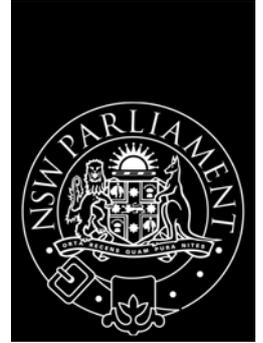


PARLIAMENT OF NEW SOUTH WALES



# Committee on the Office of the Ombudsman and the Police Integrity Commission

## REPORT ON THE EIGHTH GENERAL MEETING WITH THE INSPECTOR OF THE POLICE INTEGRITY COMMISSION

---

Incorporating answers to questions on notice,  
transcript of evidence and minutes of proceedings

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Committee on the Office of the Ombudsman and the Police Integrity Commission.**

Report on the Eighth General Meeting with the Inspector of the Police Integrity / Committee on the Office of the Ombudsman and the Police Integrity Commission. [Sydney, N.S.W.] : the Committee, 2008. – 119 p. ; 30 cm. (Report ; no. 1/54).

Chair: Angela D'Amore, MP.  
"March 2008".

ISBN 19781921012594

1. Police corruption—New South Wales.
- I. Title
- II. D'Amore, Angela.
- III. New South Wales. Police Integrity Commission.
- IV. Series: New South Wales. Parliament. Committee on the Office of the Ombudsman and the Police Integrity Commission. Report ; no. 54/1

353.46 (DDC)

## Table of Contents

Membership & Staff .....	iii
Functions of the Committee.....	v
Chair's Foreword .....	vii
<b>CHAPTER ONE - COMMENTARY .....</b>	<b>1</b>
<b>CHAPTER TWO - QUESTIONS ON NOTICE AND ANSWERS.....</b>	<b>5</b>
Inspector of the Police Integrity Commission Annual Report 2006-07 .....	5
Inspector of the Police Integrity Commission Annual Report 2005-06.....	19
Additional response to questions on notice.....	23
<b>CHAPTER THREE - TRANSCRIPT OF PROCEEDINGS .....</b>	<b>25</b>
<b>APPENDICES .....</b>	<b>37</b>
<b>APPENDIX 1 – COMMITTEE MINUTES.....</b>	<b>39</b>
<b>APPENDIX 2 - ANSWERS TO QUESTIONS TAKEN ON NOTICE .....</b>	<b>41</b>
Misconduct risk assessment: counter-terrorism policing.....	41
Outstanding PIC recommendations made pursuant to either section 173 or 181D of the Police Act 1990 .....	51
Memoranda of understanding/PIC and other agencies.....	59
Assessment of time elapsing between completion of PIC hearings and date of relevant reports.....	105
<b>INDEX.....</b>	<b>109</b>



## Membership & Staff

<b>Chair</b>	Ms Angela D'Amore MP, Member for Drummoyne
<b>Members</b>	Mr Peter Draper MP, Member for Tamworth Mr Malcolm Kerr MP, Member for Cronulla Mr Paul Pearce MP, Member for Coogee (Deputy Chair) Ms Sylvia Hale MLC The Hon Charlie Lynn MLC The Hon Lynda Voltz MLC
<b>Staff</b>	Ms Pru Sheaves, Committee Manager Ms Samantha Ngui, Senior Committee Officer Mr Jonathan Elliott, Research Officer Ms Hilary Parker, Committee Officer Ms Nina Barrett, Assistant Committee Officer
<b>Contact Details</b>	Committee on the Office of the Ombudsman and the Police Integrity Commission Parliament of New South Wales Macquarie Street Sydney NSW 2000
<b>Telephone</b>	02 9230 2737
<b>Facsimile</b>	02 9230 3052
<b>E-mail</b>	ombopic@parliament.nsw.gov.au
<b>URL</b>	www.parliament.nsw.gov.au



## Functions of the Committee

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

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

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

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

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- to exercise any function referred to in subsection (1) in relation to any report under section 27; or
- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or
- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.

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

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

Functions of the Committee

- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;
- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and
- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

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

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or
- to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

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

- (1) The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.
- (5) In this section, a reference to the Minister is;
  - (a) in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
  - (b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and
  - (c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*.

## Chair's Foreword

This report on the Eighth General Meeting with the Inspector of the Police Integrity Commission marks two occasions for the Committee. The public meeting with the Inspector was the first opportunity for the Committee to exercise its oversight role since the commencement of the 54<sup>th</sup> Parliament.

The Eighth General Meeting was also the first formal meeting of the Committee with the Inspector since his appointment in November 2006 following the resignation of the Hon James Wood AO QC.

The General Meetings are a valuable tool for the Committee to perform its work of monitoring and reviewing the functions of the Police Integrity Commission. The Inspector is uniquely placed to assist the Committee in this work and the Committee took the opportunity to question him on a wide range of issues.

The Committee regards the Inspector's role as vital in overseeing the Police Integrity Commission and welcomed Mr Moss's observations after his first year of office. The issues raised by the Inspector have been given careful consideration by the Committee and will be raised with the Police Integrity Commission during the Tenth General Meeting with the Police Integrity Commission in March 2008.

Finally I would like to thank the Members of the Committee for their participation in the General Meeting and their contribution to the reporting process. The Committee's report is a consensus document which represents the bipartisan and constructive approach taken by Members of the Committee to the exercise of its oversight role.

Angela D'Amore MP  
Chair



## Chapter One - Commentary

- 1.1 On 8 November 2007, the Committee conducted the Eighth General Meeting with the Inspector of the Police Integrity Commission, the Hon Peter Moss QC. This meeting was the first meeting between the Committee and the Inspector, following both the March 2007 election and Mr Moss's appointment to the position of Inspector in November 2006.
- 1.2 As part of the process of preparing for the General Meeting, the Committee sent questions on notice to the Inspector about matters raised in his most recent Annual Report for the year ending 30 June 2007, as well as in the Annual Report of the former Inspector, the Hon James Wood AO QC, and the Inspector's responses can be found at Chapter Two of this report.
- 1.3 Evidence was taken from the Inspector on 8 November 2007 in relation to his most recent Annual Report for the year ending 30 June 2007. The Committee's examination also included questions about current issues relevant to the Inspector's oversight of the Commission. The commentary that follows focuses on a number of issues discussed with the Inspector at the General Meeting, in particular the ability of the Commission to oversight police investigations and the suggestion that a review of the Commission would be timely.

### **Ability of the PIC to oversight police investigations**

- 1.4 The ability of the Police Integrity Commission to oversight police investigations was a matter raised by the Inspector in his Annual Report for 2006-2007. The Inspector commented on page 17 of his Annual Report that '...the circumstances surrounding the overlooking of the complaint by the Commission highlighted the limitations placed by the legislation on the Commission's powers to oversight such Police investigations.'
- 1.5 When asked by the Committee in questions on notice to comment in general terms on how these legislative limitations can impact on an investigation by the PIC, the Inspector drew the Committee's attention to section 13 of the *Police Integrity Commission Act 1996*, which outlines the Commission's principal functions. Section 13(1)(b) of the Act provides that the Commission is 'to detect or investigate, or manage or oversee other agencies in the detection or investigation of, police misconduct.'
- 1.6 Section 12(3) defines 'managing' by the Commission as providing 'detailed guidance in the planning and execution of such detection or investigation.' Section 13(4) defines 'overseeing' as 'a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it.'
- 1.7 Section 13(5) states that 'In managing or overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such management or oversight is to be achieved by agreement. However, it is the duty of members of the NSW Police Force to co-operate with the Commission in the exercise of its management and oversight functions and any other functions of the Commission.'
- 1.8 During evidence before the Committee the Inspector stated:

...in my opinion the power of the Police Integrity Commission to oversight a relevant police investigation is unduly limited by the terms of the relevant section and certainly cannot be compared to the extent of the powers in that regard that the Ombudsman has under Part 8A of the Police Act.

- 1.9 However the Inspector also stated that his opinion was formed on the basis of one complaint oversighted by the Commission. The complainant in that particular case complained to the Inspector about the time taken to complete the investigation into his complaint. The Inspector concluded that there was no substance to the complaint and that the outcome of the investigation was correct. The Inspector gave evidence that he had not discussed this matter with the Police Integrity Commissioner, but that during correspondence regarding this particular complaint, the Commissioner did not seem to view it as a problem.
- 1.10 The Inspector has brought a serious matter to the attention of the Committee. While recognising the Commission is primarily an agency that conducts investigation into the most serious forms of police corruption, the Committee treats any suggestion that its powers are lacking with the utmost concern. This is a matter the Committee will be raising at its Tenth General Meeting with the Police Integrity Commission during the first session of Parliament in 2008.

## **A review of the Police Integrity Commission**

- 1.11 During the course of his evidence, the Inspector observed  
...the time may have come, given the length of time that it has been in operation, possibly to have a complete review of what it [the Police Integrity Commission] is there for. After all, I think it is at least ten years old and a lot has happened in those last ten years, as we all know, so possibly at some stage it would be useful for the function and the role of the Police Integrity Commission to be looked at.
- 1.12 It is worth noting that the Commission has been reviewed on a number of occasions during the past ten years. The *Police Integrity Commission Act 1996* was reviewed in 2001 in line with the standard five year review of legislation. A discussion paper from this review was tabled in Parliament on 17 December 2002. The practices and procedures of the Commission were reviewed by the then Inspector, the Hon Morris Ireland QC, who tabled a report in Parliament on 1 June 2003. The previous Committee conducted a ten year review of the police complaints system, which comprehensively examined both the role and function of the Commission. This report was tabled in Parliament on 21 November 2006.
- 1.13 On 16 September 2004, legislation amending the *Police Integrity Commission Act 1996* was introduced in the House which in part amended s146 of the Act to provide that the Act be reviewed again five years after the date of assent to the amendments, ie 10 March 2005. This review will be due during 2010. Depending on the response of the Commission, the issue of capacity to oversight complaints raised by the Inspector, may be a matter the Committee refers to that review.

## **Memoranda of understanding between the Police Integrity Commission and other investigative agencies**

- 1.14 The Inspector's answers to questions on notice highlighted a number of issues in relation to the various memoranda of understanding (MOU) between the Police Integrity Commission and its various operational partners. The Inspector reviewed 11

memoranda and found a high degree of variability amongst them. In some cases this was due to the MOU being established for a particular operation, or in relation to a particular piece of legislation such as the *Criminal Assets Recovery Act 1990* which is administered by the NSW Crime Commission.

- 1.15 However the Inspector found that a number of ongoing MOUs, such as those between the Commission and Austrac, the Independent Commission Against Corruption and the NSW Crime Commission had been outdated by subsequent changes in legislation, wide variability of the ability of the Police Integrity Commissioner to request information, and very limited recognition of the Inspector's powers of review. The exception to this is the MOU between the then Police Service and the Commission relating to data transfer which recognises the jurisdiction of the Inspector.
- 1.16 The Inspector's answers also include correspondence from the Commissioner of the Police Integrity Commission, which in part advises that a number of the MOUs have been updated or are in the process of being updated.
- 1.17 It is worth highlighting some aspects of the PIC Commissioner's correspondence in relation to MOUs. The Commissioner remarks that the MOU between the Commission and the NSW Crime Commission is being given further consideration following comments by the previous Committee that the MOU effectively made the PIC a junior partner to the Crime Commission. This comment rises from the clause in the MOU which states that the Commissioner of the Crime Commission may place a caveat on the use of relevant information by the PIC and that if that issue is unresolved, may be determined by the Commissioner of the Crime Commission. The Committee will seek advice from the PIC regarding the progress of their consideration of this aspect of the MOU.
- 1.18 The PIC Commissioner also advised the Inspector that he agreed it would be useful to include in each new MOU a provision noting the position of the Inspector and his access to and oversight of all aspects of the PIC's operations and records, including its dealings with other agencies. The Committee will seek advice at appropriate intervals from the Commission regarding the inclusion of this provision in its MOUs with other agencies.



## Chapter Two - Questions on Notice and Answers

### INSPECTOR OF THE POLICE INTEGRITY COMMISSION ANNUAL REPORT 2006-07

#### QUESTION ONE:

1. *Have you been able to confirm whether the Legal Representation Office still has approval to provide legal advice and representation for persons whose testimony at a formal hearing may warrant legal representation (AR p 8 par 28)?*

#### INSPECTOR'S RESPONSE TO QUESTION ONE:

At this stage I am awaiting a response from the Attorney-General to my letter to him dated 9 October 2007.

#### QUESTION TWO:

2. *You comment at page 17 (C18-05) of your report that:  
...the circumstances surrounding the oversighting of the complaint by the Commission highlighted the limitations placed by the legislation on the Commission's powers to oversight such Police investigations.*

*Are you able to comment in general terms on how these legislative limitations can impact on an investigation?*

#### INSPECTOR'S RESPONSE TO QUESTION TWO:

The statutory provision enabling the Commission to oversight other agencies is contained in Section 13 of the *Police Integrity Commission Act 1996*, which is in the following terms ---

- (1) *The principal functions of the Commission are as follows:*
  - (a) *to prevent police misconduct,*
  - (b) *to detect or investigate, or manage or oversee other agencies in the detection or investigation of, police misconduct,*
  - (d) *to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.*
- (2) *The Commission is, as far as practicable, required to turn its attention principally to serious police misconduct.*
- (3) *The reference in this section to "managing" other agencies in the detection or investigation of police misconduct is a reference to the provision by the Commission of detailed guidance in the planning and execution of such detection or investigation.*
- (4) *The reference in this section to "overseeing" other agencies in the detection or investigation of other police misconduct is a reference to the provision by the*

*Commission of a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it.*

- (5) *In managing or overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such management or oversight is to be achieved by agreement. However, it is the duty of members of the NSW Police Force to co-operate with the Commission in the exercise of its management and oversight functions and any other functions of the Commission.*
- (6) *However, nothing in subsection (2), (3), (4) or (5):*
- (a) affects the capacity of the Commission to exercise any of the functions as referred to in subsection (1), or*
  - (b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the Commission of any of those functions.*

In the context of the present question from the Committee, it may be of assistance if I set out portion of a letter dated 30 May 2007, written by myself to the Complainant in C18-05 ---

- 1) In the letter to me of 23 May 2007, the Commission emphasises that once the Commission placed the further investigation of your complaint into the hands of NSW Police, as it did by letter dated 14 November 2005, the role of the PIC was thereafter limited to "oversighting" the Police investigation of your complaint.*
- 2) However, it would appear to me that it is necessary and desirable to explore what "oversight" means in this context. That word would normally connote a power of supervision and control.*
- 3) Section 13 of the Police Integrity Commission Act 1996 provides, so far as relevant, that the "principal functions" of the Commission include that of "...oversee[ing] other agencies in the detection or investigation of, other Police misconduct as it thinks fit."*
- 4) However the section then provides in sub-s (4) that such "overseeing" "is a reference to the provision by the Commission of a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it."*
- 5) Finally, sub-s (5) further provides that "in overseeing other agencies for the purposes of the section, the Commission does not have a power of control or direction, and any such oversight is to be achieved by agreement...."*
- 6) In the light of this statutory definition, it seems to me that "oversight" in this context (at least in the absence of a relevant agreement) means little more than that the Commission continues to have a watching brief, but without any power of control or direction in respect of the Police investigation. In effect, such oversighting seems to entail little more than waiting for the Police to decide upon how to investigate the complaint, how long to take in investigating the complaint, and to await the advice of the Police as to the fact of completion and the result of the investigation.*
- 7) If this view of the statutory definition is correct, it would follow that from 14 November 2005 to date the Commission has had no power to control the direction of the Police investigation of your complaint in any way.*

The abovementioned statutory power reposed in the PIC to enable it to oversight relevant investigations, might be contrasted with the extensive powers given to the Ombudsman in this regard by Part 8A of the Police Act 1990. See for example Sections 140-143, and in particular Section 146 which gives the Ombudsman power to monitor the investigation.

Further express powers are given to the Ombudsman by Sections 151-155.

### **QUESTION THREE:**

3. *You report at page 18 (C09-06) that adverse allegations had been made concerning the Commission. Were you satisfied that the allegations were without foundation?*

### **INSPECTOR'S RESPONSE TO QUESTION THREE:**

It may be helpful if the whole of the relevant material appearing on Page 18 of my Annual Report for 2007, were set out. That material was in the following terms -----

*C09-06: A file was opened in this matter as a result of the filing of a Statement of Claim in the Supreme Court of NSW in 2005. The Statement of Claim sought damages from the State of NSW. Although the Commission was not a party to those proceedings, adverse allegations were made therein concerning the Commission. Progress of the litigation was therefore monitored by me. However, in April 2007 the Plaintiff's claim was settled, whereupon the file was closed.*

In answering the Committee's question, it is important to emphasise, first, that the PIC was not a party to the Supreme Court proceedings, and, second, that no complaint was ever received by my Office from the Plaintiff in the Supreme Court proceedings concerning the PIC. Thus I was never in a position where I was called upon, or had jurisdiction, to investigate the allegations concerning the PIC which were contained in the Plaintiff's Statement of Claim.

The Plaintiff's Statement of Claim ran to 17 pages and made numerous allegations against various agencies of the Defendant, the State of New South Wales. So far as the PIC was mentioned in any allegations by the Plaintiff, such allegations were to the effect that the Plaintiff's husband, then a serving Police officer, had instituted complaints about NSW Police to the PIC, but that the Defendant, according to the Plaintiff's allegation, had failed to prevent the disclosure of the Plaintiff's husband as a person who had made complaints to the PIC. It was further alleged, for example, that the Defendant had failed to take any preventative steps to protect the Plaintiff's husband once the disclosure had been made that the latter had made a complaint to the PIC. These issues were not litigated in the Supreme Court because of the settlement of the matter between the parties in April 2007, and thus remain untested allegations.

### **QUESTION FOUR:**

4. *Do you endorse the previous Committee's recommendation to extend the jurisdiction of the PIC Inspector to authorise investigation of alleged impropriety or misconduct by non-PIC officers engaged in joint or related operations with PIC officers?*

[Note: Question 5 of the separate series of questions from the Committee also raises this subject matter, and the response below is intended also to be in response to Question 5.]

### **INSPECTOR'S RESPONSE TO QUESTION FOUR:**

I do endorse the previous Committee's relevant recommendation. In this regard, I noted in paragraphs (71) of my Annual Report for 2007, that -----

- (71) In effect that recommendation has been endorsed both by Mr Ireland, QC, and Mr Wood, AO, QC. It has also, in effect, been endorsed by the Hon. Gerald Cripps, QC, Commissioner, ICAC.

## QUESTION FIVE:

5. You report on a problem in interpreting s 16 of the Police Integrity Commission Act (page 25). Do you have any comment to make on s16?

## INSPECTOR'S RESPONSE TO QUESTION FIVE:

The difficulty of interpreting Section 16, in particular Section 16(3), was the subject of comment by a number of Judges involved in the case of PIC v Shaw (hereafter Shaw's case).

In my 2007 Report I attempted to summarise the position at paragraphs (88) and (90) which, so far as relevant, were in the following terms -----

- (88) *On 30 June 2006 the NSW Court of Appeal published its decision in the case of Police Integrity Commission v Shaw, [2006] NSWCA 165, an Appeal from a decision of Young CJ in Equity at first instance: [2005] NSWSC 782. The relevance of this decision, apart from what it actually decided between the parties, arises out of the Court's examination of certain provisions of the Police Integrity Act, which had given rise to difficulties of interpretation.*
- (90) *Notwithstanding the assistance rendered by this decision as to the construction of certain Sections of the legislation, difficulties of interpretation remain. This is particularly so in relation to Section 16 of the legislation. As to these difficulties see the comments of Young CJ in Equity at [46] where the Judge described Section 16(3) as apparently representing a "volte face" vis a vis the preceding portion of the Section; and those of Giles J at [22] where that Judge described Section 16 as "curiously worded".*

In paragraph (46) of the judgment of Young CJ in Equity, the following appears ----

*46 One then goes to s 16 which is headed "Provisions regarding Assessment, Opinions and Recommendations". As I have said earlier, this is the principal section relied on by the defendants. Sub-section 1 empowers the Commission to make assessments and form opinions as to whether police misconduct or other misconduct may have occurred. It then can make recommendations as to whether action other than recommendation of prosecution under the Police Act 1990 should take place, but it may not make a finding or form an opinion or make a recommendation that a specified person should be prosecuted for a criminal or disciplinary offence. However, there is then a volte-face in sub-section 3 that the PIC can form an opinion and presumably publish it, that a person is engaging in police misconduct or conduct that constitutes or involves or could constitute police misconduct. Again, Mr Walker says it is significant that this large exception to people's civil rights is limited to police misconduct.*

In paragraph (22) in the judgment of Giles J, appears in relation to Section 16 ----

*22 Section 16 is perhaps curiously worded, permitting and forbidding making assessments, forming opinions, making findings and (less curiously) making recommendations. Unless intended as a form of thought-control, the explanation may be that, quite apart from inclusion*

*in a report under s 96, stating permissible and forbidden assessments etcetera also affects what the Commission can do under other provisions of the Act, of which ss 15, 18 and 83 are the most material.*

I remain of the opinion that it would be helpful if Section 16(3) could be clarified by way of an amendment if necessary, so that the intention of that subsection is made clear. However, if that were to occur, there are other Sections of the Act that could also be considered for amendment in the interests of clarity, in my opinion.

## **QUESTION SIX**

6. *Following your review (page 26, par 94), were you satisfied with the terms of the Commission's memoranda of understanding?*

## **INSPECTOR'S RESPONSE TO QUESTION SIX:**

It might be helpful to set out Paragraph (94) of my 2007 Annual Report, which was in the following terms -----

*(94) However, in the light of the Committee's recommendation, I reviewed all relevant Memoranda made between the Commission and other relevant agencies, and wrote to the Commission in February 2007 setting out my observations and recommendations as a result of my having conducted that review.*

The observations and recommendations that I made to the PIC in this regard, are those set out in my letter to the PIC dated 14 February 2007, which, leaving aside formal parts, were in the following terms ----

### **RE: MEMORANDA OF UNDERSTANDING**

*(1) As you are aware, the Committee on the Office of the Ombudsman and the Police Integrity Commission ("The Committee"), in their phase two report in respect of section 10(5) of the Police Integrity Commission Act, recommended that the PIC Inspector examine all Memoranda of Understanding ("MOU") between the PIC and their investigative partners, and the operation including the protocols and principals for information management and sharing, as part of his regular monitoring duties. That recommendation, as far as I am aware, has not yet been considered by Parliament.*

*(2) However in view of the Committee's observations concerning the relevant MOU, as expressed, particularly, in paragraphs 1.5.5.11 to 1.5.5.13 of the report, it would appear to be highly desirable that the Inspector commence to review the content of relevant MOU without further delay. To this end, you have recently kindly provided me with copies of ten such MOU.*

*(3) The first of these is between the PIC and the Director, Australian Transaction Reports and Analysis Centre (AUSTRAC). The principal purpose of this MOU is, clearly, to provide access on the part of the PIC to certain information under the Financial Transaction Reports Act 1988.*

*(4) The draft with which I have been provided of that MOU, is unsigned and is in fact described as "draft 17 February 1997." I have therefore proceeded on the assumption that a later document was brought into existence similar to or the same as the draft and was duly signed by the Commissioner, on the one hand, and the Director on the other. Making that assumption I have noted the following matters for the consideration of the Commission.*

*(5) One difficulty about this exercise, is that I have no idea of the extent to which the parties to the MOU have acted in accordance with its terms since 1997 (assuming the agreement*

was signed in 1997). What seems abundantly clear, is that given the passage of time since the MOU was entered into, on that basis alone I would recommend that the Commission thoroughly review all aspects of the existing agreement, in the light of relevant statutory amendments to each relevant Act since the date of the agreement, and to reflect changes in the structural set up of each organisation and in the practice of each organisation, so far as relevant to the agreement. Subject to that general recommendation, I make the following comments.

