



15 JUL 2008

Senator George Campbell
Chair
Parliamentary Joint Committee on the Australian
Commission for Law Enforcement Integrity
PO Box 6100
CANBERRA ACT 2600

Dear Senator Campbell

Inquiry into law enforcement integrity models

In response to your invitation of 29 May, I provide the following information on the Committee on the Office of the Ombudsman and the Police Integrity Commission. I also draw your attention to several reports of previous Committees which may be useful to your deliberations.

The Committee's current inquiry into early intervention systems to identify officers at risk of corruption may also be of interest. Details of the inquiry may be viewed on the Committee's webpage: www.parliament.nsw.gov.au/ombudsmanpic.

The Committee looks forward to learning in due course the findings and recommendations of your inquiry and, given the contiguous work programmes of our respective committees, it would always welcome any opportunity to discuss matters of mutual interest.

Yours sincerely

A handwritten signature in blue ink that reads 'Angela D'Amore'.

Angela D'Amore MP
Chair

Current NSW system for investigating police complaints and police corruption and serious misconduct

The recommendations of the Royal Commission into the New South Wales Police Service continue to influence police oversight in New South Wales. The current system combines external and internal oversight, which ensures police ownership of a managerial or remedial approach to police complaints, seen by the Royal Commission as integral to reform¹. The Police Integrity Commission investigates corruption and serious police misconduct. All other police misconduct is investigated by the NSW Police Force, subject to oversight by the Ombudsman, but in some cases direct investigation by the Ombudsman may occur. Certain classes of minor or management issues do not require investigation by the oversight bodies and are dealt with by the Police Force. These internal investigations may, however, be audited by the Ombudsman (s.160(1) & (2) of the Police Act).

Oversight by the parliamentary committee

The proposal for a parliamentary committee to oversee the operation of the Office of the Ombudsman was originally put by former Ombudsman, David Landa, in his report to Parliament, *The Independence and Accountability of the Ombudsman* (July 1990).

The Committee is constituted under Part 4A of the *Ombudsman Act 1974* as amended by the *Ombudsman (Amendment) Act 1990* (assented to 4/12/90; commenced 18/1/91). The Committee monitors and reviews the exercise of the Ombudsman's functions and reports to Parliament on the operations, structure and procedures of the Office of the Ombudsman. The Committee commenced operations in February 1991. It has a membership of seven: three members of the Legislative Council and four members of the Legislative Assembly.

In his second reading speech on the *Ombudsman (Amendment) Bill 1990*, the then Attorney General, Mr John Dowd, explained that the main function of the Committee would be "to monitor and review the exercise by the Ombudsman of his functions". According to Mr Dowd, it was "intended that the Committee [would] be responsible for examining the general conduct and procedures of the Office of the Ombudsman and [would] not become involved in reviewing specific cases"². The latter exclusion was supported by the Ombudsman at the time, Mr David Landa, as "essential to ensure the integrity of his investigations"³. The Committee would not operate as an appeal body or tribunal and it would be inappropriate for it to become involved in reviewing or enforcing the Ombudsman's recommendations.

Statutory functions

The Committee's functions under Part 4A of the *Ombudsman Act 1974* are:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act,
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,

¹ *Royal Commission into the New South Wales Police Service, Final Report, Volume II: Reform*, May 1997, p 307

² NSW Legislative Assembly, *Hansard*, 13 November 1990, p 9485

³ David Landa, NSW Ombudsman, *The Independence and Accountability of the Ombudsman, A special report to Parliament pursuant to section 31 of the Ombudsman Act*, July 1990, p 23

- to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
- to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman,
- to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

The Committee is not authorised:

- to investigate a matter relating to particular conduct, or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
- to exercise any function referred to in subsection (1) in relation to any report under section 27, or
- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27, or
- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.⁴

In a similar manner, under Part 7 of the *Police Integrity Commission Act 1996*, the Committee also monitors and reviews how the Police Integrity Commission (PIC) and the PIC Inspector exercise their functions. The Committee is also able:

- to examine trends and changes in police corruption, and practices and methods relating to police corruption and report changes needed to the functions, structures and procedures of the Commission and the Inspector.⁵

Statutory veto power

The *Statutory Appointments Legislation (Parliamentary Veto) Amendment Act 1992* conferred upon certain parliamentary committees the right of veto of a number of statutory appointments. The Act amended the *Ombudsman Act* by providing the Committee with the power of veto over the appointment of the Ombudsman and the Director of Public Prosecutions. Following the establishment of the PIC in 1996, the Committee was given the power of veto over the appointment of the PIC Commissioner and the Inspector of the PIC.

