



ABN 22 870 745 340

Our Ref: 24575/5

30 April 2012

The Hon Catherine Cusack MLC
Chair
Committee on the Office of the Ombudsman
And Police Integrity Commission
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Chair

Please find enclosed the Commission's response to Questions on Notice dated 28 March 2012.

As discussed with the Committee Secretariat, I would like Question 6 and its response to be dealt with in camera, and for the Commission's response to Question 6 not to be published. To this end I have provided the response to Question 6 separately to the other Questions on Notice.

Should you have any queries in relation to any matter arising from this correspondence, please contact Pru Sheaves, Executive Officer, on [REDACTED]

Yours faithfully

A handwritten signature in black ink that reads "Bruce James". The signature is written in a cursive style with a large, prominent "B" and "J".

The Hon Bruce James QC
Commissioner

Police Integrity Commission Annual Report 2010-11

- 1. The Commission received 1154 complaints of misconduct against current and former sworn NSWPF officers this year (as opposed to 948 the previous year, a rise of 21%). Do you have any explanation for this?**

There is no apparent explanation for the increase in complaint numbers assessed by the Commission in 2010-11. As indicated in its 2009-2010 Annual Report, numbers of complaint assessed by the Commission can fluctuate from year to year (page 24). Significantly, though, it does not appear that the numbers of complaint assessed by the Commission are trending up or down. While the complaint figure for 2009-10 was lower than the figure reported in 2010-11, seen in the context of complaint statistics reports in previous years (see Table below) it appears that complaint numbers have not varied significantly over the past five years.

Police Complaints Assessed

2006-07	2007-08	2008-09	2009-10	2010-11
1208	1386	1157	948	1154

- 2. The Commission's investigations also increased substantially this year (approximately 29%) for both preliminary and full investigations. How has this impacted on your resources?**

The Commission's Investigation Unit (IU) is currently staffed by a Manager Investigations and Intelligence, Deputy Manager Investigations, Deputy Manager Intelligence, 8 Senior Investigators, 2 Financial Investigators, 7 Operational Analysts, 2 Investigation Support Officers and an Administration Clerk. These staffing levels necessitate a flexible approach be taken to the workload, dependent upon capacity. The Commission's primary function is the detection and investigation of serious police misconduct. The adoption of a Case Categorisation and Prioritisation Model (CCPM) has assisted the IU in focussing its resources in line with this primary function. The number of investigations undertaken in a year can vary significantly based on the complexity of matters under investigation and the duration of the investigation. Some years there may be a number of shorter, less complex investigations, and as these are completed resources can be moved to new investigations.

- 3. The Commission outlines that one of its goals for the current year is to work with other anti-corruption agencies to share knowledge and discuss issues common to your concerns. Can you give us some examples of where the Commission has engaged in this type of activity, and what other organisations were involved?**

In May 2012, the Commission will again be participating in the national police integrity agency research forum in Brisbane. The forum is scheduled to take place over two days and all agencies with a policing oversight responsibility from around Australia have been invited to attend. This forum is associated with the Australian Public Sector Anti-Corruption Conference (APSAC) conference and was first conducted in 2009. The forum will provide an opportunity to discuss current and emerging issues in police oversight and corruption

prevention. The Commission is part of the working group preparing the schedule and topics for discussion.

The Commission periodically liaises with the NSW Ombudsman's Office in relation to policy issues and corruption prevention projects. For example, in 2012 the Commission has:

- sought the input and views of the Ombudsman's Office in connection with Project Cyril, which is examining how NSWPF complaint investigations have been used to identify opportunities for system changes
- coordinated its comments on the draft NSWPF critical incident policy with that organisation.

In addition, the Commission is a participant in the Australia Anti-Corruption Commissions Forum (AACF). The purpose of the AACF is to provide the means for its members and their principals to interact, exchange information, knowledge and ideas, to work cooperatively, to share resources and to promote priority areas of interest commonly affecting them. Other agencies involved in the forum include:

1. The Australian Commission for Law Enforcement Integrity (ACLEI);
2. The Corruption and Crime Commission (CCC);
3. The Crime and Misconduct Commission (CMC);
4. The Independent Commission Against Corruption (ICAC);
5. The Office of Policy Integrity (OPI); and
6. The Tasmanian Integrity Commission (TIC).

