

PERFORMANCE MEASURES AND ACCOUNTABILITY OF OVERSIGHT AGENCIES

Organisation: New South Wales Crime Commission
Name: Mr Peter Hastings
Position: Commissioner
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NEW SOUTH WALES
Crime Commission

30 January 2013

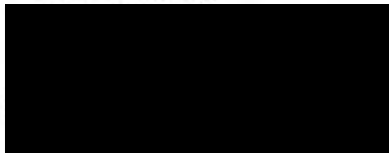
The Hon. Catherine Cusack MLC,
Chair,
Committee on the Ombudsman,
The Police Integrity Commission and the Crime Commission,
Parliament of New South Wales,
Macquarie Street,
SYDNEY. NSW. 2000.

Dear Ms Cusack:

RE: PERFORMANCE ASSESSMENTS

I refer to your letter of 10 December 2012 and now provide a submission as requested.

Yours faithfully,



Peter Hastings QC,
Commissioner.

**PARLIAMENTARY COMMITTEE ON THE OMBUDSMAN, THE POLICE INTEGRITY COMMISSION AND
THE CRIME COMMISSION**

NEW SOUTH WALES CRIME COMMISSION SUBMISSION

PERFORMANCE ASSESSMENTS

Introduction

1. This submission is made on behalf of the New South Wales Crime Commission in response to a letter dated 10 December 2012 advising that the Joint Committee has resolved to conduct an inquiry into and report on the ways in which performance is measured and reported in the agencies for which the Committee has a responsibility to monitor.
2. In the letter those agencies are referred to as "integrity organisations". A preliminary point is made that the Crime Commission does not comfortably come within that description. The Crime Commission is a criminal investigation agency and its role is different to the other agencies monitored by the Committee in that it is not involved in the oversight of the integrity of other organisations. The principal functions of the Crime Commission described in section 10 (1) of the *Crime Commission Act* 2012 are to be discharged in pursuit of the object set out in section 3 of the Act which is "to reduce the incidence of organised and other serious crime". The purpose of the exercise of the powers provided to the Crime Commission in the Act and its role in relation to asset confiscation under the provisions of the *Criminal Assets Recovery Act* 1990 is therefore in general terms to disrupt serious organised crime. For that reason it does not follow that the issues of performance measurement are the same for the Crime Commission as for the other agencies monitored by the Committee.
3. The way in which performance is reported is determined by the *Crime Commission Act* in which section 82 requires the Commission to prepare an annual report to its Management Committee for transmission to the Minister including details and particulars as set out in the section. Pursuant to section 71(1)(c) of the Act it is a function of the Joint Committee to examine each annual and any other report of the Crime Commission and to report to Parliament on any matter arising out of any such report.

4. The way in which performance is to be measured is more complex. For reasons which will be outlined below, a quantitative measurement of the effectiveness of the performance of the Crime Commission in achieving its objectives is very difficult. The incidence of organised and other serious crime is not capable of empirical qualification or quantification, and the extent to which the activities of the Crime Commission during any given reporting period reduces the incidence of serious organised crime is equally incapable of statistical measurement.
5. In the 2012 Annual Report of the Crime Commission figures are provided in relation to specified activities of the Commission but they need to be accompanied by a number of qualifications and explanations to understand the value of the statistical information provided in assessing the performance of the Commission (pages 19-20 and 55-58). The Annual Report records figures for the use of statutory powers available to the Crime Commission (pages 51-53) and for the number of disseminations of intelligence and information, which also provide data relevant to an assessment of the performance of the Commission. However, again due to the influence of factors beyond the control of the Crime Commission, the data provided is not necessarily a true indication of its performance.
6. A qualitative assessment of the performance of the Crime Commission is equally fraught with difficulty. The Commission does not have clients who may be surveyed in order to determine their level of satisfaction nor is there an area of compliance or regulation which may be evaluated. However, the Crime Commission is subject to an extraordinary level of accountability and scrutiny, details of which are set out in the Annual Report (pages 77-84) and has formulated and implemented an Internal Audit and Risk Assessment Policy, and the degree to which those processes are applied to the functions of the Crime Commission is a measure of assurance of the quality of the performance of the Commission.
7. In keeping with contemporary practices, the Crime Commission has formulated a Corporate Plan, a principal utility of which lies in the self-discipline required to identify and articulate values and objectives. The Plan identifies performance indicators but does not purport to quantify them in a manner which permits statistical assessment. The factors identified are indicia of potentially contentious issues which if detected, would require attention.
8. Generally, the Crime Commission does not see it as having a useful function in publishing self-promotional publications. The extent and sophistication of publications is not a measure of the performance of the Crime Commission in reducing the incidence of organised crime, and

the Crime Commission has endeavoured to avoid the inefficiency of diverting staff from their tasks in relation to the object of the Crime Commission to disseminating glossy documentation which achieves little or no purpose.