The Committee exercises its parliamentary veto function on a confidential basis and penalties apply for public disclosures about whether the Committee or any of its members has vetoed, or intends to veto, the appointment of an applicant. The Act imposes strict confidentiality provisions in relation to the exercise of this function and also specifies penalties for any breach of these provisions. A statutory time limit of 14 days after receipt of the referral applies for the Committee to consider vetoing a proposed appointment and an extension of 30 days may be sought on notification to the Minister. To date the Committee has chosen to consider its veto in relation to each appointment after holding a private meeting with the proposed appointee.

⁴ *Ombudsman Act 1974*, section 31B

⁵ *Police Integrity Commission Act 1996*, section 95

Extension of the Committee's jurisdiction to include oversight of the PIC and PIC Inspector
Prior to the Royal Commission into the New South Wales Police Service, police misconduct was investigated by the Office of the Ombudsman and the Police Service. Allegations of police corruption were investigated by the Independent Commission Against Corruption (ICAC).

In response to the recommendations of the Royal Commission, the Government introduced legislation to reform the police oversight system. The *Police Integrity Commission Act 1996* provided for the creation of an independent statutory body to detect, investigate and prevent police corruption and serious misconduct. The PIC Act also provided for the appointment of the PIC Inspector and the Parliamentary Joint Committee.

The existing police complaints system was reformed by amendments to the *Police Service Act 1990* (through the *Police Legislation Amendment Act 1996*). The new legislation removed the role of the ICAC in investigating police corruption while retaining the Ombudsman's jurisdiction in relation to police complaints. The PIC targets serious police misconduct and corruption.

Accountability structure

The PIC, PIC Inspector and the Ombudsman are all accountable to the Committee and report directly to the Presiding Officers of the NSW Parliament.

The PIC Inspector is independent of both the Committee and the PIC, and his position provides another level of accountability between the Committee and the PIC. The Inspector's oversight role, as specified under the PIC Act, concerns the legality of PIC operations, allegations of abuse of power, and misconduct on the part of the PIC and its officers (as distinct from the broader overview role of the Committee).

The Inspector does not act as an agent of the Committee and may exercise his functions on his own initiative, at the request of the Minister, or in response to a complaint. Matters may also be referred to the Inspector by the Ombudsman, ICAC, NSW Crime Commission, the Parliamentary Committee or any other agency.

Reports of the Committee

The following reports by previous Committees on the Office of the Ombudsman and the PIC may be of interest to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity and are available on the Committee's website (www.parliament.nsw.gov.au/ombudsmanpic):

Ten year review of the police oversight system in New South Wales (November 2006)

The results of the Qualitative and Strategic Audit of the Reform Process (QSARP)

(October 2006)

Interim Report on an Inquiry into the Police Integrity Commission's jurisdiction to oversight the Protective Security Group (March 2005)

Report on the Inquiry into Scrutiny of New South Wales Police Counter-Terrorism and Other Powers (Final Report, November 2006)

Interim Report on an Inquiry into Section 10(5) of the Police Integrity Commission Act 1996 (March 2005)

Phase Two of an Inquiry into Section 10(5) of the Police Integrity Commission Act 1996 (Final Report, November 2006)

Trends in Police Corruption (December 2002)

There are various other Committee reports which touch on oversight issues, including General Meeting reports.

PARLIAMENTARY JOINT COMMITTEE ON
THE AUSTRALIAN COMMISSION FOR
LAW ENFORCEMENT INTEGRITY

REC'D:

FROM:

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