



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

18 June 2015

Our ref: G11 2015 04

Mr Andrew Tink AM
Review of Police Oversight
Locked Bag 5111
PARRAMATTA NSW 2124

Via email: policeoversightreview@justice.nsw.gov.au

Dear Mr Tink

Re: Panel Oversight Reference

I refer to your letter of 22 May 2015 inviting submissions to address the Terms of Reference of the Review of Police Oversight, which you have been commissioned to consider and report on to the NSW Government. The approach I have chosen is essentially holistic as many of the terms are wide, falling “outside” the present ambit of the Inspector’s jurisdiction and functions.

Role of the Inspector of the PIC

The Inspector of the Police Integrity Commission (“the Inspector”) derives authority from the *Police Integrity Commission Act 1996* (“the *PIC Act*”). By section 89 of the *PIC Act*, the principal functions of the Inspector are to audit the operations of the Police Integrity Commission (“the Commission”) for the purposes of monitoring compliance with the law in New South Wales, to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission and to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission. The Inspector also has the function to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

The functions of the Inspector in relation to the matters set out above may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the Independent Commission Against Corruption (ICAC), NSW Crime Commission (NSWCC), the Joint Committee or any other agency.

The Inspector is not subject to the Commission in any respect (s. 89(3)). This provision is of paramount importance.

The Role of the PIC

I note that prior to the establishment of the Commission in 1996 in response to recommendations in the Interim Report of the Wood Royal Commission into the New South Wales Police Service, it was proposed that the Commission be set up as an independent stand-alone body and that it was not to operate as a division of the Independent Commission Against Corruption. Reasons given for this preferred independent model included the need for divisional separation for confidentiality and security and that it would provide a fresh approach to tackling the problem of serious police misconduct.

I firmly hold the view that the relevance and importance of the Commission has not diminished over the 18 years since its creation and that the Commission should remain as an independent stand-alone authority with its special expertise in its discrete functions. At the very least, the status quo should remain with respect to the operations of the Commission and there should be no merging of its functions with the Independent Commission Against Corruption (ICAC), if that is, in fact, one of the options being considered. It would not be a matter of merger or absorption. It would be an accretion to ICAC of a new specialised arm/wing/entity. This would not result in greater efficiency for the PIC component of the whole ICAC entity.

As I reported to the Committee on the Independent Commission Against Corruption on 28 March 2014, *"the police are part of the administration of justice: to prevent crime, to solve crime and to initiate, where appropriate, through the Directors of Public Prosecutions, criminal proceedings in the courts of justice. ...I think it is very important to view the police as part of the administration of justice and thus not easily capable of being merged into the executive branch, which I think the ICAC represents"*. (see page 3 of the transcript of my evidence on the NSW parliament website [parliament.nsw.gov.au/ICAC/Inquiries/Review of the 2012-2013 Annual Report of the Inspector of ICAC](http://parliament.nsw.gov.au/ICAC/Inquiries/Review_of_the_2012-2013_Annual_Report_of_the_Inspector_of_ICAC))

Currently, the NSW **Ombudsman** has a police complaints oversight function. This is in my view, a layer of oversight which could be taken up by the Commission to avoid "doubling up of inquiries".

An example is the critical incident involving the death of a Brazilian student, Roberto Laudisio-Curti whilst in the course of being arrested by police on the streets of the Sydney CBD. In that particular matter, the Ombudsman oversaw the critical incident investigation and published a Report dated 28 February 2013, which detailed how police investigated the

death of Mr Laudisio-Curti in the lead up to the coronial inquest and outlined a number of inadequacies or failings with the police investigation into the conduct of the involved police officers and other systemic issues. The Ombudsman's recommendations were aimed at strengthening police guidelines and ensuring independent civilian oversight of police critical incident investigations.

The Ombudsman acknowledged the overlapping of functions in his Report when he stated:

"Shortly after the Coroner handed down the findings and recommendations from the inquest into the death of Mr Laudisio-Curti, the Police Integrity Commission announced publicly that it will investigate whether there was any serious police misconduct or criminal conduct by the officers involved in the pursuit and restraint of Mr Laudisio-Curti. Accordingly, we have ceased any further involvement in this matter due to legislative and administrative arrangements that sensibly ensure that there is no duplication of agency involvement in the oversight and/or investigation of police misconduct issues."

The timeline of the critical incident involving Mr Laudisio-Curti is set out below:

- 18 March 2012 - Death occurred
- 14 November 2012 – Coronial inquest concludes and matter referred to PIC
- 28 February 2013 – Ombudsman hands down his report re oversight of police critical incident investigations.
- 27 May 2013 – PIC refers matter to DPP for possible prosecution without conducting public inquiry
- 13 December 2013 – DPP announces that charges recommended against 4 police officers.
- 16 December 2014 – One police officer found guilty of common assault. No conviction recorded. 3 others found not guilty.
- 20 July 2015 – Police officer's appeal listed in District Court

Another example of overlapping or duplication of functions by various bodies is the critical incident involving Adam Salter, a mentally ill man who was shot by a police officer in his own home. The Commission's investigation in the matter is known as Operation Calyx. In September 2013, the Premier announced the Terms of Reference for the review of the oversight of police critical incidents and the Hon Robert McClelland published his Report on 29 November 2013. In that Report, he made specific reference to both Operation Calyx and the death of Mr Laudisio-Curti.

