



ANNUAL REPORT



FOR THE YEAR ENDED

30 JUNE 2008



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

16 July 2008

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 2008.

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 the 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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PRELIMINARY OBSERVATIONS

- (1) This is my second Annual Report to Parliament as Inspector of the Police Integrity Commission.
- (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.*

The shorter O.E.D defines the word "audit" as including: "a methodical and detailed review."

- (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 Legal Representation Office has recently advised the Office of the Inspector that they have approval to consider applications for 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.
- (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 Annual Report of the Hon. Morris Ireland QC for the year ended 30 June 2005, and in the Annual Report of the Hon. James Wood, AO, QC, for the year ended 30 June 2006, and was referred to in my 2007 Annual Report at paragraphs (75)-(82) thereof. As far as I am aware, there have been no further developments in respect of this matter since then.

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 is GPO Box 5215 SYDNEY NSW 2001. The office telephone number is (02) 9232 3350 and the facsimile number is (02) 9232 3983. The website address is www.inspectorpic.nsw.gov.au. This includes a facility whereby complaints may

⁸ Ibid, s90

⁹ Ibid, s91

be entered and automatically forwarded to the Inspectorate. 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, typically, 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, the regular review of 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) Unless indicated to the contrary elsewhere in this report, 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) Concerns as to timeliness in some of the Commission's procedures 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 (72)-(78) 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 otherwise in connection with the exercise of the Inspector’s functions under 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.

¹⁰ Section 56 of the Police Integrity Commission Act 1996

¹¹ s. 89(1)(b) of the Act

- (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 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 *18 complaints or putative complaints* were received by the Inspector's office, and *a further 7* were carried over from the previous reporting period.
- (60) Unless otherwise indicated below, 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.

- (61) As will be obvious from the summary of the complaints below, a number 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 oversighted 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) 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 oversighted 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 complaints referred to above are summarised below, as are three reports arising out of matters the subject of complaint by two complainants. Generally, such summaries attempt to avoid identifying Complainants or confidential informants. However, as will be observed from the material below, some Complainants have expressly elected to be identified as such in this Annual Report in respect of their complaints. There being no obvious counter-vailing considerations, those requests have been acceded to.
- (64) **AS TO THE SEVEN COMPLAINTS OUTSTANDING AS AT 30 JUNE 2007**
(Each of these complaints was referred to in the Inspector's 2007 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 appears to be nearing completion.

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 solicitor 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 appeared that further legal proceedings might take place in respect of the Complainant which might be relevant to his allegations referred to above, his file had been kept open pending the completion of those proceedings. This **file** was **closed** on 24 April 2008 due to a complete absence of relevant activity and little likelihood of any in the foreseeable future.

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 responded to the Complainant's lawyers, rejecting the Complainant's allegations in total. This **file** was **closed** on 24 April 2008 due to lack of response from the Complainant's solicitors.

C18-06: Although this Complainant has forwarded voluminous material to the Inspectorate from time to time, it was impossible to discern the nature of the complaint he apparently wished to make concerning the Commission. This **file** was **closed** on 8 August 2007 due to lack of response from the Complainant.

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 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. The Report entitled "Operation Rani" was presented to Parliament by the Commission in December 2007. Clarification has recently been sought from the Complainant as to whether he wished to pursue his earlier complaint, and the latter has advised he wishes to do so. Accordingly, further particulars of the complaint have recently been requested.

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. This **file** was **closed** on 2 August 2007 as it appeared the Complainant was not desirous of continuing the complaint.

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, amounted to claims that some Commission staff were abusive and informed him they would improperly ensure his complaints were not assessed by the Commission. This **file** was **closed** on 26 October 2007 following a preliminary inquiry as a result of which I was satisfied the complaints were baseless.

(65) AS TO THE 18 COMPLAINTS OR PUTATIVE COMPLAINTS RECEIVED SINCE 1 JULY 2007

Six were complaints about NSW Police and thus not within the Inspector's jurisdiction. (**C09-07, 10-07, 12-07, 14-07, 08-08 and 09-08**).

