



ANNUAL REPORT



FOR THE YEAR ENDED

30 JUNE 2005

REPORT BY THE

INSPECTOR OF THE

POLICE INTEGRITY COMMISSION



The Hon Dr Meredith Burgmann MLC
President of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

The Hon John Aquilina MP
Speaker, Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

August 2005

Dear Madam President & Mr Speaker

In accordance with section 102 of the *Police Integrity Commission Act 1996*, I as Inspector of the Police Integrity Commission, hereby furnish to each of you for presentation to Parliament the Annual Report of the Inspector for the year ended 30 June 2005.

The Report has been prepared in accordance with the requirements of the *Police Integrity Commission Act 1996* (“*the Act*”).

Pursuant to section 103(2) of the Act, I recommend that the Report be made public forthwith.

Yours faithfully

The Honourable Morris Ireland QC
Inspector of the Police Integrity Commission

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This is my fourth and final Annual Report to Parliament as Inspector of the Police Integrity Commission. My appointment which commenced on 12 June 2002 will conclude on 31 August 2005.

These preliminary observations, in accordance with precedent, although repetitive in nature, are directed towards keeping clearly in mind the purpose and origin of the Office of the Inspectorate. It is central to the accountability of the Police Integrity Commission.

In February 1996, Justice James Wood published the first interim report of the Royal Commission into the NSW Police Service.

Chapter five (5) of that report is of particular importance. A new system was proposed to deal with Police complaints and corruption investigations in NSW.

The proposal took into account that within the NSW Police Service (as it was then entitled)¹ there was a pattern of corruption urgently to be addressed so that public confidence could be restored.

There was general acceptance by the Royal Commission that a focused, sophisticated and aggressive approach was necessary to uncover and combat serious police misconduct and corruption. The debate largely centred on the model then appropriate for NSW and the agency or agencies which should be tasked with appropriate responsibility. All the existing agencies were carefully considered.

The Royal Commission concluded that the model which needed to be adopted was one in which:

- The Police Service (now NSW Police) retained a meaningful role in dealing with management matters, customer service complaints, and certain matters of misconduct;
- There was both oversight of the Police Service, and an external responsibility to investigate serious corruption.

After careful consideration it was resolved that a new “*purpose built agency*” (which came to be called the **Police Integrity Commission**) should be established.

It was emphasised that such an agency would:

¹ By the Police Service Amendment (NSW Police) Act 2002 No S1. Schedule 1. the title Police Service of New South Wales was changed to NSW Police.

- Provide a fresh approach to the problems;
- Be purpose built, with specific focus upon the investigation of serious police misconduct and corruption; and
- Be free of the institutional baggage attached to an anti-corruption system which had failed to deal with corruption of the kind revealed by the Royal Commission.

The principal function of the Police Integrity Commission was seen to be the detection and investigation of serious police corruption. A key function being to assemble admissible evidence when investigations reveal criminal conduct and to furnish such evidence to the Director of Public Prosecutions.

Consideration was then given to the accountability of this new, very powerful, ongoing body to ensure that it be open to public review and accountable to Parliament.

The first avenue of accountability acknowledged that there is always a risk that an agency that is heavily committed to covert investigations, relies upon informants, and possesses powers which are both coercive and of a kind which might involve substantial infringement of rights of privacy, may overstep the mark.

For this reason the Commission decided that there be a “*watchdog*”, able to respond quickly and effectively to complaints of misconduct and abuse of power, without risking secrecy of operations, or confidentiality of informants and witnesses. That “*watchdog*” was designated the **Inspector of the Police Integrity Commission**.

Hence it was proposed that the Office of the Inspector of the Police Integrity Commission be created by the legislation governing the agency. The Office, it was suggested, might be held by a serving or former Supreme Court Judge and given powers to:

- Audit operations of the Police Integrity Commission;
- Deal with complaints of abuse of power and other forms of misconduct on the part of its employees; and
- Report to Parliament on matters affecting the Police Integrity Commission and its operational effectiveness and needs.

Part 6 of the *Police Integrity Commission Act 1996* makes those statutory provisions for the Office of the Inspector.

ROLE OF THE INSPECTOR

The position of the Inspector of the Police Integrity Commission (*the Inspector*) derives its authority from the *Police Integrity Commission Act 1996 (the Act)*.

