



*Inspector
of the
Police Integrity Commission*

Our Ref: G7 2013 01
Your Ref: D12/32914

25 January 2013

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

Dear Ms Cusack,

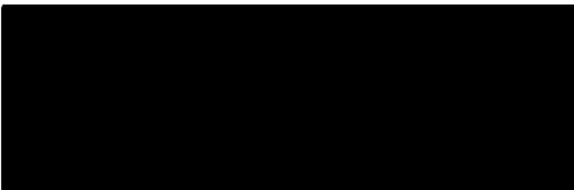
**Re: Committee on the Ombudsman, the Police Integrity Commission and the
Crime Commission**

I refer to your letter of 10 December 2012 and the Questions on Notice received on 13 December 2012.

I enclose answers to the Questions on Notice in anticipation of the hearing to be conducted by the Committee on 22 February 2013.

You will note there is a reference in the answers to a memorandum concerning section 217 of the *Police Act 1990*.

I anticipate being able to provide you with a copy of that memorandum towards the end of next week at the same time it is distributed to the Premier, the Minister for Police, the Attorney-General (for reference to the Law Reform Commission if appropriate) and the Police Integrity Commissioner.



The Hon David Levine AO RFD QC
Inspector: PIC

Thirteenth General Meeting

With the Inspector of the Police Integrity Commission, The Hon David Levine AO RFD QC
Answers to Questions on Notice

Strike Force Emblems

The committee notes your comments that the Strike Force Emblems matter has involved 'on immense and relatively sudden and quite unexpected increase in the volume of work required to be done by (the) Inspectorate' AR p2). The Committee also notes your comments that the substance of the Strike Force Emblems matter will be addressed in the financial report of 2012-2013.

The above context should be expanded to take into account that on the 11 day of October 2012, pursuant to section 125 of the *Police Integrity Commission Act 1996* and Schedule 1 to the *Ombudsman Act 1974*, the whole of the "Strike Force Emblems" matter was remitted to the Ombudsman for investigation by that office. The details are available on the Ombudsman's website www.ombo.nsw.gov.au. Anecdotally this Inspectorate has been informed that ten persons have been dedicated to the task by the Ombudsman and that it is anticipated that the Ombudsman's investigation will take two years.

1. *Given the delays involved in the finalisation of the matters addressed in the Strike Force Emblems Report, do you have any comment to make as to how such delays might be avoided in relation to similar reports in the future?*

Answer:

Given the expiration of over ten years since the preparation of the Strike Force Emblems Report within the police, the Strike Force Emblems matter enjoys a status that might not be easily be characterised in a general way. Thus it is difficult to make any comment as to how such a delay might be avoided. It seems tolerably clear however that should there be perceived a need for an inquiry of the nature sought to

be conducted internally by the police such as Strike Force Emblems, consideration should at that time be given to the referral of the matter to the Ombudsman or any other entity but not to the Inspectorate of the Police Integrity Commission under section 217 of the *Police Act 1990*. (As to section 217 of the *Police Act 1990*, see below).

2. *Does the Strike Force Emblems report provide a useful insight into the interrelationships between the NSW Police Force, the Police Integrity Commission, the NSW Crime Commission, the Ministry for Police and Emergency Services and the Inspectorate of the Police Integrity Commission?*

Answer:

No.

3. *If so, what insights does it provide?*

Answer:

Not applicable.

4. *Are there any legislative amendments that you would propose arising from the issues canvassed in the Strike Force Emblems report?*

Answer:

There are no legislative amendments that I will propose arising from the issues canvassed in the Strike Force Emblems Report; see however my answer to question 5.

5. *Are you satisfied that your review of the Strike Force Emblems matter was within your statutory functions?*

Answer:

I am not satisfied that my review of the Strike Force emblems matter was within my statutory functions. Shortly stated, an issue arises as to whether section 217 of the

Police Act 1990 now conforms with the spirit of sections 89 and 90 of the *Police Integrity Commission Act 1996*. There is a question under section 89(2) as to whether the "Minister" referred to can be the Minister of Police or should be limited to the Minister within whose portfolio falls the function of the Police Integrity Commission and the Inspectorate of the Police Integrity Commission. As a matter of policy I am of the view that under no circumstances should either entity be within the ambit of the portfolio of the Minister of Police as this profoundly derogates from the independence of each entity and not least the Inspectorate. The present state of affairs whereby both entities are within the portfolio of the Premier should be adhered to as a matter of policy. These issues will be the subject of a submission to be prepared in due course by this Inspectorate for the Attorney-General (the Premier and the Minister for Police) for the consideration, if necessary, of the NSW Law Reform Commission.

