



PARLIAMENT OF NEW SOUTH WALES

# Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission

REPORT 8/55 – AUGUST 2014

2014 GENERAL MEETINGS



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

|                        |  |
|------------------------|--|
| <b>CHAIR</b>           | Mr Bart Bassett MP (from 28 May 2014)<br>The Hon Catherine Cusack MLC (until 15 May 2014)  |
| <b>DEPUTY CHAIR</b>    | Mr Lee Evans MP  |
| <b>MEMBERS</b>         | Mr Kevin Anderson MP (until 27 May 2014)<br>The Hon Paul Lynch MP<br>Mrs Sarah Mitchell MLC<br>Mr Ryan Park MP<br>The Hon Dr Peter Phelps MLC (from 15 May 2014 to 18 June 2014)<br>The Hon Trevor Khan MLC (from 18 June 2014)<br>The Hon Adam Searle MLC |
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## Committee's functions

The Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission was originally established on 4 December 1990.

The Committee's key functions relate to the NSW Ombudsman, Police Integrity Commission, NSW Crime Commission (including the Commission's Management Committee), Information Commissioner, Privacy Commissioner, Child Death Review Team, Inspector of the Police Integrity Commission, Inspector of the Crime Commission and Inspector of Custodial Services.

The Committee's main functions involve:

- monitoring and reviewing the exercise of each office's functions
- examining each office's annual and other reports
- reporting to NSW Parliament on matters relating to each office's functions and annual and other reports
- inquiring into matters referred to the Committee by NSW Parliament.

However, the Committee is not permitted to do any of the following in relation to the offices it oversees:

- investigate matters relating to particular conduct
- reconsider decisions to investigate, not to investigate, or to discontinue investigation of a particular complaint
- reconsider findings, recommendations, determinations or other decisions in relation to a particular investigation or complaint.

The Committee's functions can be found in various pieces of NSW legislation, for example, the *Ombudsman Act 1974*, the *Police Integrity Commission Act 1996* and the *Crime Commission Act 2012*.

## Chair's foreword

In February 2014 the Committee held General Meetings with the Police Integrity Commission (PIC), the Inspector of the PIC, the NSW Crime Commission, the Information and Privacy Commission, the NSW Ombudsman and the Child Death Review Team. The Committee also met for the first time with the newly appointed Inspector of the NSW Crime Commission and the Inspector of Custodial Services.

The Committee has continued to improve the way it reports to Parliament on its increasing statutory oversight responsibilities. Key themes and common issues have been consolidated into a single chapter. This year the Committee has focused on oversight of police critical incidents, changes to agencies' jurisdiction, proposals for legislative change, and co-operation between agencies.

The report of an independent review of the oversight of police critical incidents, conducted by Mr Robert McClelland, was released in early 2014. The NSW Ombudsman and the PIC expressed concern at some of the review's recommendations. The PIC's concerns focused on comments in the report which called into question the need for the PIC and appeared to suggest that the ICAC and PIC should be merged. The Ombudsman argued that some of the proposed reforms to the oversight of critical incidents would effectively end his office's ability to monitor police investigations of critical incidents. The Committee considers that any reforms to oversight of critical incidents should retain the Ombudsman's ability to monitor police critical incident investigations and the PIC's role of investigating police misconduct, including in relation to critical incidents. The proposal to merge the ICAC and PIC is a considerable change to the current integrity system and should be carefully considered.

The past year has seen a number of changes to oversight agencies' responsibilities, including as a result of the establishment of new statutory offices. Agencies have worked co-operatively with each other to reduce duplication arising from jurisdictional changes. New and changing responsibilities have also led to proposals for legislative change to clarify some aspects of agencies' roles. The Committee supports any changes that would assist oversight bodies in performing their roles, and will continue to monitor the need for legislative amendments.

The Committee has highlighted particular projects which illustrate the important work undertaken by oversight agencies, including the NSW Crime Commission's organised crime disruption strategy, the NSW Ombudsman's work on Operation Prospect and the Child Death Review Team's progress towards improving the identification of children's Indigenous status.

I would like to thank the members of the Committee for their participation in the General Meeting and their contribution to the reporting process. I particularly wish to acknowledge the contribution of my predecessor as Chair, the Hon Catherine Cusack MLC, who presided over the General Meetings and Chaired the Committee for three years.

**Bart Bassett MP**  
Chair

# List of findings and recommendations

- FINDING 1** \_\_\_\_\_ **8**
- The Committee finds that the proposition arising from the McClelland report that the Police Integrity Commission and the Independent Commission Against Corruption should be amalgamated is not supported by the bodies concerned and was not subject to a thorough consultation process.
- FINDING 2** \_\_\_\_\_ **8**
- The Committee finds that the Independent Commission Against Corruption and the Police Integrity Commission already achieve efficiencies through existing co-operative arrangements and, hence, there is no necessity to implement the recommendation in the McClelland report that the PIC and the ICAC share staff, resources, expertise and capabilities.
- FINDING 3** \_\_\_\_\_ **8**
- The Committee further finds that significantly altering the existing oversight system for police misconduct and corruption would warrant a more comprehensive review.
- RECOMMENDATION 1** \_\_\_\_\_ **8**
- The Committee recommends that, in the implementation of any reforms to the oversight of police critical incidents, the NSW Ombudsman’s and Police Integrity Commission’s current functions and powers to independently investigate police misconduct in relation to critical incidents and monitor police critical incident investigations, should remain unchanged.





# Key themes and projects

- 1.1 The Committee conducted general meetings with the Police Integrity Commission (PIC), the Inspector of the PIC, the NSW Crime Commission, the Inspector of the Crime Commission, the Inspector of Custodial Services, the Information and Privacy Commission (IPC), the Ombudsman and the Child Death Review Team on 17 and 18 February 2014.
- 1.2 A number of key themes emerged at the meetings, and the Committee has focussed on the following in this report:
- The oversight of police critical incidents
  - The expansion of agencies' roles and workload
  - Establishment of new statutory offices
  - Inter-agency co-operation
  - Proposals for legislative change
  - Agency projects.

## OVERSIGHT OF POLICE CRITICAL INCIDENTS

- 1.3 A number of agencies have a role in relation to police critical incidents, including the NSW Ombudsman and the Police Integrity Commission (PIC).<sup>1</sup> Highly publicised critical incidents, such as the death of Roberto Laudisio-Curti, spurred public debate and concern and led to an independent review of critical incidents. In the section below, the Committee examines the findings of the review and the responses of the PIC and Ombudsman.

## McClelland Review

- 1.4 In September 2013 the then Premier announced that Mr Robert McClelland would conduct an independent review of the investigation and oversight of critical incidents, which would examine: the adequacy and clarity of current guidelines; operational, legal or other barriers to police publicly reporting on critical incident investigation outcomes; improvements to the oversight of critical incidents to guarantee accountability and transparency; and whether to amend legislation, practices or procedures.
- 1.5 Mr McClelland's report made nine recommendations aimed at improving the management of critical incident investigations, including:
- information regarding the outcome of a critical incident investigation be made public promptly after the investigation concludes

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<sup>1</sup> Critical incidents involve the death or serious injury of a police officer or a civilian, arising from a police operation. The NSW Police Force can also declare other matters to be 'critical incidents' if it is considered to have sufficient public interest.

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- the NSW Police Force's Critical Incident Guidelines be made public
- legislative amendment to provide for the oversight of critical incident investigations by the Ombudsman
- development of a Media Protocol for responding to critical incidents.<sup>2</sup>

1.6 Agencies with responsibilities in relation to critical incidents include the Police, the Ombudsman, the PIC, WorkCover and, in the case of death, the State Coroner. The report noted that while agencies were managing overlapping responsibilities to a degree, there were a number of problems, including witnesses being interviewed several times by different agencies for differing purposes; and unnecessary confusion and uncertainty caused by different agencies making different findings in a critical incident investigation. The report made recommendations to alleviate these issues:

- establishing an inter-agency forum for regular dialogue and co-operation between agencies, with a focus on reducing areas of duplication and tension
- requiring the forum to develop a 'framework for co-operation' to clarify the order of precedence for investigative processes and between investigative agencies; notification of investigations and the sharing of information; appropriate public comment; dispute resolution and joint training
- amending the Critical Incident Guidelines to ensure an investigator's priority is to provide assistance to the Coroner.<sup>3</sup>

1.7 Other recommendations included the PIC and the Independent Commission Against Corruption (ICAC) examining the feasibility of sharing staff, resources, expertise and capabilities; allowing police officers to be employed/seconded by the PIC where the PIC participates in a co-operative scheme with another agency; making the PIC's obligations consistent with the ICAC in terms of avoiding interference with court proceedings; and amendments to the Critical Incident Guidelines.<sup>4</sup>

1.8 The PIC and Ombudsman did not support a number of Mr McClelland's recommendations and comments, on the basis that the proposed reforms would limit their agencies' independence and curtail their existing roles in terms of overseeing critical incidents.

## NSW Ombudsman's response

1.9 The Ombudsman noted that the review endorsed his view of the need for independent oversight of police critical incidents. However, the Ombudsman

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<sup>2</sup> The Hon Robert McClelland, *Oversight of police critical incidents: Report to the Hon Barry O'Farrell Premier of NSW*, November 2013, pp xi-xiii

<sup>3</sup> The Hon Robert McClelland, *Oversight of police critical incidents: Report to the Hon Barry O'Farrell Premier of NSW*, November 2013, pp xii-xiii

<sup>4</sup> The Hon Robert McClelland, *Oversight of police critical incidents: Report to the Hon Barry O'Farrell Premier of NSW*, November 2013, pp xi, xiv

expressed concern that the scheme proposed by Mr McClelland would provide a veneer of oversight while effectively diminishing his office's current role:

What Mr McClelland appears to be suggesting is a watered down version of oversight that would not be comparable even to our existing oversight of police complaint matters.<sup>5</sup>

- 1.10 According to the Ombudsman, the review's recommendations would mean that his office's oversight role in relation to critical incidents would not include a capacity to monitor critical incident investigations:

Mr McClelland is recommending that the Government consider giving limited oversight powers to this office that do not include the power to monitor a critical incident investigation.

Mr McClelland is also proposing the removal of our current capacity to monitor a critical incident investigation in circumstances where a complaint has been made about the conduct of a police officer involved in a critical incident.<sup>6</sup>

- 1.11 The Ombudsman observed that the review drew on material that was factually incorrect to inform a number of recommendations, including information regarding the current role of his office, the investigation of the death of Roberto Laudisio-Curti,<sup>7</sup> and material from the Police Association and New South Wales Police Force.<sup>8</sup>

- 1.12 The Ombudsman also commented that a number of recommendations appeared to draw on material that had not been discussed with his agency: 'some of the ingredients that he put forward we think are very misconceived and were not the subject of discussion.'<sup>9</sup>

- 1.13 The recommendation to establish a committee made up of agencies involved in critical incident investigations was not supported by the Ombudsman. The Ombudsman commented that 'participation in a committee of this nature has the potential to create negative perceptions regarding my independence and impartiality.' He also commented that while he did support co-operative discussions between agencies on an as needs basis, heads of agencies currently worked co-operatively and constructively to discuss issues in relation to critical incident investigations on a case-by-case basis.<sup>10</sup>

- 1.14 The Ombudsman did not support the recommendation that the Ombudsman may only provide oversight of the investigation of critical incidents if it is conducted in accordance with the arrangements agreed between the Ombudsman and Commissioner of Police; does not include powers to supervise, control or direct

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<sup>5</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 19

<sup>6</sup> NSW Ombudsman, *NSW Ombudsman response to the report Oversight of Police Critical Incidents by the Hon Robert McClelland*, p 14

<sup>7</sup> NSW Ombudsman, *NSW Ombudsman response to the report Oversight of Police Critical Incidents by the Hon Robert McClelland*, pp 2-3

<sup>8</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 19

<sup>9</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 20

<sup>10</sup> NSW Ombudsman, *NSW Ombudsman response to the report Oversight of Police Critical Incidents by the Hon Robert McClelland*, pp 8-10

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the course of the police investigation; and does not adversely impact upon the timely completion of the investigation.

- 1.15 The Ombudsman observed that discussion in the report relevant to this recommendation inaccurately equated monitoring with supervision.<sup>11</sup> The Ombudsman's role includes a monitoring function, which involves acting as independent observers of police interviews and investigative activities. However, as independent observers, his team does not control or direct these activities, and nor would they seek to in the future:

This office would not and does not seek the power to supervise, control or direct the course of a critical incident investigation, as having such powers would be incompatible with any independent external oversight function. We would be required to remain at arm's length from any critical incident investigation given that it would be our role to review and critique the investigation.<sup>12</sup>

- 1.16 The Ombudsman rejected the review's claims that the monitoring role of his office had the potential to unreasonably intrude on the coronial process, noting that the 'statutory role of this office and the role of the Coroner are separate and distinct'.<sup>13</sup> The Ombudsman further noted that the majority of critical incident investigations do not examine death and therefore do not involve the coronial process.

