 19 October 2008 Mr McCreadie took possession of the executive vehicle provided to the Acting Commissioner after making the necessary arrangements.

Committee Comment

The Committee notes that the Solicitor-General's written opinion on the question of the legal validity of the proposed appointment of Mr McCreadie as Acting Commissioner was not provided to the Government until the day after the announcement was made. This speaks to two equally concerning flaws of process. Firstly, the question as to the lawfulness or otherwise of such an appointment appears not to have been appropriately addressed by the key decision-makers prior to the decision being made and announced. Put another way, there appears to have been an indifference to whether or not the decision was lawful. This is consistent with an indifference to the advice of the DPP, but is inconsistent with due process. Secondly, as the answer to this question depends upon construction and is

apparently open to differing legal opinion, there remains the possibility of such a proposed appointment being subject to subsequent legal challenge. The Committee accepts the strength of Mr McCreadie's view that the current provisions of the *Police Service Act 2003* relating to Acting Commissioner status applies to "normal" circumstances, and the circumstances in question were extraordinary. The Committee suggests that these differing views indicate that there is urgent need for legislative reform.

Monday, 20 October 2008

At 8.00am on Monday, 20 October 2008, Mr McCreadie reported to the office of the Minister for Police and Emergency Management, Hon Jim Cox MP as instructed. Mr McCreadie was given the requisite security passes and was briefed on his duties by the Minister. That morning Mr Miller provided a contrary legal opinion to the Solicitor-General relating to the validity of an Acting Commissioner appointment outside of the literal reading of s9 of the *Police Service Act 2003* and asked the Solicitor-General to review his earlier advice. Also that morning Sgt Weirenga was advised by a police photographer that a pre-arranged photo-shoot at Government House for that afternoon had been cancelled. Around 9.00am the Police Association met with Minister Cox who advised that Mr McCreadie had returned. The Police Association advised the Minister of its concerns.

Following his meeting with the Minister, Mr McCreadie reported to Police Headquarters. He had briefings with senior staff and called in the Police Association. The Police Association attended on Mr McCreadie and advised that they would be holding mass meetings that week so that a no-confidence motion could be considered by members. After these meetings, Mr McCreadie left work to attend a family funeral.

Committee Comment

It is clear that all affected parties, including the Premier, were of the view that Mr McCreadie had commenced his duties as Acting Commissioner at 8.00am on Monday, 20 October 2008. The

announcement had been made, Mr McCreadie had been given all of the indicia of office short of being sworn in by the Governor, and Acting Commissioner Hine had been given a clear instruction from the Secretary for the Department of Premier and Cabinet that he should continue as Acting Commissioner “*over the weekend*” – with the clear implication that he would cease to be the Acting Commissioner on the Monday.

During the course of this day the Solicitor-General gave the DPP a letter containing a closed question in the following terms:

I am advised by the Premier, the Honourable David Bartlett MP, that it is his intention to advise His Excellency the Governor to appoint Mr Richard McCreadie (the former Commissioner of Police) temporarily to the offices of Commissioner of Police and Secretary of the Department of Police and Emergency Management.

In those circumstances I am instructed to seek your formal advice whether there are any matters which are known to you and which, if true, would prevent the Premier from properly so advising His Excellency.

Your urgent response to this request would be gratefully appreciated.'

Later in the day, in reply to this formal request, the DPP provided the Solicitor-General with a reply in the following terms:

I am asked whether there are any matters of which I am aware (if true) would make it inappropriate for the Premier to recommend the appointment of Mr Richard McCreadie as temporary Commissioner of Police.

The answer to that is “yes.”

I have reason to believe that the links between the Premier, Mr R McCreadie and Mr J Johnston are close and current and I am not at this point prepared to discuss the matters affecting my answer with anyone except His Excellency the Governor should His Excellency so wish.

I appreciate that the Premier is accordingly without sufficient information to agree or disagree with my view as to the inappropriateness of the proposed appointment. As to that dilemma, and others which his precipitate announcement has posed for the administration of justice I need to consider further.

At some point on this day, there was a meeting of Cabinet. The Committee is unable to determine whether the matter of Mr McCreadie's appointment was considered. According to the Premier, at some point after Cabinet, the Solicitor-General advised him that the appointment of Mr McCreadie as Acting Commissioner should not be pursued.

