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NSW Ombudsman

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Our reference: ADM/721P02

Level 24 580 George Street
Sydney NSW 2000

Phone 02 9286 1000

Fax 02 9283 2911

Tollfree 1800 451 524

TTY 02 9264 8050

Web www.ombo.nsw.gov.au

ABN 76 325 886 267

Mr Les Tree
Deputy Director General
Department of Premier & Cabinet
GPO Box 5341
SYDNEY NSW 2001

Dear Mr Tree

Review of the Police Integrity Commission Act 1996.

Thank you for the invitation to make a submission to the review.

The Office of the Ombudsman is an independent statutory office whose operation is closely linked with the Police Integrity Commission ("the PIC"). Any proposed changes to the Police Integrity Commission Act ("the PIC Act") that relate to its functions with respect to the handling of, investigation of, or oversighting of complaints about police officers will invariably affect the jurisdiction of the Ombudsman and the operation of this office.

Any reforms of those aspects of the PIC Act must therefore be considered within the wider context of the police complaints system.

I note that the Committee on the Office of the Ombudsman and the Police Integrity System has consistently taken the view from as early as 2002¹ that it is opposed to any proposal to expand the PICs jurisdiction that would compromise its targeted corruption investigation focus.

The Committee conducted an exhaustive review of the current police complaints system in 2006 which coincided with the culmination of two statutory reviews of direct relevance to the unique system of police oversight in New South Wales, namely the review of the Police Act 1990 and the previous review of the Police Integrity Commission Act. The Committee's report clearly rejected a single agency model of oversight and endorsed the current dual model and recommended the preservation of the status quo in respect of the role and functions of the Ombudsman and the Police Integrity Commission within the police oversight system².

That position is fully supported by the Ombudsman.

Under the current system, the principal oversight body for the police complaints system is the Ombudsman. Over 5000 complaints are made under Part 8A of the

¹ Committee on the Office of the Ombudsman and the Police Integrity Commission, Report on the Sixth General Meeting with the Commissioner for the PIC, June 2002, p.xii.

² Committee on the Office of the Ombudsman and the Police Integrity Commission, Ten Year Review of the Police Oversight System in New South Wales, Report 16/53, November 2006, p.ix.

Ms Battilana



challenge for the NSW Force. In 2009/2010 twenty five police officers were removed from the Force and at least another four resigned directly as a result of disciplinary proceedings. In the complaint matters which were finalised during that year, 95 officers had been charged with a total of 300 criminal offences. In 66% of the 1145 police complaint investigations that were quality reviewed by the Ombudsman during the year, some form of management action was taken as a result of the investigation.

The complaint and oversight system therefore appears to be working well in terms of detecting misconduct and corruption and weeding out officers unfit to be members of the NSW Police Force. It is our submission that this success is a product of the sophistication of the oversight system and the vigilance with which it is enforced by the respective agencies. To maintain the generally high standard of professional conduct among police officers, it is imperative that we continue to have the legislative mechanisms available to the PIC and the other bodies involved in the police complaints system to continue the fight to minimise serious misconduct and corruption.

Apart from the issue relating to reporting mentioned below, we have no other specific submissions to make on the current provisions of the PIC Act so far as they relate to the operation and functions of the Police Integrity Commission.

A larger question arises as to whether it continues to be in the states best interest to fund a separate agency to function as the police anti-corruption agency or whether these functions could just as effectively be prosecuted by a combined PIC/ICAC. Certainly, there are potential savings to be made from the duplication of expensive infrastructure operated by both agencies such as covert surveillance teams, telecommunications interception and other covert technical resources. There is also potential synergy to be gained from combining expertise in corruption prevention and investigations. This is a matter of government policy, however, and probably beyond the scope of the current review.

The review is also to specifically address recent recommendations or issues raised by the Parliamentary Committee on the Ombudsman and the Police Integrity Commission and the adequacy of the powers, including the reporting powers, of the Inspector of the Police Integrity Commission.

We are aware of the differing views about the adequacy of the Inspector's reporting powers and note that the PIC supports changing the legislation to provide the Inspector with the power to publish complaint reports⁴. Given this is a core function of the Inspector, and for reasons of transparency and accountability, we support the legislation being clarified to make it clear that the Inspector may make a special report to the Presiding Officer of each House of Parliament at any time with respect to complaints about the Commission.

