



NEW SOUTH WALES

*Inspector
of the
Police Integrity Commission*

ANNUAL REPORT

FOR THE YEAR ENDED

30 JUNE 2013



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*Inspector
of the
Police Integrity Commission*

30 October 2013

The Hon Donald Harwin MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon Shelley Hancock MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

Dear Mr President & Madam Speaker

In accordance with section 103 of the *Police integrity Act 1996* (the PIC Act), I, as the Inspector of the Police Integrity Commission (the Inspector), hereby furnish to each of you for presentation to the Parliament the Annual Report of the Inspector for the year ended 30 June 2013.

This report has been prepared in accordance with the requirements of the PIC Act.

Pursuant to section 103(2) of the PIC Act, I recommend that the report be made public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Levine'.

The Hon David Levine AO RFD QC
Inspector

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PART 1: THE INSPECTOR'S ROLE AND FUNCTIONS

1.1 PRELIMINARY OBSERVATIONS

This Annual Report for the years 2012-13 is the first for a full reporting year during which I have occupied the Office of Inspector.

During the reporting year, after the change of location of the Inspector's premises, attention was particularly given to the reorganisation and restructuring of administrative systems. In this process the part played by my Executive Support Officer, Ms Barbara Rogers and my Senior Legal Project Officer, Ms Susan Raice cannot be praised too highly.

Further during the reporting year, the matter referred to in last year's Report as "Strike Force Emblems" (which had been referred by the Police Minister under Section 217 of the *Police Act 1990*) was referred by me in its totality to the Ombudsman pursuant to amendments to both the *PIC Act* and the *Ombudsman Act* by way of the *Ombudsman (Amendment) Act 2012*.

At the end of the reporting year it was still in the hands of that Office. In the body of this Report reference will be made to submissions I made as to the appropriateness of the reference by the Police Minister under Section 217 of the *Police Act 1990*.

Of the matters the subject of reference in the Annual Report 2011-12, the principal matter still outstanding is the body of complaints made by the New South Wales Crime Commission in relation to the conduct of Operation Winjana. The Report by the Police Integrity Commissioner to Parliament was delivered in October 2012. My Report in relation to these complaints and a ninth complaint received in October 2012 is yet to be finalised.

1.2 THE INSPECTOR

The Inspector of the Police Integrity Commission derives authority from the *Police Integrity Act 1996* (the *PIC Act*). The Inspector is appointed by the Governor with the advice of the Executive Council. The Joint Committee on the Office of the Ombudsman and Police Integrity Commission is empowered to veto the proposed appointment (schedule 2 to the *PIC Act* and section 31 of the *Ombudsman Act 1974*). The Office of the Inspector may be full time or part time according to the terms of the appointment, and the term is limited to five years. My appointment from 1 February 2012 is part time.

1.3 FUNCTIONS OF THE INSPECTOR

As enacted by section 89 of the *PIC Act*, the principal functions of the Inspector are to audit the operations of 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 Police Integrity Commission in any respect.

1.4 THE POWERS OF THE INSPECTOR

Pursuant to section 90 of the *PIC Act* the Inspector may investigate any aspect of the Commission's operations or any conduct of its officers. The Inspector is entitled to full access to the records of the Commission and to take or have copies made of any of them. The Inspector may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of its officers. The Inspector may require officers of the Commission to attend before the Inspector to answer questions, or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission. The Inspector may investigate and assess complaints about the Commission or officers of the Commission and may refer matters relating to the Commission or its officers to other agencies for consideration of action and may recommend disciplinary action or criminal prosecution against officers of the Commission.

The Inspector (pursuant to section 91) is empowered to make or hold inquiries. The powers, authorities, protections and immunities conferred on a Commissioner by the *Royal Commission Act of 1923* are conferred on the Inspector holding an inquiry and any witness summoned by or appearing before the Inspector also has the benefit of the protection and immunities under the *Royal Commission Act*.

No formal inquiry was conducted in the year 2012-2013.

OTHER RELEVANT LEGISLATION

1.5 GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 NO. 52 (GIPA ACT)

Information concerning the Inspector and PIC's statutory functions is exempt from being released under an access application made under the *GIPA Act*.

