



ANNUAL REPORT



FOR THE YEAR ENDED

30 JUNE 2007



By the

INSPECTOR

of the

**POLICE INTEGRITY
COMMISSION**



The Hon Peter Primrose, MLC
President of the Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

The Hon Richard Torbay, MP
Speaker, Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

24 July 2007

Dear Mr President & Mr Speaker

In accordance with section 102 of the *Police Integrity Commission Act 1996*, I hereby furnish to each of you for presentation to Parliament the Annual Report of the Inspector of the Police Integrity Commission for the year ended 30 June 2007.

The Report has been prepared in accordance with the requirements of the *Police Integrity Commission Act 1996* (“*the Act*”).

Pursuant to Section 103(2) of that Act, I recommend that the Report be made public forthwith.

Yours faithfully

The Hon. P.J. Moss, QC,

Inspector of the Police Integrity Commission

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- (1) This is my inaugural Annual Report to Parliament as Inspector of the Police Integrity Commission. My appointment to that office commenced on 22 *November 2006*. My Report is nevertheless intended to cover the whole of the reporting period, so as to comply with the terms of Section 102 of the *Police Integrity Commission Act*.
- (2) These preliminary observations have appeared in previous Annual Reports, their purpose being to place on record the purpose and origin of the Office of the Inspectorate, which is perceived as being central to ensuring the accountability of the Police Integrity Commission.
- (3) In February 1996, as Royal Commissioner, Justice James Wood, AO, QC, published the first interim report of the Royal Commission into the NSW Police Service.
- (4) Chapter five (5) of that report proposed the establishment of a new system to deal with Police complaints and corruption investigations in NSW.
- (5) The proposal took into account that within the NSW Police Service (as it was then entitled)¹ there was a pattern of corruption urgently to be addressed so that public confidence could be restored.
- (6) There was an acceptance by the Royal Commission that a focused, sophisticated and aggressive approach was necessary to uncover and combat serious police misconduct and corruption. The question for determination largely centred on the model that would be appropriate for NSW and the agency or agencies which should be tasked with appropriate responsibility. The existing agencies and possible models were carefully considered.
- (7) The Royal Commission concluded that the model which needed to be adopted was one in which:
 - (i) The NSW Police Service retained a meaningful role in dealing with management matters, customer service complaints, and certain matters of misconduct;
 - (ii) There was both oversight of the NSW Police Service, and an external capacity and responsibility to investigate allegations of corruption and complaints made against Police, to be shared between the Police Integrity Commission and the Office of the NSW Ombudsman.

¹ By the Police Service Amendment (NSW Police) Act 2002 No 51. Schedule 1, the title Police Service of New South Wales was changed to NSW Police.

- (8) It was recommended that a new “*purpose built agency*” (which came to be called the **Police Integrity Commission**) should be established, as an essential plank of the reform process.
- (9) It was emphasised that such an agency would:
- a) Provide a fresh approach to the problems;
 - b) Be purpose built, with specific focus upon the investigation of serious police misconduct and corruption; and
 - c) Be free of the institutional baggage attached to an anti-corruption system which had failed to deal with corruption of the kind revealed by the Royal Commission.
- (10) The principal function of the Police Integrity Commission was seen to be the detection and investigation of serious police corruption and misconduct. A key function being to assemble admissible evidence when investigations revealed criminal conduct and to furnish such evidence to the Director of Public Prosecutions.
- (11) An equally important step in the reform process was to ensure the retention of the jurisdiction of the Office of the NSW Ombudsman to oversight the NSW Police particularly in relation to the management of complaints and compliance with the law.
- (12) Consideration was given to the accountability of the new and powerful body which the report recommended should be created. Since it would have the status of a Standing Royal Commission with similar powers, it was considered important to ensure that it would be open to public review and accountable to Parliament.
- (13) The need for accountability recognised the fact that there is always a risk that an agency that is heavily committed to covert investigations, relies upon informants, and possesses powers which are both coercive and of a kind which might involve substantial infringement of rights of privacy, may overstep the mark.
- (14) For this reason the Royal Commission recommended that there should be a “*watchdog*”, able to respond quickly and effectively to complaints of misconduct and abuse of power, without risking the secrecy of operations, or the confidentiality of informants and witnesses. That “*watchdog*” was designated the **Inspector of the Police Integrity Commission**.

(15) Hence it was proposed that the Office of the Inspector of the Police Integrity Commission be created by the legislation governing the agency. The Office, it was suggested, should be given powers to:

- i) Audit the operations of the Police Integrity Commission;
- ii) Report to Parliament on matters affecting the Police Integrity Commission and its operational effectiveness and needs.
- iii) Deal with complaints of abuse of power and other forms of misconduct on the part of its employees;

(16) Part 6 of the *Police Integrity Commission Act 1996* contains statutory provisions which confer such powers on the Office of the Inspector.

ROLE OF THE INSPECTOR

(17) The position of the Inspector of the Police Integrity Commission (*the Inspector*) derives its authority from the *Police Integrity Commission Act 1996 (the Act)*.

(18) The Inspector is appointed by the Governor with the advice of the Executive Council. The Joint Committee on the Office of the Ombudsman and the Police Integrity Commission is empowered to veto the proposed appointment which is required to be referred to the Committee by the Minister².

(19) The Office of the Inspector may be a full-time or part-time Office, according to the terms of the appointment. A person is eligible (if otherwise qualified) for re-appointment but may not hold the Office of Inspector for terms totalling more than 5 years.

