

NEW SOUTH WALES  
Crime Commission

1 February 2013

The Hon. Catherine Cusack MLC  
Chair  
Committee on the Ombudsman,  
the Police Integrity Commission and the Crime Commission  
Parliament of New South Wales  
Macquarie Street  
Sydney NSW 2000

*And by email to [ombopic@parliament.nsw.gov.au](mailto:ombopic@parliament.nsw.gov.au)*

Dear Ms Cusack,

**First General Meeting with the Crime Commission**

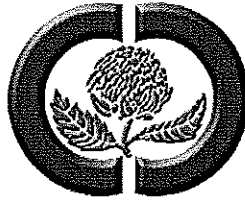
I refer to your letter dated 12 December 2012 and the enclosed paper setting out questions on notice.

A document responding to the questions has been prepared and it is enclosed for the information of the Committee.

Yours sincerely,



**P. S. Hastings QC**  
Commissioner



NEW SOUTH WALES  
Crime Commission

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

FIRST GENERAL MEETING WITH THE NSW CRIME COMMISSION  
(2013)

RESPONSES TO QUESTIONS ON NOTICE

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The Parliamentary Committee has sought from the Commission responses to 21 questions arising from the Commission's Annual Report for 2011–2012. The Commission responds as follows:

1. The costs of the Commission in responding to the Police Integrity Commission ('the PIC') during 2011–12 may be classified into external costs (being costs paid to external lawyers advising and representing the Commission and its staff) and internal costs (being the value [measured by reference to salaries] of the time of Commission officers and staff spent on responding to the PIC. Only the external costs are precisely quantifiable.

Those external costs (for 2011–12) were as follows:

Court proceedings between the Commission and the PIC:	\$24,400.76
Court proceedings between Commission staff and the PIC	61,412.97
Representation of the Commission before the PIC	832,151.95
Representation of Commission staff before the PIC	<u>157,158.73</u>
<u>Total</u>	<u>\$1,075,124.41</u>

The internal costs of the Commission's responding to the PIC cannot be precisely estimated. In 2011-12, they were mainly referable to the PIC's Operation Winjana, but also referable to a considerable range of other PIC activities. The overwhelmingly significant component of the internal costs was the salaries due for the time spent by Commission personnel on the task. During calendar year 2011, it is estimated that responding to the PIC consumed more than a quarter of the time of the Commissioner, four-fifths of the time of the Assistant Commissioner, the Solicitor to and Director of the Commission and the Commission's two most senior other lawyers (both part-time), and significant portions of other staff members' time; at one, brief point, approximately 30 staff were engaged in preparing for the then-imminent public hearings. Significant time continued to be expended into 2012 until the filing of submissions in February. It is estimated that more than \$700,000 of staff time was expended in 2011-12 on responding to the PIC; the true figure for internal cost may well be over \$1,000,000.

2. None of the eight complaints has been resolved. The following steps have been taken and are known to the Commission:

August 2011: Complaints lodged with the Inspector

August or  
September 2011: Complaints referred by the Inspector to the PIC

25 June 2012: PIC provided its response to the Inspector

5 July 2012: PIC's response referred to the Commission for  
reply

25 September 2012: Commission provided the Inspector with its reply.

3. The Commission is aware of the good standing of the Inspector, but otherwise has no basis for commenting.
4. The commentary contained at paragraphs 574-579 of the PIC's Report on its 'Operation Winjana' refer to certain orders made by the Supreme Court of

New South Wales. Those orders remain valid orders of the Court in spite of any contrary opinion of the PIC.

The PIC's commentary is based on the entirely misconceived proposition, to be found at par. 476, that costs awarded by the Supreme Court at the conclusion of successful litigation brought by the Commission against a criminal 'were deducted from the restrained monies, as opposed to being paid by the defendant personally.' Central to this proposition is the false dichotomy between money being owned by a defendant and money being restrained: the underlying false assumption is that restrained money is not owned by the defendant. In fact, when money owned by a person is subjected to a *restraining order* it remains the property of that person until a *confiscation order* is made, and it remains available to satisfy a costs order, provided the Court makes an order releasing the funds from restraint in order to allow the defendant to use them to pay a costs order made by the Court in favour of the Commission. That restraining orders can be varied to release funds from restraint was indicated by the Court of Appeal in *NSW Crime Commission v. Ollis* (2006) 65 NSWLR 478 at [30]. The *Criminal Assets Recovery Act 1990* itself, in par. 10B (3) (b) (formerly par. 10 (5) (b)) provides that funds can be released from a restraining order to meet a defendant's legal expenses if certain conditions are met, so there is no reason to think that the same could not be done to allow for the defendant to meet the Commission's legal costs: it can, and no special conditions must be met.

