



ABN 22 870 745 340

Our Ref: 22186/26

23 October 2012

Ms Rachel Simpson  
Director, Committees  
NSW Legislative Assembly  
Parliament House  
Macquarie Street  
Sydney NSW 2000  
Attn Emma Matthews

BY HAND

Dear Ms Simpson

### **Re Review of Police Integrity Commission Act 1996**

Thank you for your letter dated 19 October 2012 regarding outcomes 11 and 13 of the Government's review of the *Police Integrity Commission Act 1996*. I note the Government will not be pursuing outcome 11 in view of the commencement of the *Crime Commission Act 2012* on 5 October last.

Outcome 13 was in the following terms:

**13.** *The Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission should be asked to consider the request of the PIC to allow it to use antipersonnel spray and batons.*

The above outcome arose from the submission made by this Commission in August 2010 for the purpose of the Government's review. The Commission's submission about anti-personnel spray and batons was as follows:

### ***SPECIAL POWERS AND WEAPONS***

**1.1** *Section 124 of the PIC Act provides that Commission investigators and surveillance officers who are seconded police officers or approved former police officers<sup>1</sup> are exempt from the requirement to hold a permit or licence in relation to semi-automatic pistols, handcuffs and body armour vests. The purpose of this provision is to ensure that Commission investigators and surveillance officers can carry the police equipment necessary to perform their duties safely and without the need for the approval of the Commissioner of Police. Commission officers are only issued with this equipment when operational circumstances require it, such as when executing search warrants.*

<sup>1</sup> Persons who have served for at least five years as police officers in specified jurisdictions.

- 1.2 *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 Ron 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.*
- 1.3 *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.*
- 1.4 *This has led to an anomaly as Commissioner officers are trained in the use of anti-personnel spray and batons but these items are not exempted under s 124 of the PIC Act in the same way that semi-automatic pistols, handcuffs and body armour vests are. Commission investigators and surveillance officers must presently hold a permit approved and issued by the Commissioner of the NSW Police Force in order to possess and use anti-personnel spray and batons. It is submitted that s 124 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. It is further submitted that the reference in subsection 124(2) of the PIC Act to the Prohibited Weapons Act 1989 should be amended to the Weapons Prohibition Act 1998, to reflect the change in the title of that legislation.*

Following the above submission an amendment was made to s124(2) of the *Police Integrity Commission Act 1996* to refer to the *Weapons Prohibition Act 1998* by its correct title.

In relation to the substantive recommendation about anti-personnel spray and batons, the Commission received a Question on Notice from the Parliamentary Committee on 28 March this year. That question and the Commission’s reply were as follows:

1. ***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.*

The Commission still seeks the above amendment. Should you require any further information for the purposes of your inquiry please contact Michelle O'Brien, Commission Solicitor, on 02 9321 6745.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Bruce James', with a large, sweeping flourish that loops around the name.

**The Hon Bruce James QC  
Commissioner**