



# NSW Legislative Council Hansard

## Police Integrity Commission Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 1 March 2005.

### Second Reading

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [2.46 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

#### Leave granted.

I am pleased to introduce the Police Integrity Commission Amendment Bill 2004.

The Government established the Police Integrity Commission (PIC) in 1996 in response to recommendations by the Wood Royal Commission.

The Royal Commission identified systemic corruption within NSW Police and found deficiencies with existing oversight mechanisms.

The Government accepted the Royal Commission's recommendation that a permanent independent body be established to detect, investigate and prevent serious police misconduct and corruption.

In order to fulfil the tasks set out for it, the PIC was given broad ranging oversight and investigation powers.

The PIC's role in the detection, investigation and prevention of serious police misconduct and corruption remains as vital today as it was at the time of the Royal Commission's recommendation.

The reforms proposed in this Bill have come about as a result of the review of the Police Integrity Commission Act.

As is now common, the Act required that its policy objectives and terms be reviewed five years after its assent.

I am pleased to report that the review found that the Act, and the PIC in giving effect to its provisions, has proved effective in detecting, investigating and preventing police corruption and other serious police misconduct.

The review did identify a number of potential improvements to the legislation.

This Bill gives effect to the recommended amendments.

The Bill seeks to amend the Police Integrity Commission Act 1996 so as to:

- (a) confirm the independence and accountable nature of PIC;
- (b) enable a jury to convict a person who has made conflicting statements of which at least one must be false;
- (c) enable the Police Integrity Commission (PIC) to communicate information to the Commissioner of Police on the understanding that the information is confidential;
- (d) replace the requirement for the PIC Commissioner to obtain the Minister's concurrence when authorising a police officer to exercise any investigative, surveillance or enforcement functions under the PIC Act with a requirement that the PIC Inspector be notified of the authorisation;
- (e) enable the PIC to dispose of certain documents and things in accordance with the directions of a Local Court;
- (f) provide for the service of documents by fax and by e-mail; and
- (g) provide for a further review of the PIC Act at the end of five years from the date of assent to the proposed Act.

The Bill also amends the *Police Act 1990* to require the Commissioner of Police to consult with the PIC or Ombudsman, as the case requires, before taking management or disciplinary action against a police officer who is the subject of a complaint being dealt with by either of those bodies.

I would now like to take the opportunity to address some of the reforms in more detail.

#### INDEPENDENCE AND ACCOUNTABILITY

The Bill proposes to give greater prominence to PIC's independence and accountability.

The amendments recognise that PIC's independence from the NSW Police is not commonly understood in the broader community and, given the importance of this distinction, specifically acknowledges this independence by clarifying the principal objects of the Act.

### **DISPOSAL OF DOCUMENTS**

Schedule 1, clause [2] of the Bill will enable the PIC to seek the directions of a local court in connection with the disposal of documents and things seized pursuant to a warrant in the course of its investigations.

The PIC's current inability to dispose of these items means that it is required to hold onto inadmissible and prima facie illegal material dating back to the Wood Royal Commission, including drugs and child pornography.

This material should be destroyed.

### **SECRECY PROVISIONS**

Currently, information that PIC refers to NSW Police or other agencies for investigation or action is automatically subject to secrecy provisions.

These provisions prevent the recipient from recording or further disclosing this information unless the PIC Commissioner or Inspector provides specific permission.

The automatic application of this provision may impede an agency from efficiently and effectively investigating matters.

Schedule 1, clauses [3] and [4] resolves this situation by providing that the secrecy provisions do not apply to referred material unless PIC specifically advises that they do.

### **CONFLICTING STATEMENTS**

The courts have held that, where a person makes conflicting statements when providing evidence to PIC or the PIC Inspector, the prosecution must specify which of the two items of inconsistent evidence is false.

This presents a difficulty in obtaining a conviction for giving false statement of evidence under the existing arrangements as it is often not possible to know which statement is false.

Accordingly, Schedule 1 [5] applies the provisions of the *Crimes Act 1900* that relate to perjury and false statements when false evidence is given to PIC or the PIC Inspector.

This will enable a jury to convict a person who made conflicting statements before the PIC of which at least one was false, even if it is not known which statement is false.

### **MINISTERIAL CONSENT**

The Act currently requires the Minister to agree before a police officer can carry out any investigative, surveillance or enforcement functions for PIC purposes.

These matters are operational in nature and should not require Ministerial consent. Arrangements that would require the concurrence of the Minister or the Commissioner of Police before a police officer can perform investigative functions on behalf of the PIC could hinder timeliness and effectiveness of an operation.

The Bill introduces a requirement for the PIC Commissioner to notify the PIC Inspector of the granting of any such authorisation.

This recognises the important oversight role of the Inspector, who is well placed to inquire into and monitor the exercise of the power.

### **CHANGES TO POLICE ACT 1990**

The Police Integrity Commission Act and Police Act 1990 prevent the Commissioner of Police from taking disciplinary action against members of NSW Police who are subject of PIC or Ombudsman investigations, as the case may be, unless either of those bodies consent, or are at the very least are consulted. The consent requirements interfere with the ability of the Commissioner of Police to properly manage NSW Police.

The Bill removes this consent requirement.

In cases where an officer is subject to either an investigation by PIC or the Ombudsman, the Commissioner of Police may take appropriate criminal, dismissal or other management action against that officer following consultation with either the PIC Commissioner or Ombudsman.

### **CONCLUSION**

In conclusion, this Bill will ensure that there continues to be appropriate independent and accountable oversight of police conduct in New South Wales.

The proposed amendments will enable PIC to carry out its important functions in the most effective and efficient way possible.

I commend the Bill to the House.