Thus it can be said that I would be recommending consideration of the amendment of the *Police Act 1990* and any consequential amendments to the *Police Integrity Commission 1996* and any other legislation that would prevent the reference by the Minister for Police to the Inspector of the Police Integrity Commission of a matter in the nature of 'Strike Force Emblems'.

NSW Crime Commission complaints

The Committee notes your comments with respect of the eight complaints received by the Inspectorate in August 2011. The Committee also notes your comments that four of the complaints have been closed, and one cannot be dealt with by reason of the anonymity of the complainant.

6. *Could you confirm whether all anonymous complaints are unable to be dealt with?*

Answer:

The anonymous complaint referred to above was unable to be dealt with because the subject matter did not fall within the jurisdiction of the Inspectorate. (It concerned allegations of what amounted to nepotism in the civilian branch of a certain Police Station). I add that there has been, since, another anonymous complaint: an anonymous complaint was made on-line to Crime Stoppers. It found its way to the Inspectorate by way of a reference by a Senior Police Officer. The subject matter was

within the jurisdiction of the Inspectorate. The matter was referred to the Commissioner of ICAC. ICAC carried out an investigation, as aspects were already under Police investigation. No further action has been taken and the file has been closed. The complainant, having chosen to be anonymous, cannot be informed of that outcome.

7. *Why was it not possible to investigate this anonymous complaint?*

Answer:

See answer to 6.

8. *What is the status of the final three complaints?*

Answer:

The three matters are still current and date from 2008, 2009 and 2011.

Public interest disclosures

The Committee notes that you are an investigating authority under the Public Interest Disclosures Act 1994. The Committee also notes that you are currently undertaking an investigation in relation to a public interest disclosure matter relating to corrupt conduct and maladministration.

The investigation referred to has been closed and the complainant so advised. It is a matter collateral to (at least) Strike Force Emblems. To the extent that there is any currency to it, it will no doubt be considered by the Ombudsman.

9. *Could you outline to the Committee whether your approach to public interest disclosure investigation differs from the type of investigation you might undertake in relation to other types of complaints.*

Answer:

My approach to public interest disclosure investigations would not differ from the type of investigation I might undertake in relation to any other type of complaint. The

assertion by the complainant that the complaint is made as a public interest disclosure might require consideration. Otherwise as a matter of form, a different approach would not apply, subject to any peculiar requirements of the PID Act.

Administration

The Committee notes your comments that the staffing levels of the Inspectorate could be described as just adequate at the time of the Hon Peter Moss QC's departure, with Strike Force Emblems imposing a substantially increased workload which required the employment of a part-time legal officer.

10. *Could you outline for the Committee the process you undertook to secure funding for, and the recruitment of a part-time legal officer?*

Answer:

I approached Ms Virginia Tinson of DPC, Director, Corporate Governance. The next thing I knew was that a person was available to be interviewed, she was interviewed and accepted. It was gratifying that the matter could be handled with such facility.

11. *Following the commencement of the part-time legal officer, are your staffing levels satisfactory given the functions of your office?*

Answer:

Yes.

12. *Could you outline what the budget for the Inspectorate is for 2012-2013? Is this sufficient to acquit (perform) your statutory functions?*

Answer:

I have been provided with the following information: the 2012-2013 budget for the Inspectorate is \$339,300.00. In addition DPC has effectively supplemented this by an extra \$68,000 for the engagement of the legal officer, who has the title Senior Legal

Project Officer. I have reason to believe that the budget will be sufficient to perform my statutory functions.

13. Are you satisfied with the structure of the Inspectorate? Do you propose any structural change in the coming months or years?

