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1. BACKGROUND TO REVIEW

INTRODUCTION

- 1.1 The *Police Integrity Commission Act 1996* (“the PIC Act”) commenced in full in 1997. In December 2002 the Director General of the Ministry for Police presented to the Minister a Report on the Review of the PIC Act, undertaken pursuant to s 146 of that Act (“the 2002 Review”).
- 1.2 Since the 2002 Review there have been 19 Acts passed by Parliament that have amended the PIC Act. The amending Acts have been in the form of both minor amendments and significant changes to the functions and operation of the Commission.

THE 2002 REVIEW

- 1.3 The 2002 Review made 26 recommendations in total. Of these 21 recommended amendments or changes to the PIC Act, three recommended that sections be left unchanged.
- 1.4 The table at Appendix 1 lists each recommendation, whether it was implemented and the detail of its implementation. Out of the 21 recommendations, 13 were implemented through legislative amendments. The three recommendations that proposed no change to sections of the PIC Act were all followed.
- 1.5 Many of the implemented recommendations involved mechanical changes to the operation of the Act, of note however are the following changes, discussed in more detail below:
 - the broadening of Police Integrity Commission’s (hereafter referred to as “the Commission” or “PIC”) jurisdiction to cover unsworn civilian employees of the New South Wales Police Force (“the NSWPF”);
 - reforms of the complaint management system;
 - changes to the requirements of proof for the s107 offence “false and misleading evidence”; and
 - removing the need for the Minister of Police’s consent where a NSWPF officer is required to exercise a power under the Act.
- 1.6 The recommendations that were rejected concerned changes to the PIC Act regarding:
 - the exercise of the Commission’s powers to conduct, continue or discontinue investigations;
 - the manner in which the Commission deals with legal professional privilege;

1. BACKGROUND

- the ongoing operation of s56 secrecy obligations (except regarding the referral of information to other investigative agencies – see Recommendations 17 & 18);
 - giving the Inspector of the PIC (“the Inspector”) the ability to exercise the Commission’s jurisdiction when a conflict of interest arises;
 - ensuring a person can be legally represented before a hearing of the Inspector; and
 - the ability of police officers to disclose information to the Commission.
- 1.7 A detailed table documenting each amendment to the PIC Act since the 2002 Review and the result of those amendments is attached to this submission (Appendix 2).
- 1.8 The 2002 Review also recommended that the Inspector review the practices and procedures of the Commission’s investigations. The Inspector’s review of these matters found the procedures to be adequate and broadly recommended that they continue as presently constituted.

MAJOR AMENDMENTS TO THE PIC ACT SINCE THE 2002 REVIEW

EXPANSION OF THE COMMISSION’S JURISDICTION TO COVER ADMINISTRATIVE OFFICERS

- 1.9 This amendment was introduced by the *Independent Commission Against Corruption Amendment Act 2005* and then the *Police Integrity Commission Amendment Act 2006* on 14 April 2005 and 28 September 2006.
- 1.10 The Commission’s complaints jurisdiction was extended to cover both sworn and unsworn employees of the NSWPF.
- 1.11 The amendment was initially implemented by the *Independent Commission Against Corruption Amendment Act 2005* which held that a “reference in this Act to a police officer includes a reference to any member (whether or not a police officer) of NSW Police”.
- 1.12 This approach had unintended consequences when combined with the numerous references to police officers throughout the PIC Act. A more comprehensive revision of the PIC Act was required to address the anomalies that arose and this was implemented by the *Police Integrity Commission Amendment Act 2006* which made a number of changes to definitions and operational sections of the Act.
- 1.13 These amendments implemented Recommendation 3 of the 2002 Review.

CHANGES TO TIME LIMITS REQUIRED TO START PROCEEDINGS FOR CERTAIN OFFENCES UNDER THE ACT

- 1.14 This amendment was implemented by the *Police Integrity Commission Amendment Act 2006* on 28 September 2006.
- 1.15 A number of offences had the time limit for the initiation of proceedings expanded from the general period of 6 months, as specified in the PIC Act, to 3 years. These were offences under:
- section 25; and
 - sections 52, 53, 54 and 56.
- 1.16 Later the *Statute Law (Miscellaneous Provisions) Act (No 2) 2007* added offences against section 26 to this category.

RATIONALISATION OF THE COMPLAINT REFERRAL SYSTEM FROM THE NSW POLICE FORCE

- 1.17 This amendment was introduced by the *Police Amendment (Miscellaneous) Act 2006* on 22 November 2006.
- 1.18 Sections in the PIC Act which regulated the referral of Category 1/ Category 2 complaints were changed to rationalise the manner in which complaints against NSWPF officers received by the NSWPF were conveyed to the Commission. This amendment was intended to “remove an unnecessary bureaucratic hurdle for police dealing with complaints.”¹ It was noted that “the Police Integrity Commission already has access to the NSW Police complaints data base, which enables it to look at every complaint against NSW Police and take over the investigation of any complaint it chooses, irrespective of whether it is classified as Category 1 or Category 2. The proposed amendment will merely formalise this more efficient process”.²
- 1.19 This amendment responded to recommendation 15 of the 2002 Review.

EXPANSION OF THE COMMISSION’S JURISDICTION TO COVER COMPLAINTS AGAINST THE NEW SOUTH WALES CRIME COMMISSION

- 1.20 This amendment was introduced by the *Police Integrity Commission Amendment (Crime Commission) Act 2008* on 1 July 2008.
- 1.21 The Commission’s jurisdiction was expanded to include investigation and prevention of misconduct by New South Wales Crime Commission (“the NSWCC”) officers. This amendment did not arise as a result of the 2002

¹ The Hon Eric Roozendaal MLC, Second reading speech for *Police Amendment (Miscellaneous) Act 2006*, Hansard, 14 Nov 2006, p. 3176

² *ibid*

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Review but in response to the arrest and charging of a senior NSWCC officer with drug supply offences in June 2008.

MINOR AMENDMENTS TO THE ACT

OTHER AMENDMENTS IMPLEMENTING RECOMMENDATIONS OF THE 2002 REVIEW

1.22 The following amendments were implemented by the *Police Integrity Commission Amendment Act 2005* on 10 March 2005.

- Changing the objects of the PIC Act so its objectives were to create an “independent, accountable body” - implementing recommendation 2 of the 2002 Review
- Determining that s56 secrecy obligations attach only to information distributed to other law enforcement agencies where the Commission specifies that such obligations should so attach – implementing recommendations 17 and 18 of the 2002 Review
- Introducing a similar means of proof for s107 offences that exists for perjury offences (detailed in s331 of the *Crimes Act 1900*) – implementing recommendation 13 of the 2002 Review
- Allowing the service of documents by fax – implementing recommendation 22 of the 2002 Review
- Removing the need for approval of the Minister where a NSWPF officer is required to exercise functions under, or for a purpose of, the PIC Act. Requiring the Commission to notify the Inspector in such a case – implementing, in part, recommendation 8 and 9 of the 2002 Review (the Review had recommended that it be the Minister that was notified)
- Allowing the Commission to apply for an order for the destruction of documents within its possession – implementing recommendation 23 of the 2002 Review
- Changes to PIC Act to facilitate employment of staff under the *Public Sector Employment and Management Act 2002* – implementing recommendation 7 of the 2002 Review (Note this amendment is contained in the *Public Sector Employment Legislation Amendment Act 2006*)
- Requiring the PIC Act to be reviewed at regular five year intervals – implementing recommendation 26 of the 2002 Review.

1.23 The following amending Acts made incidental amendments to the PIC Act such as updating references to the PIC Act, removing obsolete provisions and updating definitions of certain terms to make the Act consistent with other legislation:

- *Australian Crime Commission (New South Wales) Act 2003*
- *Statute Law (Miscellaneous Provisions) Act 2003*

- *Statute Law (Miscellaneous Provisions) Act 2004*
- *Statute Law (Miscellaneous Provisions) Act 2005*
- *Statute Law (Miscellaneous Provisions) Act (No 2) 2005*
- *Statute Law (Miscellaneous Provisions) Act 2006*
- *Surveillance Devices Act 2007*
- *Police Amendment Act 2007*
- *Statute Law (Miscellaneous Provisions) Act (No 2) 2007*
- *Miscellaneous Acts (Local Court) Amendment Act 2007*
- *Statute Law (Miscellaneous Provisions) Act 2008*
- *Court and Crimes Legislation Further Amendment Act 2008*
- *Statute Law (Miscellaneous Provisions) Act (No 2) 2008*
- *Statute Law (Miscellaneous Provisions) Act (No 2) 2009*

1.24 Details of amending Acts are contained in the attached table (see Appendix 2).

REPORTS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE PIC

CHANGING OF S10(5) PROHIBITING THE PIC FROM HIRING FORMER OR CURRENTLY SERVING NSWPF OFFICERS

- 1.25 Consideration and discussion has taken place since the 2002 Review on whether s10(5) of the PIC Act, prohibiting the Commission from employing current or serving NSWPF officers, should continue in its current form.
- 1.26 The 2002 Review recommended that the section remain in its current form until such time as Operation Florida had been fully assessed and that further PIC submissions should be considered by the Minister for Police and the Committee on the Office of the Ombudsman and the PIC (“the Committee”), (Recommendation 4.)
- 1.27 The Committee conducted a further inquiry on s10(5) in two phases with the final report being tabled in November 2006. The conclusion of that report was that s10(5) should remain in its current form.³

TEN YEAR REVIEW OF THE POLICE OVERSIGHT SYSTEM

- 1.28 The Committee conducted a ten year review of the police oversight system which was tabled in Parliament in November 2006.⁴

³ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Interim Report on an Inquiry into Section 10(5) of the Police Integrity Commission Act 1996*, 22 May 2005 & *Phase Two of an Inquiry into Section 10(5) of the Police Integrity Commission Act 1996*, November 2006

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1.29 That review recommended that:

- the PIC and the Ombudsman retain their existing roles in the oversight system (Recommendation 1)
- there be further statutory recognition in the *Police Act 1990* of the PIC as the body for investigating serious police misconduct and corruption (Recommendation 2)
- the PIC should make greater use of its statutory functions of drawing attention to areas of police conduct and operations that would benefit from corruption prevention strategies and prevention initiatives (Recommendation 12)
- the PIC consult with the Independent Commission Against Corruption (“the ICAC”) with a view to collaboration and mutual assistance in implementing Rec 12 (Recommendation 13)
- the PIC Act should be amended to clarify that the Inspector is able to report to Parliament at his discretion in relation to any of his statutory functions (Recommendation 16)
- the PIC Act should be amended to make express provision for the Inspector to report to Parliament, as he considers necessary, on any abuse of power, impropriety and other forms of misconduct on the part of the PIC or its officers, regardless of whether or not these matters arise from the making of a complaint to the Inspector (Recommendation 17)

PROCEDURE FOR EXAMINING COMPLAINTS AGAINST THE POLICE INTEGRITY COMMISSION.

