



14 September 2010

Mr Les Tree
Deputy Director-General
Department of Premier & Cabinet
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Mr Tree

I refer to your undated letter and set out hereunder my submissions to the Review of the *Police Integrity Commission Act 1996* (the PIC Act).

At the outset, I should point out that the nature of the complaints with which I have to deal are, in the main, different from those dealt with by the Inspector of the Police Integrity Commission (the PIC Inspector).

The vast majority of the complaints received by me are to the effect that the Independent Commission Against Corruption (the ICAC) has failed to conduct an investigation of the complainant's allegations. Those received by the PIC Inspector are, in the main, alleging that the Police Integrity Commissioner has improperly conducted an enquiry and made findings adverse to the complainant.

There are, however, a number of aspects of the functions of the two Inspectors which are in common.

FIRST SUBMISSION

I note that section 89 of the *Police Integrity Commission Act 1996* does not include a function similar to that contained in paragraph (c) of subsection 1 of section 57B of the Independent Commission Against Corruption Act, namely;

“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 inclusion of such a function in section 89 would further clarify the Inspector's jurisdiction.

SECOND SUBMISSION

In its Report No. 9/54 - April 2010 the Committee on the Office of the Ombudsman and the Police Integrity Commission recommended:

"That the Minister for Police amend the *Police Integrity Commission Act 1996* so that, should the PIC Inspector make adverse comment in regard to the Police Integrity Commission and the Commission disagree with the Inspector's position, the Commission's response to that adverse comment be reproduced in full in the Inspector's complaint report."

With respect, I submit that such a recommendation overlooks the primary purpose of the Office of the Inspector and the nature of the relationship between the Commission and the Inspector. I agree that the findings of the Inspector should make reference to the submissions made by the Commissioner and to the fact that the Inspector rejects those submissions and also sets out the reasons why they are rejected.

I am aware that the PIC Inspector has made detailed submissions to your Committee on this point and I agree with and support his submissions.

THIRD SUBMISSION

It is submitted that the PIC Act be amended so as to clarify the person(s) to whom reports and recommendation may be made.

Under section 89 of the PIC Act the Inspector may audit the operations of the Commission and assess the effectiveness and appropriateness of the procedures of the Commission. But the Act is silent as to the person(s) to whom the results of the audit or assessment may be communicated.

The Inspector can deal with the specified classes of complaints only "by reports and recommendations". To whom are those reports and recommendations to be communicated?

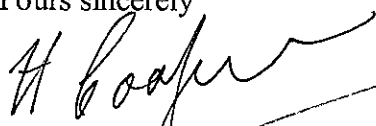
The word "reports" occurs only in section 89. Section 101 refers to a "special report" to the Presiding Officer of each House of Parliament. The distinction between a report and a special report is not defined in the Act.

If the Inspector were to make a finding of misconduct on the part of an officer of the PIC which was not serious or systemic it may be unreasonable to make a special report to the Presiding Officers. The more appropriate course could be to address the report containing the finding to the Commissioner and to the officer concerned. If the victim of the misconduct were a member of the public should he/she receive a copy of the report? It is at least arguable that the Act does not authorise the Inspector to publish the report to the Commissioner let alone to the member of the public with the possible consequence that his report loses the protection of absolute privilege under schedule 1 of the *Defamation Act 2005*.

To overcome this difficulty I suggest that the Inspector be given a general discretion to publish a report to the Commissioner and such other persons as he deems fit. In addition, the Inspector should continue to have power, in his discretion, to provide a special report to the Presiding Officer of each House of Parliament with a recommendation that the report be made public forthwith.

It is appreciated that a report could contain sensitive material describing the Commission's operational methods, sources of information and names of witnesses which need to be concealed in the public interest. To overcome this problem it is suggested that the Inspector be empowered, at his discretion, to publish an edited form of his report to persons other than the Commissioner. This should achieve the appropriate degree of security.

Yours sincerely



Harvey Cooper AM
Inspector