



***Inspector
of the
Police Integrity Commission***

Our Ref: CR-03 AC
Your Ref: M105537

13 August 2010

Ms Christabel Sheehan
Senior Policy Officer
Law Enforcement Policy Branch
Department of Premier and Cabinet
Level 8, 4-6 Bligh St
SYDNEY NSW 2000

Dear Ms Sheehan,

Re Review of Police Integrity Commission Act

I refer to the Deputy Director-General's letter to me dated 23 June 2010 in respect of this matter, and enclose herewith what I have described therein as a "Provisional Response" from myself in response to that letter, and the Terms of Reference, a copy of which was attached to the abovementioned letter. I will today forward a copy of these submissions to the Police Integrity Commission given the Commission's obvious interest in the subject matter.

I have attempted to keep my response as simple as possible, and I have assumed that the documentation referred to therein is readily available to the Review, and, on that basis, have merely referred to it (as distinct from providing copies thereof).

In addition, I have indicated, but not spelt out in detail, more general views I hold as to potential problems with certain provisions of the Act, rather than burden the Review with such details, at this stage, which might be considered to fall outside the Terms of Reference.

However, if additional detail or amplification in respect of these submissions is desired, please advise, and I will attend to the matter as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter J. Moss'.

The Hon P J Moss, QC
Inspector of the Police Integrity Commission

Encl: PIC Inspector's Provisional Response to the Review of the Police Integrity Commission Act 1996 pursuant to Section 146 of the Act

**Review of the Police Integrity Commission Act 1996 pursuant to
Section 146 of the Act**

PIC Inspector's Provisional Response

- 1) By letter dated 23 June 2010 from the Deputy Director-General, Department of Premier and Cabinet, I was advised that the Minister for Police had established a review of the *Police Integrity Commission Act 1996*.
- 2) Further that the review was pursuant to Section 146 of the Act and that a Report to Parliament was due by March 2011.
- 3) I was further advised by that letter that the Minister had requested that the review be undertaken by the Department of Premier and Cabinet, and attached to the letter was a copy of the Terms of Reference in respect of the review.
- 4) Finally, the letter advised me that any submissions from myself should be received by the Department by 31 August 2010.
- 5) As to the Terms of Reference referred to above, I note therefrom that the following *specific issues* have been formulated and will be considered in the review (in addition to the general efficacy of the Act) –
 - (i) Recent recommendations or issues raised by the Parliamentary Joint Commission (sic) on the Ombudsman and Police Integrity Commission; and
 - (ii) The adequacy of the powers, including the reporting powers, of the Inspector of the Police Integrity Commission.
- 6) As to (i) above, my understanding is that the recent recommendations of the Parliamentary Joint Committee referred to above, comprise two distinct subject matters, namely, a proposed amendment of the *Police Integrity Commission Act* in respect of the Inspector's powers to publish complaint reports concerning the Police Integrity Commission; and second, a recommendation in effect, that the Police Integrity Commission ought to have a right of reply to complaint reports by the Inspector criticising the procedures and practices of the Commission in regard to a particular complaint concerning the Commission received by the Inspector.
- 7) As to the proposed amendment of the Act to provide clarification of the Inspector's powers to publish complaint reports, I would refer to two letters from the then Minister for Police, The Hon Tony Kelly MLC, dated respectively 7 April 2009 and 13 May 2009, in each case addressed to myself, from which it is clear that an amendment has been proposed by the Minister with a view to clarifying the Inspector's powers to publish complaint reports concerning the Police Integrity Commission. I agree that such an amendment is desirable, and there has been considerable correspondence over many

months between myself and the Committee which sets out my detailed reasons for seeking such an amendment.

- 8) With respect to the second recommendation of the Parliamentary Joint Committee, mentioned above, it may be sufficient if I simply make reference to a letter from the Chair of the Committee, The Hon Kerry Hickey MP, addressed to myself and dated 10 August 2010, which makes it clear that particular submissions of mine to the Committee opposing that recommendation are to be referred by the Committee to the Minister's review of the *Police Integrity Commission Act*.
- 9) So far as the issue of the adequacy of the reporting or other powers of the Inspector are concerned, it is *not* my opinion that the Inspector's powers, apart from the clarification mentioned above, are inadequate in any relevant respect.
- 10) In particular, I am *not* of the view that the Act should be amended so that the Inspector's recommendations to the Police Integrity Commission, included in complaint reports critical of the Commission, should be other than recommendations. In other words, I am not of the view that the Commission should be compelled to act upon such recommendations, as distinct from having a discretion to do so.
- 11) Apart from the specific issues referred to in the Terms of Reference, and my response thereto, as indicated above, there are some general matters that I would seek to mention briefly at this stage, with a view to seeing whether a more detailed response is sought from me.
- 12) In summary, in investigating various complaints ultimately upheld concerning the Police Integrity Commission, and the subject of Reports compiled and published by me, I have noted that there are Sections of the Act, or wording contained therein, as to which there appears to be a difference of interpretation, or emphasis, between myself on the one hand, and the Police Integrity Commission, on the other.
- 13) The clearest example of such a difference of opinion appears to arise in respect of Section 97(2) and (3) of the *Police Integrity Commission Act*.
- 14) If requested to do so, I would be pleased elaborate on the nature of the differences that I perceive to exist, in this regard.

The Hon P J Moss, QC
Inspector of the Police Integrity Commission

13 August 2010