



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE OMBUDSMAN,  
THE POLICE INTEGRITY COMMISSION AND  
THE CRIME COMMISSION

REPORT ON THE TWELFTH GENERAL MEETING WITH THE  
INSPECTOR OF THE POLICE INTEGRITY COMMISSION

REPORT 3/55 – DECEMBER 2012

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

CHAIR	The Hon Catherine Cusack MLC
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MEMBERS	Mr Kevin Anderson MP, Member for Tamworth The Hon Paul Lynch MP, Member for Liverpool Mr Ryan Park MP, Member for Keira The Hon Sarah Mitchell MLC The Hon Adam Searle MLC
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## Terms of Reference

The Office of the Inspector of the Police Integrity Commission was created by Section 88 of the *Police Integrity Commission Act 1996*.

The functions of the Inspector include:

- auditing the operations of the Commission for the purpose of monitoring compliance with the law of the State;
- providing reports and recommendations in relation to complaints of abuse of power;
- providing reports and recommendations in relation to maladministration by the Commission or officers of the Commission; and
- assessing the effectiveness and appropriateness of the procedures of the Commission relating to the legality of its activities.

The Inspector may:

- make a recommendation or report concerning any matter relating to the functions of the Inspector;
- provide the report or recommendation to the Commission, a complainant or any other affected person; and
- exercise his functions on his initiative, at the request of the Minister, in response to a complaint or following a reference by the Ombudsman, the ICAC, the NSW Crime Commission, the Joint Committee or any other agency.

The Inspector is not subject to the Commission in any respect.

The Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission is constituted under Part 4A of the *Ombudsman Act 1974*, and under section 95 of the *Police Integrity Commission Act 1996* the Committee has the following functions:

- 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 Police Integrity Commission and Inspector of the Police Integrity Commission.

## Chair's Foreword

The general meetings between the Committee and the Inspector of the Police Integrity Commission provide an opportunity for the Committee to review the exercise by the Inspector of his legislative functions and discuss issues of public interest that are relevant to the Inspector's functions.

As this was the first meeting of the Committee with the new Inspector of the Police Integrity Commission, it provided the Committee and the Inspector with an opportunity to discuss resourcing and plans for the future as well as finalising a discussion with respect to the previous working relationship between the Inspectorate and the Police Integrity Commission.

A key task before the Inspector is the review of the Taskforce Emblems matter and the circumstances around this were discussed in some detail during the general meeting. This matter has garnered substantial public interest and the Committee will take a continuing interest in any developments relating to Taskforce Emblems. The Committee supports the Inspector in the fulfilment of his duties in relation to this matter.

The Inspector detailed his plans to the Committee for reviewing the resources of his own office and his plans to assess the current governance structures and mechanisms in place for the Police Integrity Commission and the NSW Police Force.

The Committee thanks the Inspector for his time during the general meetings and looks forward to the development of his office and the finalisation of the important work the Inspector has undertaken with respect to the Taskforce Emblems report.

The Hon. Catherine Cusack MLC  
**Chair**





## Chapter One – Commentary

- 1.1 On 21 May 2012 the Committee held a general meeting with the Inspector of the Police Integrity Commission ('the PIC').
- 1.2 As part of its preparation for the general meeting, the Committee sent the Inspector a series of questions on notice. The answers to these questions on notice can be found at Chapter Two of this report.
- 1.3 The Inspector provided an opening statement at the beginning of the meeting in camera and as such, this portion of the transcript remains confidential.
- 1.4 The Inspector took office on 1 February 2012 and a substantial portion of the discussion with the Committee centred on the role and responsibilities of the position of Inspector and the current priorities as he sees them. These issues are outlined below.

### TASKFORCE EMBLEMS

- 1.5 As detailed earlier in the terms of reference of this report, the role of Inspector of the Police Integrity Commission is established at section 88 of the *Police Integrity Commission Act 1996*, with section 89 outlining the principle functions of the Inspector as follows:
- i. to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State and,
  - ii. 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
  - iii. to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality of its activities.
- 1.6 The Police Integrity Commission Act provides the PIC with the power to investigate serious misconduct of officers of the NSW Crime Commission (NSWCC) and, subsequently, related issues come within the remit of the Inspector.
- 1.7 Taskforce Emblems has been the subject of considerable media attention recently. Taskforce Emblems was the name given to an internal police operation conducted in 2003 - 2004 which reviewed particular aspects of Operation Mascot. Operation Mascot was a joint operation between NSW Police, the Police Integrity Commission and the NSWCC which reportedly involved the surveillance of more than 100 police officers and at least two civilians. Taskforce Emblems reportedly reviewed the circumstances in which the surveillance warrants were granted.

- 1.8 Following calls from the NSW Police Association for the Police Minister to release the report, the report was referred to the Inspector of the PIC by the Minister for Police. The Inspector explained to the Committee that the Minister asked him:

To give consideration as to whether or not the Taskforce Emblems' report, which I hasten to add I am having some difficulty in identifying discreetly what documents constitute it, should be the subject of release, what public interest would be served by its release, what public interest would be prejudiced by its release and I suppose to use the jargon whether there would be any added value in the release of whatever the taskforce report is.<sup>1</sup>

- 1.9 The history and current status of Taskforce Emblems was unclear at the time of the general meeting, as the Inspector explained to the Committee:

As I have not read it all yet I cannot answer you because I do not quite understand what the material is about. But as far as I can indicate what has been referred to me, it is a bundle of material that relates to a first investigation which I believe might have been initiated in 1998 during the course of which, as I understand it so far, the Crime Commission obtained – to use a general phrase – a surveillance warrant from the Supreme Court in which apparently in excess of 100 names appeared. The name of the operation the Crime Commission was conducting I have seen, but presently escapes me.<sup>2</sup>

- 1.10 The Inspector indicated that he did not have a time frame in mind for the conclusion of the investigation and informed the Committee that his investigation was in its early stages.<sup>3</sup>

- 1.11 The Hon. Paul Lynch MP was interested in understanding the Inspector's jurisdiction and how it relates to Taskforce Emblems:

**Mr PAUL LYNCH:** The interesting thing that strikes me is that if you are the Inspector of the Police Integrity Commission whose job it is to look after the Police Integrity Commission why has it been referred to you to look after or to inquire into things that do not seem to be directly related to the Police Integrity Commission?

**Mr LEVINE:** I think that one answer is that the Minister has the power under section 217 of the Police Act to refer it to me and my knowledge of the history of the matter is that it has been referred to me as it was referred to a prior inspector in 2002, and it was the Hon. Mervyn Finlay, QC. Why it has been referred in a general sense, that is pure speculation on my part.<sup>4</sup>

- 1.12 Mr Lynch sought to clarify the relationship between the Inspector's functions and the current investigation:

**Mr PAUL LYNCH:** When you have completed it I would be fascinated to know your view of how doing this work fits into any of your principal functions in accordance with the legislation.

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<sup>1</sup>The Hon. David Levine AO RFD QC, Inspector of the Police Integrity Commission, *Transcript of evidence*, 21 May 2012, p. 2

<sup>2</sup>Mr Levine, *Transcript of evidence*, 21 May 2012, p. 1.

<sup>3</sup>Mr Levine, *Transcript of evidence*, 21 May 2012, p. 3.

<sup>4</sup>The Hon. Paul Lynch MP and Mr Levine, *Transcript of evidence*, 21 May 2012, p. 2.

**Mr LEVINE:** With respect, it would be a matter of great interest to me as well.<sup>5</sup>

- 1.13 The Committee Chair noted that this investigation was of intense public interest and expressed the Committee's willingness to offer assistance to the Inspector should he need it.

## RESOURCES

- 1.14 The Committee questioned the Inspector with respect of the resources available to his office, and queried whether those resources were sufficient for him in the conduct of his functions. The Inspector noted in his answers to the questions on notice that he had no reason to consider the budget insufficient:

It is relatively modest in my view and upon the settling into new premises and finalisation of staffing requirements, a review will be necessary I am sure.<sup>6</sup>

- 1.15 In relation to Taskforce Emblems, the Inspector noted that he was the only resource available to read, disseminate and understand the material and he had not been given a timeframe for the review by the Minister.

- 1.16 Mr Kevin Anderson MP suggested that the Inspector's resources could perhaps be increased through the secondment of staff, particularly given the level of interest in the Inspector's current investigations. The Inspector replied that once he had determined the nature and function of such staff based on the material he has available, he would be better placed to consider such action.<sup>7</sup>

- 1.17 The Inspector indicated that in terms of resources he had "everything that is lawfully and legally available to me".<sup>8</sup>

## STRATEGIC PRIORITIES

- 1.18 In the Inspector's answers to the questions on notice that were received by the Committee prior to the general meeting, he detailed the importance of his office acting in an impartial and dispassionate manner and identified that his first goal would be to take a robust and commonsense approach to the resolution of complaints from legitimate sources. He stated that:

...over the term I presently can indicate that I will be giving continuing and careful consideration to the role of both the Police Integrity Commission and this Inspectorate and the necessity therefore in the light of the passage of time since the events leading to, and the presentation of, the Report of the Wood Royal Commission.<sup>9</sup>

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<sup>5</sup> The Hon. Paul Lynch MP and Mr Levine, *Transcript of evidence*, 21 May 2012, p. 5.

<sup>6</sup> Mr Levine, Inspector of the Police Integrity Commission, *Answers to Questions on Notice*, 24 April 2012, p.1., question 4.

<sup>7</sup> Mr Levine, *Transcript of evidence*, 21 May 2012, p. 4.

<sup>8</sup> Mr Levine, *Transcript of evidence*, 21 May 2012, p. 4.

<sup>9</sup> Mr Levine, Inspector of the Police Integrity Commission, *Answers to Questions on Notice*, 24 April 2012, p.1., question 5.

1.19 During the general meeting, the Hon. Sarah Mitchell MLC referred to the Inspector's answers and asked what factors he planned to take into account when considering these issues.

1.20 The Inspector replied that the current oversight structure of the NSW Police Force evolved in response to the findings of the Wood Royal Commission and the culture within the police service. In the twenty years since, there are likely to have been significant shifts in culture and policy:

Whilst I am not troubled, I am intrigued by events being the subject of examination by X under the supervision of Y, which might end up in the hands of Z. That is not fair either to the police involved or to the respective examining bodies. It might be that over the next three to five years, or however long I am in office, or my successor is in office, the whole nature of this area of governance will have to be re-examined. Do we really need, in relation to the police, so many interested bodies?<sup>10</sup>

1.21 As part of his consideration of current governance mechanisms, the Inspector indicated that it was timely to consider the distinction between police conduct which is improper and that which is actually corrupt. He explained to the Committee:

A mechanism of identifying the true nature of that in terms of whether it is corrupt and improper or merely an accident or bad luck or an operational mishap might have to be drawn a lot earlier, and thus would facilitate a very quick examination and resolution of any issue. They seem to blur at times and merely because X happens the worst is thought and conclusions are leaped to too quickly.<sup>11</sup>

1.22 The Inspector informed the Committee that his main objective while in office would be to assess the current governance structures with a view to ensuring that these structures are working efficiently and the system is monitored by an appropriate gatekeeper.