The Inspector is appointed by the Governor with the advice of the Executive Council. The Joint Committee on the Office of the Ombudsman and the Police Integrity Commission is empowered to veto the proposed appointment which is required to be referred to the Committee by the Minister².

The Office of the Inspector may be a full-time or part-time Office, according to the terms of the appointment. A person is eligible (if otherwise qualified) for re-appointment but may not hold the Office of Inspector for terms totalling more than 5 years.

On 12 June 2002 I was appointed by the Governor as Inspector of the Police Integrity Commission for a period of three years on a part-time basis effective from date of appointment, following the retirement of the Hon. M.D. Finlay QC at the conclusion of his two terms of Office (of 3 years followed by an additional 2 years). In June 2005 my term of office was extended to 31 August 2005.

The Inspector's duties under the *Police Integrity Commission Act 1996* are to investigate complaints against the Commission's staff, to audit its operations, effectiveness and compliance with the law, and to report to the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission. That Committee has the function of monitoring and reviewing the exercise by the Commission and the Inspector of their functions³.

The Inspector is required to report annually to Parliament and may make Special Reports on any matters affecting the Commission or on any administrative or general policy matter relating to the functions of the Inspector.⁴

The Inspector's principal functions as provided by Statute⁵ are:

- (a) *to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and*

² Schedule 2 Police Integrity Commission Act 1996 and Section 31BA of the Ombudsman Act 1974

³ Section 95(1)(a) Police Integrity Commission Act 1996

⁴ Sections 101, 102 of the Police Integrity Commission Act 1996

⁵ Section 89 of the Police Integrity Commission Act 1996

- (b) *to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and*
- (c) *to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*

The Inspector may exercise the functions of the Office on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency⁶. The Inspector is not subject to the Commission in any respect⁷.

"*The Minister*" in the paragraph above is the Minister for Police. The Honourable John Watkins MP, was the Minister for Police until 21 January 2005 and thereafter the Honourable Carl Scully MP.

POWERS OF THE OFFICE OF THE INSPECTOR

To perform its function, the Office of the Inspector has been given extensive powers to investigate any aspect of the Commission's operations or any conduct of officers of the Commission⁸.

It is also empowered to make or hold inquiries and for that purpose it has the powers, authorities, protections and immunities of a Royal Commissioner⁹. It was not found necessary to hold a formal inquiry involving hearings during the reporting year. The approach adopted by this Office has traditionally been to restrict the use of costly, time-consuming, formal inquiry hearings to complaints which necessarily involve a formal hearing in order to resolve some factual conflict critical to the complaint.

The Attorney General has advised the Minister for Police that the Legal Representation Office has approval to provide legal advice and representation for persons whose testimony at a formal hearing may warrant legal representation. During the reporting year it has not been necessary to seek the assistance of the Legal Representation Office.

The question of extending the jurisdiction of the Office of Inspector to authorise investigation of alleged impropriety or misconduct by non-PIC officers engaged in joint or related operations with PIC officers is separately dealt with later in this report under the heading Extending Jurisdiction.

⁶ Ibid, s89(2)

⁷ Ibid, s89(3)

⁸ Ibid, s90

⁹ Ibid, s91

THE OFFICE

The Inspectorate has suitable office premises, within the Sydney Central Business District separate from the Police Integrity Commission which is located at 111 Elizabeth Street, Sydney. The postal address of the Inspectorate is GPO Box 5215 SYDNEY NSW 2001. The office telephone number is (02) 9232 3350 and the facsimile number is (02) 9232 3983. The email address is *inspect@tpg.com.au*. One full-time staff member is engaged in the office.

The office operates appropriate computer systems which are maintained by Information Technology Services.

I also have a small office at the Police Integrity Commission where I have full access to the electronic records of the Commission. There I can access, in complete security, the Commission's records of its operations.

FINANCES

The financing of the office of the Inspectorate falls within the operating expenses of the Ministry for Police.

As the Inspector of the Police Integrity Commission is not a Department nor a Department Head for the purposes of the *Annual Reports (Departments) Act 1985*, the requirements placed by that Act on those bodies do not apply to the preparation of an annual report by the Inspector.

Similarly, the provisions of the *Annual Reports (Statutory Bodies) Act 1984* do not apply since the Inspector is not a person, group of persons or body to whom Division 3 of Part 3 of the *Public Finance and Audit Act 1983* applies nor is it prescribed as a statutory body by the *Annual Reports (Statutory Bodies) Act*.