There are also a range of other regular and *ad hoc* forums in which the Commission and other agencies share knowledge around specific issues. For example, Commission staff attended with representatives from other oversight agencies a meeting at the offices of the Commonwealth Attorney Generals Department in Canberra. The purpose of the meeting was to discuss aspects of the telecommunications interception legislation of relevance to oversight agencies. The meeting took place in the context of the review of the telecommunications interception legislation currently being undertaken by the Attorney General's Department.

- 4. The Commission has been aiming to complete the development of a complaints and investigations case management system for some time now. Can you provide the Committee an update of progress on this?**

The major components of the Case Management System (CMS), including Complaints Management, Investigations Management, Prosecutions Management, Strategic and Operational Reporting, have been implemented. The CMS accommodates most of the Commission's operational information requirements through the entire Complaint / Investigation / Prosecution lifecycle. Current efforts are focused on minor improvements and streamlining processes within CMS.

- 5. In early 2011 the Commission initiated a new strategic priority setting process. If target selection is now decided on a strategic basis, can you describe how targets were previously selected? How will the performance of the new method be measured against the previous one?**

The draft Strategic Priority Setting proposals were completed in March 2012. They are currently under consideration by the Executive for review, prior to their adoption. It is anticipated that the new Strategic Priorities Setting process will enhance the current business model. Prior to the implementation of this process the Commission was largely reactive in target selection and heavily reliant on complaints. This new operating model is based on the National Intelligence Model from the United Kingdom and has included the implementation of Research and Development Capacity, the Tasking and Coordination Group (T&CG) leading to a realignment of resources within the IU. The Commission has also introduced a new Case Management System (CMS) allowing greater accountability and performance measurement for each individual investigation or Research and Development assessment.

- 6. In Camera response**

- 7. The Commission describes its reporting on the effectiveness of its consultation arrangements with the NSWPF. Can you provide detail on how this is assessed?**

There is no standard process used by the Commission to assess the effectiveness of its consultation arrangements with the NSWPF. In the past the Commission has formed the view that the liaison relationship is in a poor state in those circumstances where:

- there has been a discernible pattern on the part of the NSWPF of failing to provide reasonable assistance to the Commission to enable it to discharge its statutory functions (for example, failing to respond to reasonable requests for information needed for misconduct prevention projects),
- the NSWPF acted contrary to a reasonable request from the Commission.

In evaluating the health of its liaison relationship with the NSWPF, the Commission acknowledges that one-off mistakes occur and that in a large organisation, responses to queries can, through no one's fault, fall between the cracks. A number of examples which go beyond 'one-off mistakes' were noted in the Commission's 2009-10 Annual Report (pp. 30-32).

- 8. The Project Manta Report made 12 recommendations for the NSWPF. Can you provide an update on how these have been received by the NSWPF?**

Overall, the initial NSWPF response to the recommendations was positive, with the NSWPF describing the report as 'useful'. The NSWPF supported 11 of the 12 recommendations. Based on the information provided by the NSWPF Professional Standards Command on 2/3/2012, the Commission understands that the status of implementation of the remaining 11 recommendations at that time was as follows:

- two recommendations (Recommendations 5 and 6) are considered implemented
- PSC is to develop a 'corporate based corruption risk management guideline' by the second quarter of 2012 to contribute towards the implementation of a further four of the recommendations (Recommendations 1, 2 3 and 8)
- the NSW Police Force is only in the very early stages of the implementation of Recommendation 12 and as such was unable to provide details to the Commission at that time but has stated that it intends to provide an update on progress in June 2012
- there seems to be some possible misunderstanding in relation to the remaining four recommendations (Recommendations 9, 10, 11 and possibly 4). The Commission has offered to make staff available to meet and discuss the apparent misunderstandings concerning these recommendations with relevant PSC staff.

9. **There are three 'Prevention Prompts' papers available on your website which discuss the application of OH&S strategies to minimise corruption. Do you plan to prepare further similar papers? How do you source the topics for these papers?**

There are no further Prevention Prompts currently proposed. The Commission's present intention is to prepare Prevention Prompts drawing on the information obtained during the course of its research projects; the three Prevention Prompts on the Commission's public website were prepared on the basis of the information collected and analysed for Project Manta. Whether Prompts, or some other supplementary material is produced, is dependent on the nature of the original research and the extent to which it is useful in considering issues to have regard to specific practical applications. As prevention projects are concluded, the Commission will give consideration to whether or not Prevention Prompts or other material is merited.