**MOU: AUSTRAC/PIC, February 1997**

(6) In clause 4 there is a reference to section 27(1)(b) of the FTR Act; however, this section has since been omitted from the legislation.

(7) In clause 6 the Director retains the right to exclude access in respect of any particular application by the PIC. However there is no requirement that there must be a particular basis for so doing, for example that it is in the Director's view necessary in the public interest.

(8) In clause 7 and the schedule referred to it would seem preferable to include the Commissioner as a nominated officer, and to identify the balance of the nominated officers by reference to their office, rather than the way the matter is dealt with in the existing agreement.

(9) As I have mentioned, I have no way of knowing, at this stage, whether clauses such as 8 and 9 have been regularly availed of, and, if so, complied with.

(10) There are a number of clauses dealing with the limited basis on which the relevant information may be divulged or communicated by PIC officers. On one view of it, these clauses, for example, clauses 13, 17 and 25 could be seen as inconsistent with the powers of the Inspector pursuant to section 90 of the Police Integrity Commission Act. I would therefore recommend that in all relevant MOU's, an express provision be inserted making it clear that it is not intended to restrict the Inspectors powers under section 90.

(11) I would also recommend consideration be given by the Commission, as to whether the existence of these MOU's should be stated somewhere in the Commission's Annual Report. There is a general statement appearing on page 41 of the 2005-2006 Annual Report with regard to "the exchange of relevant information", but this is limited to the named organisations "and other Police agencies."

**MOU: ICAC/PIC**

(12) The copy of the relevant MOU between the PIC Commission and the ICAC, that I have been provided with is dated 11 September 1997. However clause 12.1 of the MOU provides that the MOU must be reviewed no later than 12 months from the date of the Memorandum. If that provision has been complied with and if such a provision has been included after each such review, it would follow that there must in existence documents arising out of each such review. On the other hand if that clause has not been complied with then it would follow that due to the lapse of time alone since the 1997 MOU was entered into, a review of that document is long overdue.

(13) Such a review should take into relevant amendments made to either statute and, in particular, the provisions which will come into effect when the Police Amendment (Miscellaneous) Act 2006 commences.

(14) This MOU has the appearance of a well thought out and adequate structure set forth in a logical manner. It would seem desirable for each MOU that the PIC enters into to follow as far as practicable, a similar format so that there is one general format to which all relevant MOU's conform. I would recommend that consideration be given to adopting, so far as practicable, the format of this MOU as the general format applicable to all relevant MOU's.

(15) At this stage I am not in a position to know whether the provisions of the MOU have been complied with, in particular clause 2.5, 2.6, 3.2, 5.2 and 7.1.

(16) In my opinion clause 9.2 is preferable to the comparable clause in the MOU with AUSTRAC.

(17) The provision in the ICAC/PIC MOU requiring an annual review, might be considered for inclusion in each relevant MOU, as a means of insuring that these documents do not get overlooked and become out of date and even irrelevant.

**MOU: ICAC/PIC “OPERATION OSLO”**

(18) This MOU was entered into in March 1999 and I assume has now run its course. However, it appears to be a carefully drafted document and may prove useful as a guide for future and similar operations. Clauses 4 and 5 of the document may give rise to the problem early adverted to, namely, that on one view of it the Inspector’s jurisdiction might be called into question. Clause 8 required the giving of notice in certain circumstances. It might be relevant to ascertain whether that clause was ever complied with.

**MOU: AFP/PIC, March 2001**

(19) The format of this MOU seems to have been carefully worked out, and, subject to further review which is clearly required having regard to the passage of time since it came into force, it may be that a similar format should be kept for this particular MOU.

(20) Once again I cannot know at this stage to what extent this MOU has been applied, and whether any problems have been detected in relation to it. I would suggest, however, that clause 14 in particular, be redrafted. It seems unlikely that the reference to “NSW State Government” could have any effect.

(21) There is provision for the settling of disputes, but once again I am not in a position to know whether that provision has ever been availed of.

**MOU: OMBUDSMAN/PIC, March 2001**

(22) The principal purpose of this MOU, as stated in clause (m), is “to achieve access to data stored on the PODS by the Ombudsman.” If it is assessed as necessary to enter into a new MOU for the same purpose, then it would no doubt be prudent to await the coming into force of the Police Amendment Act 2006.

(23) Clause 2 requires the Ombudsman to give notice to the Commission in certain circumstances. It may be worthwhile to ascertain whether the relevant circumstances came to pass, and, if so, whether the relevant notice was given by the Ombudsman.

**MOU: POLICE SERVICE/PIC, “RELATING TO DATA TRANSFER”, October 2001**

(24) Obviously this will require considerable update and amendment, given the passage of time, and having regard to the changes to be effected when the Police Amendment Act 2006 comes into force.

(25) This is the first MOU where I have noticed a specific clause directed to ensuring that the jurisdiction of the Inspector is not inadvertently interfered with. See Clause 12. Unless there is an intention in respect of any MOU to attempt to exclude the Inspector from access to some information relevant to that MOU, I would suggest a Clause such as Clause 12 being inserted into each MOU.

**MOU: VICTORIA POLICE/PIC, June 2001**

(26) Obviously, if there is not one already in existence, it is desirable that the PIC communicate with the Office of Police Integrity, Victoria, with a view to producing a relevant MOU between the two bodies.

**MOU: NSWCC/PIC, CAR ACT, January 2002**

(27) It may be of interest to explore to what extent this MOU has been applied in practice, and if it has, whether it meets the current intentions of the parties.

**MOU: NSWCC/PIC, June 2004**

(28) This appears to be drafted in a somewhat informal manner, and its sole purpose seems to be to provide for passage of relevant information from NSWCC to PIC, relevant information being concerning past or serving NSW Police.

(29) This is the document that contains the provision which became the subject of comment by the overseeing Committee. As the Committee pointed out, the Commissioner CC may place a caveat on the use of relevant information by the PIC and if that issue is unresolved, may be determined by Commissioner CC.

**MOU: CRIME AND MISCONDUCT COMMISSION (QLD)/PIC (NSW), February 2003**

(30) It would be of interest to know to what extent this MOU has applied in practice, and whether or not those occasions have been noted in the records.

**MOU: ODPP/PIC, September 2006**

(31) I am currently attempting to obtain a copy of the existing MOU between ICAC/DPP, on the basis that it might be useful to compare that MOU with the above. I will therefore cover this particular matter in a separate letter in due course.

**SUMMARY OF PRINCIPAL RECOMMENDATIONS FOR THE PIC COMMISSIONER'S CONSIDERATION:**

**(A) That urgent consideration be given to replacing each of the relevant Memoranda of Understanding referred to above, and that each be replaced with a document which takes into account, inter alia, changes in relevant legislation that have since taken place, and in organisational practices, as well as defects which have been noted in practice during the currency of any of the relevant memoranda of understanding. That in lieu of the MOU with Victoria Police a Memorandum of Understanding be entered into between PIC/Office of Police Integrity Victoria.**

**(B) That so far as practicable, a general format be adopted for all relevant Memoranda of Understanding.**

**(C) That a provision be included in each new MOU, to the effect that a 12 month review must take place to ensure that any practical difficulties are addressed in a timely manner, and that the document continues to be up to date. That the operation of the MOU in practice be monitored so that defects, e.g.. in time frames, can be addressed promptly, including at each 12 month review.**

**(D) That a provision be inserted into each new MOU directed to making it clear that the Inspector is entitled to have full access to all aspects of the PIC's operations and records and that no provision in the MOU is intended to restrict the Inspector's oversight functions.**

**(E) That the existence of all such Memoranda be expressly referred to in the Commission's Annual Report.**

As far as I am aware, the only relevant MOU not covered in my letter of 14 February 2007 (although referred to in paragraph (31), was the MOU between the PIC and the Director of Public Prosecutions (NSW) dated 26 September 2006.

However on 27 August 2007 I conferred with the DPP at his Office, concerning various matters of mutual interest, including the operation of the MOU between the DPP and the PIC. The DPP reported, in effect, that the content of the MOU seemed to be satisfactory, and he did not suggest the need for any review or amendment at that stage. I intend to make further contact with the DPP prior to my next Annual Report for the purpose of seeking an update as to the operation of this MOU. In my weekly conference with the PIC Commissioner following my meeting with the DPP, I conveyed the effect of my discussion with the DPP to the Commissioner.

By letter dated 12 October 2007, the Commission responded to my observations and recommendations by letter in the following terms (formal parts aside) ----

***Re PIC Memoranda of Understanding – Your letter of 14 February 2007***

*Thankyou for your letter of 9 October 2007 regarding the above.*

*Following receipt of your letter dated 14 February 2007 contact was made with the various agencies who are parties to MOUs with the Commission. Those agencies were informed, by way of background, of the interest taken by the PJC and yourself in the Commission's MOUs and invited to consider the appropriateness and relevance of their respective MOUs in the context of the review being conducted by the Commission. The response from the different agencies has been varied. In some cases, new MOUs have been drawn up or are in the process of being drawn up.*

*For your information, I have set out hereunder the present status of the various MOUs and the Commission's dialogue with the respective agencies, adopting the same order used in your letter of 14 February.*

**1. Australian Transaction Reports and Analysis Centre (AUSTRAC)**

*A letter was sent on 27 February 2007: see Matrix 1212/294 (copy attached at "A"). AUSTRAC has advised that it is developing a new pro forma MOU to be used for all of its client agencies. It is first attending to putting MOUs in place with newly designated agencies and will then be reviewing existing MOUs. AUSTRAC has indicated that as soon as it is able a draft will be sent to PIC, incorporating the requests made in PIC's letter of 27 February. I will ensure that all the points made in your letter are taken into consideration For the most recent contact see the emails attached to Matrix 1212/310. A signed copy of the existing MOU can be found at Matrix 1212/27.*

**2. Independent Commission Against Corruption**

*As far as I am aware there has been no review since the MOU of 11 September 1997 was signed. A letter was sent to the ICAC Commissioner on 4 May 2007: see Matrix 15290 (copy attached at "B"). A reply was received on 9 July agreeing to a review of the existing MOU and undertaking to progress the issue but there has been no further contact since that time: see Matrix 16793/12 (copy attached at "C"). The Operation Oslo MOU referred to at paragraph 18 of your letter has, as you surmised, run its course, Operation Oslo having concluded some time ago.*

*Further contact will be made with ICAC about updating the general MOU. As you observe in your letter, the revised document will need to reflect the recent amendments to the Police Act 1990.*

*In relation to paragraph 15 of your letter, as far as I am aware the provisions in clauses 2.5 and 2.6 of the current MOU have never really assumed significance as there has only been a small number of referrals from the ICAC of matters involving suspected police misconduct. A similar situation exists in respect of clauses 3.2, 5.2 and 7.1. Nevertheless, cooperation and assistance between the two agencies in other respects continues to take place in a most satisfactory manner.*

### **3. Australian Federal Police**

*In 2006 the AFP presented an updated MOU to the PIC to replace the MOU which was entered into in 1998. Following a lengthy period of negotiation, a new version was agreed upon in August this year: see Matrix 3231/31 (copy attached at "D") however the AFP has indicated that it wishes to defer signature until the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2007 is passed: see Matrix 3231/32.*

### **4. NSW Ombudsman**

*The MOU with the NSW Ombudsman dated March 2001 is one of three foundational documents which governed:*

- The provision of, and access to, data during and subsequent to the development of the Police Oversight Data Store (PODS); and*
- The subsequent development of the Tri-Agency Agreement for PODS (a more detailed document concerning processes for managing access to data, system enhancements and customer support: see Matrix 12418/79).*

*The other two MOUs in the suite are the PCCM related MOU between the PIC and NSWPF, discussed below, and another between the Ombudsman and NSWPF.*

*The broad principles for access to data described in this MOU remain current. The management processes described in the Tri-Agency Agreement also remain current, and have been updated by a number of minor amendments.*

*Discussions between the PIC, NSWPF and the Ombudsman are underway with a view to agreeing the future direction for PODS. The form of a revised MOU between PIC and the Ombudsman will be dependent on the outcome of those discussions. It would not be appropriate to review it at this time. The broader MOU being developed by NSWPF concerning systems data exchange and user access, discussed below, will also have a significant impact on future agreements.*

### **5. NSW Police Service**

*This MOU is the foundational document that requires the NSWPF to provide the Commission with data for PODS: paragraph 8. The MOU stipulates at paragraph 16 that "Any further memoranda of understanding concerning access by the Ombudsman or the Police Service to the PODS will be subject to this MOU".*

*The Commission has been negotiating with the NSWPF since 2006 on a broader MOU regarding systems data exchange and user access between NSWPF and PIC generally. This is part of a project being undertaken by the Police Mainframe Replacement Program whereby all agencies dealing with NSWPF systems data are being asked to sign new MOUs. Because of the special position of the Commission vis a vis NSWPF, negotiations are continuing in relation to the special clauses to be included in the new MOU to be signed by the Commission.*

### **6. Victoria Police**

*The Ethical Standards Department of Victoria Police advised on 9 July 2007 that the MOU signed on 22 June 2001 is working very well and requires no change from their*

*point of view. In relation to the Office of Police Integrity, the Commission will enter into a MOU with that agency if and when the need arises.*

**7. NSW Crime Commission**

*In relation to the CAR Act MOU with the NSWCC dated January 2002, so far as the Commission is aware the terms of the MOU have been applied in practice. The Commission has commenced a number of proceedings under the CAR Act against serving and former NSW police officers. Further details of those matters can be provided if desired. They are reported upon each year in the Commission's Annual Report.*

*In relation to the more general MOU dated June 2004, the Commission wrote to the NSWCC on 8 June 2007: see Matrix 3731/21 (copy attached at "E"). Particular attention was drawn to the comments in the PJC's Report about the MOU effectively making the PIC a "junior partner" to the Crime Commission. A reply was received from the Crime Commission on 28 August 2007: see 3731/23 (copy attached at "F"). A number of joint investigations between our two agencies were cited by the Commissioner in rejecting the suggestion that PIC is not treated like an equal partner by the NSWCC. Further consideration is being given to the MOU in light of this response.*

**8. QLD Crime and Misconduct Commission**

*The Commission discussed the MOU with a representative from the CMC in August this year and agreed that the relationship was working satisfactorily and no changes to the MOU were required: see Matrix 2533/98.*

*You have commented in your letter that "it would be of interest to know to what extent this MOU has applied in practice, and whether or not those occasions have been noted in the records". I am not sure exactly what information you are seeking by that comment but I can advise that the Commission does enjoy a high level of support and cooperation from the CMC and all dealings between the agencies are recorded on Matrix, in keeping with the Commission's normal practices*

**9. NSW Office of the Director of Public Prosecutions**

*No correspondence has been entered into with the DPP as it is only 12 months since the current MOU was settled and signed and the Commission is satisfied that no revision is required at this point.*

**SUMMARY OF PRINCIPAL RECOMMENDATIONS**

- A.** *In relation to your recommendation that urgent consideration be given to replacing each of the Memoranda referred to above, I am satisfied that those Memoranda which are not presently undergoing renewal, are not in urgent need of replacement on account of changes in legislation, organisational practices or defects in practice.*
- B.** *In relation to adopting a general format for all Memoranda, you will have observed that some agencies create their own pro formas for signature by their client agencies. The Commission has found that those agencies are generally most amenable to the inclusion of variations to reflect the Commission's particular requirements and it is considered preferable to follow that approach in those cases rather than endeavouring to get all agencies signed up to a PIC pro forma.*
- C.** *I agree that it would be useful to include in each new MOU a provision that a review take place every 12 months to ensure that any practical difficulties are addressed in a timely manner.*
- D.** *I agree that it would be useful to include in each new MOU a provision noting the position of the Inspector of the Police Integrity Commission and his access to and oversight of all aspects of the PIC's operations and records, including its dealings with other agencies.*
- E.** *I do not consider it necessary that the existence of all such MOUs be expressly referred to in the Commission's Annual Report.*

*I trust this information is of assistance. I am happy to discuss any aspect of it with you during our weekly meetings, or provide further documentation if it would assist you.*

## **QUESTION SEVEN:**

7. *Do you have any comments to make on sections 96 and 97 of the Police Integrity Commission Act (page 27, par 96)?*

## **INSPECTOR'S RESPONSE TO QUESTION SEVEN:**

Paragraphs (95) and (96) of my Annual Report were in the following terms -----

(95) *As well, and particularly having regard to the fact that it was in effect the last significant document of the Commission under the previous Commissioner, I also reviewed the content of the Commission's 2005-06 Annual Report, and forwarded a written analysis arising out of that review to the Commission in June 2007.*

(96) *I included in that written analysis, a reference to Part 8 of the Police Integrity Commission Act, which deals with Reports to Parliament, with particular reference to considerations as to the proper construction of Sections 96 and 97 of the Police Integrity Commission Act. I regard this as a matter of some importance, in particular, having regard to the definition of "affected person" in Section 96(3).*

There appears to be a difference of opinion between myself, on the one hand, and the PIC, on the other, as to the proper interpretation of Section 97. I attempted to set out my opinion in this regard (which implicitly also identified the contrary interpretation) in a letter addressed to the Commissioner and dated 5 October 2007, which, leaving aside formal parts, is in the following terms -----

### **RE: RESPONSE TO COMMISSIONER'S LETTER DATED 13 SEPTEMBER 2007 TO THE INSPECTOR**

- (1) *By letter dated 19 September 2007 I acknowledged receipt of your letter dated 13 September 2007. Since then I have had the opportunity to consider in detail the content of that letter, and accordingly respond as follows.*
- (2) *Apart from my further comments on what I regard as the proper construction of Section 97, I shall attempt to be brief. I note, in particular, that a number of the matters to which I referred in the Commission's 2006 Annual Report will be taken into account, or have been taken into account, in the preparation of the Commission's 2007 Annual Report.*
- (3) *My reference, in paragraph (12) of the Critique, to the possible inclusion of material directed at deterring the making of false complaints against the Police, was prompted by the fact that such material is included in the Ombudsman's Annual Report 2006, at page 47.*
- (4) *However, my principal purpose in writing this letter to you is to attempt to state, perhaps more succinctly, the basis on which I contend that Section 97 should be given the construction as indicated in my document dated 7 June 2007. The difference flowing from the competing interpretations, the one apparently adopted by the Commission, as appears from your letter, and that preferred by myself, could not be said to be insignificant. Therefore, I feel bound to ensure that I have put the basis for my interpretation clearly and with appropriate references to relevant material. This, then, is the purpose of what follows herein.*

- (5) *Before persons can be identified by the Commission as “affected persons”, they must be capable of coming within the definition of that expression which definition is to be found in Section 97(3). Thus, per Giles J. at paragraph 28 of Shaw’s Case (emphasis added) ----*

*. . . . . the definition of an “affected” person in s 97(3) is whether in the Commission’s opinion substantial allegations have been made against the person in the course of or in connection with the investigation. . . . .*

- (6) *In my opinion, a distinction is to be drawn between two timepoints relevant to Section 97, the first being the timepoint relevant to the making of the substantial allegations referred to in Section 97(3), namely, “in the course of or in connexion with the investigation concerned.” As to the significance seen by Basten J. in relation to this, see paragraph 83 (emphasis added) of his judgment in Shaw’s case (a passage to which I also referred to in paragraph (25) of my document referred to above).*

*83 Two points may be made in respect of the language of s 97 . . . . .  
Secondly, the scope of the mandatory obligation in sub-s 97(2) is identified by reference to affected persons, being persons against whom substantial allegations have been made “in the course or in connection with” the investigation of the matter or matters. This last point has two consequences of potential significance in the present case. First, it provides support for the argument that an allegation of giving false or misleading evidence, which would not presumably be the matter being investigated at the commencement of an investigation, but might become the subject of a substantial allegation “in the course of” the investigation and is therefore within the scope of the opinions required to be included in the report under sub-s (2). Further, there is some awkwardness in thinking that a substantial allegation will necessarily fall away at some point in the inquiry, especially if the reason is not that the person is “exonerated” by the evidence, but rather that he is inculpated, but the police are exonerated.*

*Thus the implication appears to be that a substantial allegation may “fall away at some point in the inquiry” if the reason is “that the person is exonerated by the evidence.”*

- (7) *The second timepoint relevant to Section 97, is the time at which the Commission is required to consider whether it is open to the Commission to identify a person as an “affected person.” In order to identify a person as an “affected person” the Commission is required to form the opinion that substantial allegations (i.e., allegations which in the opinion of the Commission are of substance, and not fanciful or unsupported by credible evidence) have been made in the course of or in connexion with the investigation concerned. But at what point in time must the Commission form the opinion as to whether such allegations are allegations which in the Commission’s opinion have substance?*

- (8) *As to when this opinion must be formed, see Basten J. at paragraph 99 (emphasis added) of his judgment in Shaw’s case (also referred to in paragraph (25) of my document referred to above) ---*

*99 Because a hearing had been held, as a result of a decision which was not challenged, the Commission was required to prepare a report in relation to the matters as to which it had conducted the hearing, and furnish the report to Parliament: s 96(2) and (3). The contents of its report would depend upon, relevantly for present purposes, whether or not the Commission had then formed an opinion as to whether the Respondent was an affected person. If it had formed such an opinion (and a challenge to its ability to form such an opinion in relation to the Respondent was dismissed by the primary judge and not reagitated separately on appeal) then it would have been required to include in its report a statement that consideration should be given to his prosecution for a specified criminal offence, if it were of that opinion.*

Questions on Notice and Answers

- (9) *The above passage appears to me to support the view that the relevant time when the relevant opinion is to be formed is the time when the Report is to be furnished to Parliament, that is to say, "as soon as possible after the Commission has concluded its involvement in the matter." Unless at that point in time the Commission is of the opinion that there exist substantial allegations against a person made in the course of or in connection with the investigation concerned, there would be no person capable coming within the statutory definition.*
- (10) *As well, there are aspects of several of the S96 Reports produced by the Commission during the period of the inaugural Commissioner which seem to me to suggest that the Commission had adopted the construction of S. 97 for which I contend. See Operation Belfast Report, pp. 190-191, 193 (persons against whom allegations of criminal conduct made found at date of report not to be "affected persons": see in particular 8.18 "Plant is not, in the Commission's opinion, an 'affected person'....": 8.19 no 'affected persons': 8.21 no 'affected persons': 8.29 no 'affected persons'; whereas other persons identified are found to be 'affected persons'); Saigon Report at pp. 88 ("are or were affected persons"); 108-109 (18 witnesses called re allegations of corruption or misconduct, but at date of Report none came within definition of "affected persons", although the Commission was of the opinion that it had identified "systemic failures and omissions" (6.90) but nevertheless the Commission found there were no persons who could be characterised as 'affected persons' in that portion of the investigation (6.97); Pelican Report pp. 88 ("are or were").*
- (11) *It seems to me, with respect, that the contrary view as to the proper construction of Section 97, in particular, as to the time when the opinion must be held that there are or are not persons who may be identified as "affected persons", give rise to the following difficulties: first, persons can be (and were in Banff, and notwithstanding, in the case of the relevant Police officers, that Counsel Assisting had formulated his questions so as to obtain a denial of relevant conduct, but also to state that no allegation in those terms was being made: see Basten J at para. 84) identified as "affected persons" despite the fact that at the date of the Commission's report the Commission does not hold the opinion that the allegations against those persons have any substance, or that there is any credible evidence to support such allegations. To be identified in a public Report as a person against whom in the opinion of the Commission substantial allegations, say, of murder, had been made is, in itself, a serious matter.*
- (12) *Thus in that situation persons are identified as "affected persons", so that a Section 97(2) statement is mandatory, despite the fact that at the date of its Report the Commission does not hold the opinion that such persons are the subject of allegations of substance made in the course of or in connexion with the investigation concerned. Such persons, in my opinion, should be ipso facto excluded from the "whether or not" requirement of the Section 97(2) mandatory statement, because they are not capable of being the subjects for relevant consideration. That is to say, there is no question available to which the "whether or not" requirement could be applied, because such persons could not be the subject of a "whether to" statement.*
- (13) *I do not suggest that the position is as clear as one might wish. There are passages in Shaw's case which might be considered equivocal on the issue. Ultimately, it seems to me to come down to this: if it is not unreasonable to read Section 97 in the way I have suggested above, then such a reading is to be preferred for the reasons assigned above.*

At this stage, I have not received the Commission's response to the above.