FREEDOM OF INFORMATION LEGISLATION

The Office did not receive any FOI applications in 2004/05 for documents held by this Office. There is therefore no information to give in terms of clause 9(1) of the *Freedom of Information Regulation 2000* and Appendix B in the FOI Procedure Manual.

The Inspector of the Police Integrity Commission is part of the Ministry for Police for the purposes of the reporting requirement in Part 2 of the *Freedom of Information Act 1989*. Hence, this agency's "policy documents" are included by the Minister in

the *Summary of Affairs* for the Ministry of Police provided to the Government Printing Service for publication in the Government Gazette.

REPORT OF OPERATIONS

In this report the term "monitoring" is used to include the auditing of the operations of the Commission for the purpose of monitoring compliance with the law of the State and to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

Monitoring and related activities have included regular meetings with the Commissioner of the Police Integrity Commission, Mr Terence Griffin and the Executive Officer Mr James Slater, to discuss the issues of the day, longer term strategies and to review representative samples of operational files. As needs arise separate discussions with senior officers of the Commission take place.

In fulfilling my function under s.89(1)(a) and (1)(c) of the Act, I have available to me a designated office at the Commission where I have a computer providing electronic access to all the material on file at the Commission (with the exception of Telecommunication Interception (T.I.) material). This includes the records of the Commission's various operations. Periodically and at random, I access such operations in absolute security. I have a print-out facility should this be required.

My regular meetings with the Commissioner and the Executive Officer identify the operations in which there has been activity, such as the issue of new warrants. This enables me to examine retrospectively such new warrants to ensure that all necessary approvals and administrative actions were completed in the process of obtaining and executing a warrant. In doing so I am also able to consider issues of propriety.

The Commissioner and his staff have been fully cooperative. The Commissioner has provided me with unreserved access to any officer of the Commission whom I may wish to interview. The operations of the Commission, as observed by me, were in compliance with the laws of the State.

ASSESSMENT OF PROCEDURES

Pursuant to s.89(1)(c) of the Act, the Inspector has the function of assessing "*the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*"

This statutory requirement was taken from and is, in its terms, almost identical with s.8(3)(a)(iii) of the Commonwealth *“Inspector-General of Security and Intelligence Act 1986”*.

I assess the general procedures of the Commission, as I have seen them, to be effective and appropriate relating to the legality and propriety of its activities.

Each operation of the Commission involves a preliminary assessment by the Commission through its Operation Advisory Group (OAG).

The concerns as to timeliness in some of the Commission's procedures which were expressed by the former Inspector appear now to be addressed routinely. It is important that this aspect of operations continues to be closely monitored.

The Commission has limited resources. These it is required to apply to issues which are oft times competing for the application of those resources.

I have ongoing discussions with the Commissioner focussing on this question of timeliness and of the adoption of procedures likely to achieve the best and most balanced outcome of the Commission's productivity.

As part of my assessment, I have regard to the records of those operations requiring legislative sanction. For example, I have a weekly report regarding applications for warrants under the *Listening Devices Act 1984* and relating to section 19 reports under that Act. Also, I receive reports on Notices issued to obtain information (s.25 of the Act); Notices to obtain documents or other things (s.26); Authority to enter public premises (s.29); the summoning of witnesses (s.38); and the issue of Search Warrants, and the issue of authorities to conduct Controlled Operations.

Applications to obtain information (s.25 of the Act) or to obtain documents or other things (s.26 of the Act) can only be made *“for the purposes of an investigation.”* The Commission has in place systems requiring requests for such applications to be written and to identify the relevant investigation. These may be seen by the Inspector.

The Commission has issued a code of conduct which sets out the standards of behaviour all Commission staff are to observe.

The security of the operations of the Commission is of paramount importance. The reasons for such security being clear from the final report of the Royal Commission. It is also important that the exercise of the Inspector's functions should not put at risk the confidentiality of informants and witnesses.

The Act provides that information, acquired through the exercise of the Inspector's functions, shall not be divulged except in accordance with a direction of the Inspector certifying that it is necessary to do so in the public interest.¹⁰

IMPLEMENTATION OF THE REPORT ON THE PRACTICES AND PROCEDURES OF THE POLICE INTEGRITY COMMISSION.