10. **The Commission made eight recommendations following the conclusion of Project Ostara, which investigated corruption risks as they relate to search warrants. Have these recommendations been implemented?**

The eight recommendations presented in the Commission's Project Ostara report were aimed at strengthening the management of corruption risks associated with the use of search warrants. The NSWPF accepted and proposed implementation action in regard to recommendations 1, 2, 3, 4, 5 and 6a. The Commission has no current information as to the implementation status of these recommendations, but will be seeking an update from the NSWPF as to the progress being made at the end of the 2011-2012 reporting year. The

NSWPF supported recommendation 8 stating that consideration is ongoing to identify the most appropriate way to progress this recommendation.

The NSWPF did not support recommendations 6b, 6c, 7a and 7b. These recommendations relate to: commencing video recording of searches before entry; video recording a reading to the occupier of a list of seized exhibits; review of the reasons for low compliance for recording an occupier's objection to recording of their verbal comments during a search; and, development of a strategy to improve compliance in this area.

In relation to recommendation 6b, the NSWPF indicated that it was concerned the strategy proposed by the Commission would impact upon operational safety and could potentially compromise police methodology. The Commission acknowledges these concerns are reasonable and has advised the NSWPF that this recommendation can be considered closed. However, the Commission has also informed the NSWPF that should information come to light to suggest there is a misconduct or other risk associated with the conduct of officers in the stages prior to the commencement of a search, the NSWPF may need to revisit this recommendation or consider alternative strategies.

In relation to recommendation 6c, the NSWPF advised the Commission that this recommendation is adequately catered for by existing police practice, in which the occupier, if present, is provided, in the presence of the Independent Observer, with a list of property seized during the search. The intent of recommendation 6c was to strengthen, rather than replace, current arrangements by also requiring that a list of the exhibits seized be read out to the occupier and recorded on video. On reviewing the NSWPF's response, the Commission agreed that the current NSWPF arrangement is adequate and advised that recommendation 6c could be considered closed. It noted, however, that should information come to light to suggest there is a misconduct or other risk associated with that stage of a search where information on items seized are communicated to the occupier, the NSWPF may need to revisit this recommendation or consider alternative strategies.

The Commission is seeking to engage further with the NSWPF in connection with its decision not to implement recommendations 7a and 7b. Updated information on the status of these recommendations will be sought from the NSWPF at the end of the 2011-2012 reporting year.

11. What progress has the Commission made with respect to Project Skadi?

Consultative drafts of the Project Skadi report were provided to the NSWPF in April and again in July 2011. Following protracted consultation, a final version of the report was provided to the Commissioner of Police and the Minister for Police and Emergency Services in September 2011.

The Commission received correspondence from the NSWPF responding to each of the findings presented in the report in October 2011. In the Commission's view these responses

do not adequately address the risks identified within its report. The Commission is continuing to liaise with the NSWPF in relation to Project Skadi in an attempt to work with the NSWPF to identify other strategies for managing the risks identified in its report.

At the request of the NSWPF, the Commission decided it would refrain from making its report public. This decision has been communicated to the NSWPF. The Commission has also advised the NSWPF that it may revisit this decision at some point in the future.

12. The Commission requested that the NSWPF develop a plan to address misconduct risks involved in complaint investigations (Project Querella). Can you provide an update on the progress of this plan?

On 11 July 2011, the Commission forwarded correspondence to the Commissioner of Police providing the results of the 2010 audit of compliance by NSWPF with its Complaint Allocation Risk Appraisal (CARA) policy and requesting the NSWPF develop a comprehensive plan for improving the level of compliance with the requirements of the process¹. The Commission requested that this plan be tailored to address the specific findings of the audit. On 16 August 2011, the Commissioner of Police responded, accepting the findings and outlining a process for improving compliance levels based on additional quality control processes and expanded corporate guidance for commands as to the nature of the information required from them in CARA documentation.

In September 2011, the Commission wrote to the NSWPF querying a number of aspects of the proposed strategy for improving compliance. The NSWPF has addressed the Commission's queries regarding the nature of its current plan to improve compliance. However, questions raised by the Commission in its correspondence of 11 July 2011 as to why some of the quality control strategies implemented by the NSWPF following the 2008 CARA audit were unsuccessful in improving compliance have not as yet been responded to by the NSWPF. The Commission continues to liaise with the NSWPF on this issue. Updated information will be presented in the Commission's 2011-12 Annual Report.

