

Responses to Question on Notice from the public hearing of the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission on 21 May 2012 and to the further Questions on Notice

Question Taken on Notice

'Do you have any statistics breaking down the nature of complaints that you are dealing with? ... And they are fairly stable in their trend?'

The context in which this context was asked at the public hearing suggests that what is being sought are statistics relating to complaints of misconduct by police officers, as distinct from complaints of misconduct by administrative officers, that is members of the NSW Police Force other than police officers, and complaints of misconduct by officers of the NSW Crime Commission. Accordingly, this response will be limited to complaints of misconduct by police officers.

It is important to note that the Commission draws a distinction between a complaint and the allegation or allegations of misconduct made in the complaint. A single complaint received by the Commission may contain a number of allegations of misconduct. For example, a single complaint may make allegations that a police officer has formed an improper association with a person who engages in criminal activities and that the police officer is supplying that person with confidential police information. The statistics supplied in the present response to the question taken on notice relate to allegations of misconduct in complaints.

Statistics on the types of allegations of misconduct which have been assessed by the Commission during a year are reported in annexures to the Commission's Annual Report for that year.

I attach to this document a table showing the number of allegations of various kinds of misconduct assessed by the Commission in each of the years 2008 – 2009, 2009 – 2010 and 2010 – 2011. I also attach a bar chart comparing, for each of the years 2008 – 2009, 2009 – 2010 and 2010 – 2011, the number of the ten types of allegations of misconduct most frequently assessed by the Commission.

An examination of the information presented in the table and the bar chart suggests that over the period from 2008 – 2009 to 2010 – 2011:-

- The total number of allegations of misconduct assessed by the Commission has not varied to any significant degree
- The number of allegations of the types of misconduct most frequently assessed by the Commission has not varied to any significant degree.

However, due to the hidden nature of much corruption and the possibility of false or mistaken allegations of misconduct; the Commission considers that caution must be exercised in seeking to draw any conclusion from these statistics about whether there has or has not been any variation in the actual incidence of misconduct by police officers.

Further Questions on Notice

Funding

1. *Does the Commission consider that it has sufficient funding to acquit its statutory functions?*

Under its statute the Commission's principal functions are to prevent and to detect and investigate officer misconduct, that is misconduct by police officers and officers of the Crime Commission and corrupt conduct by members of the police force other than police officers. The Commission considers that it presently has sufficient funding to be able to perform those principal functions.

However, the Commission has been informed that it, like other NSW public sector agencies, will have its funding progressively reduced in each of the financial years 2012 - 2013 to 2015 - 2016, so as to achieve the savings set out in the following table.

| 2012-13 | 2013-14 | 2014-15 | 2015-16 |
|-----------|-----------|-----------|-----------|
| \$374,000 | \$573,000 | \$743,000 | \$910,000 |

Note: These figures do not take into account any escalation which might be provided by Treasury.

For a small agency this reduction in funding is significant and is likely to lead to some reduction in the Commission's activities. For example, it is likely that some investigations into allegations of misconduct which the Commission would otherwise have undertaken will have to be referred to the police force for investigation by the police force.

The Commission is mindful of the projected reductions in its funding and is considering steps to reduce its costs, such as reducing the area of the premises it leases so as to lower rental costs and not filling all employment vacancies which occur.

As stated above, the Commission considers that it presently has sufficient funding to be able to perform its principal functions. However, as I said at the meeting of the Committee on 21 May, the Commission would not have sufficient funding to perform any other function and, in particular, a function of itself investigating police Critical Incidents. In order for the Commission to be able to investigate police Critical Incidents, the Commission would need to be a very much larger organisation, capable of maintaining continuous rapid response

systems, with many more investigators and with specialist forensic officers, and would require very much larger funding.

Planning and Transition

2. *Are there any concerns raised by the previous Commissioner that you have decided either to pursue or not to pursue?*

The previous Commissioner Mr John Pritchard resigned, with effect from 21 January 2011. Since I took up my appointment as Commissioner in January of this year I have not had the opportunity of discussing with Mr Pritchard any matter affecting the Commission.

The Hon Jerrold Cripps QC was Acting Commissioner of the Commission for the period from 22 January 2011 to 31 December 2011. While Mr Pritchard was still the Commissioner, Mr Cripps had been appointed as an Assistant Commissioner for the purpose of conducting the Commission's Operation Winjana, which involves matters relating to the NSW Crime Commission. After I was appointed Commissioner, I renewed Mr Cripps' appointment as Assistant Commissioner for the purpose of enabling him to continue and complete Operation Winjana.

I have had a number of discussions with Mr Cripps about the Commission in which Mr Cripps has given me the benefit of the experience he has gained as Assistant Commissioner and as Acting Commissioner. However, Mr Cripps has not raised with me any matter of concern calling for a decision on my part either to pursue or not to pursue the matter.