1.30 The Committee tabled a report on 22 April 2010 on the result of its inquiry “into the way in which complaints made against the Commission are examined and the procedures used to facilitate this.”⁵

1.31 The report contained one recommendation namely that:

RECOMMENDATION 1: 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.

1.32 Further discussion of the role of the Inspector is contained in Chapter 3 of this submission.

⁴ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Ten year review of the Police Oversight System in NSW*, November 2006

⁵ Terms of Reference, PJC, *Report on an Inquiry into the handling of complaints against the Police Integrity Commission*, April 2010, p.ii

2. THE BUSINESS OF THE POLICE INTEGRITY COMMISSION

STAND ALONE OVERSIGHT OF THE NSWPF

- 2.1 Notwithstanding the demonstrable improvement in the ethical health of the NSWPF since the end of the Wood Royal Commission into the NSW Police Service and the establishment of the PIC in 1997 the period since has highlighted the continuing need for independent oversight of the NSWPF by a stand alone dedicated body that retains a capacity (including the use of coercive powers) to detect and investigate the more serious allegations of police misconduct.
- 2.2 In the period following the introduction of the amendments arising from the 2002 Review (June 2005 to June 2010) the Commission has received and assessed almost 6000 complaints alleging police misconduct or other misconduct and undertaken 192 investigations.⁶ Arising from those investigations, briefs of evidence have been forwarded to the DPP for consideration of prosecution action resulting in charges being laid against both police officers and other persons for offences ranging from pervert the course of justice, supply prohibited drug, robbery whilst armed, aggravated break and enter, conspiracy to demand money with menaces, obtain money by deception, bribery, money laundering fraud offences as well as offences of give false or misleading evidence under the PIC Act.
- 2.3 To this extent the PIC's experience has been similar to that of the ICAC, the body from which the PIC assumed the responsibility for investigating and preventing police misconduct. When introducing the legislation establishing the ICAC into the Parliament in 1988 then Premier Greiner said:
- Indeed, in the long term I would expect [ICAC's] primary role to become more and more one of advising departments and authorities on strategies, practices and procedures to enhance administrative integrity. In preventing corruption in the long term, the educative and consultancy functions of the commission will be far more important than its investigatory functions.⁷
- 2.4 Just as the experience of the ICAC in the period since its establishment has not borne out this expectation, in that its investigative work has continued to occupy the bulk of its activities, so it is with the PIC as regards its major emphasis on detecting and investigating serious police misconduct.

COMPLAINTS AGAINST POLICE OFFICERS

- 2.5 The investigation of complaints of serious police misconduct therefore remains the primary focus of the Commission's activities

⁶ For the period June 2007 to June 2010 a further 253 preliminary investigations were also undertaken. Recording of Preliminary investigations as a category of investigation commenced for the 2007 Annual Report.

⁷ Second Reading speech, ICAC Bill 1988 Legislative Assembly, (Parliament of NSW), Hansard, 26 May 1988

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- 2.6 As noted in paragraph 1.18 above the system for classification of police complaints was streamlined in 2006. The PIC has access to the NSWPF complaints database and is able to take over the investigation of any complaint at any time. When the PIC takes over the investigation of a complaint the NSWPF and the Ombudsman are notified in writing and the NSWPF ceases investigation under part 8A of the *Police Act* 1990 and the Ombudsman ceases oversight of the investigation. The system of notification between the three agencies is a well-established one which works smoothly and transparently. In addition regular liaison meetings between representatives of the three agencies take place and this removes the potential for overlap or duplication in the investigation and oversighting of complaints.
- 2.7 As noted in paragraphs 1.28-1.29 above the Committee tabled a report in November 2006 following a 10 year review of the police oversight system and recommended that the PIC and the Ombudsman retain their respective roles in the oversight system.
- 2.8 Vital to any integrity agency charged with the responsibility for detecting and investigating allegations of misconduct is awareness of or getting access to complaint related information or allegations suggesting misconduct. It is often observed that misconduct and corruption are covert activities that generally occur in private between consenting parties; this makes the task of discovering or unearthing the misconduct all the more challenging. Agencies such as the PIC are therefore heavily reliant on suspicious activity being brought to their attention.
- 2.9 Section 75D of the PIC Act was introduced in 2008 as part of the raft of amendments contained in the *Police Integrity Commission Amendment (Crime Commission) Act 2008* giving the Commission the responsibility for the investigation and prevention of misconduct by officers of the NSWCC. That section provides as follows:
- 75D Duty to notify PIC of possible misconduct of Crime Commission Officers**
- (1) This section applies to the following officers:
 - (a) the Crime Commissioner,
 - (b) the Commissioner of Police,
 - (c) the principal officer of a public authority,
 - (d) an officer who constitutes a public authority.
 - (2) An officer to whom this section applies is under a duty to report to the PIC any matter that the officer suspects on reasonable grounds involves or may involve misconduct of a Crime Commission officer.
 - (3) The PIC may issue guidelines as to what matters need or need not be reported.
 - (4) This section has effect despite any duty of secrecy or other restriction on disclosure.
- 2.10 Section 75D is similar in terms to section 75B which provides for a like duty to notify the PIC of possible corrupt conduct of administrative officers (as defined

in section 4(1) of the PIC Act). Section 75B has two additional sub sections defining the reference to “principal officer of a public authority” (ss5) and “public authority” (ss6).

- 2.11 The terms of both section 75B and section 75D are taken from section 11 of the ICAC Act which provides for a duty on principal officers to notify the ICAC of possible corrupt conduct. Prior to the respective legislative changes that brought “administrative officers” of the NSWPF (or so called unsworn officers) and officers of the NSWCC under the oversight jurisdiction of the PIC, these two classes of officers were “public officials” for the purposes of the ICAC Act and thereby subject to the oversight jurisdiction of the ICAC.
- 2.12 The combined effect of these changes as reflected in sections 75B and 75D of the PIC Act is that the officers listed in sub section 1 of each of these sections (effectively encompassing the whole of the NSW public sector given the reference to principal officers of a public authority and an officer who constitutes a public authority) are under a statutory duty to notify the PIC of any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct of an administrative officer (s75B) or misconduct of a NSWCC officer (s75D).
- 2.13 This creates the somewhat anomalous position (unintended it would seem) whereby there is no corresponding obligation on these public officials to notify the Commission of similar misconduct by a police officer although police misconduct remains the principal statutory concern of the Commission (see section 13 of the PIC Act).
- 2.14 There are a number of public authorities whose officers might be more likely to observe first hand or be made aware of suspected police misconduct in the course of their duties (for example officers of the Departments of Corrective Services, Juvenile Justice and Community Services as well as other agencies such as the Director of Public Prosecutions) but whose principal officers are not thereby under a duty to notify the Commission of these matters although they have a duty to do so if it involves conduct within sections 75B or 75D.
- 2.15 The Commission submits that if it is appropriate to create a duty on principal officers to notify the Commission of suspected corrupt conduct or misconduct involving officers of the kind referred to in sections 75B and 75D respectively, then to fill the gap that remains it would be appropriate and relatively straightforward to extend that duty to encompass matters involving suspected misconduct by a police officer as well.
- 2.16 Given the combined effect of section 11 of the ICAC Act and sections 75B and 75D of the PIC Act it could not be said that to extend the duty of principal officers in this way would add an undue burden on these officers. Moreover, it would serve to enhance the principal functions of the Commission as reflected in section 13 of the PIC Act.

RECOMMENDATION: That the PIC Act be amended to extend the duty on principal officers and officers who constitute a public authority to notify the PIC of corrupt conduct by administrative officers of the NSWPF and misconduct by officers of the NSWCC to also include suspected misconduct by police officers.

COMPLAINTS AGAINST SPECIAL CONSTABLES

- 2.17 As noted above, since the 2002 Review the PIC Act has been amended to expand the jurisdiction of the PIC to include corrupt conduct by NSWPF administrative officers and misconduct by NSWCC officers. The PIC does not have jurisdiction over Special Constables of Police however from time to time questions arise as to where responsibility should lie for overlooking complaints of misconduct against these officers.
- 2.18 The PIC understands that complaints against Special Constables are handled by NSWPF. The PIC has never taken the view that this inevitably leads to PIC having natural jurisdiction for overlooking such complaints. This is because the Special Constables are not employees of the NSWPF, rather they are more properly characterised as public officials. Many Special Constables perform duties quite unrelated to the operations of the NSWPF. In the event, however, that the status of Special Constables is reviewed and a new statutory regime proposed whereby the PIC is responsible for overlooking the investigation of complaints against those Special Constables who perform security duties for the NSWPF then the PIC would have no opposition to being part of that legislative scheme.

INVESTIGATION OF OTHER INDIVIDUALS

- 2.19 In the decision of *Shaw* ([2006] NSWCA 165) the NSW Court of Appeal clarified the extent to which the PIC might, in the course of an investigation into police misconduct, inquire into and report upon the conduct of persons who were not police officers. Giles JA, (with whom Hodgson JA agreed) held that conduct of other persons besides police officers was properly within the scope of the PIC's investigative powers if that conduct was relevant to the investigation of police misconduct. This meant that the Commission could still publish an investigative report about the conduct of a person other than a police officer even if there was found to be no police misconduct.
- 2.20 In clarifying the nature and extent of the Commission's powers, particularly under section 16 of the PIC Act, the Commission endorses the decision of the Court of Appeal in *Shaw*. The Commission does not consider there is any need for legislative change in response to the decision.