(20) Following the retirement on 12 June 2002 of the first-appointed Inspector, the Hon M.D Findlay, QC at the conclusion of his five-year term, on 12 June 2002 the Hon. Morris Ireland, QC was appointed as Inspector of the Police Integrity Commission for a period of three years, and his term was subsequently extended to 31 August 2005. On 1 September 2005 the Hon. James Wood, AO, QC, was appointed as Inspector of the Police Integrity Commission for a period of three years, similarly on a part time basis, following the expiration of his predecessor's term of office. On the 22 November 2006 I was appointed as Inspector of the Police Integrity Commission for a period of five years, similarly

² Schedule 2 Police Integrity Commission Act 1996 and Section 31BA of the Ombudsman Act 1974

on a part time basis, following the resignation of my predecessor on 10 November 2006.

(21) The Inspector's duties under the *Police Integrity Commission Act 1996* are to investigate complaints against the Commission's staff, to audit its operations, effectiveness and compliance with the law, and to report to the Joint Committee on the Office of the Ombudsman and the Police Integrity Commission. That Committee has the function of monitoring and reviewing the exercise by the Commission and the Inspector of their respective functions³.

(22) The Inspector is required to report annually to Parliament and may make Special Reports on any matters affecting the Commission or on any administrative or general policy matter relating to the functions of the Inspector.⁴

(23) The Inspector's principal functions as provided by Statute⁵ are:

(a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the Stat; and

(b) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities;

(c) 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.

(24) The Inspector may exercise the functions of the Office on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency⁶. The Inspector is not subject to the Commission in any respect⁷.

(25) "*The Minister*" referred to in paragraph (24) is the Minister for Police. The Honourable David Campbell, MP, has been the Minister for Police since 2 April 2007.

³ Section 95(1)(a) Police Integrity Commission Act 1996

⁴ Sections 101, 102 of the Police Integrity Commission Act 1996

⁵ Section 89 of the Police Integrity Commission Act 1996

⁶ Ibid, s89(2)

⁷ Ibid, s89(3)

POWERS OF THE OFFICE OF THE INSPECTOR

- (26) To perform its function, the Office of the Inspector has been given extensive powers to investigate any aspect of the Commission's operations or any conduct of officers of the Commission⁸.
- (27) The Office of the Inspector is also empowered to make or hold inquiries and for that purpose it has the powers, authorities, protections and immunities of a Royal Commissioner⁹. It was not found necessary to hold a formal inquiry involving hearings during the reporting year. The approach adopted by this Office has traditionally been to restrict the use of costly, time-consuming, formal inquiry hearings to complaints which necessarily involve a formal hearing in order to resolve some factual conflict critical to the complaint.
- (28) The Attorney General has advised the Minister for Police that the Legal Representation Office has approval to provide legal advice and representation for persons whose testimony at a formal hearing may warrant legal representation. During the reporting year it has not been necessary to seek the assistance of the Legal Representation Office. (*Note: confirmation is awaited from the Attorney-General's office as to whether this arrangement is still in place.*)
- (29) The question of extending the jurisdiction of the Office of Inspector to authorise investigation of alleged impropriety or misconduct by non-PIC officers engaged in joint or related operations with PIC officers was dealt with in the report of the Hon. Morris Ireland QC for the year ended 30 June 2005, and in the Report of the Hon. James Wood, AO, QC, for the year ended 30 June 2006, and is also referred to in this Report under the heading Extending The Jurisdiction of the Inspector (paras (75)-(82) hereof).

THE OFFICE

- (30) The Inspectorate has suitable office premises, within the Sydney Central Business District, separate from the Police Integrity Commission which is located at 111 Elizabeth Street, Sydney. The postal address of the Inspectorate

⁸ Ibid, s90

⁹ Ibid, s91

is GPO Box 5215 SYDNEY NSW 2001. The office telephone number is (02) 9232 3350 and the facsimile number is (02) 9232 3983. The email address is *inspectorpic@bigpond.com*. One full-time staff member is engaged in the office.

- (31) The office operates appropriate computer systems which are maintained by Information Technology Services.
- (32) I also have a small office at the Police Integrity Commission where I have full access to the electronic records of the Commission. There I can access, in complete security, the Commission's records of its operations.

FINANCES

- (33) The financing of the office of the Inspectorate falls within the operating expenses of the Ministry for Police.
- (34) As the Inspector of the Police Integrity Commission is not a Department nor a Department Head for the purposes of the *Annual Reports (Departments) Act 1985*, the requirements placed by that Act on those bodies do not apply to the preparation of an annual report by the Inspector.
- (35) Similarly, the provisions of the *Annual Reports (Statutory Bodies) Act 1984* do not apply since the Inspector is not a person, group of persons or body to whom Division 3 of Part 3 of the *Public Finance and Audit Act 1983* applies nor is it prescribed as a statutory body by the *Annual Reports (Statutory Bodies) Act*.

FREEDOM OF INFORMATION LEGISLATION

- (36) The Office did not receive any FOI applications in 2006/07 for documents held by this Office. There is therefore no information to give in terms of clause 9(1) of the *Freedom of Information Regulation 2000* and Appendix B in the FOI Procedure Manual.
- (37) The Inspector of the Police Integrity Commission is part of the Ministry for Police for the purposes of the reporting requirement in Part 2 of the *Freedom of Information Act 1989*. Hence, this agency's "policy documents" are included by the Minister in the *Summary of Affairs* for the Ministry of Police provided to the Government Printing Service for publication in the Government Gazette.