- 1.17 The Ombudsman rejected the recommendation for an amendment to the Critical Incident Guidelines to specifically provide that the Critical Incident Investigation Team shall provide such assistance as is required by the State/Deputy State Coroner, including any instruction which is inconsistent with that provided by another agency. He suggested that if inconsistent instructions arose in an investigation, it 'would be prudent for the relevant heads of agencies to meet to discuss the tension and attempt to resolve any concerns.'<sup>14</sup>

- 1.18 In terms of the recommendation that the Ombudsman not publish its critical incident oversight reports until after the Police investigation report has been completed, the Ombudsman observed that the reasons for this recommendation were unclear, and if implemented, it would stymie the independence of his office: 'public confidence is maintained by having an independent and robust system of oversight that supports and encourages agencies to make their concerns public when it is in the public interest to do so.'<sup>15</sup>

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<sup>11</sup> The Hon Robert McClelland, *Oversight of police critical incidents: Report to the Hon Barry O'Farrell Premier of NSW*, November 2013, paragraphs 7.116 – 7.122

<sup>12</sup> NSW Ombudsman, *NSW Ombudsman response to the report Oversight of Police Critical Incidents by the Hon Robert McClelland*, p 14

<sup>13</sup> NSW Ombudsman, *NSW Ombudsman response to the report Oversight of Police Critical Incidents by the Hon Robert McClelland*, p 14

<sup>14</sup> NSW Ombudsman, *NSW Ombudsman response to the report Oversight of Police Critical Incidents by the Hon Robert McClelland*, p 19

<sup>15</sup> NSW Ombudsman, *NSW Ombudsman response to the report Oversight of Police Critical Incidents by the Hon Robert McClelland*, pp 16-17

## Police Integrity Commission's response

- 1.19 The PIC supported some of the review's recommendations for legislative change, and for changes to the Critical Incident Guidelines. However, the PIC opposed a number of the review's recommendations and comments, on the basis that they were unnecessary and outside the terms of reference for the review.
- 1.20 In terms of the recommendation for increased co-operation between the PIC and the ICAC, the PIC observed that it was unnecessary as the two Commissions already co-operate with each other. The PIC noted that there is a memorandum of understanding between the two bodies which provides for joint investigations; liaison between the Commissions; the provision of information and property from one Commission to the other; and the provision of personnel, technical equipment or expertise on request and subject to availability.<sup>16</sup>
- 1.21 The PIC noted that the review appeared to suggest that the ICAC and PIC should be merged. The PIC observed that this proposal was outside the review's terms of reference, and neither the PIC nor the ICAC were given an opportunity to comment on the matter. The PIC Commissioner, Mr Bruce James, told the Committee that the proposal was based solely on the Police Association's submission to the review:
- ... it did not occur to the PIC that Mr McClelland would go beyond his terms of reference and enter into an inquiry into the future of the PIC. We made no submissions on that matter. ... the proposal that the PIC be merged with ICAC plainly concerns ICAC as well as the PIC. It is apparent from Mr McClelland's report that no submissions were sought or received from ICAC. ...
- Where did Mr McClelland get these ideas from? ... if you compare the submissions by the Police Association, which are summarised at pages 105 to 120 of the report, and pages 91 to 95 of the report, Mr McClelland, in the absence of any submissions from any other party, adopted parts of the submissions which, without regard to the inquiry's terms of reference, had been made to him by the Police Association ...<sup>17</sup>
- 1.22 The PIC cited the 2011 Review of the Police Integrity Commission Act undertaken by the Minister for Police, which concluded that the policy objectives of the Act remained valid; and that for the foreseeable future those objectives were best performed by maintaining the ICAC and the PIC as separate bodies.<sup>18</sup>
- 1.23 In response to Mr McClelland's favourable comments regarding Victoria's Independent Broad-based Anti-corruption Commission (IBAC), which combines the functions of the PIC and ICAC, the PIC observed that the IBAC had only been in existence for a year and therefore 'can hardly be viewed as a proven model for the consolidation of anti-corruption functions into one agency.'<sup>19</sup>
- 1.24 In terms of the recommendation to remove the prohibition on the PIC employing police officers, the PIC stated that the issue was outside the review's jurisdiction

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<sup>16</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, pp 16-17

<sup>17</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, p 17

<sup>18</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, p 18

<sup>19</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, p 18

and was therefore not addressed by review participants. The 2011 Ministerial review of the PIC Act recommended that the prohibition be maintained.<sup>20</sup>

- 1.25 The PIC did not support the recommendation to establish a committee made up of agencies involved in critical incident investigations to ensure issues relevant to critical incidents are reviewed and resolved. The PIC reflected that it should not be assumed that the agencies would have common interests and would be able to resolve any issues. The PIC also rejected the suggestion that the committee would have authority over its members, for example in terms of the language used in agency reports:

... It is left quite unclear as to how the committee is to operate. Is it to be merely a forum for an exchange of views or is it to have some kind of authority? Can it resolve issues in such a way that a decision of the committee is binding on all the members of the committee?

... it would appear to us to be suggested that the committee should have some authority, at least some persuasive authority, over what sort of language an oversight agency uses in its reports and some sort of role in how counsel assisting an oversight agency that conducts hearings should conduct itself, and we do oppose that.<sup>21</sup>

- 1.26 In the PIC's view, Mr McClelland's comments in the review suggested that the PIC investigates matters involving incompetence and poor performance, which do not amount to serious misconduct. The PIC argued that this view is unfounded and is based on the Police Association's view. The PIC observed that its investigations into the deaths of Adam Salter and Roberto Laudisio-Curti found serious police misconduct which resulted in referrals to the Director of Public Prosecutions for consideration of criminal charges.<sup>22</sup>

- 1.27 In response to Mr McClelland's view that the police force, including the Professional Standards Command (PSC), has changed since the time of the Wood Royal Commission, the PIC pointed to the deficiencies in the police critical incident investigation into the death of Adam Salter (Operation Calyx):

... Operation Calyx, is a quite recent example of a seriously deficient critical incident investigation by a high-ranking officer of the police force and an uncritical endorsement of that seriously deficient investigation by a high-ranking officer of the PSC ... we are aware of recent instances in which officers of the PSC have improperly alerted other police officers that they are being investigated for alleged misconduct by either the PSC or the Commission.<sup>23</sup>

### Committee comment

- 1.28 The Committee supports the Ombudsman and PIC's work in relation to police critical incidents. Recommendations made by the Ombudsman and PIC have resulted in amendments to the NSW Police Force's critical incident guidelines, which have improved the way that critical incident investigations are conducted.

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<sup>20</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, pp 19-20

<sup>21</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, p 20

<sup>22</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, p 17

<sup>23</sup> Mr Bruce James, Commissioner, Police Integrity Commission, Transcript of evidence, 17 February 2014, pp 17-18

Oversight by the two agencies has meant that misconduct in the handling of particular investigations has been exposed and preventative measures instituted. The agencies' role is vital in ensuring that there is appropriate oversight of the police response to incidents that involve a death or serious injury. The Committee does not support any measure that would dilute or diminish independent oversight of police critical incidents.

- 1.29 For this reason, the Committee does not support the recommendation of the McClelland review to establish a committee made up of agencies involved in critical incident investigations to discuss and resolve issues, including: the precedence of investigative processes and the role of investigative agencies; notification of investigations and the sharing of information; and appropriate public comment. The Committee considers that this recommendation has the potential to limit the participating agencies' independence and impede their respective roles. It would be inappropriate for a committee to play a part in determining how the PIC and the Ombudsman undertake their role in relation to critical incidents.
- 1.30 The Committee is not convinced that duplication exists in respect of the oversight of police critical incidents. Each agency involved performs distinct and valuable oversight roles in relation to the way that police respond to critical incidents. The Ombudsman monitors and reports on police investigations into critical incidents, such as the death of Roberto Laudisio-Curti. In addition to investigating police misconduct connected with critical incidents, the PIC is undertaking research work to ensure critical incidents are prevented and investigated appropriately.<sup>24</sup> The Committee supports the PIC and Ombudsman's work and considers that prevention and research, and monitoring of police investigations into specific critical incidents, are vital to the management of critical incidents.
- 1.31 The Committee shares the PIC's concerns regarding the McClelland review's recommendations for increased co-operation between the PIC and the ICAC, as a first step in a merger of the two bodies. Broader consideration of the state's framework for oversight of police conduct was not encompassed by the review's terms of reference, and proper consideration and consultation on the issue has not been undertaken. The Committee notes that the ICAC and ICAC/PIC Inspector have indicated that they do not support the proposal to merge the ICAC and the PIC.<sup>25</sup> The Committee is concerned at the lack of consultation regarding a proposal that would seek to make far-reaching changes to the state's existing oversight framework.
- 1.32 Merging the PIC and ICAC would be a major change to the current oversight system in New South Wales. The Committee supports the current framework with separate agencies performing complementary but independent roles. The Committee rejects the notion that amalgamating these bodies would improve the efficiency and effectiveness of this state's anti-corruption framework. The ICAC Commissioner recently told the ICAC Committee that in her view there would be

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<sup>24</sup> Mr Alan Kearney, Director, Prevention and Information, Police Integrity Commission, Transcript of evidence, 17 February 2014, pp 21-22

<sup>25</sup> The Hon David Levine, Inspector of the ICAC and the Hon Megan Latham, Commissioner of the ICAC, Transcript of evidence of ICAC Committee public hearing, 28 March 2013, pp 3-4, 12

no cost savings, as a combined agency would effectively require a doubling of resources if it were to maintain a proper focus on police corruption.

### FINDING 1

**The Committee finds that the proposition arising from the McClelland report that the Police Integrity Commission and the Independent Commission Against Corruption should be amalgamated is not supported by the bodies concerned and was not subject to a thorough consultation process.**

### FINDING 2

**The Committee finds that the Independent Commission Against Corruption and the Police Integrity Commission already achieve efficiencies through existing co-operative arrangements and, hence, there is no necessity to implement the recommendation in the McClelland report that the PIC and the ICAC share staff, resources, expertise and capabilities.**

### FINDING 3

**The Committee further finds that significantly altering the existing oversight system for police misconduct and corruption would warrant a more comprehensive review.**

### RECOMMENDATION 1

**The Committee recommends that, in the implementation of any reforms to the oversight of police critical incidents, the NSW Ombudsman's and Police Integrity Commission's current functions and powers to independently investigate police misconduct in relation to critical incidents and monitor police critical incident investigations, should remain unchanged.**

## EXPANSION OF AGENCIES' ROLES AND WORKLOAD

1.33 The 2012/13 reporting period brought changes to the ways in which a number of agencies perform their functions and an expansion of their responsibilities. The Committee examines the impact of these changes in this section.

### Additional functions for the NSW Ombudsman

1.34 2014 has seen an expansion of the Ombudsman's role, with the addition of a number of new areas of responsibility, which are outlined below.

#### *Deputy Ombudsman for Aboriginal Programs*

1.35 A recent amendment to the Ombudsman Act provided for the appointment of a Deputy Ombudsman to monitor and scrutinise the effectiveness of programs and services for Aboriginal people.

1.36 In introducing the Bill, the Minister for Aboriginal Affairs stated that reports by the Auditor-General and Ombudsman had 'called on government to have greater accountability in the design and delivery of programs and services for Aboriginal people'. He noted that in spite of significant investment in programs and services,



there has been 'limited demonstrable improvement in the lives of Aboriginal people across New South Wales'.<sup>26</sup>

1.37 In response, the Minister established a taskforce which made recommendations to improve education and employment opportunities for Aboriginal people, and service delivery and accountability in Aboriginal affairs. The government responded by creating a plan for Aboriginal affairs, *Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE)*. As part of OCHRE consultations with Aboriginal communities it was proposed that a Deputy Ombudsman for Aboriginal programs be appointed.

1.38 The Deputy Ombudsman position was to commence in July 2014. However the Ombudsman expressed concern to the Committee that funding for, and the term of, the position had not been finalised.<sup>27</sup> The Committee wrote to the Minister for Aboriginal Affairs requesting information on funding for the position. The Minister advised that the Ombudsman will receive \$739,000 annually for the Deputy Ombudsman for Aboriginal Programs, initially from a three-year OCHRE allocation, with ongoing funding from the Consolidated Fund from 2016-17.