Under Schedule 1 of the *GIPA Act*, an access application made for access to any information relating to the PIC's corruption prevention, complaint handling, investigative or reporting functions will not be granted.

Under Schedule 2 of the *GIPA Act*, an access application made for access to any information relating to the auditing, complaint handling, investigative and reporting functions of the Inspector of PIC will not be granted.

Applications for access to information can be made in respect of the Inspector's administrative functions, for example human resources policies and practices. Such applications will be assessed on a case by case basis.

In compliance with section 125 of the *GIPA Act* the following report on GIPA applications is published:

In 2012-2013, there were no access applications made under the *GIPA Act* to the Inspector. There was a consultation pursuant to section 54 of the *GIPA Act* by another Agency which also gave rise to the application of schedules 1 and 2. I did not consent to disclosure of the requested information insofar as it related to “excluded information” originating from this Office.

The website of the Office of the Inspector of PIC contains details of how to obtain information from the Office of the Inspector of PIC.

1.6 THE PUBLIC INTEREST DISCLOSURES ACT 1994 (PID ACT)

This legislation provides for public servants and officials to report serious wrongdoing in public sector agencies on a confidential basis. Under that legislation complaints or allegations made by public servants or public officials are called disclosures. The *PID Act* provides that such persons making disclosures are to be protected against actual or potential reprisals.

The Inspector is an investigating authority under Section 4. Pursuant to Section 6D(1) of the Act, the Office of the Inspector of PIC has developed a policy for managing public interest disclosures. This policy and the Inspector’s Statement of Commitment to the legislation are available for viewing on the Office’s website www.oipic.nsw.gov.au.

The following information is provided as required by section 31 of the *PID Act*:

- a) The number of public officials who have made a public interest disclosure to me – 1
- b) The number of public interest disclosures received by me relating to each of the following:
 - i. Corrupt conduct – 1
 - ii. Maladministration – 0
 - iii. Serious and substantial waste of public money - 0

The investigation of the PID matter did not progress as the complainant did not provide further and better particulars as requested. I found that there was insufficient information on which to make a finding and accordingly, the complaint file was closed on 6 December 2012. The complainant was notified of the closure and the reasons for it. The matter was however embraced by the reference of “Emblems” to the Ombudsman.

1.7 TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) ACT 1979 (CTH) (TIA ACT)

The Inspector is included as an eligible authority for the purposes of the *TIA Act*. In accordance with reporting requirements under section 96(1) and 159(1) of the *TIA Act*, the Commonwealth Attorney-General’s Department was advised by me that there was nil usage of the provisions of the *TIA Act* during the current reporting period.

PART 2: THE OFFICE OF THE INSPECTOR OF PIC

ADMINISTRATION

2.1 PREMISES

During the reporting period the premises of the Inspectorate were relocated in the central business district.

Postal address: GPO Box 5215, Sydney, NSW, 2000

Telephone: (02) 9232 3350

Facsimile: (02) 8243 9471

E-mail: pic_executive@oipic.nsw.gov.au

2.2 STAFF

As of the end of the reporting period the office was constituted by the Inspector, the Senior Legal Project Officer, Ms Susan Raice and his Executive Support Officer, Ms Barbara Rogers. The number of days per week worked varied between three and five. Ms Raice joined the Inspectorate in October 2012. She is employed on a part time basis.

2.3 BUDGET AND FINANCE

The Inspector is an independent statutory office and the office of the Inspector is a cost centre within the Department of Premier and Cabinet (DPC).

The budget for the year 2012-2013 was \$339,000 with actual costs of \$396,000.

LIAISON AND COMMUNICATION

2.4 LIAISON WITH THE POLICE INTEGRITY COMMISSION

The *PIC Act* operates in accordance with its terms and there is a mutual expectation on the part of myself and the Commissioner that each will comply with his statutory duties.

Otherwise, if required, special liaison arrangements can be made on an ad-hoc basis in the event of substantial bureaucratic requirements arising. Such arrangements have been and will be effectively made between the Executive Assistant to the Commissioner and my Executive Support Officer. This was a successful arrangement during the reporting year.