Release of Information

3. *An ex-police officer who claims to have been misrepresented in the TV series Underbelly and who has completed defamation proceedings against Channel Nine complains that protected or restricted information held about her by the PIC (being documents gathered by the predecessor Royal Commission) was improperly released by the PIC to Channel Nine or their representatives.*
- a. *Was any such material released by the PIC to Channel Nine?*
 - b. *On what basis was it released?*
 - c. *What was the status of any such information?*
 - d. *Were there any restrictions on such a release?*

I take it that the ex-police officer referred to in the question is [REDACTED] who brought defamation proceedings in the Supreme Court against a number of defendants including TCN Channel Nine Pty Ltd.

While the defamation proceedings were still on foot the Commission received a letter dated 22 September 2011 from the solicitors acting for the defendants in the defamation proceedings, requesting that the Commission provide access by those solicitors to a number

of documents relating to [REDACTED] which came into existence during the Royal Commission into the NSW Police Service.

The Commission received a further letter from the solicitors for [REDACTED] dated 28 September 2011, in which the solicitors requested Acting Commissioner Cripps to exercise his power under s56(4)(c) of the *Police Integrity Commission Act* by certifying that it was necessary in the public interest to divulge to the solicitors the documents referred to in the letter of 22 September.

Three of the documents referred to in the letter of 22 September had been admitted as public exhibits at public hearings of the Royal Commission. The other documents referred to in the letter of 22 September had never become public documents.

On 31 October 2011 the Commission wrote letters to the solicitors acting for the defendants in the defamation proceedings and to the solicitor acting for [REDACTED] in the defamation proceedings. With each letter the Commission enclosed copies of the three documents which had become public exhibits at public hearings of the Royal Commission.

In the letter to the solicitors for the defendants in the defamation proceedings the Commission said that further consideration would be given to whether the Acting Commissioner should certify that it was necessary in the public interest to provide the other documents referred to in the solicitors' letters.

In the letter to [REDACTED] solicitor, but not in the letter to the defendants' solicitors, the Commission enclosed copies of the other documents the defendants' solicitors were seeking to have access to and invited [REDACTED] solicitor to make submissions about whether those documents should be divulged. No submission was received by the Commission from [REDACTED] solicitor.

Subsequently, and before any decision under s56(4)(c) had been made, the Commission was informed that the defamation proceedings had been settled.

No documents referred to in the defendants' solicitors letter of 22 September 2011, apart from the three documents which were provided with the Commission's letters of 31 October 2011, were ever provided to the solicitors for the defendants in the defamation proceedings.

I answer the questions asked as follows.

- a. The only documents released to Channel Nine were the three documents released to the solicitors for the defendants in the defamation proceedings, all of which had become public exhibits at public hearings of the Royal Commission.
- b. and c. The documents were released on the basis that they had become public exhibits at public hearings of the Royal Commission.
- d. No restriction was imposed in the letter of 31 October 2011 to the solicitors for the defendants or otherwise.

**ALLEGATIONS AGAINST SWORN NSWPF OFFICERS ASSESSED BY PIC:
2008-09 – 2010-11**

| Allegation type | Allegations assessed in 2008-09 | Allegations assessed in 2009-10 | Allegations assessed in 2010-11 |
|---|--|--|--|
| Improper association | 199 | 172 | 158 |
| Unauthorised / improper disclosure of information | 174 | 153 | 170 |
| Failure to investigate | 171 | 179 | 183 |
| Misuse authority for personal benefit or the benefit of an associate | 112 | 117 | 132 |
| Attempting to pervert the course of justice | 85 | 83 | 86 |
| Improper interference in an investigation by another police officer | 81 | 76 | 74 |
| Offence punishable upon conviction by a maximum sentence of 5 years or more | 73 | 59 | 74 |
| Protection of person(s) involved in drugs | 60 | 72 | 70 |
| Lied during proceedings / in statement / on affidavit | 59 | 65 | 71 |
| False accusation | 58 | 49 | 66 |
| Dealing or supply | 59 | 22 | 59 |
| Fabrication of evidence (other than perjury or verballing) | 42 | 34 | 32 |
| Bribery | 35 | 33 | 45 |
| Tampering with or destroying | 19 | 9 | 15 |
| Theft / misappropriation (more than \$5000) | 17 | 0 | 0 |
| Sexual assault | 16 | 16 | 18 |
| Mislead the court | 10 | 6 | 9 |
| Withholding or suppression of evidence | 9 | 8 | 9 |
| Child sexual abuse or paedophilia | 9 | 9 | 16 |

Attachment A

| Allegation type | Allegations assessed in 2008-09 | Allegations assessed in 2009-10 | Allegations assessed in 2010-11 |
|---|--|--|--|
| Cultivation or manufacture | 6 | 2 | 7 |
| Perjury | 5 | 2 | 6 |
| Make false statement (verballing) | 5 | 2 | 6 |
| Collusion between police witnesses | 5 | 8 | 6 |
| Inappropriate prosecution / misuse of prosecution power | 3 | 6 | 8 |
| Homicide | 2 | 1 | 4 |
| Other allegations – *Less serious allegations including customer service issues. | 1615 | 1586 | 1686 |
| Total allegations | 2932 | 2772 | 3007 |

Top 10 allegations assessed by the PIC: 2008 - 2011