#### *Monitoring role for people with disabilities in care*

1.39 The Ombudsman has a number of functions relating to people with disabilities, including:

- Handling and investigating complaints about disability services.
- Inquiring into major issues affecting people with disabilities.
- Reviewing the care, circumstances and deaths of people with disabilities in care.
- Monitoring, reviewing, and setting standards for the delivery of disability services.
- Co-ordinating Official Community Visitors in their visits to supported accommodation and assisted boarding houses.<sup>28</sup>

1.40 Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, informed the Committee that the Ombudsman's office had been concerned for some time about abuse and neglect in the disability field. However proposed legislative reforms<sup>29</sup> will give the Ombudsman oversight of this area and allow for the office to 'deal with quite serious matters in a very active way and ensure that very thorough oversight'. He noted that the challenge would be to improve oversight of, and the response to, abuse and neglect in disability

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<sup>26</sup> The Hon Victor Dominello MP, Legislative Assembly Hansard, 18 March 2014, p 27,384

<sup>27</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 27

<sup>28</sup> NSW Ombudsman, *Annual Report 2012-2013*, p 95

<sup>29</sup> The Disability Inclusion Bill provides for the Ombudsman to have a monitoring and investigative role in relation to certain reportable incidents occurring in supported group accommodation facilities of the Department of Family and Community Services, or a funded provider.

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accommodation before the shift to the National Disability Insurance Scheme (NDIS).<sup>30</sup>

- 1.41 The Ombudsman's office has been active in ensuring that its current oversight role for people with disabilities will continue with the introduction of the NDIS. The Ombudsman informed the Committee that his focus would be ensuring that 'individuals should not be any less protected or supported than they currently are'.<sup>31</sup>
- 1.42 There is uncertainty around what jurisdiction the Ombudsman will have in providing oversight for people with disabilities upon the introduction of the NDIS, with the Deputy Ombudsman commenting that:

We have nine different jurisdictions across the country. The issue will be: Where will the oversight system lie under a multibillion dollar system? We are keen for that issue to be progressed as soon as possible. We have put out a draft paper. It reflects discussions that I have had with other Commissioners across the country as to what we believe to be the fundamental elements needed to be in place by way of safeguarding.<sup>32</sup>

*Working with children check*

- 1.43 Completion of a satisfactory *Working With Children Check* is a prerequisite for anyone working with children in either a paid or unpaid capacity. The check involves a national criminal history check and a review of findings of workplace misconduct, and is administered by the Office of the Children's Guardian. In 2013 the Ombudsman assumed responsibility for aspects of the Working with Children Check scheme, including an obligation to notify the Office of the Children's Guardian of concerns relating to certain individuals. As part of this new role, the Ombudsman's office is strengthening its intelligence systems to gather and analyse evidence to identify individuals who may pose a risk to children.<sup>33</sup>
- 1.44 The expanded responsibilities and new functions taken on by the Ombudsman involve employing additional staff. The Ombudsman informed the Committee that the current office layout is inadequate and will be unable to accommodate additional staff in the future. As the lease for the current premises is coming to an end the Ombudsman is working with Government Property NSW to either refurbish the existing space or move elsewhere, with both possible solutions having the potential to create significant disruption.<sup>34</sup>

*Legislative reviews*

- 1.45 The Ombudsman has been given responsibility for legislative reviews of the Firearms Act and Restricted Premises Act, as part of a strategy to disrupt criminal

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<sup>30</sup> Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, Transcript of evidence, 18 February 2014, pp 25-26

<sup>31</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 25

<sup>32</sup> Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, Transcript of evidence, 18 February 2014, p 26

<sup>33</sup> NSW Ombudsman, *Annual Report 2012-2013*, p 90

<sup>34</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 28

organisations. The Ombudsman informed the Committee that the reviews are in the early stages and information requirements are currently being determined.<sup>35</sup>

### Committee comment

- 1.46 The expansion of responsibilities brings a number of uncertainties for the office of the Ombudsman, with further demands being placed on staff and on the existing office layout. The Committee will follow these issues with interest over the coming months.

### Enabling one person to serve as Inspector of the PIC and Inspector of the ICAC

- 1.47 In 2013 legislation was introduced to enable one person to occupy the positions of both Inspector of the PIC and Inspector of the ICAC. The Hon David Levine is the first person to undertake both roles, having been appointed PIC Inspector in February 2012 and ICAC Inspector in February 2014.
- 1.48 When the Committee met with Mr Levine he had only recently assumed responsibility for performing both roles, however he highlighted similarities between the roles: 'The role is virtually identical with regard to each statute's powers, but I have yet to see how those powers are applied to the different entities.'<sup>36</sup>
- 1.49 Mr Levine explained that the offices of the Inspector of the PIC and the Inspector of the ICAC are in the same building, but are separated from each other.<sup>37</sup> The same technology will be used with respect to accessing files for each Inspectorate, although the files will be located in independent, sterile environments.<sup>38</sup>
- 1.50 At the time of his meeting with the Committee, Mr Levine was carrying out his role as Inspector of the PIC three days per week, and anticipated that his new appointment may require an increase in his working week to four days.<sup>39</sup>
- 1.51 Mr Levine is currently assisted in his role as the Inspector of the PIC by two staff. He explained that these staff will also assist him in his role as the Inspector of the ICAC but he anticipated that his staffing level will remain at two.<sup>40</sup>

### Committee comment

- 1.52 The Committee will follow up with Mr Levine regarding his management of the workload of the two Inspectorates. The Committee will be interested to find out whether, through his role as Inspector of the ICAC and working more closely with the ICAC, Mr Levine discovers any new and innovative ideas which may also be useful or relevant to the PIC or the PIC Inspectorate in carrying out their respective roles and functions. The Committee welcomes the establishment of a

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<sup>35</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 16

<sup>36</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 17 February 2014, p 1

<sup>37</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 17 February 2014, p 1

<sup>38</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 17 February 2014, p 2

<sup>39</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 17 February 2014, p 1

<sup>40</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 17 February 2014, pp 1, 3

single office for the Inspector of the PIC and Inspector of the ICAC roles and considers that this is an efficient use of financial and administrative resources.

### NSW Crime Commission - organisational reforms

- 1.53 The Committee heard evidence regarding reforms to the NSW Crime Commission's structure and governance, introduced following the enactment of the *Crime Commission Act 2012*, including a reconstituted Management Committee and a new governance unit. The Commission's Management Committee is chaired by Mr David Patten; its members are the Crime Commissioner, the Police Commissioner, the Chair of the Australian Crime Commission's Board, and the Chief Executive of the Police and Emergency Services Ministry. The Committee meets monthly and considers operational matters including potential new references, a schedule of current confiscation proceedings, along with current litigation, financial reports and resourcing issues.<sup>41</sup>
- 1.54 The Commission has adopted a hierarchical management structure, replacing the previous flat management structure, which had been criticised in the Patten Commission of Inquiry into the Crime Commission.<sup>42</sup> A Director of Corporate Services position has been created and filled, with the Director to perform management duties that were undertaken by the Assistant Commissioner, in relation to personnel, human resources and IT. The Commission has also employed a governance team, which will undertake tasks including examining practices within the Commission, writing policies and codes of conduct, and supervising seminars for bullying and harassment. The Patten inquiry had recommended extra funding for the establishment of a governance team.<sup>43</sup>

### Information and Privacy Commission – managing an increasing workload

- 1.55 The IPC has recently reviewed its strategic priorities and identified nine key priority areas to make the most efficient use of resources and manage an increasing workload. Speaking at the public hearing, the Information Commissioner commented on the importance of defining and focussing on priority areas 'to better harness the Commission's resources, to direct them appropriately, to ensure that we acquit our statutory responsibilities and to serve the public.'<sup>44</sup>
- 1.56 A continuing challenge for the IPC has been higher than expected requests for assistance in relation to the *Government Information (Public Access) Act 2009* (the GIPA Act), leading to a backlog of reviews and complaints to be processed. The IPC has introduced measures to address this issue, including working to resolve the oldest and most complex cases; reviewing procedures for conducting

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<sup>41</sup> Mr Peter Hastings, Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, p 10 and *Crime Commission Act 2012* s 50

<sup>42</sup> David Patten, *Report of the Special Commission of Inquiry into the New South Wales Crime Commission*, 30 November 2011, pp 51, 115

<sup>43</sup> Mr Peter Hastings, Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, p 10

<sup>44</sup> Ms Elizabeth Tydd, Information Commissioner, Information and Privacy Commission, Transcript of evidence, 18 February 2014, p 1

reviews; and implementing a new case management system.<sup>45</sup> The IPC has also trained staff on effective team performance and statutory decision writing.<sup>46</sup>

- 1.57 The Information Commissioner informed the Committee that these initiatives had reduced the backlog and that the age profile of outstanding cases had been reduced considerably in the last eight months:

To assist with the higher than expected demand, processes were implemented that include triage of cases on receipt for identification of matters which can be closed expeditiously, implementation of improved and systematic case load monitoring, and increased resources such as template correspondence and reports.<sup>47</sup>

- 1.58 However, the Information Commissioner noted that GIPA requests were increasing, requiring continued efforts to ensure a timely response.<sup>48</sup> The IPC is working to improve case management practices. A project to introduce a differential case management system is underway and stage one will be completed by June 2014. Improved case management practices will have benefits including a triage and categorisation system, and enhanced timeliness.<sup>49</sup>

- 1.59 The Information Commissioner is required to report to Parliament each year on the operation of the GIPA Act. While the IPC has previously included information on the GIPA Act in its annual report, it has not yet reported separately on the Act's operation. The Information Commissioner told the Committee that this year the IPC will report on the operation of the GIPA Act over the three years that it has been in operation, including trends in GIPA requests and best practice across agencies.<sup>50</sup>

- 1.60 The IPC provides privacy advice to members of the public, government agencies and other organisations. In the last five years, privacy related enquiries have risen from 858 per annum to 1,928 for the 2012-2013 reporting period.<sup>51</sup> The IPC has taken steps to respond to enquiries in a timely fashion, including an integrated structure that allows for two dedicated enquiry officers to respond to both privacy and GIPA enquiries; and using a new case management system to monitor privacy enquiries and identify recurring themes or questions that could be answered by factsheet or on the IPC webpage.<sup>52</sup>

### Committee comment

- 1.61 The Committee notes the increasing workload for the IPC, and is satisfied that the steps taken will assist the IPC to manage the additional work and reduce the backlog. The conduct of the strategic priorities review will assist the IPC to further

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<sup>45</sup> Ms Elizabeth Tydd, Information Commissioner, Information and Privacy Commission, Transcript of evidence, 18 February 2014, p 2

<sup>46</sup> Information Commissioner, Information and Privacy Commission, answers to additional questions, question 2, p 1

<sup>47</sup> Information Commissioner, Information and Privacy Commission, answers to additional questions, question 4, p 3

<sup>48</sup> Ms Elizabeth Tydd, Information Commissioner, Information and Privacy Commission, Transcript of evidence, 18 February 2014, p 2

<sup>49</sup> Information Commissioner, Information and Privacy Commission, answers to additional questions, question 2, p 2

<sup>50</sup> Ms Elizabeth Tydd, Information Commissioner, Information and Privacy Commission NSW, Transcript of evidence, 18 February 2014, p 3

<sup>51</sup> Information and Privacy Commission, Annual Report 2012-2013, p 24

<sup>52</sup> Privacy Commissioner, Information and Privacy Commission, answers to additional questions, question 5, p 2

improve systems and perform its role more effectively. The Committee notes that the GIPA review report has been completed and the Committee will examine it as part of the next general meeting.

## ESTABLISHMENT OF NEW STATUTORY OFFICES

1.62 The office of Inspector of the Crime Commission has been established following the review of the Crime Commission, and custodial services reforms have led to the establishment of the office of Inspector of Custodial Services. The Committee discusses these new statutory offices in this section.

### Inspector of the Crime Commission

1.63 The position of Inspector of the Crime Commission was established following the Patten review of the Crime Commission, and the enactment of the *Crime Commission Act 2012*, which implemented new accountability arrangements. The Inspector's functions include auditing the Commission's operations to monitor compliance with the law, and dealing with complaints of abuse of power, impropriety and other misconduct by the Commission or its officers. The Inspector also deals with conduct amounting to maladministration by the Commission or its officers and assesses the effectiveness and appropriateness of the Commission's procedures relating to the legality or propriety of its activities.<sup>53</sup>

1.64 The Hon Graham Barr QC is the first Inspector of the Crime Commission, having been appointed on 22 April 2013 for a five year term. He undertakes the role on a part-time basis. The Inspectorate employs two staff – an Executive Assistant who works 4 days a week, and a Senior Policy Analyst who works one day a week.<sup>54</sup>

1.65 In the year since his appointment, the Inspector has focused on establishing the office and developing policies and processes to enable him to undertake his statutory functions. Mr Barr told the Committee that he and his staff have been developing procedures and processes for audits of the Commission's powers and would shortly commence an audit program:

... The development of strategy for audits and the like has moved well on ... We have identified the principal matters that we wish to look at. The need is to look at the special powers the Crime Commission has, such as the right to have people arrested, to have people give evidence involuntarily, and the right to apply for listening devices and the like in order to track people. As you will be aware, there is a host of these things in special legislation. That would be the principal focus of the audit that I would carry out. There are other matters but that is just about developed now and we are about to put into effect a program of auditing.<sup>55</sup>

1.66 With regard to complaints, the Inspector advised that he had received around five complaints at the time of the hearing, which had been dealt with.<sup>56</sup>

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<sup>53</sup> *Crime Commission Act 2012*, s 62(1)

<sup>54</sup> Office of the Inspector of the Crime Commission, *Annual Report for the year ended June 2013*, p 7

<sup>55</sup> Mr Graham Barr, Inspector of the Crime Commission, Transcript of evidence, 17 February 2014, p 26

<sup>56</sup> Mr Graham Barr, Inspector of the Crime Commission, Transcript of evidence, 17 February 2014, p 26

## Inspector of Custodial Services

- 1.67 The Inspector of Custodial Services in New South Wales is a new position established under the *Inspector of Custodial Services Act 2012*, which commenced in August 2013.
- 1.68 The Inspector has a responsibility to inspect, examine, review and make recommendations on all custodial services in New South Wales, including their management by Corrective Services NSW. The Inspector may provide advice or make recommendations relating to the efficiency, economy and proper administration of custodial centres and custodial services.<sup>57</sup>
- 1.69 The Inspector must inspect and report to Parliament on each adult facility at least once every five years and on each juvenile facility at least once every three years. The Inspector also oversees the Official Visitor program and provides advice, training and assistance to Official Visitors in the exercise of their functions.
- 1.70 Dr John Paget assumed the role of Inspector on 1 October 2013. Recruitment for other positions in the Inspectorate was finalised in February 2014; the Inspectorate is staffed by the Inspector, two Assistant Inspectors and a co-ordinator of the Official Visitors program.