2.5 MEETINGS/CONFERENCES UNDERTAKEN BY THE INSPECTOR

During the current reporting period I met with the Police Integrity Commissioner on 14 September 2012, 16 November 2012, 6 December 2012, 1 February 2013, 3 May 2013 and 9 May 2013. In addition, there were numerous telephone conversations throughout the reporting period. The purposes of these meetings were to discuss the fundamentals of the operations of my office vis-à-vis the

Commission and vice versa given that both the Commissioner and I were newly appointed in the year 2012. The meetings between the Commissioner and myself also were the occasion for discussion of any discreet matters that may have arisen involving personnel of the Commission.

On 5 July 2012 I met with the Inspector of ICAC, Mr Harvey Cooper AM, to discuss operational and policy issues.

I appeared before the Joint Parliamentary Committee on 22 February 2013. Ms Rogers and Ms Raice accompanied me to those hearings. I answered Questions on Notice. On 11 April 2013 I appeared before the Joint Parliamentary Committee into Performance Measures. Ms Raice accompanied me to that inquiry. Additionally I have had meetings with Ms Virginia Tinson, Associate Director, Department of Premier & Cabinet, Mr Bruce Barbour, NSW Ombudsman, Mr Peter Hastings, NSWCC Commissioner and the Hon Graham Barr QC, NSWCC Inspector. On 18 June 2013 I had a meeting with Ms Rachel McCallum, DPC General Counsel and Ms Fiona Cameron, DPC Legal Officer at the IPIC office.

On 21 June 2013 a courtesy visit took place in the IPIC office with several members of the Independent Broad-based Anti-corruption Commission (IBACC) of Victoria. The functions of the Inspector and the role of the Joint Parliamentary Committee were discussed.

2.6 WEBSITE

As noted in the last Report, the website needed radical overhauling and this has been attended to. The contact details of the office remain unchanged but the content provides more complete information in relation to cognate statutory bodies and public access.

PART 3: THE WORK OF THE INSPECTOR'S OFFICE DURING THE REPORTING PERIOD: SECTION 217 POLICE ACT REFERENCE AND SUBMISSIONS

- 3.1 As stated above the Minister for Police, pursuant to section 217 of the *Police Act 1990*, during the reporting period made a reference to me in the following terms:

"In your role as Inspector of the Police Integrity Commission I request that you undertake a review of this matter with an emphasis upon reviewing the recommendations to ensure they have firstly, been properly dealt with, secondly their release would be in the public interest, thirdly whether their release would not prejudice any legal action or investigation by the Public Integrity Commission or your office and fourthly, their release will not unreasonably reflect upon any individuals without them being afforded natural justice.

In accordance with S.217 of the Police Act NSW, 1990, I respectfully request this investigation be reviewed by your office and report provided to myself with your findings".

As at 11 May 2012, my office as Inspector was not within the Police Minister's portfolio. It was within that of the Premier.

By letter dated 25 May 2012 the Hon Barry O'Farrell MP, Premier, wrote to me in the following terms:

Dear Inspector

I refer to the NSW Police Strike Force Emblems Report dated 25 August 2005.

I am advised the Minister for Police and Emergency Services referred the Emblems Report to you earlier this month. I am further advised that in accordance with S.217 of the Police Act NSW 1990, the Minister has asked you to determine whether you are of the opinion that the recommendations of the report can be made available to the public.

As the Minister responsible for the administration of the Police Integrity Commission Act 1996 I would also respectfully request you consider whether the Emblems Report could be publicly released in its entirety. (emphasis added)

The NSW Government is committed to openness and transparency but we understand the necessity of balancing public interest against procedural fairness and the importance of not prejudicing any potential legal action or investigation.

On 23 November 2012, I submitted my Report and Review of the Emblems matter to the Hon Michael Gallacher, the Minister of Police and Emergency Services. I attached a covering letter to that Report and Review in which I advised against the publication of the Emblems Report and my Report and Review of it, other than to the Minister of Police and Emergency Services, the Hon the Premier of NSW, Police Commissioner Scipione and the NSW Ombudsman. I had no objection to the release of my covering letter.