1.23 In response to concern raised by the Committee with respect to the previous relationship between the Inspector of the Police Integrity Commission and the Commissioner of the Police Integrity Commission, the Inspector noted that this situation was in the past:

You now have a new Police Integrity Commissioner, you now have a new Inspector. There have been some legislative changes. There might be legislative changes affecting the New South Wales Crime Commission. I think all of that, being new and being fresh, will be good.<sup>12</sup>

1.24 The Inspector noted in his answers to questions on notice that while there is no formal plan or agreement for communication between his office and the Police Integrity Commission, he does not view this to be an issue of concern and confirmed that to date communications between his office and the Commission had worked efficiently. The Inspector told the Committee that:

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<sup>10</sup> Mr Levine, *Transcript of evidence*, 21 May 2012, p. 5.

<sup>11</sup> Mr Levine, *Transcript of evidence*, 21 May 2012, p. 6.

<sup>12</sup> Mr Levine, *Transcript of evidence*, 21 May 2012, p. 7.

...the notion of any formal agreement or plan would be inconsistent, in my respectful view, with the separate roles the statute provides for the PIC and the Inspector.<sup>13</sup>

- 1.25 The Inspector confirmed that he is happy with the statutory limitations that are currently imposed on the Inspectorate but was mindful that:

This view might change upon the evolution of the office as conducted by myself and of any relationship with the PIC itself as well as other bodies which can be affected by the exercise of my jurisdiction.<sup>14</sup>

## CONCLUSION

- 1.26 The Committee emphasised to the Inspector that it is keen to have the matter of Taskforce Emblems resolved and the Chair noted:

I think I speak for all members of the Committee when I say we are anxious to have it resolved and to assist you in any way we can. Please do not hesitate to let the Committee know if it can be of assistance.<sup>15</sup>

- 1.27 The Committee was pleased to hear of the Inspector's commitment to the resolution of the complaints. The Committee will continue to demonstrate an ongoing interest with respect to the Inspector's work in relation to Taskforce Emblems and the Inspector's consideration of the framework of the anti police corruption agencies.

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<sup>13</sup> Mr Levine, Inspector of the Police Integrity Commission, *Answers to Questions on Notice*, 24 April 2012, p.1., question 2.

<sup>14</sup> Mr Levine, Inspector of the Police Integrity Commission, *Answers to Questions on Notice*, 24 April 2012, p.1., question 1.

<sup>15</sup> The Hon. Catherine Cusack MLC, Chair, *Transcript of evidence*, 21 May 2012, p. 5.

## Chapter Two – Answers to Questions on Notice – Current Inspector

Dear Ms Cusack

I refer to your letter of 28 March 2012 and the appended Questions on Notice.

At the outset I make the request, that my appearance before the Committee commence *in camera*.

[REDACTED]

The answers to the Questions on Notice must be viewed in the following context: the Office of the Inspector of the Police Integrity Commission was vacant from the 21 November 2011 until the 1 February 2012 on which date I commenced duties. Further the evolution of my acquaintance with the requirements of the office will have to some extent been disrupted by the necessity to put in place certain procedural and compliance reforms and the physical movement of the offices of my Inspectorate to be co-located with the Inspectorate of ICAC, sometime in June-July 2012.

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Further as to the Questions on Notice, I have addressed them expressly and made no comment upon my predecessor's responses to previous Questions on Notice: I trust, however, to be in a position, if required, to comment on those previous responses.

The answers to the Questions on Notice are appended hereto.

Yours sincerely,



The Hon David Levine AO RFD QC  
Inspector: PIC

1. **Do you have any comment you wish to make with respect to the statutory limitations imposed on the Inspectorate?**

It is my present position that the statutory limitations imposed upon the Inspectorate taking into account recent amendments to the legislation are sufficient. This view might change upon the evolution of the office as conducted by myself and of any relationship with the PIC itself as well as other bodies which can be affected by the exercise of my jurisdiction.

2. **Do you have an agreement with respect to the ongoing communication between your office and the Police Integrity Commission? If so, could you provide the Committee with details of this plan?**

No agreement with respect to the ongoing communication between my office and the Police Integrity Commission exists nor is there any plan. Certainly arrangements are in place for purely bureaucratic efficiency relating to the making of appointments for my calling upon the PIC, delivery of documentation and the like. Otherwise the notion of any formal agreement or plan would be inconsistent, in my respectful view, with the separate roles the statute provides for the PIC and the Inspector.

3. **The outgoing Inspector proposed to liaise with the Commonwealth Attorney General with respect to *Telecommunications (Interception and Access) Act 1979*. Are you aware of any response? If a response has been received, please provide a copy to the Committee.**

I attach hereto a response as is referred to in the Question on Notice from Ms Kathryn Ovington of the Commonwealth Attorney General's Department.

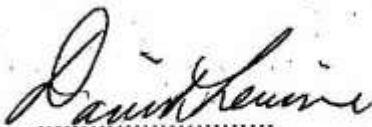
4. **Do you consider the budget allocated to the Inspector sufficient to acquit the statutory functions of the Inspectorate?**

I have no reason to consider it not to be sufficient. It is relatively modest in my view and upon the settling into new premises and finalization of staffing requirements, a review will be necessary I am sure.

5. **Have you set any goals or priorities for your terms as Inspector of the Police Integrity Commission?**

First, a robust commonsense approach be adopted by my Inspectorate to the resolution of any complaints from any legitimate source and that they be dealt with dispassionately, impartially without the intrusion of any element of personal animosity or ill will. Secondly, over the term I presently can indicate that I will be giving continuing and careful consideration to the role of both the Police Integrity Commission and this Inspectorate and the necessity therefor in the light of the passage of time since the events leading to, and the presentation of, the Report of The Wood Royal Commission.

24 April 2012-04-24



The Hon David Levine AO RFD QC  
Inspector: PIC

**PIC\_Inspector - Ovington, TSLB to Inspector PIC - Request for comments - use of lawfully intercepted information in public hearings [SEC=UNCLASSIFIED]**

**From:** "Ovington, Kathryn" <Kathryn.Ovington@ag.gov.au>  
**To:** "pic\_inspector@dpc.nsw.gov.au" <pic\_inspector@dpc.nsw.gov.au>  
**Date:** 29/03/2012 4:28 PM  
**Subject:** Ovington, TSLB to Inspector PIC - Request for comments - use of lawfully intercepted information in public hearings [SEC=UNCLASSIFIED]  
**CC:** "Whitaker, Susan" <susan.whitaker@ag.gov.au>, "Kelly, Wendy" <Wendy.Kelly@ag.gov.au>

**UNCLASSIFIED**

Dear Inspector

I work in the Telecommunications and Surveillance Law Branch of the Attorney-General's Department and we are currently developing amendments to the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

With changes to the technological and structural nature of the telecommunications industry, law enforcement and security agencies are facing increasing challenges to their capability to undertake telecommunications interception. In response the Department is reviewing the operation of the TIA Act. This project is being conducted within Government and we have approval for limited in-confidence consultation with Government agencies and Departments as well as selected industry participants. Within New South Wales, the Department has had similar discussions through pre-existing forums with New South Wales Police, the Police Integrity Commission, the Independent Commission Against Corruption and the Crime Commission.

Your predecessor, the Hon PJ Moss QC, wrote to the former Attorney-General, the Hon Robert McClelland MP, on 4 November 2011 to express concern about the disclosure of certain lawfully intercepted conversations in hearings by the Police Integrity Commission. In the former Inspector's view, the material was irrelevant to the Commission's investigation and publication was to the potential detriment of the interests and reputations of those involved.

The use of lawfully intercepted information (LII) in public hearings is and will remain a contentious area. The Department would like to ensure that existing powers are unaffected as much as possible going forward while balancing privacy interests and ensuring public confidence in the regime. Accordingly, the Department is considering an option to maintain the status quo enabling the use of LII in public hearings (that are not prosecutions) but to require the head of that agency to approve the use of LII in a public hearing prior to a hearing occurring. In making a decision to approve the use of LII in a public hearing, the head of the agency may be required to have regard to:

- the value of the LII to the investigation
- the potential damage that public disclosure could have on any person, including their reputation
- whether the public disclosure of the LII will assist in the investigation, and
- the gravity of the offence under investigation

The agency head's power to make such a decision may be supported by an ability to impose restrictions on the publication of any evidence.

We consider that including such requirements on the face of the TIA Act would create a national approach.

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In addition, we propose that this approach would add integrity by assuring the public that decisions to use LII in public proceedings are considered at the highest level within agencies.

We seek your comments on this proposal, on an in-confidence basis, in light of the comments made by your predecessor on this issue.

Kind regards

**Kathryn Ovington**  
Senior Legal Officer  
Telecommunications and Surveillance Law Branch  
Tel: 02 6141 3059 / mob: 0439 575 352

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**Inspector  
of the  
Police Integrity Commission**

Our Ref: CR 04-AD

4 November 2011

The Hon Robert McClelland MP  
Attorney-General  
Parliament House  
BARTON ACT 2600

Dear Attorney-General,

Rc: *Telecommunications (Interception and Access) Act (1979)*

- 1) I have set out below, for your interest, paragraphs 139-146 from my 2011 Annual Report tabled in the NSW Parliament on 11 October 2011.
- 2) That material will no doubt speak for itself, and I need not comment further upon it.
- 3) In view of my conclusions stated in paragraphs 145-146, it occurred to me that you may wish to consider amending the legislation to overcome the problems identified by me in that material.

**ADVICE FROM THE COMMONWEALTH DIRECTOR OF  
PUBLIC PROSECUTIONS**

139) As noted in my 2010 Annual Report (page 17), I wrote to the Commonwealth DPP in respect of the apparent breaches by the Commission of the *Telecommunications (Interception and Access) Act (1979)* (Cth), identified in my Report dated 28 January 2010 (published on the Inspector's website). My Report dealt with complaints by the Police Association (NSW) of improper use by the Commission Of lawfully intercepted

1/5

CR-04 AD

Inspector of the Police Integrity Commission  
GPO Box 5215, Sydney NSW 2001  
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telephone conversations. In that correspondence I sought the advice of the DPP as to whether, in light of my opinions as to a breach of that legislation, proceedings should be commenced by the DPP against the Commission or any officer thereof. The advice subsequently conveyed to me by letter from the CDPP was to the effect that in his opinion there was no reasonable prospect of securing a conviction against the Police Integrity Commission or any of its officers under section 105 of that legislation in respect of the publication by the Commission of the material the subject of the complaint.