SPECIAL POWERS AND WEAPONS

- 2.21 Section 124 of the PIC Act provides that Commission investigators and surveillance officers who are seconded police officers or approved former police officers⁸ are exempt from the requirement to hold a permit or licence in relation to semi-automatic pistols, handcuffs and body armour vests. The purpose of this provision is to ensure that Commission investigators and surveillance officers can carry the police equipment necessary to perform their duties safely and without the need for the approval of the Commissioner of Police. Commission officers are only issued with this equipment when operational circumstances require it, such as when executing search warrants
- 2.22 Since the commencement of the PIC Act there have been a number of developments in police practice regarding equipment for dealing with conflict situations. Following the shooting death of Ron Levi in 1997, police in many jurisdictions moved to better train and equip their officers with non-lethal alternatives so that the least degree of force necessary could be deployed to deal with a conflict situation. NSWPF officers were equipped with oleoresin capsicum spray in 1999.
- 2.23 Capsicum spray (or “anti-personnel spray”) and batons are now standard tactical options for NSWPF officers in the field. Commensurate with this, the training of officers in the appropriate use of weapons and other approaches such as conflict de-escalation has also developed significantly. Officers of the Commission also engage in such training, provided by specialist instructors from an independent law enforcement agency.
- 2.24 This has led to an anomaly as Commissioner officers are trained in the use of anti-personnel spray and batons but these items are not exempted under s 124 of the PIC Act in the same way that semi-automatic pistols, handcuffs and body armour vests are. Commission investigators and surveillance officers must presently hold a permit approved and issued by the Commissioner of the NSW Police Force in order to possess and use anti-personnel spray and batons. It is submitted that s 124 of the Act should be amended so that the exemption from the requirement to hold a permit is extended to batons and anti-personnel spray in the case of Commission officers who are seconded police officers or approved former police officers. It is further submitted that the reference in subsection 124(2) of the PIC Act to the *Prohibited Weapons Act 1989* should be amended to the *Weapons Prohibition Act 1998*, to reflect the change in the title of that legislation.

⁸ Persons who have served for at least five years as police officers in specified jurisdictions.

RECOMMENDATION: That s124 of the PIC Act be amended to replace the reference to the *Prohibited Weapons Act 1989* with a reference to the *Weapons Prohibition Act 1998*. Further that s124 be amended to include batons and anti-personnel spray in the exemption from the requirement to hold a permit in the case of Commission officers who are seconded police officers or approved former police officers.

PREVENTION, EDUCATION AND RESEARCH

2.25 Pursuant to section 13(1)(a) of the PIC Act one of the principal functions of the Commission is to prevent serious police misconduct and other police misconduct. Other functions of the Commission pursuant to section 14 also include undertaking inquiries into or audits of any aspect of police activities, and to make recommendations concerning police corruption education programs, police corruption programs and similar programs and generally to advise police and other authorities on ways in which police misconduct may be eliminated.

2.26 Over the years the Commission has built up an extensive body of specialist skills and expertise in the field of preventing police misconduct. The Commission has gradually increased the level of work it undertakes under this legislative function. There has also been a corresponding increase in the level of engagement and collaboration with the NSWPF in the common pursuit of identifying weaknesses in systems and processes that represent a risk of misconduct and devising strategies to address and minimise these risks. The table below details the prevention and research papers published by the Commission in the last five years;

Research & Issues Papers	
Date	Title
13 October 2008	Developing an Early Intervention System for Police Misconduct in a Law enforcement Agency
13 October 2008	Unauthorised Disclosure of confidential Information by NSW Police Officers
27 October 2008	Project Marrella: Is misconduct by NSW police officers affected by the number of students in a training intake at the NSW Police college?
12 March 2010	Characteristics of complaints about misconduct by off duty NSW police officers
5 May 2010	Improper Associations in the NSW Police Force: a Review of Compliance with Policies and Guidelines

Research & Prevention Reports	
Date	Title
30 September 2005	Operation Abelia – Volume 1 – Summary Report Research and Investigations into Illegal Drug Use by Some NSW Police Officers
30 September 2005	Operation Abelia – Volume 2
30 September 2005	Operation Abelia – Volume 3
30 September 2005	Operation Abelia – Volume 4 Appendices
30 September 2006	Management of Misconduct Risks by the NSW Police Counter Terrorist Coordination Command
22 September 2009	Project Odin – Identifying and Managing High Risk Officers in the NSW Police Force
25 November 2009	Project Manta – Preventing corruption in the NSW Police Force

AUDIT AND NSWCC

- 2.27 The Commission considers that the existing provisions of the PIC Act are effective and appropriate for it to continue its work in preventing police misconduct. There is however one aspect of its prevention functions in relation to the NSWCC where further change would complement its existing statutory functions as regards police misconduct.
- 2.28 As noted in paragraph 2.25 above, in relation to the NSWPF the Commission has a specific audit function pursuant to section 14(a) of the PIC Act. This audit capacity forms an important part of the Commission's principal legislative function of preventing serious police misconduct and other police misconduct.
- 2.29 The Commission's functions in respect of misconduct by officers of the NSWCC is provided for in section 13B of the PIC Act but is limited to prevention (ss(1)(a)), and detection and investigation (ss(1)(b)) and does not specifically refer to a function of undertaking audits. While that function might reasonably be considered to come under the heading of prevention, an audit is a distinct kind of activity; auditing allows for proactively monitoring and reviewing selected activities of an agency and to identify issues including governance and control frameworks within agencies before there is a requirement for major remedial action. This is particularly so in the case of an organisation like the NSWCC which has significant coercive powers and which may therefore be susceptible to greater risk of abuse.
- 2.30 The Commission recently completed a major review of the capacity of the NSWCC to identify and manage serious misconduct risks. As part of that

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review the Commission identified a number of high risk activities undertaken by the NSWCC that it plans to monitor as part of a wider audit program. Specifically providing for an audit function in relation to the NSWCC would clarify the Commission's activities in this area. Given the wide prevention and research functions that the ICAC has in relation to all other public authorities and officials under section 13 of the ICAC Act such a change to the PIC Act would align the NSWCC with the rest of the public sector including the NSWPF.

RECOMMENDATION: That section 13B of the PIC Act be amended to specifically provide for an audit function in relation to the NSWCC.

3. THE INSPECTOR OF THE POLICE INTEGRITY COMMISSION

- 3.1 Part 6 of the PIC Act creates the position of Inspector of the Police Integrity Commission (the Inspector). The principal functions of the Inspector are provided for in section 89 and the Inspector's powers in section 90 of the PIC Act.

ADEQUACY OF THE INSPECTOR'S POWERS

- 3.2 In addition to the general efficacy of the PIC Act, the terms of reference for this Review identify as a specific issue for consideration the adequacy of the powers, including the reporting powers, of the Inspector. While not stated, it would appear that the impetus for consideration of this specific issue lies in recent reports of the Inspector, with which the Commission does not agree, upholding complaints against the Commission of breaches of procedural fairness in three investigation reports.⁹
- 3.3 The existing provisions of the PIC Act appear to contemplate that there may remain disagreement between the Commission and the Inspector as to the outcome of a complaint considered by the Inspector. This is so in that there is no power in the Inspector to direct the Commission to accept a finding arising from the outcome of complaint or to act on any related recommendation.
- 3.4 In this respect the Inspector's position is no different to that of the Commission vis a vis the NSWPF, as the Commission has no power of direction over the NSWPF as regards any findings it may make in relation to a complaint or any related recommendation for further action thereby arising. The Commission supports this position as regards its relationship with the NSWPF and does not seek any change.
- 3.5 To the extent that it is suggested that a means of resolving the position between the Inspector and the Commission is to amend Part 6 of the PIC Act to give the Inspector a power of direction over the Commission, the Commission does not support such a proposal. In this respect it is to be observed that the current Inspector in his submission to this Review dated 13 August 2010 (a copy of which was provided to the Commission at the time it was provided to the Review) also does not support such a proposal.
- 3.6 Where the Commission disagrees with the Inspector as to the outcome of a particular complaint and any related recommendations it does not do so lightly and only after careful and extensive deliberation. The recent matters where there has been disagreement between the Commission and the Inspector have been confined to a discrete issue, largely legal in nature (the nature and extent of the rules of procedural fairness and the application of

⁹ See Inspector's Special Report to Parliament under s101 of the Act presented 2 April 2009

3. INSPECTOR OF THE PIC

those rules in certain contexts) and the frequency of those disagreements has diminished over time.

- 3.7 As a response therefore to what in effect has been a temporary and narrowly confined set of circumstances the Commission does not consider that any proposals to vest the Inspector with the power to compel or direct the Commission to act on the Inspector's findings or recommendations represents sound policy making. Such a power would also serve to give the Inspector the appearance if not the actual character of an appellate court and thereby fundamentally realign the nature of the relationship between what are properly recognised in the PIC Act as two separate yet equally independent bodies.
- 3.8 The Commission does however support amending the PIC Act to make it clear that the Inspector's reports may be made public as previously recommended by the Committee.
- 3.9 Allied with this change however, where such a report contains criticisms or conclusions which the Commission does not accept, the Inspector's final report should also refer to if not include as an annexure the submissions of the Commission as to the relevant points of disagreement. In the Commission's view, given the important relationship between the Commission and the Inspector, it is in the public interest for the basis of any disagreement to be made known and it would also assist in maintaining public confidence in the effective operation of that relationship.
- 3.10 In this respect, the Commission endorses the views of the Joint Standing Committee on the Corruption and Crime Commission of the Western Australian Parliament (the JSC) in its Report on the Relationship between the Parliamentary Inspector and the Commissioner of the (WA) Corruption and Crime Commission. That Report dealt with a dispute between the Commissioner of the Corruption and Crime Commission and the (former) Parliamentary Inspector as to the functions, powers and responsibilities of the Corruption and Crime Commission and the Parliamentary Inspector as they pertain to each other.
- 3.11 The JSC recommended, inter alia, that in any report prepared by the Parliamentary Inspector that is critical of the Corruption and Crime Commission, the Parliamentary Inspector include in his report all Corruption and Crime Commission submissions as to the Parliamentary Inspector's adverse comments¹⁰.
- 3.12 While there are subtle differences in the relationships between the Parliamentary Inspector, the JSC and the WA Corruption and Crime Commission compared to the similar bodies under the PIC Act, the policy reasons behind the recommendation as discussed in the JSC's report are in the

¹⁰ Joint Standing Committee on the Corruption and Crime Commission Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission, Report No 2, 38th Parliament, March 2009, recommendation 1 at page 38.

Commission's view, equally applicable to legislative scheme governing the relationship between this Commission and its Inspector.