Principles of performance assessment

9. There is a body of literature available concerning the methodology appropriate to measuring the performance or effectiveness of compliance or regulatory government agencies, and although the Crime Commission is not a government agency of the same type, some of the accepted principles may be applicable. It seems accepted that there are generally two related issues – efficiency which is about doing things right – and effectiveness which is about doing the right things.
10. In that sense efficiency can be measured by reference to indications that an agency is discharging its functions in a manner which is "right", which may be in the sense of proper, moral and lawful in view of the statutory objectives and obligations of the agency. Alternatively efficiency may mean doing things right in terms of being cost-efficient and avoiding waste. In the context of the discharge of functions for the purpose of disrupting organised crime, there are so many variables involved that the task of any sensible measurement of efficiency by that standard is impossible.
11. Measuring effectiveness is said to be about measuring whether actual outcomes are aligned with desired outcomes. Accordingly, the starting point of measuring effectiveness is to define specific goals for outcomes for the organisation, and then to measure and manage the operations of the organisation in order to determine that the defined goals have been met. It is an area of the theory of performance assessment which is difficult to apply to the Crime Commission. Specific goals need to be defined sensibly, taking into account the capacity to identify organised crime, and bearing in mind the resources available to do the job. There is no point purporting to achieve a goal of eliminating organised crime. There is also little value in specifying vague goals such as "reducing serious organised crime", or identifying goals that provide no more than broad motherhood statements.

The Processes of the Crime Commission

12. In order to appreciate the difficulties in assessing the performance of the Crime Commission, it is necessary to bear in mind the nature of its processes. As mentioned above, the prescribed principal functions of the Crime Commission are to be directed towards achieving the object of the *Crime Commission Act* of reducing the incidence of organised and other serious crime. The discharge of those functions is usually in relation to a “relevant criminal activity” or a “serious crime concern” described in a reference from the Management Committee of the Crime Commission, although it may also be for the purposes of reinvestigation of police enquiries into other matters, or participating in a task force or providing expert services to other agencies. In each case, involvement of the Crime Commission is confined and it does not have an unfettered capacity to investigate criminal activities.
13. References are generated in consultation with the New South Wales Police Force and identify areas of criminal activity in relation to which it is considered that the capacity of, and additional statutory powers available to, the Crime Commission will be effective or useful. Once notice of a reference has been given, the operational activity pursuant to it often varies depending upon the width of its terms, and according to the extent to which police bring to the attention of the Crime Commission specific instances of the relevant criminal activity which has been specified in the notice. For that reason, the Crime Commission currently has a limited capacity to control the nature and extent of investigative work required of it within a given reporting period and the task of quantifying desired outcomes for that period is virtually impossible.
14. The number of references does not provide a reliable guide to the amount of work to be performed. Some references are framed in broad terms and involve widespread investigations over longer periods of time, whereas others may be comparatively narrow and be in relation to the investigation of a specific criminal offence thereby requiring limited resources over a short period of time.
15. Organised crime is a constantly changing landscape and the sophistication of counter surveillance and other preventative measures and of asset concealment by criminals, increases constantly. The task of achieving desired outcomes is invariably affected by unknown and unpredictable developments in this area during reporting periods.

16. Similarly, the extent of the deployment of an important function of the Crime Commission available to disrupt serious organised crime, asset confiscation, is also beyond the control of the Commission and not capable of accurate quantification in terms of a desired outcome. Cases are referred to the Crime Commission by police, usually as a result of a successful conclusion of a criminal investigation, and decisions are then made within the Crime Commission as to whether confiscation proceedings are warranted and worthwhile.
17. In addition, the value of confiscated property in a given period is impossible to predict because it is not known in advance whether proceedings will be brief and inexpensive because they will settle, or whether the outcome will only emerge over a longer period of time and after costly and protracted litigation. Nevertheless, the Crime Commission does set itself a target against which reports are provided to the Management Committee, which at least provides a means of identifying any inexplicable abnormalities in trends.
18. Figures relating to the numbers of charges laid during a reporting period can also mean very little. A reference may result in a single charge against a senior crime figure which may be more disruptive to organised crime than a result of a number of charges against low level criminals. Similarly, a reference may involve substantial resources during a reporting period without coming to a resolution, which may occur in the next reporting period.
19. In any event, the Crime Commission considers that is undesirable to set goals for arrests and charges, or values of confiscations, for given reporting periods. To do so would generate inappropriate pressure to take shortcuts to secure results in order to meet those goals. The point has more force in relation to setting conviction rates. Securing convictions is beyond the control of the Crime Commission and is a matter for the Director of Public Prosecutions, and a just outcome is more appropriate than pressing for a conviction in order to secure a predetermined target.
20. For the same reasons, it is undesirable to seek to achieve predetermined budgetary goals if it is in an incentive to cut operating costs at the expense of meeting proper standards of investigation.