- 140) As also noted in my 2010 Annual Rep<sup>011</sup>(page 17) I had of my own initiative "commenced an investigation into the circumstances in which the Commission published in that [Mallard] Report, the telephone conversations of certain persons together with the identity and personal details of those persons, apparently on the basis that such persons were parties to a telephone conversation with a person being investigated by the Commission, and also details sufficient to identify another person referred to in those conversations together with potentially adverse material relating to that person." **Subsequently, I completed my investigation and produced a Report detailing my findings and recommendations. That Report appears in the Schedule to this Annual Report and is also available on the Inspector's website- [www.inspectorpic.nsw.gov.au](http://www.inspectorpic.nsw.gov.au).**
- 141) For convenience, I include below the following summary of the background to and the conclusions reached in that Report, including paragraphs 1-7 of my Report.

- 1) *The Police Integrity Commission's Operation Mallard Report was presented to the NSW Parliament in December 2007, and thereupon made a public document, on the recommendation of the Commission.*
- 2) *Contained in that Report is a considerable amount of material comprising personal details concerning two persons identified therein as Quenten Roberts and Michelle Roberts, neither of whom was at any time under investigation by the Commission, nor was either called as a witness by the Commission during the conduct of the Mallard hearings. There*

*is also material concerning a person identified in the Report only, and unceremoniously, as "Purcell's ex-wife" who falls into the same category, although such material is confined to one subject matter of narrow compass.*

- 3) *In fact, the only reason Mr and Ms Roberts were identified in the Commission's public Report, together with the personal details pertaining to them, was that each participated in telephone conversations with, and at the behest of, the then Superintendent Purcell of NSW Police, who was under investigation by the Commission at that time, which telephone calls were lawfully intercepted by the Commission pursuant to telephone intercept warrants obtained by the Commission.*
- 4) *However, unlike the Roberts, the woman referred to as "Purcell's ex-wife" was not, as will appear below, a party to any such lawfully intercepted telephone conversation, her involvement resting on the even more tenuous basis that she was so-described when mentioned in relation to a lawfully intercepted telephone call between Purcell and another police officer. Nevertheless, personal details concerning her were published by the Commission in its Mallard Report.*
- 5) *These personal details were among those also published about these three persons during the Commission's public hearings, which took place on 30-31 May, and, in particular, on 1 June 2007, when the telephone calls between Purcell and each of the Roberts were played in full so as to be audible to those in the hearing room, and the text thereof displayed on a public monitor (subject in each case to deletions made by the Commission relating to other persons mentioned therein), and when portion of the content of the telephone conversation referred to above, in respect of "Purcell's ex-wife", was put to Purcell by Counsel Assisting during Purcell's examination.*

6) *Transcripts and the audio-tapes relating to the telephone calls involving the Roberts, were then provided by the Commission to the representatives of the Media present in the hearing room. None of this material was at any time sought to be retrieved by the Commission from these recipients, and no restriction was placed by the Commission on the use to which this material might be put by them.*

7) *In my opinion, the overall effect of the publication of the material in question, both in the public hearing and in the subsequent Report, because of the nature of that material, and the construction that might not unreasonably be placed upon it, was capable of damaging the interests and reputations of the three persons publicly identified in this manner.*

142) I concluded that the Commission had published concerning those three persons, without their knowledge or consent, highly personal information which was capable of causing each of them embarrassment, which was potentially prejudicial to their interests, and damaging to their integrity and reputations, and that there was *not the slightest justification* for the Commission's conduct in so doing.

143) Subsequently, I again sought the advice of the CDPP as to whether, in light of my opinions as to a breach of the TIA Act, proceedings should be commenced by the DPP against the Commission or any officer thereof. The advice subsequently conveyed to me by letter from the CDPP was to the same effect as the previous advice, namely, that in his opinion there was no reasonable prospect of securing a conviction against the Police Integrity Commission or any of its officers under that legislation.

144) The gravamen of that and the previous advice seems to be that the CDPP takes the view that the question of the relevance to an investigation of lawfully intercepted material gathered by the Police Integrity Commission is a matter solely for the Commission to determine, and that the issue of whether in the circumstances the Commission ought to have excised the offending material did not bear on whether an offence had been committed.

145) This situation in my opinion gives rise to a most unsatisfactory state of affairs. As the extracts published by the Commission from the lawfully intercepted conversations identified in my two Reports demonstrate, in my opinion, the Commission in each case published personal details of and or derogatory references to a number of persons arising out of the intercepted telephone conversations. That material was entirely irrelevant to the Commission's investigation. The Commission nevertheless published that irrelevant material to the potential detriment of the interests and reputations of those involved.

146) Yet it appears that such persons are left without remedy or protection under that legislation or any other law.

Yours sincerely,



The Hon P J Moss, QC  
Inspector of the Police Integrity Commission

# Chapter Three – Answers to Questions on Notice – Former Inspector

## Responses to Questions on Notice – 7 November 2011

### Principal functions of the Inspector

**Question A:** You have mentioned at paragraph 26 of the annual report that one of the Inspector's 'limitations' is its inability to conduct a merits review of matters considered by the Commission. In your opinion, is there scope for the Inspector to have a merits review function, or should its role be purely one of process and propriety?

**Inspector's response to A:** I used the word "limitations" in paragraph 25 of my 2011 Annual Report in the context of the Inspector's functions. I did not mean to suggest in paragraph 26 that I was of the view the Inspector should have a power to conduct a "merits review" of the opinions of the Commission as expressed in Reports to Parliament arising out of the Commission's investigations. I would see such a function as undermining the central role of the Commission in making such Reports to Parliament. It is also difficult to envisage how the Inspector could ever be in a position to conduct such a "merits review" not having carried out the relevant investigation or seen and heard the relevant witnesses give evidence.

**Question B:** At paragraph 56 of the annual report, you note that you have discussions with the Acting Commissioner concerning the question of timeliness and the allocation of resources to ensure a proper discharge of the Commission's statutory responsibility. In your experience, in what timeframe has the Commission usually conducted an inquiry? Is there an unsatisfactory turnover of complaint matters and, if so, is this a matter of limited resources, insufficient processes or both?

**Inspector's response to B:** The time taken by the Commission to conduct and complete an inquiry involving public hearings varies considerably depending on the nature of the inquiry and other factors, including, given the particular procedures adopted by the Commission, the timely discharge by Counsel Assisting of his/her functions, especially once the hearings have concluded. As to the time taken to deal with substantial complaints against the Commission, this is complicated by factors such as when, in relation to the matters complained of, the particular complaint was received by the Inspector. However, generally speaking, I think the process of obtaining a response from the Commission to such complaints once the Commission has been notified

## Responses to Questions on Notice – 7 November 2011

by the Inspector of particulars of the complaint, has been satisfactory in all the circumstances.

### **Advice from the Commonwealth Director of Public Prosecutions**

Following from your 2010 Annual Report, in your 2011 Annual Report you have indicated that the advice from the Commonwealth Director of Public Prosecutions in relation to the relevance to an investigation of lawfully intercepted material gathered by the Police Integrity Commission is a matter solely for the Commission to determine, and that the issue of whether in the circumstances the Commission ought to have excised the offending material did not bear on whether an offence had been committed. At paragraph 142, you note that highly personal information of three individuals was published. You also note that this information was capable of causing each of them embarrassment and was potentially prejudicial to their interest and damaging to their integrity and reputations without justification. Further, at paragraph 146 you have noted that these individuals are left without remedy or protection under legislation or any other law.

**Question C: Are there any recommendations you would make in relation to amendments to the legislation to rectify this lack of remedy and protection?**

**Inspector's response to C:** As a result of receiving notice of this Question from the Committee, I forwarded to the Commonwealth Attorney-General a copy of the item, referred to above, from my Annual Report, and requested that the Attorney give consideration as to whether, in the light of my comments, it seemed to him an amendment to the TIA Act was desirable.

### **Publishing of Complaint Reports in the appendix of the Annual Report**

**Question D: Have you previously published Complaint Reports that uphold the decisions of the Commission?**

**Inspector's response to D:** Each Annual Report includes a Section containing a reference to all complaints against the Commission received during the relevant period. Where a complaint is dismissed, as the majority have been, the fact that the complaint was dismissed and the grounds on which it was dismissed, are published in the Annual Report. Where I have taken the view, in dismissing such complaints,



### Responses to Questions on Notice – 7 November 2011

that the circumstances justify the preparation of a full and detailed Report explaining the facts and the reasons for the dismissal of the particular complaint, I have made and published a full Report: see, eg, the Complaint Reports dismissing two complaints by former NSW senior police officers in the Schedule to my 2009 Annual Report.

**Question E: Have you considered the impact on the public's perception of the Commission of omitting to publish such Complaint Reports?**

**Inspector's response to E:** See Inspector's response to D.

## Chapter Four – Answers to Further Questions on Notice – Current Inspector



NEW SOUTH WALES

*Inspector  
of the  
Police Integrity Commission*

Our Ref: 2012/03  
Your Ref: LAC12/008

20 June 2012

The Hon Catherine Cusack MLC  
Committee Chair  
Committee on the Office of the Ombudsman and Police Integrity Commission  
Parliament of New South Wales  
Macquarie Street  
**SYDNEY NSW 2000**

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

Dear Ms Cusack,

I refer to your letter of the 4 June 2012.

I am grateful for the extension of time in which to provide answers to the Further Questions on Notice.

I enclose my responses and accompanying documentation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Levine', enclosed in a rectangular box.

The Hon David Levine AO RFD QC  
Inspector: PIC

REPORT ON THE TWELFTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE  
INTEGRITY COMMISSION  
ANSWERS TO FURTHER QUESTIONS ON NOTICE – CURRENT INSPECTOR

PARLIAMENT OF NSW  
COMMITTEE OF THE OFFICE OF THE OMBUDSMAN & POLICE INTEGRITY

COMMISSION FURTHER QUESTIONS ON NOTICE

**Funding**

- i. *In response to question on Notice 4, you indicated that a review of the budget may be necessary after you have settled into your position. Do you have a time frame in mind for this?*

**Answer**

I do not have a precise time frame in mind. The information available to me in the barest of outlines (which is all I presently require) and provided by the Chief Financial Officer of DPC is that the financial budget for 2011-12 is \$353,268.00. In the scheme of things I would regard this amount as being minimalist. There may be factors that will impact upon the budget:

First, the relocation of the offices of the Inspectorate to Bligh House by the end of July 2012. This will no doubt affect so much of the budget which is allocated to the payment of commercial rent. The second matter which could impact upon the budget is the necessity to employ either on a part or full time basis an additional member of staff. The nature and volume of the work of the Inspectorate since I commenced on the 1 February 2012 have not indicated that there is any necessity for either a full or part time additional member of staff. I have made an informal arrangement with the office of the Crown Solicitor that in the event that I require legal advice I may approach a member of the staff of that office who will decide whether or not that the Crown Solicitor can handle the matter. In the event that the Crown Solicitor cannot, I will then use what I understand to be a protocol via DPC for the engagement of independent legal advice. Hitherto the necessity to take such a step has not arisen. A third area that may affect budget will be the acquisition of a sophisticated telephone system and digital recording devices. The costs have yet to be explored.

