

12 July 2012

Our ref: ADM/1704P04
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The Hon Catherine Cusack MP
Chair
Committee on the Office of the Ombudsman
and the Police Integrity Commission
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Ms Cusack

17th General Meeting of the Committee – further questions on notice

Please find attached answers to your further questions on notice following the 17th General Meeting with the NSW Ombudsman, provided to my office on 4 July 2012.

Yours sincerely



Bruce Barbour
Ombudsman

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- 3. Did the Ombudsman's Office ever utilise software owned by Software AG in order to access data on the police Mainframe Computer system? If so are you aware that legal action was taken by Software AG alleging that software had been pirated and the police were forced to settle that matter? Do you have details of that settlement and did it involve police conceding they had unlawfully exceeded the contracted number of licenses allowed for that software?**

In answer to the first part of this question, the NSW Ombudsman is currently reviewing its information holdings to ascertain what, if any, use the office made of software owned by Software AG. This will take additional time, as it involves reviewing records which in some cases are ten years old. The Ombudsman will endeavour to provide this information to the Committee in due course.

The NSW Ombudsman is not aware of any litigation involving Software AG and the NSWPF. As such, the Ombudsman does not have any details of any settlement between NSWPF and Software AG. The additional parts of the question are matters that can only be answered by the NSWPF.

- 4. What conclusions have been drawn to date concerning your reviews of the legislation concerning Consorting and Facial Identity?**

The findings and recommendations arising from these reviews will form part of reports to Parliament at the conclusion of the review periods. The following is some information on work completed so far on both reviews.

Removal of face coverings for identification purposes

The Ombudsman is to keep under scrutiny the use of powers by police under Part 3 Division 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to officers requiring that a person remove a face covering for identification purposes. These new powers came into effect on 1 November 2011 and we will be reviewing how police exercise the powers between 1 November 2011 and 31 October 2012. We have finalised an Information Agreement with the NSWPF and begun our consultations with relevant community and representative organisations and the NSWPF. Our leaflet regarding the review has been translated into 7 languages and we will be releasing an Issues Paper for comment in August 2012. Our final report regarding this review will be provided to the Minister by May 2013.

Consorting

The Ombudsman is to keep under scrutiny the use of powers by police under Division 7 Part 3A of the *Crimes Act 1900* relating to the offence of consorting for a period of two years. These powers came into effect on 9 April 2012. We have worked with police regarding the

information requirements for this review, and have met on several occasions with NSWPF to discuss other aspects of the review.

5. In your submission to the review of the PIC you argued for the amalgamation of the PIC and ICAC. Is that still your view?

The NSW Ombudsman's position has not changed from that expressed in the submission.

6. Were you consulted on the establishment of the Inspector of Corrective Services? What is your view of the position?

The NSW Ombudsman was contacted shortly before the Inspector of Custodial Services Bill 2012 was introduced into Parliament. The office's position on the creation of new oversight bodies has always been that one of the primary considerations should always be the need to avoid unnecessary duplication and proliferation of "watchdog" bodies. The NSW Ombudsman will work closely with the Inspector once appointed to avoid duplication and ensure appropriate communication and information exchange.

7. In your answers to Questions on Notice you refer to the proposed closure of all ADHC operated and funded residential centres by 20/7/2018. What progress has been made to date on this commitment? Is ADHC on track to achieve that result by that date?

Our monitoring indicates that there has been considerable progress with ADHC's work under Stronger Together 2 to close the residential centres. The agency's progress report to us in February 2012 indicated that:

- In 2010 and 2011, five residential centres had closed or been redeveloped, including two ADHC-operated centres, and three NGO centres. In total, 204 residents were relocated in that period.
- ADHC has commenced redevelopment, planning or consultation work in relation to four of the seven existing ADHC-operated centres, including one centre that is scheduled to close by the end of June 2013. ADHC has also had preliminary discussions regarding the redevelopment of one of the other three centres.
- ADHC has had extensive consultations with the 14 funded services that operate the remaining NGO centres regarding their progressive redevelopment by June 2018.

We are mindful that this work is in its early stages and the closure of the centres is a large scale and significant project that is occurring in the midst of broader reform of the disability sector. We will continue to actively monitor progress.

- 8. The Committee notes the Premier's memorandum M1997-26, entitled Litigation Involving Government Authorities: Is the Office of the NSW Ombudsman aware of this memorandum, and did it have reference to this memorandum, during the MicroFocus dispute?**

The NSW Ombudsman is aware of the memorandum and had reference to it during the Micro Focus proceedings.

- 9. The Committee refers to your answer to Question on Notice number 9 with respect to asbestos surveys in schools. In your answer, you indicated that your final report was due to be released to the Minister for Finance and Services by the end of April 2012. Is this report complete, and do you anticipate that it will be made public? Are there any recommendations in the report, and if so - what are they?**

The NSW Ombudsman is in the process of finalising the investigation, and is yet to make a decision as to whether to make the matter the subject of a report to Parliament.

Questions taken on notice during the hearing

- 1. You refer (on page 5 of the transcript) to the need for the Ombudsman to be automatically informed of critical incidents so that your office can assess if there is a need for them to oversight the police investigation. Can you provide the details of what legislative amendment would be required to achieve this?**

As the Ombudsman observed in evidence before the Committee, the office is currently working with both NSW Police Force and the Coroner on the best method of dealing with this issue. There are a number of possible legislative methods of implementing such a system, and the Ombudsman does not wish to pre-empt future discussions by putting forward a single solution. The Ombudsman can provide the Committee with an update, including any draft legislative options that are prepared, in due course.

- 2. You refer (on page 8 of the transcript) to funding cuts to your core budget. Can you provide a figure for this core budget?**

The Ombudsman, like all agencies, is allocated a total budget amount each year. This includes funding for the office's core services as well as funding for discrete responsibilities such as legislative reviews, supporting the Official Community Visitors and our work in relation to public interest disclosures. This total amount has been adjusted for budget cuts, or 'savings measures' or 'efficiency measures' prior to the budget announcement. As the Ombudsman noted in his evidence, in 2012-13, these cuts were \$865,000, and included efficiency dividends, procurement savings, program savings and the recent labour cost adjustment. The recurring cost of these measures is highlighted in the enclosed table for the Committee's information. This does not reflect the ongoing impact of unfunded pay increases.