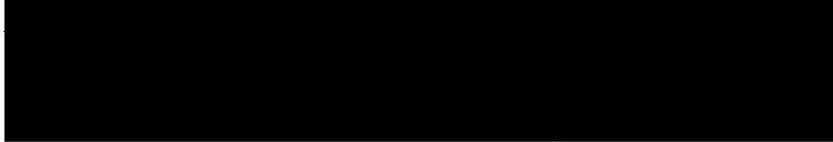


Dear Ms Cusack

I refer to your letter of 28 March 2012 and the appended Questions on Notice.

At the outset I make the request, that my appearance before the Committee commence in camera.



The answers to the Questions on Notice must be viewed in the following context: the Office of the Inspector of the Police Integrity Commission was vacant from the 21 November 2011 until the 1 February 2012 on which date I commenced duties. Further the evolution of my acquaintance with the requirements of the office will have to some extent been disrupted by the necessity to put in place certain procedural and compliance reforms and the physical movement of the offices of my Inspectorate to be co-located with the Inspectorate of ICAC, sometime in June-July 2012.

1/2

Further as to the Questions on Notice, I have addressed them expressly and made no comment upon my predecessor's responses to previous Questions on Notice: I trust, however, to be in a position, if required, to comment on those previous responses.

The answers to the Questions on Notice are appended hereto.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "David Levine".

The Hon David Levine AO RFD QC  
Inspector: PIC

1. **Do you have any comment you wish to make with respect to the statutory limitations imposed on the Inspectorate?**

It is my present position that the statutory limitations imposed upon the Inspectorate taking into account recent amendments to the legislation are sufficient. This view might change upon the evolution of the office as conducted by myself and of any relationship with the PIC itself as well as other bodies which can be affected by the exercise of my jurisdiction.

2. **Do you have an agreement with respect to the ongoing communication between your office and the Police Integrity Commission? If so, could you provide the Committee with details of this plan?**

No agreement with respect to the ongoing communication between my office and the Police Integrity Commission exists nor is there any plan. Certainly arrangements are in place for purely bureaucratic efficiency relating to the making of appointments for my calling upon the PIC, delivery of documentation and the like. Otherwise the notion of any formal agreement or plan would be inconsistent, in my respectful view, with the separate roles the statute provides for the PIC and the Inspector.

3. **The outgoing Inspector proposed to liaise with the Commonwealth Attorney General with respect to *Telecommunications (Interception and Access) Act 1979*. Are you aware of any response? If a response has been received, please provide a copy to the Committee.**

I attach hereto a response as is referred to in the Question on Notice from Ms Kathryn Ovington of the Commonwealth Attorney General's Department.

4. **Do you consider the budget allocated to the Inspector sufficient to acquit the statutory functions of the Inspectorate?**

I have no reason to consider it not to be sufficient. It is relatively modest in my view and upon the settling into new premises and finalization of staffing requirements, a review will be necessary I am sure.

5. **Have you set any goals or priorities for your terms as Inspector of the Police Integrity Commission?**

First, a robust commonsense approach be adopted by my Inspectorate to the resolution of any complaints from any legitimate source and that they be dealt with dispassionately, impartially without the intrusion of any element of personal animosity or ill will. Secondly, over the term I presently can indicate that I will be giving continuing and careful consideration to the role of both the Police Integrity Commission and this Inspectorate and the necessity therefor in the light of the passage of time since the events leading to, and the presentation of, the Report of The Wood Royal Commission.

24 April 2012-04-24



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The Hon David Levine AO RFD QC  
Inspector: PIC

**PIC\_Inspector - Ovington, TSLB to Inspector PIC - Request for comments - use of lawfully intercepted information in public hearings [SEC=UNCLASSIFIED]**

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**From:** "Ovington, Kathryn" <Kathryn.Ovington@ag.gov.au>  
**To:** "pic\_inspector@dpc.nsw.gov.au" <pic\_inspector@dpc.nsw.gov.au>  
**Date:** 29/03/2012 4:28 PM  
**Subject:** Ovington, TSLB to Inspector PIC - Request for comments - use of lawfully intercepted information in public hearings [SEC=UNCLASSIFIED]  
**CC:** "Whitaker, Susan" <susan.whitaker@ag.gov.au>, "Kelly, Wendy" <Wendy.Kelly@ag.gov.au>

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**UNCLASSIFIED**

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Dear Inspector

I work in the Telecommunications and Surveillance Law Branch of the Attorney-General's Department and we are currently developing amendments to the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

With changes to the technological and structural nature of the telecommunications industry, law enforcement and security agencies are facing increasing challenges to their capability to undertake telecommunications interception. In response the Department is reviewing the operation of the TIA Act. This project is being conducted within Government and we have approval for limited in-confidence consultation with Government agencies and Departments as well as selected industry participants. Within New South Wales, the Department has had similar discussions through pre-existing forums with New South Wales Police, the Police Integrity Commission, the Independent Commission Against Corruption and the Crime Commission.