I may well be in a better position to provide further information on budgetary matters early in 2013, that is after I have been in Office for 10 months.

**Planning and Transition**

- ii. *Are there any concerns raised by the previous Inspector that you have decided either to pursue or not to pursue?*

**Answer**

I have been working on the basis that the 2012 amendments to the Police Integrity Commission Act 1996 have addressed concerns raised by my predecessor.

There is one matter which I gather agitated my predecessor and that was in relation to the *Telecommunications (Interception and Access Act 1979) (Commonwealth)* I attach a letter he wrote to the then Commonwealth Attorney-General The Hon Robert McClelland dated 4 November 2011. I further attach communications from Ms Kathryn Ovingham of the Attorney-General's Department of the Commonwealth and my responses to Ms Ovingham. This is the only other matter of which I am conscious that was an issue raised by my predecessor and which I have addressed.

Task Force Emblems

- iii.
- (a) *Under what function, as set out in Section 89 of the Police Integrity Commission Act are you conducting your work on the referral to you of aspects of the Task Force Emblems?*
  - (b) *If this work is not captured by the functions under s 89, upon what basis are you performing these tasks?*
  - (c) *If this work is not captured by the function under s 89,*
    - i. *What protection or indemnities attach to you while you perform this work?*
    - ii. *What capacity do you have to report to Parliament as the results of your work?*
- iv. *If you are conducting an Inquiry under s217 of the Police Act, how do you have jurisdiction for the purposes of this Inquiry over,*
- (a) *PIC officers*
  - (b) *Officers or employees of the Crime Commission relating to events over a decade ago?*

Answer

The issues raised in these questions occurred to me after receipt by me of a request by the Minister for Police under section 217 of the Police Act. I was referred to a request made by the then Minister for Police (Mr Costa) in 2002 under the same section to my predecessor, the Hon Mervyn Finlay QC. There is no evidence that the issues raised in the questions you have asked concerned the Hon Mervyn Finlay QC who proceeded to provide a Report to the then Minister for Police. Although the issues raised by the Questions have occurred to me, and indeed concern me, I have adopted the following approach.

I am prepared to approach the reference from the current Police Minister on the same basis as my predecessor the Hon Mervyn Finlay QC to ensure that the 'Taskforce Emblems' matter (which has at least a 12 year history) be brought to finality. I do not consider it to be in the public interest, with respect, that my efforts to achieve this outcome be thwarted by undue technical jurisdictional issues not least because of the time that has passed. If I am able to achieve some finality and it is then discovered that I did so without jurisdictional power, then so be it. The alternative, being stymied into doing little or nothing is not, to my mind, acceptable. I can indicate that each of the entities referred to in Questions iii. and iv. have themselves expressed a willingness to cooperate with me in providing information to enable the preparation of my Report to the Minister. This approach I can well understand might be considered to be unorthodox in some quarters but it is for a desirable end in my respectful view.

That is as far as I am prepared to proceed in answer to the Questions at this stage.

- v. *Have you considered seeking Crown Solicitor advice on the above issues (items iii, iv and v)?*

Answer

Yes and I shall do so. When I shall do so, I do not quite know however I think I can safely say that by the time I have completed writing the Report I will be better placed properly to instruct the Crown Solicitor as to the matters on which I wish to receive his advice.

20 June 2012



The Hon David Levine AO RFD QC  
Inspector: PIC



***Inspector  
of the  
Police Integrity Commission***

Our Ref: CR 04-AD

4 November 2011

The Hon Robert McClelland MP  
Attorney-General  
Parliament House  
BARTON ACT 2600

Dear Attorney-General,

Re: *Telecommunications (Interception and Access) Act (1979)*

- 1) I have set out below, for your interest, paragraphs 139-146 from my 2011 Annual Report tabled in the NSW Parliament on 11 October 2011.
- 2) That material will no doubt speak for itself, and I need not comment further upon it.
- 3) In view of my conclusions stated in paragraphs 145-146, it occurred to me that you may wish to consider amending the legislation to overcome the problems identified by me in that material.

ADVICE FROM THE COMMONWEALTH DIRECTOR OF  
PUBLIC PROSECUTIONS

139) As noted in my 2010 Annual Report (page 17), I wrote to the Commonwealth DPP in respect of the apparent breaches by the Commission of the *Telecommunications (Interception and Access) Act (1979)* (Cth), identified in my Report dated 28 January 2010 (published on the Inspector's website). My Report dealt with complaints by the Police Association (NSW) of improper use by the Commission of lawfully intercepted

telephone conversations. In that correspondence I sought the advice of the DPP as to whether, in light of my opinions as to a breach of that legislation, proceedings should be commenced by the DPP against the Commission or any officer thereof. The advice subsequently conveyed to me by letter from the CDPP was to the effect that in his opinion there was no reasonable prospect of securing a conviction against the Police Integrity Commission or any of its officers under section 105 of that legislation in respect of the publication by the Commission of the material the subject of the complaint.

140) As also noted in my 2010 Annual Rep<sup>011</sup>(page 17) I had of my own initiative "commenced an investigation into the circumstances in which the Commission published in that [Mallard] Report, the telephone conversations of certain persons together with the identity and personal details of those persons, apparently on the basis that such persons were parties to a telephone conversation with a person being investigated by the Commission, and also details sufficient to identify another person referred to in those conversations together with potentially adverse material relating to that person." **Subsequently, I completed my investigation and produced a Report detailing my findings and recommendations. That Report appears in the Schedule to this Annual Report and is also available on the Inspector's website- [www.inspectorpic.nsw.gov.au](http://www.inspectorpic.nsw.gov.au).**

141) For convenience, I include below the following summary of the background to and the conclusions reached in that Report, including paragraphs 1-7 of my Report.

1) *The Police Integrity Commission's Operation Mallard Report was presented to the NSW Parliament in December 2007, and thereupon made a public document, on the recommendation of the Commission.*

2) *Contained in that Report is a considerable amount of material comprising personal details concerning two persons identified therein as Quenten Roberts and Michelle Roberts, neither of whom was at any time under investigation by the Commission, nor was either called as a witness by the Commission during the conduct of the Mallard hearings. There*

REPORT ON THE TWELFTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE  
INTEGRITY COMMISSION

ANSWERS TO FURTHER QUESTIONS ON NOTICE – CURRENT INSPECTOR

*is also material concerning a person identified in the Report only, and unceremoniously, as "Purcell's ex-wife" who falls into the same category, although such material is confined to one subject matter of narrow compass.*

- 3) *In fact, the only reason Mr and Ms Roberts were identified in the Commission's public Report, together with the personal details pertaining to them, was that each participated in telephone conversations with, and at the behest of, the then Superintendent Purcell of NSW Police, who was under investigation by the Commission at that time, which telephone calls were lawfully intercepted by the Commission pursuant to telephone intercept warrants obtained by the Commission.*
- 4) *However, unlike the Roberts, the woman referred to as "Purcell's ex-wife" was not, as will appear below, a party to any such lawfully intercepted telephone conversation, her involvement resting on the even more tenuous basis that she was so-described when mentioned in relation to a lawfully intercepted telephone call between Purcell and another police officer. Nevertheless, personal details concerning her were published by the Commission in its Mallard Report.*
- 5) *These personal details were among those also published about these three persons during the Commission's public hearings, which took place on 30-31 May, and, in particular, on 1 June 2007, when the telephone calls between Purcell and each of the Roberts were played in full so as to be audible to those in the hearing room, and the text thereof displayed on a public monitor (subject in each case to deletions made by the Commission relating to other persons mentioned therein), and when portion of the content of the telephone conversation referred to above, in respect of "Purcell's ex-wife", was put to Purcell by Counsel Assisting during Purcell's examination.*

6) *Transcripts and the audio-tapes relating to the telephone calls involving the Roberts, were then provided by the Commission to the representatives of the Media present in the hearing room. None of this material was at any time sought to be retrieved by the Commission from these recipients, and no restriction was placed by the Commission on the use to which this material might be put by them.*

7) *In my opinion, the overall effect of the publication of the material in question, both in the public hearing and in the subsequent Report, because of the nature of that material, and the construction that might not unreasonably be placed upon it, was capable of damaging the interests and reputations of the three persons publicly identified in this manner.*

142) I concluded that the Commission had published concerning those three persons, without their knowledge or consent, highly personal information which was capable of causing each of them embarrassment, which was potentially prejudicial to their interests, and damaging to their integrity and reputations, and that there was *not the slightest justification* for the Commission's conduct in so doing.

143) Subsequently, I again sought the advice of the CDPP as to whether, in light of my opinions as to a breach of the TIA Act, proceedings should be commenced by the DPP against the Commission or any officer thereof. The advice subsequently conveyed to me by letter from the CDPP was to the same effect as the previous advice, namely, that in his opinion there was no reasonable prospect of securing a conviction against the Police Integrity Commission or any of its officers under that legislation.

144) The gravamen of that and the previous advice seems to be that the CDPP takes the view that the question of the relevance to an investigation of lawfully intercepted material gathered by the Police Integrity Commission is a matter solely for the Commission to determine, and that the issue of whether in the circumstances the Commission ought to have excised the offending material did not bear on whether an offence had been committed.



REPORT ON THE TWELFTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE  
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ANSWERS TO FURTHER QUESTIONS ON NOTICE – CURRENT INSPECTOR

- 145) This situation in my opinion gives rise to a most unsatisfactory state of affairs. As the extracts published by the Commission from the lawfully intercepted conversations identified in my two Reports demonstrate, in my opinion, the Commission in each case published personal details of and or derogatory references to a number of persons arising out of the intercepted telephone conversations. That material was entirely irrelevant to the Commission's investigation. The Commission nevertheless published that irrelevant material to the potential detriment of the interests and reputations of those involved.
- 146) Yet it appears that such persons are left without remedy or protection under that legislation or any other law.