- 3.2 On 4 February 2013, I forwarded a Memorandum with respect to the Ministerial referral pursuant to section 217 to the Hon the Premier O'Farrell, the Hon Michael Gallacher MLC and Ms Cusack, Chair of the JPC.

After a review of relevant legislative history, I concluded:

"The referral by the Minister pursuant to section 217 in effect required a review of the procedures of the Police. This was concurrent with the Inspector's oversight role of the PIC, a body which was established to prevent, detect and investigate serious police misconduct. The Emblems matter revolved around alleged officer misconduct on a very large scale, dating back to the last century. The situation was thus that this Inspectorate was asked to review Police conduct and procedures over a wide area and discrete recommendations whilst also overseeing the PIC, which is an integrity body established to investigate virtually the same such kind of matters as arose from Strike Force Emblems, namely serious police misconduct.

One of the functions of the Inspector is to consider complaints lodged against PIC or its officers. Such complaints are usually from current or former Police officers. It is clear that by its very nature, the role of "authorised person" (in s.217 above) and the role of the Inspector should not be undertaken by the same person.

It is undesirable that the Inspector be asked to report to a Minister of Police on matters with respect generally to the management and administration of the NSW Police (noting the functions in s.89(1)above) and given that the Inspector's role is to oversight the PIC. It is paramount that the PIC Inspector is seen as independent, impartial and objective in performing his functions. To review and report back with respect to the Emblems matter did not sit with the role of PIC Inspector and in effect, had the potential of undermining public confidence in the Inspectorate.

Further, to consider whether recommendations of an internal report prepared over 10 years ago had been "properly dealt with" would have required an in-depth knowledge of the administration and management of the Police over the past 10 years, including determining whether and how the recommendations of the Emblems matter had been implemented or could have been.

Given the width of the Terms of Reference, this Inspectorate was not adequately staffed to deal with such a large matter. At the time the Emblems matter was referred, I was (and still am) engaged on a part-time basis (3 days a week). In addition, I had the assistance of an Executive Assistant, who was also employed 3 days a week. In October 2012, a third staff member, a Senior Legal Project Officer, was employed to assist me in the Inspectorate. She is also employed on a part-time basis (3 days a week). The Emblems matter has now been referred to the NSW Ombudsman and I understand that 10 staff will be employed to work on the matter and it is anticipated that the investigation will take about 2 years.

The reference from the Minister (within whose portfolio lies the Inspectorate) must be a reference pursuant to s.89(2) of the PIC Act to perform the functions referred to at s.89(1). The independence of the Inspector will otherwise be at risk of subversion and the office compromised.

Section 217 in its current form is too broad. The section should be amended (together with any other necessary amendments elsewhere) so that the situation cannot arise whereby a Minister of Police can appoint an Inspector of PIC to review the procedures of the Police. The Police Act should be amended so as to define "authorised person" for the purpose of s.217. The definition should expressly exclude the PIC Inspector, given the Inspector's quite specific legislative functions to which I have already referred".

- 3.3 By way of letter dated 17 April 2013, the Hon the Premier of NSW acknowledged my Memorandum and advised that "no further referrals under section 217 of the Police Act 1990 will be made to the Inspector of the Police Integrity commission. This will ensure that public confidence in the Inspectorate is maintained".

PART 4: THE WORK OF THE INSPECTOR'S OFFICE DURING THE REPORTING PERIOD: GENERALLY

4.1 PRELIMINARY: PERIOD 1 JULY 2011 TO 21 NOVEMBER 2011

The file number 606-11 is constituted by the nine complaints made by the NSW Crime Commission relating to the conduct of the Police Integrity Commission in Operation Winjana concerning the conduct of officers within the NSWCC. At the end of the last reporting period the Report of the Assistant Commissioner, the Hon Jerrold Cripps QC, had not been provided nor had my Report into the complaints.

This is a matter of some substance, which found its way to the Supreme Court of NSW: NSW Crime Commission v the Police Integrity Commission [2011]NSWSC 55 (18 February 2011); Giorgiutti v the Police Integrity Commission (No. 2) [2011] NSWSC 476 (24 May 2011); Giorgiutti v The Police Integrity Commission (No. 3) [2011] NSWSC 978 (31 August 2011).