Two were complaints as to the referral of those complaints by the Commission to NSW Police for investigation, and thus matters within the discretion vested

in the Commission in that regard, and not within the Inspector's jurisdiction in that there was nothing to suggest the discretion had been wrongly exercised. **(C02-08 and 07-08).**

Three were closed on 24 April 2008, 30 May 2008, and 13 June 2008, respectively, for want of a proper response from the Complainant. **(C11-07, C03-08, C10-08).**

- (66) In the case of **two** complaints, matters the subject of the complaints were dealt with by **three** reports as required by Section 89(1)(b) of the legislation. Prior to such reports being finalised, drafts thereof were provided to the Commission to enable the Commission to respond thereto prior to publication. As to the perceived difficulties with the publication of such reports, *see* "Problems with the Legislation" at Page 30. *Summaries of these Reports appear below.*

**SUMMARY OF INSPECTOR'S REPORT
DATED 14 DECEMBER 2007**

RE: COMPLAINT: C15/07

- (i) *By letter dated 13 November 2007 the Complainant made a complaint to the Inspector concerning an Investigator on the staff of the Police Integrity Commission to the effect that on 12 November 2007 during a conversation between the Complainant, a serving NSW Police officer, and the Investigator, the latter revealed, in effect, that he was aware that the Complainant had recently complained to the PIC Inspector concerning particular activities of the Commission.*
- (ii) *In my Report I noted that I had never met or spoken to either the Complainant or the Investigator, and that it seemed to me that the matter could be dealt with by the Inspector by way of correspondence with the Complainant on the one hand, and by way of correspondence with the Commission/Investigator on the other. That was the course followed. The Report set out the dates of all such correspondence passing between my office and either of the parties.*
- (iii) *In the course of my investigation I was also provided with a written notation from each of the parties setting out the terms of the relevant conversation to the best recollection of each of the parties. Despite some difference in the recollection of the parties as to the exact terms of the relevant conversation, it was clear that there was one aspect on which both versions agreed, namely, that the Investigator revealed to the Complainant*

that the Investigator was aware that the Complainant had recently made a complaint to the Inspector and the subject matter of that complaint.

- (iv) *In the course of the correspondence referred to above, the Commissioner had advised me that it had been necessary for the Investigator to be made aware by the Commission of the fact that the Complainant had made the particular complaint in order that the Commission might properly respond to the complaint. Thus it was clear that that disclosure to the Investigator was an authorised disclosure.*
- (v) *In the result the only issue to be dealt with by me was as to the basis on which the Investigator had raised the matter with the Complainant, thus making the latter aware that the Investigator was in possession of information that the Complainant had made a complaint to the Inspector and was aware of the subject matter of that complaint.*
- (vi) *My Report noted that it appeared to me that the Investigator at the time of the relevant conversation was clearly subject to Section 56 of the Police Integrity Commission Act. I concluded that while it appeared to me that the disclosure by the Investigator involved an error of judgment, I had no doubt that it was an inadvertent disclosure involving an unintended and technical breach of Section 56 of the Act. I therefore upheld the complaint on this limited basis, but expressed the view that it should not be regarded as a significant matter and that it did not call for any disciplinary action to be taken by the Commission in respect of the Investigator.*

**SUMMARY OF INSPECTOR'S REPORT
DATED 11 DECEMBER 2007**

In respect of this complaint, the Complainant has elected to be identified as such.

(NOTE: The Report itself comprised 45 numbered paragraphs. Compressing that material to 15 numbered paragraphs for the purposes of this summary has necessarily required the exclusion of considerable detail from the summary. In particular, paragraphs 35) to 38) of the Report, in which I concluded, in effect, that, quite apart from the matters complained of by the Complainant referred to in the summary below, the adverse comment in the Whistler Report posted on the Commission's website concerning the Complainant's involvement in what is described as the "critical incident" aspect of the investigation (see, for example, Section 9.14 thereof) could be seen as being less than fair to the Complainant because it appeared that relevant and exculpatory material appearing in other parts of the Whistler Report may have been overlooked.)