The report on The Practices and Procedures of the Police Integrity Commission was tabled in Parliament on 18 June 2003. The executive summary and the recommendations arising from the review of the Commission's practices and procedures were incorporated in the annual report of this Inspectorate for the year ending 30 June 2003.

The Commission accepted without demur the recommendations set out in the report.

The majority of recommendations were implemented by November of 2003 with the remainder being implemented and incorporated in the Commission's two publications Practice Notes and Practice Guidelines which were published in July 2004.

Hearings conducted by the Commission during the reporting year have not disclosed a need for further extension or amendment of the practices and procedures presently being followed.

COMPLAINTS

During the reporting period the Inspectorate dealt with 14 complaints relating to the activities of the Commission.

Some of the complaints are summarised below. Such summaries attempt to avoid identifying complainants or confidential informants. The Report also avoids publishing material reflecting the internal working and methodologies of the Commission and the legal advice of lawyers employed by the Commission to provide the same in pursuit of its functions, which are not matters in the public interest to be disclosed.

- One (1) complaint relates to events which occurred many years ago in which alleged police misconduct may have contributed to the conviction of one of a number of accused persons. This matter remains on foot and is nearing completion.

¹⁰ Section 56 of the Police Integrity Commission Act 1996

- One (1) putative complaint was received from a member of the public alleging misconduct by NSW Police. Following correspondence the Complainant consented to the referral of his complaint by the Commission to NSW Police to be dealt with by the Professional Standards Command.
- One (1) putative complaint, was received via a member of Parliament. The course adopted by the Commission in referring this matter to NSW Police to be dealt with in accordance with Part 8A of the Police Act 1990 (complaints about conduct of police officers) was, in the circumstances appropriate.
- One (1) complaint against the PIC related to the exclusion of an individual from PIC premises during occupancy of the hearing room by another duly authorised crime agency. The matter was resolved with recommendations as to procedural changes being implemented by the Commission to notify other users of the right reserved by the Commission to refuse admission to certain individuals in special circumstances.
- One (1) complaint related to an alleged breach of confidentiality on the part of the Commission in varying, pursuant to Clause 2A Schedule 3 of the Police Integrity Commission Act 1996 a non publication order as to the name of a witness who gave evidence before the Wood Royal Commission to enable civil proceedings to be undertaken. Following an investigation it was determined that the variation of the non-publication order was in accordance with statutory provisions.
- Correspondence regarding one (1) complaint was received by this Inspectorate, however, the matter complained of did not relate to any PIC officer. Correspondence and the brochure “Making a Complaint to the Inspector” was sent to the Complainant. No further correspondence has been received.
- One (1) complaint against the PIC related to alleged misconduct by NSW police officers. Correspondence between this Inspectorate, the Complainant and the PIC was entered into. The complaint was dealt with by a Report of Preliminary Investigation and the matter concluded.
- One (1) internal enquiry was conducted by this Inspectorate in relation to an officer of the PIC. No impropriety or misconduct by the officer in question has been disclosed.
- One (1) putative complaint was received via a member of Parliament and relates to alleged misconduct by PIC officers. The Complainant was

interviewed and the nature of his complaint identified. This complaint has not yet been fully resolved.

- One (1) putative complaint received was in relation to the alleged improper use of telephone intercept product by members of the NSW Police. This matter was forwarded to the PIC for consideration.
- One (1) putative complaint against the PIC was in relation to the declination by the PIC to investigate allegations of misconduct by officers of the Police Royal Commission and the NSW Police Force. Enquiries established that no further investigation was necessary.
- One (1) current complaint is in relation to alleged failure on the part of the PIC to investigate allegations of police misconduct. The matter in question is currently in the course of investigation by the PIC.
- One (1) putative complaint is from a member of parliament regarding the Operation Vail Report and relates to information leaks allegedly from NSW Police. The matter was brought to the attention of this Inspectorate by the PIC and is being monitored.

The misconception that the Office of Inspector of the Police Integrity Commission exercises an appellate role in relation to the acceptance or rejection of evidence and the opinions expressed in the Commission's reports rather than the statutory function of dealing with complaints of abuse of power, impropriety or other forms of misconduct and/or illegality prescribed by Section 89 of the Police Integrity Commission Act 1996 continues to be apparent in a number of the complaints received.

Experience establishes that almost all complaints can be dealt with by preliminary inquiry.