13. The Commission expressed significant concerns that the NSWPF has not been managing its confidential information in an appropriate manner despite recommendations from your office published in 2008. Do you intend to assess any instances of improper disclosure of information? How will you assess this? Do you have any further comment on this issue?

The Commission has no current plans to conduct any new research in relation to the unauthorised release of confidential information in the NSWPF. However, the Commission may revisit this subject at some point in the future after the implementation of remedial strategies proposed by NSWPF in response to the Commission's 2008 report. In the

¹ CARA is used by police to assess whether there is potential for an Investigator and/or Command level conflict of interest in the allocation of a complaint investigation.

meantime, it is likely that the improper release of confidential information will continue to be scrutinised in Commission investigations.

At the end of the 2011-12 reporting year the Commission will seek updated information from the NSWPF on the implementation of the recommendations presented in the Commission's report of 2008. This will then be included in the Commission's 2011-12 Annual Report.

14. The Research & Issues paper series provides a valuable resource to members of the public as well as government agencies. Can you describe how the issues researched for these papers are selected and how the material is disseminated? For example, is there an accompanying media release?

As to the first limb of the question, the Commission evaluates all ideas for misconduct prevention projects using a series of assessment criteria. These criteria are designed to assist the Commission in identifying projects that, as far as can be determined, will assist the Commission achieve the best possible outcome. The criteria, which are quite extensive, include:

1. Does the proposed project have the potential for a strategic NSWPF-wide impact on corruption prevention?
2. Is there a potential for collaboration or linkages with other units in the Commission? (for example, working with the Investigations Unit)
3. Does it develop Commission objectives that so far have received less attention?
4. Can the anticipated outcomes be achieved more effectively in other ways (ie not a project)?

As to the second limb of the question, the Commission considers in relation to each report or paper that it releases publicly whether or not a media release is merited. In each case, however, the Commission issues a broadcast email to a large group academic researchers, government agencies and others in Australia and overseas whenever it releases a new report or paper.

15. Can you provide an update on the development of the NSWPF Gifts and Benefits policy? Has the Commission reviewed this yet?

In response to the Commission's recommendation in the Operation Iris Report, the NSWPF *Receipt of Gifts and Benefits Policy and Guidelines* document was reviewed by the Professional Standards Command. An updated version of the policy was published by NSWPF in August 2011. The Commission has recently reviewed the document. It provides satisfactory guidance to NSWPF officers. Messages about NSWPF expectations around soliciting and receiving gifts and benefits are clear and illuminated by practical examples.

More importantly, however, the NSWPF accepted the Commission's view on a possible lack of awareness of the provisions of this policy. PSC have since taken action to remind staff of

the policy, reinforced with Commanders the need to maintain a gift register and emphasised with staff their obligations in relation to the receipt and registration of gifts. The Commission considers this recommendation satisfactorily implemented.

- 16. The Commission noted a restructure of its Operations Division. Has this realised the benefits envisioned? Have there been any unforeseen negative effects? How has this restructure affected your budget?**

The restructure of the Operations Division was undertaken in an effort to better focus the resources of the Investigations Unit. The new structure allows for a more efficient and effective coordination of IU resources in line with demand. The restructure has been achieved within the existing budget. Staff are now allocated into defined teams providing greater continuity, retention of corporate knowledge and assisting with the allocation of work within the unit. There are no negative effects as a result of the restructure, with it having been received positively across the board. It continues to work effectively.

- 17. The Commission mentions several achievements relating to personnel policy, especially around the development of a new Purchasing Leave Policy and better performance and sick leave management. Can you give some examples of how these improvements have been demonstrated? What performance measurements do you use?**

With respect to the new Purchasing Leave Policy, the Commission states in its 2010-11 Annual Report that the policy provides an alternate flexible working arrangement for staff. Since the introduction of this policy in September 2009, it has been utilised by one employee for the purposes of taking additional leave during school holidays in order to provide care for his school aged children.