MONITORING THE OPERATIONS AND PROCEDURES OF THE COMMISSION

- (38) In this report the term "*monitoring*" is used to include the auditing of the operations of the Commission for the purpose of reviewing compliance with the law of the State, and the assessment of the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.
- (39) Monitoring and related activities have included weekly meetings with the Commissioner of the Police Integrity Commission, Mr John Pritchard, and the Commission Solicitor, Ms Michelle O'Brien, to discuss relevant issues and strategies, regularly reviewing representative samples of operational files, and the taking of necessary steps to satisfy myself as to the justification for the exercise of the Commission's various investigative powers. As needs arise separate discussions with senior officers of the Commission may take place.
- (40) In fulfilling my function under s.89(1)(a) and (1)(c) of the Act, I have available to me a designated office at the Commission where I have a computer providing electronic access to all the material on file at the Commission (with the exception of Telecommunication Interception (T.I.) material). This includes the records of the Commission's various operations. Periodically and at random, I access such operations in absolute security. I have a print-out facility should this be required.
- (41) My regular meetings with the Commissioner and the Commission Solicitor identify the operations in which there has been activity, such as the issue of new warrants. This enables me to examine retrospectively such new warrants to ensure that all necessary approvals and administrative actions were completed in the process of obtaining and executing a warrant. In doing so I am also able to consider issues of propriety.
- (42) *The Commissioner and his staff have been fully cooperative.* The Commissioner has provided me with unreserved access to the records of the Commission (save for Telecommunication Interception material) and to any officer of the Commission whom I may wish to interview. The operations of the Commission, as observed by me in respect of the reporting period have been in compliance with the laws of the State.

ASSESSMENT OF PROCEDURES OF THE COMMISSION

- (43) Pursuant to s.89(1)(c) of the Act, the Inspector has the function of assessing “*the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.*”
- (44) This statutory requirement was taken from and is, in its terms, almost identical with s.8(3)(a)(iii) of the Commonwealth “*Inspector-General of Security and Intelligence Act 1986*”.
- (45) I assess the general procedures of the Commission, as I have seen them, in respect of the reporting period, to be effective and appropriate relating to the legality and propriety of its activities.
- (46) Each operation of the Commission involves a preliminary assessment by the Commission through its Operation Advisory Group (OAG), usually comprising the Commissioner, Assistant Commissioner, Commission Solicitor and Director of Intelligence and Executive Services.
- (47) The concerns as to timeliness in some of the Commission's procedures which were expressed by former Inspector Findlay and the response thereto, continue to be closely monitored. The Commission, obviously, has limited resources and this may sometimes result in priorities having to be determined in respect of those resources, which may mean that some operations are placed on hold.
- (48) Whenever it appears to me to be desirable to do so, I have discussions with the Commissioner focussing on this question of timeliness and on the allocation of resources, including the selection of matters for investigation or review with a view to achieving the proper discharge of the Commission's statutory responsibilities.
- (49) As part of my assessment, I have regard to the records of those operations requiring legislative sanction. For example, I receive regular reports regarding applications for warrants under the *Listening Devices Act 1984*. Also, I receive reports on Notices issued to obtain information (s.25 of the Act); Notices to obtain documents or other things (s.26); Authority to enter public premises (s.29); the summoning of witnesses (s.38); the issue of Search Warrants, and the issue of authorities to conduct Controlled Operations (see further, paragraphs (70)-(74) hereof). I inform myself through discussion with the Commissioner and audit of the Commission's records, so as to be satisfied that such powers are fairly and appropriately exercised.
- (50) Applications to obtain information (s.25 of the Act) or to obtain documents or other things (s.26 of the Act) can only be made “*for the purposes of an investigation.*” The Commission has in place systems requiring requests for

such applications to be in writing and to identify the relevant investigation. These may be seen by me, and may be the subject of discussion at my weekly meetings with the Commissioner.

- (51) The Commission has issued a code of conduct which sets out the standards of behaviour that all Commission staff are to observe. Additionally it has internal Committees concerned respectively with an audit of its activities and human resource functions, to the minutes of which I have access.
- (52) The security of the operations of the Commission is of paramount importance. The reasons for such security are made clear in the final report of the Royal Commission. It is also important that the exercise of the Inspector's functions should not put at risk the confidentiality of informants and witnesses. From my observations, I have no reason to be concerned in relation to the adequacy of the Commission's security practices and safeguards, or those relating to the security of my own office.
- (53) The Act provides that information, acquired through the exercise of the Inspector's functions, shall not be divulged except for the purposes of and in accordance with the Act or in accordance with a direction of the Inspector certifying that it is necessary to do so in the public interest.¹⁰

COMPLAINTS CONCERNING THE COMMISSION

- (54) An important function of the Inspector is, that of dealing 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*¹¹.
- (55) Section 90 of the Act empowers the Inspector to investigate any aspect of the Commission's operations or any conduct of officers of the Commission and entitles the Inspector to full access to the records of the Commission. It provides that the Inspector "may investigate and assess complaints about the Commission or officers of the Commission".
- (56) Section 91 of the Act provides that the Inspector may make or hold inquiries for the purposes of the Inspector's functions.
- (57) Generally, such inquiries involve seeking information and submissions in turn from the parties to the complaint (usually the Complainant, on the one hand, and

¹⁰ Section 56 of the Police Integrity Commission Act 1996

¹¹ s. 89(1)(b) of the Act

the Commission on the other) until the gravamen of the complaint is clearly established and both parties have had every reasonable opportunity to present relevant material and arguments on the issues identified. Usually it is also necessary for the Inspector to access by computer relevant electronic records of the Commission.