It should be noted that some of the orders quoted in par. 474 of the Winjana Report were poorly drafted in that they inelegantly conflated the costs order (power for which was contained in s. 95 of the *Civil Procedure Act 2005*) and the order varying the restraining order so as to facilitate payment of the costs order (power for which is founding s. 12 of the *Criminal Assets Recovery Act*). The Crown Solicitor has advised (as the PIC well knew but failed to mention in its report) that the incorrect statement of the source of power in the quoted orders did not affect the validity of the substance of the orders, and that proposition is entirely orthodox.

5. No.
6. Any person is free to make a complaint to the PIC, but there is no process for 'referring' complaints to the PIC. Complaints can be made in accordance with the procedures of the PIC. However, attention is drawn to s. 75D of the *Police Integrity Commission Act 1996*. Reports as required by this section are customarily made by letter from Commissioner to Commissioner.
7. No.
8. The Commission is satisfied that all necessary steps have been taken to ameliorate the effects of *NSW Crime Commission v. Cook* [2011] NSWSC 1348. In the period from the date of that decision until 5 October 2012 (when the *Crime Commission Act 2012* commenced), confiscation takings were significantly reduced, although during 2012 there was an overall improvement due to the good work of Commission staff. Since the commencement of the *Crime Commission Act*, the figures on confiscation results have been consistent with confidence that the confiscation regime will (in respect of the present issue) work effectively into the future. (See also the response below to QQ. 13 and 14.)
9. There is no formal or required process. In practice, however, most issues are either raised by an informal communication to a member of the Committee or because Committee members in the course of their ordinary work detect that a concern has arisen.
10. Minutes of the meetings of the Committee are kept and reference is made therein to any advice sought and the opinion formed by the Committee.
11. During the reporting period, although several issues were raised by Committee members (including concerns that had been mentioned by other

staff), no matters were raised as actual requests for advice by a (non-Committee) member of staff of the Commission.

12. The Commission does not have the resources to maintain records of how much time its staff spend on various activities. However, the building supervisor (who when available undertakes other work for the Commission) has advised that significantly more of his time is now required in dealing with the building management company than was previously required simply to manage the building itself. Furthermore, significant other personnel resources now have to be expended in dealing with building management issues: the repeated failure of the building management company to manage the building effectively and efficiently has often required the time-consuming intervention of the Assistant Director (Technical Operations), Mr Singleton (as Commissioner and Assistant Commissioner), and others. The issues have required, far more than in the past, the close attention of the Commission's Management Team. Moreover, needless and unsatisfactory practices and developments have required considerable work by intelligence analysts (in conducting security checks on numerous persons because of a failure sensibly to manage the recruitment of tradespeople) and Commission lawyers (in responding to various avoidable issues). (Although it is outside the scope of the question, the Commission notes that a return of the building to the Commission's ownership—with its saving of staff time and, more directly, rent—would save the Commission more than \$125,000 pa; removal of the wasteful levels of private management would save even more for taxpayers.)
13. Yes.
14. A detailed briefing for the Minister is being prepared.
15. The Commission's role in investigating public place shootings since January 2012 has been to join with police in investigating specific matters regarding which the police have requested assistance. (The matter is, of course,

primarily a police matter, and it would not be appropriate, nor would be within the resources of the Commission, for the Commission to intervene unilaterally.) The police have requested the Commission's assistance for nine strike forces investigating shooting incidents.

Since 1 January 2012, in respect of these matters, the Commission has issued 75 summonses requiring witnesses to attend Commission hearings (not all matters proceeded to hearings), obtained nine surveillance device warrants (not including such warrants by police officers who may also be Commission staff members), intercepted 62 telecommunications services, and established 'live' receipt of call associated data in respect of 67 telecommunications services. Most importantly, the Commission has assigned significant analytical staff to the investigations. The Commission's work has contributed to the making of 29 arrests and the laying of 106 charges.

16. The Commission's legal capacity 'to pierce the so called "wall of silence" (*i.e.*, its power to summons witnesses to hearings and require them to answer questions) is probably one of the most significant factors motivating police to seek Commission assistance, but in the case of those matters being investigated by the NSW Police Force's State Crime Command the motivation will have included officers' past good experiences in working with the Commission, including the benefits of its analytical and intelligence gathering capabilities.
17. The Committee recommended by Mr Patten—called by the Commission the 'Human Source Management Committee'—was formally established by a memorandum executed on 12 January 2012 by Commissioner Singleton. The number of sources being managed by the Commission is a matter of high secrecy and the Commission would propose to deal with the matter in confidential session if required.
18. Mr Patten's recommendation for a merit-based, competitive selection process for staff recruitments and promotions was informally adopted in December

2011. Its adoption as formal policy from 1 July 2012 was recorded in a memorandum executed by Commissioner Singleton on 30 June 2012. The contents of the policy are contained in that memorandum. It should be noted that the Commission has always had (at least since the early 1990s, if not earlier) a merit-based approach to recruitment, although the formality of the competitive aspects of the approach has varied according to the seniority of the position in question and the circumstances (*e.g.* urgency) of the situation.