With respect to the Performance Management System, the Commission states in its 2010-11 Annual Report that the new system continues to be an effective tool in creating increased accountability across the organisation and in identifying appropriate staff development opportunities. The Performance Management System is based on the identification of key accountabilities for individual positions and the formulation of performance standards to measure these key accountabilities. These performance standards are objective and directly relevant to the key accountabilities which, in turn are linked to business plans. By relying on objective and measurable information, the performance management system has improved accountability and ultimately performance across the organisation. The performance management system also identified training and development opportunities for both individual employees and business units as a whole.

With respect to sick leave management, in January 2009 the Commission introduced a system whereby total sick leave taken, total number of sick leave occurrences and total number of days covered by medical certificates are monitored on a monthly basis. The information gathered is shared with the Executive, with line managers and with the

employees themselves to show the Commission's vigilance in monitoring sick leave statistics. The managing sick leave policy allows for certain courses of action to be taken when documented thresholds have been surpassed. The benefit to the Commission of the sick leave management system and the monitoring procedures that it has introduced is outlined in the table below:

Calendar Year	Total Days Sick Leave Taken	Total Number of Sick Leave Occurrences Taken
2008	761.925	458.75
2009	786.24	412
2010	591.55	366
2011	596.775	370

18. Almost 42% of Commission staff members are female, but less than 25% of staff that were offered the opportunity to perform higher duties during the year were female. Can you explain this discrepancy?

During the reporting period, 7 of 27 (25.93%) higher duties staff development opportunities were filled by female staff members.

The nature of the vacant position has much to do with which staff members are given access to higher duties staff development opportunities at the Commission. The overriding factor of course is whether an employee actually has the skills, knowledge and experience to satisfy the criteria for the vacant position. Another relevant factor is whether an individual actually wishes to be considered for a higher duties opportunity and not all eligible employees of the Commission are interested in filling such vacancies.

Although 42% of Commission staff members are female, this percentage drops quite significantly to 23% within the Commission's Investigative staff numbers. Of the ten higher duties opportunities that became available within the Investigations area throughout the reporting year, only one was filled by a female employee. This reflects the fact that the environment within which the Commission operates its core functions is traditionally a male dominated environment. This is further reflected by the fact that the percentage of female applications for investigative positions at the Commission is usually well below 10% of all applications. The effect of the male domination within the investigative environment is that the overall statistics relating to higher duties opportunities is dragged down to a level which is not reflective of the overall situation at the Commission. Leaving out the Investigations area figures, 35% of other higher duties opportunities throughout the reporting period were provided to female staff members.

When taking into consideration the above information and the fact that a total of 18% of the Commission's female employees are working approved part-time and other special working arrangements to accommodate an appropriate balance between their professional and

personal responsibilities, the Commission considers the discrepancy outlined in question 18 above to be both understandable and acceptable.

Police Integrity Commission Annual Report 2009-10

- 1. The Commission commenced work on Project Caesar during the 2009-10 reporting period and the Committee understands that a draft has been prepared. What is the progress on this report?**

The Commission made some progress in advancing the project report in 2010-11. At the end of that year, a draft version of a report had been finalised for internal review. However, at that stage no decisions had been made as to the disposition of the report. In September 2011, the draft version was provided to David Patten for the purposes of the inquiry he conducted into the NSW Crime Commission.

A further decision on the report awaits the outcome of the Commission's Operation Winjana, which itself is examining the practices and procedures of the NSW Crime Commission in the conduct of actions under the Criminal Assets Recovery Act 1990.

A final decision on the report is yet to be made by the Commission.

- 2. One of the Commission's stated aims is to raise awareness of the Commission and provide advice to the Community. Can you provide some detail on how this is achieved?**

The Commission has sought to raise public awareness using a number of measures. The Commission provides a range of information about its work and practices on its website. Community members are able to use the website to contact the Commission, or contact Commission officers direct, in order to obtain further information.

From time-to-time the Commission participates in opportunities to address public forums, most notably the ICAC run Rural and Regional Outreach Programs.

In addition, an incidental outcome of public hearings is that they provide information to the broader community about misconduct currently of interest to the Commission. Public reports on investigations, research and the Commission's Annual Reports provide further details.

Principally, however, the Commission directs most of its attention to raising awareness about its work amongst one of its key stakeholder groups, the officers of the NSWPF. This is particularly the case in respect of the Commission's work on misconduct prevention (as it can lead to a shared understanding of the risks of misconduct in day-to-day policing), and the Commission's role in the complaints management process (as police themselves are the

predominant source of complaints about police misconduct). The Commission's activities in this area are outlined in some detail in the 2009-10 (p. 41) and 2010-11 (p.35) Annual Reports.