- (58) Other inquiries may require the holding of a formal hearing. Generally, a formal hearing exercising the powers of a Royal Commissioner as conferred by Division 1 of Part 2 of the Royal Commissions Act 1923 will only be held where it is necessary by that means to resolve a disputed issue of fact critical to the inquiry. Such hearings may be small scale and appropriately held in the Inspector's office. For this purpose, the Ministry for Police has in the past made arrangements for a court reporter from the Attorney General's Department to be available for such hearings. It may, on the other hand, require a larger scale hearing. The circumstances may indicate that it should be public or that it should be private. If public, the facility of a Commission hearing room may be appropriate to be arranged pursuant to section 92(4)(a) of the Act. On the other hand, it may be more appropriate for a hearing room to be arranged through the Attorney General's Department, at a venue which is seen to be quite independent of the Commission. *It has not been necessary to hold any such hearing during the year under review.* The fact that none of the determined complaints summarised below, in so far as they concern the Commission, led to full, as opposed to preliminary inquiries, indicates that these more formal processes are not invoked lightly. However, such preliminary inquiries may on occasions lead to individual matters being either reconsidered or considered afresh by the Commission. Experience establishes that almost all complaints can be dealt with by preliminary inquiry, and such complaints have been treated as putative complaints.
- (59) During the reporting period a total of *30 complaints or putative complaints* were received by the Inspector's office, or carried over from the previous reporting period. Of these, 13 were determined by my predecessor and 10 by myself, leaving 7 complaints current at the conclusion of the reporting period.
- (60) Each complaint has been assigned an identifying code, which preserves the anonymity of the Complainant, but indicates the year in which the complaint was received, and the numerical position of the complaint in relation to complaints received in that particular year. For example, "C12-03" denotes that that particular complaint was the 12th complaint received by the Inspectorate in 2003. *In each of the complaints summarised below, as having been determined, the Inspector notified the Complainant of the relevant decision, and the reasons for that decision, and, where appropriate, made suggestions as to the existence and identification of other agencies to which the complaint could be referred.*

- (61) As will be obvious from the summary of the complaints below, the majority of the complaints alleged misconduct by NSW Police, and were therefore outside the Inspector's jurisdiction. In such cases, where there was also a complaint concerning the Commission, it was usually in the form of an objection by the Complainant to the Commission's having referred the complaint to NSW Police for investigation, in some cases under the supervision of the Ombudsman, or in very few cases, such investigations to be oversights by the Commission, rather than the Commission itself investigating the relevant allegations. Such objections are, of course, difficult to sustain, because the Commission has a discretion as to whether a particular matter justifies an investigation by the Commission, rather than a referral to NSW Police for investigation. Unless it can be clearly shown that the exercise of that discretion has miscarried, such objections must be overruled by the Inspector.
- (62) In view of this confusion among Complainants as to the nature of the Inspector's jurisdiction, shortly after my appointment I drafted an initial pro-forma letter to Complainants which sets out the nature of the Inspector's jurisdiction, and which makes it plain that the Inspector has no power to investigate complaints against NSW Police. The letter attempts to explain, in a summary way, the role of the Commission and the Ombudsman, respectively, in referring complaints received concerning NSW Police, to NSW Police for investigation, which investigations may, on a very few occasions, be oversights by the Commission, or monitored by the Ombudsman, the latter having the principal role in supervising the investigation of such complaints by NSW Police, and having specific powers under Part 8A of the Police Act, to monitor such investigations, which powers are not conferred on the Commission.
- (63) The nature of the complaints is summarised below. Such summaries attempt to avoid identifying Complainants or confidential informants. The Report also avoids publishing material reflecting the internal working and methodologies of the Commission. These are not matters which it is in the public interest to be disclosed.

AS TO THE COMPLAINTS DETERMINED BY MY PREDECESSOR:

C03-05: This was a complaint concerning NSW Police which, due to the particular circumstances, was investigated by a specially appointed Assistant Commissioner. The investigation found no substance in the complaints.

C10-05: This complaint concerned aspects of the regulation of operations of the security industry, and, accordingly, was not a matter within the Inspector's jurisdiction.

C04-06: This was a complaint concerning NSW Police which was referred by the Commission to the Ombudsman, a reference found by the Inspector to be appropriate.

C05-06: This was a complaint concerning NSW Police, and as there was no complaint concerning the Commission, the matter was not within the Inspector's jurisdiction. The Commission eventually referred the complaint to NSW Police under Part 8A of the Police Act 1990.

C06-06: This was a complaint concerning NSW Police, which the Inspector referred to the Commission, and as there was no complaint concerning the Commission, the matter was not one within the Inspector's jurisdiction.

C08-06: This was a complaint concerning NSW Police, which the Inspector referred to the Commission, which was then referred on to the Ombudsman, which the Inspector viewed as being appropriate.

C10-06: This was a complaint concerning NSW Police which had been previously investigated by the Commission, whereupon the latter advised the Inspector that no further action would be taken on the complaint, a decision which the Inspector viewed as the appropriate one.

C11-06: This complaint involved allegations in respect of DOCS and certain judicial officers and accordingly, there being no complaint concerning the Commission, the matter was not within the Inspector's jurisdiction.