19. The written policy on managing unsatisfactory performance and remedial disciplinary action (as recommended by Mr Patten) was finalized on 30 June 2012.
  
20. The Complaints Handling Policy, which was already extant before the Special Commission of Inquiry into the New South Wales Crime Commission, was extensively rewritten in the light of the report of that Special Commission, and the revised policy was completed and adopted on 30 June 2012. In respect of complaints against the Commissioner personally, it provides:

The authority of the Commissioner within the Commission—for example, the Commissioner's general authority to have access to all information—is such that particular arrangements are needed in respect to complaints and potential complaints against the Commissioner.

In addition to the options that a person has according to the foregoing provisions of this Policy and the provisions of the Internal Reporting Policy, a person wishing to complain about the Commission may:

- make the complaint to such external authority as the person wishes (but, in order to assist, attention is drawn to the Police Integrity Commission and the Ombudsman); and
- make the complaint to any member of the Commission's Management Team (being, for present purposes, the Assistant Commissioners, the Directors, the Executive Manager and the Governance Manager).

Each member of the Management Team authorized to keep the complaint confidential from the Commissioner and to deal with it in accordance with the following propositions:

- Each complaint is to be managed according to the needs of the particular complaint and its circumstances, and taking into account general principles of complaint management.



- The recipient of the complaint should consider whether or not the complaint should be referred or notified to an external authority, especially the PIC or the Ombudsman. If the recipient is satisfied that such a referral or notification should be made then it must be made and it must be made confidentially in writing (although this provision does not prevent additional means of communicating a referral or notification).
- If the complaint is a complaint of serious misconduct by the Commissioner then the Commissioner of the PIC must be notified confidentially in writing of the substance of the complaint unless the recipient has consulted at least two members of the Management Team at least both three and a majority of those people (including the recipient of the complaint) are satisfied that because of special circumstances the Commissioner of the PIC should not be notified and that a failure to notify would be lawful and ethical.
- The recipient of the complaint should consider and determine who else amongst the Management Team should be advised of the complaint.
- Unless the complaint has been notified to the Commissioner of the PIC and the recipient of the complaint is satisfied that there are special circumstances warranting the contrary course, the recipient must notify at least two others from amongst the Management Team of the complaint. The recipient and those thus notified shall then determine who else amongst the Management Team shall be notified. An ad hoc committee of the recipient and those notified shall thus be established
- The ad hoc committee shall determine its own procedures and shall determine how the complaint shall be managed, bearing in mind the general principles applicable to dealing with a complaint (including confidentiality and natural justice).
- The ad hoc committee shall have access to and use of all of the resources and holdings of the Commission—including such staff of the Commission as it determines—for the purposes of managing the complaint.
- The ad hoc committee shall have authority to provide information about the complaint to such staff members as it sees fit.
- The ad hoc committee shall keep a record of its actions and decisions in respect of the complaint.
- Once the ad hoc committee has determined how the complaint is resolved, the ad hoc committee shall:
  - unless there are compelling reasons to the contrary—inform the complainant of the determination and of such of its reasons as it sees fit, and advise the complainant that a complaint might be available to the PIC, Ombudsman or other external authority;

- unless there are compelling reasons to the contrary—inform the complainant of the determination and of such of its reasons as it sees fit, and advise the complainant that a complaint might be available to the PIC, Ombudsman or other external authority;
- unless there are compelling reasons to the contrary—inform the Commissioner of the determination and of such of its reasons as it sees fit; and
- after giving the Commissioner and the complainant an opportunity to be heard—decide whether or not the PIC or any other external authority should be informed.

An overriding consideration is that complaints against the Commissioner are to be treated with the same seriousness and diligence as the same complaint would be treated if had been made against a member of staff and that those making complaints against the Commissioner are not to be subjected to any reprisal or other inappropriate response.

21. The one valid application made by a news media applicant pursuant to the *Government Information (Public Access) Act 2009* that the Commission received in 2011–12 sought the documentation that the Commission had sought to tender during the public hearings held by the PIC for the purposes of its Operation Winjana (see the transcript of those proceedings at pp. 618–626). The application was received on 6 October 2011. The decision to grant access was made and executed on 7 October 2011.

Dated: 1 February 2013