Yours sincerely,



The Hon P J Moss, QC  
Inspector of the Police Integrity Commission

**PIC\_Inspector - Ovington, TSLB to Inspector PIC - Request for comments - use of lawfully intercepted information in public hearings [SEC=UNCLASSIFIED]**

**From:** "Ovington, Kathryn" <Kathryn.Ovington@ag.gov.au>  
**To:** "pic\_inspector@dpc.nsw.gov.au" <pic\_inspector@dpc.nsw.gov.au>  
**Date:** 29/03/2012 4:28 PM  
**Subject:** Ovington, TSLB to Inspector PIC - Request for comments - use of lawfully intercepted information in public hearings [SEC=UNCLASSIFIED]  
**CC:** "Whitaker, Susan" <susan.whitaker@ag.gov.au>, "Kelly, Wendy" <Wendy.Kelly@ag.gov.au>

**UNCLASSIFIED**

Dear Inspector

I work in the Telecommunications and Surveillance Law Branch of the Attorney-General's Department and we are currently developing amendments to the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

With changes to the technological and structural nature of the telecommunications industry, law enforcement and security agencies are facing increasing challenges to their capability to undertake telecommunications interception. In response the Department is reviewing the operation of the TIA Act. This project is being conducted within Government and we have approval for limited in-confidence consultation with Government agencies and Departments as well as selected industry participants. Within New South Wales, the Department has had similar discussions through pre-existing forums with New South Wales Police, the Police Integrity Commission, the Independent Commission Against Corruption and the Crime Commission.

Your predecessor, the Hon PJ Moss QC, wrote to the former Attorney-General, the Hon Robert McClelland MP, on 4 November 2011 to express concern about the disclosure of certain lawfully intercepted conversations in hearings by the Police Integrity Commission. In the former Inspector's view, the material was irrelevant to the Commission's investigation and publication was to the potential detriment of the interests and reputations of those involved.

The use of lawfully intercepted information (LII) in public hearings is and will remain a contentious area. The Department would like to ensure that existing powers are unaffected as much as possible going forward while balancing privacy interests and ensuring public confidence in the regime. Accordingly, the Department is considering an option to maintain the status quo enabling the use of LII in public hearings (that are not prosecutions) but to require the head of that agency to approve the use of LII in a public hearing prior to a hearing occurring. In making a decision to approve the use of LII in a public hearing, the head of the agency may be required to have regard to:

- the value of the LII to the investigation
- the potential damage that public disclosure could have on any person, including their reputation
- whether the public disclosure of the LII will assist in the investigation, and
- the gravity of the offence under investigation

The agency head's power to make such a decision may be supported by an ability to impose restrictions on the publication of any evidence.

We consider that including such requirements on the face of the TIA Act would create a national approach.

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page 2 of 2

In addition, we propose that this approach would add integrity by assuring the public that decisions to use LII in public proceedings are considered at the highest level within agencies.

We seek your comments on this proposal, on an in-confidence basis, in light of the comments made by your predecessor on this issue.

Kind regards

Kathryn Ovington  
Senior Legal Officer  
Telecommunications and Surveillance Law Branch  
Tel: 02 6141 3059 / mob: 0439 575 352

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COMMITTEE ON THE OMBUDSMAN, THE POLICE INTEGRITY COMMISSION AND THE CRIME COMMISSION

ANSWERS TO FURTHER QUESTIONS ON NOTICE – CURRENT INSPECTOR

Page 1 of 1

**PIC\_Executive - Email TSLB to Inspector PIC [SEC=UNCLASSIFIED]**

**From:** "Ovington, Kathryn" <Kathryn.Ovington@ag.gov.au>  
**To:** PIC\_Executive PIC\_Executive <PIC\_Executive@dpc.nsw.gov.au>  
**Date:** 4/04/2012 4:08 PM  
**Subject:** Email TSLB to Inspector PIC [SEC=UNCLASSIFIED]  
**CC:** "Whitaker, Susan" <susan.whitaker@ag.gov.au>, "Kelly, Wendy" <Wendy.Kelly@ag.gov.au>

**UNCLASSIFIED**

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Thank you inspector.

Kind regards

**Kathryn Ovington**  
Senior Legal Officer  
Telecommunications and Surveillance Law Branch  
Tel: 02 6141 3059 / mob: 0439 575 352

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**From:** PIC\_Executive PIC\_Executive [mailto:PIC\_Executive@dpc.nsw.gov.au]  
**Sent:** Wednesday, 4 April 2012 3:35 PM  
**To:** Ovington, Kathryn  
**Subject:** [SEC=UNCLASSIFIED]

Dear Ms Ovington

Thank you for your email of 29 March 2012. I shall attend to the matters raised as soon as I can.

Yours sincerely

The Hon David Levine AO RFD QC  
Inspector PIC

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REPORT ON THE TWELFTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE  
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Page 1 of 1

**PIC\_Inspector - T(I & A) Act 1979 - Comment [SEC=UNCLASSIFIED]**

**From:** PIC\_Inspector  
**To:** Kathryn.Ovington@ag.gov.au  
**Date:** 20/04/2012 12:08 PM  
**Subject:** T(I & A) Act 1979 - Comment [SEC=UNCLASSIFIED]

Dear Ms Ovington,

I refer to your email re the subject seeking my comments on the disclosure of lawfully intercepted conversations.

There is an initial matter that is puzzling me; it is either simple, complex or its solution is staring me in the face.

S.63 (1) refers to "...subsection 7(1)". There are similar references to "subsection 7(1)" in , for example, S63A(1)(c) and S63B(1) and (2).

My query is: "subsection 7(1)" of what Section?

OR, are the references to " subsection 7(1)" to be understood as references to *Section 7 (1)* of the Act?

Or is it something else altogether?

Please do feel free to help me in any way you consider appropriate.

Yours sincerely,

**The Hon David Levine AO RFD QC**  
Inspector - Police Integrity Commission  
NSW Department of Premier & Cabinet  
GPO Box 5215 Sydney NSW  
T: 9232 3350 F: 8243 9471  
E: [pic\\_inspector@dpc.nsw.gov.au](mailto:pic_inspector@dpc.nsw.gov.au)

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**PIC\_Inspector - Email PIC Inspector to TSLB - T(I & A) Act 1979 - Comment [SEC=UNCLASSIFIED]**

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**From:** "Ovington, Kathryn" <Kathryn.Ovington@ag.gov.au>  
**To:** PIC\_Inspector PIC\_Inspector  
<PIC\_Inspector@dpc.nsw.gov.au>  
**Date:** 20/04/2012 3:26 PM  
**Subject:** Email PIC Inspector to TSLB - T(I & A) Act 1979 - Comment [SEC=UNCLASSIFIED]  
**CC:** "Whitaker, Susan" <susan.whitaker@ag.gov.au>

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**UNCLASSIFIED**

Dear Inspector

I can see that these references can be confusing. It is a usage that we have probably adopted from our parliamentary drafting colleagues. They refer to section x, subsection x(1), paragraph x(1)(b), subparagraph x(1)(b)(i) and so on.

Yes, as you say the references to subsection 7(1) are to be understood as references to section 7(1) of the Act.

Incidentally, I am out of the office next week. If you are sending any comments next week, would it be possible for you to email my Director Susan Whitaker at [susan.whitaker@ag.gov.au](mailto:susan.whitaker@ag.gov.au). I will put her contact details in my out of office message in any event.

Kind regards, Kathryn

Kathryn Ovington  
Senior Legal Officer  
Telecommunications and Surveillance Law Branch  
Tel: 02 6141 3059 / mob: 0439 575 352

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**From:** PIC\_Inspector PIC\_Inspector [mailto:PIC\_Inspector@dpc.nsw.gov.au]  
**Sent:** Friday, 20 April 2012 12:08 PM  
**To:** Ovington, Kathryn  
**Subject:** T(I & A) Act 1979 - Comment [SEC=UNCLASSIFIED]

Dear Ms Ovington,

I refer to your email re the subject seeking my comments on the disclosure of lawfully intercepted conversations.

There is an initial matter that is puzzling me; it is either simple, complex or its solution is staring me in the face.

S.63 (1) refers to "....*subsection 7(1)*". There are similar references to "subsection 7(1)" in , for example,

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REPORT ON THE TWELFTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE  
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ANSWERS TO FURTHER QUESTIONS ON NOTICE – CURRENT INSPECTOR

Page 1 of 1

**PIC\_Inspector - T(I&A) Act 1979 - Comment**

**From:** PIC\_Inspector  
**To:** kathryn.ovington@ag.gov.au [SEC=UNCLASSIFIED]  
**Date:** 21/05/2012 4:03 PM  
**Subject:** T(I&A) Act 1979 - Comment

Thank you for your email of the 20 April 2012.

My present position is this; I have read the communication from my predecessor to the then Commonwealth Attorney-General, The Hon Robert McClelland MP dated the 4 November 2011. I have also had regard to what my predecessor wrote in his 2010 Annual Report as set out in his communication of the 4 November 2011.

It is not to be taken that by having had regard to them, I am necessarily in agreement with them or would have taken the same steps as my predecessor.

I agree with the observations generally in your communication dated 29 March 2012. The area certainly is contentious and there are of course competing areas of public interest to be served, protected and reconciled if necessary.

Presently, I am *not* of the view that a LII should lose its immunity because it is 'irrelevant' the more so if found to be irrelevant by someone such as an Inspector rather than the particular body conducting the inquiry in which evidence of the LII emerges.

This leads me to state expressly that I agree, at this point of time, that the status quo should be maintained in relation to the use of LII in public hearings but that the head of the relevant agency should have power relating to approval of the use of LII in public hearings even if, on the strictest legal basis, there may well be an argument that it is 'irrelevant', provided the matters to which you refer are properly balanced.

Certainly the agency's head should have power to impose restrictions on disclosure and to publish public disclaimers and the like.

It goes without saying that a national approach is highly desirable.

I regret I cannot expand further on the matter, except to say that I would not necessarily taken the same course as my predecessor with the utmost respect to him and further that the overall approach outlined in your communication of 29 March 2012 is one with which I am in essential agreement.

Yours sincerely

**The Hon David Levine AO RFD QC**  
Inspector - Police Integrity Commission  
GPO Box 5215 Sydney NSW  
T: 9232 3350 F: 8243 9471  
E: [pic\\_inspector@dpc.nsw.gov.au](mailto:pic_inspector@dpc.nsw.gov.au)

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**PIC\_Inspector - RE: Email Inspector PIC to Ovington, TSLB - T (I&A) Act 1979 - Comment - use of LII in public hearings [SEC=UNCLASSIFIED]**

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**From:** "Ovington, Kathryn" <Kathryn.Ovington@ag.gov.au>  
**To:** PIC\_Inspector PIC\_Inspector  
<PIC\_Inspector@dpc.nsw.gov.au>  
**Date:** 23/05/2012 9:03 AM  
**Subject:** RE: Email Inspector PIC to Ovington, TSLB - T(I&A) Act 1979 - Comment - use of LII in public hearings [SEC=UNCLASSIFIED]  
**CC:** "Whitaker, Susan" <susan.whitaker@ag.gov.au>, "Kelly, Wendy" <Wendy.Kelly@ag.gov.au>, "Woodley, Stuart" <Stuart.Woodley@ag.gov.au>

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**UNCLASSIFIED**

Thank you Inspector for your comments on this issue.