- (i) *By letter dated 30 August 2007, Detective T.S. Briggs (“the Complainant”), of NSW Police, lodged a complaint with the Inspector’s Office (received on 27 September 2007) in respect of the publication of the Police Integrity Commission’s Report in Operation Whistler in December 2005, in so far as that Report named the Complainant therein as an “affected person”, and published certain opinions and made recommendations in relation to the Complainant.*
- (ii) *Essentially, the Complainant contended that as part of the Commission’s Report concerning him, the Commission published material damaging to his reputation and integrity, which material formed no part of the issues defined by the Commission as relating to the Complainant, which were confined to allegations that the Complainant, and a number of other Police officers, being involved in a critical incident, failed to ensure that the critical incident was dealt with in accordance with established guidelines for the management and investigation of critical incidents (See: 9.7(b) of the Whistler Report).*
- (iii) *As was made clear in my Report, the Whistler Report did indeed contain material capable of damaging the reputation and integrity of the Complainant which formed no part of the issues defined by the Commission concerning the Complainant.*

BACKGROUND FACTS

- (iv) *Briefly, following the publication of reasons by a Magistrate on 24 March 2004, in relation to the hearing of criminal charges against, one, AFH, (not identified further in my Report), in Wagga Local Court, the Magistrate referred the matter to the PIC.*
- (v) *The central factual issue in the proceedings before the Magistrate was the determination of the circumstances in which AFH had received injuries suffered on the day of his arrest on 6 February 2004 by Police, including the Complainant, although there was no suggestion the latter had caused or contributed to those injuries.*
- (vi) *In handing down his reasons for dismissing the charges brought against AFH which were, in effect, that of using an offensive weapon to prevent lawful detention, resisting arrest, and assaulting Police, the Magistrate recorded that he disbelieved or found unreliable the evidence given in the proceedings by several Police officers, including the evidence of the Complainant.*

- (vii) *The Complainant was the Officer-in-Charge in relation to the arrest of AFH (although for most of that time he was not the most Senior Officer present), and he was also the Informant in relation to the charges against AFH, which were subsequently dismissed by the Magistrate.*
- (viii) *In the course of investigating the circumstances referred to by the Magistrate in his published reasons, the PIC conducted public hearings at Wagga in February and March of 2005, and in connection therewith retained the services of Senior Counsel as Counsel Assisting. The Complainant gave evidence in those proceedings on 22 and 23 February as well as 10 March 2005. He was represented by Counsel therein.*
- (ix) *Notwithstanding the identification of the only allegations against the Complainant referred to above, when the Commission's Operation Whistler Report was published, as a public document, in December 2005, it included in paragraphs 9.7, 9.8 and 9.11-9.14, in relation to the Complainant adverse opinions and comment which my Report summarised as follows--*
- (a) That the Complainant gave "untruthful" evidence in the Local Court proceedings;*
 - (b) That the Complainant failed to include all relevant information in the brief of evidence;*
 - (c) That the Complainant pursued the prosecution despite a complete lack of forensic and other evidence.*
- (x) *The Commission is not bound by the rules of evidence and can inform itself on any matter in such manner as it considers appropriate (Section 20(1) of the Police Integrity Commission Act), but like similar statutory investigative authorities, it is bound, before publishing material damaging to a person's reputation or integrity, to afford that person a full and fair opportunity to correct or contradict the material in question.*
- (xi) *Thus the Commission is required to define the issues in respect of which there exists the possibility that it may make adverse findings or comment or form opinions in respect of any person. Procedural fairness then requires that the relevant person be accorded a full and fair opportunity of dealing with the issues so defined.*
- (xii) *In this particular case, the issues defined by the Commission, following the completion of the Complainant's evidence, as formulated in the written submissions of Counsel Assisting, were put to the Complainant and dealt with by the Complainant's Counsel in the latter's written. Despite that*