## **INSPECTOR OF THE POLICE INTEGRITY COMMISSION ANNUAL REPORT 2005-06**

**NOTE:** The 2005-06 Annual Report is the report of the previous Inspector, the Hon James Wood QC

### **QUESTION ONE:**

1. *On page 5 of the report the Hon James Wood wrote:*

*An equally important step in the reform process was to ensure the retention of the jurisdiction of the Office of the NSW Ombudsman to oversight the NSW Police particularly in relation to the management of complaints and compliance with the law. This has been achieved through the formalisation of an agreement between the Commission and the Ombudsman pursuant to s67(a) of the Police Integrity Commission Act concerning the classification of complaints and the establishment of a comprehensive regime for their investigation and management.*

*What is your view of the current role of the Ombudsman in the oversight of complaints about police?*

### **INSPECTOR'S RESPONSE TO QUESTION ONE:**

Important changes in relation to investigation of complaints against the Police, were effected by the *Police Amendment (Miscellaneous) Act 2006*, which, so far as relevant, came into effect on 1 June 2007. Those changes, in effect, removed the distinction between categories of Police complaints. Nevertheless, the jurisdiction of the Office of the NSW Ombudsman to oversight the NSW Police particularly in relation to the management of complaints has been retained in the legislation.

In N.S.W, complaints by members of the public concerning police complaints may be made to the Ombudsman, the Police Integrity Commission or directly to the Police. In practical terms the Ombudsman deals with the vast majority of police complaints, usually by overseeing investigation of such complaints by the police themselves. Thus the vast majority of police complaints are investigated by the police, but such investigations are overseen by the Ombudsman.

By way of contrast, the Police Integrity Commission's role is confined to investigating a small number of serious police complaints (perhaps less than twenty per annum) and to overseeing an even smaller number of complaints investigated by the Police at the request of the Commission.

The overall position may be demonstrated by reference, first, to the 2005-2006 Annual Report of the Ombudsman.

During that year, 2131 police complaints were investigated by police at the request of the Ombudsman, such investigations being overseen by the Ombudsman. In a small number of cases, the Ombudsman directly investigates police complaints.

Reference to the 2005-2006 Annual Report of the Police Integrity Commission, reveals that during the same period only 17 serious complaints out of a total number of 666 police

complaints assessed by the Commission as serious police complaints were investigated by the Commission, the balance being referred to the Ombudsman for investigation by police under oversighting by the Ombudsman. The investigation of a further 9 serious police complaints were referred to the police for investigation but oversighted by the Commission.

From the above statistics it will be seen that it is the Ombudsman who has the principal role in relation to the oversighting of the investigation of police complaints; and that it is the Police who have the primary role for investigating police complaints, in most cases under being oversighted by the Ombudsman. The role of the Police Integrity Commission, on the other hand, is in effect confined to investigating a small number of serious police complaints each year.

Part 8A of the Police Act confer a number of specific powers on the Ombudsman in relation to the investigation by the Ombudsman of complaints against NSW Police.

See, for example, Section 142 (Power to request further information from a complainant), 143 (Ombudsman may request further information from other persons), 145 (Investigating Police must have regard to any matters specified by the Ombudsman), 146 (Ombudsman may monitor the investigation), 150 (After investigation of a complaint has been concluded the Ombudsman must be provided a copy of the final Report), 151 (If required by the Ombudsman to do so, the Commissioner must provide the Ombudsman with details of the investigation), 152 (If the Ombudsman is dissatisfied with the investigation of a complaint the Commissioner must provide the Ombudsman with relevant information if sought), 153 (If Ombudsman is dissatisfied with the investigation, the latter may request the Commissioner to cause a further investigation to be conducted), 154 (Ombudsman may request review of Commissioner's decision in respect of the complaint).

None of these powers are conferred by Part 8A of the Police Act on the Police Integrity Commission.

## **QUESTION TWO AND FOUR**

2. *On page 11, Mr Wood comments that his monitoring of the records of PIC operations which require legislative sanction (eg controlled operations) "to some extent... involves a duplication of the monitoring carried out by the Ombudsman".*

*Do you consider that there is any unnecessary duplication and in what way does the Inspector's oversight differ from or add value to the Ombudsman's?*

4. *Has the amendment to section 142 of the PIC Act (the provision for notifying the Inspector of an authorisation of a police officer to exercise investigative, surveillance or enforcement functions under or for the purposes of the PIC Act) been working satisfactorily?*

## **INSPECTOR'S RESPONSE TO QUESTIONS TWO AND FOUR:**

I have combined these two questions and the answers thereto, because the subject matter in each case has to do with the provisions of the *Law Enforcement (Controlled Operations) Act 1997*.

It might be helpful in answering these questions if I were to set out paragraphs (72) and (73) of my Annual Report which dealt with this subject matter and were in the following terms ----

*(72) In practice controlled operations undertaken by the Police Integrity Commission from time to time of necessity involve police officers in the exercise of investigative, surveillance or enforcement functions and accordingly fall within the purview of Section 142(1) of the Police Integrity Commission Act which provides:*

**142 Exercise of functions by police**

*(1) A police officer may not exercise investigative, surveillance or enforcement functions under or for the purposes of this Act unless authorised to do so by the Commissioner."*

*(1A) As soon as practicable after giving such an authorisation, the Commissioner must notify the Inspector of that fact.*

*(73) Although by virtue of the definition of "police officer" in Section 4 of the Police Integrity Act, the reference to "police officer" in subsection (1) must be read as referring to NSW police officers only, I am in a position to inform myself of all Controlled Operation authorisations by the Commissioner by reason of my access to the Commission's internal records, and I also intend to further inform myself in this regard by reference to the Ombudsman's Annual Report dealing with compliance with the relevant provisions of the Law Enforcement (Controlled Operations) Act. During the reporting period the Commissioner authorised two Controlled Operations neither of which, due to subsequent circumstances, was carried into execution.*

In my opinion the Inspector's functions in relation to this subject matter do not involve any unnecessary duplication on the relevant statutory functions of the Ombudsman. In fact, since my appointment the Commissioner has not authorised any controlled operations which were actually put into effect.

As to whether, in my opinion, Section 142 of the PIC Act has been working satisfactorily, as already mentioned, no controlled operations authorised by the PIC Commissioner have in fact taken place since the time of my appointment. However, as mentioned in paragraph (73) of my Report, despite the limited definition of "Police officer" in Section 142, I am in a position to inform myself of all controlled operation authorisations by the Commissioner by reason of my access to the Commission's internal records. By way of contrast, Part 4 (Sections 21-24) of the Law Enforcement (Controlled Operations) Act requires that the Ombudsman act as an independent monitoring and inspection agency. The Act further requires that the Ombudsman be notified of all grants with an authority, and variations to an authority. The Ombudsman must also be notified of all occasions on which the Chief Executive Officer receives a report on a controlled operation. Notices must be provided to the Ombudsman within 21 days of the event to which the Notice relates. Although the Ombudsman must conduct inspections of the internal records of the relevant agencies to assess compliance with the requirements of the Act, that need be carried out only once every twelve months, although the Ombudsman may inspect such records at any time. Accordingly, although there is an overlap in the Inspector's functions, on the one hand, and the Ombudsman's, on the other, in relation to the PIC in this regard, I do not see that as constituting unnecessary duplication.

### QUESTION THREE:

3. *On page 13 Mr Wood reports that six complaints concerning matters which the Commission had declined to investigate (see point (c)) were referred by him back to the PIC and NSW Police for further investigation. In a speech given at the 2nd National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies Mr Wood said that his management of a complaint did “not constitute an appeal or administrative law review, in the strict sense”, however he considered that, if it satisfied the Wednesbury test of unreasonableness, a complaint against the PIC for declining to investigate a matter could be sustained, although he had no power to compel the PIC to take further action or “make orders that might undo some form of misconduct”.<sup>1</sup>*

*Would you consider that his comments and referral of matters back to the Commission is in conflict with his observation on page 14 of his Report that the Office of the Inspector of the Police Integrity Commission does not exercise “...an appellate role in relation to decisions of the Commission whether to conduct investigations into complaints or to refer them to the NSW Police Service”.*

### INSPECTOR'S RESPONSE TO QUESTION THREE:

From the relevant passage on page 13 of the Inspector's 2006 Annual Report, I note that the Complainants sought that the PIC investigate complaints against the Police in relation to the Complainants' own criminal convictions. This unusual feature may have caused the Inspector to take the view that he should conduct a preliminary investigation arising out of each such complaint. In the speech given by Mr Wood, referred to in the question, there can be no doubt, in my opinion, that the statement that the Inspector's jurisdiction does not constitute the Inspector as a general appellate entity to which every decision of the PIC can be appealed, is correct. The reference to the “Wednesbury Test”, is a shorthand reference to the case of *Associate Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1KB 233. The Wednesbury reasonableness test is sometimes stated in terms that where the unreasonableness of the decision of a public body has been challenged the test is whether the decision was so irrational that it cannot be supported or that no sensible person who had applied his or her mind to the question to be decided could have arrived at that decision. The PIC has a discretion whether or not itself to investigate a relevant complaint, or alternatively pass the complaint on to the Ombudsman for investigation, or on to NSW Police to be investigated. That is a discretion vested in the Commission and not in the Inspector. However, if the particular circumstances led to a conclusion that the Commission had failed to exercise the discretion in a reasonable manner, that would appear to be a matter falling within the Inspector's jurisdiction. If such a case did arise, all the Inspector could do as a matter of practicality, would be to draw the Inspector's concerns to the attention of the PIC. Thus I am not of the opinion that there is any conflict between the material that appears on page 13, on the one hand, and Mr Wood's speech on the other.

Inspector, Police Integrity Commission

17 October 2007

---

<sup>1</sup> Committee on the Independent Commission Against Corruption, NSW Parliament, *Report on the 2<sup>nd</sup> National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies*, p 141

## **ADDITIONAL RESPONSE TO QUESTIONS ON NOTICE<sup>2</sup>**

### **RE: THE CURRENT ROLE OF THE OMBUDSMAN IN OVERSIGHTING THE INVESTIGATION OF COMPLAINTS CONCERNING NSW POLICE**

- 1) Since the Inspector's [initial] response to the PJC in respect of this matter, the Ombudsman has published his 2007 Annual Report, in particular, Section 4: Police. Reflected in this report are the recent significant legislative changes which came into force on 1 June 2007, further simplifying the police complaints system. In effect, the changes remove the distinction between Category 1 complaints and Category 2 complaints, and replace these with a single category of "notifiable complaints", as defined in a written agreement between the PIC and the Ombudsman, following consultation with the NSW Police Commissioner. Briefly, all such notifiable complaints must be recorded by police and brought to the attention of the Ombudsman.
- 2) Once notified to the Ombudsman, the latter conducts an assessment with a view to classifying such complaints as require investigation, as distinct from some other procedure, or as requiring no action. In the case of complaints assessed as requiring investigation, these are forwarded by the Ombudsman to police for investigation, importantly subject to the extensive powers in this regard reposed in the Ombudsman by Part 8A of the Police Act.
- 3) The report notes that during the reporting year the Ombudsman received and assessed 3,466 formal or written complaints (2198 from members of the public, and 1268 from the police themselves). Of these, 2157 were investigated by police such investigations being oversighted by the Ombudsman.
- 4) The Ombudsman has power to directly investigate complaints, but this power is used sparingly and only where relevant criteria are satisfied.
- 5) There is also power to monitor the investigation of complaints by police, and in these cases the Ombudsman takes up the role of an independent observer of the investigation procedures. During the reporting year 34 investigations were monitored in this way.
- 6) Although the PIC may in theory choose to investigate or oversee the investigation of notifiable complaints, in practice only a handful are either investigated or oversighted by the PIC. For example, according to the PIC 2007 Annual Report published on 25 October 2007, during the reporting year only 11 complaints received by the PIC were investigated by it, and a further 25 were the subject of oversight by the PIC. Although the PIC has certain powers under the PIC Act to oversight the investigation of such complaints by police, it is not included in the extensive powers conferred on the Ombudsman under the Police Act.
- 7) Thus it is clear that the Ombudsman's role in ensuring that complaints against NSW police are properly recorded and investigated has been strengthened, and relevant procedures have been significantly improved, and it follows that the jurisdiction of the Ombudsman in this regard continues to be a vital and effective force in this context.

---

<sup>2</sup> Received by the Committee 6 November 2007



## Chapter Three - Transcript of Proceedings

**NOTE:** The Eighth General Meeting with the Inspector of the Police Integrity Commission was held at Parliament House, Macquarie Street, Sydney, on 8 November 2007.

**PETER JAMES MOSS**, Inspector of the Police Integrity Commission, GPO Box 5215, Sydney, affirmed and examined:

**CHAIR:** We circulated some questions to you on 27 September 2007. Would you like to table your written response to these questions?

**Mr MOSS:** I would, Madam Chair. Could I also make a short statement by way of opening?

**CHAIR:** Please do.

**Mr MOSS:** Thank you for giving me the opportunity to make an opening statement to yourself and the Committee. I am pleased to have this opportunity to appear before the Committee, which represents my first appearance since I was appointed Inspector of the Police Integrity Commission on 22 November 2006.

As the Committee is aware, my inaugural annual report, dated 24 July 2007, was presented to the President of the Legislative Council and the Speaker of the Legislative Assembly on that date and was made a public report.

Prior to my appearance before the Committee today, I have received on behalf of the Committee a number of written questions on notice and I have responded to each of those questions in writing. I assume that material is before the Committee today. I am here, of course, to answer all such questions as the Committee may ask of me and I will attempt to do so to the best of my ability. Thank you, Madam Chair.

**CHAIR:** In your answer to question 2 in relation to section 13 of the Police Integrity Commission Act which gives the Commission an oversight function for investigations carried out by other agencies, you state that in your opinion this means that the Commission continues to have a watching brief but without any power of control or direction in respect of the police investigation. Do you consider that the Police Integrity Commission should have oversight powers in relation to police investigations similar to those of the Ombudsman?

**Mr MOSS:** In the light of my experience to date, it is my opinion that the current ability to oversight police investigations by the Police Integrity Commission is somewhat limited, and I so conclude, as a result of my reading of the relevant section of the Police Integrity Commission Act, and I think that opinion of mine to some extent is borne out by the letter from the Police Integrity Commission Commissioner to which I referred in my letter to the relevant complainant, which is included in my response to that question. In other words, the Police Integrity Commission Commissioner seemed to also be of the view that the power of the Police Integrity Commission to oversee a particular police investigation is limited by the section, and certainly in my opinion, whatever the power is, it falls far short of the powers of

the Ombudsman under Part 8A of the Police Act, and in that updated response that I made in respect of the Ombudsman's powers, which I assume everyone has, I think that comes out loud and clear. So the short answer is: Yes, in my opinion the power of the Police Integrity Commission to oversight a relevant police investigation is unduly limited by the terms of the relevant section and certainly cannot be compared to the extent of the powers in that regard that the Ombudsman has under Part 8A of the Police Act.

**CHAIR:** In your work overseeing the Commission have you found this to be an obstacle for them?

**Mr MOSS:** My only experience to date has been in relation to that one complaint, and there, as I say, I think the limitation of the power was clearly seen. It is in my response but I think from memory that the period of oversight was something like 18 months, which I would have thought was an unduly long period to be overlooking a complaint that the complainant made, which was in effect that police had perjured themselves in proceedings in a local court. That is what his complaint was. It was pretty straightforward. As I say, it took the police about 18 months, overlooked by the Police Integrity Commission, to arrive at their conclusion in relation to that complaint.

I might say in my view they arrived at the correct conclusion. I myself concluded that there was no substance to the complaint and notified the complainant accordingly, but I think it did demonstrate that the oversight powers of the Police Integrity Commission are somewhat limited. I did request the Police Integrity Commission to do certain things in relation to overlooking that complaint but their response in effect was: Well, this is the power we have and we cannot do the sort of things that you, the Inspector, would like us to do.

**CHAIR:** Just expanding on that, has the Commission indicated to you that this is a problem?

**Mr MOSS:** No, I cannot say that the Commission sees it as a problem. I have not actually discussed that with the Commissioner, although as I say we did correspond in relation to this particular complaint. They seem to take the view that their power is limited but I could not say that they see that as a problem.

**CHAIR:** Are you satisfied with the response provided to you by the Commissioner of the Police Integrity Commission in relation to the Commission's memoranda of understanding?

**Mr MOSS:** Yes. I thought it was a very full response. I will follow up. There were a number of issues that that response raised. For example, a number of the memoranda of understanding referred to have not been finalised and certainly before my next annual report I would propose to go over each of those and to update the position for the purpose of my next annual report.

**CHAIR:** When in your view would you think the memoranda of understanding would need replacing?

**Mr MOSS:** I recommended to the Police Integrity Commission, and the Police Integrity Commission has accepted, that from now on each such memoranda of

understanding should have a clause in it providing in effect that it is to be reconsidered every 12 months from the point of view of adequacy and to cover any changes in relevant circumstances or legislation. Provided that clause is inserted and provided it is observed, then I would think that is the best way of ensuring that these memoranda are kept relevant and adequate.

**CHAIR:** Do you propose to continue monitoring the Commission's memoranda of understanding?

**Mr MOSS:** Yes. As I say, I will certainly follow up that letter from the Police Integrity Commission to which you referred, Madam Chair, and just to ensure that all those are finalised and also to check that that 12 months provision is included, and also you may see another very important recommendation that I made, and which has been accepted by the Police Integrity Commission, is that there should be a provision to the effect that the Police Integrity Commission Inspector's powers are not cut down in terms of these memoranda. I was a bit disturbed when I saw a couple of them because they appeared to have the effect of cutting down on the Inspector's powers under the Police Integrity Commission Act. However, that recommendation has been accepted by the Police Integrity Commission, so I do not see any problem in that regard.

**Mr KERR:** Inspector, if I could take you back to that case involving alleged perjury by police officers?

**Mr MOSS:** Yes, Mr Kerr.

**Mr KERR:** Did the investigation take 18 months to complete?

**Mr MOSS:** As I mentioned in my opening statement, I was appointed in November 2006. From memory, I think the complaint was at that stage about 12 months old. Certainly it was not a new complaint at that stage. It started off with the complainant making a complaint to the Police Integrity Commission and, from memory, I think it was at least six months before they referred it to the police. It may have been nearer 12 months. So the whole investigation certainly took longer than the period of 18 months during which the police oversighted it.

**Mr KERR:** Did the police continue in service or were they suspended?

**Mr MOSS:** No, Mr Kerr. This was a simple proceeding in the local court in Sydney. I don't want to identify the matter in any way of course. It was really a storm in a teacup, as the complainant himself on one occasion acknowledged. He was charged with assault. It was not by any means a serious assault and it was on another male who just happened to be in the vicinity. The complainant was arrested and taken down to the police station. He made an electronic record of interview and he was released. The matter then proceeded to the court on a simple assault charge. He was represented by a solicitor. I don't want to give you too much detail, Mr Kerr.

**Mr KERR:** Perhaps if I might interrupt, Mr Inspector, because really the essence of my question is that you may say it was a storm in a teacup, but an allegation of perjury is a very serious matter.

**Mr MOSS:** Yes.

**Mr KERR:** It certainly would be treated by these police officers as a serious matter.

**Mr MOSS:** Absolutely.

**Mr KERR:** They are entitled to have the matter dealt with expeditiously and this allegation resolved one way or another.

**Mr MOSS:** Yes.

**Mr KERR:** For the matter not to be referred for police investigation for what, 12 months--

**Mr MOSS:** As I say, it was at least six months old when I was appointed; I think more. For the first six months my recollection is the Police Integrity Commission was handling the matter and then they decided to give it to the police but they also decided that they would oversight it. They do not oversight many matters, unlike the Ombudsman, but they decided to oversight this one, I think because my predecessor requested them to oversight it, and once the oversight started it was some 18 months before the proceedings concluded and it concluded with the police being satisfied that there was no substance to the complaint. I conducted an independent examination and I was absolutely satisfied there was no substance to the complaint. It was a misunderstanding on the part of the complainant.

**Mr KERR:** But it was a serious allegation.

**Mr MOSS:** It was a serious allegation.

**Mr KERR:** And the fact that it took such a length of time when these officers were in fact innocent I would have thought was a matter for concern and that time-line is certainly unsatisfactory, because I understand on the facts that you have given us it was not a complex matter and on the face of it it should have been resolved far quicker than that.