### *Challenges and priorities*

- 1.71 In order to fulfil its statutory duty to inspect all adult custodial facilities at least once every five years and each juvenile custodial facility at least once every three years, the Inspectorate has been developing procedures for inspection. The Inspector informed the Committee that the most effective inspection process is one of transparency, conducted in partnership with the agencies being inspected.<sup>58</sup>
- 1.72 The Inspectorate has consulted Corrective Services NSW and the Department of Juvenile Justice on inspection procedures, and expects the procedures to be finalised by the end of April 2014.<sup>59</sup>
- 1.73 Two jurisdictions, the United Kingdom and Western Australia, have informed the development of inspection procedures. Both these jurisdictions maintain independent custodial inspectorates, similar to New South Wales. Inspectorate staff travelled to Western Australia to participate in training with their Western Australian counterparts. The Inspector informed the Committee that the Inspectorate would also consult with custodial inspection bodies in Victoria and Queensland, although these bodies do not have the same independence as the New South Wales Inspectorate.<sup>60</sup>

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<sup>57</sup> Custodial services in New South Wales include adult and juvenile correctional facilities; residential facilities; transitional centres; juvenile justice centres; and court and police cells managed by Corrective Services or Juvenile Justice.

<sup>58</sup> Inspector of Custodial Services, Answers to additional questions, question 3, p 2

<sup>59</sup> Inspector of Custodial Services, Answers to additional questions, question 1a, p 1

<sup>60</sup> Inspector of Custodial Services, Answers to additional questions, question 1a, p 1

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- 1.74 A draft Inspection Manual will document procedures and provide information for agencies being inspected. The Inspector provided the Committee with an overview of the Manual:

It shows how we operate, the description of what is the nature of inspection, how we see the process operating, what role we see for Corrective Services, how it will assist us, how Juvenile Justice will assist us; the governance arrangements, if you like. It is really out there so there are no surprises.<sup>61</sup>

*Official Visitors*

- 1.75 The Inspector scrutinises all custodial services in New South Wales, focusing on broad, systemic issues rather than complaints from individuals in custody. Individual complaints are heard by the NSW Ombudsman or by Official Visitors. Official Visitors are appointed by the Minister for Justice and were formerly administered by Corrective Services NSW or Juvenile Justice, but are now administered by the Inspector.
- 1.76 Official Visitors report each year to the Inspector and the Minister on inquiries and complaints they have received, and any issues of concern. Speaking at the public hearing, the Inspector commented that reports from Official Visitors would be valuable in alerting him to potential systemic issues:

... individual complaints, a series of complaints over a particular issue would indicate a systemic problem. The source of those complaints would be the official visitors because they are the ones hearing all the complaints all the time and would be able to inform us as part of the integrated inspection effort that this is an issue in this jail. If you heard from another official visitor you would soon get the theme that this was a systemic issue.<sup>62</sup>

**Committee comment**

- 1.77 The accountability framework in New South Wales has been broadened and strengthened with the creation of the new statutory offices of Inspector of the Crime Commission and Inspector of Custodial Services. The Inspectors will perform important roles in scrutinising custodial services and ensuring that the Crime Commission uses its powers appropriately. The creation of these positions brings a wider oversight role for the Committee, and the Committee looks forward to developing constructive relationships with both Inspectors.

**INTER-AGENCY CO-OPERATION**

- 1.78 This section focusses on agencies that are co-operating with each other to reduce overlaps and duplication that may arise as a result of changes to their jurisdiction, and to avoid potential for legal conflict.

**Custodial issues – Ombudsman and Inspector of Custodial Services**

- 1.79 The Ombudsman has a legislative responsibility to deal with complaints from people in custody in New South Wales. A specialist unit handles complaints, conducts an extensive program of visits to custodial services and may conduct

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<sup>61</sup> Inspector of Custodial Services, Office of Custodial Services, Transcript of evidence, 17 February 2014 p 33

<sup>62</sup> Inspector of Custodial Services, Office of Custodial Services, Transcript of evidence, 17 February 2014, p 31



inquiries into specific issues relating to custodial services. In 2012/13 the Ombudsman received more than 700 complaints from individuals in custody.<sup>63</sup>

- 1.80 Complaints from inmates provide the Ombudsman with an overview of key issues facing corrective services; these issues are communicated regularly to senior Corrective Services staff:

... We develop a clear understanding of what the key issues are and we track those and from an intelligence perspective, we use them in the best way we can. The manager of the Corrections Unit is in regular contact with senior staff of Corrective Services NSW and we talk through those issues with them. If we see a potential trend or an issue occurring, we inform them.<sup>64</sup>

- 1.81 While the Ombudsman does not have any oversight responsibility for Official Visitors, the Ombudsman may communicate with Official Visitors.

- 1.82 The Committee enquired if the Inspector of Custodial Services had access to the complaints the Ombudsman receives and if formal discussions between the Inspector and Ombudsman had taken place. The Inspector informed the Committee that he had met with the Ombudsman and had drafted a memorandum of understanding to avoid overlaps and duplication between the agencies.<sup>65</sup>

- 1.83 According to the Ombudsman, the aim of both parties would be to provide a 'seamless system in relation to accountability frameworks for custodial services'.<sup>66</sup> The memorandum of understanding will set out the individual responsibilities of the Inspector and Ombudsman and provide a framework for liaison and referral of issues between the agencies.<sup>67</sup>

- 1.84 The Ombudsman emphasised the importance of communication to ensure there is a clear mutual understanding of both agencies' areas of responsibility, in order to avoid confusion:

The problem is that if you are making complaints and those complaints need to be properly researched and investigated then you need access to information. If there is no clarity about who is doing that then that is when the confusion starts. Once the inspectorate is fully staffed we will sit down to try and work through some of these things. ... We will try to make sure that we have a very workable framework and that everyone is clear about who is supposed to be doing what. Certainly from my perspective I would want the quickest and easiest way of resolving any issues of dispute to be the primary focus.<sup>68</sup>

### Committee comment

- 1.85 The Inspector of Custodial Services and the Ombudsman have both stated that their primary focus is to improve custodial services through a strong

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<sup>63</sup> NSW Ombudsman, *Annual Report 2012-2013*, p 60

<sup>64</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 23

<sup>65</sup> Inspector of Custodial Services, Office of Custodial Services, Transcript of evidence, 17 February 2014 p 31

<sup>66</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 24

<sup>67</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 24

<sup>68</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 25

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accountability framework and minimisation of duplication of their roles. Both have expressed a desire to work with each other to facilitate this.

- 1.86 Communication between the two agencies is important in terms of ensuring a clear understanding of their roles. Developing a memorandum of understanding will assist both agencies to consider and agree on how they will perform their respective roles.
- 1.87 The Committee is pleased that the Inspector and Ombudsman have taken steps to establish liaison. The Committee considers that a co-operative relationship with mutual respect for the role of each body and knowledge sharing will enhance the operations of both the Inspector and the Ombudsman, leading to a strengthening of the accountability framework for custodial services.

### Oversight of Crime Commission

- 1.88 In its 2013 general meeting report, the Committee commented that new measures for oversight of the Crime Commission raised the potential for overlap between the two bodies responsible for this oversight - the PIC and the Inspector of the Crime Commission. To address this issue, the Committee recommended that the PIC and the Inspector develop protocols to ensure there is a clear understanding of lines of oversight and responsibility for the management of complaints about the Crime Commission.<sup>69</sup>
- 1.89 During 2013, the PIC Commissioner and the Inspector met to discuss the division of responsibility for oversight of the Crime Commission. The Commissioner's view was that the division of responsibility should be determined with reference to Mr David Patten's Report of the Special Commission of Inquiry into the NSW Crime Commission, which led to the enactment of the *Crime Commission Act 2012* and increased oversight of the Crime Commission.
- 1.90 The Commissioner referred to Mr Patten's recommendation that the Inspector be primarily responsible for auditing the Crime Commission's work to ensure compliance with the law; assessing the effectiveness and appropriateness of its procedures; and dealing with complaints of misconduct and conduct amounting to maladministration. Mr Patten had noted that the PIC is required to focus principally on serious misconduct, and considered that the Inspector should therefore refer instances of criminal activity or serious misconduct to the PIC.<sup>70</sup>
- 1.91 Citing the Patten report and the PIC and Crime Commission Acts, the PIC Commissioner suggested that the PIC should exercise the functions of preventing, detecting and investigating serious misconduct or criminal activity by a Crime Commission officer, while the Inspector should exercise oversight of the Commission consistent with his functions under the Crime Commission Act.<sup>71</sup>

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<sup>69</sup> Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, *2013 General Meetings*, report 7/55, p 5

<sup>70</sup> Police Integrity Commission, Answers to further questions, question 3, pp 3-4

<sup>71</sup> Section 62(1) provides that the Inspector's principal functions are:

(a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and

- 1.92 The Inspector did not agree with this view, preferring instead to consider each case individually. Mr Barr told the Committee that he was 'not prepared to come to a settled understanding that that would always be the way that things ought to be dealt with. I would prefer to look at cases individually.'<sup>72</sup>
- 1.93 In spite of these differing views, the relationship between the agencies is cordial and an agreement has been reached on how to manage allegations of misconduct. The agencies will advise each other of complaints about Crime Commission officers' conduct and, in any case where it is unclear who should deal with a complaint, the Inspector and the Commissioner will consult with each other to resolve the issue.<sup>73</sup>
- 1.94 The Inspector told the Committee that 'I am confident that, as the law stands, we can deal with the need to decide who is going to hear any particular complaint.'<sup>74</sup>

### Committee comment

- 1.95 The Committee is pleased that the PIC Commissioner and Inspector of the Crime Commission have met to discuss their respective roles in the oversight of the Crime Commission, and the Committee supports the continuation of the co-operative relationship that has been fostered. The Committee recognises that the new arrangements whereby two agencies are responsible for oversight could lead to overlaps and differing interpretations of the agencies' roles. The Committee will continue to monitor this issue and consider the need for legislative clarification should it arise.

### Legal disputes between agencies

- 1.96 In 2011, the Crime Commission and the PIC were involved in a legal dispute about the PIC's power to examine the Crime Commission's practices and procedures in conducting action under the Criminal Assets Recovery Act, and whether the PIC could hold public hearings as part of its investigation into the Crime Commission's practices.
- 1.97 In its previous report, the Committee stated that it does not wish to see these agencies engaging in costly and protracted litigation in future. The Committee recommended that the PIC and Crime Commission develop protocols to be followed in the event of future disagreements between their agencies, with the aim of promoting alternatives to litigation.<sup>75</sup>

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(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

<sup>72</sup> Mr Graham Barr, Inspector of the Crime Commission, Transcript of evidence, 17 February 2014, p 27

<sup>73</sup> Police Integrity Commission, Answers to further questions, question 3, pp 3-4

<sup>74</sup> Mr Graham Barr, Inspector of the Crime Commission, Transcript of evidence, 17 February 2014, p 26

<sup>75</sup> Police Integrity Commission, Answers to further questions, question 2, pp 2-3

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- 1.98 The Committee sought an update on this issue. The PIC Commissioner and Crime Commissioner met in October 2013 to discuss resolving future disagreements between their agencies. The Commissioners then wrote to each other, agreeing that in case of future disputes, the option of seeking an opinion from the Solicitor-General should remain open provided that the Crown Solicitor has not acted for either Commission in the dispute. The Commissioners also agreed that both agencies should comply with the Premier's Memorandum<sup>76</sup> or any similar document, and that alternative dispute resolution by a mediator would not be an appropriate way to resolve such disputes.<sup>77</sup>
- 1.99 With regard to the Committee's recommendation that the agencies develop a protocol, the PIC Commissioner expressed doubt about whether it would be possible or appropriate, stating that 'any future dispute might well have features which were not anticipated at the time any protocols were entered into and which would render any protocols inappropriate for resolving the dispute.'<sup>78</sup>
- 1.100 Evidence during the Committee's 2013 general meeting indicated that there was uncertainty arising from a lack of compliance with the Premier's Memorandum during the dispute between the Crime Commission and the PIC. Given this, the Committee recommended that the Premier review the memorandum to provide clarity about how agencies considering litigation should proceed in future, and consider developing a new guideline that meets the more complex circumstances of litigation associated with oversight agencies.<sup>79</sup>
- 1.101 The Government responded that given the length of time since the publication of the Premier's memorandum, the Government will review it and consider whether clarification is required. The Government noted that the main purpose of Premier's memoranda is to record and communicate government policy for ministers and agencies subject to ministerial direction, and that other public authorities are encouraged to comply to the extent that it is appropriate and relevant for them to do so.