Your input, and consideration of your predecessor's comments, are both greatly appreciated.

Kind regards, Kathryn

**Kathryn Ovington**  
Senior Legal Officer  
Telecommunications and Surveillance Law Branch  
Tel: 02 6141 3059 / mob: 0439 575 352

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**From:** PIC\_Inspector PIC\_Inspector [mailto:PIC\_Inspector@dpc.nsw.gov.au]  
**Sent:** Monday, 21 May 2012 4:03 PM  
**To:** kathryn.ovington@ag.gov.au [SEC=UNCLASSIFIED]  
**Subject:** Email Inspector PIC to Ovington, TSLB - T(I&A) Act 1979 - Comment - use of LII in public hearings

Thank you for your email of the 20 April 2012.

My present position is this; I have read the communication from my predecessor to the then Commonwealth Attorney-General, The Hon Robert McClelland MP dated the 4 November 2011. I have also had regard to what my predecessor wrote in his 2010 Annual Report as set out in his communication of the 4 November 2011.

It is not to be taken that by having had regard to them, I am necessarily in agreement with them or would have taken the same steps as my predecessor.

I agree with the observations generally in your communication dated 29 March 2012. The area certainly is contentious and there are of course competing areas of public interest to be served, protected and

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REPORT ON THE TWELFTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE  
INTEGRITY COMMISSION

ANSWERS TO FURTHER QUESTIONS ON NOTICE – CURRENT INSPECTOR

Page 2 of 2

reconciled if necessary.

Presently, I am *not* of the view that a LII should lose its immunity because it is 'irrelevant' the more so if found to be irrelevant by someone such as an Inspector rather than the particular body conducting the inquiry in which evidence of the LII emerges.

This leads me to state expressly that I agree, at this point of time, that the status quo should be maintained in relation to the use of LII in public hearings but that the head of the relevant agency should have power relating to approval of the use of LII in public hearings even if, on the strictest legal basis, there may well be an argument that it is 'irrelevant', provided the matters to which you refer are properly balanced.

Certainly the agency's head should have power to impose restrictions on disclosure and to publish public disclaimers and the like.

It goes without saying that a national approach is highly desirable.

I regret I cannot expand further on the matter, except to say that I would not necessarily taken the same course as my predecessor with the utmost respect to him and further that the overall approach outlined in your communication of 29 March 2012 is one with which I am in essential agreement.

Yours sincerely

**The Hon David Levine AO RFD QC**  
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## Chapter Five – Transcript of proceedings

**NOTE:** The general meeting with the Inspector of the Police Integrity Commission was held at Parliament House, Macquarie Street, Sydney on 21 May 2012.

**DAVID DANIEL LEVINE**, AO, RFD, QC, Inspector of the Police Integrity Commission, affirmed and examined:

**CHAIR:** Welcome to this hearing. Before proceedings commence I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment. If your phone is on silent, please switch it off completely. I declare open the hearing in relation to the review of the Inspector of the Police Integrity Commission Annual Report for the year ended 30 June 2011. It is a function of the Committee on the Office of the Ombudsman and the Police Integrity Commission to examine each annual report and other reports of the Inspector of the Police Integrity Commission and report to both Houses of Parliament in accordance with section 95 (1) (c) of the Police Integrity Commission Act 1996. The Committee welcomes the Inspector of the Police Integrity Commission. I convey the thanks of the Committee for your appearance here today. Can I clarify this point: You have returned answers to questions on notice from the Committee; are you happy for those answers to be published?

**Mr LEVINE:** Yes.

**CHAIR:** The Committee has received a detailed response from you and the previous inspector to its questions on notice. I understand that those responses can form part of the evidence today and be made public.

**Mr LEVINE:** Yes.

**CHAIR:** I understand that you would like to make an opening statement before the commencement of questions and that you would like this portion of the hearing to be conducted in camera.

**Mr LEVINE:** Yes please.

**CHAIR:** I ask that the room be cleared. Under the legislation witnesses are entitled to request in-camera hearings.

**CHAIR:** First of all, can I just thank people in the public gallery for your consideration of closing the hearing. The Committee is appreciative. We welcome the inspector and we are very eager to have a positive relationship with him.

We will now move to the formal part, which is the questions and I might ask Mr Lynch to commence questions to the inspector.

**Mr PAUL LYNCH:** I understand from the media that you have had referred to yourself the issue of the report of Task Force Emblems. Is that correct, has it been referred to you?

**Mr LEVINE:** What has been referred to me is connected, as far as I understand it, with Task Force Emblems and it was referred to me towards the end of the week before last.

**Mr PAUL LYNCH:** What has been referred to you then?

**Mr LEVINE:** As I have not read it all yet I cannot answer you because I do not quite understand what the material is about. But as far as I can indicate what has been referred to me, it is a bundle of material that relates to a first investigation which I believe might have been initiated in 1998 during the course of which, as I understand it so far, the Crime Commission obtained – to use a general phrase – a surveillance warrant from the Supreme Court in which apparently in excess of 100 names appeared. The name of the operation the Crime Commission was conducting I have seen, but presently escapes me.

**Mr PAUL LYNCH:** Can I interpose, is it perhaps Mascot?

**Mr LEVINE:** Thank you. Consequent upon the issue by the Supreme Court of a warrant, complaints were made I think on behalf of the Police Association to the Commissioner of Police, who initiated what is now known as the Emblems Inquiry. The warrant issued by the Supreme Court was issued in 2000 and as far as I am aware anything in connection with either Mascot or Emblems, for reasons unknown to me, if it be the fact, came to an end in 2006, and the issue has only now just been revived and the Minister has asked me to look at it and I have looked at the bundle of papers and for me to say very much more than that would be imprudent because there is some of it that even as a matter of language I simply do not understand.

**Mr PAUL LYNCH:** Excepting that it is, by the sounds of it, quite early days for you, have you formed a view about the possible release of the taskforce report?

**Mr LEVINE:** No.

**Mr PAUL LYNCH:** It is clear I think from what you have said though that the behaviour complained of was by someone at the Crime Commission?

**Mr LEVINE:** If I am correct in my understanding that the applicant for the warrant was the Crime Commission and the application to the Supreme Court was in the usual form, it would have involved supporting material lodged with the judge of the Supreme Court by the Crime Commission.

**Mr PAUL LYNCH:** And the Emblems report or the Emblems taskforce is a police taskforce and therefore the report is a police document?

**Mr LEVINE:** As far as I understand, yes.

**Mr PAUL LYNCH:** The interesting thing that strikes me is that if you are the Inspector of the Police Integrity Commission whose job it is to look after the Police Integrity Commission why has it been referred to you to look after or to inquire into things that do not seem to be directly related to the Police Integrity Commission?

**Mr LEVINE:** I think that one answer is that the Minister has the power under section 217 of the Police Act to refer it to me and my knowledge of the history of the matter is that it

has been referred to me as it was referred to a prior inspector in 2002, and it was the Hon. Mervyn Finlay, QC. Why it has been referred in a general sense, that is pure speculation on my part.

**CHAIR:** Can I just clarify: what did the Minister ask you to do?

**Mr LEVINE:** To give consideration as to whether or not the Task Force Emblems' report, which I hasten to add I am having some difficulty in identifying discretely what documents constitute it, should be the subject of release, what public interest would be served by its release, what public interest would be prejudiced by its release and I suppose to use the jargon whether there would be any added value in the release of whatever that taskforce report is.

**CHAIR:** What sort of volume of documents are we talking about?

**Mr LEVINE:** Two centimetres thick.

**CHAIR:** So it is a fairly substantial task?

**Mr LEVINE:** Yes.

**CHAIR:** Do you have the resources to undertake that?

**Mr LEVINE:** I am the only present resource and I first have to read, disseminate and understand everything that has been given to me. I can do that, and then I will decide whether I need any further information, if I can obtain further information as a matter of law, as a matter of fact and as a matter of utility, but I have nowhere near reached that point because I have not finished reading it. It is as simple as that.

**Mr KEVIN ANDERSON:** Did the Minister give you a time line in which to respond to looking into the report?

**Mr LEVINE:** No. No, I have no recollection of a time being fixed.

**Mr PAUL LYNCH:** In terms of the opportunity you have had to date to look at the material, can you determine whether copies of the original affidavits requesting the warrants are contained in the bundle?

**Mr LEVINE:** Affidavits in support of a warrant application from my own judicial experience have a sanctity attached to them that even when I was a judge of the Supreme Court was often beyond my comprehension and what became of them after a warrant was either issued or declined remains to me to this day unknown. I can say to you that my perusal of that bundle indicates that no such affidavits are included in it.

**CHAIR:** Is it possible to make an assessment without the affidavits?

**Mr LEVINE:** Possible, anything is possible, yes. Yes, I will say it is possible.

**CHAIR:** The absence of the affidavits actually seems to have become the issue itself so whose responsibility would it be, if anybody is to be able to access those affidavits?

**Mr LEVINE:** The only way I can answer that at the moment is: whoever has what appears to be an absolute veto over their disclosure waiving that right and that would be at least the Crime Commissioner. It may well be that in my consideration of such documents that I have received that I will have to consider the question of access to the affidavits.

**Mr PAUL LYNCH:** Can you determine as yet whether Task Force Emblems had access to the affidavits?

**Mr LEVINE:** No, I cannot determine that.

**Mr KEVIN ANDERSON:** In your opinion why do you think there is so much interest in relation to the suppression of this document and the reports relating to it?

**Mr LEVINE:** I am not sure whether I can answer that. The interest might be political in which case I have no interest in that as a reason. I am of course instinctively alert to the fact that this a very, very old matter and naturally I am conscious of the issue, which might be summed up by saying, "Why now?" If it died, as it presently appears to have on the little I have read of it, in 2006, why is it that six years later is it being revived, I ask rhetorically?

**CHAIR:** Have you seen the resolutions of the recent Police Association conference in relation to this matter?

**Mr LEVINE:** Only as reported in the press.

**CHAIR:** I just wondered if you had any response to that.

**Mr LEVINE:** I cannot stress how early the days are in relation to this.

**CHAIR:** Yes.

**Mr PAUL LYNCH:** One of the comments made by a previous inspector was—to paraphrase—that he thought that the fact that there were 114 names referred to in an application and 116 when the warrant was issued was a fairly minor matter. Have you formed a view as to whether you agree with that?