Your predecessor, the Hon PJ Moss QC, wrote to the former Attorney-General, the Hon Robert McClelland MP, on 4 November 2011 to express concern about the disclosure of certain lawfully intercepted conversations in hearings by the Police Integrity Commission. In the former Inspector's view, the material was irrelevant to the Commission's investigation and publication was to the potential detriment of the interests and reputations of those involved.

The use of lawfully intercepted information (LII) in public hearings is and will remain a contentious area. The Department would like to ensure that existing powers are unaffected as much as possible going forward while balancing privacy interests and ensuring public confidence in the regime. Accordingly, the Department is considering an option to maintain the status quo enabling the use of LII in public hearings (that are not prosecutions) but to require the head of that agency to approve the use of LII in a public hearing prior to a hearing occurring. In making a decision to approve the use of LII in a public hearing, the head of the agency may be required to have regard to:

- the value of the LII to the investigation
- the potential damage that public disclosure could have on any person, including their reputation
- whether the public disclosure of the LII will assist in the investigation, and
- the gravity of the offence under investigation

The agency head's power to make such a decision may be supported by an ability to impose restrictions on the publication of any evidence.

We consider that including such requirements on the face of the TIA Act would create a national approach.

In addition, we propose that this approach would add integrity by assuring the public that decisions to use LII in public proceedings are considered at the highest level within agencies.

We seek your comments on this proposal, on an In-confidence basis, in light of the comments made by your predecessor on this issue.

Kind regards

**Kathryn Ovington**  
Senior Legal Officer  
Telecommunications and Surveillance Law Branch  
Tel: 02 6141 3059 / mob: 0439 575 352

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**Inspector  
of the  
Police Integrity Commission**

Our Ref: CR 04-AD

4 November 2011

The Hon Robert McClelland MP  
Attorney-General  
Parliament House  
BARTON ACT 2600

Dear Attorney-General,

**Re: *Telecommunications (Interception and Access) Act (1979)***

- 1) I have set out below, for your interest, paragraphs 139-146 from my 2011 Annual Report tabled in the NSW Parliament on 11 October 2011.
- 2) That material will no doubt speak for itself, and I need not comment further upon it.
- 3) In view of my conclusions stated in paragraphs 145-146, it occurred to me that you may wish to consider amending the legislation to overcome the problems identified by me in that material.

**ADVICE FROM THE COMMONWEALTH DIRECTOR OF  
PUBLIC PROSECUTIONS**

- 139) As noted in my 2010 Annual Report (page 17), I wrote to the Commonwealth DPP in respect of the apparent breaches by the Commission of the *Telecommunications (Interception and Access) Act (1979)* (Cth), identified in my Report dated 28 January 2010 (published on the Inspector's website). My Report dealt with complaints by the Police Association (NSW) of improper use by the Commission of lawfully intercepted

telephone conversations. In that correspondence I sought the advice of the DPP as to whether, in light of my opinions as to a breach of that legislation, proceedings should be commenced by the DPP against the Commission or any officer thereof. The advice subsequently conveyed to me by letter from the CDPD was to the effect that in his opinion there was no reasonable prospect of securing a conviction against the Police Integrity Commission or any of its officers under section 105 of that legislation in respect of the publication by the Commission of the material the subject of the complaint.

140) As also noted in my 2010 Annual Report (page 17) I had of my own initiative “commenced an investigation into the circumstances in which the Commission published in that [Mallard] Report, the telephone conversations of certain persons together with the identity and personal details of those persons, apparently on the basis that such persons were parties to a telephone conversation with a person being investigated by the Commission; and also details sufficient to identify another person referred to in those conversations together with potentially adverse material relating to that person.” Subsequently, I completed my investigation and produced a Report detailing my findings and recommendations. That Report appears in the Schedule to this Annual Report and is also available on the Inspector’s website – [www.inspectorpic.nsw.gov.au](http://www.inspectorpic.nsw.gov.au).