**Mr MOSS:** I may say, Mr Kerr, sometimes the personality of the complainant can add enormously to the complexity of the matter. I never met this complainant, I made the point not to meet him, but let me say that all the evidence before me suggested that he was a very difficult man and I think these sort of people rub everyone up the wrong way and things that should not take X length of time in fact do. That does not absolve anyone from doing their duty but I think if you work into the equation that on all the evidence before me he was a very difficult customer.

**Mr KERR:** Nevertheless, as I say, on the face of it it is not satisfactory.

**Mr MOSS:** No, I said as much in my annual report.

**Mr KERR:** Perhaps more generally, when the Police Integrity Commission conducts inquiries and goes public in relation to those inquiries and the hearings are concluded, the length of time before they make recommendations is a matter which would cause those people involved considerable concern. It is important that the recommendations be formulated as quickly as possible.

**Mr MOSS:** I agree with all that, Mr Kerr, very much so.

**Mr KERR:** There are a number of matters that have received a lot of publicity since Superintendent Adam Purcell's matter that do not seem to have been finalised with recommendations.

**Mr MOSS:** Well, that certainly has not been published yet.

**Mr KERR:** No, and I was wondering if you had done any surveys in relation to hearings that had been completed and the length of time before the Police Integrity Commission formulates recommendations.

**Mr MOSS:** I have certainly thought about this matter a lot, Mr Kerr. I am highly conscious of the fact that people named publicly can suffer enormous damage to their integrity and reputation, particularly if no further action is taken, so they never have a chance to clear themselves or to put what it is they want to put. I think we perhaps should bear in mind that the current Commissioner was appointed only in October 2006, so to the extent that we are talking about historical matters—and I know you are not at the moment--

**Mr KERR:** No.

**Mr MOSS:** But I think it is probably fair to bear in mind that the current Commissioner has been there only since October 2006, so he has barely been there a year, much like myself, but I am concerned and I do propose to follow carefully, each time the Commission has a public hearing, as to how long it takes them to deliver a report arising out of that public hearing, because there is no doubt—and I have specific cases in mind—that people suffer a great deal in terms of their integrity and reputation if these matters are not handled fairly and promptly to say the least.

I think there is still a lot of confusion in the community as to the opinions of the Police Integrity Commission, when they publish a report after a public hearing, as to the legal basis of these opinions. Regrettably I think a lot of people, and I think including the police, regard opinions, assessments, recommendations expressed by the Police Integrity Commission in their public reports as findings of guilt. That is totally wrong; the Police Integrity Commission cannot make findings of guilt; but this is not much consolation to people who get adversely named in these reports. So I think at the very least one has to do one's best to ensure that fairness prevails and that these reports are delivered promptly, and the recommendations, if they are going to be acted upon, are acted upon, again, promptly. I can tell you of cases where that has not happened.

**Mr KERR:** So you can think of cases where that is not happening?

**Mr MOSS:** I have got a complaint at the moment. Once again, I do not want in any way to identify this officer.

**Mr KERR:** No, this goes only to time-lines rather than facts.

**Mr MOSS:** Yes. Let me say that recommendations were put out by the Police Integrity Commission in December 2005 in respect of this officer and he is still waiting for

those recommendations to be finalised.

**Mr KERR:** That is the second aspect. The first aspect is where there is a hearing and there are no recommendations or recommendations are outstanding and there are a number of matters where that is the case where in fact there has been a considerable amount of adverse publicity in relation to a police officer which may not even amount to any criminal accusations.

**Mr MOSS:** No.

**Mr KERR:** But they are nevertheless extremely damaging to that person's reputation.

**Mr MOSS:** Yes.

**Mr KERR:** It is outstanding for some time and that is bad enough.

**Mr MOSS:** Yes.

**Mr KERR:** Then we have the second situation that you have just adverted to where the Police Integrity Commission does make recommendations and the matter is still not finalised.

**Mr MOSS:** That, of course, has nothing to do with the Police Integrity Commission.

**Mr KERR:** No, but it is unsatisfactory from the administration of the police.

**Mr MOSS:** I couldn't agree more.

**Mr KERR:** Do you know how many instances that would be?

**Mr MOSS:** No.

**Mr KERR:** You are aware of a number of them though?

**Mr MOSS:** No, what has made me aware specifically is this complaint, because there does not seem to be any doubt on the facts that the recommendation was made in a report released in December 2005 by the Police Integrity Commission and there is no doubt whatsoever that this officer is still waiting for finalisation, and, as you say, it may be that what is put against him does not amount to a criminal offence, it really amounts to some breach of duty under the Police Act.

**Mr KERR:** Would it be an idea perhaps to do a survey as to how many hearings have been conducted publicly and are awaiting recommendations?

**Mr MOSS:** Yes.

**Mr KERR:** Secondly, how many recommendations have been made and officers are still in limbo as to their career.

**Mr MOSS:** I will attempt to follow that up, Mr Kerr.

**Mr PEARCE:** I am new to this Committee, so I am not sure of your precise role. Are you familiar with the *Police Integrity Commission Annual Report 2006-2007*?

**Mr MOSS:** Yes, I am. When I say I am familiar with it, I have not read the financial statements, but I have read the parts that interest me, in particular parts like section 7, very closely. Section 7 deals with the number of police complaints they received about police and what they did with them.

**Mr PEARCE:** In reference to your earlier comments regarding the memoranda of understanding that exist between the Police Integrity Commission and the police, a report from the previous Chair of this Committee, Mr Lynch, concerning the Counter Terrorism Coordination Command identified that in the changes there were significantly less statutory protections than existed previously, and there was a suggestion that it be monitored by the Police Integrity Commission. At page 31 of the report:

Should the PIC's recommendations contained in its report *Management of Misconduct Risks by the NSW Police Counter Terrorist Coordination Command: An Assessment* not be implemented, or should they prove not to be effective, the Committee will consider recommending legislation to reintroduce a statutory audit.

I notice that basically what has happened since that time, and this is pages 38-39 and following, is that there still does not appear to be a firm set of guidelines in place. My interpretation from reading this is that the Police Integrity Commission are happy with the police doing their own internal audit on this. The reason I raise this is that there was concern expressed initially about the risk of the police doing the internal audit, that the previous Special Branch abused their powers significantly, particularly in relation to innocent individuals. Are you satisfied that this agreement that appears to have been reached between the Police Integrity Commission and the police in relation to the Counter Terrorism Command is likely to protect civil liberties and innocence or is it liable to be open to abuse, as was the old Special Branch?

**Mr MOSS:** Mr Pearce, I would have to have a look at that, if you don't mind, and get back to you about that.

**Mr PEARCE:** That is fine. I apologise for not putting that earlier. I only just got the report.

**Mr MOSS:** I must say I did not spend a lot of time on that particular section of the report.

**Ms HALE:** I am also a new member of the Committee, but can I also reiterate the concerns that have been expressed about the possibility of the police exceeding their powers, particularly in relation to terrorism or other offences, given the considerable expansion of police powers that we seem to be witnessing. That said, earlier you referred to the unduly limited ability of the Police Integrity Commission to oversight police investigations and you said that the Police Integrity Commission's powers were far short of those of the Ombudsman.

**Mr MOSS:** Yes.

**Ms HALE:** Would there be any benefit if the Police Integrity Commission were to be given powers comparable to those of the Ombudsman in your opinion or would that be an unnecessary duplication?

**Mr MOSS:** Perhaps I should make clear that the provision in the Police Integrity Commission Act to which I am referring in relation to their oversighting power is section 13, and then, as I said, if you have that update response I made in writing in response to the Ombudsman's powers where I in fact refer to the Ombudsman's Police Annual Report for 2007, I think you will see from that that the Ombudsman has extensive powers under section 8A of the Police Act. Not only can the Ombudsman oversight, and direct and control the oversighting, but he has the power to monitor under a particular section, to actually sit in as an observer. He does not do that unless it is justified but he has these powers. So there is a vast difference, in my opinion, between the powers of the Ombudsman under section 8A of the Police Act and section 13 of the Police Integrity Commission Act.

Whether you could justify, as it were, including the Police Integrity Commission in those same provisions that the Ombudsman has, I suppose it is really a matter of policy, but under the present police complaint system it is clear that it is the intention of Parliament that the Ombudsman should be the principal overseer of complaints against the police. As you will see from that updating material, the Ombudsman receives thousands of complaints against police each year and he then assesses those complaints that need to be investigated, which are the majority of them. He then farms those out to police to investigate, but he then oversights those investigations and he oversights them in a way that shows that he has got control and he can direct, and, if he is not satisfied, then he can let the police know and demand a further investigation.

**Ms HALE:** I appreciate that, and you did say it is a question of policy. What I am asking is in your opinion would there be any benefit in giving increased powers to the Police Integrity Commission?

**Mr MOSS:** Yes, I think so. I do not think that means that they are going to oversight any greater number than they are presently oversighting, because they see that as not their function, or certainly not their primary function, but to the extent that they are going to oversight any, I would have thought there is some benefit in giving them additional powers to oversight. I think their present powers are too limited.

**Ms HALE:** In terms of the cases that they do oversight, do they determine to do so in relation to a set of criteria or how do they determine which ones they will oversee and which ones they will not?

**Mr MOSS:** The single experience that I have had since my appointment in this context is the one I have already mentioned and I came into that because they were oversighting an investigation as a result of a complaint to me. So I do not have any general knowledge, apart from the annual report. In this 2007 annual report that Mr Pearce has referred to, I think they say in that year they oversighted 25 cases. I have no details of those 25 cases, apart from the one I have already mentioned, but I would propose to take an interest in that area and to track through their oversighting of cases and make sure that they are timely and so on.

**Ms HALE:** Just in relation to the matter that has been raised about the six to 12

months before a matter was referred to the police, did the Commission give any explanation as to why it took so long?

**Mr MOSS:** I do not know that the Commission would concede that it did take too long. That of course is my view. They would probably say that it took six months for them to get statements and interview this man and they would probably say that they had a lot of other things on their plate. So I do not know that they would agree with me or Mr Kerr that it was unduly long.

**The Hon. LYNDA VOLTZ:** Can I ask a question of clarification because I am new to the Committee as well. When you talk about serious police misconduct as your brief--

**Mr MOSS:** As the Commission's brief.

**The Hon. LYNDA VOLTZ:** As the Commission's brief, what would constitute serious police misconduct? Would say an order that overrode standing operating procedures be considered serious police misconduct? How do you define serious as opposed to minor?

**Mr MOSS:** The Commission has a special committee, which sits every fortnight or so and which includes the Commissioner and other senior staff, and they are continually assessing complaints. Obviously they receive a lot of complaints a year, but they investigate either about one or two percent only of those complaints. For example, if you look at that 2007 annual report of the Police Integrity Commission, you will see that in that year, of all the complaints they received they investigated only 11 out of I think a couple of thousand. No, I think 1200. No, I think about 1500. But they investigated only 11 of those.

They have to come to some conclusion about which ones they are going to investigate, but obviously it is not hard to think of what would constitute a serious police complaint: serious allegations of police corruption for example at a high level; police dealing in illegal drugs systemically for example. If we think of some of the recent public hearings, Mr Kerr has already referred to one and we have not got a report from that yet, but there is another one too that a report is awaited and that was an investigation, including public hearings, into the disappearance of a woman around Wagga Wagga and police were involved in that allegedly. So that became a serious complaint.

**The Hon. LYNDA VOLTZ:** So serious criminal behaviour.

**Mr KERR:** Was that Wagga Wagga or Bathurst?

**Mr MOSS:** No, I think it was Wagga Wagga. Public hearings certainly took place in Wagga Wagga. It might have been Bathurst, Mr Kerr. You might be right.

**The Hon. LYNDA VOLTZ:** So say an order to ignore standard operating procedures would not come under the Police Integrity Commission, it would come under the Ombudsman?

**Mr MOSS:** I think these questions are probably best directed to the Police Integrity Commission but I am prepared to give my opinion. I think that probably not. What they seem to investigate, if you have a look at what they actually investigate, are claims of police corruption—they are prominent—claims that police are illegally dealing in drugs, claims that

police have unlawfully assaulted someone, claims that police are illegally dealing in arms, perjury, and that sort of thing.

**The Hon. LYNDIA VOLTZ:** I am just trying to link it to the oversighting of the terrorism task force, in terms of if there are standard operating procedures and people have raised concerns and there is an audit, where does that fit in?

**Mr MOSS:** The Police Integrity Commission may regard that sort of thing as a serious police complaint. We have not been able to test that with experience as yet but no doubt instances will arise.

**The Hon. LYNDIA VOLTZ:** And just so I can clarify it in my mind, the memorandum of understanding with AUSTRAC, that is cleared up now, you do have access, or is the director still able to at his discretion--

**Mr MOSS:** I think that is one of the ones yet to be finalised and that is one of the ones that I propose to follow up.

**The Hon. LYNDIA VOLTZ:** Because given the nature of the type of complaints you are actually charged with and when you talk about corruption, obviously with the AUSTRAC, the ability to access that system would be crucial, would it not?

**Mr MOSS:** Yes, indeed. Yes, I will keep a close eye on that and make sure that those memoranda do not obstruct the Inspector in carrying out his duties.

**The Hon. LYNDIA VOLTZ:** It seems an awfully long time for a memorandum of understanding to be resolved. Will it be resolved in terms of clarifying soon?

**Mr MOSS:** I will certainly follow it up and certainly before my next annual report I will make sure that that is in order.

**Mr KERR:** Yes. The limited powers you mentioned that the Police Integrity Commission has, turning to that perjury matter, you wanted the Police Integrity Commission to do certain things?

**Mr MOSS:** Again, Mr Kerr, I do not know how much detail you want but--

**Mr KERR:** Perhaps I might explain, Inspector. I took from your remarks earlier that you wanted the Police Integrity Commission to take certain actions. They said, "We cannot do that because we do not have those powers". It seems to me that if they had those powers, then you could more effectively do your job if they were able to implement your suggestions.

**Mr MOSS:** That is certainly my view. My view is that they should have powers of direction and control when they are oversighting an investigation. They should be able to call on the police to carry out their investigation in a timely manner and they should be able to see the evidence on which the police come to their ultimate conclusion.

**Mr KERR:** Are you surprised that they have not complained about the lack of powers?

**Mr MOSS:** As I say, I am not sure what the views of the Police Integrity Commission are in that regard. I cannot say that they have indicated to me that they are unhappy with the power they have, but we seem to be each of the view that it is a limited power.

**Mr KERR:** The Police Integrity Commission has been operating for some time now. There are a number of organisations that are directly affected; the Police Association springs to mind. Have you ever had any discussions with the Police Association as to their views of the Police Integrity Commission?

**Mr MOSS:** No. Bear in mind, Mr Kerr, that I have no jurisdiction over police. I have no jurisdiction in respect of complaints about police. My complaints jurisdiction is confined to complaints about the Police Integrity Commission and its officers, but I do see, of course, published in the press from time to time statements attributed to police officers that they are unhappy with aspects of the Police Integrity Commission. I suppose one could say that perhaps if those sort of complaints were not being made, then it might be said the Police Integrity Commission were not doing their job. Whether that is a correct assessment I do not know but we would have to take into account disgruntled police officers may be acting from other than high moral motive.

**Mr KERR:** Do you recall what sort of criticism was made?

**Mr MOSS:** I think the *Daily Telegraph* made some criticism recently of the Police Integrity Commission. I do not want to give it any more publicity.

**Mr KERR:** The *Daily Telegraph* does not have a policing role though I take it. I think you mentioned that you had read criticisms by police officers.

**Mr MOSS:** I think that case you mentioned, you mentioned the Purcell case, and we have not got a report yet so we must be careful, but I think some police were unhappy about the publicity that was given.

**Mr KERR:** Did you see the publicity it was given?

**Mr MOSS:** Only as it was reported in the press. It was reported in the *Sydney Morning Herald*. I don't want to say I don't read a particular newspaper, but I did see it in the *Sydney Morning Herald*.

**Ms HALE:** Do you believe the Police Integrity Commission is adequately resourced to perform the role that it needs to perform, and if its powers were to be enlarged would that need to be accompanied by increasing resources?

**Mr MOSS:** As far as I can see it is adequately resourced. It seems to have some able investigators attached to it. I mean the time may have come, given the length of time that it has been in operation, possibly to have a complete review of what it is there for. After all, I think it is at least ten years old and a lot has happened in those last ten years, as we all know, so possibly at some stage it would be useful for the function and the role of the Police Integrity Commission to be looked at.

**Ms HALE:** If there were such a review to take place, who do you think should

conduct it? Would that fall within your responsibilities?

**Mr MOSS:** My office comprises myself and my executive assistant, who is here today. I would not think our resources would be anything like what would be needed to do a job like that.

**Ms HALE:** So there is no statutory requirement for review at regular intervals of the Police Integrity Commission's activities?

**Mr MOSS:** Not to my knowledge, Ms Hale, no.

**CHAIR:** I would like to thank you, Inspector, for your attendance today and for the full and frank responses you gave the Committee's questions, and I would also like to thank our new members on the Committee and we certainly look forward to a productive new year.

**(The witness withdrew)**

**(The Committee adjourned at 10.48 a.m.)**

# Appendices

Appendix 1 – Committee Minutes

Appendix 2 – Answers to Questions Taken on Notice



## Appendix 1 – Committee Minutes

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 1)**

10 am Thursday 28 June 2007  
Room 814, Parliament House

#### **Members Present**

Ms D'Amore MP            Mr Draper MP            Ms Hale MLC  
Mr Kerr MP                Mr Pearce MP

#### **Apologies**

Apologies were received from Mr Lynn MLC and Ms Voltz MLC

#### **Also Present**

Les Gönye, Glendora Magno, Samantha Ngui, Hilary Parker, Pru Sheaves

.....

#### **General Business**

.....

- The Chair advised committee members of the need to hold general meetings to consider the most recent annual reports of the NSW Ombudsman, the Police Integrity Commission and the Inspector of the Police Integrity Commission.

.....

The committee adjourned at 10.36 am until a date to be determined.

---

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 3)**

10 am Thursday 8 November 2007  
Waratah Room, Parliament House

#### **Members Present**

Ms D'Amore MP            Ms Hale MLC            Mr Kerr MP  
Mr Lynn MLC                Mr Pearce MP            Ms Voltz MLC

**Apologies**

Mr Draper MP

**Also Present**

Glendora Magno, Samantha Ngui, Hilary Parker, Pru Sheaves

**Eighth General Meeting with the Inspector of the Police Integrity Commission**

The public hearing commenced at 10am.

The Hon Peter James Moss QC, Inspector of the Police Integrity Commission, was affirmed and examined. The Inspector tabled his answers to questions on notice and made a short opening statement. He was then questioned by the Chair, followed by other members of the Committee.

Questioning concluded, the Inspector withdrew and the Committee adjourned at 10.48am.

## Appendix 2 - Answers to Questions Taken on Notice

### MISCONDUCT RISK ASSESSMENT: COUNTER-TERRORISM POLICING



NEW SOUTH WALES

*Inspector  
of the  
Police Integrity Commission*

22 January 2008

Ms Angela D'Amore MP  
Chair  
Parliament of New South Wales  
Committee on the Office of the Ombudsman  
and the Police Integrity Commission  
Macquarie Street  
SYDNEY NSW 2000

Dear Madam Chair,

**RE: MISCONDUCT RISK ASSESSMENT: COUNTER-TERRORISM  
POLICING**

- 1) When I appeared before your Committee on 8 November 2007, a question was directed to me in the following terms:--

*“Are you satisfied that this agreement that appears to have been reached between the Police Integrity Commission and the Police in relation to the Counter-Terrorism Command is likely to protect civil liberties and innocence or is it liable to be open to abuse, as was the old special branch?”*

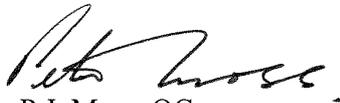
- 2) As I made clear in my evidence before the Committee at that time, I was unable to respond relevantly to that question.
- 3) However, to enable me to make a relevant response, I wrote to Mr Alan Kearney, Director Intelligence and Executive Services, of the Police Integrity Commission, by letter dated 19 December 2007. I *enclose* a copy of that letter.
- 4) By letter dated 11 January 2008 the Commission responded to my letter. I *enclose* herewith a copy of that letter.

email: [inspectorpic@bigpond.com](mailto:inspectorpic@bigpond.com)  
GPO BOX 5215, SYDNEY NSW 2001 TEL: (02) 9232 3350 FAX: (02) 9232 3983

Appendix 2 - Answers to Questions Taken on Notice

- 5) From the content of the Commission's letter to me dated 11 January 2008, I have noted the following matters in particular:--
- 6) First, that "in line with its statutory functions...the Commission's assessment focussed on managing the misconduct risks that result from the work undertaken by officers responsible for counter-terrorism policing. It did not focus on the protection of civil liberties."
- 7) Second, that "...the strategies proposed by the Commission seek to minimise any abuse of the powers provided to Police under the legislation. These strategies do not seek to restrict lawful use of powers, hence the strategies proposed by the Commission do not seek to protect civil liberties per se."
- 8) Further, that in the Commission's opinion "the strategies that it has proposed in its assessment are an improvement" on those strategies which preceded the current strategies.
- 9) I trust that this letter, together with the copy letters enclosed, are viewed by the Committee as providing an adequate response to the question directed to me by the Committee and to which I have referred above.

Yours sincerely



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

Our Ref: AK191207

19 December 2007

Mr Alan Kearney  
Director Intelligence and Executive Services,  
Police Integrity Commission  
PO Box 3880  
SYDNEY NSW 2001

Dear Mr Kearney

**RE: MISCONDUCT RISK ASSESSMENT: COUNTER-TERRORISM POLICING**

- 1) You may recall that during our meeting at Commission premises last Friday, I mentioned that in my weekly discussions with the PIC Commissioner, I had referred to a question directed to me by the PJC when I appeared before the Committee on 8 November 2007. That material can be found on Pages 7 and 8 of the transcript relating to my appearance before the PJC (copies enclosed). It was agreed that I should approach you for further information about this issue, in the first instance.
- 2) My attention was drawn by the PJC, to a statement by the prior PJC to the effect that should the PIC's recommendations in this regard not be implemented, or should they prove not to be effective, the Committee will consider recommending legislation to reintroduce a statutory audit.
- 3) The Committee commented, after referring to Pages 38-39 of the PIC 2007 Annual Report, that "there still does not appear to be a firm set of guidelines in place."
- 4) A question was directed to me in the following terms---  
  

*"Are you satisfied that this agreement that appears to have been reached between the Police Integrity Commission and the Police in relation to the Counter-Terrorism Command is likely to protect civil liberties and innocence or is it liable to be open to abuse, as was the old special branch?"*
- 5) I informed the Committee that I could offer no comment at that time, but that I would look into the matter and report back to the Committee. The purpose of this letter is to seek information on which to base a relevant response to the PJC.
- 6) At Page 28 of the PIC 2007 Annual Report the statement appears, in effect, that the PIC undertook the assessment "to consider what, if any, special oversight or monitoring

Appendix 2 - Answers to Questions Taken on Notice

arrangements are needed to adequately manage the misconduct risks that result from the nature of the work undertaken by officers in the CTCC.”