In the Committee's Report No 9/54 of 2010, it recommended that the PIC Act be amended to provide that where the PIC Inspector makes adverse comment in regard to the PIC and the PIC disagrees with the Inspector's position, the Commission's

⁴ Police Integrity Commission, Answers to Questions on Notice No 3, see Appendix 1 of Committee on the Ombudsman and the Police Integrity Commission, Report on an Inquiry into the Handling of Complaints Against the Police Integrity Commission, Report No 9/54 April 2010.

Police Act each year. Pursuant to section 121 of the Police Act, the PIC and the Ombudsman (following consultation with the Commissioner of Police) have developed a guideline which identifies the class of police complaints that contain allegation of police misconduct that are deemed to be of such a level of seriousness that they are required to be notified to the Ombudsman for oversight. A related guideline made under s122(2) of the Police Act determines which other matters need not be dealt with under Part 8A and may be handled directly by local area commands.

In the 2009/2010 financial year, this resulted in a pool of 3032 notifiable complaints that contained allegations of serious police misconduct. Following further analysis, the Ombudsman either directed or agreed with a decision already taken by the Commissioner to investigate approximately two thirds of these. The net pool of notifiable complaints that were investigated or made the subject of informal resolution by police in 2009/2010 and directly oversights by the Ombudsman was 1896. In contrast the PIC took over the investigation of 14 matters and oversights another 7 complaints received during the year.

That is, in the last financial year, the Ombudsman oversights 99% of all notifiable police complaints whereas the PIC investigated or monitored 1% of such complaints. The Ombudsman therefore provides the primary external oversight of police complaint investigations. This enables the PIC to dedicate itself to the investigation and prevention of serious police misconduct and corruption.

The distinct roles of the PIC and the Ombudsman therefore complement each other in terms of the oversight of police misconduct without leading to any duplication of effort.

The current provisions of the PIC Act facilitate the complimentary roles of the PIC and Ombudsman with respect to the police complaints system. The referral and information disclosure provisions of the Act in particular facilitate the close working relationship the agencies enjoy. They permit the exchange of relevant information that enables each to focus on its core functions while ensuring that any individual matter that comes to the attention of either agency that requires investigation or oversight is properly supervised by one agency or the other.

The respective roles of the PIC and the Ombudsman were a product of the recommendation of the Wood Royal Commission which recognised that there were different approaches required for the supervision of the complaint system and for corruption investigation. It noted in particular that "a focussed, sophisticated and aggressive approach [was] required to uncover and combat serious police misconduct and corruption"³ and this has become the *raison d'être* for the PIC.

The Ombudsman agrees with this view and supports the current provision of section 13(2) that the PIC as far as practicable is required to turn its attention principally to serious police misconduct.

It is our submission that the policy objectives of the PIC Act remain valid. Corruption and misconduct have never managed to be eradicated in any police force in the world and are an inevitable by-product of the discretionary exercise of significant powers and the nature of policing. Police misconduct continues to be a serious problem and

³ Royal Commission into the New South Wales Police Service, Interim Report, February 1996, p.91.

response to that adverse comment be reproduced in full in the Inspector's complaint report⁵.

The Public Finance and Audit Act sets a precedent for such a provision in section 38C (3) which provides that reports on performance audits of agencies by the Auditor General that are tabled in Parliament need to include any submissions or comments made by the Head of the authority or a summary, in an agreed form, of any such submissions or comments.

Such a provision is a kind of safety net to ensure a degree of procedural fairness. In our view, it is preferable to provide for procedural fairness as part of the investigation process itself. The Ombudsman Act places such an obligation upon the Ombudsman before making any report. Section 24(2) of the Ombudsman Act provides:

- (2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable:
 - (a) inform that person of the substance of the grounds of the adverse comment, and
 - (b) give the person an opportunity to make submissions.

Given the controversy that led to the Committee's recommendation, it may be opportune for the review to consider whether such a provision be incorporated into the PIC Act with respect to the exercise of the reporting powers of both the Police Integrity Commission and the Inspector.

I note that an interim report is to be provided to the Minister for Police by the end of 2010 with a final report to be tabled in Parliament by March 2011. If any matters are identified in the interim report that are likely to have impact on the oversight of the current police complaints system or the relationship between the PIC and this office, I would appreciate being provided with a copy of the interim report and the opportunity to make a further submission if needed.

Similarly, if any submissions received by the review go to any issue relating to the operations or practices of my office in respect to the police complaints system, I would appreciate the opportunity to review them and provide comment where needed.

Yours sincerely



Bruce Barbour
Ombudsman

3/8/10

⁵ Committee on the Ombudsman and the Police Integrity Commission, Report on an Inquiry into the Handling of Complaints Against the Police Integrity Commission, Report No 9/54 April 2010, page v.