- 3.13 That this is so is reflected in the recent Report of the Committee on an inquiry into the handling of complaints against the Police Integrity Commission (report No 9/54 – April 2010). In that Report the Committee recommended as follows;

That the Minister for Police amends 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 [emphasis added]

- 3.14 At paragraphs 4.7 to 4.9 of its Report, similar to the position adopted by the JSC in Western Australia as referred to above, the Committee set out the wider important public policy rationale that lay behind this recommendation and at paragraph 4.7 commented as follows;

The Committee agrees that, where there is a substantive difference of opinion, the Commission's views on the Inspector's opinions and conclusions in his complaint investigation reports should be on the record, for the information of the complainant in particular but also for the reports' wider audience. It seems appropriate for both the Inspector's and the Commission's views on the matter to be available in the one document, i.e the Inspector's complaint report. [emphasis added]

- 3.15 It is clear that the Committee did not envisage there would be any distinction drawn between versions of the Inspector's reports, be it either a report posted to the Inspector's website and the report which may be made public (or presented to Parliament). It would be a simple exercise for the Commission's correspondence setting out the basis for its difference of opinion with the opinions and conclusions contained in the Inspector's final report to be made available "in the one document" wherever and in whatever form that document is published and regardless of the volume of that correspondence. To do so would not undermine the legitimacy or authority of any findings or opinions expressed by the Inspector but reflect the independence of the two bodies which is appropriately embodied in the provisions currently governing that relationship.

RECOMMENDATION: That the PIC Act be amended to clarify that the Inspector's reports may be made public.

3. INSPECTOR OF THE PIC

RECOMMENDATION: That the PIC Act be amended so that should the Inspector in a report make adverse comment in regard to the 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.

4. LIST OF RECOMMENDATIONS

RECOMMENDATION: That the PIC Act be amended to extend the duty on principal officers and officers who constitute a public authority to notify the PIC of corrupt conduct by administrative officers of the NSWPF and misconduct by officers of the NSWCC to also include suspected misconduct by police officers. (p.10)

RECOMMENDATION: That s124 of the PIC Act be amended to replace the reference to the *Prohibited Weapons Act 1989* with a reference to the *Weapons Prohibition Act 1998*. Further that s124 be amended to include batons and anti-personnel spray in the exemption from the requirement to hold a permit in the case of Commission officers who are seconded police officers or approved former police officers. (p.12)

RECOMMENDATION: That section 13B of the PIC Act be amended to specifically provide for an audit function in relation to the NSWCC. (p.14)

RECOMMENDATION: That the PIC Act be amended to clarify that the Inspector's reports may be made public. (p.17)

RECOMMENDATION: That the PIC Act be amended so that should the Inspector in a report make adverse comment in regard to the 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. (p.17)

APPENDICES

APPENDIX 1 – RECOMMENDED AMENDMENTS TO THE POLICE INTEGRITY COMMISSION ACT 1996 IN THE 2002 REVIEW

No.	Recommendation	Implemented Y/N?	Detail
2	Section 3(a) of the Act should be amended to reflect that one of the principal objects of the Act is to establish an <u>independent</u> and <u>accountable</u> body, with the principal function of detecting, investigating and preventing police corruption and other serious police misconduct.	YES	The <i>Police Integrity Commission Amendment Act 2005 No 5</i> amended Section 3(a) of the Act so that instead of “a body” the Act reads “an independent, accountable body.” ¹¹
3	That further consultation take place with all interested parties as to the merits of the PIC’s jurisdiction being extended to cover the corrupt conduct of civilian employees of the NSWPF	YES	<p>The <i>Independent Commission Against Corruption Amendment Act 2005</i> initially changed the definition in that Act so that references to police officer included references to a member of the NSW Police Force regardless of whether they were a police officer or not.¹² This amendment had a number of unintended consequences and a subsequent amendment was therefore passed.</p> <p>On 12 Jan 2007 the <i>Police Integrity Commission Amendment Act 2006 No 64</i> addressed these anomalies. It implemented the “transfer of jurisdiction to investigate civilian members of</p>

¹¹ *Police Integrity Commission Amendment Act 2005 No 5*, Schedule 1, [1]

¹² *Independent Commission Against Corruption Amendment Act 2005*, Schedule 2.8

No.	Recommendation	Implemented Y/N?	Detail
			<p>NSW Police from the <i>Independent Commission Against Corruption</i> to the <i>Police Integrity Commission</i>.¹³</p> <p>The <i>Police Integrity Commission Amendment Act 2006 No 64</i> made a number of changes to the <i>Police Integrity Commission Act 1996</i> and the <i>Independent Commission Against Corruption Act 1988</i>.</p> <p>The amendment:</p> <ul style="list-style-type: none"> • Inserted new definitions of ‘administrative officers’ in s4¹⁴ • Inserted a new definition of ‘corrupt’ conduct of an administrative officer by inserting a s5A¹⁵ • Inserted a new section 13A giving the commission “other functions regarding administrative officers.”¹⁶ • Inserted a s75A and s75B regarding complaints against administrative officers.¹⁷ • Made a number of other incidental amendments.
4	S10(5) of the Act which bars the Commission from engaging current or former NSWPF Officers should remain in place. Any further Police Integrity Commission submissions on s10(5) should be considered by the Minister for Police and PJC after the Commission’s	YES	<p>Section 10(5) of the <i>Police Integrity Commission Act 1996</i> remains unchanged.</p> <p>N.B. The PJC conducted an inquiry in two phases into s10(5) of the PIC Act.¹⁸ These recommended that s10(5) be retained</p>

¹³ Second Reading Speech, *Police Integrity Commission Amendment Act 2006 No 64*, 19 Sept 2006,

¹⁴ *Police Integrity Commission Amendment Act 2006 No 64*, Schedule 1, [1]

¹⁵ *Police Integrity Commission Amendment Act 2006 No 64*, Schedule 1, [3]

¹⁶ *Police Integrity Commission Amendment Act 2006 No 64*, Schedule 1, [4]

¹⁷ *Police Integrity Commission Amendment Act 2006 No 64*, Schedule 1, [13]

No.	Recommendation	Implemented Y/N?	Detail
	Operation Florida investigation has been fully assessed.		in its original form.
5	S92(5) of the Act which bars the Inspector from engaging current or former NSWPF Officers should remain in place	YES	Section 92(5) of the <i>Police Integrity Commission Act 1996</i> remains unchanged.
6	The flexibility of clause 3(1) of Schedule 2 of the Act should be maintained, allowing for either the full time or part time appointment of the Inspector	YES	Clause 3 of Schedule 2 of the <i>Police Integrity Commission Act 1996</i> remains unchanged.
7	A regulation should be made so that staff of the Commission and Inspector, respectively employed under s10(2) and s92(2) of the Act, are entitled to the same extended and recreational leave entitlements as persons employed under the non-executive and appointment provisions of the <i>Public Sector Management Act 1998</i> and subject to the recognition of service provisions of the <i>Transferred Officers Extended Leave Act 1961</i>	YES	<p>The <i>Public Sector Employment Legislation Amendment Act 2006</i> amended s10 of the Act to modify the definition of “staff of the Commission” so that it reads as follows:</p> <p>(1) The staff of the Commission comprises:</p> <p>(a) the staff who are employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> in the Government Service to enable the Commission to exercise its functions, and</p> <p>(b) the persons referred to in subsections (3) and (4).¹⁹</p> <p>The PIC Act regulations extended such benefits to the staff of the PIC Inspector.²⁰</p>
8	Section 142 of the Act should be amended to remove the requirement that the Commission obtain the approval of	YES	The <i>Police Integrity Commission Amendment Act 2005 No 5</i> amended the Act by omitting from s142 (1) the following

¹⁸ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Interim Report on an Inquiry into Section 10(5) of the Police Integrity Commission Act 1996*, 22 May 2005 & *Phase Two of an Inquiry into Section 10(5) of the Police Integrity Commission Act 1996*, November 2006

¹⁹ *Public Sector Employment Legislation Amendment Act 2006*, Schedule 4.51, [4], in force 17 March 2006

²⁰ *Police Integrity Commission Regulation 2006*, cl5

No.	Recommendation	Implemented Y/N?	Detail
	the Minister of Police where a NSW Police Officer is required to exercise investigative, surveillance or enforcement functions under, or for the purposes of the Act (whether in connection with joint task force operations or otherwise.) A police officer should be able to exercise such functions with the approval of the Commissioners of Police and the PIC.		words “such an authorisation may not be given without concurrence of the Minister” so that it read as follows: s142 Exercise of functions by police (1) A police officer may not exercise investigative, surveillance or enforcement functions under or for the purposes of this Act unless authorised to do so by the Commissioner. Such an authorisation may not be given without concurrence of the Minister. ²¹
9	Section 142 should be amended to require the Commissioner of the Police Integrity Commission to notify the Minister for Police where a NSW police officer is required to exercise investigative, surveillance or enforcement functions under, or for the purposes of, the Act	NO	The <i>Police Integrity Commission Amendment Act 2005 No 5</i> amended the Act by inserting s142(1A) as follows: (1A) As soon as practicable after giving such an authorisation, the Commissioner must notify the Inspector of that fact.
10	The Minister of Police should request the Inspector of the Police Integrity Commission to review the appropriateness of the Commission’s procedures and practices in respect to the formality and length of Commission investigations, having specific regard to s20 of the Act, and to advise whether those procedures and practices are appropriate and whether specific improvements may be made to them.	YES – in part	On 12 Feb 2003 Minister for Police the Hon Michael Costa requested that the Inspector “conduct an inquiry and furnish a Report on the appropriateness of the Police Integrity Commission’s procedures and practices with respect to the formality and length of its hearings and functions (with particular emphasis on public hearings and reporting by the Commission on public hearings) and on any

²¹ *Police Integrity Commission Amendment Act 2005 No 5*, Schedule 1, [7]

No.	Recommendation	Implemented Y/N?	Detail
			<p>specific improvements that may be made to those practices and procedures.”²²</p> <p>Specific regard was to be had to s20 of the Act.</p> <p>The Inspector’s report was tabled in Parliament on 1 June 2003.</p> <p>The report made recommendations for changes to PIC Procedures and Practices. These can be found on pages i to iii.</p> <p>Recommendation 1 of the review held that “provided it acts within the scope of its mandate the PIC should conduct its investigations in such a manner as it considers fit, free from interference from external influences.”²³</p>
11	Section 23(3) of the Act should be amended to require the Commission to consider the public interest in considering whether or not to conduct, continue or discontinue an investigation.	NO	This proposed amendment was not implemented.
12	Consideration should be given to amending s23 of the Act to make it clear that the Commission may discontinue an investigation (or part thereof) on its own motion or upon the application of a public authority, public official or an	NO	This proposed amendment was not implemented.