- 7) Incidentally, as I understand it the CTCC no longer exists having been replaced by the Anti-Terrorism and Security Group.
- 8) At Page 29 of the Annual Report it is noted that the Royal Commission and others each identified the need for special oversight of any unit that was to replace the special branch.
- 9) Further, at an earlier point in time legislation was introduced which required the NSWPF to conduct relevant annual audits.
- 10) In the PJC’s Report to Parliament in November 2006 on Police Counter-Terrorism and other powers, at 5.6.4.2, the PJC recorded that

*“The Commission does not see that further oversight by an external agency needs to be mandated at this stage.”*

- 11) May I enquire whether that remains the view of the Commission currently?
- 12) Finally I note from Page 31 and 39 of the PIC 2007 Annual Report, that a number of issues had not been finalised as at the cutting off period in respect of that Report.
- 13) Could you please provide me with a current assessment of what misconduct risk management plan, if any, is in place at the moment and whether in your view, is possible to give a response to the PJC’s query as to whether current arrangements are likely to protect civil liberties?

Yours sincerely

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

*Enc.*



ABN 22 870 745 340

Our Ref: 16802/11

11 January 2008

The Hon P.J. Moss, QC  
Inspector of the Police Integrity Commission  
GPO Box 5215  
SYDNEY NSW 2001

Dear Inspector

**Re: Misconduct Risk Assessment – Counter-Terrorism Policing**

Please refer to your correspondence of 19 December 2007 (your reference AK 191207) regarding the above subject.

In response to your request for information, this letter has been structured to provide comments on the following issues:

- focus of the Commission's assessment was on misconduct risks – not civil liberties
- strengths of the strategies proposed by Commission compared to previous regimes
- restructuring/renaming of unit undertaking counter-terrorism policing
- monitoring NSW Police Force progress in implementation of strategies proposed by Commission.

In addition I have enclosed for your information a copy of the Commission's assessment concerning the management of misconduct risks in the Counter-Terrorism Coordination Command (CTCC).

**Focus of the Commission's assessment was on misconduct risks – not civil liberties**

One aspect of the question posed by Mr Pearce of the Parliamentary Committee, focuses on whether the strategies proposed by the Commission will 'protect civil liberties'. Associated with the Parliamentary Committee's question, Paragraph 13 of your letter seeks whether in the Commission's view it 'is possible to give a response to the PJC's query as to whether current arrangements are likely to protect civil liberties'.

It should be noted that, in line with its statutory functions and as noted in Paragraph 6 of your letter, the Commission's assessment focussed on managing the misconduct risks that result from the work undertaken by officers responsible for counter-terrorism policing. It did not focus on the protection of civil liberties.



The Commission's assessment considered legislative changes in the area of counter-terrorism in Chapter 3 and Appendix 3 of its assessment. Civil liberty issues were raised in the parliamentary debates following the second reading speeches associated with the various pieces of legislation. However, it should be noted that one effect of the legislation that has been enacted is to restrict the civil liberties of certain persons following a terrorist act or where there is reason to believe that a terrorist act may occur in the near future and that the exercise of the powers will substantially assist in preventing the terrorist act.

Hence the strategies proposed by the Commission seek to minimise any abuse of the powers provided to police under the legislation. These strategies do not seek to restrict lawful use of powers, hence the strategies proposed by the Commission do not seek to protect civil liberties per se.

**Strengths of the strategies proposed by Commission compared to previous regimes**

A second aspect of the question posed by Mr Pearce of the Parliamentary Committee, focuses on whether the strategies proposed by the Commission will leave the police work 'liable to be open to abuse, as was the old Special Branch'.

The Commission is of the opinion that the strategies that it has proposed in its assessment are an improvement on the regimes associated with each of: the Special Branch, the Protective Security Group and that associated with the then Counter-Terrorist Coordination Command at the time the Commission undertook its assessment.

The former Special Branch had been described as seeming 'accountable only to itself' (Wood 1997, p. 251), using 'anachronistic and unreliable' filing systems, and having 'no satisfactory procedures for the management of informants' (Police Integrity Commission 1998, p. 29).

Unlike the former Special Branch, the CTCC – recently renamed the Anti-Terrorism and Security Group (see below) – does not rely on stand-alone systems. Instead it uses NSW Police Force corporate systems. Some of these corporate systems include facilities which enable regular audits to be conducted. Its systems are as accountable and transparent as the systems used by other NSW Police Force commands because it was using the same corporate systems. The CTCC advised that it uses a range of strategies to manage the potential misconduct risks its officers may face. These strategies were discussed in the Commission's assessment (pp. 74-91) and summarised as follows:

These strategies include: physical security measures, use of corporate systems for information management and informant management, a panel rather than individuals to decide which information should be collected, supervision and record keeping in relation to investigations, rotation of officers, and audits to deter and detect individual instances of misconduct. The CTCC has also advised that because its officers work closely with officers from other agencies such as the AFP and ASIO, the work of CTCC officers is subject to being observed by officers from the other agencies with whom they work (p. 89).

As observed in Paragraph 9 of your letter, at an earlier point in time legislation was introduced which required the NSWPF to conduct relevant annual audits. That



legislation (*Police Legislation Amendment (Protective Security Group) Act 1998*) amended both the *Police Act 1990* and the *Police Integrity Commission Act 1996* to provide oversight of the work of the Protective Security Group which replaced the Special Branch. It required that NSW Police conduct annual audits of the operations of the Protective Security Group and that the Commission monitor and report on those audits. However, in March 2003 when the Protective Security Group's functions were absorbed into the newly created CTCC, those audits ceased. This resulted in a legislative anomaly whereby sections of the *Police Act 1990* concerning the conduct of audits of the Protective Security Group and sections of the *Police Integrity Commission Act 1996* concerning the monitoring of those audits no longer had practical application as there was no longer a Protective Security Group.

The monitoring of the work of the CTCC proposed by the Commission in its assessment was designed to be more targeted to the nature of the risk to be managed (focussing on procedures used to manage targeting and information retention (and disposal)) than the Protective Security Group audits which had been criticised as focussing on areas that were not at risk and duplicating other procedures. The Commission also sought to allow that the monitoring be sufficiently flexible to allow for changes in misconduct risks that result from the changes in functions performed and any changes in the name of the functional unit that carries out these functions. (For further discussion of these issues please refer to pp.108-109 of the Commission's assessment.)

The Commission has been informed that corporate recognition of the risks faced by officers undertaking counter-terrorism policing is to occur through the inclusion of a requirement for an audit of the work of this unit into the performance agreements of the Commissioner of Police, Deputy Commissioner Specialist Operations and the Assistant Commissioner Counter Terrorism and Special Tactics.

It is the Commission's view that while the CTCC had already introduced some strategies to make it less liable to the failings of the former Special Branch, opportunities for the CTCC to further strengthen its capacity to resist misconduct were identified in the Commission's assessment. As summarised in the 2006-2007 Annual Report these involved:

- acknowledging the special misconduct risks faced by officers undertaking counter-terrorist policing and dignitary protection
- strengthening capacity to identify and respond to current and future misconduct risks
- oversight from beyond the command (pp. 38-40).

In Paragraphs 10 and 11 of your letter, you ask the question as to whether the Commission currently remains of the view that:

The Commission does not see that further oversight by an external agency needs to be mandated at this stage.

The Commission remains of this view, subject to the strategies proposed by the Commission being implemented by the NSW Police Force. NSW Police Force progress in implementation is discussed below.



**Restructuring/renaming of unit undertaking counter-terrorism policing**

As you note in your letter, the CTCC no longer exists having been replaced by the Anti-Terrorism and Security Group (Paragraph 7 in your letter). There has been subsequent restructuring within the broader command referred to as the 'Counter Terrorism & Special Tactics Command' and there may be further changes in the future. It is for this reason that in drafting its assessment the Commission observed that:

The misconduct risks associated with the functions performed by the CTCC and the naming of the functional unit (or units) within NSW Police that undertake these functions may be subject to change over time. It is for these reasons, it is desirable that any oversight or monitoring arrangements to be linked to the functions performed, rather than to the name of the unit that currently performs those functions ... (pp. 108-109).

For the same reasons the Commission proposed that NSW Police should:

document [its] recognition of the inherent misconduct risks of any unit that undertakes the work of the former Special Branch and documents the lessons, for those currently undertaking this work, to be learnt from the investigations undertaken into the work of the former Special Branch (p. 113).

**Monitoring NSW Police Force progress in implementation of strategies proposed by Commission**

In its assessment, the Commission stated that:

The Commission will retain an interest in this area until it is satisfied with the systems put in place by the CTCC and by NSW Police to manage these potential misconduct risks (p. 114).

Also, as noted in Paragraph 2 of your letter, the previous Parliamentary Committee had stated that should the PIC's recommendations in this regard not be implemented, or should prove not to be effective, the Committee will consider recommending legislation to reintroduce a statutory audit.

The continued monitoring by this Commission acts as an incentive for the NSW Police Force to implement the strategies proposed by the Commission. While Mr Pearce refers to 'this agreement that appears to have been reached by the Police Integrity Commission and the Police in relation to the Counter-Terrorist Command', the initial NSW Police position that those who undertake counter terrorism policing do not require any special monitoring has only been changed by continued efforts of the Commission.

In Paragraph 12 of your letter you observe that as noted in the 2007 Annual Report a 'number of issues had not been finalised as at the cutting off period in respect of the Report'. In response to Paragraph 13 of your letter, the following update in terms of NSW Police Force progress in implementation is provided. As noted above, as summarised in the 2006-2007 Annual Report the Commission had proposed the following strategies as a result of its assessment:

- acknowledging the special misconduct risks faced by officers undertaking counter-terrorist policing and dignitary protection



- strengthening capacity to identify and respond to current and future misconduct risks
- oversight from beyond the command (pp. 38-40).

As noted in the Annual Report, the Commission considers that NSW Police Force action in relation to the first of these meets what was required (pp. 38-39). In relation to the second, the new *Potential Misconduct Risks* section of the Induction package contributes to this strategy and the Commission will continue to monitor progress in the Anti-Terrorism and Security Group's (or other unit subsequently undertaking these functions) corruption resistance planning. Some progress has been made in relation to the third of these strategies since the preparation of the material for the 2007 Annual Report. Specifically, the Commission received a copy of the plan for the review of the Anti-terrorism and Security Group from the NSW Police Force on 12 December 2007. At that time the NSW Police Force advised that the Organisational Review & Support (ORS) had largely completed its field component of the review and had commenced drafting the report.

I trust the above information addresses your queries.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Pritchard'. The signature is fluid and cursive, written over a light grey background.

John Pritchard  
Commissioner

Encl.



## OUTSTANDING PIC RECOMMENDATIONS MADE PURSUANT TO EITHER SECTION 173 OR 181D OF THE POLICE ACT 1990



### *Inspector of the Police Integrity Commission*

4 February 2008

Ms Angela D'Amore MP  
Chair  
Parliament of New South Wales  
Committee on the Office of the Ombudsman  
and the Police Integrity Commission  
Macquarie Street  
SYDNEY NSW 2000

Dear Madam Chair,

#### **RE: OUTSTANDING PIC RECOMMENDATIONS MADE PURSUANT TO EITHER SECTION 173 OR 181D OF THE POLICE ACT 1990**

- 1) You may recall that when I appeared before your Committee on 8 November 2007, I was asked a number of questions which I was unable to adequately respond to at that stage. In each such case, I informed the Committee that I would look into the matter and respond to the Committee in due course.
- 2) One such question went to the issue of how many recommendations were currently outstanding, being recommendations made by the PIC for action to be taken against particular officers pursuant to either Section 173 or 181D of the Police Act 1990. The purpose of this letter is to respond to that issue.
- 3) On 14 December 2007 I wrote to the PIC Commissioner seeking information in respect of this issue. By letter dated 20 December 2007 the Commissioner provided the information sought. I *enclose* copies of my letter to the Commissioner and the latter's response thereto.
- 4) As a result of the information referred to in my letter, together with the further information contained in the Commissioner's letter to me, I would understand that the results might be summarised as follows.

email: [inspectopic@bigpond.com](mailto:inspectopic@bigpond.com)  
GPO BOX 5215, SYDNEY NSW 2001 TEL: (02) 9232 3350 FAX: (02) 9232 3983

- 5) First, in relation to Operation Juniper, there remains one outstanding recommendation pursuant to Section 181D, and it appears that the Commissioner of Police has indicated that a decision will be made in respect of this matter early in 2008.
- 6) Second, in relation to Operation Mercury, it appears that there remains outstanding a recommendation pursuant to Section 173 on the basis that the relevant officer remains on sick leave, and it appears that this matter will not be further considered until the officer returns to duty.
- 7) Third, in relation to Operation Whistler, the matters outstanding comprise a recommendation under S181D in respect of Inspector Murphy; a recommendation pursuant to S173 in respect of Senior Constable Briggs; a recommendation pursuant to S181D in respect of Constable Jackson, which it appears will not be the subject of a decision by the Commission of Police until the outcome of a current prosecution against Constable Jackson is available. My understanding is that those proceedings are part heard and will resume in May 2008.
- 8) With respect to Senior Constable Briggs, the Committee has a copy of my Report concerning Senior Constable Briggs dated 11 December 2007. A copy of that Report has also been provided by me to the Commissioner of Police, given its obvious relevance to the recommendation made by the PIC in respect of Senior Constable Briggs.
- 9) Apart from those matters, I note that there are relevant recommendations outstanding in respect of four officers arising from Operation Mallard; one officer arising from Operation Horseshoe; one officer arising from Operation Norsca; and one officer arising from Operation Alpago. Finally, I note that the PIC Report in Operation Rani recommended that action be taken against an Officer pursuant to either S.181D or S.173.

Yours sincerely



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

14 December 2007

Mr John Pritchard  
Commissioner  
Police Integrity Commission  
GPO Box 3880  
**SYDNEY NSW 2001**

Dear Commissioner

**RE: OUTSTANDING PIC RECOMMENDATIONS: Re: SECTION 173 OR 181D OF POLICE ACT**

- 1) As you may be aware, when I appeared before the PJC on 8 November 2007 it was suggested to me by a member of that Committee that I should undertake a survey as to how many recommendations made by PIC under the above Sections of the Police Act remain outstanding.
- 2) The purpose of this letter is therefore to seek that information from the Commission.
- 3) I have picked up some relevant information from the Commission's 2007 Annual Report, and it might be helpful if I were to advert to those particular items.
- 4) On Page 23 with reference to Operation Juniper, there is a reference to the NSWPF having commenced action under Section 181D of the Police Act against an unidentified officer. Could I please have an update in respect of that matter?
- 5) On Page 26 of the Annual Report, with reference to Operation Mercury, there is reference to a recommendation in respect of non-reviewable action under Section 173. Could I please have an update in respect of that matter?
- 6) On Page 27 with reference to Operation Whistler, there is reference to Inspector Murphy and that NSWPF had advised that consideration was being given to Section 181D action in respect of that officer. Could I have an update in respect of that matter?
- 7) On the same page and in relation to the same operation, there is a reference to recommendations in respect of four other officers that non-reviewable management action be taken in respect of them. The statement is made that the Commission is satisfied that the appropriate action has been taken by NSWPF. My understanding is that at least in respect of two of those officers NSWPF declined to take any action against those officers. Could I have an update in respect of this matter please?
- 8) Relevant to this topic, it seems to me, is part of the content of Page 37 of the 2007 Annual Report. There reference is made to recommendations aimed at reducing the time taken to

Appendix 2 - Answers to Questions Taken on Notice

finalise the outcome of management action and providing information to officers notified in the context of reviewable action having been recommended in respect of those officers.

9) The material goes on to indicate that NSWPF had commenced a formal project in respect of these matters, and has also commenced to provide the Commission on a quarterly basis with schedules concerning officers who are or have been subject to reviewable management action.

10) Is there any further information that could usefully be added to that material since the date of the publication of the 2007 Annual Report?

Yours sincerely

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

**FAXED**  
21-12-07



ABN 22 870 745 340

**HAND DELIVERY**



Our Ref: 7896/415

20 December 2007

The Hon P.J. Moss, QC  
Inspector of the Police Integrity Commission  
GPO Box 5215  
SYDNEY NSW 2001

Dear Inspector

I refer to your faxed letter of 14 December 2007 seeking an update on NSWPF responses to outstanding Commission recommendations in respect of s.173 and 181D of the *Police Act 1990*.

Adopting the numbered paragraphs referred to in your letter, updates on "recommended" managerial action in respect of officers, and in respect of the other matters raised in your letter, are as follows. Updates on managerial action in respect of other officers not canvassed in your letter follow thereafter.

**4) On Page 23 with reference to Operation Juniper, there is a reference to the NSWPF having commenced action under Section 181D of the Police Act against an unidentified officer. Could I please have an update in respect of that matter?**

NSWPF have commenced action under s.181D against an officer. The Commission has been advised that a decision is expected to be made by the Commissioner of Police, in respect of any action to be taken, early 2008.

**5) On Page 26 of the Annual Report, with reference to Operation Mercury, there is reference to a recommendation in respect of non-reviewable action under Section 173. Could I please have an update in respect of that matter?**

This officer remains on sick leave. NSWPF will consider this recommendation on the officer's return to work.



**6) On Page 27 with reference to Operation Whistler, there is reference to Inspector Murphy and that NSWPF had advised that consideration was being given to Section 181D action in respect of that officer. Could I have an update in respect of that matter?**

The NSWPF Internal Review Panel has supported this recommendation. This officer remains under consideration for removal under s.181D

**7) On the same page, and in relation to the same operation, there is a reference to recommendations: in respect of four other officers that non-reviewable management action be taken in respect of them. The statement is made that the Commission is satisfied that the appropriate action has been taken by NSWPF. My understanding is that at least in respect of two of those officers NSWPF declined to take any action against those officers. Could I have an update in respect of this matter please?**

Senior Constable Timothy Briggs, who was the subject of a recommendation for reviewable action, has been served with an order under s.173. That action has since been suspended pending the outcome of a complaint made to the Inspector of the PIC.

NSWPF advise that Senior Constable Amanda Deissel, who was the subject of a recommendation for non-reviewable action, was, at the time the recommendation was considered, also undergoing separate remedial action. It was the NSWPF view that the action taken would address the recommendation. The Commission is satisfied with this response. This matter is finalised.

Senior Constable Christopher Jackson remains suspended from duty. Any non-reviewable or reviewable action will depend on the outcome of his criminal prosecution.

Senior Constable Melinda Jennings was the subject of a recommendation for non-reviewable action. That action has been completed with the officer provided training, advice and guidance. The Commission is satisfied with this response. This matter finalised.

Sergeant Christopher Kelly was the subject of a recommendation for non-reviewable action. NSWPF, while determining that this officer had no misconduct issue to answer and that no adverse finding should be recorded, nonetheless provided 'advice and guidance' to the officer in relation to "the giving of evidence and appropriate preparation when attending court and other evidentiary tribunals". The Commission is satisfied with this response. This matter is finalised.

Constable Julie Philpott was the subject of a recommendation for non-reviewable action. NSWPF, while determining that no adverse finding should be recorded, nonetheless provided guidance to the officer generally in relation to "her obligations in respect of statement preparation and official note taking". The Commission is satisfied with this response. This matter is finalised.

**8) Relevant to this topic, it seems to me, is part of the content of Page 37 of the 2007 Annual Report. There reference is made to recommendations aimed at reducing the time taken to finalise the outcome of management action and providing information to**



7062955

*officers notified in the context of reviewable action having been recommended in respect of those officer.*

**9) The material goes on to indicate that NSWPF had commenced a formal project in respect of these matters, and has also commenced to provide the Commission on ~ quarterly basis with schedules concerning officers who are or have been subject to reviewable management action.**

**10) Is there any further information that could usefully be added to that material since the date of the publication of the 2007 Annual Report?**

The Commission received a copy of the NSWPF Professional Standards Command report on 'Streamlining the s181D and s 173 processes' in September 2007.

The Commission noted that the project report has documented that the average time taken for the NSW Police Force to implement appealable management action has been increasing since 2004 and furthermore that the NSWPF considers that this average time taken is unacceptable. Furthermore the project has identified the following as factors which increase the processing time for officers subject to these management action processes:

- time taken to complete internal investigations
- nature and format of the investigative material provided to the Employee Management Branch
- complexity of the management action processes
- structure of the Processing Unit and its staffing levels
- training of analysts, and
- an increase in the number and type of both mandatory referrals and mandatory notification matters.

In early October the Commissioner wrote to the NSWPF seeking clarification in relation a number of issues. In response, the NSWPF advised that:

- the streamlining project reviewed the management action processes including an examination of the steps involved in the process
- 'the project was unable to recommend streamlining the steps any further except to recommend a change of structure' and added 'whilst the streamlining project was unable to recommend any further streamlining *per se* after examination of the steps involved in the process, it was able to recommend substantial time savings through its (proposed) outsourcing model and (an) alternate option of restructuring the Process Unit'
- the NSWPF is 'unable to provide timeframes for the process'. Should the outsourcing option be implemented, 'it will enable [the NSPF] to set timeframes based on negotiations for a performance based contract' NSWPF expects to be in a position in the early part of 2008 to provide further information on changes to management action processes.

The report on the Streamlining Project also referred to a current 'EM database' project 'being undertaken to rationalise all of the databases being utilised by Employee Management into a centralised database'. The Commission has sought details on time frames and major steps anticipated in the project.



The Commission will continue to monitor NSWPF activities in this area and anticipates reporting on this in its next Annual Report.

In addition, the Commission continues to receive quarterly schedules concerning officers who are or have been subject to reviewable management action. his schedule includes all officers subject to management action, not just those the subject of a Commission recommendation. There is nothing further to report in relation to these schedules.

**Action in respect of other officers**

Finally, for completeness in respect of this response, I note that, in addition to the officers referred to in your letter of 14 December, NSWPF is also considering action in respect of a number of other officers based upon evidence arising from Commission investigations:

Operation Mallard – Briefs of evidence and/or other material in respect of four officers has been provided to NSWPF for consideration of reviewable and/or non-reviewable action.

Operation Horseshoe – A brief of evidence in respect of one officer has been referred to the NSWPF for consideration of managerial action.

Operation Norsca – A recommendation for 181D action in respect of an officer is presently being considered by the Commissioner of Police.

Operation Oxide – NSWPF commenced 181D action in respect of an officer arising from this Commission investigation, however the officer was medically discharged on 31/8/07.

Operation Alpago - NSW Police commenced 181D action in respect of an officer arising from this Commission investigation. This matter remains open.

Please contact me if I can be of further assistance.

