



NEW SOUTH WALES

*Inspector
of the
Police Integrity Commission*

ANNUAL REPORT

FOR THE YEAR ENDED

30 JUNE 2016



*Inspector
of the
Police Integrity Commission*

28 October 2016

The Hon Donald Harwin MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon Shelley Hancock MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Dear Mr President & Madam Speaker

In accordance with section 103 of the *Police Integrity Commission Act, 1996* ("the *PIC Act*"), I, as the Inspector of the Police Integrity Commission, hereby furnish to each of you for presentation to the Parliament, the Annual Report of the Inspector for the year ended 30 June 2016.

This report has been prepared in accordance with the requirements of the *PIC Act*. Pursuant to section 103(2) of the *PIC Act*, I recommend that the report be made public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Levine".

The Hon David Levine AO RFD QC
Inspector: PIC

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PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS

1.1 PRELIMINARY OBSERVATIONS

There have been no statutory changes in the reporting year affecting the functions and powers of the Inspector.

1.2 THE INSPECTOR

The Inspector of the Police Integrity Commission derives authority from the *Police Integrity Commission Act 1996* (the PIC Act). The Inspector is appointed by the Governor with the advice of the Executive Council. The Joint Committee on the Office of the Ombudsman and Police Integrity Commission is empowered to veto the proposed appointment (schedule 2 to the *PIC Act* and section 31 of the *Ombudsman Act 1974*). The Office of the Inspector may be full time or part time according to the terms of the appointment, and the term is limited to five years. My appointment from 1 February 2012 is part time and will expire 31 January 2017.

1.3 FUNCTIONS OF THE INSPECTOR

As enacted by section 89 of the *PIC Act*, the principal functions of the Inspector are to audit the operations of the Commission for the purposes of monitoring compliance with the law in New South Wales, 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 and to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission. The Inspector also has the function to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

The functions of the Inspector in relation to the matters set out above may be exercised 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 Independent Commission Against Corruption (ICAC), NSW Crime Commission (NSWCC), the Joint Committee or any other agency.

The Inspector is not subject to the Police Integrity Commission in any respect (s.89(3)). The importance of this provision must not be overlooked.

1.4 THE POWERS OF THE INSPECTOR

Pursuant to section 90 of the *PIC Act* the Inspector may investigate any aspect of the Commission's operations or any conduct of its officers. The Inspector is entitled to full access to the records of the Commission and to take or have copies made of any of them. The Inspector may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of its officers. The Inspector may require officers of the Commission to attend before the Inspector to answer questions, or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission. The Inspector may investigate and assess complaints about the Commission or officers of the Commission and may refer matters relating to the Commission or its officers to other agencies for consideration of action and may recommend disciplinary action or criminal prosecution against officers of the Commission.

The Inspector (pursuant to section 91) is empowered to make or hold inquiries. The powers, authorities, protections and immunities conferred on a Commissioner by the *Royal Commission Act of 1923* are conferred on the Inspector holding an inquiry and any witness summoned by or appearing before the Inspector also has the benefit of the protection and immunities under the *Royal Commission Act*.

OTHER RELEVANT LEGISLATION

1.5 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 NO. 52 (GIPA ACT)

Under Schedule 1 of the *GIPA Act*, an access application made for access to any information relating to the PIC's corruption prevention, complaint handling, investigative or reporting functions will not be granted.

Under Schedule 2 of the *GIPA Act*, an access application made for access to any information relating to the auditing, complaint handling, investigative and reporting functions of the Inspector of PIC will not be granted.

Applications for access to information can be made in respect of the Inspector's administrative functions, for example human resources policies and practices. Such applications will be assessed on a case by case basis.

In compliance with section 125 of the *GIPA Act* the following report on GIPA applications is published:

- In 2015-2016, there were no access applications made under the *GIPA Act* to the Inspector.

The website of the Office of the Inspector of PIC contains details of how to obtain information from the Office of the Inspector of PIC.

1.6 THE PUBLIC INTEREST DISCLOSURES ACT 1994 (PID ACT)

This legislation provides for public servants and officials to report serious wrongdoing in public sector agencies on a confidential basis. Under that legislation complaints or allegations made by public servants or public officials are called disclosures. The *PID Act* provides that such persons making disclosures are to be protected against actual or potential reprisals.

The Inspector is an investigating authority under Section 4. Pursuant to Section 6D(1) of the *PID Act*, the Office of the Inspector of PIC has developed a policy for managing public interest disclosures. This policy and the Inspector's Statement of Commitment to the legislation are available for viewing on the Office's website www.oipic.nsw.gov.au.

