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Our Ref: 27985/8
Your Ref: D14/03852

11 March 2014

The Hon Catherine Cusack MLC
Committee Chair
Committee on the Office of the Ombudsman, the Police
Integrity Commission and the Crime Commission
Parliament of NSW
Macquarie Street
SYDNEY NSW 2000

Dear Chair

I am writing in response to the letter from the Committee dated 28 February 2014 enclosing further questions for the Commission. I attach the Commission's responses to the further questions.

I note in the transcript that the Commission undertook to provide the Committee with information about the cost to the NSW Police Force of an Early Intervention System ('EIS'). From time to time the Police Force has provided the Commission with estimates of the likely cost of an EIS. These estimates have varied considerably, depending on the availability of suitable technology and whether the systems were to be developed internally or out-sourced, amongst other things. Mr Kearney, in noting at the meeting of the Committee a possible cost of \$1-1.5M, was relying on information which had been provided several years previously. Recent advice from the NSWPF is that an EIS would cost in the order of \$7M in capital over three years with \$480K in annual recurrent costs.

Should there be any queries in relation to any matters arising from this letter or the Commission's responses to the further questions, please contact [REDACTED]

Yours sincerely

[REDACTED]
The Hon Bruce James QC
Commissioner

encl.

Further questions for the Police Integrity Commission

1. Has the PIC introduced any new methods for measuring performance in the last twelve months or are there any plans to do so in the near future?

The Commission has not introduced any new methods for measuring performance in the last twelve months. However, there are a number of matters which may have a bearing on future measurement of, and reporting on, the performance of the Commission.

Firstly, the Commission is presently considering the possibility of reporting in more detail on the outcomes of investigations in which no further action by the Commission is proposed. While still to be settled, it is possible that the Commission will use categories based on the Table provided in its correspondence to the Committee of 13 March 2013 (p.5 of our ref. 26274/11) as the basis for reporting these outcomes in the Annual Report. This will provide an opportunity to highlight outcomes where, for example, complaints against officers have been shown on investigation to be false or vexatious or where all reasonable lines of inquiry have been exhausted.

Secondly, the Commission's business planning processes are presently being audited as part of the Internal Audit Program for 2013-14. The report of the Audit is due to be completed before the end of the current financial year and may impact on planning and performance measures into the future.

Finally, the Commission is also undertaking a broader management review. While achieving mandated recurrent expenditure savings is the key purpose of the review, potential improvements in practices are also to be considered. The review may therefore impact on planning and performance measures. This review is due to be completed in April 2014.

The Commission is part way through the period canvassed in the 2012-2015 Corporate Plan. Performance against the Corporate Plan is reviewed annually and outcomes reported in the Annual Report. A new Corporate Plan will be developed in 2015. It is expected that the planning process will take into account the outcomes of the audit and review mentioned above and also the Committee's *Inquiry into Performance Measures and Accountability of Oversight Agencies*.

2. In the Committee's report on last year's General Meeting, the Committee recommended that the PIC and the Crime Commission develop formal protocols to be followed in the event of any future disagreements between the two offices, with the objective of promoting alternatives to litigation. Have you made any progress in relation to this recommendation?

The Commissioners of the two Commissions met on 29 October 2013 to discuss arrangements for resolving any future disagreements between the two Commissions. After the meeting the Commissioner of the PIC wrote a letter to the Commissioner of the Crime Commission dated 30 October 2013 and the Commissioner of the Crime Commission replied by a letter dated 11 November 2013. Copies of these two letters are attached. The Commissioners of the two Commissions agreed that:

1. The option of seeking an opinion from the Solicitor-General should remain open. A necessary condition of this option being available is that the Crown Solicitor has not acted for either Commission in the dispute.

2. Each of the Commissions should comply with the Premier's Memorandum M1997-26 or any similar document the object of which is to have disputes between government agencies resolved, without recourse to litigation.

3. Could you update the Committee on the PIC's relationship with the Inspector of the Crime Commission and what progress has been made in ensuring that the oversight of the Crime Commission by the PIC and the Inspector is effective and efficient?