Yours faithfully

  
John Pritchard  
Commissioner

## MEMORANDA OF UNDERSTANDING/PIC AND OTHER AGENCIES



NEW SOUTH WALES

### *Inspector of the Police Integrity Commission*

4 February 2008

Ms Angela D'Amore MP  
Chair  
Parliament of New South Wales  
Committee on the Office of the Ombudsman  
and the Police Integrity Commission  
Macquarie Street  
SYDNEY NSW 2000

Dear Madam Chair,

#### **RE: MEMORANDA OF UNDERSTANDING/ PIC AND OTHER AGENCIES**

- 1) You may recall that when I appeared before your Committee on 8 November 2007, I undertook to the Committee to follow up the position concerning Memoranda of Understanding between the PIC and other agencies. The purpose of this letter is to convey to you and your Committee the current position, insofar as I have been able to obtain information in relation thereto.
- 2) First, so that the Committee will have before it the full correspondence passing between myself and the Commission in relation to this matter, I *enclose* copies of my letter to the Commission dated 14 February 2007, the Commission's acknowledgement of that letter dated 14 June 2007, the Inspector's letter to the Commission dated 9 October 2007, the Commission's letter to the Inspector dated 12 October 2007, the Inspector's letter to the Commission dated 14 October 2007 and the Commission's letter to the Inspector dated 22 January 2008.
- 3) It will be noted from the Commission's letter to the Inspector dated 12 October 2007, that the Commission accepted the Inspector's recommendations that each new MOU should contain a provision to the effect that a review must take place not later than the expiry of twelve months from the relevant date,

email: [inspectorpic@bigpond.com](mailto:inspectorpic@bigpond.com)

GPO BOX 5215, SYDNEY NSW 2001 TEL: (02) 9232 3350 FAX: (02) 9232 3983

and that each new MOU contain a provision making it clear that there was no intention to oust the jurisdiction of the Inspector vis a vis the PIC.

- 4) The Committee will also note from the Commission's letter to the Inspector dated 22 January 2008, that in relation to AUSTRAC, the ICAC and the AFP, newly-drafted MOU's have been prepared in each case, and it is anticipated that these will be ratified in the near future.
- 5) The Commission has provided me with copies of the drafts in respect of AUSTRAC and in respect of the ICAC, and I have noted that in each case that there are provisions protecting the jurisdiction of the PIC Inspector, and also providing for a twelve monthly review of the particular MOU.
- 6) The Committee will also note from the Commission's letter to the Inspector dated 22 January 2008 that apart from the NSW Crime Commission the PIC does not see any necessity to depart from the existing MOU's in the case of the remaining relevant agencies.

Yours sincerely



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

Our Ref: MOU 02/07

14 February 2007

Mr John Pritchard  
Commissioner  
Police Integrity Commission  
GPO Box 3880  
**SYDNEY NSW 2001**

Dear Commissioner

**RE: MEMORANDA OF UNDERSTANDING**

(1) As you are aware, the Committee on the Office of the Ombudsman and the Police Integrity Commission (“The Committee”), in their phase two report in respect of section 10(5) of the Police Integrity Commission Act, recommended that the PIC Inspector examine all Memoranda of Understanding (“MOU”) between the PIC and their investigative partners, and the operation including the protocols and principals for information management and sharing, as part of his regular monitoring duties. That recommendation, as far as I am aware, has not yet been considered by Parliament.

(2) However in view of the Committee’s observations concerning the relevant MOU, as expressed, particularly, in paragraphs 1.5.5.11 to 1.5.5.13 of the report, it would appear to be highly desirable that the Inspector commence to review the content of relevant MOU without further delay. To this end, you have recently kindly provided me with copies of ten such MOU.

(3) The first of these is between the PIC and the Director, Australian Transaction Reports and Analysis Centre (AUSTRAC). The principal purpose of this MOU is, clearly, to provide access on the part of the PIC to certain information under the Financial Transaction Reports Act 1988.

(4) The draft with which I have been provided of that MOU, is unsigned and is in fact described as “draft 17 February 1997.” I have therefore proceeded on the assumption that a later document was brought into existence similar to or the same as the draft and was duly signed by the Commissioner, on the one hand, and the Director on the other. Making that assumption I have noted the following matters for the consideration of the Commission.

Appendix 2 - Answers to Questions Taken on Notice

(5) One difficulty about this exercise, is that I have no idea of the extent to which the parties to the MOU have acted in accordance with its terms since 1997 (assuming the agreement was signed in 1997). What seems abundantly clear, is that given the passage of time since the MOU was entered into, on that basis alone I would recommend that the Commission thoroughly review all aspects of the existing agreement, in the light of relevant statutory amendments to each relevant Act since the date of the agreement, and to reflect changes in the structural set up of each organisation and in the practice of each organisation, so far as relevant to the agreement. Subject to that general recommendation, I make the following comments.

**MOU: AUSTRAC/PIC, February 1997**

(6) In clause 4 there is a reference to section 27(1)(b) of the FTR Act; however, this section has since been omitted from the legislation.

(7) In clause 6 the Director retains the right to exclude access in respect of any particular application by the PIC. However there is no requirement that there must be a particular basis for so doing, for example that it is in the Director's view necessary in the public interest.

(8) In clause 7 and the schedule referred to it would seem preferable to include the Commissioner as a nominated officer, and to identify the balance of the nominated officers by reference to their office, rather than the way the matter is dealt with in the existing agreement.

(9) As I have mentioned, I have no way of knowing, at this stage, whether clauses such as 8 and 9 have been regularly availed of, and, if so, complied with.

(10) There are a number of clauses dealing with the limited basis on which the relevant information may be divulged or communicated by PIC officers. On one view of it, these clauses, for example, clauses 13, 17 and 25 could be seen as inconsistent with the powers of the Inspector pursuant to section 90 of the Police Integrity Commission Act. I would therefore recommend that in all relevant MOU's, an express provision be inserted making it clear that it is not intended to restrict the Inspectors powers under section 90.

(11) I would also recommend consideration be given by the Commission, as to whether the existence of these MOU's should be stated somewhere in the Commission's Annual Report. There is a general statement appearing on page 41 of the 2005-2006 Annual Report with regard to "the exchange of relevant information", but this is limited to the named organisations "and other Police agencies."

**MOU: ICAC/PIC**

(12) The copy of the relevant MOU between the PIC Commission and the ICAC, that I have been provided with is dated 11 September 1997. However clause 12.1 of the MOU provides that the MOU must be reviewed no later than 12 months from the date of the Memorandum. If that provision has been complied with and if such a provision has been included after each such review, it would follow

that there must in existence documents arising out of each such review. On the other hand if that clause has not been complied with then it would follow that due to the lapse of time alone since the 1997 MOU was entered into, a review of that document is long overdue.

(13) Such a review should take into relevant amendments made to either statute and, in particular, the provisions which will come into effect when the Police Amendment (Miscellaneous) Act 2006 commences.

(14) This MOU has the appearance of a well thought out and adequate structure set forth in a logical manner. It would seem desirable for each MOU that the PIC enters into to follow as far as practicable, a similar format so that there is one general format to which all relevant MOU's conform. I would recommend that consideration be given to adopting, so far as practicable, the format of this MOU as the general format applicable to all relevant MOU's.

(15) At this stage I am not in a position to know whether the provisions of the MOU have been complied with, in particular clause 2.5, 2.6, 3.2, 5.2 and 7.1.

(16) In my opinion clause 9.2 is preferable to the comparable clause in the MOU with AUSTRAC.

(17) The provision in the ICAC/PIC MOU requiring an annual review, might be considered for inclusion in each relevant MOU, as a means of insuring that these documents do not get overlooked and become out of date and even irrelevant.

#### **MOU: ICAC/PIC "OPERATION OSLO"**

(18) This MOU was entered into in March 1999 and I assume has now run its course. However, it appears to be a carefully drafted document and may prove useful as a guide for future and similar operations. Clauses 4 and 5 of the document may give rise to the problem early adverted to, namely, that on one view of it the Inspector's jurisdiction might be called into question. Clause 8 required the giving of notice in certain circumstances. It might be relevant to ascertain whether that clause was ever complied with.

#### **MOU: AFP/PIC, March 2001**

(19) The format of this MOU seems to have been carefully worked out, and, subject to further review which is clearly required having regard to the passage of time since it came into force, it may be that a similar format should be kept for this particular MOU. The review might wish to take into account the current state of affairs in the Said matter.

(20) Once again I cannot know at this stage to what extent this MOU has been applied, and whether any problems have been detected in relation to it. I would suggest, however, that clause 14 in

Appendix 2 - Answers to Questions Taken on Notice

particular, be redrafted. It seems unlikely that the reference to “NSW State Government” could have any effect.

(21) There is provision for the settling of disputes, but once again I am not in a position to know whether that provision has ever been availed of.

**MOU: OMBUDSMAN/PIC, March 2001.**

(22) The principal purpose of this MOU, as stated in clause (m), is “to achieve access to data stored on the PODS by the Ombudsman.” If it is assessed as necessary to enter into a new MOU for the same purpose, then it would no doubt be prudent to await the coming into force of the Police Amendment Act 2006.

(23) Clause 2 requires the Ombudsman to give notice to the Commission in certain circumstances. It may be worthwhile to ascertain whether the relevant circumstances came to pass, and, if so, whether the relevant notice was given by the Ombudsman.

**MOU: POLICE SERVICE/PIC, “RELATING TO DATA TRANSFER”, October 2001**

(24) Obviously this will require considerable update and amendment, given the passage of time, and having regard to the changes to be effected when the Police Amendment Act 2006 comes into force.

(25) This is the first MOU where I have noticed a specific clause directed to ensuring that the jurisdiction of the Inspector is not inadvertently interfered with. See Clause 12. Unless there is an intention in respect of any MOU to attempt to exclude the Inspector from access to some information relevant to that MOU, I would suggest a Clause such as Clause 12 being inserted into each MOU.

**MOU: VICTORIA POLICE/PIC, June 2001.**

(26) Obviously, if there is not one already in existence, it is desirable that the PIC communicate with the Office of Police Integrity, Victoria, with a view to producing a relevant MOU between the two bodies.

**MOU: NSWCC/PIC, CAR ACT, January 2002.**

(27) It may be of interest to explore to what extent this MOU has been applied in practice, and if it has, whether it meets the current intentions of the parties.

**MOU: NSWCC/PIC, June 2004**

(28) This appears to be drafted in a somewhat informal manner, and its sole purpose seems to be to provide for passage of relevant information from NSWCC to PIC, relevant information being concerning past or serving NSW Police.

*(29) This is the document that contains the provision which became the subject of comment by the oversighting Committee. As the Committee pointed out, the Commissioner CC my place a caveat on the use of relevant information by the PIC and if that issue is unresolved, may be determined by Commissioner CC.*

**MOU: CRIME AND MISCONDUCT COMMISSION (QLD)/PIC (NSW), February 2003**

(30) It would be of interest to know to what extent this MOU has applied in practice, and whether or not those occasions have been noted in the records.

**MOU: ODPP/PIC, September 2006**

(31) I am currently attempting to obtain a copy of the existing MOU between ICAC/DPP, on the basis that it might be useful to compare that MOU with the above. I will therefore cover this particular matter in a separate letter in due course.

**SUMMARY OF PRINCIPAL RECOMMENDATIONS FOR THE PIC COMMISSIONER'S CONSIDERATION:**

**(A) That urgent consideration be given to replacing each of the relevant Memoranda of Understanding referred to above, and that each be replaced with a document which takes into account, inter alia, changes in relevant legislation that have since taken place, and in organisational practices, as well as defects which have been noted in practice during the currency of any of the relevant memoranda of understanding. That in lieu of the MOU with Victoria Police a Memorandum of Understanding be entered into between PIC/Office of Police Integrity Victoria.**

**(B) That so far as practicable, a general format be adopted for all relevant Memoranda of Understanding.**

**(C) That a provision be included in each new MOU, to the effect that a 12 month review must take place to ensure that any practical difficulties are addressed in a timely manner, and that the document continues to be up to date. That the operation of the MOU in practice be monitored so that defects, e.g.. in time frames, can be addressed promptly, including at each 12 month review.**

Appendix 2 - Answers to Questions Taken on Notice

**(D) That a provision be inserted into each new MOU directed to making it clear that the Inspector is entitled to have full access to all aspects of the PIC's operations and records and that no provision in the MOU is intended to restrict the Inspector's oversight functions.**

**(E) That the existence of all such Memoranda be expressly referred to in the Commission's Annual Report.**

Yours sincerely

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



ABN 22 870 745 340



6976799

Our Ref: 16805/4

14 June 2007

The Hon P.J. Moss, QC  
Inspector of the Police Integrity Commission  
GPO Box 5215  
SYDNEY NSW 2001

Dear Inspector

**Re: Memoranda of Understanding**

Thankyou for your letter of 14 February 2007 and I apologise for the time taken to acknowledge your letter.

Your correspondence has been drawn to the attention of the relevant officers and Commissioner Pritchard will no doubt discuss the matter with you on his return.

Yours sincerely

A handwritten signature in black ink, appearing to read "Cathy Healy".

**Cathy Healy**  
Executive Assistant  
Police Integrity Commission

Our Ref: MOU 09/10

9 October 2007

Mr John Pritchard  
Commissioner  
Police Integrity Commission  
GPO Box 3880  
**SYDNEY NSW 2001**

Dear Commissioner,

**RE: MY LETTER OF 14 FEBRUARY 2007**

I refer to my letter to you dated 14 February 2007, which was acknowledged by your Executive Assistant in letter dated 14 June 2007. However, that acknowledgement is the only response I have received to the letter at this stage.

In a series of questions received recently from the PJC directed to the Inspector, one of those questions is in the following terms ----

“(6) Following your review (page 26, par 94), were you satisfied with the terms of the Commission’s memoranda of understanding?”

The Chair of the PJC has requested that I respond to the series of questions by 22 October 2007.

If a further response is intended on the part of the Commission to my letter dated 14 February 2007, I should be grateful if that response could reach me prior to 22 October 2007.

Yours faithfully,

The Hon P.J Moss, Q.C.,  
Inspector of the Police Integrity Commission



ABN 22 870 745 340

HAND DELIVERY



Our Ref: 16805/13

12 October 2007

The Hon P.J. Moss, QC  
Inspector of the Police Integrity Commission  
GPO Box 5215  
SYDNEY NSW 2001

Dear Inspector

**Re PIC Memoranda of Understanding – Your letter of 14 February 2007**

Thankyou for your letter of 9 October 2007 regarding the above.

Following receipt of your letter dated 14 February 2007 contact was made with the various agencies who are parties to MOUs with the Commission. Those agencies were informed, by way of background, of the interest taken by the PJC and yourself in the Commission's MOUs and invited to consider the appropriateness and relevance of their respective MOUs in the context of the review being conducted by the Commission. The response from the different agencies has been varied. In some cases, new MOUs have been drawn up or are in the process of being drawn up.

For your information, I have set out hereunder the present status of the various MOUs and the Commission's dialogue with the respective agencies, adopting the same order used in your letter of 14 February.

**1. Australian Transaction Reports and Analysis Centre (AUSTRAC)**

A letter was sent on 27 February 2007: see Matrix 1212/294 (copy attached at "A"). AUSTRAC has advised that it is developing a new pro forma MOU to be used for all of its client agencies. It is first attending to putting MOUs in place with newly designated agencies and will then be reviewing existing MOUs. AUSTRAC has indicated that as soon as it is able a draft will be sent to PIC, incorporating the requests made in PIC's letter of 27 February. I will ensure that all the points made in your letter are taken into consideration For the most recent contact see the emails attached to Matrix 1212/310. A signed copy of the existing MOU can be found at Matrix 1212/27.

**2. Independent Commission Against Corruption**

As far as I am aware there has been no review since the MOU of 11 September 1997 was signed. A letter was sent to the ICAC Commissioner on 4 May 2007: see Matrix 15290 (copy attached at "B"). A reply was received on 9 July agreeing to a review of the existing MOU and undertaking to progress the issue but there has been no further contact since that time: see Matrix 16793/12 (copy attached at "C"). The Operation



7041545

Oslo MOU referred to at paragraph 18 of your letter has, as you surmised, run its course, Operation Oslo having concluded some time ago.

Further contact will be made with ICAC about updating the general MOU. As you observe in your letter, the revised document will need to reflect the recent amendments to the *Police Act 1990*.

In relation to paragraph 15 of your letter, as far as I am aware the provisions in clauses 2.5 and 2.6 of the current MOU have never really assumed significance as there has only been a small number of referrals from the ICAC of matters involving suspected police misconduct. A similar situation exists in respect of clauses 3.2, 5.2 and 7.1. Nevertheless, cooperation and assistance between the two agencies in other respects continues to take place in a most satisfactory manner.

### 3. Australian Federal Police

In 2006 the AFP presented an updated MOU to the PIC to replace the MOU which was entered into in 1998. Following a lengthy period of negotiation, a new version was agreed upon in August this year: see Matrix 3231/31 (copy attached at "D") however the AFP has indicated that it wishes to defer signature until the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2007* is passed: see Matrix 3231/32.

### 4. NSW Ombudsman

The MOU with the NSW Ombudsman dated March 2001 is one of three foundational documents which governed:

- The provision of, and access to, data during and subsequent to the development of the Police Oversight Data Store (PODS); and
- The subsequent development of the Tri-Agency Agreement for PODS (a more detailed document concerning processes for managing access to data, system enhancements and customer support: see Matrix 12418/79).

The other two MOUs in the suite are the PCCM related MOU between the PIC and NSWPF, discussed below, and another between the Ombudsman and NSWPF.

The broad principles for access to data described in this MOU remain current. The management processes described in the Tri-Agency Agreement also remain current, and have been updated by a number of minor amendments.

Discussions between the PIC, NSWPF and the Ombudsman are underway with a view to agreeing the future direction for PODS. The form of a revised MOU between PIC and the Ombudsman will be dependent on the outcome of those discussions. It would not be appropriate to review it at this time. The broader MOU being developed by NSWPF concerning systems data exchange and user access, discussed below, will also have a significant impact on future agreements.

### 5. NSW Police Service

This MOU is the foundational document that requires the NSWPF to provide the Commission with data for PODS: paragraph 8. The MOU stipulates at paragraph 16 that "*Any further memoranda of understanding concerning access by the Ombudsman or the Police Service to the PODS will be subject to this MOU*".



7041546

The Commission has been negotiating with the NSWPF since 2006 on a broader MOU regarding systems data exchange and user access between NSWPF and PIC generally. This is part of a project being undertaken by the Police Mainframe Replacement Program whereby all agencies dealing with NSWPF systems data are being asked to sign new MOUs. Because of the special position of the Commission vis a vis NSWPF, negotiations are continuing in relation to the special clauses to be included in the new MOU to be signed by the Commission.

**6. Victoria Police**

The Ethical Standards Department of Victoria Police advised on 9 July 2007 that the MOU signed on 22 June 2001 is working very well and requires no change from their point of view. In relation to the Office of Police Integrity, the Commission will enter into a MOU with that agency if and when the need arises.

**7. NSW Crime Commission**

In relation to the CAR Act MOU with the NSWCC dated January 2002, so far as the Commission is aware the terms of the MOU have been applied in practice. The Commission has commenced a number of proceedings under the CAR Act against serving and former NSW police officers. Further details of those matters can be provided if desired. They are reported upon each year in the Commission's Annual Report.

In relation to the more general MOU dated June 2004, the Commission wrote to the NSWCC on 8 June 2007: see Matrix 3731/21 (copy attached at "E"). Particular attention was drawn to the comments in the PJC's Report about the MOU effectively making the PIC a "junior partner" to the Crime Commission. A reply was received from the Crime Commission on 28 August 2007: see 3731/23 (copy attached at "F"). A number of joint investigations between our two agencies were cited by the Commissioner in rejecting the suggestion that PIC is not treated like an equal partner by the NSWCC. Further consideration is being given to the MOU in light of this response.

**8. QLD Crime and Misconduct Commission**

The Commission discussed the MOU with a representative from the CMC in August this year and agreed that the relationship was working satisfactorily and no changes to the MOU were required: see Matrix 2533/98.

You have commented in your letter that *"it would be of interest to know to what extent this MOU has applied in practice, and whether or not those occasions have been noted in the records"*. I am not sure exactly what information you are seeking by that comment but I can advise that the Commission does enjoy a high level of support and cooperation from the CMC and all dealings between the agencies are recorded on Matrix, in keeping with the Commission's normal practices

**9. NSW Office of the Director of Public Prosecutions**

No correspondence has been entered into with the DPP as it is only 12 months since the current MOU was settled and signed and the Commission is satisfied that no revision is required at this point.



7041547

**SUMMARY OF PRINCIPAL RECOMMENDATIONS**

A. In relation to your recommendation that urgent consideration be given to replacing each of the Memoranda referred to above, I am satisfied that those Memoranda which are not presently undergoing renewal, are not in urgent need of replacement on account of changes in legislation, organisational practices or defects in practice.

B. In relation to adopting a general format for all Memoranda, you will have observed that some agencies create their own pro formas for signature by their client agencies. The Commission has found that those agencies are generally most amenable to the inclusion of variations to reflect the Commission's particular requirements and it is considered preferable to follow that approach in those cases rather than endeavouring to get all agencies signed up to a PIC pro forma.

C. I agree that it would be useful to include in each new MOU a provision that a review take place every 12 months to ensure that any practical difficulties are addressed in a timely manner.

D. I agree that it would be useful to include in each new MOU a provision noting the position of the Inspector of the Police Integrity Commission and his access to and oversight of all aspects of the PIC's operations and records, including its dealings with other agencies.

E. I do not consider it necessary that the existence of all such MOUs be expressly referred to in the Commission's Annual Report.

I trust this information is of assistance. I am happy to discuss any aspect of it with you during our weekly meetings, or provide further documentation if it would assist you.

Yours sincerely

**John Pritchard**  
Commissioner

Our Ref: MOU 12/07

14 December 2007

Mr John Pritchard  
Commissioner  
Police Integrity Commission  
GPO Box 3880  
**SYDNEY NSW 2001**

Dear Commissioner

**RE: MEMORANDA OF UNDERSTANDING**

- 1) I acknowledge receipt of your letter dated 12 October 2007, and thank you for the information provided therein.
- 2) You may be aware, that when I appeared before the PJC on 8 November 2007 I was asked questions relating to your letter, whereupon I informed the PJC that I would seek an update from the Commission in due course. That, then, is the purpose of this letter.
- 3) I should be grateful if I could obtain from you the information sought below in relation to the specific MOU mentioned in each case.
- 4) AUSTRAC: Could you please advise what progress has been made in this matter since the date of your letter, and in particular whether the draft MOU referred to has been received?
- 5) I note, incidentally, from the 2007 AUSTRAC Annual Report, that there appears to be minimal contact between the PIC and AUSTRAC. For example, from page 49 thereof it appears that out of a total of 24,440 suspect transaction reports disseminated by AUSTRAC during the year, 2 only were disseminated to the PIC.
- 6) ICAC: Could you please advise whether the further contact referred to has taken place, and to what extent this MOU has progressed?
- 7) AFP: I note that a new version was agreed between the PIC and the AFP in August 2007, but that signature had been deferred as at the date of your letter. May I inquire whether this MOU has now been executed by the parties?
- 8) NSW OMBUDSMAN: I note that at the date of your letter it was considered inappropriate to review the relevant MOU. Could you please advise what further progress, if any, has taken place in respect of this particular matter?