Around 6.00pm the Police Association were advised that Mr McCreadie's appointment as Acting Commissioner would be abandoned. Around the same time Acting Commissioner Hine was contacted by Mr Edwards and advised of the Premier's change of mind. Between 7.00pm and 9.00pm the Solicitor-General telephoned Mr McCreadie to advise that his appointment would not be pursued by the Premier. In return for the events of the previous week, in Mr McCreadie's own words he received; "*nothing but pain*".³

Committee Comment

The treatment of Mr McCreadie by the Government, and in particular the Premier, during the week 13-20 October 2008 was clearly inequitable. Proper process was not followed from start to finish. It is altogether too convenient for the Government to have set Mr McCreadie in place as *de facto* Acting Commissioner, and then cast him aside when its own failure of process brought its plans to nought. This Committee is firmly of the view that the Government has at least a moral obligation to provide Mr McCreadie redress for wrongs perpetrated against him as a consequence of the Government's failure of process

Tuesday, 21 October 2008

On the morning of Tuesday, 21 October 2008 the Solicitor-General delivered a "please explain" letter to the DPP seeking detailed reasons for the DPP's affirmative response of the previous day to the Solicitor-General's closed question. While the DPP was considering his response to this letter, Hansard

³ P16.

of Question Time in the House of Assembly at 10.15am on that day records the following statement made by the Premier:

Mr BARTLETT - Mr Speaker, let me make it clear that we will not be proceeding with the appointment of Mr McCreadie as a temporary commissioner. I have explained to the House all the detail I have on the reasons for that. Those questions can only be asked of one person in terms of the release of any advice and that is, I believe, the Director of Public Prosecutions. I do not have the advice. He has not provided me with the advice. I do not know why he has not provided me with the advice. I have asked the Solicitor-General to write to him with the request for that advice but obviously as he is an independent statutory officer, I could not and would not compel him to do so.

In terms of the now obviously failed appointment of Mr McCreadie I would say this. I believe - and I made this choice and I will stand by this choice - that at this time, having received advice from the Solicitor-General - as you have been briefed this morning but were happy to run around the town saying otherwise over recent days - there is no legal impediment under the police act to the appointment of Mr McCreadie. There is no legal impediment and I received that advice. I made a decision about a tried and tested leadership.

According to the DPP's evidence to this Committee, he was concerned that the above comments misrepresented his position. In the DPP's own testimony, he released copies of the letters which had passed between the Solicitor-General and himself on the previous day to the; "*Leader of the Opposition and Leader of the Greens in order that the parliamentary record be corrected and Parliament not be misled.*"⁴

The Premier

Mr BARTLETT - You can play political games with that if you like but I am seeking to assure you that you are wrong in asserting that there is some legal impediment in appointing a temporary commissioner. There is not. I became aware - and I would have to go back and think in detail about this - after making the announcement in this place last week that informal conversations

between the Solicitor-General and the DPP had occurred, which were relayed to me via my secretary and which caused me to therefore ask the Solicitor-General to ask the DPP formally for his view on this matter.

Wednesday, 22 October 2008

On the morning of Wednesday, 22 October 2008 the Solicitor-General met with the DPP in the latter's office. The DPP's recollection that Mr Edwards was in the Solicitor-General's office on the same corridor, Mr Edwards' recollection is that he was in his own office at the relevant time. During the relevant time, the DPP has testified that he and the Solicitor-General negotiated on a form of words which would clarify what the DPP had meant in his closed response letter to the Solicitor-General of Monday, 20 October 2008 when he has referred to "*close and current*" "*links*". In testimony to this Committee the DPP made the following observation:⁵

I gave the Solicitor-General my letter which made it absolutely clear that I was not alleging face-to-face contact or any corrupt arrangement but that there were links. He relayed that letter to Mr Edwards in his room.

It appears that the intention of delivering this document to Mr Edwards was so that he could advise the Premier accordingly. Mr Edwards accepts that the document had been related to him in sufficient time for him to attend the House of Assembly prior to the conclusion of Question Time that morning. Mr Edwards testified that he had handed the document to the Premier at the conclusion of Question Time.⁶ Reference to Mr Edwards' testimony on this point can perhaps be described as dismissive.⁷

Hansard for the House of Assembly for Tuesday, 21 October 2008 at 6.08pm records that the Premier took issue with the DPP's reference in his closed response letter of the previous day to the Solicitor-General to; "*close and*

⁵ P54.