At the suggestion of the Commissioner the Commissioner and the Inspector of the Crime Commission met on 16 January 2014, to discuss inter alia the first recommendation made by the Parliamentary Committee in its Report 7/55 – October 2013, namely *"The Committee recommends that the Police Integrity Commission and the Inspector of the Crime Commission develop protocols to ensure there is a clear understanding of lines of oversight and responsibility for the management of complaints made against the Crime Commission."*

At the meeting the Commissioner expressed a view, based on the existing provisions of the *Crime Commission Act 2012* and the *Police Integrity Commission Act 1996*, that the division of responsibility for oversight of the Crime Commission should be determined by reference to the Report of the Special Commission of Inquiry into the NSW Crime Commission 30 November 2011 ("the Patten Report"), and especially Chapter 11 – Oversight and Accountability; the provisions of the *Crime Commission Act*, especially Part 4 (sections 60 – 69) dealing with the Inspector of the NSW Crime Commission; and the provisions of the *Police Integrity Commission Act*, especially s 13.

At the meeting the Commissioner noted that it was clear that the provisions of Part 4 of the *Crime Commission Act* were intended to give effect to recommendations made in the Patten Report. In paragraphs 270 and 271 of the report Mr Patten, having decided that he should recommend the appointment of an Inspector of the Crime Commission but that the Police Integrity Commission should continue to play a role in the oversight of the Crime Commission, considered the question of the relationship which should exist between the Inspector and the Police Integrity Commission. Mr Patten concluded:-

"What I recommend for the role of the Inspector is that he or she be primarily involved in auditing the operations of the Commission to ensure compliance with the law, in assessing the effectiveness and appropriateness of its procedures and in dealing (by reports and recommendations) with complaints of misconduct and conduct amounting to maladministration (compare s. 57B of the ICAC Act); and bearing in mind that the PIC is required, as far as practicable, to turn its attention principally to serious misconduct: PIC Act s. 13B(2))."

*...
The Inspector should be required to refer instances of criminal activity or serious misconduct to the PIC."*

Section 62(1) of the *Crime Commission Act* provides:-

"(1) The principal functions of the Inspector are:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- (c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations

- and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
- (d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.”

Under s 13 of the Police Integrity Commission Act the principal functions of the Police Integrity Commission include to prevent, detect and investigate misconduct of a Crime Commission officer. Under s 13(2) the Commission is required, as far as practicable, to turn its attention principally to serious officer misconduct.

In the light of Mr Patten’s report and the above legislation, the Commissioner suggested at the meeting that the Inspector of the Crime Commission should have oversight of the Crime Commission in accordance with s 62(1) of the Crime Commission Act and that the Police Integrity Commission should exercise the functions of preventing, detecting and investigating serious misconduct or criminal activity by a Crime Commission officer.

At the meeting the Inspector said that he did not agree with the views expressed by the Commissioner. Subsequently, the Inspector said that, while the Commissioner could inform other persons that he (the Inspector) was not in agreement with the Commissioner’s views, he would prefer that the Commissioner not attempt to summarise what his views were.

However, it ought be noted that the relationship between the Inspector of the Crime Commission and the Commission remains cordial and professional and it has been agreed that the Inspector and the Commission should notify each other of all complaints each receives of alleged misconduct by a Crime Commission officer. It has also been agreed that, if any case arises where it is unclear whether it should be dealt with by the Inspector or the Commission, that question would be determined in consultation between the Inspector and the Commissioner.

No such matters necessitating consultation have arisen to date. Nor is the Commission aware of any instances of duplication of effort by the Inspector and the Commission.

4. Under the Crime Commission Act 2012, the Inspector of the Crime Commission can make reasonable use of the services of the staff or facilities of the PIC. Has this arrangement been used as yet?

No, the Inspector has not sought to use Commission resources.

5. What are the PIC’s main priorities for the remainder of 2014 and how does the PIC determine which projects and investigations are prioritised?

Investigations

Commission investigations are prioritised during the initial assessment of an allegation by the Tasking and Coordination Group (T&CG) – the Commission’s operational management group – using the Commission’s Case Categorisation and Prioritisation Model. Allegations are assessed against criteria which include:

- The nature and complexity of the alleged misconduct;
- How recently is the misconduct alleged to have occurred;
- The consequences of the alleged misconduct for the NSW community;
- Will the allegation affect public confidence in the NSW criminal justice system;
- Are there broader, strategic issues at stake which may be of significance.