In October 2012, the PIC published its report in Operation Winjana. I am currently in the process of preparing my report with respect to the 9 complaints and as such they are currently still active.

4.2 PERIOD 1 JULY 2012 TO 30 JUNE 2013

4.2.1 There have been 16 new complaints received in the reporting period. Of these 13 have been closed.

Of the 13 closed:

- 6 were found to be outside the jurisdiction of the Inspector
- 6 were not upheld
- 1 was withdrawn

4.2.2 The remaining 3 complaints are currently active.

4.2.3 Of the 16 new complaints received in the reporting period, only one related to the conduct of the PIC since the appointment of the Hon Bruce James QC as Commissioner. This was a complaint lodged by an affected person in Operation Calyx about the conduct of Counsel Assisting, during the Police Integrity Commission hearing. I did not uphold the complaint. The complainant was informed that he could refer his complaint to the NSW Bar Association and/or the Legal Services Commissioner.

This office received numerous communications which were incapable of being dealt with because the caller or writer did not articulate a matter which invoked my jurisdiction. Those have not been included in any statistical information in this Report.

4.2.4 There were 16 complaints outstanding from the 2011/2012 reporting period. Of these 6 have been closed as follows:

- 1 was a Public Interest Disclosure and it was not upheld. Reference has already been made to this complaint earlier in this Report under the heading "The Public Interest Disclosures Act".
- 2 were not upheld
- 1 was referred to the Independent Commission against Corruption
- 2 were outside the jurisdiction of this Office

4.2.5 Of the remaining 10 complaints outstanding from the 2011-2012 reporting period, 9 of those comprise the body of complaints made by the NSW Crime Commission, to which I referred earlier in my preliminary observation.

PART 5: AUDITING OF THE POLICE INTEGRITY COMMISSION BY THE INSPECTOR

5.1 PERIOD 1 JULY 2012 TO 30 JUNE 2013

I undertook audits of the following Police Integrity Commission operations:

Operation Binda: I was proposing to audit this Operation. On 16 November 2012, I had a meeting with the PIC Commissioner who informed me that the affected person had admitted to the misconduct and had resigned. The PIC published its report in Operation Binda in June 2013. I was satisfied that the PIC had conducted the investigation in accordance with its functions and had complied with the law of the State. No further action was taken by me.

Operation Calyx: I undertook an audit of the applications for and execution of warrants issued pursuant to the *Surveillance Devices Act 2007* and the *Telecommunications (Interception and Access) Act 1979 (Cth)*. I was satisfied that there were lawful grounds for applying for the warrants and that it was appropriate to do so in the circumstances. I was satisfied that the PIC had complied with the law of the State. The substantive hearings in public relating to Operation Calyx took place from 27 July 2012 onwards. The PIC Report was presented to Parliament in June 2013.

Operation Barmouth: I was provided with the daily transcripts of both the private and public hearings and was satisfied that the PIC was effectively performing its function. (The PIC Report has been presented to the Parliament in September 2013).

On a number of occasions, I and my staff have availed ourselves of the dedicated Inspector's room at the offices of the PIC in order to investigate specific complaints.

5.2 THE JOINT PARLIAMENTARY REFERENCE: TORBAY

On 22 May 2013, the Joint Parliamentary Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission referred to me pursuant to section 89(2) of the *PIC Act 1996* for my consideration, information provided by the PIC at the hearing of 11 April 2013 and by way of answer to a question on notice. In particular, I was asked to consider the PIC's handling of allegations by a Police Officer that in June 2007, former Member of Parliament Richard Torbay and former Local Area Commander Superintendent David Cushway made an unauthorised visit to a prisoner in Armidale police cells. I am awaiting information from the Ombudsman and will then discuss the matter with the PIC. Thereafter I shall prepare a special Report for the JPC.

PART 6: IN CONCLUSION

I have met with the Police Integrity Commissioner from time to time as referred to above. I have been given written reports routinely relating to operations being conducted by the PIC including new investigations, current operational activity reviews, reports received and cognate matters. The relationship has been cordial and cooperative.

The Hon David Levine AO RFD QC
Inspector
October 2013