²² Inspector of the Police Integrity Commission, *Report on the practice and procedures of the PIC*, 1 June 2003, para. 1.6–1.7 [located: [http://www.parliament.nsw.gov.au/Prod/parlament/committee.nsf/0/fe671cefd15dc55eca256d640018898e/\\$FILE/Final%20Committee%20Report%2001%20June%202003%20-%20Inquiry%20into%20Fifth%20General%20Meeting%20with%20the%20Inspector%20of%20the%20Police%20Integrity%20Commission.pdf](http://www.parliament.nsw.gov.au/Prod/parlament/committee.nsf/0/fe671cefd15dc55eca256d640018898e/$FILE/Final%20Committee%20Report%2001%20June%202003%20-%20Inquiry%20into%20Fifth%20General%20Meeting%20with%20the%20Inspector%20of%20the%20Police%20Integrity%20Commission.pdf)]

²³ Inspector of the Police Integrity Commission, *Report on the practice and procedures of the PIC*, 1 June 2003, p.i

No.	Recommendation	Implemented Y/N?	Detail
	individual who is substantially and directly interested in the subject matter of the investigation (though not to impose a duty on the Commission to alert interested parties of that investigation.)		
13	<p>A section corresponding to s331 of the <i>Crimes Act 1900</i> should be inserted in Part 6 of the Act so as to enable a special finding of guilt to be brought in for an offence of giving false testimony to the Commission, contrary to section 107 of the Act, or for an offence of giving false testimony in hearings before the Inspector where:</p> <p>a) the jury is satisfied that the witness made 2 statements one oath and one is irreconcilably in conflict with the another; and</p> <p>b) the jury is satisfied that one of the statements was made by the witness knowing that it was false but cannot say which statement was so made.</p>	YES	<p>The <i>Police Integrity Commission Amendment Act 2005 No 5</i> inserted a subsection 2 in s107 such that:</p> <p>“(2) Sections 331 and 332 of the <i>Crimes Act 1900</i> apply to proceedings for an offence under this section in the same way as they apply to proceedings for an offence under section 330 of that Act.”</p> <p>(Note similar provision inserted in s20 of <i>New South Wales Crime Commission Act 1985</i>)</p>
14	The Government, in consultation with representatives of the legal profession and other interests, should conduct a review into the manner in which the legal professional privilege might be appropriately claimed in respect to the investigations and hearings of the <i>Police Integrity Commission</i> and other relevant statutory investigative bodies.	NO	No changes to the provisions regarding legal professional privilege in the Act (s27 & s40) have been made.
15	The review of the <i>Police Act 1900</i> should consider opportunities for rationalisation of the police complaints system afforded by the new c@t.si complaints management system and in particular:	YES – in part	<p>The <i>Police Amendment (Miscellaneous) Act 2006</i> modified the police complaint system by:</p> <ul style="list-style-type: none"> removing the Category 1/Category 2 complaint distinction; and

No.	Recommendation	Implemented Y/N?	Detail
	<ul style="list-style-type: none"> • whether the Ombudsman should oversight all police complaints, with the Commission focusing on the investigation of police corruption and serious misconduct; • whether the Category 1/Category 2 complaint distinction can be rationalised; • whether NSWPF should commence investigation of Category 1 complaints subject to the Ombudsman’s oversight, and only cease investigating the matter if the Commission advises it wishes to deal with the matter under the Act. • whether the requirement for the Commission to advise the Ombudsman when it determines not to investigate a Category 1 complaint should be removed, with it only being required to advise when it determines to investigate a matter • whether the Commission should obtain consent of the complainant before referring a complaint to NSWPF or the Ombudsman for investigation; and • Whether the Ombudsman should obtain the consent of the complaint before referring a complaint to the NSWPF for investigation. 		<ul style="list-style-type: none"> • requiring the PIC to advise NSWPF of the complaints it is investigating. <p>Amendments were made to s70, s71, s74 & other incidental amendments to implement these changes.²⁴</p> <p>The amendment was intended to “remove an unnecessary bureaucratic hurdle for police dealing with complaints.”²⁵</p>
16	The <i>PIC Act</i> and <i>Police Act</i> should be amended to ensure the Commissioner of Police is able to take management action (or refer a matter for the commencement of	YES	The <i>Police Integrity Commission Amendment Act 2005 No 5</i> amended the <i>Police Act 1900</i> by inserting in s173 the following:

²⁴ *Police Amendment (Miscellaneous) Act 2006*, Schedule 3.25

²⁵ The Hon Eric Roozendaal MLC, Second Reading Speech *Police Amendment (Miscellaneous) Act 2006*, Hansard, 14 Sept 2006, p.3716

No.	Recommendation	Implemented Y/N?	Detail
	criminal proceedings) against a police officer the subject of an investigation by the Commission, following consultation with the Commission.		<p>(4A) Before making an order under subsection (2) or (3) with respect to a police officer who is the subject of a complaint under Part 8A that is being dealt with by the Police Integrity Commission or the Ombudsman, the Commissioner must consult with the Police Integrity Commission or the Ombudsman, as the case requires.</p> <p>(4B) Failure to comply with subsection (4A) with respect to any order under subsection (2) or (3) does not affect the validity of the order.</p> <p>N.B. These provisions do not exist in the present <i>Police Act 1900</i></p>
17	Sections 77(5) and Section 83(6) of the Act should be replaced with provisions similar to s18(4) so that information referred to authorities for investigation or other action is only subject to the secrecy provisions of section 56 of the Act where the Commission so specifies.	YES	The <i>Police Integrity Commission Amendment Act 2005 No 5</i> made amendments to both s77(5) and s83(6) implementing this recommendation. ²⁶
18	Section 84 of the Act should be amended to refer to the <i>Criminal Assets Recovery Act 1990</i> rather than the <i>Drug Trafficking (Civil Proceeding) Act 1990</i> .	YES	Appropriate amendments made in the <i>Statute Law (Miscellaneous Provisions) Act 2004</i> ²⁷
19	The Act (or the <i>Police Regulation 2000</i> , if Parliamentary Counsel so advises) should be amended to make it clear that a member or former member of the NSW Police may volunteer any information, document or thing to the	NO	<p>No amendment made to the PIC Act in response to this recommendation.</p> <p>It appears also that no amendment was made to the Police</p>

²⁶ *Police Integrity Commission Amendment Act 2005 No 5*, Schedule 1, [5] & [6]

²⁷ *Statute Law (Miscellaneous Provisions) Act 2004*, Schedule 2.29

No.	Recommendation	Implemented Y/N?	Detail
	<p>Commission, other than an original NSW Police document or thing.</p> <p>This should not prevent a member or former member of the NSWPF from giving the Commission an original document or thing if required to do so under s26 of the Act. Also, nothing should prevent a member of the NSWPF volunteering a copy of such a document or thing, or giving information to the Commission as to the existence of that document or thing, which would enable the Commission to order its production under s26 of the Act.</p>		<p>Regulations. The current regulation concerning confidential information (cl.75 of the <i>Police Regulation 2008</i>) makes no mention of allowing the volunteering of information by NSWPF officers to the Commission.</p>
20	<p>The Government should give further consideration to whether section 56 of the Act, and similar secrecy provisions in other Acts, require amendment to enable persons who have not been specifically authorised to make decisions to make disclosures to an audience who have already lawfully received from another source the information the subject of disclosure</p>	NO	<p>No amendment was made.</p>
21	<p>The Act be amended to require summonses, issued by either the Commission or Inspector, to be personally served.</p>	NO	<p>No amendment was made.</p>
22	<p>That s139 of the Act be amended to enable other documents requiring service by the Commission or Inspector to be served by facsimile or other electronic means (where recipient indicates such means of communication are available), in terms similar to s35 of</p>	YES	<p>The <i>Police Integrity Commission Amendment Act 2005 No 5</i> amended the Act to insert s139(2) of the Act as follows:</p> <p>(2) In addition to the means of service provided for under subsection</p>

No.	Recommendation	Implemented Y/N?	Detail
	the <i>NSWCC Act 1985</i> .		<p>(1), service of a document on a person (whether a natural person or a body corporate) may be effected by facsimile transmission or other electronic means notified by the person as being an available means of communication.</p> <p>(3) Service of a facsimile copy of a document in accordance with subsection (1) is taken to be service of the document for the purposes of that subsection.</p>
23	Section 47 of the Act should be amended by inserting a provision in the same or similar terms to s7(3) of the <i>Search Warrants Act 1985</i> to enable the Commission to approach a magistrate for orders that material obtained pursuant to a search warrant that cannot be returned or transferred to the Attorney General or DPP be destroyed or otherwise disposed of as each case requires	YES	<p>The <i>Police Integrity Commission Amendment Act 2005 No 5</i> amended the Act to insert s47(3) of the Act as follows:</p> <p>(3) Other disposal If it appears to the Commission:</p> <p>(a) that there is no person who is entitled to possession of any document or thing referred to in subsection (2), or</p> <p>(b) that there is such a person, but the person does not wish to have possession of any such document or thing, the Commission may apply to a Local Court for directions as to</p>

No.	Recommendation	Implemented Y/N?	Detail
			its disposal and dispose of it in accordance with the directions given by the Local Court in response to the application. ²⁸
24	Part 6 of the Act should be amended to enable the Inspector to exercise the Commission’s jurisdiction , where the Commissioner and Inspector so agree, in circumstances where there is a conflict of interest or a perception of a conflict of interest in the Commission exercising the jurisdiction.	NO	The section was not so amended.
25	Section 91 of the Act should be amended to provide that the Inspector is required to give reasonable opportunity for a person giving evidence to an inquiry under s91 to be legally represented.	NO	The section was not so amended.
26	Section 146 of the Act should be amended to require a further five year review (from the date of assent to that amendment) of the validity of the policy objectives of the Act, and the appropriateness of the terms of the Act for securing those objectives.	YES	<p>The <i>Police Integrity Commission Amendment Act 2005 No 5</i> amended the Act to insert s146(2A) which read as follows:</p> <p>(2A) A further such review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to the <i>Police Integrity Commission Amendment Act 2005</i>.²⁹</p> <p>It also amended s146 (3) so that instead of “review” it read “each such review”³⁰</p>

²⁸ *Police Integrity Commission Amendment Act 2005 No 5*, Schedule 1, [2]