The model is used to determine the relative importance of particular matters to the Commission, to identify which allegations should be investigated by the Commission and which should be referred to other agencies.

In terms of ongoing priorities, investigations are prioritised according to operational exigencies at the time, taking into account, amongst other things, the progress made on inquiries and other evidence collection strategies. Another factor which can impact on the priority for resourcing is whether or not briefs have been referred to the Office of the DPP for consideration for prosecution or information has been disseminated to the Commissioner of Police for consideration for managerial or other action. Such matters tend to require less resources until such time as a decision is made by the ODPP or the NSWPF, or further information is sought. Commission resources are allocated between operations and coordinated by the Director of Operations at weekly T&CG meetings attended by the relevant unit managers. Relative priorities for individual investigations might also be adjusted at the discretion of the Commissioner, usually on the basis of public interest.

While the Commission's investigation priorities may be adjusted due to changing operational circumstances, at present the Commission is conducting inquiries which focus on areas including the improper relationships between serving Police Officers and persons known to engage in criminality, the sale of banned substances by serving Police officers and allegations that officers have committed offences against the administration of justice, such as perjury.

Prevention Projects

Potential prevention projects are assessed against the Commission's selection criteria and those meeting the criteria are allocated to a researcher following approval of a project plan by the Commissioner. Each researcher may have up to three concurrent projects, responsibilities for parts of which may be shared with other researchers. Typically researchers will incrementally progress each project, moving between the projects depending on the status of scheduled activity and the collection of information required to be assessed. Each researcher has a project which is regarded as their first priority and this is determined between the researcher and their manager in the context of project plans, personal performance agreements and the Unit's Business Plan which has been endorsed by the Director Prevention & Information.

In addition, the Commissioner, from time to time, can also adjust the relative priority assigned to a particular research project. Typically this occurs where there is a clear public interest in developing an understanding about the nature of particular risks of misconduct and in the examination of possible solutions. Such is the case with Project Harlequin (misconduct risks associated with critical incidents) which has recently been assigned an additional part-time researcher.

In terms of prevention projects, the Commission's priorities for the remainder of 2014 are to:

- conclude research on misconduct risks associated with source management (Project Skadi);
- conclude and publish research on misconduct risks associated with critical incidents (Project Harlequin) and on the current state of corruption prevention planning in NSWPF (Project Mobula); and
- consult further with NSWPF in regard to the implementation of recommendations for projects on the misconduct risks associated with authorised secondary employment

(Project Santuri – published February 2014) and prevention outcomes from complaint investigations (Project Cyril – published in March 2014).

6. Could you explain to the Committee the processes by which you monitor the Police's implementation of your recommendations? Is it through regular meetings, correspondence or other methods?

The Commission principally monitors the Police's implementation of its recommendations through regular meetings with management and staff of the Professional Standards Command and of other Commands in the NSWPF with responsibility for policies which address a risk of police misconduct. The Commission also monitors progress through the exchange of formal correspondence. The Commission may also examine NSWPF systems to determine the extent to which expected changes have been made, including changes to policies on the police intranet, for example.

7. The annual report notes that the PIC undertook capital fit-out works to achieve ongoing recurrent savings. The PIC also completed a restructure of its Telecommunications Interception and Registry Units (pages 2 and 61). Are you satisfied that the current levels of resourcing and staffing are sufficient for the PIC to adequately perform its functions?

As is the case with all public sector agencies, the Commission is required to achieve savings mandated by Treasury. The capital fit-out and the restructure of the Telecommunications Interception and Registry Units were part of a number of measures that have been implemented which have enabled the Commission to meet savings targets required to be met in recent years. The Review mentioned in response to Question 1 above is intended to identify further savings and efficiencies to assist the Commission meet savings targets which accumulate over the next three financial years.

At present, resourcing and staffing levels are sufficient for the Commission to perform its functions. It is anticipated that the Review will identify further efficiencies to meet the savings targets mandated for the next three financial years. However, there is likely to be little scope for further savings without their having an impact on Commission functions. About 70% of the Commission's discretionary funding in the recurrent budget is comprised of salaries. With significant aggregation of responsibilities in the Commission's management structure in recent years, future additional savings may be difficult to achieve without losses to front line positions. This will have an impact on the Commission's performance of its core functions.