- 3. In the 2009-10 Annual Report you detail Project Surrey, which was designed to identify risk factors for serious police misconduct. The Annual Report indicated that the analyses were being finalised and the Commission expected to release a paper with its findings during the 2010-11 year. In the following year's annual report the Commission notes that this project had been placed on hold. The Committee considers that such a report appears to be integral to the Commission's business and may provide valuable information for corruption prevention activities. Is the Commission planning to renew this project?**

The intention of Project Surrey was to identify risk factors for serious police misconduct using large quantities of NSWPF data from multiple data sources. This data, however, proved difficult to work with resulting in significant delays in the information collection and analysis phases of the project. On reviewing the first draft of the report, a number of questions emerged pertaining to the reliability of the results and the extent to which they could be used for the purposes of planning or policy development in the organisational context of the NSWPF.

In view of the fact that the two researchers who had commenced the project in 2009 had departed the Commission by the time the first draft was furnished in early 2011, the Commission was faced with a choice of allocating the project to another member of staff or an externally-engaged researcher or curtailing its work in this area altogether. The decision taken at that time was that the resource investment required to complete the project could not be justified in light of the Commission's other prevention priorities. In addition, it is questionable that the data sources available are sufficient to support anything other than the most tentative of findings regarding risk factors for serious police misconduct. The Commission has no plans to resume work in relation to this project.

- 4. The Commission refers to the development of an Intelligence Management Framework. Can you elaborate on what this involves and its progress?**

Over the last three years, the Commission has adopted a variant of the National Intelligence Model (NIM) for the conduct of law enforcement operations that has been adapted to suit the Commission's needs. The NIM was developed in the United Kingdom and has been widely adopted by other law enforcement agencies. The model emphasises an intelligence led approach to target identification and development. Elements of this model include the centralised control of tasking and operations, risk management and the prioritisation of work that is most relevant to the Commission's role (i.e. serious misconduct).

The intelligence framework element of this plan has included the adoption of an integrated intelligence and Case Management System, the acquisition of intelligence tools and a planned data warehouse capability. Furthermore, the Commission has liaised with external

training providers so that analysts can supplement their qualifications and experience in order to better perform their current role. One element of this framework is still to be implemented; the adoption of the strategic priorities process, but this expected to occur in the coming months.

Review by the minister of the PIC Act 1996

- 1. One of the outcomes of the Review suggests that the Committee consider recommending a function to enable the Commission to audit the NSWCC. Does the Commission have any comment on this?**

The Commission's response to this question depends on the outcome of the Special Commission of Inquiry into the NSW Crime Commission. Should an Inspector of the Crime Commission be appointed who has audit powers, the Commission would not seek a legislative amendment to allow an audit function.

- 2. The Commission has requested that Committee make a recommendation to amend the legislation to allow specified officers of the Commission to carry antipersonnel spray and batons. Do you have any further comments on this request?**

The purpose of this amendment is to update s124(2) of the PIC Act to reflect the current training and practices in conflict de-escalation which are in place at the Commission. When the PIC Act commenced in 1996 it contained a provision about firearms and weapons which mirrored the corresponding provision in the *Royal Commission (Police Service) Act 1994*. The provision was that Commission investigators and surveillance officers who were seconded police officers or approved former police officers were exempt from the requirement to hold a permit or licence in relation to semi-automatic pistols, handcuffs and body armour vests (s124).

Section 124 of the PIC Act provides

- (1) Commission investigators, and Commission surveillance officers, who are seconded police officers or approved former police officers are exempt from the requirement made by the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), but only when acting in their capacity as officers of the Commission.
- (2) Commission investigators, and Commission surveillance officers, who are seconded police officers or approved former police officers are exempt from the requirement under the *Weapons Prohibition Act 1998* to be authorised by a permit to possess or use handcuffs and body armour vests, but only when acting in their capacity as officers of the Commission.

The purpose of the provision was to remove the need for the Commissioner of Police to issue individual permits for such officers to carry the police equipment necessary to perform their duties safely. One permit is issued which permits the Commission to possess pistols and weapons and issue them to the exempt officers when circumstances require it.