Answer:

I am satisfied with the present structure of the Inspectorate. I do not propose any structural change in, let us say, the balance of this reporting year. After the “Strike Force Emblems” matter was referred to the Ombudsman, (“Emblems” constituted an immense impediment to the performance of the Inspectorate’s usual function), attention has been paid to the establishment of some “routine”. Unless there is an intrusion of the dimensions of “Emblems” the present structure will be sufficient to deal with what I anticipate, as far as I can, to be the quantum of work for the Inspectorate.

Website

The committee notes your comments that it became apparent that the website of the Inspectorate needed radical overhauling.

14. Could you outline your concerns with the previous website, and how those concerns have been addressed by the new website?

Answer:

It was brought to my attention that the website should be updated so that it was compliant with policy in regard to websites and legal matters. I am grateful to Ms Seema Srivastava, Executive Officer of the Office of the Inspector of the Independent Commission Against Corruption for drawing the matter to my attention and providing assistance in updating the website. It is, so far as I understand these matters, up to date and compliant.

Communication

The Committee notes that you have met with the Commissioner of the Police Integrity Commission, the Inspector of ICAC and an associate director at the Department of Premier and Cabinet.

15. Do you propose to meet with any key personnel to meet with in the coming months?

Answer:

With the Commissioner of the NSWCC I will have a personal meeting by way of courtesy. Mr Hastings QC has been known to me professionally for most of my career. It is to be kept in mind that the NSW Crime Commission is a complainant to this Inspectorate and thus it is desirable otherwise to maintain an arm's length relationship with that Commission.

16. Are there any other personnel that you proposed to meet with in the coming months?

Answer:

Save for Mr Hastings and meetings with the Hon Bruce James QC, the Police Integrity Commissioner, no.

17. Do you think a regular meeting of key personnel - such as yourself, the Commissioner of the Police Integrity Commission, the Commissioner of the Crime Commission, the Commissioner of the Independent Commission Against Corruption and the Ombudsman - would be a useful exercise? If so, why? If not, why not?

Answer:

Meeting with the Commissioner of the Police Integrity Commission on a regular basis is desirable. I do not see it as a useful exercise to meet regularly with the Commissioner of the Crime Commission, (it is a complainant), the Commissioner of the Independent Commission Against Corruption or the Ombudsman. If there is a necessity to meet with any of those persons it can be arranged on an ad hoc basis. The fundamental issue is to maintain the independence of this Inspectorate particularly in relation to the Independent Commission Against Corruption which is the body to which the Inspectorate's conduct can be referred.

Key performance measures and accountability

The Committee is currently undertaking an inquiry in relation to performance measures and accountability of oversight agencies.

It is to be kept in mind that the Inspectorate is presently constituted by a part-time Inspector, and two part-time staff members. The legislation governing the Inspector operates in accordance with its terms.

18. Can you think of any key performance measures that might be appropriate by which the Inspectorate could reference its activities? If so, what might they be?

Answer:

Frankly, no.

19. Do you think key performance measures are a useful inclusion in an annual report. If so, why? If not, why not?

Answer:

Whilst it might be the case that I would be better placed to respond at the end of an “Emblems” free reporting year, the performance of the Inspectorate might otherwise be judged by reference to the four matters in s.89 of the PIC Act and for example, the time taken to deal with matters referred to it (save for those inherited from the previous regime), whether any complaints have been made about the Inspectorate itself.

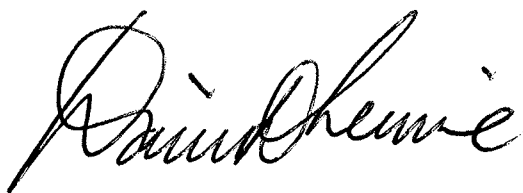
20. The Inspectorate plays an important role in ensuring the accountability of the Police Integrity Commission. Do you have any comments to make in relation to your capacity to ensure that accountability?

Answer:

I agree that the Inspectorate plays an important role in accountability. I do not have any particular comment in relation to my capacity to ensure its accountability.

However, as it is presently structured, and without the intrusion of “Emblems” types of

references: it has the resources to discharge the obligations under the legislation and to explain the manner in which it has discharged those obligations especially in the annual report or any other report the Inspector considers he has to make to Parliament.

A handwritten signature in black ink, appearing to read "David Levine". The signature is fluid and cursive, with a large initial 'D' and 'L'.

The Hon David Levine AO RFD QC
Inspector: PIC