The following information is provided as required by section 31 of the *PID Act*:

- a) The number of public officials who have made a public interest disclosure to me – 0
- b) The number of public interest disclosures received by me relating to each of the following:
 - i. Corrupt conduct – 0
 - ii. Maladministration – 0
 - iii. Serious and substantial waste of public money – 0

1.7 TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979 (CTH) (TIA ACT)

The Inspector is included as an eligible authority for the purposes of the *TIA Act*. In accordance with reporting requirements under section 96(1) and 159(1) of the *TIA Act*, the Commonwealth Attorney-General's Department was advised by me that there was nil usage of the provisions of the *TIA Act* during the current reporting period.

PART 2: THE OFFICE OF THE INSPECTOR OF PIC

ADMINISTRATION

2.1 PREMISES

Postal address: GPO Box 5341, Sydney, NSW, 2001
Telephone: (02) 9232 3350
E-mail: pic_executive@oipic.nsw.gov.au

2.2 STAFF

As of the end of the reporting period the office was constituted by the Inspector, the Principal Legal Advisor and the Inspector's Executive Support Officer. The number of days per week worked varied between three and five, depending upon the workload of the Office.

2.3 BUDGET AND FINANCE

The Inspector is an independent statutory office and the office of the Inspector is a cost centre within the NSW Department of Premier and Cabinet (DPC).

The statement provided by the Chief Finance Officer of DPC for the period 1 July 2015 to 30 June 2016 shows total expenditure of \$261,211. This compares with a total expenditure of \$235,919 in the prior year. The budget for the year 2016-2017 is \$280,303.

Inspector's remuneration: An annual retainer of \$10,000. (This is in addition to the annual retainer of \$10,000 received as Inspector of the Independent Commission Against Corruption). A daily rate of \$1,870, as at 22 June 2016. (This is paid to cover the work done for both Offices- Inspector of PIC and Inspector of ICAC).

LIAISON AND COMMUNICATION

2.4 LIAISON WITH THE POLICE INTEGRITY COMMISSION

The *PIC Act* operates in accordance with its terms and there is a mutual expectation on the part of myself and the Commissioner that each will comply with his statutory duties. No Memorandum of Understanding has been entered into.

Otherwise, if required, special liaison arrangements can be made on an ad-hoc basis in the event of substantial bureaucratic requirements arising. Such

arrangements have been and will be effectively made between the Executive Assistant to the Commissioner and my Executive Support Officer. This was a successful arrangement during the reporting year.

2.5 MEETINGS/CONFERENCES UNDERTAKEN BY THE INSPECTOR

Date	With Whom	Where	Purpose
2015 July 30	Ombo-PICC	NSW Parliament	Informal meeting to meet new Parliamentary Joint Committee and to explain role of Inspector.
July 31	Commissioner PIC	PIC	Confidential
2016 February 23	Commissioner PIC	PIC	Confidential
February 29	Ombo-PICC	NSW Parliament	Review of Annual Report for the year ended 30 June 2015.
May 16	IBACC (Victorian Parliamentary Committee)	NSW Parliament	Closed hearing to assist IBACC in gaining an understanding of how anti-corruption bodies, inspectorates and equivalent parliamentary oversight bodies operate in other states and territories.

During the current reporting period I met with the Police Integrity Commissioner on 2 occasions as set out above. In addition, there were telephone conversations of a general nature throughout the reporting period. The purposes of these meetings were to discuss the fundamentals of the operations of my office vis-à-vis the Commission and vice versa. The personal meeting between the Commissioner and me also was the occasion for discussion of any discreet matters that may have arisen involving personnel of the Commission.

2.6 WEBSITE

The website of the Office of the Inspector of the Police Integrity Commission is updated periodically and contains all relevant statutory and other information for members of the public.

PART 3: THE WORK OF THE INSPECTOR'S OFFICE GENERALLY DURING THE REPORTING PERIOD

3.1 There were 7 new complaints received in the reporting period. They have all been closed and none was upheld. Specifically I note that:

- 1 of those closed involved an internal PIC complaint about the conduct of a PIC Officer. I was satisfied that there was no evidence to substantiate the allegations so as to warrant my investigating the matter. I was satisfied that the PIC had appropriately considered the complaint and found that there was no basis to it.
- 1 complaint was an anonymous complaint about the internal management of PIC. The allegations were vague and required further particulars. As the complainant was anonymous, I was unable to seek further information and thus the file was closed.
- Of the remaining 5 complaints, my jurisdiction was invoked but there was no evidence of impropriety, abuse of power or maladministration on the part of PIC or its officers and the complaints were, therefore, not upheld.

3.2 There were 2 complaints outstanding from the 2014-2015 reporting period. Both have now been finalised. My jurisdiction was invoked in both matters but I found no impropriety on the part of PIC or its officers and thus the complaints were not upheld.