ABN 22 870 745 340



Our Ref: 24632/26

30 October 2013

Mr Peter Hastings QC
Commissioner
NSW Crime Commission
PO Box Q566
QVB Post Office
SYDNEY NSW 1230

Dear Commissioner

I would like to thank you for inviting me to your office yesterday. I think that our meeting was courteous and constructive and I understand that you share those views.

It may well be the case that we should communicate with each other more frequently than we have done in the past. However, I see no need for us to schedule regular meetings.

I note that the principal matter that I raised with you is the same matter as is dealt with in recommendation 2 of the recommendations made in the report of October 2013 by the Parliamentary Committee for both our Commissions (and also other agencies).

The recommendation reads:-

"The Committee recommends that the Police Integrity Commission and the Crime Commission jointly develop formal protocols to be followed in the event of any future disagreements between the two agencies, with the objective of promoting alternatives to litigation."

This recommendation clearly arises out of the litigation in 2011 between the Crime Commission and the Police Integrity Commission concerning whether the Police Integrity Commission in its Operation Winjana had power to examine the practices and procedures of the Crime Commission in the conduct of actions under the Criminal Assets Recovery Act and whether the Police Integrity Commission had power to conduct public hearings about the practices and procedures of the Crime Commission in the conduct of such actions. As you would be aware, there were a number of hearings in the Supreme Court and considerable legal costs were incurred by both Commissions.

It may be that a dispute of this kind, that is a dispute involving legal questions about the existence and extent of statutory powers of one of the Commissions, will never arise again. Nevertheless, particularly having regard to the recommendation made by the Parliamentary Committee, I think we should consider what steps could be taken to prevent any future



disagreement on such a legal question leading to expensive, and I would suggest unseemly, litigation between two government agencies.

I doubt whether it would be possible, or even appropriate, to develop "formal protocols" between our two agencies, as suggested in the recommendation by the Parliamentary Committee. Any future dispute might well have features which were not anticipated at the time any protocols were entered into and which would render any protocols inappropriate for resolving the dispute.

I confirm that at our meeting I did make the following suggestions about how a future dispute might be resolved, without litigation.

1. The option of seeking an opinion from the Solicitor-General should remain open. A necessary condition of this option being available is that the Crown Solicitor has not acted for either Commission in the dispute. As you are aware, the Crown Solicitor acted for your Commission in the dispute about Operation Winjana and thereby disqualified himself, and also the Solicitor-General, from giving an independent opinion. In the case of Operation Winjana my Commission in fact made an approach to the Solicitor-General but was informed that, because the Crown Solicitor was acting for one of the parties, the Solicitor-General would decline to become involved.
2. Each of the Commissions should comply with the Premier's Memorandum M1997-26 or any similar document the object of which is to have disputes between government agencies resolved, without recourse to litigation.

I do not consider there is any ambiguity in the present Premier's Memorandum but perhaps, as recommended by the Parliamentary Committee, a new guideline could be developed.

3. I do not consider that alternative dispute resolution by a mediator, at least as usually conceived, would be an appropriate way of resolving disputes between government agencies about legal questions. The view I have just stated was in fact the view expressed in correspondence in February – March 2011 by both Mr Cripps, who was then the Acting Commissioner of the Police Integrity Commission, and by the Crown Solicitor himself, acting for the Crime Commission.

My understanding is that you are generally in agreement with the opinions I expressed at the meeting and have repeated in this letter. I would, of course, welcome any comments you may wish to make.

Yours sincerely



The Hon Bruce James QC
Commissioner



NEW SOUTH WALES
Crime Commission

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13 NOV 2013
POLICE INTEGRITY COMMISSION

11 November 2013

The Hon. Bruce James QC
Commissioner
Police Integrity Commission
GPO Box 3880
SYDNEY NSW 2001.

Dear Commissioner:

Thank you for your letter of 30 October 2013.

I agree with your summary of the current position, and our general agreement to the proposals by you in the letter, and I do not think that there is anything that I can usefully add.

I also agree that we need not formulate a schedule for meetings, but that we should meet perhaps more frequently than we have whenever it seems appropriate.

Yours faithfully,

Peter Hastings QC,
Commissioner.