In the critical incident involving Adam Salter, there was separately, a critical incident investigation; a review of that investigation; a coronial inquest; the independent review by the Hon Robert McClelland; an investigation by the Commission; a referral to the DPP and ultimately the prosecution of 4 police officers.

The timeline of the matter is as follows:

- 18 November 2009 – Shooting death occurred
- 29 May 2011 – critical incident report published.
- June 2011 - A review of the critical incident report was published.

- 25 September 2011 to 7 October 2011 – Coronial inquest into the death
- 14 October 2011 – Coronial finding handed down.
- 1 November 2011 - Declared an investigation by PIC after complaint lodged – becomes Operation Calyx
- 27 July 2012 to 7 September 2012 – PIC Public inquiry.
- June 2013 - PIC Report in Operation Calyx published.
- 22 August 2013 - PIC refers brief to DPP for consideration of prosecution against number of Police officers.
- 29 November 2013 – McClelland Report published
- 22 August 2014 – DPP determines sufficient evidence to lay charges
- 23 October 2014 – First mention in local court.
- 17-28 August 2015- Trial date set for one of the police officers
- 26 April 2016 – Trial date set for 3 other police officers.

In both examples provided above, there is a significant amount of time between the critical incident and the ultimate prosecution of police officers involved in the incident. Any changes to the oversight of police which reduces the period of time between incident and finalisation of processes following the incident would be a positive outcome. It would also be likely to increase public confidence in the oversight role of the PIC, in particular, and in the effective and efficient administration of justice generally.

Prior to my appointment as Inspector and the appointment of the Hon Bruce James QC as Commissioner, there was much publicised acrimony between the Commission and the Inspector. The Inspector at that time was critical of the way the Commission was operating and published several Reports which were critical of the PIC's handling of certain matters. These Reports are readily available for viewing and downloading on the Inspectorate's website at oipic.nsw.gov.au.

Since my appointment in 2012, the relationship between the Commission and this Inspectorate has been cordial and co-operative. I have had no reason to publish any adverse reports or make recommendations as to the Commission's functioning or handling of its investigations.

Much is still being made of, what I now consider to be the historical animosity between the PIC and the Inspector of PIC. The view has been expressed (not least by the Police Association as I understand it) that these prior criticisms of the PIC are proof that PIC is not fulfilling its function as an independent body set up to detect, expose and prevent corruption and that it should be abolished or merged with another body such as the ICAC. As Inspector for the past 3 years or so, I have found that PIC is fulfilling its function as intended and that its activities are appropriate and within the jurisdiction. I do not support those criticisms of the PIC.

Should similar problems with the operations and activities of the PIC arise in the future, it is important to note that the legislation in its current form provides for the Office of Inspector, whose role is critical to ensuring that the PIC is accountable for its practices and procedures. This model of oversight is working effectively and I see no reason to depart from it, there being no reason to anticipate functional incapacity or disharmony of the kind experienced years ago. To further ensure the continuing independence and effective functioning of the PIC, the term of Commissioner should remain at a maximum of 5 years. It is also desirable that a former Supreme Court Judge or equivalent be appointed to the role.

Should the PIC's function be expanded as a consequence of the present Inquiry, such as taking over the police complaints oversight function from the Ombudsman, the work of the Inspector would not increase to such an extent that it would make it difficult for the same person to occupy both the Office of the Inspector of PIC and the Office of the Inspector of the ICAC, which is currently the situation. Both the PIC legislation and the ICAC legislation allows for an Assistant Inspector to be appointed to assist the Inspector. Further, the Inspector is able to employ more staff if and when the need arises, with the assistance of the Department of Premier and Cabinet. To this end, I am satisfied that I have access to the necessary resources to perform my functions as Inspector of PIC as set out in Part 6 of the PIC legislation.

Inspector of the NSW Crime Commission

Presently, there is an Inspector of the NSW Crime Commission whose functions are set out in similar terms to those of the Inspector of the PIC except in relation to Crime Commission officers namely (s. 63 *NSW Crime Commission Act 2012*):

- (1) The principal functions of the Inspector are:
 - (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
 - (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
 - (c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
 - (d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.
- (2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or a government agency or member of a government agency.
- (3) The Inspector is not subject to the Commission in any respect.
- (4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:
 - (a) contrary to law, or
 - (b) unreasonable, unjust, oppressive or improperly discriminatory, or
 - (c) based wholly or partly on improper motives.

- (5) Without affecting the power of the Inspector to make a report under section 67 or 68, the Inspector may, at any time:
- (a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and
 - (b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.

Section 75C of the PIC Act states that:

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...

There has been only one occasion that as Inspector of PIC I dealt with, on my own initiative, a complaint concerning a PIC officer. The Report dated 30 May 2014 may be found at: oipic.nsw.gov.au/reports.

Both the PIC and the Inspector of the NSWCC have the power to investigate a complaint about the misconduct of a Crime Commission officer, which is, with respect, an unnecessary doubling up of powers. The role of the Inspector of the NSWCC should be considered in light of the current allocation of the functions and powers between it and the PIC. If there are to be any legislative changes vis-à-vis these functions and powers, the PIC should retain the function of investigating misconduct of a Crime Commission officer rather than the Inspector of the NSWCC.

These briefly stated views are unaffected by anything in the Special Report to the Minister dated 28 October 2014 prepared by Inspector Barr. The Report is not on his Inspectorate's website but may be found at: parliament.nsw.gov.au

Yours sincerely,

The Hon. David Levine AO RFD QC
Inspector: PIC