C12-06: In this matter, the Inspector dealt with the complaint by preparing a Report dated 9 November 2006, copies of which were delivered to the Commission and the Complainant. Briefly, the Complainant had complained to the Inspector in relation to certain findings made by the Commission in the Commission's Report on Operation Florida tabled in the NSW Parliament on 28 June 2004.

In particular, the Complainant objected to the content of the following paragraph in the Commission's said Report –

[4.186] While the evidence to the Commission raises a strong suspicion that [the Complainant] was involved in the corrupt conduct that occurred, in particular in relation to the events

of 4 February 1992, and that he received part of the money corruptly taken, the admissible evidence in respect of [the Complainant] is such that the Commission is of the opinion that consideration should not be given to the prosecution of [the Complainant] for any criminal offence.

In the Inspector's Report, the latter noted that the Complainant "can, accordingly, assume that the Commission has not made any adverse finding or expression of opinion in terms that he did steal money, or that consideration should be given to his prosecution for criminal offence."

Included in the Reports' conclusions, was the following important statement of principle –

b. As a general principle, I would consider it undesirable for a PIC report to ascribe "suspicion" that a particular officer "was involved in corrupt conduct." That expression is a loaded expression which does not have a proper place in the criminal law, as is indicated by the standard jury direction that "suspicion is not a substitute for proof beyond reasonable doubt". It falls short of a finding or even an opinion. It is ultimately equivocal, it is difficult to answer particularly in so far as it invites a reversal of the onus of proof, and it can be misunderstood or subsequently misrepresented, particularly if it finds its way onto an officer's file. These observations have a particular relevance to the opening sentence of paragraph 4.186 of the report.

C13-06: This appeared to be a complaint concerning NSW Police. However, the file was closed due to lack of response.

C14-06: This was a complaint referred to the Commission in respect of NSW Police, whereupon the Commission referred the matter to NSW Police for investigation subject to supervision by the Ombudsman. The Complainant objected to the fact that the Commission had referred the complaint to NSW Police under the supervision of the Ombudsman, but the Inspector was of the view that in so doing the Commission acted reasonably and accordingly dismissed the complaint.

C15-06: This matter involved complaints concerning NSW Police which complaints were referred by Commission to the NSW Police for investigation, under the supervision of the Ombudsman. As there appeared to be no objection by the complainant to the action taken by the Commission, the file was closed.

C17-06: This was a complaint concerning NSW Police which the Commission referred to the Ombudsman. The complainant apparently objected to this. However the Inspector was satisfied this was an appropriate reference and dismissed the complaint.

AS TO THE COMPLAINTS DETERMINED BY MYSELF:

C12-05: This complaint arose as a result of a communication from a Member of the NSW Parliament, to the effect that there had allegedly been Police misconduct involved in the conviction of a person in relation to a notorious murder in Sydney. However the Commission investigated the complaint and found that there was no evidence to support the allegations, and accordingly discontinued the investigation.

C15-05: This Complainant, through his Solicitors, attempted to reactivate his earlier complaint concerning NSW Police. The matter had had a very long history, including being the subject of a decision of the NSW Court of Criminal Appeal. After reviewing the file I wrote to the Complainant's Solicitor advising her that in my opinion no new evidence had been presented to justify the reopening of the matter and that accordingly the application to reopen was refused.

C16-05: This complaint alleged misconduct by NSW Police. However on the viewing of the material I was satisfied that the Commission had properly investigated the matter, and that there was no ground for intervention by the Inspector.

C18-05: This involved a complaint made to the Commission that NSW Police had given perjured evidence during the hearing of an assault charge against the Complainant (ultimately dismissed) at Hornsby Local Court. The Commission referred the matter to NSW Police for investigation, and oversights that investigation. The Complainant from time to time expressed considerable criticism of the Police investigation, and of the Commission's oversighting role in relation to that investigation. In my opinion the investigation of the complaint was unduly drawn out due to a number of factors, but ultimately I was satisfied that the Police investigation as oversighted by the Police Integrity Commission established that there was no evidence to support the allegations. However, the Police failed to provide the Complainant with an adequate explanation as to the nature of their investigations, and on what basis they had made the decision to take no further action in the matter. As well, the circumstances surrounding the oversighting of the complaint by the Commission highlighted the limitations placed by the legislation on the Commission's powers to oversight such Police investigations.

C09-06: A file was opened in this matter as a result of the filing of a Statement of Claim in the Supreme Court of NSW in 2005. The Statement of Claim sought damages from the State of NSW. Although the Commission was not a party to those proceedings, adverse allegations were made therein concerning the Commission. Progress of the litigation was therefore monitored by me. However, in April 2007 the Plaintiff's claim was settled, whereupon the file was closed.

C01-07: This complaint concerned neither NSW Police nor the Commission, and accordingly was not one within the Inspector's jurisdiction.

C02-07: This complaint alleged that the Commission had not acted appropriately in relation to the Complainant's complaint against NSW Police. In fact the Commission had noted that the complaint had previously been referred by the Complainant to the Ombudsman for investigation and accordingly proposed to take no further action in respect of that complaint. As this action was clearly appropriate the complaint was dismissed.

C04-07: This was a complaint against NSW Police, which had been referred to the Commission. After reviewing the matter I was satisfied that there was no basis for any complaint concerning the Commission.

C05-07: This was a complaint against NSW Police which had in fact been investigated by NSW Police under the supervision of the Ombudsman. I reviewed the material but could see no basis for any complaint against the Commission and accordingly dismissed the complaint.