A preliminary inquiry allows this Inspectorate to conduct a review of a complaint, once the parties, in the course of correspondence processed through this office have identified the issues, with a view to determining whether there is sufficient substance in the complaint to warrant a further inquiry using the full range of statutory powers.

The fact that none of the new complaints against the Commission led to full, as opposed to preliminary inquiries, indicates that these more formal processes are not invoked lightly.

TELECOMMUNICATION (INTERCEPTION) ACT 1979 (Cwth)

The *Telecommunication (Interception) Legislation Amendment Act 2000* (Cwth) which included the Inspector of the Police Integrity Commission as an “eligible authority” was given Royal Assent on 23 June 2000.

Applications for the issue of Telephone Intercept (T.I.) warrants are communicated to me by the Commission’s T.I. Manager. The formalities associated with access to the foundational material upon which reliance is placed in seeking the issue of T.I. warrants and access to the product of such warrants is recorded to facilitate the statutory audit of such access by the NSW Ombudsman.

These arrangements have been working satisfactorily.

FUTURE OPERATIONS

The functions of the office of the Inspector may be regarded as twofold:

First, that of auditing the operations of the Commission for the purpose of monitoring compliance with the law of the State¹¹ and assessing the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities¹².

The procedures in place to fulfil the above functions are several. One being by regular conferences with the Commissioner and the Executive Officer. Another by conferences from time to time with senior officers of the Commission.

A further procedure is by regular access to the computer in my room at the Commission. Without giving details, this enables me to closely follow operations in complete security.

Another procedure is to look at the records of those operations requiring legislative sanction.

The law of the State which imposes obligations in relation to the keeping and inspection of interception records is the *Telecommunication (Interception)(NSW) Act 1987* (“the State Act”). Section 10 of the Act imposes an obligation upon the Ombudsman to inspect the records of each eligible authority “at least twice during each financial year, beginning on or after 1 July, 1988”.

¹¹ s. 89(1)(a) of the Act

¹² s. 89(1)(c) of the Act

The Police Integrity Commission is an “*eligible authority*” for the purposes of the State Act (s3). Thus, it is clear that the Ombudsman, and not the Inspector of the Police Integrity Commission, is the designated authority for the purpose of ensuring that the Police Integrity Commission **complies with its record keeping responsibilities** (emphasis added) under the State Act and other relevant obligations under the TI Act.

Second, that of dealing with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission¹³.

Section 90 of the Act empowers the Inspector to investigate any aspect of the Commission’s operations or any conduct of officers of the Commission and entitles the Inspector to full access to the records of the Commission. It provides that the Inspector “*may investigate and assess complaints about the Commission or officers of the Commission*”.

Section 91 of the Act provides that the Inspector may make or hold inquiries for the purposes of the Inspector’s functions.

Such inquiries generally involve seeking information and submissions in turn from the parties to the complaint until the gravamen of the complaint is clearly established and both parties have had every reasonable opportunity to present relevant material and arguments on the issues identified. They usually involve accessing by computer relevant electronic records of the Commission.

Other inquiries may require the holding of a formal hearing. Generally, a formal hearing exercising the powers of a Commissioner as conferred by Division 1 of Part 2 of the *Royal Commissions Act 1923* will only be held where it is necessary by that means to resolve a disputed issue of fact critical to the inquiry.

Such hearings may be small scale and appropriately held in the Inspector’s office. For this purpose, the Ministry for Police has made arrangements for a court reporter from the Attorney General’s Department to be available for such hearings.

It may, on the other hand, require a larger scale hearing. The circumstances may indicate that it should be public or that it should be private. If public, the facility of a Commission hearing room may be appropriate to be arranged pursuant to section 92(4)(a) of the Act. On the other hand, it may be more appropriate for a hearing room to be arranged through the Attorney General’s Department, at a venue which is seen to be quite independent of the Commission.

¹³ s. 89(1)(b) of the Act

ELECTRONIC RECORD KEEPING

The MATRIX system of electronic record keeping which replaced the DETRAK system previously in place has resulted in easier access to operational reports and to the minutes of the regular Operational Advisory Group meetings.

From time to time changes in the formatting and operational procedures continue to improve the easy access to the recorded information. From the Inspectorates perspective the MATRIX system is well managed and effective.