procedure having been followed, when the Whistler Report was published it contained the material referred to above (in paragraph (ix) hereof) which formed no part of the issues defined by the Commission as contained in the relevant submissions of Counsel Assisting, which material was clearly capable of damaging the Complainant's reputation and integrity. In these circumstances I concluded in my Report that the Complainant had been denied procedural fairness by the presiding Commissioner and the Commission, and that to that extent the Whistler Report was produced in breach of the Commission's duty to observe procedural fairness in respect of the Complainant. Clearly this was due to inadvertence, but exactly how it came about is not, it appears, discoverable at this stage, particularly having regard to the lapse of time since the Report was prepared and the fact that the presiding Commissioner's term of office expired in October 2006.

(xiii) In November 2004, the Complainant had been selected as the preferred candidate for the position of Team Leader, Sergeant, Wagga Anti-Theft Unit, and was so appointed pending subsequent confirmation. The Complainant held that position for some 2 ½ years, until the appointment was terminated in March 2007, following the service upon him of a Show Cause Notice dated 10 November 2006 from the Integrity Review Committee, NSW Police, which included a copy of paragraphs 9.11 to 9.14 of the Whistler Report. The Notice referred to "sustained findings" and "adverse findings" having been made by the PIC in relation to the Complainant. On 3 October 2007, the Complainant was served with a Notice under Section 173(5) of the Police Act, informing him that consideration was being given by NSW Police to a "reviewable Order" being made against him. The document made reference to the PIC investigation in Operation Whistler. Thus, it appears that to the extent that NSW Police authorities have taken this action against the Complainant, such action is substantially based on Sections 9.11– 9.14 of the Whistler Report, including, of course, the material summarised in paragraph (ix) hereof. As a result of the Inspector's investigation into the complaint, the Section 173 proceedings were placed in abeyance pending the conclusion of that investigation, and have yet to be finalised.

(xiv) In written correspondence with the Commission in relation to this matter, I recommended that the Commission adopt the position of advising NSW Police that no reliance should be placed on the offending material in a way adverse to the Complainant. The Commission advised that they accepted that recommendation in principle, but pointed out, rightly, that it would be a matter for NSW Police as to what reliance, if any, might be placed on the offending material.

- (xv) *However, I made it clear in my Report that in my opinion, no reliance should be placed on the offending material by NSW Police, or other third parties, and that the offending material should be regarded as invalid, and should not have appeared in the Whistler Report, and to the extent NSW Police had relied on that material, it would be up to NSW Police to give careful consideration to the extent to which such reliance has caused damage to the Complainant's integrity, reputation and promotion prospects, and, if so, whether and to what extent that damage should be rectified. I provided a copy of my report to the Commissioner of Police, given the latter's obvious interest in its subject matter.*

**SUMMARY OF INSPECTOR'S REPORT
DATED 12 MARCH 2008**

In respect of this complaint, the Complainant has elected to be identified as such.

(NOTE: The Report itself comprised 22 numbered paragraphs. In paragraph (1) of that Report it was noted that the Report had been drafted on the assumption that it would be read in the light of the Report dated 11 December 2007 (summarised above), in other words, in order to fully comprehend the later Report a detailed knowledge was assumed of the earlier Report. This circumstance has made it difficult to create a summary as such for the readers of this Annual Report, in view of the fact that the earlier Report itself has merely been summarised herein.)

- (i) *By letter dated 18 January 2008, the Complainant, Detective T.S Briggs, raised a number of further objections to the content of the Whistler Report.*
- (ii) *As a result of reviewing the relevant portions of the Whistler Report, in the light of the current complaints, I concluded that there appeared to be inconsistencies in relation to the "critical incident" opinions expressed in respect of the Complainant, between 9.7(b) when read with 9.8, on the one hand, and 9.11(a) and 9.14, on the other. (A copy of the Whistler report is posted on the Commission's website.)*
- (iii) *In brief, my report drew attention to the opinions expressed in 3.51 and 3.52 of the Whistler Report, where the Commission concluded it would "not express an opinion that Briggs actively participated with Murphy to conceal Jackson's misconduct." And in 3.52 "the evidence is insufficient to conclude Briggs acted deliberately, nevertheless, conduct of that type by senior officer is, in the Commission's view, police misconduct." My report then continued---*