**Mr LEVINE:** The previous inspector to whom you are referring is the Hon. Mervyn Finlay.

**Mr PAUL LYNCH:** Yes. It was referred to by the Hon. Morris Ireland in his report.

**Mr LEVINE:** I do not recall seeing any report by the Hon. Morris Ireland. I do recall reading about that difference in numbers and I recall that Mervyn Finlay did not consider it to be of much significance. It would be a very unusual state of affairs for me to dissent from any view expressed by someone as eminent as the Hon. Mervyn Finlay.

**Mr PAUL LYNCH:** I do not think this has been asked, but do you have any sense of how long it will take for you to finalise the Minister's request?

**Mr LEVINE:** To be frank, no.

**Mr PAUL LYNCH:** When you have completed it I would be fascinated to know your view of how doing this work fits into any of your principal functions in accordance with the legislation.

**Mr LEVINE:** With respect, it would be a matter of great interest to me as well.

**CHAIR:** I refer you to correspondence to Minister Costa from the Hon. Mervyn Finlay—that is, a letter dated 29 April 2002 under the reference C-0702-AR. There is an issue on which I would like your comment, either now or on notice, relating to the Listening Devices Act. He suggests that he has Crown Solicitor's advice that a warrant can be issued in relation to a person even though that person is not under suspicion of having committed any crime and not even suspected of having any knowledge about any crime that has been committed or will be committed; that is, it is still valid to issue a warrant for them to be covered by a listening device. That astounded me in terms of the limits on issuing warrants for listening devices. Do you have any comment and is it still the case?

**Mr LEVINE:** I cannot say whether it is still the law because a new Act has been passed since the Listening Devices Act was enacted. I think I am sensible of what you are getting at. Correct me if I am putting words in your mouth, but the issue is whether or not the mere fact that a person is named in a warrant, either as a matter of law or by rational inference from the naming, is in some way infected by that fact that the person is named. I understand that there are probably arguments for and against that proposition. My reading thus far has planted the seed in my mind of the view that the mere naming of a person by itself in the warrant should not lead to that conclusion. My recollection of what I have read is that Mervyn Finlay had the benefit of advice from the Solicitor-General, Mr Sexton, along those lines. At this point in time I am inclined to agree, although my mind is otherwise open until I can assimilate all the material.

**CHAIR:** I understand that that inference should not be made legally and that is the legal position. However, for officers and civilians named in those warrants that is not the public position. That seems to be the issue here.

**Mr LEVINE:** I understand that.

**CHAIR:** It is not a legal issue but an issue of the impact it has had on people's reputations.

**Mr LEVINE:** I understand that that is the matter that concerns the Police Association. I can understand why that might concern that association or anyone who finds out that their name is on a warrant issued by the Supreme Court under the Listening Devices Act. That would be a natural human reaction, I suppose.

**CHAIR:** A tremendous shock?

**Mr LEVINE:** Yes, for some.

**CHAIR:** We look forward to the progress of your inquiries. I am eager to assure you of the Committee's support if you feel you need access to independent legal advice, which you do not appear to have at the moment.

**Mr LEVINE:** That has been exercising my mind. If I need it, I will commence the process of asking for it.

**Mr KEVIN ANDERSON:** Given your propensity for protracted unfinished past matters to be resolved, and you appear to have a rather large one in front of you notwithstanding others that you would be looking at as well, do you think it would be timely to second staff given the interest in this issue? Would that ensure a timely resolution given that people's reputations are hanging in the balance?

**Mr LEVINE:** In relation to the Strike Force Emblems matters?

**Mr KEVIN ANDERSON:** Yes.

**Mr LEVINE:** I would be happy to think about the secondment of staff, but I would need time to determine the nature and function of that staff. Only I can read the material. I am yet to determine whether I want any further material. Let us say that I have everything that is lawfully and legally available to me, I will then consider what resources I need to answer the Minister's inquiries and to address the issues raised by this Committee.

**CHAIR:** We understand that the whole idea of the Police Integrity Commission and its activity is to enhance the Police Service.

**Mr LEVINE:** Yes.

**CHAIR:** When an activity appears to be diminishing the service, causing rancour and dragging on for as long as this has, I think I speak for all members of the Committee when I say we are anxious to have it resolved and to assist you in any way we can. Please do not hesitate to let the Committee know if it can be of assistance.

**Mr LEVINE:** I certainly will not hesitate.

**Mr PAUL LYNCH:** Once again, subject to what opportunities you have to look at material, Strike Force Emblems was not an investigation into the Police Integrity Commission; it was an investigation into police officers or the Crime Commission.

**Mr LEVINE:** I do not know. I do not know in the sense that I am not prepared to say yes, it was into X, or yes, it was into Y, or no, it was not into Z. It was an investigation by the then police commissioner flowing from complaints to him by people who, I gather through their industrial organisation or otherwise, learned that they had been named in the warrant. That is as far as I can go and am prepared to go.

**Mr PAUL LYNCH:** It would obviously be a matter of considerable concern to people around this table and elsewhere if the police were investigating the Police Integrity Commission, but I dare say we will have to wait until the conclusion of your work to be certain of that fact.

**Mr LEVINE:** I might be naive because of many reasons, one of which is having only been in this part-time job since 1 February, but I can assure you that it never occurred to me—and I perhaps should thank you for raising it—that this is an exercise in the police investigating

the Police Integrity Commission or its inspector, which would be an extraordinary state of affairs.

**CHAIR:** Thank you for answering those questions, which are of intense public interest.

**The Hon. SARAH MITCHELL:** I refer you to some of the responses you gave to questions provided on notice. Of particular interest to me, you talked about assessing the necessity of both the Police Integrity Commission and the inspectorate, and I was hoping you could elaborate this morning on how you plan to do this and what factors you take into account.

**Mr LEVINE:** That would be a long-term exercise. I must say that it is at least interesting that if something happens involving the police there appear to be so many avenues for investigation and complaint and examination. The Police Integrity Commission and its inspectorate evolved, as we know, from the Wood royal commission, which commenced early in the 1990s and involved police culture at that time, historically and of course since. The proposition that interests me, and which I included in my answer to the question, is that in 20 years I am sure there have been changes in the culture of the police and an understanding of the need for integrity and transparency. Whilst I am not troubled, I am intrigued by events being the subject of examination by X under the supervision of Y, which might end up in the hands of Z. That is not fair either to the police involved or to the respective examining bodies. It might be that over the next three to five years, or however long I am in office, or my successor is in office, the whole nature of this area of governance will have to be re-examined. Do we really need, in relation to the police, so many interested bodies? That is all I meant by that answer, and I cannot provide the answer.

**CHAIR:** They would often end up investigating each other.

**Mr LEVINE:** Yes.

**CHAIR:** Have you contemplated what sort of process could be put in place to achieve a rationalisation of governance arrangements?

**Mr LEVINE:** Only very superficially. A distinction I think must always be drawn between police conduct which might be described as incompetent but not necessarily improper or corrupt merely because the police are involved in a certain incident. A mechanism of identifying the true nature of that in terms of whether it is corrupt and improper or merely an accident or bad luck or an operational mishap might have to be drawn a lot earlier, and thus would facilitate a very quick examination and resolution of any issue. They seem to blur at times and merely because X happens the worst is thought and conclusions are leaped to too quickly.

**CHAIR:** The word "integrity" is a very powerful word, is it not?

**Mr LEVINE:** Yes.

**CHAIR:** An inquiry into someone's integrity by an integrity body may not be appropriate if, as you say, someone has just made a mistake, which we all make. Are you suggesting a gatehouse approach?



**Mr LEVINE:** Possibly, but then who is the gatekeeper? That is another problem. Should it be a senior police officer or someone else? At present my view is that the current structure leads to more questions than answers and in due course I would hope to be able to re-examine or examine the total structure, and I will do so with the assistance of my colleagues, whether they be the Ombudsman or the Independent Commission against Corruption or anyone else. That is the end objective I have. I have to read the papers in the matter we have been talking about. Prioritising is difficult.

**Mr PAUL LYNCH:** Can I suggest, if you are going to look at those issues, the statutory review of the Police Integrity Commission Act, which is on the Department of Premier and Cabinet website, is not a bad place to start. It canvasses the arguments, and there was an inquiry by this Committee about six or seven years ago that goes through all of those arguments as well.

**Mr KEVIN ANDERSON:** Do you think that the community has lost a little faith in terms of the issues we are talking about, police investigating police and making sure that everyone is taken care of to a certain degree? Do you think there needs to be that independent body that is quite separate? I know you are talking about giving thought to a gatehouse process, but is the community asking what is the point? If the fox is in the henhouse, they are talking to each other.

**Mr LEVINE:** Has there been a loss of community confidence in the police? As a general proposition, I do not believe so. I think we would be at the point of anarchy if there was community-wide want of confidence in our police force. Our police force does not deserve that view being held by the community at large—might I make that clear. The police investigating itself is not an objectionable state of affairs in circumstances where the criteria for such an investigation are clearly established, and that forms part of what I was talking about before that might require examination and greater definition. It is no different to the judiciary examining itself through the Judicial Commission of New South Wales—judges judging judges, but they are the criteria fairly well established and the occasion is rare. But I do not think it is fair, with respect either to the community or to the police, to say that there has been generally a lack of confidence merely because the police often investigate themselves. It would be unfair to say that, the more so because for the past 20 years we have had a royal commission and the existence of the Police Integrity Commission and the Ombudsman to whom people can complain. So I suppose in the end I am saying no to your question.

**Mr PAUL LYNCH:** Is it not the sign of a corruption-resistant organisation that it can investigate itself? Should not one of the aims be to have a police service that is sufficiently corruption free that it can quite easily and properly and with everyone's confidence investigate itself?

**Mr LEVINE:** Yes. In a perfect world that would be wonderful but we do not live in a perfect world. A corruption-free police service would not require self-examination on corruption issues because it begs the question but a corruption-free police service could well examine itself as to technical or operational competence, for example, that does not involve notions of corruption.

**CHAIR:** I think the issue of biggest concern perhaps is the innocent police officer who is falsely accused. Is there a process that has sufficient integrity to make an outcome that is in a

timely way that he can have his reputation intact and continue on, because all the integrity organisations seems to be—

**Mr LEVINE:** I am glad you have raised that because I have not been asked or I did not feel there was any room otherwise to comment, but in the short time I have been in this office the progress of matters has at times been glacial and that is fair neither to any victim nor to the complainant. As in other areas of law and governance, promptitude to attain finality is vital and I must say that I have been struck by how long things seem to take. That does not mean that if they were done quickly they would be done in a better or worse way; it might be attributable to the fact that some of the officers are part time and some are not, all sorts of reasons. But I think the desirable end in the public interest is for prompt, thorough and final disposal of such issues.

**CHAIR:** The Emblems case is an example where one strike force leads to another strike force leads to another strike force—I mean, the code names over the years—and there seems to be no outcome. Here you are today having a bundle of papers given to you because of the inability of the system to achieve an outcome. I guess, putting the issues of Emblems aside, that is an unsatisfactory process for the police and for the community.