²⁹ *Police Integrity Commission Amendment Act 2005 No 5*, Schedule 1, [9]

³⁰ *Police Integrity Commission Amendment Act 2005 No 5*, Schedule 1, [10]

APPENDICES

APPENDIX 2 – AMENDMENTS TO THE POLICE INTEGRITY COMMISSION ACT 1996 SINCE 2002 REVIEW

Section	Amendment	Comments
<i>Australian Crime Commission (New South Wales) Act 2003</i>		
<i>Assented 30.6.2003</i>		
18	Section 18 Co-operation with other agencies Omit paragraph (h) of the definition of investigative agency in section 18 (5). Insert instead: (h) the Australian Crime Commission, or	<ul style="list-style-type: none"> Amends reference to “investigative agency” to include the Australian Crime Commission
<i>Statute Law (Miscellaneous Provisions) Act 2003</i>		
<i>Assented 22.7.2003</i>		
79	Section 79 Further action by Commission Omit “section 98” from section 79 (3). Insert instead “section 100”.	<ul style="list-style-type: none"> Amends an incorrect cross reference
<i>Statute Law (Miscellaneous Provisions) Act 2004</i>		
<i>Assent 6.7.2004</i>		
Note this was referred to in recommendation 18 of the 2002 Review.		
19 & 84	Sections 19 and 84 Omit “ <i>Drug Trafficking (Civil Proceedings) Act 1990</i> ” wherever occurring (including where occurring in the heading to section 19 and in the Note to section 84 (2)). Insert instead “ <i>Criminal Assets Recovery Act 1990</i> ”.	<ul style="list-style-type: none"> Amendment updates references to a renamed Act.

Section	Amendment	Comments
<p><i>Police Integrity Commission Amendment Act 2005</i></p> <p><i>Assented 10.3.2005</i></p> <p>This amendment implements many of the recommendations of the 2002 Review</p>		
3	<p>Sch 1 - [1] Section 3 Principal objects of Act Omit “a body” from section 3 (a). Insert instead “an independent, accountable body”.</p>	<ul style="list-style-type: none"> • Amends object of Act to emphasise “independent” and “accountable” nature of the PIC. • Note this is in response to a recommendation of the 2002 Review.
47	<p>[2] Section 47 Seizure of other documents and things Insert after section 47 (2): (3) Other disposal If it appears to the Commission: (a) that there is no person who is entitled to possession of any document or thing referred to in subsection (2), or (b) that there is such a person, but the person does not wish to have possession of any such document or thing, the Commission may apply to a Local Court for directions as to its disposal and dispose of it in accordance with the directions</p>	<ul style="list-style-type: none"> • Allows Commission to apply to Local Court ordering the destruction of documents within its possession. • This is in response to a need for such a provision identified as part of the 2002 review of the Act.
77	<p>[3] Section 77 Referral of matter Insert “on the understanding that the information is confidential” after “under this section” in section 77 (5).</p>	<ul style="list-style-type: none"> • Removes the s56 secrecy obligations from information disseminated to other authorities for investigation unless the Commission specifically indicates it attaches. • This was in response to a recommendation of the 2002 review
83	<p>[4] Section 83 Referral of matter Insert “on the understanding that the information is</p>	<ul style="list-style-type: none"> • Removes the s56 secrecy obligations from information disseminated to other authorities for investigation unless the

Section	Amendment	Comments
	confidential” after “under this section” in section 83 (6).	<p>Commission specifically indicates it attaches.</p> <ul style="list-style-type: none"> • This was in response to a recommendation of the 2002 review
107	<p>[5] Section 107 False or misleading evidence Insert at the end of the section: (2) Sections 331 and 332 of the <i>Crimes Act 1900</i> apply to proceedings for an offence under this section in the same way as they apply</p>	<ul style="list-style-type: none"> • Inserts similar requirements for proof of s107 that exist for s331 of the Crimes Act • This was in response to a recommendation of the 2002 review
139	<p>[6] Section 139 Service of documents Insert at the end of the section: (2) In addition to the means of service provided for under subsection (1), service of a document on a person (whether a natural person or a body corporate) may be effected by facsimile transmission or other electronic means notified by the person as being an available means of communication. (3) Service of a facsimile copy of a document in accordance with subsection (1) is taken to be service of the document for the purposes of that subsection.</p>	<ul style="list-style-type: none"> • Allows service of documents by fax where person consents to such service • This was in response to a recommendation of the 2002 review
142	<p>[7] Section 142 Exercise of functions by police Omit “Such an authorisation may not be given without concurrence of the Minister.” from section 142 (1).</p>	<ul style="list-style-type: none"> • Removes requirement for Commission to obtain approval of the Minister of Police whenever a NSWPF officer is required to exercise functions under, or for the purposes of, the Act. • This was in response to a recommendation of the 2002 review
142 (1A)	Section 142 (1A)	<ul style="list-style-type: none"> • Creates an obligation that where the above occurs the

Section	Amendment	Comments
(Inserted)	Insert after section 142 (1): (1A) As soon as practicable after giving such an authorisation, the Commissioner must notify the Inspector of that fact.	Commissioner must notify the Inspector.
146	[9] Section 146 Review of Act Insert after section 146 (2): (2A) A further such review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to the <i>Police Integrity Commission Amendment Act 2005</i> . [10] Section 146 (3) Omit “the review”. Insert instead “each such review”.	<ul style="list-style-type: none"> • Made it compulsory for a review to be taken every five years after the assent of this amendment.
Independent Commission Against Corruption Amendment Act 2005 <i>Assented 14.4.2005</i> This is the initial attempt to extend jurisdiction to unsworn members of the NSWPF.		
4	Section 4 Definitions Insert after section 4 (3): (3A) References to police officers extend to all members of NSW Police A reference in this Act to a police officer includes a reference to any member (whether or not a police officer) of NSW Police.	<ul style="list-style-type: none"> • This is the initial attempt to extend the jurisdiction of the Commission to administrative officers of the NSWPF. • Note the unintended consequences of this amendment were rectified in a later amendment to the Act contained in <i>Police Integrity Commission Amendment Act 2006</i>
Statute Law (Miscellaneous Provisions) Act 2005 <i>Assented 1.7.2005</i>		

Section	Amendment	Comments
38	Sch 1.27 - Section 38 Power to summon witnesses and take evidence Omit “the Commission” where secondly occurring in section 38 (2). Insert instead “the hearing”.	<ul style="list-style-type: none"> Amendment more accurately identifies the person at which section 38 (2) is directed (being a person appearing at the hearing before the Commission rather than a person appearing at the Commission).
Statute Law (Miscellaneous Provisions) Act (No 2) 2005 <i>Assented 24.11.2005</i>		
Whole Act		<ul style="list-style-type: none"> Replaces “legal practitioner” where found in the Act with “Australian legal practitioner.”
Public Sector Employment Legislation Amendment Act 2006 <i>Assented 13.3.2006</i> N.B. This amendment allowed staff of the Commission to be employed by Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> . It came out of a recommendation of the 2002 review.		
4	Sch 4.51 - [1] Section 4 Definitions Omit the definition of <i>staff of the Commission</i> from section 4 (1). Insert instead: <i>staff of the Commission</i> —see section 10.	<ul style="list-style-type: none"> Incidental amendment of definition to implement the change of staffing arrangements.
8	[2] Section 8 Assistant Commissioners Omit “employed as referred to in section 10 (1) or (2)” from section 8 (3). [3] Section 8 (4) Omit “employed as referred to in section 10 (2)”	<ul style="list-style-type: none"> Updating cross references for the new definition in the Act
10	[4] Section 10 Staff Omit section 10 (1) and (2). Insert instead: (1) The staff of the Commission comprises:	<ul style="list-style-type: none"> Section ensuring that staff of the Commission can be employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i>

Section	Amendment	Comments
	(a) the staff who are employed under Chapter 1A of the <i>Public Sector Employment and Management Act 2002</i> in the Government Service to enable the Commission to exercise its functions, and (b) the persons referred to in subsections (3) and (4).	
22	[5] Section 22 Incidental powers Insert at the end of the section: (2) However, the Commission cannot employ any staff.	<ul style="list-style-type: none"> • Incidental amendment implementing the above
Statute Law (Miscellaneous Provisions) Act 2006 <i>Assented 20.6.2006</i>		
18A	Sch 2.40 - [1] Section 18A (1) Omit “, 64 (5) or 71 (3)”. Insert instead “or 64 (5)”.	<ul style="list-style-type: none"> • Omits redundant cross reference
57, 62 & 71	SCh 2.40 - [2] Section 57 (3) Omit “sections 166 (Certain information to be confidential) and 169 (Ombudsman or officer as witness)”. Insert instead “sections 163 (Ombudsman not to publish certain information) and 165 (Ombudsman and officers of Ombudsman not competent or compellable witnesses in respect of certain matters)”. [3] Section 57 (4) Omit “section 169”. Insert instead “section 165”. [4] Section 62 (2) Omit “section 172A”. Insert instead “section 170”.	<ul style="list-style-type: none"> • Update cross references in the Act

Section	Amendment	Comments
	<p>[5] Section 71 (3) Omit “Section 141 (6)”. Insert instead “Section 140 (4)”.</p>	
<p>Police Integrity Commission Amendment Act 2006</p> <p><i>Assented 28.9.2006</i></p> <p>N.B. This amendment gives the Commission jurisdiction over complaints against the administrative officers of the NSWPF.</p>		
<p>4</p>	<p>Section 4 Definitions Insert in alphabetical order in section 4 (1): <i>administrative officer</i> means any member of NSW Police other than a police officer. <i>administrative officer complaint</i> means a complaint made under section 75A. <i>corrupt conduct</i> of an administrative officer—see section 5A. <i>disciplinary proceedings</i> means proceedings for a disciplinary offence. <i>former administrative officer</i> means any person who is not an administrative officer but who has been an administrative officer at any time previously (whether before or after the commencement of Schedule 1 [1] to the <i>Police Integrity Commission Amendment Act 2006</i>). <i>former officer of the Commission</i> means any person who is not</p>	<ul style="list-style-type: none"> • Updates definition section as required to ensure that the Commission has jurisdiction over the complaints of administrative officers of the NSWPF.