"(The expression "Police misconduct" as well as referring to more serious matters, also covers minor disciplinary breaches by Police: Section (5)(2) of the legislation.) In any event, given these opinions, in

which the Commission expressly declined to make findings of mala fides in respect of the Complainant's relevant conduct, it is clear that no adverse finding was made or opinion formed concerning any intention on the part of the Complainant in respect of, or relevant to, Murphy's decision, and therefore there could be no reflection on the Complainant's integrity, arising from that material."

(iv) *My report concluded that----*

"However, it is by no means clear from 9.12 and 9.14 that in forming those adverse opinions in relation to the critical incident allegation, any regard was had to the apparently conflicting findings at 3.51 and 3.52, and the evidence on which those findings were based. It follows that there appears to have been a denial of procedural fairness in this regard."

(v) *My Report also upheld the Complainant's objections in relation to the factual accuracy of the material concerning him appearing in paragraphs 7.15, 7.23 and 10.15 Of the Whistler Report. In respect of that material I concluded----*

"The content of 7.15, 7.23 and 10.15, of which the Complainant complains, in each case reflects a denial of procedural fairness on the part of the Commission, first, because it seems to be related to the underlined material in 9.14 as that appears in Paragraph (20) of my earlier Report, second, because it carries implied criticism and adverse inferences in respect of the Complainant, and third, because the content is inaccurate or clearly misconstrues the evidence on which it purports to be based."

Following the release of the abovementioned two Reports, dated 11 December 2007 and 12 March 2008, respectively, to the relevant recipients, including the Complainant himself, I received a letter from the latter informing me that as a result of the adverse comment concerning him in the Whistler Report (as dealt with in my two Reports) his name had been placed on the Adverse Mentions List (the existence of which, until then, I had not been aware), being a list kept by the NSW Director of Public Prosecutions, and which includes the names of police officers the subject of adverse comment by the Police Integrity Commission. When any such officers are police witnesses in a forthcoming trial the DPP is obliged to provide the Defendant with the information that the officer is on the list and the reason the officer is on the list. Accordingly, I thereupon made available to the DPP copies of my two Reports dealing with

the Complainant's complaints in respect of the Whistler Report and received subsequent advice from the DPP that the Complainant's name would be removed from the list in the light of my Reports.

By letter dated 11 April 2008, I was advised by the Commission that it has commenced a new investigation arising out of my Reports concerning the complaints by Detective Briggs, summarised above, the purpose of which includes a consideration of certain material which formed part of the Operation Whistler investigation, and that once that has been concluded, a draft of the proposed report of that investigation will be provided to Detective Briggs, as well as other officers relevantly affected by material published in the Whistler Report, prior to the report being presented to the NSW Parliament.

The remaining **five** complaints are still current, and have not yet been finalised: *see below for summaries of those complaints.*

C04/08: In this matter, the Complainant, a serving NSW Police officer, has complained to the Inspector in respect of material published of and concerning herself by the Police Integrity Commission in its Operation Whistler Report published in December 2005.

Briefly, the essence of the complaint is that there is material concerning the Complainant in the Whistler Report which includes comment adverse to the reputation and integrity of the Complainant which material was published in the Whistler Report without first providing an opportunity to the Complainant to respond to that material. By letter dated 19 June 2008, the Complainant's solicitor requested that further consideration of the matter be deferred for the time being