C06-07: This was an oral complaint received over the telephone by my Executive Assistant being complaints against NSW Police, which the Commission referred to the Police for investigation with notification of that fact to the Ombudsman. I reviewed the material and could see no basis for any complaint against the Commission and accordingly dismissed the complaint.

CURRENT (UNRESOLVED) COMPLAINTS 2006-2007

(Each of these complaints will be further addressed in the Inspector's 2008 Annual Report.)

C12-03: This complaint was initiated by way of a letter to the Inspector from a Member of the NSW Parliament. In effect, the complaint was that the Commission had not properly responded to the Complainant's representations on behalf of a person serving a prison sentence in NSW, following the latter's

conviction in respect of a notorious murder. Following intervention by the then Inspector, by way of correspondence with the Commission, the Complainant withdrew his complaint concerning the Commission. Nevertheless, the Inspector kept open the file on the matter for the purpose of monitoring the Commission's ongoing investigation into the Complainant's allegations from time to time. The Commission has conducted a lengthy investigation into the matters raised by the Complainant concerning the murder conviction, which has not yet been completed.

C09-05: The Complainant in this matter wrote to the Inspector in August 2005 alleging Police corruption in relation to the Complainant's two convictions for solicit to murder. The Complainant at some stage applied to the Commission for the latter to investigate his allegations against NSW Police. Subsequently, the Commission declined to investigate the allegations, but with the Complainant's consent referred the allegations to NSW Police for investigation and to the Ombudsman. The Complainant continued to raise matters with the Commission requesting that such matters be investigated by the Commission, but these requests were declined by the Commission. The Inspector found that the Commission had acted reasonably in making these decisions. In February 2006 the Court of Criminal Appeal dismissed the Complainant's appeal against conviction and sentence. However, as it appears that further legal proceedings may take place in respect of the Complainant which may be relevant to his allegations referred to above, his file has been kept open pending the completion of those proceedings.

C16-06: This Complainant was an informant in the Wood Royal Commission. Through his lawyers he has complained to the Inspector alleging breaches by the Commission of arrangements entered into between himself and the Commission. The Commission has responded to the Complainant's lawyers, rejecting the Complainant's allegations in total. There the matter rests for the moment.

C18-06: Although this Complainant has forwarded voluminous material to the Inspectorate from time to time, to date it has been impossible to discern the nature of the complaint he apparently wishes to make concerning the Commission. A further letter has recently been sent to the Complainant, again requesting that he advise the Inspectorate whether he wishes to complain in respect of the Commission, and if so as to the nature of his complaint.

C03-07: Allegations concerning the Complainant in this matter (a former Police officer) have been investigated by the Commission, which has conducted private and public hearings in relation thereto. The Complainant has complained to the Inspector that the Commission investigations so far as

the Complainant is concerned amount to a gross abuse of justice. However, the Complainant subsequently requested the Inspector not to pursue his complaints further pending the outcome of the Commission's investigations, and its Report to Parliament in respect thereof pursuant to Section 96 of the Police Integrity Act.

C07-07: In this matter the Complainant (a serving Police officer) complained to the Inspector concerning the content of, and circumstances surrounding, a written communication from one of the Commission's investigators to the Complainant. However, the Complainant was requested to supply further and better particulars as to the construction he was placing upon the relevant portions of the communication, and to consider whether a different construction could be reasonably placed upon that material. This, in turn, elicited a response from the Complainant that was not helpful in elucidating the nature of his complaint, whereupon a further attempt was made to obtain clarification of his complaint, and a response to this is currently awaited.

C08-07: This Complainant made multiple complaints concerning staff of the Commission, arising out of telephone conversations he alleges he had with staff members during June 2007. His allegations include those of staff hanging up on him during these conversations, and refusing to return his calls after assurances given in that regard. His more serious allegations, in effect, amount to claims that some Commission staff were abusive and informed him they would improperly ensure his complaints were not assessed by the Commission. At the end of the reporting period, I was in the process of seeking from the Complainant further particulars regarding these allegations, prior to putting such allegations to the Commission so that the staff in question would have the opportunity to respond to the allegations.

(64) As is obvious from the nature of most of the complaints summarised above, misconceptions persist that the Office of Inspector of the Police Integrity Commission exercises an appellate role in relation to decisions of the Commission, such as whether to conduct investigations into particular complaints or to refer them to NSW Police, or alternatively that the Inspector has an independent function to investigate such complaints. It was in an attempt to dispel such misconceptions that I drafted the initial pro forma letter to Complainants, referred to in paragraph (62) above.

- (65) The *Telecommunication (Interception) Legislation Amendment Act 2000* (Cwth) (the TI Act) which included the Inspector of the Police Integrity Commission as an “eligible authority” was given Royal Assent on 23 June 2000.
- (66) Applications for the issue of Telephone Intercept (T.I.) warrants are communicated to me by the Commission’s T.I. Manager. The formalities associated with access to the foundational material upon which reliance is placed in seeking the issue of T.I. warrants and access to the product of such warrants is recorded to facilitate the statutory audit of such access by the NSW Ombudsman. By reason of the constraints contained in the TI Act, I do not have access to the product of such warrants, such material being carefully isolated within the Commission’s IT procedure so as to quarantine it save for essential operational purposes.
- (67) These arrangements have been working satisfactorily.

ELECTRONIC RECORD KEEPING

- (68) The MATRIX system of electronic record keeping which replaced the DETRAK system previously in place has resulted in easier access to operational reports and to the minutes of the regular Operational Advisory Group meetings.
- (69) From time to time changes in the formatting and operational procedures continue to improve the easy access to the recorded information. From the Inspectorate’s perspective the MATRIX system is well managed and effective.

