



Mrs Carly Maxwell
Director, Legislative Assembly Committees
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Director

Re: 2014 General Meeting with the Inspector of the New South Wales Crime Commission

Thank you for your letter dated 28 February 2014. I do not wish to suggest any changes to the transcript of the evidence I gave before the Committee. I answer the further questions posed as follows.

- (1) If the Police Integrity Commission ("PIC") and the Inspector of the Crime Commission ("ICC") are to continue to be severally responsible for the investigation of complaints about possible misconduct of Crime Commission officers those officers listed in s75D(1) of the PIC Act (s75D) should be placed under a duty to report such possible officer misconduct to the ICC. Part 4 of the Crime Commission Act ("CC Act") should be amended to include provisions like those in s75D. Of course, the ICC would not be a listed officer but the PIC Commissioner would.

The PIC Commissioner and the ICC should be under mutual obligations to report to one another all complaints they receive about Crime Commission officers, whether or not those complaints appear to pass the test in s75D(2).

The test in s75D(2) requires only that a relevant officer suspect on reasonable grounds that a matter may concern officer misconduct. The combination of mere suspicion ("suspects") with mere possibility ("may concern") may evince an intention to require the officer to report any matter other than one that is bad on its face. That is a very low hurdle which virtually excludes the exercise of any discretion by the reporting officer. The officers identified in subs (1) are senior officers qualified to make and accustomed to making discretionary decisions. If this interpretation is valid, is it the Parliament's intention to require everything to be reported except that which will obviously fail?

Subs (2) needs to be reconsidered and, if appropriate, recast.

This should be added to s23 of the PIC Act –

- (1A) If the Commission conducts an investigation on a Crime Commission officer complaint the investigation must be carried no further than is necessary to establish whether the complaint is or is not justified.

There are other awkwardnesses resulting from the pressing into service of the PIC Act. An example is s55B of the PIC Act, which defines misconduct of a Crime Commission officer. Although the definition is inclusive, it is wide: see the examples at (2) (b) and (c). The word is not defined in the CC Act, so it might have a different meaning there.

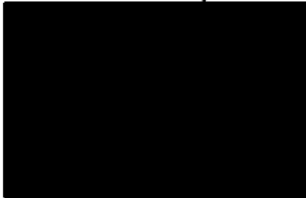
- (2) The functions of my office are set forth in Part 4 of the Crimes Commission Act. They fall broadly into two kinds, namely receiving and dealing with complaints of abuse of power, etc, and with conduct amounting to maladministration: s62 (1) (b) and (c); and auditing the operations of the Commission and assessing the effectiveness and appropriateness of its activities according to what is lawful and proper: s62(1) (a) and (d).

As to the first kind, my office will perform satisfactorily if it deals appropriately with every complaint received and every instance of maladministration that comes to light. It will or will not do so according to a subjective assessment. There are no objective criteria by which to measure performance of my office.

As to the second kind, my office will perform satisfactorily if it carries out the functions prescribed. There are no objective criteria by which to measure performance.

- (3) I would not look to any other agency.

Yours faithfully



The Hon Graham Barr QC
Inspector, New South Wales Crime Commission
7 March 2014