PART 4: AUDITING OF THE POLICE INTEGRITY COMMISSION BY THE INSPECTOR

4.1 AUDITS CONDUCTED IN PERIOD 1 JULY 2015 TO 30 JUNE 2016

On a monthly basis, I am provided with a copy of the PIC's Report to the Operations Advisory Group on Operations activities (OAG). As part of my audit function, I note what activity, if any, has taken place since the last Report was submitted. I also note what new preliminary investigations and investigation have been instigated by the PIC. When I consider it appropriate, I request further information from the PIC as to the progress in certain investigations. I also rely on these reports to determine which investigations should be the subject of a more detailed audit by me. The OAG Report is an invaluable mechanism for the provision to me of relevant and updated information.

In the reporting period, I have conducted no audits.

I have also had regard to the PIC's summary of prosecution briefs with the DPP, which are also provided to me on a monthly basis. In the 2012/2013 reporting year, I conducted several audits, including in relation to PIC Operation Calyx. I note that subsequently, 4 police officers were prosecuted for offences pursuant to s.107 of the *PIC Act* (give false or misleading evidence to the Commission) and s.327(1) of the *Crimes Act 1900* (perjury). The alleged offences took place in November 2009. On 23 June 2016, Judge Woods QC in the District Court found all co-accused not guilty of the s.107 charges. On 24 June, the DPP advised the Court that the perjury charges would not be proceeding to trial. This now finalises the matters arising from Operation Calyx, but for the costs application (which on 11 August was adjourned for judgment on a date to be fixed.)

In the 2012/2013 reporting period, another one of the audits I conducted was in relation to Operation Barmouth. Prosecution action has been instigated following that investigation, with 5 police officers being charged with several offences, including common assault. As at the end of this reporting period, those matters are still in Court.

In the reporting period (2013/2014), I conducted an audit, amongst others, in relation to PIC Operation Montecristo, upon which I reported in my Annual Report for the period ending 30 June 2014. I note that PIC is still awaiting advice from the Attorney-General as to whether any prosecutions will flow from its investigation and recommendations in Operation Montecristo.

In the reporting period (2013/2014), I also conducted an audit in relation to PIC Operation Symi. Subsequently, 2 police officers have been charged with various offences under both the *Crimes Act* and the *PIC Act*. The alleged offences took place in 2009. On 1 September, a Local Court Magistrate found one of the police officers guilty of perjury and fabricating evidence. He has lodged an appeal against conviction and sentence. The prosecution of the other police officer has been adjourned due to his ill health.

4.2 SUBMISSIONS REGARDING POLICE OVERSIGHT

In my last Annual Report, I reported that Mr Andrew Tink AM was commissioned to consider and report to the Government on police oversight by 31 August 2015. The Terms of Reference included:

1. Options for a single civilian oversight model for police in NSW
2. Any gaps in the current police oversight system
3. Functional overlap between oversight bodies
4. Best practice models from around the world
5. A recommended model for police oversight including guidance on its design, structure, cost and establishment

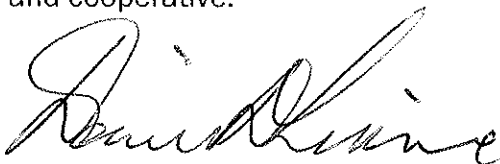
The full Terms of Reference and my submissions, amongst others, can be found on the Justice Department's website at: justice.nsw.gov.au/legal-information-and-services.

Andrew Tink AM delivered his Report on 31 August 2015 and it was published on 26 November 2015. Amongst the recommendations was that the Police Integrity Commission and the Police Division of the Office of the Ombudsman be replaced by a single body with two clearly defined functions: detecting and investigating serious misconduct and corruption, and overseeing complaints handling.

On 26 November 2015, Mr Troy Grant, Deputy Premier of NSW and Minister for Justice and Police, announced that the NSW Government would be creating a new Law Enforcement Conduct Commission (LECC) after adopting recommendations from Andrew Tink AM. It is proposed that the new LECC will become operational in early 2017. At the end of the reporting period a draft Bill had been circulated, and upon which stakeholders had been asked to comment, prior to the Bill being introduced into Parliament. I made submissions with respect to the draft Bill. (On 13 September 2016, the Bill was introduced by Deputy Premier Grant in the Legislative Assembly.)

PART 5: CONCLUSION

I have met with the Police Integrity Commissioner from time to time as referred to above. I have been given written reports routinely relating to operations being conducted by the PIC including new investigations, current operational activity reviews, reports received and cognate matters. The relationship has been cordial and cooperative.

A handwritten signature in black ink, appearing to read 'David Levine', written in a cursive style.

The Hon David Levine AO RFD QC
Inspector PIC
October 2016