CONTROLLED OPERATIONS

- (70) Subject to the provisions of the *Law Enforcement (Controlled Operations) Act 1997*, the Police Integrity Commissioner may authorise the carrying out of controlled operations. This function is seen as an important and productive weapon which, absent statutory authority, would contravene the law. A controlled operation may be described as a covert investigative method used by law enforcement agencies, including the Commission, during which, for example, an undercover Police officer infiltrates a suspected criminal enterprise to obtain evidence to identify and prosecute those involved, and in the course of so doing may himself necessarily engage in conduct which but for the Act would be unlawful and expose him to criminal and/or civil liability.

- (71) The approval procedures for authority to conduct a controlled operation have been settled by the Commission's Solicitor and are set out in some detail. Although the application for a controlled operations authority is prepared by the relevant investigative officer with the assistance of the Team lawyer, as and when required the Commission Solicitor also provides advice upon the necessity or appropriateness of the application. Such operations are subject to the external audit, as far as documentation is concerned, by the Ombudsman in accordance with Part 4 of the Act.
- (72) In practice controlled operations undertaken by the Police Integrity Commission from time to time of necessity involve police officers in the exercise of investigative, surveillance or enforcement functions and accordingly fall within the purview of Section 142(1) of the *Police Integrity Commission Act* which provides:

“142 Exercise of functions by police

(1) A police officer may not exercise investigative, surveillance or enforcement functions under or for the purposes of this Act unless authorised to do so by the Commissioner.”

(1A) As soon as practicable after giving such an authorisation, the Commissioner must notify the Inspector of that fact.

- (73) Although by virtue of the definition of “police officer” in Section 4 of the *Police Integrity Act*, the reference to “police officer” in subsection (1) must be read as referring to NSW police officers only, I am in a position to inform myself of all Controlled Operation authorisations by the Commissioner by reason of my access to the Commission's internal records, and I also intend to further inform myself in this regard by reference to the Ombudsman's Annual Report dealing with compliance with the relevant provisions of the *Law Enforcement (Controlled Operations) Act*. During the reporting period the Commissioner authorised two Controlled Operations neither of which, due to subsequent circumstances, was carried into execution.
- (74) A code of conduct applicable to all relevant agencies is contained in Schedule One of the Regulations made pursuant to Section 20 of the Act. The Section provides, so far as relevant, that a Regulation must not be made pursuant to Section 20, except on the recommendation of the Inspector, and that a contravention of the code of conduct by any person employed with a relevant agency (which includes the Commission) is taken to be misconduct for the purpose of any relevant disciplinary proceedings.

EXTENDING THE JURISDICTION OF THE INSPECTOR

- (75) As mentioned in paragraph (29) of this Report, the question of extending the jurisdiction of the Office of Inspector to authorise investigation of alleged impropriety or misconduct by non-Commission officers engaged in joint or related Operations with Commission officers, was dealt with at some length in the Report of the Hon. Morris Ireland, QC, for the year ended 30 June 2005, and in the Report of the Hon. James Wood, AO, QC, for the year ended 30 June 2006.
- (76) It is not necessary to repeat the whole of the relevant material that appeared in the Report of the Hon. James Wood, AO, QC, for the year ending 30 June 2006, and the following is intended to be a summary of that material, with the addition of any relevant material since the date of that Report.
- (77) The jurisdiction of the Office of Inspector as prescribed by Part 6 and Schedule 2 of the Police Integrity Commission Act 1996 (the Act) is plainly confined to dealing with (by reports and recommendations) the operations and conduct of the Police Integrity Commission (the PIC) and officers of the Commission.
- (78) In furtherance of this statutory function the powers specifically granted are comprehensive and the intention that they be all encompassing is made plain by Section 93 which provides:

“93 Incidental powers

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector’s functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.”

- (79) The jurisdictional issue was highlighted during two investigations conducted by the former Inspector of the PIC the Hon. M. D. Finlay QC during October/November 2001. The deficiency in jurisdiction relates to situations where PIC officers engage in joint operations with personnel retained by other law enforcement agencies. The capacity for it to do so was recognised as an important in the Royal Commission’s Interim Report.
- (80) The Committee on the Office of the Ombudsman and the Police Integrity Commission in it’s Report to Parliament in 2003 sought to overcome the perceived difficulty by a recommendation in the following terms-

“The Police Integrity Commission Act 1996 be amended to provide the Inspector with jurisdiction to investigate alleged improprieties by non-PIC officers, in circumstances where:

- the conduct of a PIC officer also is involved; or*
- there is a connection between the alleged misconduct and the activities of the PIC; or*
- the legality or propriety of the PIC’s activities is called into question;*

and, the conduct is conduct of a type that would normally fall within the Inspector’s jurisdiction.”

(81) In effect that recommendation has been endorsed both by Mr Ireland, QC, and Mr Wood, AO, QC. It has also, in effect, been endorsed by the Hon. Gerald Cripps, QC, Commissioner, ICAC.

(82) Finally in the Committee’s Report to Parliament in *November 2006*, as a result of it’s Inquiry into Section 10(5) of the Police Integrity Commission Act, the following appears –

“Once again the Committee has reiterated its call for an extension of the jurisdiction of the PIC Inspector with respect to the conduct of non-PIC officers in circumstances where the conduct in question is connected with the PIC’s investigations and activities.”

