

4 May 2017

The Hon Troy Grant MP
Minister for Police and Minister for Emergency Services
52 Martin Place
Sydney NSW 2000

Dear Minister,

As you are aware, the Commission is in the throes of finalising its recruitment of senior staff comprising a number of Directors (Integrity, Oversight and Covert Services) the Solicitor to the Commission and its Chief Executive Officer. As I understand it, the Police Association of New South Wales (Police Association) has indicated strongly that no former employee of the Police Integrity Commission (PIC) should be employed in the LECC, particularly in the senior positions. Indeed, you will recall that you informed me of this view in our discussions about staffing. As I am shortly to appoint applicants to the senior positions, I think it desirable to set out clearly my views on the representations made by the Police Association about former PIC employees.

As, of course, you are well aware, recruitment to the Commission of its staff is governed by the *Government Sector Employment Act 2013* (NSW) (the Act) and the Rules made under it. The objects of the Act include providing for "transparent governance and employment arrangements for the Public Service" and establishing "an ethical framework for the government sector comprising core values and principles that guide their implementation": ss 4(c), 4(d). The core values, as set out in s 7 of the Act, include the requirement to "consider people equally without prejudice or favour" and, of particular present relevance, "recruit and promote employees *on merit*" (italics added).

Part 3 of the Rules, headed "Merit-based employment", specifically provides (without allowing exceptions) that "[any] employment decision relating to a role in the Public Service is to be based on an assessment of the *capabilities, experience and knowledge* of the person concerned against the pre-established standards for the role to determine the person best suited to the requirements of the role and the needs of the relevant Public Service agency" (emphasis added).

It is therefore clear that to add a criterion unconnected with the merits of an applicant is contrary to both the Act and the Rules unless some particular attribute of the position prevents a person who falls within a particular class from being considered. An example of this last category is the pre-existing employment with the NSW Police Force of applicants for some positions. The reasons for this exclusion (quite apart from the provisions of s 21 of the LECC Act) are self-evident and do not call for further

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discussion. On the other hand, the reasons given by the Police Association for excluding from consideration persons formerly employed with the PIC are of an altogether different character. The argument is that, having regard to criticisms made by Inspectors of the PIC (which, essentially, concern alleged procedural unfairness and the form of reports) and complaints made by aggrieved Police Officers about adverse findings, no employee of the PIC (except, possibly, administrative staff) should be considered for employment with the LECC, regardless of merit. This blanket prohibition ignores the sole responsibility of the Commissioners for the conduct of hearings, including affording procedural fairness, as well as the terms of their reports. I do not intend to revisit the question whether any of these criticisms were justified. It is sufficient to say that (with several irrelevant exceptions) there has been no criticism of other PIC staff. As I informed members of the executive of the Police Association at our initial meeting on 16 February 2017, I would, of course, take into actual consideration any criticisms they might have of particular officers of the PIC, but no information of this kind has been provided.

In my view, to deny recruitment to an otherwise suitably qualified candidate on the ground that he or she was formally employed by the PIC would be not only be self-evidently unfair but contrary to the Act and the Rules. Although non-compliance with the core values set out in s.7 of the Act cannot be the subject of litigation, it may also well be otherwise a breach of the Rules and, hence, able to be litigated.

Of course, I understand that you would not at all wish to place the Commission in this position. I bring it to your attention only because it is plainly desirable, I think, that the work of the Commission should start off in a transparent and responsible way which, I have no doubt, is the policy that you would wish the Commission to pursue.

Sincerely,

A handwritten signature in black ink, appearing to read 'M F Adams', with a long, sweeping underline.

The Hon M F Adams, QC
Chief Commissioner