### Committee comment

- 1.102 The Committee notes the comments of the PIC regarding the establishment of a protocol and is satisfied that the agencies have considered this issue and agreed on alternative ways to minimise the risk of future litigation. Since the legal dispute, there have been significant changes to the oversight of the Crime Commission and both agencies have new Commissioners.
- 1.103 While it is undesirable for independent bodies to engage in unnecessary and costly litigation, the Committee considers that jurisdictional disputes between independent statutory bodies are not matters that necessarily lend themselves to alternative dispute resolution. Consequently, the ability to resolve such matters informally would need to be considered on a case by case basis. The Committee

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<sup>76</sup> Department of Premier and Cabinet, *M1997-26 Litigation Involving Government Authorities*, October 1997

<sup>77</sup> Police Integrity Commission, Answers to further questions, question 2, pp 2-3

<sup>78</sup> Correspondence between PIC Commissioner and Crime Commissioner dated 30 October 2013, PIC Answers to further questions

<sup>79</sup> Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, *2013 General Meetings*, report 7/55, pp 17-18

notes the comment in the Government's response to its earlier report, that the Premier's memorandum concerning Litigation Involving Government Authorities was intended to communicate government policy for ministers and agencies subject to ministerial direction.

## PROPOSALS FOR LEGISLATIVE CHANGE

- 1.104 The Committee considers suggestions for legislative change raised by the Inspector of Custodial Services, the Inspector of the Crime Commission and the Child Death Review Team in this section.

### Management of complaints about Crime Commission officers

- 1.105 The Committee discussed the new arrangement for the oversight of the Crime Commission in detail at paragraphs 1.63 and 1.88. The Committee has noted the co-operative approach adopted by the PIC and Crime Commission Inspector in relation to oversight of the Crime Commission. Notwithstanding the current arrangements, the Inspector has raised the need for legislative change regarding the management of complaints.
- 1.106 The Inspector expressed the view that legislative change is required to resolve anomalies in the Crime Commission Act and PIC Act. Mr Barr told the Committee that currently the PIC Commissioner and Crime Commissioner do not have to advise him of complaints alleging misconduct by Crime Commission officers.<sup>80</sup>
- 1.107 Mr Barr argued that the PIC and Crime Commission Acts should be amended so that the officers listed in s75D<sup>81</sup> of the PIC Act are also under a duty to report possible misconduct to the Inspector of the Crime Commission. He also stated that the PIC Commissioner and the Inspector should be obliged to report complaints to one another. He argued that the current legislation could lead to duplication of work in relation to complaints:

As things stand, disaffected people can complain about Crime Commission officers to me, to the PIC or both. Experience over the years suggests that people who can complain to two people will do so. Unless the complaint passes the test in section 75D of the Police Integrity Commission Act—a test, I might say, that is not easy to interpret and is not the subject of universal agreement—I have no obligation to tell the Police Integrity Commissioner if I receive a complaint. Indeed, the whole nature of things suggests that I would be obliged not to tell him, because these things are confidential.

The Police Integrity Commissioner has no obligation to tell me that he has received any particular complaint about a Crime Commission officer. That can lead to the undesirable position—and I think this is not a fantasy—where both Mr James and I are dealing with the same complaint, neither knowing that the other is doing so.<sup>82</sup>

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<sup>80</sup> Mr Graham Barr, Inspector of the Crime Commission, Transcript of evidence, 17 February 2014, p 28

<sup>81</sup> Section 75D of the PIC Act provides that the Ombudsman, the Crime Commissioner, the Inspector of the Crime Commission and the Commissioner of Police, principal officers of a public authority, and an officer who constitutes a public authority are under a duty to report to the PIC any matter that they suspect on reasonable grounds concerns or may concern officer misconduct.

<sup>82</sup> Mr Graham Barr, Inspector of the Crime Commission, Transcript of evidence, 17 February 2014, pp 26-28 and Inspector of the Crime Commission, Answers to further questions, question 1, p 1

### Committee comment

- 1.108 The Committee considers that further consultation and consideration is required with regard to the Inspector's suggestion for legislative change in relation to the management of complaints about Crime Commission officers. The Committee notes that the current oversight arrangements appear to be working in practice and the potential for duplication in relation to complaints is being managed adequately by the agencies.
- 1.109 The current legislation has only been in place since 2012, and more time is needed to determine how the current framework is operating and whether any amendments are warranted. The Committee would also like to seek the view of the PIC on the proposed amendment. The Committee will monitor the management of complaints regarding Crime Commission officers, and whether aspects of the Crime Commission and PIC Acts require clarification.

### Change to role of Official Visitors - Custodial Services

- 1.110 As the Committee has noted, Official Visitors report each year to the Inspector of Custodial Services on inquiries and complaints they receive, and the Inspector considers these reports to be valuable in alerting him to potential systemic issues. In this regard, the Inspector raised a potential amendment to the *Crimes (Administration of Sentences) Act 1999* to enable official visitors to conduct audits or carry out inspections under his directive:

... The Crimes (Administration of Sentences) Act has a section that I would like to see adjusted. It relates to how we can use the official visitors. The legislation says that official visitors can deal with complaints but they cannot audit or inspect. ... I would like to see the legislation adjusted so it says "unless directed by the Inspector" so it is quite clear that we can use the official visitors in that role. In December we had a meeting with the Department of Attorney General and Justice, Corrective Services and Juvenile Justice, and there is no objection to that. We will push that further forward early this financial year now that we are trying to get the administrative arrangements and architecture sorted out as well so when it goes to Parliament it is a complete package.<sup>83</sup>

### Committee comment

- 1.111 Official Visitors to custodial facilities are a valuable source of information and reports from inmates. The Committee therefore supports any change that would enable the Inspector of Custodial Services to work with Official Visitors to facilitate his role of scrutinising custodial facilities. The Committee notes that the Inspector has consulted with the Department of Attorney General and Justice and Corrective Services on a proposed amendment to enable Official Visitors to audit or inspect facilities under his direction. The Committee will seek an update from the Inspector during its next general meeting on progress with this amendment.

### Biennial reporting by the Child Death Review Team

- 1.112 The Convenor of the Child Death Review Team informed the Committee that the Team's resources and staffing are adequate for it to perform its functions. However, he stated that an amendment to the legislation to move from annual

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<sup>83</sup> Dr John Paget, Inspector of Custodial Services, Transcript of evidence, 17 February 2014, pp 31-32

reporting to biennial reporting would enable the Team to undertake its prevention work more effectively. Such an amendment would also allow agencies more time to implement the Team's recommendations in relation to child deaths:

The Team is also considering other options for strengthening its ability to effectively perform its functions, particularly in relation to its prevention activities. Part of the Team's consideration concerns the potential need for amendment to the legislated reporting requirements to move to biennial rather than annual reporting – to enable the Team greater capacity to undertake work, either alone or with others, in relation to the prevention of child deaths; and to provide agencies with sufficient time to demonstrate important progress in implementing the Team's recommendations and to report on the outcomes from the work.<sup>84</sup>

- 1.113 The Convenor indicated that in the first quarter of 2014, the Team would table a report from a research project on causes of death of children with a child protection history, along with a separate report by the Ombudsman on the New South Wales child protection system. In October, the Team's annual report on child deaths will be tabled at the same time as the Ombudsman's biennial report on reviewable child deaths.<sup>85</sup>

### Committee comment

- 1.114 The Committee notes that the Child Death Review Team will produce two reports this year, along with separate reports by the Ombudsman on reviewable child deaths and child protection. The Committee acknowledges the Convenor's view that biennial reporting would have benefits in terms of enabling agencies to have more time to respond to the Team's recommendations, and reduce the reporting burden on the Team. However, accountability and transparency around the Team's work, and around child deaths, is also important and annual reporting achieves this aim. In the Committee's view, further consideration of the proposal is required to ensure that an appropriate balance between accountability and efficiency is struck. The Committee will seek further detail on this proposal from the Convenor during the next general meeting.

### FOCUS ON AGENCY PROJECTS

- 1.115 Agency projects of particular interest to the Committee are examined in this section.

### Organised crime disruption strategy

- 1.116 The Committee heard details of the NSW Crime Commission's organised crime disruption strategy, which involves identifying people involved in organised crime to better focus the Crime Commission's operations and resources. The Crime Commissioner, Mr Peter Hastings, discussed the rationale behind the organised crime list and how it is compiled:

The philosophy behind it is that it will provide a discipline for decisions in relation to undertaking operations and allocating resources. The list at the moment is prepared

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<sup>84</sup> Convenor, Child Death Review Team, answers to additional questions, question 4, p 4

<sup>85</sup> Mr Bruce Barbour, Convenor, Child Death Review Team, Transcript of evidence, 18 February 2014, p 31

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by one of our teams under the auspices of a senior intelligence manager, assisted by some intelligence officers. She bases the preparation of profiles ... on information gathered by human sources. It then goes before a committee which not only involves staff of the Commission but now involves the commander of the Organised Crime Squad and the State Crime Command Director who participate in decisions about adding names to the list and also in theory, because we have not got the practicalities finalised yet, participate in decisions about which persons on the list shall be nominated for specific investigation.<sup>86</sup>

- 1.117 The organised crime list is based on the approach taken by the UK's Serious Organised Crime Agency. The Commissioner told the Committee that the number of people on the list is continually increasing, with approximately 500 people listed currently. The list primarily focuses on kilo dealers of drugs, in order to disrupt organised crime at its senior levels.<sup>87</sup>
- 1.118 The Committee heard that the Crime Commission will work in partnership with the NSW Police State Crime Command's Organised Crime Squad, and its resources will be primarily dedicated to assisting the Squad. Additional police and Crime Commission staff will be allocated to working on organised crime, with the number of staff from both agencies attached to the organised crime squad to double. Crime Commission staff will have a reduced capacity to assist police in other areas due to the increased resources dedicated to organised crime.<sup>88</sup>
- 1.119 The Assistant Commissioner told the Committee that joint operations are highly effective. This is reflected in the amount of cash seized by the police organised crime squad, which works with the Crime Commission:

The organised crime targeting squad over the past few years has seized almost twice the amount of cash as all the other organised crime squads combined. There are six squads altogether in the directorate and one outdoes all the others. It is the team that has been working in our building and it is in large part because it is working in our building. ... we can expect the greater effectiveness of the police who have been there in previous years to be passed on to the new police coming into the building because intelligence-led investigations tend to be more effective.<sup>89</sup>

### Asset confiscation – ICAC referral

- 1.120 The *Crime Commission Act 2012* overturned the effects of *NSW Crime Commission v Cook*, which had limited the Crime Commission's capacity to undertake confiscation work under the *Criminal Assets Recovery Act 1990* (CAR Act). The Committee heard that confiscations have increased following this legislative change and that in the current financial year the dollar value of seizures and the number of proceedings commenced were returning to previous levels.<sup>90</sup>

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<sup>86</sup> Mr Peter Hastings, Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, p 8

<sup>87</sup> Mr Peter Hastings, Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, pp 8, 14

<sup>88</sup> Mr Peter Hastings, Commissioner, and Mr Peter Singleton, Assistant Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, pp 11-12

<sup>89</sup> Mr Peter Singleton, Assistant Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, p 13

<sup>90</sup> Mr Peter Hastings, Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, p 9



1.121 With regard to the status of confiscation action recommended by the ICAC in relation to Eddie Obeid, the Crime Commissioner noted that the CAR Act had been amended to provide that common law offences could form a basis for confiscation proceedings. The Commission is considering whether to proceed with confiscation proceedings against Mr Obeid and has retained Senior Counsel to assess relevant material:

... We have senior counsel retained—Ian Temby—to advise us, plus two juniors, who are spending a lot of time on it. We are also at the moment working in consultation with the Office of the Director of Public Prosecutions to share the burden of assessing all the material that the Independent Commission Against Corruption gathered because to some extent we have a common role when identifying the adequacy of evidence. ... in the interim, two officers from the Office of the Director of Public Prosecutions are in residence at the Commission working side by side with our staff to assess the evidence.<sup>91</sup>

1.122 The Commission is unlikely to make a decision on the matter before mid-2014, due to its complexity.

1.123 In terms of the adequacy of the CAR Act, the Commissioner stated that while possible amendments were being considered, in his view the main challenges lay with proving the elements of the Obeid case due to the circumstances, including the way money was dispersed and shareholdings acquired and sold. Mr Hastings stated that 'there are some technical issues that need to be addressed, but I am not sure that the legislation requires radical change to improve our prospects.'<sup>92</sup>

### **PIC Inspector's complaint investigations**

1.124 The PIC Inspector's key functions include dealing with complaints of abuse of power, impropriety and other forms of misconduct on the part of the PIC or its officers, and dealing with conduct amounting to maladministration by the PIC or its officers.<sup>93</sup>

1.125 Since the General Meeting, the Inspector has finalised investigations into a number of complaints by the NSW Crime Commission about the PIC's conduct in Operation Winjana.<sup>94</sup> As the Committee has noted, the Operation resulted in legal proceedings between the PIC and the Crime Commission.