C05/08: This Complainant is Ms Stephanie Young who has elected to be identified as such in this Report. Her complaint to the Inspector concerns her appearances before the Police Integrity Commission and the material published concerning her in the Commission's Operation Rani Report made a public document by the NSW Parliament in December 2007 on the recommendation of the PIC, as well as the opinion expressed therein that a prima facie case against the Complainant had been established in respect of the criminal offence created by Section 107 of the Police Integrity Commission Act. The complaint asserts that the PIC (and its officers) in respect of the treatment accorded to the Complainant has abused its powers and misconducted itself. The essence of the complaint is that the PIC denied procedural fairness to the Complainant in a number of areas in respect of her appearance before the PIC, in the aftermath of her appearances before the PIC, and in respect of the material published of her in the public Report, and in purporting to find a prima facie case established in

respect of the criminal offence referred to above. *The NSW Director of Public Prosecutions has in fact declined to accept the recommendation of the Commission that the Complainant be prosecuted.* However, I regard the DPP's decision not to prosecute as irrelevant to my inquiry into the Complainant's complaints concerning the Commission, and accordingly I put that circumstance to one side.

On 2 April 2008 I notified to the Commission in writing as to the terms of this complaint. On 9 May 2008 I received a written response from the Commission responding to the details of the Complainant's complaint. On 27 May 2008, I provided an edited version of the Commission's response to the Complainant's solicitor, for his response. On 1 July 2008, I received the Complainant's rejoinder to the Commission's response, and forwarded a copy thereof to the Commission the same day. There the matter rests for the moment.

C06/08 This Complainant is in fact the Police Association of NSW, which has elected to be identified as the Complainant in this Annual Report. By letter dated 14 February 2008, the Association made a number of complaints to the Inspector concerning the PIC in particular arising out of the Commission's report in Operation Mallard, and Operation Rani. There was also a complaint concerning the Commission's Report in Operation Vail published some years ago.

However at this stage, I have requested, but not yet received, adequate particulars from the Police Association concerning the details of their complaints.

C11/08: This Complainant, a serving Police officer, appeared as a witness in respect of one of the Commission's hearings. In December 2007, the Commission presented its Report to the NSW Parliament which was immediately made a public document on the recommendation of the Commission.

The Complainant was named therein as an "affected person", and the Commission expressed the opinion, in effect, that consideration should be given to the prosecution of the Complainant in respect of two offences under Section 107 of the Police Integrity Commission Act, which provides, in effect that a person who at a hearing before the Commission gives evidence that is to the knowledge of the person false or misleading in the material particular is guilty of an indictable offence. *A decision from the NSW Director of Public Prosecutions as to whether the Complainant is to be prosecuted as recommended by the Commission is still awaited.*

By letter dated 7 April 2008, the Complainant's solicitor complained to the Inspector on behalf of the Complainant that the Complainant had been denied procedural fairness by the Commission in a number of respects.

At the forefront of the complaint was the allegation that the Commission in refusing to allow the Complainant to adduce medical evidence as to her memory and concentration functioning, on the basis such evidence was clearly relevant to her evidence apparently the subject of the findings leading to the opinion referred to above, amounted to a denial of procedural fairness.

The complaint also included an allegation that written submissions submitted to the Commission on behalf of the Complainant in response to the submissions of Counsel Assisting the Commission, were not properly dealt with by the Commission.

On 6 May 2008, I forwarded details of this complaint to the Commission for the Commission's response. By letter dated 9 May 2008, the Complainant's solicitor referred a further complaint to the Inspector to the effect that the Commission, without the authority or knowledge of the Complainant had provided copies of the medical reports referred to above to the Director of Public Prosecutions, thereby publishing highly personal medical reports of the Complainant, which would be available to the Prosecutor should the DPP decide to commence the relevant proceedings against the Complainant. The same day I forwarded details of this further complaint to the Commission. On 6 June 2008 I received the Commission's written response to the complaint, and on 13 June 2008 I forwarded a copy of the Commission's written response to the Solicitor for the Complainant. There the matter rests for the moment.

.C12/08: Initial details concerning this complaint were received in the Inspector's office by way of letters from the Complainant's solicitor during April and May 2008.

In brief the complaint concerning the PIC, relates to information provided in June 2002, and subsequently, by the Complainant's solicitor, to the Commission, concerning alleged serious Police misconduct in relation to the Complainant's client. I am awaiting further and better particulars of the complaint from the Complainant's solicitor. I have however conveyed the gist of the complaint to the Commission during one of my regular meetings with the Commissioner.