⁶ P75.

⁷ Pp74-77.

current" - "*links*". The Premier's contribution at that time ends with the following statement:⁸

If anyone can characterise what I have just described in terms of my contact with either of these two gentlemen as a 'close and current relationship', I would be deeply surprised.

In evidence to this Committee, the DPP stated that:⁹

I said links, not relationship or face-to-face contact. I used that carefully. I was not saying, as has been misinterpreted in that, that it was because of those links that it was inappropriate. I was saying that I knew of matters which, if true, would make it not appropriate but I was not prepared to say what those matters were.

Thursday, 23 October 2008

Blanket media coverage of the differences between the DPP and the Government occurred.

Friday, 24 October 2008

At the instigation of the Solicitor-General a meeting was held between the Premier, the Solicitor-General, the DPP and Mr Edwards. At this meeting, parties resolved whatever differences they might have previously had. During this meeting, it was confirmed that Mr Edwards had discussed the possibility of appointing Mr McCreadie as Acting Commissioner with Mr Damien Bugg QC and Sir Max Bingham QC; "*in the early days*". Following this meeting a joint media release was issued by the parties.

⁸ P88

⁹ P51.

PUBLIC SECTOR STANDARDS COMMISSIONER

The Committee draws the attention of the Legislative Council once again to Recommendation 12 of this Committee's first Interim Report which reads as follows:

The Committee **recommends** that the Legislative Council do call upon the Government as a matter of legislative priority, to replace the current *State Service Act 2000* with a Public Sector Management Act along the lines of those in place in Western Australia and New Zealand. One of the central features of such a legislative model must be the appointment of a Public Sector Standards Commissioner, reporting directly to Parliament, with jurisdiction to prepare shortlists of suitable candidates to all public sector executive appointments, up-to and including Heads of Agency, for Ministerial approval. Ministers should have the power to refuse such shortlists and request replacement short-lists, on the proviso that they publish their reasons for so doing in the *Gazette*.

This recommendation was adopted on the basis of evidence presented to it by the Auditor-General for Tasmania, Mr Mike Blake. In the Auditor-General's view it represents a world's-best-practice model for such appointments.

The Committee notes that, on Tuesday, 19 May 2009 speaking in the House of Assembly in his response to the first Interim Report of this Committee the Premier made the following remarks relating to Recommendation 12:

The recommendation calls for a public sector standards commissioner but the State Service Commissioner already has this role. The current State Service Commissioner, which is a statutory appointment under the State Service Act, already has broad functions and powers under the act and reports to Parliament annually on the performance or exercise of those functions and powers.

The commissioner may only be removed from office by the Governor through a resolution of both Houses of Parliament, which ensures the independence of this role. I see no need to change this role.

The employer functions of the commissioner have been delegated to the Secretary of the Department of Premier and Cabinet since 2004 on the basis that the then commissioner, Mr Robert Watling, saw a potential tension between acting as the employer and having responsibility for review of employment decisions. Following the retirement of Commissioner Watling in January 2009 a review was established to determine the governance arrangements under the State Service Act, particularly as it relates to the State Service Commissioner's functions. The review will consider various models, including those that operate in other jurisdictions. I anticipate that the review will be completed later this year.

The Committee also notes that neither of the Opposition parties have expressed any view regarding Recommendation 12 of this Committee's first Interim Report.

The Committee draws the attention of the Legislative Council to the fact that the circumstances surrounding the aborted appointment of Mr McCreadie, which was possible under the present system endorsed by the Premier, would not have been possible under the model recommended by this Committee.

As an object lesson about the weaknesses of the present Tasmanian legislation and the strengths of the Western Australian model advocated by the Auditor-General, the aborted appointment of Mr McCreadie is both stark and salutary.

The Committee therefore calls once more for the attention of all political parties to be focussed on Recommendation 12 of this Committee's first Interim Report. The Committee also respectfully makes the following Recommendation:

Recommendation 2

The Select Committee on Public Sector Executive Appointments recommends that the Government reconsider its position on Recommendation 12 of this Committee's first Interim Report, and in the interests of greater transparency and accountability in the appointment of Senior Public Sector Appointments, adopt that Recommendation in its terms.

Hon Paul Harriss MLC (Chair)**May 2010**