1.126 The Inspector did not uphold any of the complaints arising out of Operation Winjana and made no express recommendations. However, he commented on the legal proceedings and stated that he expected dealings between the two bodies 'to be conducted without acrimony but with good sense, commonsense, professional courtesy and efficiency.'<sup>95</sup>

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<sup>91</sup> Mr Peter Hastings, Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, pp 14-15

<sup>92</sup> Mr Peter Hastings, Commissioner, Crime Commission, Transcript of evidence, 17 February 2014, pp 14-15

<sup>93</sup> *Police Integrity Commission Act 1996*, ss 89(1)(b) and (b1)

<sup>94</sup> Operation Winjana examined whether a staff member of the Crime Commission and others associated with him were involved in criminal activity or other serious misconduct, as well as the Crime Commission's practices and procedures in carrying out actions under the *Criminal Assets Recovery Act 1990*.

<sup>95</sup> Inspector of the Police Integrity Commission, *Report – Complaints by NSW Crime Commission arising from the conduct by the Police Integrity Commission in 'Operation Winjana'*, May 2014, pp 26-27

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- 1.127 A further matter, referred by the Committee in May 2013, concerned the PIC's handling of allegations that former Local Area Commander, Superintendent David Cushway, provided former Member of Parliament, Richard Torbay, with access to a prisoner at Armidale Police Station, potentially interfering with an investigation.<sup>96</sup>
- 1.128 The PIC conducted a preliminary investigation into the matter and determined not to pursue it further, instead referring it to the NSW Police Force.<sup>97</sup> In particular, the PIC advised the Inspector that it declined to investigate further as it did not consider that Superintendent Cushway's actions constituted serious police misconduct, instead falling within the category of internal disciplinary issues.<sup>98</sup>
- 1.129 The Inspector was satisfied with the conduct of the PIC and other relevant agencies in dealing with the matter, concluding that the allegations were properly investigated and that the action taken was appropriate in the circumstances.<sup>99</sup>

### Operation Prospect

- 1.130 The Ombudsman's investigation into allegations of serious misconduct by officers of the NSW Police Force, NSW Crime Commission and the PIC, Operation Prospect, was a matter of interest for the Committee in its previous report.
- 1.131 The Ombudsman provided an update on the progress of Operation Prospect. He noted that the operation has involved analysis of an enormous volume of data, more than his office had ever dealt with before. The analysis of much of the information has been finalised and private interviews and hearings have also been held. The Ombudsman anticipated that the public report would be finalised by the end of 2014:

Operation Prospect is fully staffed and it is well underway. ... since the previous meeting with the Committee it has finalised a lot of the analysis of the information... the office has not dealt with, and I think very few organisations would ever have dealt with, the volume of material that this inquiry is dealing with. We are literally talking about millions of pages of information. We have continued the analysis of that information. We have conducted a large range of private interviews and private hearings pursuant to our Royal Commission powers, the matter is on track. I anticipate that we will be in a position to finalise the matter with a public report by the end of 2014. That is the advice I provided to Premier and Cabinet when I sought additional funding beyond the initial period that it had been provided. We had been provided with funding only until the end of the financial year 2013-14. It was fairly clear that we were not going to complete it by then, but I remain optimistic that we will do so.<sup>100</sup>

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<sup>96</sup> Mr David Levine, Inspector of the Police Integrity Commission, Transcript of evidence, 17 February 2014, p 4

<sup>97</sup> Police Integrity Commission, Answers to questions taken on notice, 8 May 2013, question 2, p 2

<sup>98</sup> Inspector of the Police Integrity Commission, *Report – Parliamentary Joint Committee Reference pursuant to section 89(2) Police Integrity Commission Act 1996: Richard Torbay and David Cushway*, May 2014, p 3

<sup>99</sup> Inspector of the Police Integrity Commission, *Report – Parliamentary Joint Committee Reference pursuant to section 89(2) Police Integrity Commission Act 1996: Richard Torbay and David Cushway*, May 2014, p 6

<sup>100</sup> Mr Bruce Barbour, Ombudsman, Transcript of evidence, 18 February 2014, p 19

## Child deaths - identification of Indigenous status

- 1.132 An ongoing concern for the Child Death Review Team has been a lack of accuracy around the reporting of deaths of children of Indigenous background. The 2012 annual report noted that collection of reliable information on indigenous status is a 'significant issue that affects policy development, planning and service improvement across health, education, community service and other areas.'<sup>101</sup>
- 1.133 While a key function of the Child Death Review Team is to identify trends and patterns in relation to child deaths, the 2012 report is unable to provide trend information for Indigenous children due to a lack of consistency in methods of identifying and reporting the Indigenous status of children who have died. The Team has used different approaches over time to identify Aboriginal and Torres Strait Islander status and the base population of Indigenous children, which enables mortality rates to be calculated. This means that data across years is not directly comparable.
- 1.134 The Team's Convenor informed the Committee that the Australian Institute of Health and Welfare (AIHW) had been engaged to provide advice on how to best collect and report on the Indigenous status of children. The Team will introduce systems to ensure greater consistency and follow the AIHW's guidance to support the identification of Indigenous status.<sup>102</sup>

## Committee comment

- 1.135 The Committee was interested to hear of agencies' key projects and innovations in the way that agencies perform their key functions. The Committee commends the Crime Commission on its innovative approach in developing an organised crime disruption strategy that promotes the best use of the Commission's resources to reduce the threat of serious organised crime in New South Wales.
- 1.136 With regard to Operation Prospect, the Committee commends the Ombudsman for the progress made in such a resource intensive and complex operation, and will be interested in the final report, due at the end of 2014.
- 1.137 The Committee hopes that changes in methodology for collecting and reporting on children's Indigenous status will enable the Child Death Review Team to report trend information for Indigenous children who have died. The Team's work has shown that Indigenous children are over-represented in each category of child deaths where prevention is a key factor. Improving identification of Indigenous status is therefore critical in terms of improving our understanding of Indigenous child deaths, and developing and implementing preventative measures to reduce deaths.

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<sup>101</sup> NSW Child Death Review Team, *Annual Report 2012*, p 11

<sup>102</sup> Convenor, Child Death Review Team, Transcript of evidence, 18 February 2014, p 31

## Appendix One – Resourcing and staffing

Below are tables for each agency oversighted by the Committee, setting out resourcing and staffing profiles for the years since 2010–2011. The Committee intends to monitor changes in resourcing and staffing across the agencies it oversights.

**Table 1: Ombudsman and the Child Death Review Team<sup>103</sup>**

| Resourcing profile  |                 |                 |                 |                 |                 |                 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|   | 2010-11         |                 | 2011-12         |                 | 2012-13         |                 |
|   | Budget (\$'000) | Actual (\$'000) | Budget (\$'000) | Actual (\$'000) | Budget (\$'000) | Actual (\$'000) |
| <b>Staffing expenses</b><br>(salaries, superannuation, leave etc)                   | 18,724          | 19,222          | 20,233          | 21,491          | 21,435          | 21,218          |
| <b>Operating expenses</b><br>(leases, insurance, maintenance, travel, printing etc) | 4,044           | 4,612           | 4,744           | 4,704           | 4,362           | 4,954           |
| <b>All other expenses</b>   | 453             | 463             | 571             | 767             | 473             | 736             |
| <b>TOTAL expenses</b>   | <b>23,221</b>   | <b>24,297</b>   | <b>25,548</b>   | <b>26,962</b>   | <b>26,270</b>   | <b>26,908</b>   |
| <b>Revenue—recurrent appropriations</b>   | 21,460          | 21,804          | 23,406          | 23,796          | 24,044          | 24,044          |
| <b>Revenue—capital appropriations</b>   | 314             | 369             | 219             | 248             | 294             | 294             |
| <b>All other revenue</b>  | 1,100           | 2,255           | 1,237           | 1,854           | 1,426           | 3,643           |
| <b>TOTAL revenues</b>   | <b>22,874</b>   | <b>24,428</b>   | <b>24,862</b>   | <b>25,898</b>   | <b>25,764</b>   | <b>27,981</b>   |

| Staffing profile   |         |         |         |
|--|---------|---------|---------|
|  | 2010-11 | 2011-12 | 2012-13 |
| <b>Total number of staff</b>   | 207     | 209     | 201     |
| <b>Number of full-time equivalent staff</b>                                | 185.19  | 186.36  | 179.82  |
| <b>Number of men</b>   | 56      | 55      | 54      |
| <b>Number of women</b>   | 151     | 154     | 147     |
| <b>Number of people of Aboriginal or Torres Strait Islander background</b> | 5       | 6       | 6       |
| <b>Number of people whose first language was not English</b>               | 36      | 38      | 32      |
| <b>Number of people with a disability</b>                                  | 19      | 21      | 24      |

<sup>103</sup> The Child Death Review Team forms part of the Ombudsman's total budget allocation.

Table 2: Police Integrity Commission

| Resourcing profile  |                 |                 |                 |                 |                 |                 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|   | 2010-11         |                 | 2011-12         |                 | 2012-13         |                 |
|   | Budget (\$'000) | Actual (\$'000) | Budget (\$'000) | Actual (\$'000) | Budget (\$'000) | Actual (\$'000) |
| <b>Staffing expenses</b><br>(salaries, superannuation, leave etc)                   | 14,012          | 13,229          | 14,184          | 14,132          | 14,310          | 13,088          |
| <b>Operating expenses</b><br>(leases, insurance, maintenance, travel, printing etc) | 4,752           | 4,243           | 4,862           | 4,334           | 4,576           | 4,380           |
| <b>All other expenses</b>   | 1,481           | 1,320           | 1,411           | 1,191           | 1,411           | 1,069           |
| <b>TOTAL expenses</b>   | <b>20,245</b>   | <b>18,792</b>   | <b>20,457</b>   | <b>19,657</b>   | <b>20,297</b>   | <b>18,537</b>   |
| <b>Revenue—recurrent appropriations</b>   | 17,961          | 16,947          | 18,147          | 17,454          | 17,976          | 16,966          |
| <b>Revenue—capital appropriations</b>   | 1,790           | 1,166           | 1,790           | 1,270           | 1,790           | 1,011           |
| <b>All other revenue</b>  | 744             | 636             | 770             | 1,083           | 781             | 414             |
| <b>TOTAL revenues</b>   | <b>20,495</b>   | <b>18,749</b>   | <b>20,707</b>   | <b>19,807</b>   | <b>20,547</b>   | <b>18,391</b>   |

| Staffing profile   |         |         |         |
|--|---------|---------|---------|
|  | 2010-11 | 2011-12 | 2012-13 |
| <b>Total number of staff</b>   | 116     | 111     | 104     |
| <b>Number of full-time equivalent staff</b>                                | 105.63  | 103     | 100.66  |
| <b>Number of men</b>   | 68      | 65      | 60      |
| <b>Number of women</b>   | 48      | 46      | 44      |
| <b>Number of people of Aboriginal or Torres Strait Islander background</b> | 1       | 1       | 2       |
| <b>Number of people whose first language was not English</b>               | 11      | 9       | 11      |
| <b>Number of people with a disability</b>                                  | 8       | 7       | 6       |

**Table 3: Inspector of the Police Integrity Commission**

| Resourcing profile  |                |                |                |                |                        |                |
|---|----------------|----------------|----------------|----------------|------------------------|----------------|
|   | 2010-11        |                | 2011-12        |                | 2012-13 <sup>104</sup> |                |
|   | Budget (\$)    | Actual (\$)    | Budget (\$)    | Actual (\$)    | Budget (\$)            | Actual (\$)    |
| <b>Staffing expenses</b><br>(salaries, superannuation, leave etc)                   | 259,000        | 258,873        | 266,709        | 292,890        | 60,600*                | 104,284*       |
| <b>Operating expenses</b><br>(leases, insurance, maintenance, travel, printing etc) | 88,000         | 70,110         | 92,974         | 157,006        | 278,700*               | 291,708*       |
| <b>All other expenses</b>   | 0              | 0              | 0              | 0              | 0                      | 0              |
| <b>TOTAL expenses</b>   | <b>347,000</b> | <b>328,983</b> | <b>359,683</b> | <b>449,896</b> | <b>339,300</b>         | <b>395,992</b> |
| <b>Revenue—recurrent appropriations</b>   | 347,000        | 328,818        | 359,683        | 449,896        | 0                      | 0              |
| <b>Revenue—capital appropriations</b>   | 0              | 0              | 0              | 0              | 0                      | 0              |
| <b>All other revenue</b>  | 0              | 165            | 0              | 0              | 0                      | 0              |
| <b>TOTAL revenues</b>   | <b>347,000</b> | <b>328,983</b> | <b>359,683</b> | <b>449,896</b> | <b>339,300</b>         | <b>395,992</b> |

| Staffing profile   |         |         |         |
|--|---------|---------|---------|
|  | 2010-11 | 2011-12 | 2012-13 |
| <b>Total number of staff</b>   | 2       | 2       | 3       |
| <b>Number of full-time equivalent staff</b>                                | 0       | 0       | 0       |
| <b>Number of men</b>   | 1       | 1       | 1       |
| <b>Number of women</b>   | 1       | 1       | 2       |
| <b>Number of people of Aboriginal or Torres Strait Islander background</b> | 0       | 0       | 0       |
| <b>Number of people whose first language was not English</b>               | 0       | 0       | 0       |
| <b>Number of people with a disability</b>                                  | 0       | 0       | 0       |

<sup>104</sup> The Inspector of the PIC has clarified that until the end of 2011, the remuneration for Inspector Peter Moss was paid as a salary expense. From March 2012 onwards, the remuneration for Inspector David Levine has been paid as a Board Member fee, which is classified as an operating expense. This explains why actual salary expenses were higher than actual operating expenses in 2011-2012 and why actual operating expenses were higher than actual salary expenses in 2012-2013.