- (67) 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.
- (68) 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.
- (69) These arrangements have been working satisfactorily.

ELECTRONIC RECORD KEEPING

- (70) The MATRIX system of electronic record keeping has resulted in easier access to operational reports and to the minutes of the regular Operational Advisory Group meetings.
- (71) 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

- (72) 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.
- (73) 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.

- (74) 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.

- (75) 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 nil Controlled Operations.

- (76) A code of conduct applicable to all relevant agencies is contained in Schedule 1 of the Regulations made pursuant to Section 20 of the Act. The Section provides, so far as relevant, that a Regulation must be 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.

(77) On 2 August 2007, I recommended to the Director General of the Police Ministry in the following terms----

“Pursuant to Section 20(4) of the Law Enforcement (Controlled Operations) Act 1997, I hereby recommend that a Regulation be made prescribing a Code of Conduct for authorised operations pursuant to Section 20 (1) of the Act, the content of such Regulation being in effect as referred to by the Principal Policy Analyst in her e-mails to me dated 23 and 26 July 2007, respectively (copies of which are attached hereto).”

(78) Prior to making that recommendation, I ascertained that except in one unexceptional respect, the Code of Conduct as contained in the Regulation to commence on 1 September 2007, was as set out in the prior 1998 Regulation, which was subject to a sunset clause, thus requiring the making of a new regulation in that regard. The new Regulation was gazetted on 1 September 2007, the 1998 regulation being repealed on the same date.

MEETINGS WITH PARLIAMENTARY COMMITTEES

(79) 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.

(80) 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

(81) On 8th November 2007, I appeared and gave evidence before the Parliamentary Joint Committee. Prior to my appearance I received correspondence from the Committee containing a number of questions relating to matters within the Inspector’s functions of interest to the Committee, and I responded to each of those questions in writing prior to my appearance. Subsequent to my appearance, I responded in writing to the Committee in respect of certain questions asked of me during the hearing by Committee members.

(82) *The Report of the Parliamentary Joint Committee on the Eighth General Meeting with the Inspector of the Police Integrity Commission* (which includes copies of the correspondence referred to above) was published in March 2008, and is accessible on the Committee website at:

¹² S.95(1)(a) of the Act

www.parliament.nsw.gov.au/prod/parlment/committee

- (83) This Inspectorate holds itself available and would welcome enquiries and discussion on any matter of concern to members of the Parliamentary Joint Committee at any time.

<p>PROBLEMS WITH THE LEGISLATION: RE: S.89(1)(b) OF THE POLICE INTEGRITY ACT</p>

- (84) The principal functions of the Inspector are provided for in Section 89 of the Police Integrity Act. So far as relevant, Section 89(1)(b) provides that the Inspector's functions include dealing with complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission, by reports and recommendations.
- (85) Included in Section 90 of the Act (the powers of Inspector) is the power to investigate and assess complaints about the Commission or officers of the Commission.
- (86) When one goes to Part 8 of the Act (Reports to Parliament) Section 101 and 102 are of some relevance to the present subject matter. Section 101 provides for special reports by the Inspector to the presiding officer of each House of Parliament on the type of matters specified in the Section, and Section 102 deals with Annual Reports.
- (87) The equivalent provisions relating to the ICAC Inspector under the ICAC Act are Sections 57(1)(b) and (cc), 57F, 77A and 77B, 78 and 109.
- (88) In the present context, each of the PIC Inspector and the ICAC Inspector are in the same statutory position vis a vis dealing with relevant complaints by Reports and recommendations. That is to say, the statutory provisions are, so far as relevant, identical.
- (89) The problems that I see arising in the present context when one has regard to these provisions in the legislation are as follows.
- (90) First, the persons to whom reports are to be published are not specified in any way. The Inspector is not provided expressly with any power to do otherwise than to deal with relevant complaints by way of reports and recommendations. I do not read Section 89 as necessarily implying that the Inspector has power to publish his reports as to complaints against the Commission to the general public.