CONTROLLED OPERATIONS

Controlled operations are conducted by the Police Integrity Commission pursuant to the Law Enforcement (Controlled Operations) Act 1997. Controlled operations which are an important and productive weapon in the Commission's arsenal embrace operations which, absent statutory authority, would contravene the law.

The approval procedures for authority to conduct a controlled operation have been settled by the Commission's Solicitor and are set out in some detail. Although the application for a controlled operations authority is prepared by the relevant investigative officer with the assistance of the Team lawyer, as and when required the Commission Solicitor also provides advice upon the necessity or appropriateness of the application. Post-approval such operations are subject to the external audit, as far as documentation is concerned, by the Ombudsman. As the Commission is the decision maker in such controlled operations the roles of the Operation Advisory Group (OAG), the Team Lawyer, and the Commission Solicitor are important.

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 prior to recent amendment provided:

“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. Such an authorisation may not be given without concurrence of the Minister.”

Accordingly as section 142 stood, the concurrence of the Minister was a prerequisite to the exercise of police functions in a controlled operation. Whilst there could be no objection in principle to the concurrence of the Minister being obtained, practical considerations, in circumstances where last minute changes necessitating the deployment of alternate or additional police officers at times when, for good reason, the Minister was unavailable could seriously compromise a major operation.

To put the position in context it is only necessary to recognise that a controlled operation may be the climax of an investigation to which substantial resources would inevitably have been devoted. The risk of aborting a controlled operation in circumstances where the concurrence of the Minister was unable to be availed of was that at the very least, the gathering of important if not critical evidence would be jeopardised. This statutory restraint called for urgent review.

The Police Integrity Commission Amendment Act 2005 No 5 in Schedule 1 provides:

- [7] Section 142 Exercise of functions by Police
Omit “*Such an authorisation may not be given without concurrence of the Minister.*” From section 142 (1).
- [8] Section 142 (1A)
Insert after section 142 (1):
(1A) As soon as practicable after giving such an authorisation, the Commissioner must notify the Inspector of that fact.

The amendments which were proclaimed to commence on 1st June 2005 provide an effective remedy.

EXTENDING JURISDICTION

The jurisdiction of the Office of Inspector as prescribed by Part 6 and Schedule 2 of the Police Integrity Commission Act 1996 (the Act) is plainly confined to dealing with (by reports and recommendations) the operations and conduct of the Police Integrity Commission (the PIC) and officers of the Commission.

In furtherance of this statutory function the powers specifically granted are comprehensive and the intention that they be all encompassing is made plain by Section 93 which provides:

“93 Incidental powers

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector’s functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.”

The jurisdictional issue was highlighted during two investigations conducted by the former Inspector of the PIC the Hon. M. D. Finlay QC during October/November 2001. The deficiency in jurisdiction relates to situations where PIC officers engage in joint operations with personnel retained by other crime agencies.

The two investigations came to be known as “The Four Corners programme” and “The Operation Mascot listening device warrant”. The facts in each matter are well known and do not warrant further recounting at this time.

The significant point is that both investigations called for the examination of the conduct of NSW Crime Commission officers as well as PIC officers. No jurisdictional point was taken and Mr Finlay was able to complete the investigations without objection. However, the fact remains that reliance on grant of jurisdiction by consent is singularly inappropriate and most likely ultra vires.

It is quite beside the point that on each of the occasions above referred to the NSW Crime Commission was the agency involved. The PIC also conducts joint operations for example with NSW Police and with the Independent Commissions Against Corruption being but two crime agencies both within New South Wales.

Following the fifth General Meeting with me on 25th June 2003, the Committee on the Office of the Ombudsman and the Police Integrity Commission reported to Parliament expressing concern about limitations on the jurisdiction of the Inspector. The Committee sought to overcome this difficulty by recommending that:

“The Police Integrity Commission Act 1996 be amended to provide the Inspector with jurisdiction to investigate alleged improprieties by non-PIC officers, in circumstances where:

- the conduct of a PIC officer also is involved; or*
- there is a connection between the alleged misconduct and the activities of the PIC; or*
- the legality or propriety of the PIC’s activities is called into question;*

and, the conduct is conduct of a type that would normally fall within the Inspector's jurisdiction."

By letter of 11 August 2004 the then Minister for Police the Honourable John Watkins MP advised that:

"The Ministry for Police has sought Crown Solicitor's advice on the circumstances in which the "improprieties" of Crime Commission and other officers may be investigated, which I enclose for your consideration.