Table 4: NSW Crime Commission

| Resourcing profile  |                 |                 |                 |                 |                 |                 |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|   | 2010-11         |                 | 2011-12         |                 | 2012-13         |                 |
|   | Budget (\$'000) | Actual (\$'000) | Budget (\$'000) | Actual (\$'000) | Budget (\$'000) | Actual (\$'000) |
| <b>Staffing expenses</b><br>(salaries, superannuation, leave etc)                   | 13,092          | 12,615          | 13,419          | 12,996          | 16,981          | 14,340          |
| <b>Operating expenses</b><br>(leases, insurance, maintenance, travel, printing etc) | 4,313           | 5,279           | 4,438           | 5,607           | 5,544           | 4,855           |
| <b>All other expenses</b>   | 1,357           | 1,461           | 1,198           | 1,023           | 1,005           | 803             |
| <b>TOTAL expenses</b>   | <b>18,762</b>   | <b>19,355</b>   | <b>19,055</b>   | <b>19,626</b>   | <b>23,530</b>   | <b>19,998</b>   |
| <b>Revenue—recurrent appropriations or grants and contributions</b>                 | 16,765          | 16,968          | 17,019          | 17,019          | 21,451          | 19,050          |
| <b>Revenue—capital appropriations or capital grants and contributions</b>           | 1,544           | 1,544           | 1,482           | 1,250           | 1,482           | 630             |
| <b>All other revenue</b>  | 89              | 590             | 441             | 1,016           | 502             | 617             |
| <b>TOTAL revenues</b>   | <b>18,398</b>   | <b>19,102</b>   | <b>18,942</b>   | <b>19,285</b>   | <b>23,435</b>   | <b>20,297</b>   |

| Staffing profile   |                                  |                                  |                      |
|--|----------------------------------|----------------------------------|----------------------|
|  | 2010-11                          | 2011-12                          | 2012-13              |
| <b>Total number of staff</b>   | 105 (as well as 35 casual staff) | 108 (as well as 29 casual staff) | 145 (0 casual staff) |
| <b>Number of full-time equivalent staff</b>                                | 97                               | 99                               | 126.14               |
| <b>Number of men</b>   | 50                               | 48                               | 61                   |
| <b>Number of women</b>   | 55                               | 60                               | 84                   |
| <b>Number of people of Aboriginal or Torres Strait Islander background</b> | 0                                | 0                                | 0                    |
| <b>Number of people whose first language was not English</b>               | 24                               | 29                               | 37                   |
| <b>Number of people with a disability</b>                                  | 5                                | 5                                | 7                    |

Table 5: Inspector of the NSW Crime Commission

| Resourcing profile  |         |        |         |        |                       |                     |
|---|---------|--------|---------|--------|-----------------------|---------------------|
|   | 2010-11 |        | 2011-12 |        | 2012-13               |                     |
|   | Budget  | Actual | Budget  | Actual | Budget Full Year (\$) | Actual YTD Dec (\$) |
| <b>Staffing expenses</b><br>(salaries, superannuation, leave etc)                   | N/A     | N/A    | N/A     | N/A    | 234,753               | 88,997              |
| <b>Operating expenses</b><br>(leases, insurance, maintenance, travel, printing etc) | N/A     | N/A    | N/A     | N/A    | 111,992               | 31,862              |
| <b>All other expenses</b>   | N/A     | N/A    | N/A     | N/A    |                       |                     |
| <b>TOTAL expenses</b>   | N/A     | N/A    | N/A     | N/A    | 346,745               | 120,859             |
| <b>Revenue—recurrent appropriations</b>   | N/A     | N/A    | N/A     | N/A    | 347,000               | 182,000             |
| <b>Revenue—capital appropriations</b>   | N/A     | N/A    | N/A     | N/A    |                       |                     |
| <b>All other revenue</b>  | N/A     | N/A    | N/A     | N/A    |                       |                     |
| <b>TOTAL revenues</b>   | N/A     | N/A    | N/A     | N/A    | 347,000               | 182,000             |

| Staffing profile   |         |         |         |
|--|---------|---------|---------|
|  | 2010-11 | 2011-12 | 2012-13 |
| <b>Total number of staff</b>   | N/A     | N/A     | 3       |
| <b>Number of full-time equivalent staff</b>                                | N/A     | N/A     | 1.8     |
| <b>Number of men</b>   | N/A     | N/A     | 1       |
| <b>Number of women</b>   | N/A     | N/A     | 2       |
| <b>Number of people of Aboriginal or Torres Strait Islander background</b> | N/A     | N/A     | 0       |
| <b>Number of people whose first language was not English</b>               | N/A     | N/A     | 0       |
| <b>Number of people with a disability</b>                                  | N/A     | N/A     | 0       |



Table 6: Information and Privacy Commission

| Resourcing profile  |             |             |                  |                  |                  |                        |
|---|-------------|-------------|------------------|------------------|------------------|------------------------|
|   | 2010-11     |             | 2011-12          |                  | 2012-13          |                        |
|   | Budget (\$) | Actual (\$) | Budget (\$)      | Actual (\$)      | Budget (\$)      | Actual (\$)            |
| <b>Staffing expenses</b><br>(salaries, superannuation, leave etc)                   | N/A         | N/A         | 3,930,000        | 3,345,078        | 3,788,000        | 4,028,783              |
| <b>Operating expenses</b><br>(leases, insurance, maintenance, travel, printing etc) | N/A         | N/A         | 1,428,000        | 1,844,482        | 1,493,000        | 1,289,411              |
| <b>All other expenses</b>   | N/A         | N/A         | -                | -                | 125,000          | 134,991                |
| <b>TOTAL expenses</b>   | N/A         | N/A         | <b>5,358,000</b> | <b>5,189,560</b> | <b>5,406,000</b> | <b>5,451,192</b>       |
| <b>Revenue—recurrent appropriations</b>   | N/A         | N/A         | 5,272,000        | 5,274,200        | 5,152,000        | 5,152,000              |
| <b>Revenue—capital appropriations</b>   | N/A         | N/A         | 366,000          | 248,300          | 150,000          | 167,300 <sup>105</sup> |
| <b>All other revenue</b>  | N/A         | N/A         | 42,000           | 188,309          | 42,000           | 688,823 <sup>106</sup> |
| <b>TOTAL revenues</b>   | N/A         | N/A         | <b>5,680,000</b> | <b>5,710,809</b> | <b>5,344,000</b> | <b>6,008,123</b>       |

| Staffing profile   |         |         |                   |
|--|---------|---------|-------------------|
|  | 2010-11 | 2011-12 | 2012-13           |
| <b>Total number of staff</b>   | N/A     | 33      | 25 <sup>107</sup> |
| <b>Number of full-time equivalent staff</b>                                | N/A     | 32.6    | 24.6              |
| <b>Number of men</b>   | N/A     | 7       | 4                 |
| <b>Number of women</b>   | N/A     | 26      | 21                |
| <b>Number of people of Aboriginal or Torres Strait Islander background</b> | N/A     | 0       | 0                 |
| <b>Number of people whose first language was not English</b>               | N/A     | 6       | 1                 |
| <b>Number of people with a disability</b>                                  | N/A     | 0       | 0                 |

<sup>105</sup> Revenue – capital appropriations – increased actual due to Treasury approving the carry forward of surplus revenue from the 2011-2012 previous financial year.

<sup>106</sup> All other revenue – increased actual due to Treasury allocation of \$496,370 through a voluntary redundancy grant. The IPC also received \$70,000 from tickets sold for the Open Government Conference and interest income of \$29,000.

<sup>107</sup> The total number of staff reflects the total head count at that point in time. The IPC has establishment of 28.6 FTE following the implementation of a review in 2012-2013 to meet labour savings targets and achieve Parliament's requirements for an integrated office.

## Appendix Two – List of witnesses

Monday 17 February 2014

Mitchell Library, State Library of New South Wales

| <b>Witness</b>   | <b>Organisation</b>  |
|--|--|
| The Hon Bruce James QC<br>Commissioner                   | Police Integrity Commission                                |
| Mr Allan Kearney<br>Director, Prevention and Information | Police Integrity Commission                                |
| Ms Michelle O'Brien<br>Commission Solicitor              | Police Integrity Commission                                |
| Mr Roy Cottam<br>Acting Director, Operations             | Police Integrity Commission                                |
| The Hon David Levine AO RFD QC<br>Inspector              | Office of the Inspector of the Police Integrity Commission |
| Mr Peter Hastings QC<br>Commissioner                     | NSW Crime Commission                                       |
| Mr Peter Singleton<br>Assistant Commissioner             | NSW Crime Commission                                       |
| The Hon Graham Barr QC<br>Inspector                      | Office of the Inspector of the NSW Crime Commission        |
| Dr John Paget<br>Inspector                               | Office of the Inspector of Custodial Services              |

**Tuesday 18 February 2014**  
**Mitchell Library, State Library of New South Wales**

| <b>Witness</b>   | <b>Organisation</b>                    |
|--|--|
| Ms Elizabeth Tydd<br>Information Commissioner  | Information and Privacy Commission NSW |
| Dr Elizabeth Coombs<br>Privacy Commissioner  | Information and Privacy Commission NSW |
| Mr Bruce Barbour<br>Ombudsman  | NSW Ombudsman                          |
| Mr Christopher Wheeler<br>Deputy Ombudsman, Public Administration                        | NSW Ombudsman                          |
| Mr Steven Kinmond<br>Deputy Ombudsman, Community and Disability<br>Services Commissioner | NSW Ombudsman                          |
| Ms Linda Waugh<br>Deputy Ombudsman, Police and Compliance                                | NSW Ombudsman                          |
| Mr Bruce Barbour<br>Convenor   | NSW Child Death Review Team            |
| Dr Jonathan Gillis<br>Independent Member   | NSW Child Death Review Team            |
| Ms Kathryn McKenzie<br>Director, Systemic Reviews  | NSW Child Death Review Team            |

## Appendix Three – Extracts from minutes

### **Minutes of Proceedings of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission (no. 37)**

10:47am, Monday, 17 February 2014

Mitchell Room 2, State Library of New South Wales

#### **Members Present**

Ms Cusack (Chair), Mr Anderson, Mr Lynch and Mr Searle.

#### **Apologies**

Apologies were received from Mrs Mitchell, Mr Evans and Mr Park.

#### *Officers in attendance*

Helen Minnican, Carly Maxwell, Jessica Falvey, Jacqueline Isles, Jenny Whight and Millie Yeoh.

#### **1. Draft questions for witnesses**

Committee staff briefed the Committee on the development and categorisation of draft questions for witnesses.

#### **2. Confirmation of minutes**

Resolved, on the motion of Mr Lynch: That the minutes of 13 November 2013 and 16 October 2013 be confirmed.

\*\*\*\*

#### **4. Media orders**

Resolved, on the motion of Mr Anderson: That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearings on 17 and 18 February 2014 in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for parliamentary committees.

#### **5. 2014 General Meetings - Public hearing**

The Committee convened General Meetings with the Inspector of the Police Integrity Commission, the Crime Commission, the Police Integrity Commission, the Inspector of the Crime Commission and the Inspector of Custodial Services at 10:51am. The public and the media were admitted.