**Mr LEVINE:** Yes, it is. About the Emblems matter, I am prepared to say this, if I have not already said it. I am troubled by the fact that something that appears to have commenced in 1998 died in 2006 and is now revived. Whatever I have to do, I will do it in accordance with my statutory obligations and duties, but I am human like everyone else and I just look back at this and say, "Why now?" The end might have to be determined provided it is determined lawfully, but what value is the best value in any outcome?

**Mr PAUL LYNCH:** It is no secret that the relationship between the previous inspector and the Police Integrity Commission was poisonous. It seems to me there was a lot more aggravation in there than you would expect from the normal tension between an agency and the oversight body. My questions are these: Where do you think the fault lay in that? Secondly, perhaps more importantly, what do you think needs to be done to make sure that relationship does not deteriorate back to the way it was?

**Mr LEVINE:** That is the relationship between my predecessor and the Police Integrity Commission?

**Mr PAUL LYNCH:** Yes.

**Mr LEVINE:** You describe it as poisonous. That is different to it being described as toxic, the more popular word. I am not prepared to concede that it was that. I do not know that. I happen to know Mr Cripps and I have known Mr Cripps all my professional life and have had some prior acquaintance with Mr Moss. I have seen in published reports that I have had an occasion to read some certainly very strong language used by one about the other but that is the past. You now have a new Police Integrity Commissioner, you now have a new inspector. There have been some legislative changes. There might be legislative changes affecting the New South Wales Crime Commission. I think all of that, being new and being fresh, will be good. Of course I know the new Police Integrity Commissioner and have known him for some decades since he first appeared before me as a Crown prosecutor yonks ago. To the extent that we are friends, it was a friendship based purely on a professional acquaintance. I have the

utmost respect for him and I hope that that is reciprocated. Thus far our contact has been minimal but cordial, and that is how I anticipate it will continue.

**CHAIR:** Thank you. That brings our questioning to a close. If the Committee has further questions, would you be willing to take them on notice?

**Mr LEVINE:** Yes.

**CHAIR:** Before we close, I will ask the Committee to agree to a motion that, with the exception of those parts of the *Hansard* marked in camera, those parts of the transcript available for the public and the answers to questions on notice be published subject to corrections?

**Motion agreed to.**

**(The witness withdrew)**

**(Short adjournment)**

## Appendix One – List of Witnesses

21 May 2012, Waratah Room, Parliament House

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Witness

Organisation

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The Hon David Levine AO RFD QC  
Inspector of the Police Integrity Commission

Inspectorate of the Police Integrity Commission

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## Appendix Two – Extracts from Minutes

### MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 5)

10:00am, Wednesday, 19 October 2011

Room 1254, Parliament House

#### Members Present

Mr Evans (acting Chair), Ms Mitchell, Mr Park and Mr Searle.

#### Apologies

An apology was received from Ms Cusack, Mr Lynch and Mr Anderson.

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#### 5. Public Hearing with the Inspector of the Police Integrity Commission and visit to the Information and Privacy Commission

The Committee resolved on the motion of Mr Searle to note the Public Hearing with the Inspector of the Police at 2pm on Monday 7 November 2011, followed by a visit to the Information and Privacy Commission departing Parliament House at 3:15pm on 7 November 2011.

The Committee resolved on the motion of Mr Park to invite the Acting Commissioner of the Police Integrity Commission to a Public Hearing to be held on a date as soon as convenient, and after 7 November 2011.

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### MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 6)

3:00pm, Wednesday, 7 November 2011

Waratah Room, Parliament House

#### Members Present

Mr Evans (acting Chair), Mr Anderson, Mr Lynch, Ms Mitchell, Mr Park and Mr Searle.

#### Apologies

An apology was received from Ms Cusack.

.....

### 3. Correspondence

- (i) Resolved on the motion of Ms Mitchell that the Inspector's answers to questions on notice form part of the Inspector's formal evidence at the 12<sup>th</sup> meeting between the Inspector and the Committee in circumstances where the Inspector seeks to table said answers.
- (ii) Resolved on the motion of Ms Mitchell that the Inspector's response to the PIC Special Report form part of his formal evidence during the 12<sup>th</sup> meeting between the Inspector and the Committee in circumstances where the Inspector seeks to table said answers.

### 4. Review of questions to be asked of the PIC Inspector at the Hearing

The Committee noted the draft questions.

### 5. Public Hearing with the Inspector of the Police Integrity Commission and visit to the Information and Privacy Commission

Resolved on the motion of Ms Mitchell to defer the Public Hearing with the Inspector of the Police Integrity Commission at 2pm on Monday 7 November 2011 to another date and time.

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 7)

1:15pm, Monday, 21 November 2011

Room 1254, Parliament House

### Members Present

Mr Evans (acting Chair), Mr Lynch, Ms Mitchell, Mr Park and Mr Searle.

### Apologies

Apologies were received from Mr Anderson and Ms Cusack.

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### 3. Questions on notice to the Inspector of the PIC

Resolved, on the motion of Mr Lynch:

'That the Committee request that the Inspector of the PIC provide written responses to the circulated questions, under cover of the circulated draft letter.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 9)

10:03AM, Wednesday, 22 February 2012  
Room 1136, Parliament House

### Members Present

Ms Cusack (Chair), Mr Anderson , Ms Mitchell, Mr Park and Mr Searle

### Apologies

Apologies were received from Mr Lynch and Mr Evans

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### 3. Public Hearings

Resolved on the motion of Ms Mitchell:

'That the Committee hold public hearings on the 21 May 2012 with the following

- Commissioner of the Police Integrity Commission
- The Inspector of the Police Integrity Commission
- The NSW Ombudsman, in his capacity as Ombudsman
- The NSW Ombudsman in his capacity as Convenor of the Child Death Review Team
- The Information Commissioner
- The Privacy Commissioner;

And inform the above mentioned of the proposed 21 May public hearing date'.

Resolved on the motion of Ms Mitchell:

'That the Committee staff members prepare an explanation of the remit of this Committee.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 10)

10:00AM, Wednesday, 28 March 2012  
Room 1254, Parliament House

### Members Present

Ms Cusack (Chair), Mr Anderson , Mr Evans, Mr Lynch and Mrs Mitchell

### Apologies

Apologies were received from Mr Park and Mr Searle

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### 3. General Meetings – 21 May 2012

The Chair noted the upcoming meetings with the Information Commissioner, the Deputy Privacy Commissioner, the Inspector of the Police Integrity Commission and the Commissioner of the Police Integrity Commission on 21 May 2012.

Resolved, on the motion of Mr Anderson:

'That the Committee endorse the draft questions on notice to be sent to the Information and Privacy Commission, the Inspectorate of the Police Integrity Commission and the Police Integrity Commission.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 11)

10:00AM, Wednesday, 9 May 2012

Room 1153, Parliament House

### Members Present

Ms Cusack (Chair), Mr Anderson , Mr Park and Mrs Mitchell

### Apologies

Apologies were received from Mr Lynch and Mr Searle

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### 3. General Meeting – 21 May 2012

The Chair noted that the Committee has the answers to the Questions on Notice from the Inspector of the Police Integrity Commission and the Commissioner of the Police Integrity Commission and the Information and Privacy Commissioner.

The Chair noted the draft questions without notice for the upcoming meeting.

Resolved, on the motion of Mr Park:

'To endorse the draft timetable for the General Meeting.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 12)

09:30am, Monday, 21 May 2012

Waratah Room, Parliament House



## Members Present

Ms Cusack (Chair), Mr Evans (Deputy Chair), Mr Anderson , Mr Lynch and Mrs Mitchell

## Apologies

Apologies were received from Mr Park and Mr Searle

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## 2. General Meetings – 21 May 2012

Members noted the briefing packs that related to each General Meeting.

Members resolved, on the motion of Mrs Mitchell:

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'That Ms Deborah Rogers, the Executive Assistant to the Inspector of the Police Integrity Commission be permitted to be present throughout the General Meeting with the Inspector of the Police Integrity Commission on 21 May 2012.'

The Committee adjourned at 09:45am until:

The Committee convened a General Meeting with the Inspector of the Police Integrity Commission at 10:00am. The public and media were admitted.

Mr David Levine, Inspector of the Police Integrity Commission, was affirmed and examined.

Resolved on the motion of Mr Lynch to commence the hearing *in camera*. The Chair ordered that the room be cleared.

The in camera session completed, the public were admitted to the room.

Mr Levine agreed to take further questions from the committee on notice.

Evidence completed, Mr Levine withdrew.

Resolution –

On the motion of Mr Anderson,

'With the exception of those parts of the *Hansard* marked in-camera, the transcript be made available to the public and answers to questions on notice be published subject to corrections.'

*Mr Evans joined the Hearing*

The Committee adjourned at 11:00am .....

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 14)

10:00am, Wednesday, 15 August 2012

Room 1254, Parliament House

## Members Present

Ms Cusack (Chair), Mr Evans (Deputy Chair), Mr Anderson, Mr Lynch, Mrs Mitchell, Mr Park and Mr Searle

## Apologies

An apology was received from Mr Park

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## 4. General Meetings and answers to further questions on notice

Members noted the circulated answers to further questions on notice received from the Police Integrity Commission, the Inspector of the Police Integrity Commission, the Information and Privacy Commission and the Ombudsman.

Resolved, on the motion of Mr Anderson:

'That the answers to further questions on notice received from the Police Integrity Commission, the Inspector of the Police Integrity Commission and the Information and Privacy Commission be published and made available on the Committee website.'

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## MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 21)

3:30 PM, Monday, 10 December 2012

Room 1153, Parliament House

## Members Present

Ms Cusack (Chair) and Mr Searle

Via teleconference: Mr Anderson, Mr Evans, Mr Lynch, Mrs Mitchell and Mr Park

Staff in attendance: Rachel Simpson, Emma Matthews, Hilary Parker, Todd Buttsworth and Rohan Tyler

The meeting commenced at 3:33 PM.

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## 2. Consideration of the Chair's draft reports – Review of Annual Reports following General Meetings on 21 May 2012 and 18 June 2012

Members noted Standing Order 301(3) in relation to report consideration, and resolved on the motion of Mrs Mitchell:

'That the Committee consider each of the Annual Report Reviews in globo.'

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In relation to Report 3/55: *Twelfth General Meeting with the Inspector of the Police Integrity Commission*, resolved on the motion of Mr Anderson:

- that the draft Report be the Report of the Committee and that it be signed by the Chair and presented to the House;
- that the Chair and the Secretariat be permitted to correct stylistic, typographical and grammatical errors; and
- that, once tabled, the Report be placed on the Committee's website.

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The Committee thanked the secretariat for its assistance in the preparation of the reports.

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