The advice would suggest that ICAC has jurisdiction to investigate the "improprieties" of Crime Commission officers, at least where they may attract disciplinary action.

The Crime Commission is also accountable to its Management Committee, of which I am a member, and I am ultimately accountable to Parliament for the manner in which I discharge my functions under the New South Wales Crime Commission Act 1985.

The Crown Solicitor's advice also suggests the PIC Act contemplates a regime where the Inspector and ICAC may jointly deal with concerns arising from PIC joint operations, if appropriate, with there being considerable flexibility in how such matters are managed. The Inspector could investigate matters relevant to PIC and refer other matters to ICAC for investigation. Alternatively, the whole matter might be referred to ICAC. ICAC would be able to investigate matters and refer matters relevant to the Inspector's jurisdiction back to the Inspector at any time, for the Inspector to further deal with as appropriate."

In my response to the Minister by letter of 23 August 2004 I said:

"I respectfully accept without demur the legislative construction and the opinions expressed by the Crown Solicitor.

The advices sought did not touch upon the adverse aspects of the lacuna which presently exists in the Inspector's powers when dealing with complaints arising in the course of joint operations where the subject of the complaint may involve other public officials.

The efficacy of threading a pathway through existing legislation to reach, in piecemeal fashion, a notional alternative to the statutory amendment proposed by the Parliamentary Joint Committee calls for careful consideration.

The alternatives, on the one hand, of abdicating the responsibility of dealing with a core function of the Inspector's role to investigate allegations of misconduct by the PIC or its officers by referring the matters to the ICAC and on the other embarking upon a fragmentation of investigative procedures which seek to obviate the apparently anomalous legislative deficiency, serve to highlight the need for introduction of a simple amendment of the nature presently found in Ss.129(2) and 130(2) of the PIC Act.

Militating strongly against the hiving-off of investigations into allegations of misconduct by PIC officers to the ICAC is the fact that staff of the latter agency are not subject to the prohibition against employment of NSW Police or former NSW Police.

This embargo as to employment also extends to the Office of the Inspector.

Access to the records, practices and procedures pertaining to the PIC fall within the Inspector's direct oversight role. Confidentiality and security of these aspects of the PIC operations is paramount and may be placed at risk by referring the investigation of complaints against PIC officers to the ICAC.

Accordingly, in response to your request for my advice "...on whether I (you) believe the Crown Solicitor's advice shows a way of appropriately dealing with more complex investigations into aspects of joint operations involving PIC", I advise that I do not so believe and that in my opinion an amendment of the PIC Act as proposed by the Parliamentary Joint Committee is the appropriate remedy for this anomaly."

During the resumed debate on the second reading of the Police Integrity Commission Amendment Bill on 16 September 2005 Mr Paul Lynch Chairman of the Committee on the Office of the Ombudsman and the Police Integrity Commission, in addressing this issue said¹⁴:

"... I touch briefly on one absence from the bill. One glaring omission is any provision to extend the jurisdiction of the PIC Inspector. At present the Inspector does not have power to investigate the conduct of non-PIC officers connected with the activities of PIC officers. Two separate incidents connected with Operation Florida, one of which included the release of material to Chris Masters of Four Corners, revealed the practical nature of this problem. In both instances the actions of New South Wales Crime Commission officers involved in the joint operation with the PIC were relevant. The case for

¹⁴ NSW Legislative Assembly Hansard Full Day Transcript page 78.

extending the jurisdiction of the Inspector to reach into such instances is, I think, logically unanswerable.

...The alternative is what I can only describe as a silly and cockamamie scheme that is termed as threading a pathway through existing legislation. The PIC Inspector, who is somewhat more polite than I am, recently described that as being “devoid of practical efficacy”. It obviously involves fragmenting investigations and has risks for confidentiality. Regrettably, the amendment is not contained in this legislation and I hope it is forthcoming soon.

