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**INQUIRY INTO GENERAL MEETING WITH THE POLICE INTEGRITY
COMMISSION IN RELATION TO THE 2009/10 AND 2010/11
ANNUAL REPORTS**

Organisation: Police Integrity Commission

Name: The Hon Bruce James QC

Position: Commissioner

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27 April 2012

Mr David Shoebridge MLC
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Mr Shoebridge

I refer to your letter of 23 April in which you raise a number of matters about the incident which occurred at Kings Cross in the early morning of Saturday 21 April. In your letter you express the view that the whole series of events which occurred should be the subject of an independent investigation, that is an investigation independent of the NSW Police Force. I understand you to be suggesting that the Police Integrity Commission should conduct such an independent investigation.

In considering your suggestion it is useful to bear in mind the matters to which I will now refer.

The Police Integrity Commission was established in 1996. The powers and functions of the Commission are set out in the *Police Integrity Commission Act 1996*. The primary functions of the Commission since its inception have been to detect, investigate and prevent police misconduct and particularly police corruption. In performing its primary functions the Commission has engaged in covert, complex investigations into alleged police corruption.

To enable the Commission to perform its primary functions the Commission has acquired specialist resources and has developed a structure, appropriate to the performance of that work. The Commission's investigation resources consist of a small number of investigators (8 in total), financial and intelligence analysts, legal officers and covert physical and electronic surveillance operatives.

However, the Commission has neither the resources nor the structure which would support a capability to investigate incidents of the kind which occurred on 21 April. Such incidents are described by the NSW Police Force as "critical incidents", that is incidents involving police officers that result in the death of or serious injury to a member of the public or a police officer. There are many respects in which the Commission lacks the resources and the structure, which are available to the NSW Police Force, to investigate critical incidents.

Importantly, the Commission does not have the resources or the structure to maintain a 24 hour a day capability to respond to a critical incident, wherever it occurs in the State, so as to be able to attend the scene of an incident within a short time (desirably within minutes) of it happening, to take control of the scene, to preserve evidence, to put in place measures to safeguard the public and maintain order if necessary and to immediately initiate an investigation into the incident.

While the Commission's investigators have had considerable experience in the conduct of investigations into alleged police corruption, the investigators have not had any recent experience in investigating an incident involving serious injury or death. Furthermore, the Commission, unlike the NSW Police Force, does not have any officers with specialist forensic qualifications and does not have ready, established, access, as the NSW Police Force has, to external sources of specialist forensic services.

The investigation of any critical incident is likely to be a very substantial undertaking. In the present case the investigation you seem to be suggesting that the Commission undertake would be an investigation into "the whole series of events", including the decision by police to engage in a police pursuit, the police pursuit, the shooting by police of occupants of the vehicle and the actions of police after the shooting. Such an investigation, if it was to be undertaken by the Commission, would be likely to require the whole of the Commission's investigation resources, thus bringing to a halt the investigations the Commission is presently conducting into allegations of police misconduct.

The conclusion which I consider has to be drawn is that the NSW Police Force is the only agency with the capacity and the necessary powers to effectively respond to and investigate critical incidents in this State.

Each year a number of critical incidents occur, which become the subject of critical incident investigations. I am informed that each year there are approximately 40 critical incident investigations and that so far this calendar year approximately 15 critical incident investigations have been commenced. Even if it were possible for the Commission effectively to investigate a small number of critical incidents, it would be quite impossible for the Commission to investigate all or most of them.

There are in existence arrangements which provide for independent oversight of critical investigations by the NSW Police Force. Many critical incident investigations are oversights and some are actively monitored by the Ombudsman. In actively monitoring an investigation the Ombudsman may, where appropriate, provide input to the investigation, be physically present during interviews by police of complainants, police officers and witnesses and receive regular updates and information about the progress of the investigation. The Ombudsman also has the power to directly investigate and report on the conduct of a police officer and the manner in which the NSW Police Force is conducting an investigation.

If the Ombudsman suspects any misconduct in the carrying out of a critical incident investigation by the NSW Police Force, arrangements in place between the Ombudsman and the Commission ensure that the matter is brought to the attention of the Commission. The Commission can then give consideration to whether it should undertake an investigation into the alleged misconduct, that is an investigation of a kind which the Commission is accustomed and equipped to carry out. Such an investigation would be quite different in nature from the original investigation into the critical incident.

An example of an investigation by the Commission into whether police officers engaged in serious misconduct in the investigation of a critical incident is the investigation the Commission is presently conducting into whether there was misconduct by police officers in the investigation into the shooting of Mr Adam Salter in 2009.

In the case of the incident which occurred on 21 April this year the NSW Police Force is presently conducting a critical incident investigation into the events that occurred. The Ombudsman has advised that he intends to actively monitor the critical incident investigation and that, in the event of the Ombudsman's suspecting any serious misconduct in that investigation, the Commission will be informed. If that happens, the Commission will give consideration to undertaking its own investigation of the suspected misconduct by police.





I would like to point out that for a number of years both the Commission and the Ombudsman have had an involvement in the ongoing development by the NSW Police Force of its policy for dealing with critical incidents. The advice of the Commission and the Ombudsman is typically directed to identifying and reducing the risks of misconduct in a critical incident investigation by the NSW Police Force.

I conclude by saying that the Commission is of the view that an investigation by the NSW Police Force of the incident which occurred on 21 April, with independent and active monitoring by the Ombudsman, is the only appropriate, and is the only practical, means of properly investigating the incident. The Commission does not propose to undertake an investigation of its own at this time.

Yours faithfully

The Hon Bruce James QC
Commissioner