The Hon. David Levine QC, Inspector of the Police Integrity Commission, was affirmed and examined.

The Inspector agreed to take further questions from the committee on notice.

Evidence completed, Mr Levine withdrew.

Mr Peter Hastings QC, Commissioner, and Mr Peter Singleton, Assistant Commissioner, were affirmed and examined.

The Commissioner agreed to take further questions from the Committee on notice.

Evidence completed, the witnesses withdrew.

The Hon. Bruce James QC, Commissioner of the Police Integrity Commission, was sworn and examined.

Mr Roy Cottan, Acting Director Operations, Mr Allan Kearney, Director Prevention and Information, and Ms Michelle O'Brien, Commission Solicitor, were affirmed and examined.

The Commissioner made an opening statement.

The Commissioner tendered the following documents for the information of the Committee:

1. Letter dated 5 February 2014, received from Commissioner of the Police Integrity Commission during the public hearing concerning the Report on the McClelland Review of the Investigation and Oversight of Police Critical Incidents
2. Document received from the Commissioner during the public hearing outlining the Terms of Reference for the Review of the Investigation and Oversight of Police Critical Incidents.

The Commissioner agreed to take further questions from the Committee on notice.

Evidence completed, the witnesses withdrew.

## **6. Deliberative meeting**

Resolved, on the motion of Mr Lynch: That the Committee accept and publish the following documents tendered by the Police Integrity Commission during the public hearing:

1. Letter dated 5 February 2014, received from Commissioner of the Police Integrity Commission during the public hearing concerning the Report on the McClelland Review of the Investigation and Oversight of Police Critical Incidents;
2. Document received from the Commissioner during the public hearing outlining the Terms of Reference for the Review of the Investigation and Oversight of Police Critical Incidents.

## **7. Public hearing**

The public hearing resumed at 1:32pm.

The Hon. Graham Barr QC, Inspector of the Crime Commission, was sworn and examined.

The Inspector made an opening statement.

The Inspector agreed to take further questions from the Committee on notice.

Evidence completed, the Inspector withdrew.

Dr John Paget, Inspector of Custodial Services, was sworn and examined.

The Inspector made an opening statement.

The Inspector agreed to take further questions from the Committee on notice.

Evidence completed, the Inspector withdrew.

**8. Transcript**

Resolved, on the motion of Mr Lynch: That the corrected transcript of evidence given today be authorised for publication and uploaded on the Committee's website.

**9. Next meeting**

The Committee adjourned at 3:06pm until Tuesday 18 February 2014 at 1:00pm.

**Minutes of Proceedings of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission (no. 38)**

1:04 pm, Tuesday, 18 February 2014

Mitchell Room 2, State Library of New South Wales

**Members Present**

Ms Cusack (Chair), Mr Anderson, Mr Lynch, Mrs Mitchell and Mr Searle.

**Apologies**

Apologies were received from Mr Evans and Mr Park.

*Officers in attendance*

Helen Minnican, Carly Maxwell, Jessica Falvey, Jacqueline Isles, Jenny Whight and Millie Yeoh.

**1. 2014 General Meetings - Public hearing**

The Committee convened General Meetings with the Information and Privacy Commission, the NSW Ombudsman and the Child Death Review Team. The public and the media were admitted.

Ms Elizabeth Tydd, Information Commissioner and Chief Executive Officer and Dr Elizabeth Coombs, Privacy Commissioner, Information and Privacy Commission, were sworn and examined.

The Commissioners made opening statements.

The Privacy Commissioner tendered the following documents:

1. Downloaded Web Article -titled 'Understanding the Drone Epidemic'
2. Downloaded Web Article - titled 'What Drones Inherit from Their Ancestors'
3. Downloaded Web Article - titled 'The Regulation of Civilian Drones' Impacts on Public Safety'
4. Downloaded Web Article - titled 'The Regulation of Civilian Drones' Applications to the Surveillance of People'.

The Commissioners agreed to take further questions from the Committee on notice.

Evidence completed, the Commissioners withdrew.

Mr Bruce Barbour, Ombudsman, Mr Chris Wheeler, Deputy Ombudsman Public Administration, Ms Linda Waugh, Deputy Ombudsman Police and Compliance, and Mr Steve Kinmond, Deputy Ombudsman and Community and Disability Services Commissioner, were affirmed and examined.

The Ombudsman tendered the following documents:

1. Letter dated 15 October 2013, concerning the Ombudsman's submission to the McClelland Review of the Investigation and Oversight of Police Critical Incidents
2. Letter dated 5 February 2014 concerning the NSW Ombudsman's response to the McClelland Report on the Review of the Investigation and Oversight of Police Critical Incidents
3. NSW Ombudsman Service Charter - CONFIDENTIAL DRAFT
4. Undated letter outlining the response of the Ombudsman to the Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper No 4, titled 'Preventing Sexual Abuse of Children in Out of Home Care'
5. Undated letter outlining the response of the Ombudsman to the Royal Commission into Institutional Responses to Child Sexual Abuse 'Towards Healing' Issues Paper
6. Undated letter outlining the Ombudsman's response to the Royal Commission into Institutional Responses to Child Sexual Abuse 'Working with Children Check' Issues Paper;
7. Letter dated 15 October 2013 outlining the Ombudsman's response to the Royal Commission into Institutional Responses to Child Sexual Abuse, 'Child Safe Institutions Issues Paper'.

Evidence completed, the witnesses withdrew.

Mr Bruce Barbour, Convenor Child Death Review Team, and Ms Kathryn McKenzie, Director Systemic Reviews, Child Death Review Team, were affirmed and examined. Dr Jonathan Gillis, Deputy Convenor Child Death Review Team, was sworn and examined.

The Convenor tendered the Child Death Review Team Strategic Plan 2013 – 2016.

The Convenor agreed to take further questions from the Committee on notice.

Evidence completed, the witnesses withdrew.

The public hearing concluded at 4:15pm.

## **2. Deliberative meeting**

- a. \*\*\*\*
- b. \*\*\*\*

### **c. Transcript**

Resolved, on the motion of Mr Anderson: That the corrected transcript of evidence given today be authorised for publication and uploaded on the Committee's website.

### **d. Questions on notice and additional questions**

Resolved, on the motion of Mr Anderson: That the questions taken on notice, and any outstanding questions without notice, be forwarded to the appropriate agency with a request for answers within nine working days.

### **e. Tendered documents**

Resolved, on the motion of Mr Anderson: That the Committee accept and publish the following documents tendered by the Privacy Commissioner, the Ombudsman and the Convenor of the Child Death Review Team:

EXTRACTS FROM MINUTES

- Downloaded Web Article -titled 'Understanding the Drone Epidemic'
- Downloaded Web Article - titled 'What Drones Inherit from Their Ancestors'
- Downloaded Web Article - titled 'The Regulation of Civilian Drones' Impacts on Public Safety'
- Downloaded Web Article - titled 'The Regulation of Civilian Drones' Applications to the Surveillance of People'
- Letter dated 15 October 2013, concerning the Ombudsman's submission to the McClelland Review of the Investigation and Oversight of Police Critical Incidents
- Letter dated 5 February 2014 concerning the NSW Ombudsman's response to the McClelland Report on the Review of the Investigation and Oversight of Police Critical Incidents
- Undated letter outlining the response of the Ombudsman to the Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper No 4, titled 'Preventing Sexual Abuse of Children in Out of Home Care'
- Undated letter outlining the response of the Ombudsman to the Royal Commission into Institutional Responses to Child Sexual Abuse 'Towards Healing' Issues Paper
- Undated letter outlining the Ombudsman's response to the Royal Commission into Institutional Responses to Child Sexual Abuse 'Working with Children Check' Issues Paper
- Letter dated 15 October 2013 outlining the Ombudsman's response to the Royal Commission into Institutional Responses to Child Sexual Abuse, 'Child Safe Institutions Issues Paper'
- The Child Death Review Team Strategic Plan 2013 – 2016.

**3. Next meeting**

The Committee adjourned at 4:25 pm until a date and time to be determined.

**Minutes of Proceedings of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission (no. 39)**

1:05 pm, Thursday 27 March 2014

Room 1043, Parliament House

**Members Present**

Ms Cusack (Chair), Mr Evans (Deputy Chair), Mr Anderson, Ms Mitchell and Mr Searle.

*Officers in attendance*

Jacqueline Isles, Helen Minnican, Dora Oravec and Jenny Whight.

**1. Apologies**

Apologies were received from Mr Lynch and Mr Park.

**2. Confirmation of Minutes**

Resolved, on the motion of Ms Mitchell: That the minutes of the meetings held on 17 February 2014 and 18 February 2014 be confirmed.

**3. \*\*\***

**4. 2014 General meetings**



#### **4.1 Media coverage**

The Chair referred to a recent media report of the Committee's recent public hearings, copies of which were previously circulated for members' information, and spoke to the importance of safeguarding the confidentiality of uncorrected transcripts. Discussion ensued.

#### **4.2 Correspondence**

The Committee noted the following items received from agencies:

- NSW Ombudsman, dated 18 February 2014, regarding additional disability-related information referred to at the public hearing
- Inspector of Custodial Services, dated 3 March 2014, clarifying his evidence on juvenile detainees' access to Imams.

Resolved, on the motion of Mr Searle: That the Committee authorise publication of correspondence from the Inspector of Custodial Services clarifying evidence given at the public hearing held on February 17, and that the correspondence be placed on the Committee's website.

#### **4.3 Responses to questions taken on notice and additional questions**

The Committee noted the responses received from the oversighted agencies to questions taken on notice at the hearings and additional questions.

Resolved, on the motion of Ms Mitchell: That the Committee authorise publication of responses to questions on notice and additional questions from the following agencies, and that the responses be placed on the Committee's website:

- Inspector of the NSW Crime Commission, dated 7 March 2014
- Commissioner, NSW Crime Commission, dated 10 March 2014
- NSW Ombudsman, dated 11 March 2014
- Convenor, Child Death Review Team, dated 11 March 2014
- Commissioner, Police Integrity Commission, dated 11 March 2014
- Inspector of the Police Integrity Commission, dated 12 March 2014
- Information Commissioner, Information and Privacy Commission, dated 12 March 2014
- Privacy Commissioner, Information and Privacy Commission, dated 12 March 2014
- Inspector of Custodial Services, dated 13 March 2014.

#### **4.4 Financial and staffing information for 2012-2013**

The Committee noted that financial and staffing information for 2012-2013 requested by the Committee had now been received from all of the oversighted agencies. The Committee also noted the collated financial and staffing information for oversighted agencies for the past three years prepared by the secretariat and circulated for reference at the meeting.

#### **4.5 Draft report outline**

The Committee discussed the draft outline for the report on the 2014 general meetings circulated previously to Members. The Chair invited Members to email any suggested changes to the secretariat as soon as possible.

#### **4.6 Funding for Aboriginal Deputy Ombudsman position**

The Committee considered a draft letter to the Minister for Citizenship and Communities, and Minister for Aboriginal Affairs, seeking clarification about the funding arrangements for the proposed Aboriginal Deputy Ombudsman position, which the NSW Ombudsman discussed at the public hearing.

Resolved, on the motion of Mr Anderson: That the Committee write to the Minister for Citizenship and Communities, and Minister for Aboriginal Affairs, seeking clarification about the funding arrangements for the proposed Aboriginal Deputy Ombudsman position.

5 \*\*\*

6 \*\*\*

**7 Next meeting**

The Committee adjourned at 1.22 pm until a date and time to be determined.

**Minutes of Proceedings of the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission (no. 42)**

1.07pm, Thursday 14 August 2014

Room 1153, Parliament House

**Members Present**

Mr Bassett (Chair), Mr Khan, Mr Park, Ms Mitchell and Mr Searle

*Officers in attendance*

Helen Minnican, Carly Maxwell, Dora Oravec, Jacqueline Isles and Jenny Whight.

**1. Apologies**

Apologies were received from Mr Evans and Mr Lynch

**2. Confirmation of minutes**

Resolved, on the motion of Ms Mitchell, seconded Mr Searle: That the minutes of 19 June 2014 be confirmed.

3. \*\*\*

**4. 2014 General Meetings – consideration of Chair’s draft report**

The Chair’s draft report having been previously circulated was taken as read.

The Committee agreed to consider the list of findings and recommendations.

Resolved on the motion of Mr Searle, seconded Mr Khan: That the words ‘the Premier retain’ be omitted from recommendation 1, and the words ‘should remain unchanged’ inserted instead at the end of the recommendation.

Resolved on the motion of Mr Park, seconded Mr Khan:

1. That the draft report, as amended, be the report of the Committee, and that it be signed by the Chair and presented to the House.
2. That the Chair and secretariat be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be posted on the Committee's website.

5. \*\*\*

**6. Next meeting**

The Committee adjourned at 1.12pm until a date and time to be determined.