Appendix 2 - Answers to Questions Taken on Notice

- 9) NSW: I note that at the date of your letter negotiations were continuing in relation to certain special clauses intended to be inserted in this MOU. Could you please advise what progress, if any, has been made in respect of this matter?
- 10) VICTORIA POLICE: I note this MOU is considered satisfactory and requiring no change. And I further note that so far as the Office of Police Integrity is concerned, it appears at the date of your letter that it was not seen as necessary to have an MOU with that organisation.
- 11) NSW CRIME COMMISSION: As to the CAR MOU I note that that appears to be satisfactory. As to the general MOU I note that as of the date of your letter further consideration was been given to that document. Could you please advise what progress, if any, has been made in this respect since the date of your letter?
- 12) QUEENSLAND CRIME AND MISCONDUCT COMMISSION: I note that this document is considered satisfactory and that no changes are envisaged. I further note that all dealings between the two agencies are recorded within the Matrix system.
- 13) NSW DPP: I note that no revision is considered necessary at this stage.
- 14) Finally I note that the abovementioned Memoranda of Understanding undergoing redrafting, are not, in your opinion, in urgent need of replacement on account of changes in legislation, organisational practices or defects in practice. I further note that you agree with my recommendation that each new MOU contain a twelve month revision clause, and that steps should be taken to ensure that no provision in the MOU would have the effect of ousting the jurisdiction of the Inspector vis a vis the PIC.

Yours sincerely

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



HAND DELIVERY



ABN 22 870 745 340

Our Ref: 16805/22

22 January 2008

The Hon P.J. Moss, QC  
Inspector of the Police Integrity Commission  
GPO Box 5215  
SYDNEY NSW 2001

Dear Inspector

**Re Memoranda of Understanding**

I refer to your letter dated 14 December 2007. In response to your request, I set out hereunder the current position with respect to the memoranda listed in your letter.

**AUSTRAC**

Following the provision of a draft MOU by AUSTRAC on 29 October last and subsequent liaison between officers of the Commission and AUSTRAC, a new MOU and Instrument of Authorisation have been prepared and are presently with AUSTRAC for approval. I attach a copy of those documents. I also respond to the particular points raised in your correspondence of 14 February 2007 as follows, adopting your numbering:

**1. Removal of reference to s 27(1)(b) of the *Financial Transactions Reports Act 1988 (FTR Act)***

As you pointed out in your letter dated 14 February 2007, this section has been removed from the FTR Act. The new MOU contains updated legislative references which accord with the new regime established by the *Anti-Money Laundering and Counter Terrorism Funding Act 2006 (Cth)*. Access, use and disclosure of AUSTRAC information is now regulated by that Act (the "AML/CTF Act").

**2. Right of Director to Exclude Access**

Clause 11 of the new MOU repeats clause 6 of the previous MOU to the extent that the Director, now described as the CEO or his delegate, retains the right to exercise discretion in respect of any access request or issue based on its individual merits. In addition clause 11 permits the CEO to revoke access where necessary.

The AML/CTF Act confers a discretion upon the AUSTRAC CEO to grant access to AUSTRAC systems to officials of other agencies. That discretion is unfettered, subject to the condition that certain agencies must give an undertaking to comply with the Information Privacy Principles. The new MOU is consistent with those provisions. In light of the breadth of the discretion conferred by the legislation, it would seem inconsistent for the CEO to sign up to a MOU with a State agency which potentially confined or imposed qualifications on that discretion. I do not entertain any concerns



that the discretion will be used in a manner which is inimical to the interests of the Commission.

### 3. Nominated Officers

In your letter of 14 February 2007 at paragraph 8 you suggested that it would seem preferable to include the Commissioner in Schedule 1 as a nominated officer who should have on-line access to FTR information. Further, that the balance of nominated officers should be identified by reference to their office.

In relation to the Commissioner, it is not my wish to have on-line access to AUSTRAC information as I do not envisage ever having cause to carry out inquiries directly on the AUSTRAC database.

In relation to the members of staff who are nominated on the former Schedule 1 (now "Annexure B" to an Instrument of Authorisation issued with the new MOU), you will observe that they are now referred to by means of their positions, ie 2 financial investigators and 10 operational analysts.

You will see that Annexure A to the Instrument of Authorisation names a broader pool of people (including myself) who may access AUSTRAC information.

There is a third class of PIC officers who will be able to read AUSTRAC information once it becomes part of the Commission's holdings. The previous MOU did not restrict the capacity of officers with access to AUSTRAC information to disseminate it to other officers within the Commission, including the Commissioner, and nor does the new MOU. See, eg, clause 30 of the previous MOU which permitted PIC officers to disseminate financial information to other "law enforcement officers" (which included PIC officers) and clause 31 of the new MOU which permits PIC officials to disclose AUSTRAC information in accordance with ss 127 and 128 of the AML/CTF Act (including between officers of the same agency).

### 4. Role of PIC Inspector

As previously advised, the concerns raised at paragraph 10 of your letter dated 14 February 2007 have been brought to the attention of AUSTRAC. Additional clauses numbered 8 and 9 giving the Inspector of the PIC access to all AUSTRAC information held by the Commission have been included in the new MOU.

### 5. Clauses 8 and 9 of the previous MOU

Clauses 8 and 9 of the previous MOU set various time frames, the former relating to notification to AUSTRAC that a particular person's access should be withdrawn and the latter as to the time within which AUSTRAC would deal with new applications for access. In relation to these two aspects particularly, I am advised that there has been no turnover in the persons with online access for quite some years, and so no need to refer to either of these clauses. I am also informed that no issues have arisen in relation to the previous MOU from an investigative perspective.

### ICAC

Discussions were held between the respective Commission Solicitors in November last year and on 18 January last a new MOU was forwarded to the ICAC for consideration. I enclose a



7100332

copy. The new clauses have been highlighted and underlined for your assistance. I do not anticipate any delay in the execution of that document.

**AFP**

The new MOU has been settled and will be executed in a meeting to be held between the AFP Deputy Commissioner and myself which is expected to take place in mid-February 2008.

**NSW OMBUDSMAN**

There has been no change with respect to this MOU.

**NSWPF**

As above

**VICTORIA POLICE**

No revision required.

**NSW CRIME COMMISSION**

Still under consideration.

---

**QUEENSLAND CMC**

No revision required.

**NSWODPP**

No revision required.

I confirm that those MOU that are not being replaced are not considered to be in need of amendment. In respect of those MOUs that are being replaced, you will observe that clauses have been included providing for unrestricted access by the Inspector of the PIC to all records held by the Commission and providing for a review of the MOU every 12 months.

If you require any further information I would be happy to provide same.

Yours faithfully

John Pritchard  
Commissioner



Australian Government  
Australian Transaction Reports  
and Analysis Centre

**DRAFT**

---

# Memorandum of Understanding

---

between

**the Chief Executive Officer of the Australian Transaction Reports and  
Analysis Centre**

and

**the Commissioner for the Police Integrity Commission**

**regarding access to and use of AUSTRAC information or documents  
containing AUSTRAC information**

## Objective

1. The Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Police Integrity Commission (PIC) have entered into this Memorandum of Understanding (MOU) to facilitate a cooperative framework by which both parties will work together to effectively perform their respective functions within the terms of the applicable law.
2. The key provisions of this MOU agreed upon by AUSTRAC and the PIC are:
  - a) to facilitate access to and use of AUSTRAC information<sup>1</sup> by employees of PIC, including online access to the AUSTRAC database;
  - b) the secrecy and access requirements to be met by the PIC in using AUSTRAC information in their work;
  - c) to provide training opportunities to the PIC on the use of AUSTRAC's online database and general support regarding AUSTRAC information; and
  - d) accountability and feedback with respect to the PIC's usage of AUSTRAC information;
3. The agencies do not intend this MOU to create legally binding obligations between them.

## Commencement

4. This MOU comes into effect on the day of signing by the Chief Executive Officer of AUSTRAC (AUSTRAC CEO) and the Commissioner for the Police Integrity Commission (the Commissioner).
5. Upon signing of this MOU, the former MOU titled "Memorandum of Understanding between the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Police Integrity Commission on access to and use of Financial Transaction Reports information" which was signed on 18 March 1998 will be revoked.

---

<sup>1</sup> AUSTRAC information, as defined in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* means:

- a) eligible collected information; or
- b) a compilation by the AUSTRAC CEO of eligible collected information; or
- c) an analysis by the AUSTRAC CEO of eligible collected information.

Eligible collected information, as defined in the AML/CTF Act means:

- a) information obtained by the AUSTRAC CEO under:
    - (i) this Act; or
    - (ii) any other law of the Commonwealth; or
    - (iii) a law of a State or Territory; or
  - (b) information obtained by the AUSTRAC CEO from a government body; or
  - (c) information obtained by an authorised officer under Part 13, 14 or 15;
- and includes FTR information (within the meaning of the *Financial Transaction Reports Act 1988*).

## Access to AUSTRAC information

6. Access to AUSTRAC information by the PIC is made in accordance with sub-section 126(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) whereby the AUSTRAC CEO or a delegate may, in writing, authorise specified officials or a specified class of officials of a specified designated agency to have access to AUSTRAC information for the purposes of performing the agency's functions and exercising the agency's powers.
7. The AUSTRAC CEO or a delegate has signed an "Instrument of Authorisation" detailing the class of officials of the PIC that have access to AUSTRAC information for the purpose of performing the PIC's functions and exercising the PIC's powers.
8. **The PIC Act also establishes the office of the Inspector of the PIC. Section 89 of the PIC Act sets out the principal functions of the Inspector, which include dealing with misconduct on the part of the Commission and/or its officers, and assessing the Commission's procedures relating to the legality or propriety of its activities. Under the PIC Act, the Inspector is entitled to full access to the records of the Commission and to take or have copies thereof.**
9. **Nothing in this MOU limits, or is intended to limit, the Inspector in having full access to the records of the Commission and the taking or having copies of such, including records of, containing or related to AUSTRAC information and held by the PIC, and any logs, reports or like documents relating to access to AUSTRAC information by PIC officials.**

## Online access to AUSTRAC information

10. The AUSTRAC CEO or a delegate agrees to provide a number of authorised officials of the PIC with online access to AUSTRAC information. Online access to AUSTRAC information is limited to officials of certain business areas of the PIC and is restricted to the AUSTRAC information specified in Annexure B of the Instrument of Authorisation.
11. The AUSTRAC CEO or a delegate of the AUSTRAC CEO retains the right to exercise discretion in respect of any access request or issue based on its individual merits and revoke access where necessary.
12. AUSTRAC will monitor the number of authorised officials of the PIC with online access to AUSTRAC information and will not permit the number of approved online access officials to be exceeded as specified in Annexure B of the Instrument of Authorisation.
13. Requests for online access to AUSTRAC information by PIC officials must be approved by one of the senior officers of PIC, specified in Schedule 1 of this MOU.
14. AUSTRAC agrees to process applications for online access to AUSTRAC information within 5 business days of receiving notification from any of the senior officers listed in Schedule 1.

15. Online access to AUSTRAC information by PIC officials will be subject to access controls to protect both parties. The controls will consist of:
  - a) a unique computer access code (user identifier); and
  - b) a unique password
16. AUSTRAC will maintain a computer access log that provides a record of AUSTRAC information accessed online by PIC officials. The detailed information contained in this log will be available only to the AUSTRAC CEO or senior AUSTRAC officers approved by the AUSTRAC CEO and the Commissioner or senior officers of the PIC approved by the Commissioner, as detailed in Schedule 1.
17. When a PIC official ceases to undertake duties which require online access to AUSTRAC information, PIC will notify AUSTRAC within 5 working days of the duties having ceased. AUSTRAC will remove the official's user identifier code within 5 working days of receiving notification.
18. On the first day of each month, any PIC official with online access to AUSTRAC information will have their access automatically revoked if the user has not accessed the database within 3 months of being provided access or, for all other users, have not accessed the database for a period of 6 months.
19. AUSTRAC will provide PIC with a user statistics report on a **quarterly** basis. PIC agrees to provide all relevant internal managers with a copy of the statistical report.

**Special provisions regarding AUSTRAC information collected under section 16 of the *Financial Transaction Reports Act (FTR Act)* and section 41 of the *AML/CTF Act***

20. AUSTRAC information collected under section 16 of the FTR Act and section 41 of the AML/CTF Act (namely suspect transaction reports {SUSTRs} and suspicious matter reports {SMRs}) are protected by specific secrecy provisions under the relevant legislation.
21. SUSTRs and SMRs are disseminated by AUSTRAC to the PIC for appropriate consideration. The special nature of such reports and the need to protect the identity of persons furnishing such reports is to be recognised at all times.
22. SUSTRs are not admissible as evidence in any legal proceeding<sup>2</sup>, other than a prosecution for an offence against sub-section 29(1) or 30(1) of the FTR Act. Legal proceedings are those which form part of making a determination of how the law applies to an entity – administrative applications, such as for a search warrant, would not fall under this definition. This includes any documents that contain details of SUSTRs. Evidence is also not admissible as to:

---

<sup>2</sup> Sub-section 16(5D) of the FTR Act refers.

Appendix 2 - Answers to Questions Taken on Notice

- a) whether a SUSTR was prepared; or
  - b) whether a copy of a report, or document purporting to set out information contained in such a report, was given to or received by the AUSTRAC CEO; or
  - c) whether particular information was contained in a SUSTR; or
  - d) whether further information was given pursuant to sub-section 16(4) of the FTR Act.
23. SMRs, copies of SMRs, and any document that contains details of a SMR or any document given or produced under sub-section 49(1) of the AML/CTF Act are not admissible as evidence in any court or tribunal proceedings<sup>3</sup>, other than criminal proceedings for an offence against section 123, 136 or 137 or section 175 proceedings for a contravention of sub-section 41(2) or 49(2) of the AML/CTF Act. Evidence is not admissible as to:
- a) whether or not a report was prepared for the purposes of sub-section 41(2) of the AML/CTF Act; or
  - b) whether or not a report prepared for the purposes of sub-section 41(2) of the AML/CTF Act, or a document purporting to set out information (including the formation or existence of a suspicion) contained in such a report, was given to, or received by, the AUSTRAC CEO; or
  - c) whether or not particular information (including the formation or existence of a suspicion) was contained in a report prepared for the purposes of sub-section 41(2) of the AML/CTF Act; or
  - d) whether or not particular information (including the formation or existence of a suspicion) was given under sub-section 49(1) of the AML/CTF Act; or
  - e) whether or not a particular document was produced under sub-section 49(1) of the AML/CTF Act.
24. PIC will not call any person who has submitted a SUSTR or SMR to give evidence in proceedings before a court **in relation to a SUSTR or SMR, including but not limited to the matters set out in clauses 20(a) to (d) and 21(a) to (e) above.**

---

<sup>3</sup> Section 124 AML/CTF Act.

25. AUSTRAC will record on its database the designated agency(s) that each SUSTR or SMR has been disseminated to. If, in the course of their duties, a PIC official with online access to AUSTRAC information identifies a SUSTR or SMR of potential interest to the PIC, the official agrees to contact AUSTRAC to arrange for the dissemination of the report to PIC which will be reflected on the AUSTRAC database **unless the Commission considers that doing so may affect the integrity of its investigation.**
26. A PIC official who identifies a SUSTR or SMR of potential interest to the PIC will contact any other designated agency(s)<sup>4</sup> that has been disseminated the report prior to commencing an investigation **unless the Commission considers that doing so may affect the integrity of any investigation it may commence.** This is to avoid any unnecessary duplication of work between designated agencies.

### **Use and release of AUSTRAC information collected from an overseas financial intelligence unit**

27. AUSTRAC agrees to facilitate requests to overseas financial intelligence units (FIUs) for financial intelligence where a MOU has been entered into with the respective country by the AUSTRAC CEO or the Minister for Justice and Customs for the exchange of such information.
28. Requests to another country must comply with the agreement entered into with the respective country which primarily relate to providing support on matters associated with money laundering or financial crime associated with money laundering.
29. PIC agrees that the following limitations are placed on AUSTRAC information disseminated to the PIC which originated from an overseas country:
- a) the information will be used only for the specific purpose for which the information was sought or provided and subject to any limitations placed on use of the information;
  - b) the information will not be disclosed to a third party without the prior written permission of the disclosing FIU. Any such permission is to be sought through AUSTRAC; and
  - c) the information cannot be used as evidence in any formal proceedings including Briefs of Evidence.

### **Privacy and Security**

30. Personal information included in AUSTRAC information which may be accessed by PIC officials in accordance with this MOU, is subject to the provisions of the *Privacy Act 1988 (Cth)*.

---

<sup>4</sup> the definition of 'designated agency' does not include the Australian Taxation Office.

31. In accordance with sub-section 126(3) of the AML/CTF Act, the PIC undertakes that it and its officials will comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* in respect of AUSTRAC information obtained under:
- a) the authorisation; or
  - b) sub-section 128(2) of the AML/CTF Act
32. A copy of the Information Privacy Principles is provided in Schedule 2 of this MOU.
33. A PIC official must not disclose AUSTRAC information except where they are permitted to do so in accordance with sections 127 and 128 of the AML/CTF Act.
34. AUSTRAC agrees that any PIC information that comes into its possession by virtue of the operation of this MOU will not be further disclosed or used by AUSTRAC without the approval or knowledge of PIC.
35. PIC officials with online access to AUSTRAC information shall not download bulk AUSTRAC information to an external device, including but not limited to a computer disk, USB drive or MP3 player or magnetic tape except where approval is granted to do so by the AUSTRAC CEO or a senior AUSTRAC officer approved by the AUSTRAC CEO or a delegate.
36. PIC agrees that it will adhere to the Privacy Commissioner's Guideline: The use of data matching in Commonwealth Administration (the Guidelines). In doing so, the PIC will not use AUSTRAC information for data matching purposes unless specifically authorised by the AUSTRAC CEO. This does not preclude routine comparison by the PIC of AUSTRAC information against its existing databases, for the purpose of confirming identities, or the downloading of such data for inclusion into internal working documents, such as information reports, spreadsheets or analytical software applications<sup>5</sup>.
37. Authorised PIC officials accessing AUSTRAC information will ensure that the information is protected by such security safeguards as is reasonable in the circumstances, against:
- a) loss, unauthorised access, unauthorised use or unauthorised disclosure; and
  - b) modification or other misuse.

---

<sup>5</sup> Data matching refers to data matching as defined in the Guidelines issued by the Officer of the Privacy Commissioner

## Accountability

38. Where AUSTRAC information is disseminated by the PIC to another agency, the PIC will maintain an auditable record of that dissemination. Upon request in writing, the AUSTRAC CEO or an approved senior AUSTRAC officer may view the audit log. PIC undertakes not to further disseminate AUSTRAC information to another designated agency unless the authorised officials to whom the information is provided hold an appropriate authorisation under sub-section 126(1) of the AML/CTF Act.
39. PIC is responsible for any mishandling or inappropriate use by its authorised officials of AUSTRAC information.
40. PIC agrees it will take appropriate disciplinary action against an authorised PIC official who is in breach of this MOU or the FTR Act or AML/CTF Act as soon as practical after becoming aware of the breach.
41. PIC agrees to advise AUSTRAC in writing of any incident involving a breach of this MOU or the FTR Act or AML/CTF Act within 5 working days of becoming aware of the incident.
42. PIC agrees to conduct regular audits of its authorised officials with online access to AUSTRAC information to ensure they are complying with this MOU, the FTR Act and AML/CTF Act. AUSTRAC may also request an audit of authorised officials with online access to AUSTRAC information. AUSTRAC will provide the PIC with the necessary information it requires to perform these audits.

## Feedback

43. On a quarterly basis, the PIC will provide to AUSTRAC a report of the utility of AUSTRAC information obtained by PIC officials. The report will be in a format agreed between AUSTRAC and the PIC to enable capture of quality quantitative (statistical) and qualitative (informational) feedback. These reports will assist AUSTRAC in assessing the effectiveness of AUSTRAC in achieving the objectives of the AML/CTF Act. The PIC/AUSTRAC Liaison Officer will compile a report on PIC's use of AUSTRAC information, and provide the report to AUSTRAC after the end of each quarter. PIC will provide any further information sought by AUSTRAC for clarification and enrichment of feedback provided.
44. PIC will regularly compare the **quarterly** utility reports with the 'User Statistics Report', provided by AUSTRAC to the PIC, to ensure that effective feedback is provided. The feedback will be used to:
  - a) assess the value of AUSTRAC information to designated partner agency operations;
  - b) assess financial analysis methodologies utilised during the investigative process to assist us to improve the quality of training and support AUSTRAC delivers;

Appendix 2 - Answers to Questions Taken on Notice

- c) assess the need for potential changes to AUSTRAC's automated monitoring systems, data mining technologies and suspect reporting guidelines to counteract emerging methods of dealing with tainted funds;
- d) provide sanitised information back to reporting entities to reassure them that their efforts are valued by AUSTRAC's partner agencies, contributing to efforts to counter organised crime, revenue evasion and terrorism and encouraging them to remain vigilant;
- e) provide sanitised information to the Minister for Justice and Customs;
- f) include statistical information within the AUSTRAC Annual Report;
- g) include sanitised information regarding the value of AUSTRAC information, within material presented to the PIC;
- h) assist the development of money laundering and terrorist financing typologies prepared by AUSTRAC; and
- i) assess the need for legislative amendments where the PIC identifies the circumvention and / or evasion of reporting requirements under the AML/CTF Act.

## **Training and Support**

- 45. AUSTRAC agrees to provide training and training materials to PIC officials with online access to AUSTRAC information to assist PIC officials to maximise their ability to extract information relevant to the performance of their duties.
- 46. AUSTRAC agrees to keep PIC informed of enhancements to the AUSTRAC database and other systems or arrangements that may assist the PIC in the performance of its functions.
- 47. AUSTRAC will endeavour to support major PIC investigations as may be required by providing other services that are within its resource capacity and powers.
- 48. PIC will assist AUSTRAC by providing facilities and other assistance where required in order to meet the needs stated in paragraphs 43 to 45.
- 49. PIC agrees to invite AUSTRAC staff to participate in relevant development opportunities within PIC to increase the skills of AUSTRAC staff and increase the level of support it provides to the PIC.
- 50. Where appropriate, AUSTRAC and the PIC will consult with each other in relation to media releases which may be of interest to or have an effect on each agency.

## Variation

51. Any variation to this MOU, except changes to the Schedules, will require the issue of a new MOU signed by the AUSTRAC CEO and the Commissioner. The Schedules may be varied after written agreement between the AUSTRAC CEO and Commissioner for the PIC, or their respective delegates. Any request for an amendment to the MOU or Schedules should be made by the AUSTRAC CEO, or the PIC Commissioner or an appropriate senior officer. In any case, the MOU will be subject to an annual review by the parties.