I suppose the alternative will be more Committee reports reflecting our undoubted frustration that that amendment has not been made. ...I briefly draw the attention of the House to some of the comments in the Committee’s report and quote from the foreword, which states:

The first issue relates to the Committee’s recommendation that the Police Integrity Commission Act 1996 be amended to ensure that the Inspector is able to fully exercise his functions with respect to the investigation of the PIC’s activities. It has become obvious to the Committee that the Inspector’s capacity to conduct such investigation may be seriously compromised by his lack of jurisdiction with respect to the conduct of non-PIC officers connected with the activities of the PIC. The Committee previously suggested that the PIC Act be amended by narrowly extending the Inspector’s jurisdiction in limited circumstances, to overcome the practical inadequacies of the existing legislative framework which requires the Inspector to refer the conduct of the PIC’s investigative partners to the ICAC.

The Committee cannot see any valid reason as to why the amendment should not proceed and remains concerned about the capacity for the Inspector to perform his functions in its absence. The need for such amendment is clearly shown by two incidents occurring in Operation Florida in which the conduct of the PIC’s investigative partners, in this case the NSW Crime Commission, was relevant. The proposed amendment also would provide an appropriate mechanism to deal with conflict of interest issues that might arise for the PIC when exercising its own jurisdiction.”

By letter dated 14 April 2005 the Hon. Carl Scully Minister for Police advised as follows:

“On 11 January the Commissioner of the ICAC wrote to the former Minister proposing that the ICAC would initiate discussions with the PIC Inspector and the PIC to progress the development of guidelines for the handling and referring of complaints between each agency. I have replied to the

Commissioner requesting that the development of these guidelines be progressed as a matter of priority before 31 May 2005.

I note your concerns regarding the suitability of joint guidelines to achieve practical oversight of non-PIC officers involved in PIC operations. Therefore I propose that should these joint guidelines prove impractical, I shall request the Ministry for Police to re-examine the legislative option that has been proposed by the PJC to expand the PIC Inspector's jurisdiction. Before pursuing this approach however, I would appreciate a report from the ICAC Commissioner and yourself."

I furnished my brief report to the Minister by letter of 2nd May 2005 concluding as follows:

I have conferred with the Hon. Jerrold Cripps QC, ICAC Commissioner and Mr Terence Griffin, PIC Commissioner.

Our considered view is that:

- the fragmentation of an inquiry by being heard in part by both the Inspector and the ICAC is unworkable.*
- the alternative of the Inspector referring allegations of misconduct during joint operations to ICAC is beset by the difficulties outlined above which cannot be overcome by the formulation of guidelines.*
- the appropriate remedy lies in implementing the recommendation of the Parliamentary Joint Committee.*

I report accordingly.

There the matter rests. I have felt the need to address this issue at length for the reason that joint operations by crime agencies are both productive and an efficient use of public resources. They should be encouraged.

Nevertheless, as in the past, the need to investigate matters of complaint will inevitably arise.

One can only hope that consideration of the matters adverted to above will dissolve the mystifying reluctance of the legislature to remedy this obvious jurisdictional deficiency by simple amendment to the jurisdiction of the Inspector.

MEETINGS WITH PARLIAMENTARY COMMITTEES

The Committee on the Office of the Ombudsman and the Police Integrity Commission (the Parliamentary Joint Committee) is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the *Ombudsman Act 1974* are set out in section 31B.

Under the *Police Integrity Commission Act 1996*, the Parliamentary Joint Committee has the function of monitoring and reviewing *'the exercise by the Commission and the Inspector of their functions'*.¹⁵

The Report of the Parliamentary Joint Committee on the Sixth General Meeting with the Inspector of the Police Integrity Commission was published in September 2004 and is accessible on the Committee website at:

www.parliament.nsw.gov.au/prod/parlment/committee

This Inspectorate holds itself available and would welcome enquiries and discussion on any matter of concern to members of the Parliamentary Joint Committee at any time.

CONCLUSION

As indicated at the outset of this Annual Report my term of office concludes on 31st August 2005.

I take this opportunity to express my appreciation to the Commissioner of the Police Integrity Commission Mr Terry Griffin, and to the office holders and staff of the Commission for their unfailing courtesy and co-operation throughout the term of my appointment. Their professionalism and commitment to the important work in which they are engaged does them great credit.

My association with the Chairman Mr Paul Lynch MP and the members of the Parliamentary Joint Committee has been both cordial and of interest. My gratitude

¹⁵ S.95(1)(a) of the Act

extends in particular to the outstanding staff of the Committee in their pleasant and competent rendering of responses and assistance at all times.

Most importantly go my thanks and appreciation to my Executive Assistant Ms Fiona McIntyre for her greatly valued assistance and expertise over the past two years and three months.