Section	Amendment	Comments
	<p>an officer of the Commission but who has been an officer of the Commission at any time previously (whether before or after the commencement of Schedule 1 [1] to the <i>Police Integrity Commission Amendment Act 2006</i>).</p>	
4	<p>[2] Section 4 (3A) Omit the subsection.</p>	<ul style="list-style-type: none"> • Omits flawed subsection inserted by the <i>Independent Commission Against Corruption Amendment Act 2005</i> but had unintended consequences.
5A	<p>[3] Section 5A Insert after section 5: 5A Corrupt conduct of administrative officers (1) Definition For the purposes of this Act, <i>corrupt conduct</i> of an administrative officer means any conduct of an administrative officer that is corrupt conduct for the purposes of the <i>Independent Commission Against Corruption Act 1988</i>.</p> <p>(2) Former administrative officers Conduct may be dealt with, or continue to be dealt with, under this Act even though any administrative officer involved has ceased to be an administrative officer. Accordingly, references in this Act to an administrative officer extend, where</p>	<ul style="list-style-type: none"> • Inserts new definition of corrupt conduct for administrative officers.

Section	Amendment	Comments
	appropriate, to include a former administrative officer.	
13A (inserted)	<p>[4] Section 13A Insert after section 13: 13A Other functions regarding administrative officers (1) Other functions of the Commission include the following: (a) to prevent corrupt conduct of administrative officers, (b) to detect or investigate, or oversee other agencies in the detection or investigation of, corrupt conduct of administrative officers. (2) The Commission is, as far as practicable, required to turn its attention principally to serious corrupt conduct of administrative officers. (3) The reference in this section to <i>overseeing</i> other agencies in the detection or investigation of corrupt conduct of administrative officers is a reference to the provision by the Commission of guidance that relies on a system of guidelines prepared by it and progress reports and final reports furnished to it rather than the</p>	<ul style="list-style-type: none"> • Expands functions of Commission to accommodate expanded jurisdiction.

Section	Amendment	Comments
	<p>provision of detailed guidance in the planning and execution of such detection and investigation.</p> <p>(4) In overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such oversight is to be achieved by agreement. However, it is the duty of members of NSW Police to co-operate with the Commission in the exercise of its oversight functions and any other functions of the Commission.</p> <p>(5) However, nothing in subsection (2), (3) or (4):</p> <p>(a) affects the capacity of the Commission to exercise any of the functions as referred to in subsection (1), or</p> <p>(b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the Commission of any of those functions.</p>	
<p>15, 16, 23, 30</p>	<p>Not included – text of amendments available in Sch 1 [5] – [13]</p>	<ul style="list-style-type: none"> • Minor amendments to definitions to facilitate extended jurisdiction to administrative officers.
<p>Part 4A (inserted)</p>	<p>[13] Part 4A Insert after Part 4: Part 4A Complaints against administrative officers 75A Complaints about possible corrupt conduct of administrative</p>	<ul style="list-style-type: none"> • Inserts Part 4A to allow Commission to receive and investigate complaints against administrative officers of the NSWPF.

Section	Amendment	Comments
	<p>officers (cf ICAC Act s 10)</p> <p>(1) Any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct of an administrative officer.</p> <p>(2) The Commission may investigate any such complaint or decide that the complaint need not be investigated.</p> <p>(3) The Commission may discontinue an investigation of any such complaint.</p> <p>75B Duty to notify Commission of possible corrupt conduct of administrative officers (cf ICAC Act s 11)</p> <p>(1) This section applies to the following officers:</p> <p>(a) the Ombudsman,</p> <p>(b) the Commissioner of Police,</p> <p>(c) the principal officer of a public authority,</p> <p>(d) an officer who constitutes a public authority.</p> <p>(2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct of an administrative officer.</p> <p>(3) The Commission may issue guidelines as to what</p>	

Section	Amendment	Comments
	<p>matters need or need not be reported.</p> <p>(4) This section has effect despite any duty of secrecy or other restriction on disclosure.</p> <p>(5) The regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.</p> <p>(6) In this section, <i>public authority</i> has the same meaning as it has in the <i>Independent Commission Against Corruption Act 1988</i>.</p>	
<p>93A (inserted)</p>	<p>[14] Section 93A Insert after section 93: 93A Former officers of the Commission (1) For the avoidance of doubt, conduct may be dealt with, or continue to be dealt with, under this Act even though any officer of the Commission involved has ceased to be an officer of the Commission.</p>	<ul style="list-style-type: none"> • Gives the Inspector the powers to investigate complaints against Commission officers where those officers have left the Commission.

Section	Amendment	Comments
	<p>(2) Accordingly, references in this Act to an officer of the Commission extend, where appropriate, to include a former officer of the Commission.</p> <p>(3) Without limiting subsection (2), appropriate references to which that subsection applies include references in provisions of this Act that concern:</p> <p>(a) complaints about, or investigating or otherwise dealing with, the conduct of an officer of the Commission, or</p> <p>(b) obtaining information, documents or other things from, or requiring answers or evidence to be given or produced by, an officer of the Commission (whether in connection with the officer's own conduct</p>	
<p>129-132, 135</p>	<p>Not included – text of amendments available in Sch 1 [15] – [22]</p>	<ul style="list-style-type: none"> • Minor amendments to definitions to facilitate extended jurisdiction to administrative officers.
<p>141</p>	<p>[23] Section 141 Proceedings for offences Omit section 141 (4). Insert instead: (4) Proceedings for an alleged offence under any of the following provisions of this Act may be commenced within 3 years after the</p>	<ul style="list-style-type: none"> • This amendment expanded the list of offences for which the longer 3 year time limit on prosecution existed from just s104(c) offences to offences under: <ul style="list-style-type: none"> ○ S25 ○ S52,53,54 and 56 ○ S104(c)

Section	Amendment	Comments
	commission of the alleged offence: (a) section 25, (b) sections 52, 53, 54 and 56, (c) section 104 (c),	
Schedule 3 Part 6	<p>[25] Schedule 3 Insert at the end of the Schedule (with appropriate Part and clause numbering):</p> <p>Part Provisions consequent on enactment of Police Integrity Commission Amendment Act 2006</p> <p>Definition In this Part: <i>amending Act</i> means the <i>Police Integrity Commission Amendment Act 2006</i>. Application of amendments to previous conduct of administrative officers</p> <p>(1) Except as provided by subclause (2), the amendments made to this Act by the amending Act concerning the detection and investigation of corrupt conduct of administrative officers or former administrative officers extend to conduct that occurred (or is alleged to have occurred) before the relevant commencement day.</p> <p>(2) This Act (as in force immediately before the relevant</p>	<ul style="list-style-type: none"> • Provisions that extend jurisdiction to administrative officers extended to the conduct of those officers before the amendment came into force • Provisions regarding the expansion of offences that fall under s141 apply to offences committed on the day of commencement and all days after commencement of that amendment.

Section	Amendment	Comments
	<p>commencement day) continues to apply to the investigation of a complaint about the conduct of an administrative officer that was made before that day.</p> <p>(3) In this clause, <i>relevant commencement day</i> means the day on which Schedule 1 [4] to the amending Act commences.</p> <p>Application of amendment to section 141</p> <p>(1) The amendment made to section 141 (4) by Schedule 1 [23] to the amending Act applies to offences committed (or alleged to have been committed) on or after the commencement of that amendment.</p> <p>(2) Section 141 (4), as in force immediately before the commencement of Schedule 1 [23] to the amending Act, continues to apply to offences committed (or alleged to have been committed) before that commencement</p>	
<p>Police Amendment (Miscellaneous) Act 2006</p> <p><i>Assented 22.11.2006</i></p> <p>This amendment changes the complaint oversight system removing the Cat 1/Cat 2 distinction that previously applied and implemented the complaint system that presently exists.</p>		
Whole Act	<p>Sch 3.25</p> <p>[1] The whole Act</p> <p>Omit “NSW Police” wherever occurring (except where</p>	<ul style="list-style-type: none"> • Changes references from ‘NSW Police’ to ‘NSW Police Force.’

Section	Amendment	Comments
	elsewhere specifically referred to in this Subschedule). Insert instead “the NSW Police Force”.	
4, 13, 14, 67, 68, 69, 74, 99, 128	<i>See Schedule 3.25</i>	<ul style="list-style-type: none"> • Amendments to wording of these sections to reflect the change from Cat 1/ Cat 2 distinction. • Omitting certain sections which include the Cat 1/Cat 2 distinction.
70, 71	<p>[9] Sections 70 and 71 Omit sections 70–73. Insert instead: 70 Powers of Commission in respect of police complaints (1) The Commission may decide in relation to a police complaint (however made): (a) to investigate or take over the investigation of the complaint, or (b) to investigate or take over the investigation of part of the complaint, or (c) to refer the complaint or part of the complaint to the Ombudsman or to the Commissioner of Police to be dealt with in accordance with Part 8A of the <i>Police Act 1990</i>. (2) The Commission may review any decision made by it under this section. (3) The Commission may investigate any matter relating to a police complaint even though it refers the complaint or part of the complaint to be dealt with in accordance with Part 8A of the <i>Police Act 1990</i>.</p>	<ul style="list-style-type: none"> • Omits s70-73 which contained reference to the Cat 1/Cat 2 distinction. • Inserts new sections 70 and 71 regarding complaints referral.

Section	Amendment	Comments
	<p>(4) The Commission may make a decision under this section before the commencement of an investigation by the Commissioner of Police under Part 8A of the <i>Police Act 1990</i>, during the progress of any such investigation or after any such investigation.</p> <p>(5) A complaint, to the extent that it is investigated by the Commission, cannot be dealt with as a complaint under Part 8A of the <i>Police Act 1990</i> and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations.</p> <p>71 Commissioner of Police to be notified of take over or referral of investigation</p> <p>(1) The Commission must notify the Commissioner of Police of any decision to investigate or take over the investigation of a police complaint or part of a police complaint or to refer a complaint or part of a complaint to be dealt with in accordance with Part 8A of the <i>Police Act 1990</i>.</p> <p>(2) The Commission must notify the Commissioner of Police of any change to a decision referred to in subsection (1).</p> <p>(3) If the Commission makes a decision to investigate or take over the investigation of part of a police complaint, or to refer to the Commissioner of Police part of a police complaint, the Commission is to revise the complaint by</p>	

Section	Amendment	Comments
	<p>removing the reference to the part of the conduct concerned that it has decided to investigate itself. The Commission is to provide a copy of the revised complaint to the Commissioner of Police.</p> <p>(4) The revised complaint is to be dealt with in accordance with Part 8A of the <i>Police Act 1990</i>.</p> <p>(5) The Commission is not the complainant for a revised complaint and the original complainant continues to be the complainant for the purposes of the revised complaint.</p>	
Schedule	<p>[14] Schedule 3 Insert at the end of the Schedule with appropriate Part and clause numbering: Part Provisions consequent on enactment of Police Amendment (Miscellaneous) Act 2006 Complaints Sections 70 and 71, as substituted by the <i>Police Amendment (Miscellaneous) Act 2006</i>, and section 74, as amended by that Act, apply to complaints made before the commencement of those sections and that amendment.</p>	<ul style="list-style-type: none"> • Inserts provision in Schedule 3 ensuring amendments apply to complaints made before the commencement of the amendment.
<p>Surveillance Devices Act 2007</p> <p><i>Assented 23.11.2007</i></p>		
50	<p>S2.6 Section 50 Surveillance devices Omit “<i>Listening Devices Act 1984</i>”.</p>	<ul style="list-style-type: none"> • Minor amendment to update correct name of Act.