MEETINGS WITH PARLIAMENTARY COMMITTEES

(83) The Committee on the Office of the Ombudsman and the Police Integrity Commission (the Parliamentary Joint Committee) is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the *Ombudsman Act 1974* are set out in section 31B.

(84) Under the *Police Integrity Commission Act 1996*, the Parliamentary Joint Committee has the function of monitoring and reviewing ‘*the exercise by the Commission and the Inspector of their functions*’.¹²

(85) The Report of the Parliamentary Joint Committee on the Ten-Year Review of the Police Oversight System in NSW was presented to Parliament in November

¹² S.95(1)(a) of the Act

2006. Reference is made at p.154 of that Report to the fact that the Inspector gave evidence and made submissions to the Committee on 24 August 2006.

- (86) Due to the timing of my appointment as Inspector, and other factors, the opportunity for me to appear before the Joint Parliamentary Committee has not to date presented itself. However, I hold myself available and would welcome enquiries and discussion on any matter of concern to members of the Parliamentary Joint Committee at any time.
- (87) In particular, I note from the Committee's Report presented to Parliament in November 2006, concerning its inquiry into Section 10(5) of the Police Integrity Commission Act, the reference at p.24 of that Report to future Committee inquiries as including-
- ii) *The processes involved in the preparation and consideration of briefs of evidence provided by the PIC to the DPP for consideration;*
 - iii) *The roles of Counsel assisting and the Commissioner of the PIC and the impact of the relationship between these positions on the conduct of proceedings at the Commission and its operations;*
 - iv) *Extending the Inspector's jurisdiction to the PIC's investigative partners;*
 - v) *Arrangements between the PIC and ICAC under Section 131 of the PIC Act.*

PROBLEMS WITH THE LEGISLATION

- (88) On 30 June 2006 the NSW Court of Appeal published its decision in the case of *Police Integrity Commission v Shaw*, [2006] NSWCA 165, an Appeal from a decision of Young CJ in Equity at first instance: [2005] NSWSC 782. The relevance of this decision, apart from what it actually decided between the parties, arises out of the Court's examination of certain provisions of the *Police Integrity Act*, which had given rise to difficulties of interpretation.
- (90) Notwithstanding the assistance rendered by this decision as to the construction of certain Sections of the legislation, difficulties of interpretation remain. This is particularly so in relation to Section 16 of the legislation. As to these difficulties see the comments of Young CJ in Equity at [46] where the Judge described Section 16(3) as apparently representing a "volte face" vis a vis the preceding portion of the Section; and those of Giles J at [22] where that Judge described Section 16 as "curiously worded". In his judgement, Young J also made reference to the role of Counsel assisting the Commission, and was critical of aspects of the opening of Counsel in the hearing before the Commission (at [11] and [12]), and observed that the *Police Integrity Commission Act* did not

clearly define the role of Counsel assisting, other than that of conducting the examination of witnesses and making submissions [20]. The Judge also noted that the Commission was bound by the rules of natural justice. These observations as to the role of Counsel assisting the Commission would seem to have a timely relevance given the indication by the Parliamentary Joint Committee that this is a subject it intends to explore in the future (see paragraph (87) hereof).

END NOTES

(91) Since my appointment as Inspector on 22 November 2006, I have had the benefit of having participated in the following relevant events;

In February 2007 I met and conferred in my office with Professor John McMillan, Integrity Commissioner, Commonwealth;

In February/March 2007 I attended a two-day conference in Melbourne organised by the Office of Police Integrity, Victoria;

Also in March 2007 I met and conferred with the NSW Ombudsman, Mr Bruce Barbour, and Assistant Ombudsman (Police) Mr Simon Cohen;

In May 2007 I conferred in my office with a Parliamentary Delegation representing the Committee overseeing the Crime and Misconduct Commission in Queensland.

(92) In the Committee's report presented to Parliament in November 2006, following its inquiry into Section 10 (5) of the *Police Integrity Commission Act*, the Committee recommended that it would be appropriate for the Inspector to monitor the operation of any Memorandum of Understanding made between the Commission and another agency as part of the Inspector's regular monitoring duties.

(93) As far as I am aware, the recommendations of the Committee made in that Report have not yet been considered by the Parliament.

(94) However, in the light of the Committee's recommendation, I reviewed all relevant Memoranda made between the Commission and other relevant agencies, and wrote to the Commission in February 2007 setting out my observations and recommendations as a result of my having conducted that review.

- (95) As well, and particularly having regard to the fact that it was in effect the last significant document of the Commission under the previous Commissioner, I also reviewed the content of the Commission's 2005-06 Annual Report, and forwarded a written analysis arising out of that review to the Commission in June 2007.
- (96) I included in that written analysis, a reference to Part 8 of the Police Integrity Commission Act, which deals with Reports to Parliament, with particular reference to considerations as to the proper construction of Sections 96 and 97 of the *Police Integrity Commission Act*. I regard this as a matter of some importance, in particular, having regard to the definition of "affected person" in Section 96(3).
- (97) Since my appointment as Inspector of the Police Integrity Commission, I have received much assistance for which I am extremely grateful and wish to acknowledge here. In particular, I acknowledge the considerable assistance provided by the Commissioner, Solicitor and senior staff of the Commission, and the Commissioner's Executive Assistant, Ms Cathy Healy, as well as the considerable support provided to my office by the Police Ministry. I also wish to acknowledge the invaluable assistance provided to me by my Executive Assistant, Ms Nikki Healey.