

A submission to the Department of Premier and Cabinet by the New South Wales Commissioned Police Officers Branch relating to the Review of the Police Integrity Commission Act 1996.

This submission is supported unanimously by delegates of the Commissioned Police Officers Branch of the New South Wales Police Association.

Its purpose is to provide the Department of Premier and Cabinet with insight and perspective from the Commissioned Police Officers Branch of the New South Wales Police Association. This submission builds upon and enhances the submission provided by the President of the Police Association of NSW, Mr Scott Webber.

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The Police Integrity Commission (PIC) enjoys a unique standing amongst all other police oversight bodies in Australia. Police at all ranks in New South Wales strongly support the PIC and embrace as both relevant and necessary the concept of independent oversight .

The PIC enjoys high levels of cooperation from our senior ranks, particularly at operational levels where productive working relationships have been developed and maintained over a number of years. This very positive relationship permeates deeply within the NSW Police Force psyche and has greatly assisted Commissioner Scipione to forge significant and necessary changes in police culture in support of resistance to corruption.

Acceptance of and participation by police in the broader policy objectives of the PIC Act have been pivotal to its success, but this support cannot be unconditional. The police community strongly supports the identification and removal by the PIC of corrupt individuals from its ranks, provided that all officers who come to the notice of PIC are dealt with according to law.

The police community understands that officers who are innocent of any wrongdoing will, from time to time, be the subject of adverse allegations that must be investigated by the PIC.

However, in recent times there has been a growing list of police who have not been accorded by the PIC the judicial and procedural fairness inherent in our legal system.

We refer in particular to those police involved with the PIC operations Mallard, Rani, Whistler and Alsord who have suffered greatly as a result of their dealings with the Commission.

There is extensive correspondence available between the Inspector of the PIC, the Commission itself and the Police Association that provides detailed commentary on these issues, but in summary our concerns are:

- Recommendations and findings of wrong doing are not put to the officers concerned, denying them the opportunity of rebuttal
- Adverse findings against officers, despite the absence of any solid or meaningful evidence, the effect of which is devastating on them, both professionally and personally
- The use of unfair prejudicial language in reports.

Compounding the effects of these issues is the reluctance of PIC to remove adverse findings against police from its web site, even after the Commission has been demonstrated to have erred.

Significantly, commissioned police officers' concerns on the issues of judicial and procedural fairness by the PIC are consistent with views expressed by the Inspector of PIC.

The PIC's actions have ramifications not just for the affected police but also for the legal system more generally. The Department of Public Prosecutions maintains an 'Adverse Mention List' with the names of police mentioned adversely by the PIC and which is supplied to lawyers in trials in which these officers are to give evidence.

Defence lawyers in these trials attack the integrity and character of police who have spent their professional lives pursuing investigative excellence, destroying their credibility in the presence of a jury. This is a devastating outcome for an officer who has done nothing wrong and creates the potential for a miscarriage of justice in those cases where juries act on information that the PIC has got so wrong.

The additional cost of these injustices, potentially, is that they will damage the PIC's reputation within the police community and so compromise a relationship that has been so effective in ridding the NSW Police Force of corruption.

We would argue that very small changes, not to the PIC Act but to the application of PIC's substantial powers, would completely ameliorate the police community's concerns of injustice to its members.

With the exception of one minor alteration, the Commissioned Police Officers Branch believes the PIC Act 1996 No28, remains appropriate in delivering the policy objectives as intended by the Parliament.

The PIC has far ranging powers and it is crucial that, like the police it investigates it, too, is held to account by established democratic processes that include the publication of reports by the Inspector of the PIC.

Our view is that an oversight body without the capacity to publish its findings is significantly compromised. The minor alteration sought by the Commissioned Police Officer's Branch would clarify the power of the Inspector of the PIC to publish complaint reports concerning the Commission.

Our remaining concerns can be addressed relatively simply. We believe the PIC Act is fulfilling its policy objectives but is being substantially let down by the PIC's application of the Act and by the lack of effective oversight provided by the Joint Parliamentary Committee.

We are not satisfied with the performance of the Joint Parliamentary Committee that oversees PIC. The Committee's inaction and reluctance or inability to criticise or critically examine PIC reports have, in recent times, lead to a reduction in their quality, consistency and, we would suggest, relevance. We would argue that if the Joint Parliamentary Committee had been more vigilant and diligent and responded to the concerns of the Inspector of the PIC in these matters, the issue of innocent police being wrongly accused of misconduct by the PIC would not have arisen.

Therefore, we are of the view that the Joint Parliamentary Committee in its current form does not have the necessary expertise in matters of judicial and procedural fairness and so would benefit in its deliberations by the presence of senior legal counsel.

We also hold the view the selection of the next PIC Commissioner should be, ideally a former Supreme Court judge who would bring to the position a deep appreciation of judicial and procedural fairness and readily and consistently apply those principles within the framework of the PIC Act.

It is not in the interests of the community of New South Wales to have honest, hardworking police treated unfairly by the Police Integrity Commission. In recent times, there has been a growing list of investigations conducted by the PIC that do not reach the standards that a sophisticated democracy expects. Critically, particularly given its role in overseeing the activities of police, the areas in which the PIC is faltering centre on the fundamental principles of law.

This is an area the PIC can ill afford to get wrong, particularly if it generates a perception amongst the police community that it is above the same laws and principles of fairness it correctly applies to the officers it investigates. Once that perception takes hold, the policy objectives of the PIC Act will be seriously and unnecessarily compromised.

In summary, we simply ask that the same rules of procedural fairness apply equally to the PIC as they do to the police it investigates and all other members of the community who are subject to our system of justice.

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Executive Member, Commissioned Police Officers Branch
NSW Police Association

31 August, 2010