Term of Reference (a) – Reporting Requirements

21. The Crime Commission presents to the Minister for Police and Emergency Services its annual report in conformity with sections 11A and 12 of the *Annual Reports (Departments) Act* and Section 82 of the *Crime Commission Act*.
22. The Crime Commission is liable to extensive obligations to report on numerous aspects of its functions annually. It is also subject to a wide range of accountability measures such as scrutiny by the Auditor General, by the Commonwealth Ombudsman and the New South Wales Ombudsman. It is also subject to oversight by its Management Committee, the Department of Attorney and Justice, the Ministry of Premier and Cabinet, the Police Integrity Commission, its Inspector and the Joint Committee.
23. As mentioned earlier, in compliance with Treasury Guidelines, the Crime Commission has introduced an Internal Audit and Risk Management Policy supervised by an internal Audit and Risk Committee acting in consultation with external auditors, IAB Services with whom the Commission has contracted to provide internal audit services. In conformity with the Policy and in consultation with IAB there have been formulated and implemented a Corporate Governance Framework and a Whole of Government Legislative Compliance Framework. Pursuant to these arrangements staff of the Crime Commission are obliged not only to comply with the policies formulated, but also to participate in audits and report back to auditors in relation to issues thereby revealed. The Crime Commission's external auditor is the Auditor General.

Term of Reference (b) – Measures Being Used To Assess Performance And Effectiveness

24. As stated above the Crime Commission does not consider that it is feasible or appropriate to set desired outcomes in numerical terms relating to arrests, convictions and confiscation and therefore does not embark upon a finite comparison of the results for a reporting period with desired outcomes for the particular period, or with results from any other period. The Crime Commission records the statistical information set out in the Annual Report relating to the arrests, charges, seizures and confiscations as an indication of its performance but does not regard those results alone as an effective measure of performance. As mentioned earlier, the outcomes recorded during any particular reporting period are affected by a large number of circumstances beyond the control of the Crime Commission and the results may be due to a

number of such influences which are not a reflection of the performance of the Crime Commission.

25. The statistics do, however, allow the Crime Commission to generally monitor its work. Inexplicable fluctuations in the figures recorded can give notice of the need to inquire as to the reason for any such deviations. The inquiry may conclude that there were external circumstances (which of course, may require a change of approach), or some other factor that serves to explain the abnormality or indicate that there is a problem that requires fixing or the adoption of alternative procedures.
26. Similarly, the Annual Report provides figures in relation to the use of statutory powers but those figures are also affected by factors which have no bearing on the measurement of the effectiveness of the Crime Commission.
27. It should also be borne in mind in assessing its performance that the capacity of the Crime Commission to carry out its statutory role in reducing the incidence of serious organised crime is not unlimited and is constricted by the comparatively modest resources provided to it.

Term of Reference (c) – How Measures Are Determined

28. The Crime Commission is bound by its statutory obligations. The *Crime Commission Act* prescribes its functions in the context of the object of the Act to reduce the incidence of organised and other serious crime and provides statutory powers to assist the Crime Commission in the discharge of its responsibilities. For the reasons outlined above, the prevalence of serious organised crime and the extent to which the incidence of it is reduced during any given reporting period is not realistically capable of measurement.
29. The Commission is obliged to ensure that its resources are dedicated to achieving the object of the Act in a manner which is compliant with all relevant statutory requirements. Measures which reflect the level of compliance are appropriate to assess the performance of the Commission.

Term of Reference (d) – Effectiveness of Measures

30. Given the qualifications and conditions described above in relation to the capacity of factors beyond the control of the Crime Commission to render statistical information to be of limited value, it is not apparent that any particular measure has the capacity to individually effectively assess the performance of the Commission. The assurance of the effectiveness of the work of the Crime Commission comes from the capacity to detect any significant abnormalities in those figures, and from the high level of oversight and accountability in which it operates.

Term of Reference (e) – Overlap or Difference between Agencies

31. The point was made at the beginning of this submission that the functions of the Crime Commission differ in character from those of the Ombudsman and the Police Integrity Commission (and for that matter the Independent Commission against Corruption) in that the Crime Commission is an investigative agency charged with an obligation to disrupt organised crime through the use of the powers made available to it. The Crime Commission does not pretend to be sufficiently familiar with the issues confronting the other agencies in order to have a view as to the manner in which those agencies should embark upon a process of assessing their effectiveness.

Term of Reference (f) – Other Relevant Matters

32. An important aspect of the investigative processes of the Crime Commission is secrecy. The nature and scope of references to and investigations by the Crime Commission are generally not published as to do so would seriously undermine the effectiveness of its investigative work, which is largely covert. Accordingly, any requirement for public reporting upon details of references and the progress being made in completing them, would be inappropriate.
33. Pursuant to section 59 of the Act, the Crime Commission must keep the Management Committee informed of the general conduct of its operations, and must provide to it information concerning any specific matter relating to the Crime Commission's operations, when so requested. It is an example of the package of checks and balances applicable to the Crime Commission whereby the community may be confident that the Crime Commission is properly performing its statutory function.



Peter Hastings QC,
Commissioner.

30 January 2013.