- (91) Nor do I think the provisions of Section 101 and 102 of the legislation, referred to above, could be construed as covering the Inspector's reports dealing with complaints concerning the Commission.
- (92) Thus, it seems to me, the legislation gives no guidance, expressly, as to who should be seen as the recipients of such reports. Nor any guidance as to the status that should be accorded to such reports. As I have said, in my opinion it is not clear that the Inspector has any power to publish the reports so that they become public reports. Nor does there appear to be any power in the legislation authorising the Inspector to present such reports to Parliament.
- (93) If this conclusion is accepted as reasonable, it follows that an amendment to the legislation would appear to be desirable to clarify these issues. I have drawn these perceived problems to the attention of the Joint Parliamentary Committee.

END NOTES

- (94) **Meeting with NSW Director of Public Prosecutions:** on 27 August 2007 I conferred with Mr. Cowdery, Q.C., at his office, on matters of mutual interest, including in particular, as to the effectiveness of Memoranda of Understanding dated 29 September 2006, between the DPP and the Police Integrity Commission. In response to a recent letter from me in that regard, the DPP advised that subject to certain matters which he specified the MOU appeared to be working satisfactorily. I have passed on that assessment by the DPP to the Commission.
- (95) **Meeting with Gail Archer, Q.C.:** on 21 November 2006 at my office, I met with Ms. Archer in respect of her then brief from the Attorney-General (W.A.) to review the workings of the Corruption and Crime Commission Act 2003. Her Review was published in February 2008, and I commend it those with an interest in the Review's subject matter.
- (96) **Meeting with NSW Police Commissioner:** on 3 December 2007, I met with Commissioner Scipione at his office, for the purpose of general discussions concerning matters of mutual interest, including, in particular, the need for reasonable expedition in respect of the finalisation by NSW Police of recommendations by the PIC that particular NSW Police officers be dealt with under the relevant provisions of the Police Act.

- (97) **Meeting with ICAC Commissioner:** on 4 December 2007, I conferred with Mr. Cripps, Q.C., at his office, and that discussion included, in particular, the Commissioner's input into the writing of public reports presented by the ICAC to the NSW Parliament.
- (98) **Meeting with ICAC Inspector:** on 4 December 2007, at his office, I met with Mr. Kelly, concerning, in particular, perceived problems with the legislation, which is, so far as relevant, in identical terms, in respect of both the PIC Inspector, and the ICAC Inspector, dealing with the publication of Reports as to complaints made concerning the PIC, on the one hand, and the ICAC, on the other: *see "Problems with the Legislation."* Page 30.
- (99) **Review of PIC's 2007 Annual Report:** as with the Commission's 2006 Annual Report, I also conducted a review of the 2008 Annual Report, published in October 2007 (and available via the Commission's website: www.pic.nsw.gov.au), and provided the Commission with a written analysis of the review, including, in particular, the detection of a number of errors in Section 7 of the 2007 Annual Report. The Commission subsequently amended the version of Section 7 appearing on the Commission's website.
- (100) **Review of numerous Memoranda of Understanding:** as noted on my 2007 Annual Report, at paragraphs (92) to (94), in the PJC'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. 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. In October 2007, I received a written response from the Commission, which satisfied me that reasonable steps had been taken to update and amend particular Memoranda of Understanding.
- (101) **Establishment of Inspector's website:** On 7 May 2008 the Inspector's website was established as a result of the kind assistance rendered by Mr Bill Sharpe, Mr Alex Aidar and Mr David Lin, Officers of the Commission. Included on the website is the facility to allow details of complaints to be entered thereon and forwarded automatically to the Inspectorate. All Annual Reports of previous PIC Inspector's will shortly be available on this website, as well as copies of my 2007 Annual Report and this Annual Report: www.inspectorpic.nsw.gov.au

(103) 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.

The Hon. P.J. Moss, QC
Inspector of the Police Integrity Commission

16 July 2008