## Termination

52. This MOU will remain operative until replaced by a new MOU on the same subject matter or terminated. Either the AUSTRAC CEO or the Commissioner may terminate the MOU at any time by written notice.

**Chief Executive Officer**

Australian Transaction Reports  
and Analysis Centre

Date

**Commissioner**

Police Integrity Commission

Date

## Schedule 1

The senior officers of the Police Integrity Commission authorised to notify the AUSTRAC CEO of the names of members of staff pursuant to clause 12 and 13 of the MOU are:

- Commissioner
- **Assistant** Commissioner
- **Director Operations**
- **Director Intelligence and Executive Services**
- **Chief Investigator**

or any person occupying any of the above positions.

## Schedule 2

### Information Privacy Principles

#### Principle 1

##### Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
  - (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
  - (b) the collection of the information is necessary for or directly related to that purpose.
2. Personal information shall not be collected by a collector by unlawful or unfair means.

#### Principle 2

##### Solicitation of personal information from individual concerned

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector from the individual concerned;  
the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:
  - (c) the purpose for which the information is being collected;
  - (d) if the collection of the information is authorised or required by or under law--the fact that the collection of the information is so authorised or required; and
  - (e) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information.

### **Principle 3**

#### **Solicitation of personal information generally**

Where:

- (a) collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- (c) the information collected is relevant to that purpose and is up to date and complete; and
- (d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned

### **Principle 4**

#### **Storage and security of personal information**

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.

### **Principle 5**

#### **Information relating to records kept by record-keeper**

1. A record-keeper who has possession or control of records that contain personal information shall, subject to clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:
  - (a) whether the record-keeper has possession or control of any records that contain personal information; and
  - (b) if the record-keeper has possession or control of a record that contains such information:
    - (i) the nature of that information;
    - (ii) the main purposes for which that information is used; and

- (iii) the steps that the person should take if the person wishes to obtain access to the record.
- 2. A record-keeper is not required under clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.
- 3. A record-keeper shall maintain a record setting out:
  - (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
  - (b) the purpose for which each type of record is kept;
  - (c) the classes of individuals about whom records are kept;
  - (d) the period for which each type of record is kept;
  - (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
  - (f) the steps that should be taken by persons wishing to obtain access to that information.
- 4. A record-keeper shall:
  - (a) make the record maintained under clause 3 of this Principle available for inspection by members of the public; and
  - (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

## **Principle 6**

### **Access to records containing personal information**

Where a record-keeper has possession or control of a record that contains personal information, the individual concerned shall be entitled to have access to that record, except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

## **Principle 7**

### **Alteration of records containing personal information**

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:
  - (a) is accurate; and
  - (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.
2. The obligation imposed on a record-keeper by clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.
3. Where:
  - (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
  - (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;

the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

## **Principle 8**

### **Record-keeper to check accuracy etc. of personal information before use**

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

## **Principle 9**

### **Personal information to be used only for relevant purposes**

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

## **Principle 10**

### **Limits on use of personal information**

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:
  - (a) the individual concerned has consented to use of the information for that other purpose;
  - (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
  - (c) use of the information for that other purpose is required or authorised by or under law;
  - (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
  - (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.
2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

## **Principle 11**

### **Limits on disclosure of personal information**

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
  - (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
  - (b) the individual concerned has consented to the disclosure;
  - (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
  - (d) the disclosure is required or authorised by or under law; or

Appendix 2 - Answers to Questions Taken on Notice

- (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
- 2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.

A person, body or agency to whom personal information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

**DRAFT**

***Anti-Money Laundering and Counter-Terrorism Financing Act  
2006***

**INSTRUMENT OF AUTHORISATION**

I, Neil James Jensen PSM, Chief Executive Officer of the Australian Transaction Reports and Analysis Centre (AUSTRAC), under subsection 126(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), hereby authorise:

- (1) The class of officials of the Police Integrity Commission (PIC) described in Annexure A to have access to all classes of AUSTRAC information<sup>1</sup>; and
- (2) The class(es) of officials of PIC detailed in Column 1 of Annexure B to have online access to the AUSTRAC information set out in Column 2 of Annexure B for the purpose of performing the functions and exercising the powers of PIC.

Neil James Jensen PSM  
Chief Executive Officer

~~AUSTRAC~~

day of 2008

<sup>1</sup> AUSTRAC information is defined in section 5 of the AML/CTF Act.

**Annexure A – Authorised class of officials of the Police Integrity Commission to have access to AUSTRAC information**

Officials or classes of officials of the Police Integrity Commission areas holding the following positions:

- Commissioner
- Assistant Commissioner
- Director Operations
- Director of Intelligence and Executive Services
- Commission Solicitor
- Chief Investigator
- Senior Investigators, Financial Investigators and Operational Analysts.

▪ **Annexure B – Authorised class(es) of officials of the Police Integrity Commission to have online access to AUSTRAC information**

Up to 12 authorised officers at any one time of the Police Integrity Commission are authorised to have online access to AUSTRAC information.

Class(es) of Officials	Class(es) of AUSTRAC Information
<p><b>Category A</b> Access is restricted to 2 Commission staff members who are financial investigators within the Investigations Unit.</p>	<ul style="list-style-type: none"> <li>• Full access to Suspect Transaction Reports (SUSTRs) and Suspicious Matter Reports (SMRs) referred to the Commission and restricted to an indicator only in regard to all other SUSTR's and SMRs.</li> <li>• Full access to International Currency Transfer Reports (ICTRs).</li> <li>• Full access to Cross Border Movement of Bearer Negotiable Instrument Reports (CBM – BNIs).</li> <li>• Full access to Cross Border Movement of Physical Currency Reports (CBM – PCs).</li> <li>• Full access to International Funds Transfer Reports (IFTIs).</li> <li>• Full Significant Cash Transaction Reports (SCTRs).</li> </ul>
<p><b>Category B</b> Access is restricted to 10 Commission staff members who are operational analysts within the Investigations Unit.</p>	<ul style="list-style-type: none"> <li>• An indicator of SUSTRs and SMRs which have been referred to the Commission . A message stating that access has been denied in relation to all other SUSTRs and SMRs.</li> <li>• Full access to ICTRs nationally within New South Wales</li> <li>• Full access to CBM – BNIs nationally within New South Wales</li> <li>• Full access to CBM – PCs nationally within New South Wales</li> <li>• Full access to IFTIs nationally within New South Wales</li> <li>• Full access to SCTRs nationally within New South Wales</li> </ul>

1212/320

## DRAFT MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("the Memorandum") is made the ..... day of ..... 2008 between the Independent Commission Against Corruption ("the ICAC") and the Police Integrity Commission ("the PIC").

### 1. PURPOSE

- 1.1 To set out the arrangements to be entered into between the ICAC and the PIC pursuant to s131 of the *Police Integrity Commission Act 1996* ("the PIC Act").
  - 1.2 To set out the arrangements for liaison between the ICAC and the PIC concerning the exchange of information, and operational pursuit of matters within the jurisdiction of both Commissions.
  - 1.3 To acknowledge the preparedness of the ICAC and the PIC, in the public interest, to share with each other on an ongoing basis and as far as is legally practicable relevant information within each body's possession concerning possible police misconduct and corruption in particular classes of cases as described below so as to allow the most efficient and effective pursuit of matters within the jurisdiction of each.
- 

### 2. ICAC NOTIFICATION OF POLICE MISCONDUCT *or* CORRUPT CONDUCT of an ADMINISTRATIVE OFFICER (s131(1)(a) PIC Act)

- 2.1 Pursuant to subsection 128(2) of the PIC Act, but subject to clause 2.4, the ICAC will refer complaints received by it involving police officers, whether or not involving conduct of other public officials, to the PIC where the ICAC is of the opinion that the complaint involves serious police misconduct.
- ~~2.2 For the purposes of the ICAC determining whether or not a complaint involves serious police misconduct, within the definition of that term in the PIC Act, the PIC will inform the ICAC of any agreement reached between the PIC Commissioner and the Ombudsman pursuant to section 67 of the PIC Act as to the class or kind of complaint that should be referred to the PIC, and shall keep the ICAC informed of any changes to such agreement.~~
- 2.3 Subject to clause 2.4, the ICAC will notify the PIC of all other matters which come to the attention of the ICAC which the ICAC suspects may involve police misconduct *or corrupt conduct of administrative officers of the NSW Police Force ("administrative officers")*.
- 2.4 The ICAC will not refer matters involving police misconduct *or corrupt conduct of administrative officers* to the PIC which come to the attention of the ICAC by virtue of a report made to the ICAC by the NSW Police Force by virtue of section 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"). In all such cases it will be assumed that the NSW Police Force has directly notified the PIC of the matter. The ICAC will inform the PIC of any guidelines issued, pursuant to section 11 of the ICAC Act, to the Ombudsman or NSW Police Force concerning the reporting of suspected corrupt conduct involving NSW Police Force personnel.

2.5 All matters which are not urgent will be notified to the PIC in writing on a fortnightly basis.

2.6 Matters which are urgent will be notified to the PIC as soon as possible, either by way of written notification or oral communication to be subsequently confirmed in writing.

**3. PIC NOTIFICATION OF CORRUPT CONDUCT (s131(1)(b) PIC Act)**

3.1 The PIC will notify the ICAC of all matters which come to the attention of the PIC and which the PIC suspects may involve corrupt conduct as defined in the ICAC Act and which conduct is not excluded from the jurisdiction of the ICAC by the provisions of the PIC Act.

3.2 All such matters which are not urgent will be notified to the ICAC in writing on a fortnightly basis.

3.3 Matters which are urgent will be notified to the ICAC as soon as possible, either by way of written notification or oral communication to be subsequently confirmed in writing.

**4. ICAC INVESTIGATIONS INVOLVING POLICE (s131(1)(c) PIC Act)**

~~4.1 Pursuant to subsection 129(2) of the PIC Act the ICAC may investigate and otherwise deal with a matter involving the conduct of police officers or administrative officers, provided it is done in the context of matters that also involve public officials who are not police officers or administrative officers.~~

4.2 In each case where the ICAC proposes to investigate such a matter it shall inform the PIC of that intention.

4.3 The ICAC and the PIC shall consult about each such proposal with a view to determining, among other things:

- i. whether the ICAC should proceed to investigate the matter and, if so, the parameters of that investigation;
- ii. whether the PIC should investigate the matter instead of the ICAC; or
- iii. whether the ICAC and PIC should jointly investigate the matter and, if so, the role of each agency in that joint investigation.

**5. PIC INVESTIGATIONS INVOLVING POLICE AND OTHER PUBLIC OFFICIALS (s131(1)(d) PIC Act)**

5.1 The PIC may from time to time wish to investigate and otherwise deal with a matter involving the conduct of public officials other than police officers or administrative officers in the context of a PIC investigation involving police officers or administrative officers.

5.2 In each case where the PIC proposes to investigate such a matter it shall inform the ICAC of that intention.

Appendix 2 - Answers to Questions Taken on Notice

- 5.3 The PIC and the ICAC shall consult about each such proposal with a view to determining, among other things:
- i. whether the PIC should proceed to investigate the matter and, if so, the parameters of that investigation;
  - ii. whether the ICAC should proceed to investigate the matter instead of the PIC; or
  - iii. whether the PIC and the ICAC should jointly investigate the matter and, if so, the role of each agency in that investigation.

**6. JOINT INVESTIGATIONS**

6.1 Section 18(1) of the PIC Act provides that the PIC may, in exercising its investigative functions, work in co-operation with investigative agencies such as the ICAC.

6.2 Section 16 of the ICAC Act provides that in exercising its functions the ICAC may work in co-operation with other agencies.

6.3 It is agreed that any decision as to the manner in which matters in which the ICAC and the PIC have a joint interest might be jointly or otherwise investigated, should have regard to:

- i. the statutory functions and responsibilities of each agency;
- ii. the strategic significance of the matter to each agency;
- iii. the resources and time which each agency has available to pursue the matter and achieve a conclusion;
- iv. the relationship between the matter and other matters being pursued by each agency;
- v. whether initially the matter might be most appropriately pursued by either
- vi. agency, with results being shared, as far as legally practicable and the decision on ultimate coverage being deferred;
- vii. methods ensuring the most effective result; and
- viii. the need to avoid inefficiency, duplication and overlap.

**7. REFERRAL OF MATTERS**

7.1 Pursuant to subsection 53(5) of the ICAC Act and section 83 of the PIC Act both parties agree that the concurrence of the other to any proposed referral will only be taken to have been given once the agreement in writing to the proposed referral from that agency has been received by the agency seeking to make the referral.

**8. EDUCATION AND CORRUPTION PREVENTION PROGRAMS**

- 8.1 The PIC recognises that the ICAC will continue to be involved in education and corruption prevention programs with the NSW Police Force.
- 8.2 Where, pursuant to subsection 14(c) of the PIC Act, the PIC intends making a recommendation concerning a police corruption education program, a police corruption prevention program or similar program conducted by the ICAC for the NSW Police Force, the PIC will, before making any such recommendation consult with the ICAC about the proposed recommendation and provide the ICAC with an opportunity to comment.

**9. LIAISON IN GENERAL**

- 9.1 Liaison between the ICAC and the PIC will be required at a number of levels and for various purposes. Subject to the provisions of the ICAC and PIC Acts, such liaison may include provision of information on allegations of corruption and intended operational responses, advice on corruption prevention issues, advice on administrative matters and provision of information on prospective employees. All correspondence with the ICAC should be directed to the Solicitor to the Commission except for that from the PIC Commissioner.

All correspondence with the PIC should be directed to the Commission Solicitor except for that from the ICAC Commissioner.

- 9.2 To assist in liaison between the ICAC and the PIC, the principal contact officers are nominated as:

ISSUE	ICAC	PIC
General liaison matters	Solicitor to the Commission	<u>Commission Solicitor</u>
Investigative & Intelligence matters	Director, Investigations	<u>Director Operations</u>
Legal Matters, <u>vetting of personnel</u>	Solicitor to the Commission	Commission Solicitor
Corruption Prevention and Education	Director, Corruption Prevention & Education	<u>Director Intelligence and Executive Services</u>
Administration, Research and Personnel	Director, Corporate Services & Research	<u>Director Intelligence and Executive Services</u>

- 9.3 While the relationship should operate with as much speed and efficiency as possible, requests for information and assistance should be made in writing, or if made orally, should be confirmed in writing as soon as possible. This includes requests for written material, documents, vetting of prospective employees and intelligence holdings. The requesting body will provide a receipt for such supplied material.
- 9.4 Liaison meetings between the PIC and the ICAC will be held as required.
- 9.5 The Commissioners of the ICAC and PIC will keep each other briefed in areas of joint interest.

**10. PROVISION OF INFORMATION AND PROPERTY**

10.1 The ICAC and the PIC may obtain access to each other's intelligence or property holdings, subject to the following conditions:

10.1.1 As far as practicable, requests for the dissemination of information or property from one agency ("the originating agency") to the other agency ("the receiving agency") be in writing;

10.1.2 Requests for the dissemination of information or property demonstrate a need to know;

10.1.3 Information disseminated by one agency to the other be held securely and confidentially;

10.1.4 Subject to 10.1.7 the originating agency obtain the prior consent of the source of the information or property before disseminating the information or property;

10.1.5 Paragraph 10.1.4 does not apply where the nature of the information or property, the identity of the source of the information or operational imperatives are such that it is not in the public interest to seek the prior consent of the source of the information or property;

---

Example 1: It is not in the public interest to permit delaying disseminating the information for the sake of seeking the consent of its source.

Example 2: It is not in the public interest to notify the source of the information that the information is to be disseminated to another agency.

~~10.1.6 Paragraph 10.1.5 operates subject to the general law, including the following:~~

10.1.6.1 secrecy provisions contained within statutes governing the administration and operations of other law enforcement and related agencies (for example, the NSW Police Force, the Australian Crime Commission, the NSW Crime Commission, the Australian Federal Police and the Australian Transaction Reports and Analysis Centre);

10.1.6.2 laws regarding the retention of information or property such as the *Protected Disclosures Act 1994*, *Royal Commissions Act 1923*, *Law Enforcement (Powers and Responsibilities) Act 2002*.

10.1.7 Where either agency seeks property obtained by the other agency from another source and the property is no longer required by the agency, it will be returned to the source from

which it was obtained and the requesting agency advised to seek the material directly from that source. If there is a reasonable concern that the material may be destroyed by the source, then subject to the general law, it will be provided direct to the requesting agency.

- 10.2 Each agency is permitted to further disseminate information obtained from the originating agency unless otherwise stipulated and, in any case, subject to the following conditions:

10.2.1 Information contained within a hearing transcript or exhibit that has been suppressed from further publication pursuant to section 27 of the *Royal Commission (Police Service) Act 1994*, sections 52 or 53 of the PIC Act, subsection 112 of the ICAC Act or other similar provision, not be further published by the receiving agency to a third party without the prior written approval of the originating agency.

**10.3 Each agency may, subject to availability, provide personnel or technical equipment or expertise to the other agency for the purposes of an investigation being conducted by the other agency, upon receipt of a reasonable request for same.**

**10.4 The PIC Act also establishes the office of the Inspector of the PIC. Section 89 sets out the principal functions of the Inspector, which include dealing with misconduct on the part of the Commission or its officers, and assessing the Commission's procedures relating to the legality or propriety of its activities. The Inspector is entitled to full access to the records of the Commission and to take or have copies thereof.**

**10.5 Nothing in this MOU limits, or is intended to limit, the Inspector in having full access to the records of the Commission and the taking or having copies of such, including records of, containing or related to ICAC information held by the PIC.**

## 11. ICAC RECEIPT OF COMPLAINTS RE PIC

- 11.1 The ICAC acknowledges that pursuant to subsection 126(1) of the PIC Act and subsection 12A(3) of the *Protected Disclosures Act 1994* the conduct of the PIC Commissioner or an officer of the PIC cannot be made the subject of a complaint, inquiry, investigation or other action under the ICAC Act, except in relation to matters referred to the ICAC by the PIC Inspector. Where the ICAC receives any information relevant to the function of the PIC Inspector, the ICAC shall provide such information to the PIC Inspector.

## 12. REVIEW

- 12.1 The Memorandum may be reviewed at the request of either party but in any event shall be reviewed no later than 12 months from the date of the Memorandum.

.....  
The Hon Jerrold Cripps QC  
Commissioner, ICAC

.....  
John Pritchard  
Commissioner, PIC



# ASSESSMENT OF TIME ELAPSING BETWEEN COMPLETION OF PIC HEARINGS AND DATE OF RELEVANT REPORTS



## *Inspector of the Police Integrity Commission*

4 February 2008

Ms Angela D'Amore MP  
Chair  
Parliament of New South Wales  
Committee on the Office of the Ombudsman  
and the Police Integrity Commission  
Macquarie Street  
SYDNEY NSW 2000

Dear Madam Chair,

### **RE: ASSESSMENT OF TIME ELAPSING BETWEEN COMPLETION OF PIC HEARINGS AND DATE OR RELEVANT REPORTS**

- 1) You may recall that when I appeared before your Committee on 8 November 2007, I was asked a question, in effect, as to whether I had made any assessment in relation to the time taken between PIC completed hearings and the publication of the PIC Report arising out of the particular hearings, which Report contained recommendations and opinions formed by the PIC. I informed the Committee, on that occasion, that I had not done any such assessment but that I would do so in the future and advise the Committee of the outcome of my deliberations. The purpose of this letter is to make some relevant observations for the assistance of the Committee.
- 2) Since my appearance before the Committee, the PIC has published two Section 96 Reports, being in respect of Operation Rani, and Operation Mallard, respectively. I have therefore thought it relevant to look at those Reports in the context referred to above.

### **OPERATION RANI**

- 3) This Operation is referred to in the Commission's 2006 Annual Report at Pages 6 and 20, respectively. In effect, that Report states that *"in 2005 allegations were received that former Detective Sergeant Bradley Hosemans was associated with Janine Vaughan prior to her disappearance and may have been involved in her disappearance and suspected murder."*
- 4) Operation Rani was also referred to in the Commission's 2007 Annual Report at pages 11 and 24, respectively. On each of those pages it was reported in effect that the allegations were that Hosemans may have been involved in the disappearance and suspected murder of the missing woman.
- 5) In the Section 96 Operation Rani report, published in December 2007 (at page 1 of the Executive Summary) it is stated that the relevant allegation was anonymous, and that the last hearing (a private hearing) was concluded in November 2006. Thus, it follows, that approximately twelve months elapsed between the date of the last hearing in the matter and the publication of the Report.
- 6) However, it should be noted page iii of the Executive Summary includes the statement that the "Report was deliberately delayed to permit liaison between the Commission and the new Strike Force in the period immediately following the conclusion of the Commission's investigation."
- 7) At Paragraph 1.9 of the Rani Report the scope and purpose of the public hearing is stated in the following terms---  
  
*"to investigate the circumstances surrounding the disappearance of Ms Janine Mary Vaughan from Bathurst on 7 December 2001, and the conduct of NSW Police involved in the subsequent investigation of her disappearance."*
- 8) In the event, the Commission found that there was no credible evidence implicating Hosemans in the disappearance of Ms Vaughan (Para 10.13).

### **OPERATION MALLARD**

- 9) In the Commission's 2006 Annual Report (at Page 19) Operation Mallard is referred to in terms that *"A Senior Police Officer perverted the course of justice during the investigation of a serious criminal offence."*
- 10) Similarly in the Commission's 2007 Annual Report (at Page 23) Operation Mallard is referred to. Included in this material is information that the statement of the general scope and purpose of the hearings was amended on 31 May 2007. The amendment was in the following terms---

*“Whether Superintendent Adam Purcell has been involved in serious misconduct or criminal activity in relation to the release of confidential Police information.”*

- 11) The Mallard Report was published in December 2007. At page 91 the last date given in respect of hearings is 1 June 2007. It follows that some six months elapsed between the final hearing date and the presentation of the Report to Parliament.
- 12) Following my appearance before the Committee on 8 November 2007, I attempted to ascertain what the relevant position was in relation to ICAC practices, and my general impression was that, very approximately, an average of about five months seems to elapse between the final hearing of the matter before the ICAC and the publication of the relevant Report to Parliament

Yours sincerely



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



## Index

alleged perjury by police officers, 27, 34  
AUSTRAC, 34  
Counter Terrorism Coordination Command, 31, 34  
Inspector's powers, 27  
memoranda of understanding, 26, 31  
MOUs, 2  
Ombudsman, 32  
oversight police investigations, 1, 25, 31, 32, 34  
PIC's recommendations, 28  
Police Association, 35  
powers of the Ombudsman, 25  
Purcell, Adam, 29, 35  
resources, 35  
review of PIC, 2  
review of Police Integrity Commission, 35  
serious police misconduct, 33  
Special Branch, 31  
standard operating procedures, 33