Section	Amendment	Comments
	Insert instead “ <i>Surveillance Devices Act 2007</i> ”.	
Police Amendment Act 2007 <i>Assented 7.12.2007</i>		
74	Sch 2 - [1] Section 74 Termination of police investigations Omit “Ombudsman” from section 74 (3). Insert instead “Commissioner of Police”.	<ul style="list-style-type: none"> Changes s74 to hold that the Commissioner of Police can commence or resume an investigation where the Commission notifies the Commissioner of Police that it has finished its investigation. Previously the section held that the Ombudsman was to be notified instead of the Commissioner.
Schedule 3	Sch 2 - [3] Schedule 3 Insert at the end of the Schedule with appropriate Part and clause numbering: Part Provision consequent on enactment of Police Amendment Act 2007 Complaints Section 74, as amended by the <i>Police Amendment Act 2007</i> , applies to complaints made before the commencement of that amendment.	<ul style="list-style-type: none"> Ensures that the above amendment to s74 applies to complaints received before the commencement of the amendment.
Statute Law (Miscellaneous Provisions) Act (No 2) 2007 <i>Assented 7.12.2007</i>		
141	Sch1.17 – [1] Section 141 Proceedings for offences Omit “section 25” from section 141 (4) (a). Insert instead “sections 25 and 26”.	<ul style="list-style-type: none"> This amendment extended the time for which proceedings for an offence against s26 of the Act could be brought. Previously proceedings had to be brought within 6 months, this amendment extended the time limit for offences against s26 to 3 years making it consistent with offences against s25.

Section	Amendment	Comments
Schedule 3	<p>[2] Schedule 3 Savings, transitional and other provisions Insert at the end of the Schedule with appropriate Part and clause numbering: Part Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act (No 2) 2007 Proceedings for offences Section 141, as amended by the <i>Statute Law (Miscellaneous Provisions) Act (No 2) 2007</i>, does not apply in respect of any alleged offence under section 26 that occurred before that section was so amended.</p>	<ul style="list-style-type: none"> Provides that the above amendment to s141 does not apply to any offence committed before the amendment took effect.
Miscellaneous Acts (Local Court) Amendment Act 2007 <i>Assented: 13.12.2007</i>		
47(3) & 141(1) – (3)	Schedule 2 Amendments replacing “a Local Court” with “the Local Court”	<ul style="list-style-type: none"> Changes reference from “a Local Court” to “the Local Court”
Police Integrity Commission Amendment (Crime Commission) Act 2008 <i>Assented 1.7.2008</i> N.B. This Act makes significant changes to the PIC Act giving the Commission jurisdiction over officers of the NSWCC.		
4, 15 ,16, 23, 30, 30 ,40, 61,	See Schedule of the amendment	<ul style="list-style-type: none"> Minor changes to the amending definitions and the machinery of many provisions in order to implement the extended jurisdiction.

Section	Amendment	Comments
75B, 76, 77, 78, 79A, 82, 99, 100, 129, 130, 131, 132 & 135		
5B (inserted)	<p>[2] Section 5B Insert after section 5A: 5B Misconduct of Crime Commission officers (1) Definition For the purposes of this Act, <i>misconduct</i> of a Crime Commission officer means any misconduct (by way of action or inaction or alleged action or inaction) of a Crime Commission officer:</p> <p>(a) whether or not it also involves participants who are not Crime Commission officers, and (b) whether or not it occurs while the Crime Commission officer is officially on duty, and (c) whether or not it occurred before the commencement of this subsection, and (d) whether or not it occurred outside the State or outside</p>	<ul style="list-style-type: none"> • Inserts section 5B defining misconduct of NSWCC officers

Section	Amendment	Comments
	Australia.	
13B and 13C (inserted)	<p>Sch1 [3] 13B Other functions of PIC in relation to Crime Commission officers</p> <p>(1) Other functions of the PIC include the following: (a) to prevent misconduct of Crime Commission officers, (b) to detect or investigate, or oversee other agencies in the detection or investigation of, misconduct of Crime Commission officers.</p> <p>(2) The PIC is, as far as practicable, required to turn its attention principally to serious misconduct of Crime Commission officers.</p> <p>(3) The reference in this section to <i>overseeing</i> other agencies in the detection or investigation of misconduct of Crime Commission officers is a reference to the provision by the PIC of guidance that relies on a system of guidelines prepared by it and progress reports and final reports furnished to it rather than the provision of detailed guidance in the planning and execution of such detection and investigation.</p> <p>(4) In overseeing other agencies for the purposes of this section, the PIC does not have a power of control or direction, and any such oversight is to be achieved by agreement. However, it is the duty of Crime Commission officers to co-operate with the PIC in the exercise of its oversight functions.</p>	<ul style="list-style-type: none"> • Inserts s13B and 13C to update the functions of the Commission as they relate to the investigation of NSWCC officers.

Section	Amendment	Comments
	<p>(5) However, nothing in subsection (2), (3) or (4): (a) affects the capacity of the PIC to exercise any of the functions as referred to in subsection (1), or (b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the PIC of any of those functions.</p> <p>13C Special allocation of PIC's functions in relation to Crime Commission officers The PIC Commissioner may allocate responsibility for the exercise of the functions of the PIC in relation to Crime Commission officers to an Assistant Commissioner and to such members of the staff of the PIC as are designated by the PIC Commissioner for the purposes of this section.</p>	
19	<p>[6] Section 19 Application of Criminal Assets Recovery Act 1990 Insert after section 19 (3): (3A) Subsection (3) does not apply if the exercise of the function by the PIC under that Act relates to an investigation by the PIC concerning misconduct of a Crime Commission officer.</p>	<ul style="list-style-type: none"> Update's provisions regarding CARA to avoid any conflict that may arise with the NSWCC by avoiding the need to consult with the NSWCC where CARA proceedings arise out of the misconduct of a NSWCC officer.
30	<p>[9] Section 30 Injunctions Insert at the end of section 30 (2) (c):</p>	

Section	Amendment	Comments
	<p>or (d) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of misconduct, or suspected misconduct, of a Crime Commission officer.</p>	
<p>75C & 75D</p>	<p>Part 4B Complaints against Crime Commission officers 75C Complaints about possible misconduct of Crime Commission officers (1) Any person may make a complaint to the PIC about a matter that involves or may involve misconduct of a Crime Commission officer. (2) The PIC may investigate any such complaint or decide that the complaint need not be investigated. (3) The PIC may discontinue an investigation of any such complaint. 75D Duty to notify PIC of possible misconduct of Crime Commission officers (1) This section applies to the following officers: (a) the Crime Commissioner, (b) the Commissioner of Police, (c) the principal officer of a public authority, (d) an officer who constitutes a public authority. (2) An officer to whom this section applies is under a duty to report to the PIC any matter that the officer suspects on</p>	<ul style="list-style-type: none"> Updating provisions regarding the capacity of persons to make complaints to the PIC regarding misconduct of NSWCC officers as well as introducing and to notify PIC of the misconduct of NSWCC officers.

Section	Amendment	Comments
	<p>reasonable grounds involves or may involve misconduct of a Crime Commission officer.</p> <p>(3) The PIC may issue guidelines as to what matters need or need not be reported.</p> <p>(4) This section has effect despite any duty of secrecy or other restriction on disclosure.</p>	
Schedule 3	<i>See Schedule 3</i>	<ul style="list-style-type: none"> • Provisions extending application of amendment to previous misconduct of NSWCC • Provisions regarding the affect of the amendments on present investigations by ICAC.
Statute Law (Miscellaneous Provisions) Act 2008 <i>Assented 1.7.2008</i>		
14A	Sch 2.41 – Section 14A Omit the section.	<ul style="list-style-type: none"> • Omits s14A a “spent” provision
Court and Crimes Legislation Further Amendment Act 2008 <i>Assented 8.12.2008</i>		
21	Sch 29.7 Section 21 Court proceedings Omit “warden,” from section 21 (1).	<ul style="list-style-type: none"> • Minor amendment omitting reference to “warden” in the section

Section	Amendment	Comments
Statute Law (Miscellaneous Provisions) Act (No 2) 2008		
<i>Assented 10.12.2008</i>		
Part 3, Division 7, Heading	Sch 2.21 Part 3, Division 7, heading Omit “ Listening ”. Insert instead “ Surveillance ”.	<ul style="list-style-type: none"> • Minor amendment updating referencing to form of warrant
Statute Law (Miscellaneous Provisions) Act (No 2) 2009		
<i>Assented: 14.12.2009</i>		
18A (1)	Sch 2.27 – [1] Section 18A (1) Omit “64 (5)”. Insert instead “71 (3)”.	<ul style="list-style-type: none"> • Minor amendment to update appropriate section of the <i>Police Act 1900</i> (Sch 2.27)
143(2)(a)	Sch 2.27 [2] Section 143 (2) (a) Omit “ <i>Public Sector Management Act 1988</i> ”. Insert instead “ <i>Public Sector Employment and Management Act 2002</i> ”.	<ul style="list-style-type: none"> • Minor amendment to update name of <i>Public Sector Employment and Management Act 2002</i> (Sch 2.27)
61	Sch 5.14 - Section 61 (1) (a), (b), (d) and (e) Omit the paragraphs. Insert instead: (a) section 17 of the <i>Casino, Liquor and Gaming Control Authority Act 2007</i> ,	<ul style="list-style-type: none"> • Minor updating references to liquor, registered clubs and casino legislation