Since the commencement of the PIC Act there have been a number of developments in police practice regarding equipment for dealing with conflict situations. Following the shooting death of Roni Levi in 1997, police in many jurisdictions moved to better train and equip their officers with non-lethal alternatives so that the least degree of force necessary

could be deployed to deal with a conflict situation. NSWPF officers were equipped with oleoresin capsicum spray in 1999.

Capsicum spray (or "anti-personnel spray") and batons are now standard tactical options for NSWPF officers in the field. Commensurate with this, the training of officers in the appropriate use of weapons and other approaches such as conflict de-escalation has also developed significantly. Officers of the Commission also engage in such training, provided by specialist instructors from an independent law enforcement agency.

The Commission has a permit to possess and issue spray and batons to its officers. Those weapons form part of the standard suite of items now issued to Commission officers when they are going into an operational situation that carries a risk of conflict. However, whilst the approved former police officers are exempt from obtaining a licence for the other weapons, they must obtain an individual licence for spray and batons as those items are not mentioned in s124(2) of the PIC Act. The requested amendment merely seeks to extend the exemption currently provided by s124(2) so that it includes the additional items that now form part of the standard training and practice. If the amendment is not made the officers will continue to train in the use of spray and batons and will be issued with same by the Commission when operational circumstances require it, but they will have to have first obtained individual permits to do so. The purpose of the amendment is merely to remove the administrative burden of obtaining such permits. Accordingly it is still the Commission's recommendation that s 124(2) of the Act should be amended so that the exemption from the requirement to hold a permit is extended to batons and anti-personnel spray in the case of Commission officers who are seconded police officers or approved former police officers.

Report of the Special Commission of Inquiry into the NSW Crime Commission

The Report of the Special Commission recommends, among other things, that:

- a) any future Parliamentary Committee that is established to oversee the NSWCC has the power to veto the appointment of a Commissioner.
- b) That an Inspector be appointed to the Commission and this Inspector be provided with staff, who will have the right to use PIC's facilities if required.
- c) That the PIC Act be amended to provide that the PIC not exercise its powers under s. 23(2) and s. 24 (in relation to a preliminary investigation into matters covered by s. 23(2)) without the consent of the Inspector.

Does the Commission have any specific or general comments to make regarding the above recommendations?

In relation to a), the Commission does not oppose the PJC having the power to veto the appointment of the Commissioner of the Crime Commission and notes that such veto powers also appear in s64A of the *Independent Commission Against Corruption Act 1988* in relation to the proposed appointees to the positions of Commissioner and Inspector of the Independent Commission Against Corruption and at s31BA of the *Ombudsman Act 1974* which includes a veto power for the following positions:

- Ombudsman
- Director of Public Prosecutions
- Information Commissioner
- Privacy Commissioner
- Commissioner of the Police Integrity Commission
- Inspector of the Police Integrity Commission

It would be consistent to apply uniform levels of Parliamentary scrutiny to the position of the Commissioner of the Crime Commission.

In relation to b) the Commission agrees with the appointment of an Inspector to the NSW Crime Commission with appropriate staffing levels. If the Inspector is to have the right to use Commission's facilities, this should only occur by mutual agreement between the Inspector and the Commissioner and be subject to the availability of the required facilities.

In relation to c), s23(2) of the *Police Integrity Commission Act 1996* (the Act) provides that the Commission may conduct an investigation even though no particular police officer, administrative officer, Crime Commission officer or other person has been implicated and even though no police misconduct, misconduct of a Crime Commission officer or corrupt conduct of an administrative officer is suspected. Section 24 of the Act provides that an investigation may be in the nature of a preliminary investigation and gives some examples of preliminary investigations which could be conducted by the Commission.

The Commission would not oppose an amendment to the Act which would provide that the Commission should not exercise its power under s23(2) to conduct an investigation even though no

particular officer or other person has been implicated and even though no misconduct of an officer is suspected, without the Inspector having consented to such an investigation.

The Commission would not oppose an amendment to the Act which would provide that the Commission should not exercise its power under s24 to conduct a preliminary investigation, if the investigation would fall within s23(2) (that is, no particular officer or other person has been implicated and even though no misconduct of an officer is suspected) without the Inspector having consented to such an investigation.

It may be, that if the proposed amendment in relation to s23(2) was made, then the proposed amendment in relation to s24 would become unnecessary.