141) For convenience, I include below the following summary of the background to and the conclusions reached in that Report, including paragraphs 1-7 of my Report.

1) *The Police Integrity Commission’s Operation Mallard Report was presented to the NSW Parliament in December 2007, and thereupon made a public document, on the recommendation of the Commission.*

2) *Contained in that Report is a considerable amount of material comprising personal details concerning two persons identified therein as Quenten Roberts and Michelle Roberts, neither of whom was at any time under investigation by the Commission, nor was either called as a witness by the Commission during the conduct of the Mallard hearings. There*

is also material concerning a person identified in the Report only, and unceremoniously, as "Purcell's ex-wife" who falls into the same category, although such material is confined to one subject matter of narrow compass.

- 3) In fact, the only reason Mr and Ms Roberts were identified in the Commission's public Report, together with the personal details pertaining to them, was that each participated in telephone conversations with, and at the behest of, the then Superintendent Purcell of NSW Police, who was under investigation by the Commission at that time, which telephone calls were lawfully intercepted by the Commission pursuant to telephone intercept warrants obtained by the Commission.
- 4) However, unlike the Roberts, the woman referred to as "Purcell's ex-wife" was not, as will appear below, a party to any such lawfully intercepted telephone conversation, her involvement resting on the even more tenuous basis that she was so-described when mentioned in relation to a lawfully intercepted telephone call between Purcell and another police officer. Nevertheless, personal details concerning her were published by the Commission in its Mallard Report.
- 5) These personal details were among those also published about these three persons during the Commission's public hearings, which took place on 30-31 May, and, in particular, on 1 June 2007, when the telephone calls between Purcell and each of the Roberts were played in full so as to be audible to those in the hearing room, and the text thereof displayed on a public monitor (subject in each case to deletions made by the Commission relating to other persons mentioned therein), and when portion of the content of the telephone conversation referred to above, in respect of "Purcell's ex-wife", was put to Purcell by Counsel Assisting during Purcell's examination.

- 6) *Transcripts and the audio-tapes relating to the telephone calls involving the Roberts, were then provided by the Commission to the representatives of the Media present in the hearing room. None of this material was at any time sought to be retrieved by the Commission from these recipients, and no restriction was placed by the Commission on the use to which this material might be put by them.*
- 7) *In my opinion, the overall effect of the publication of the material in question, both in the public hearing and in the subsequent Report, because of the nature of that material, and the construction that might not unreasonably be placed upon it, was capable of damaging the interests and reputations of the three persons publicly identified in this manner.*
- 142) I concluded that the Commission had published concerning those three persons, without their knowledge or consent, highly personal information which was capable of causing each of them embarrassment, which was potentially prejudicial to their interests, and damaging to their integrity and reputations, and that there was *not the slightest justification* for the Commission's conduct in so doing.
- 143) Subsequently, I again sought the advice of the CDPP as to whether, in light of my opinions as to a breach of the TIA Act, proceedings should be commenced by the DPP against the Commission or any officer thereof. The advice subsequently conveyed to me by letter from the CDPP was to the same effect as the previous advice, namely, that in his opinion there was no reasonable prospect of securing a conviction against the Police Integrity Commission or any of its officers under that legislation.
- 144) The gravamen of that and the previous advice seems to be that the CDPP takes the view that the question of the relevance to an investigation of lawfully intercepted material gathered by the Police Integrity Commission is a matter solely for the Commission to determine, and that the issue of whether in the circumstances the Commission ought to have excised the offending material did not bear on whether an offence had been committed.

- 145) This situation in my opinion gives rise to a most unsatisfactory state of affairs. As the extracts published by the Commission from the lawfully intercepted conversations identified in my two Reports demonstrate, in my opinion, the Commission in each case published personal details of and or derogatory references to a number of persons arising out of the intercepted telephone conversations. That material was entirely irrelevant to the Commission's investigation. The Commission nevertheless published that irrelevant material to the potential detriment of the interests and reputations of those involved.
- 146) Yet it appears that such persons are left without remedy or protection under that legislation or any other law.

Yours sincerely,



The Hon P J Moss, QC  
Inspector of the Police Integrity Commission