



PARLIAMENT OF NEW SOUTH WALES

COMMITTEE ON THE OMBUDSMAN,
THE POLICE INTEGRITY COMMISSION AND
THE CRIME COMMISSION

REPORT ON THE USE OF ANTI-PERSONNEL SPRAY AND BATONS
BY POLICE INTEGRITY COMMISSION OFFICERS

REPORT 6/55 – DECEMBER 2012

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Membership

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Terms of Reference

Following a referral from the Premier, the Hon. Barry O'Farrell MP, the Committee passed a resolution on 24 October 2012 to adopt the following terms of reference:

'That the Joint Standing Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission is to inquire into and report on whether legislation ought to be introduced to enable Police Integrity Commission officers to use anti-personnel spray and batons, to bring practices into line with those of NSW Police Force officers.'

Chair's Foreword

Any regulation of any facet of an organisation's activities should be regularly reviewed to ascertain its ongoing appropriateness. Bureaucratic 'red tape' should be limited to what is absolutely necessary to ensure the good governance of organisations.

Of particular concern to this Committee is when unnecessary bureaucracy hinders the essential work of the important agencies it oversees. During this Inquiry, the Committee heard evidence of the administrative difficulties faced by investigators of the Police Integrity Commission in relation to accessing equipment that is operationally necessary.

The Police Integrity Commission was established in 1996 following the Wood Royal Commission into the New South Wales Police Force. The principal function of the Police Integrity Commission is to detect, investigate and prevent police corruption and other serious police misconduct.

The work of the Police Integrity Commission is essential for the good governance of New South Wales and, from time to time, it is dangerous work. Risk management is an essential aspect of the work of the Commission, and the Committee heard evidence during this Inquiry that risk management features prominently in all operational work undertaken by the Commission. However, the Committee understands that in order to ensure that its investigators have access to appropriate firearms and weapons, managing risk has resulted in extraordinary ongoing administrative inconvenience.

Of particular concern to the Committee is that the administrative requirements that have been put in place to mitigate risk relating to the issue of weapons to PIC investigators has had the consequence of creating a new – possibly greater – risk of compromising the identity of the officers undertaking under-cover operations. In order to mitigate this unintended and unnecessary risk, the Police Commissioner and Firearms Registry have implemented special procedures to protect the integrity of the PIC investigators. In other words, extraordinary measures have been undertaken to risk manage the risk management system.

This Committee has reviewed the recommendation of the Police Integrity Commission: namely, that its investigators be provided with access to anti-personnel spray, batons and magazines for semi-automatic pistol ammunition, and that this access be provided in a manner that does not involve licensing and permits. The Committee supports this recommendation and is keen to see the necessary interim measures adopted to ensure that the administrative problems currently experienced by the Police Integrity Commission and the New South Wales Firearms Registry are minimised as expeditiously as possible.

This Committee is committed to assisting with cutting administrative red tape wherever possible, and will continue to advocate for the rectification of any regulatory approach that is unnecessarily burdensome. In this instance, the Committee had reference to the operational requirements of the Commission and then determined that the administrative requirements were cumbersome and recommended a simplified process.

The Hon. Catherine Cusack MLC
Chair

List of Findings and Recommendations

RECOMMENDATION 1 _____ 9

The Committee recommends that section 124 of the *Police Integrity Commission Act* be amended to provide the same exemption for appropriately trained 'other' PIC officers in relation to the use of firearms and other police equipment. The Committee recommends that this be achieved by way of the proposed section 124 outlined in Recommendation 4.

RECOMMENDATION 2 _____ 10

The Committee recommends that in any circumstances where officers of the PIC are required to provide personal details to the NSW Police Force in relation to licensing and permits for firearms and weapons, consideration be given to permitting those applications to be provided on an unidentified basis.

RECOMMENDATION 3 _____ 11

The Committee recommends that the provision of firearms and weapons to officers of the PIC should be granted by way of clear legislative statement, and not by way of a corporate licence. The Committee recommends that this be achieved by way of the proposed section 124 outlined in Recommendation 4.

RECOMMENDATION 4 _____ 12

The Committee recommends that section 124 of the *Police Integrity Commission Act 1996* be amended to clearly provide 'approved former police officers' and other appropriately trained investigators of the PIC with the authority to possess and use firearms and weapons in a manner consistent with NSW Police Force officers, by including in section 124(2) a list of approved weapons.

The Committee recommends that consideration be given to replacing section 124 with the following text:

Section 124 Firearms and other police equipment

(1) Commissioner investigators, and Commission surveillance officers, who are seconded police officers, approved former police officers, or certified by the Commissioner as appropriately trained, are exempt from the requirement made by the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), but only when acting in their capacity as officers of the Commission.

(2) Commissioner investigators, and Commission surveillance officers, who are seconded police officers, approved former police officers, or certified by the Commissioner as appropriately trained, are exempt from the requirement under the *Weapons Prohibition Act 1998* to be authorised by a permit to possess or use handcuffs, body armour vests, anti-personnel spray, batons and magazines holding 15 rounds of semi-automatic pistol ammunition, but only when acting in their capacity as officers of the Commission.

RECOMMENDATION 5 _____ 14

The Committee recommends that, as an interim measure, the *Weapons Prohibition Regulation* and the *Firearms Regulation* be amended to provide PIC investigators with an exemption under the *Weapons Prohibition Act* and the *Firearms Act* with respect to anti-personnel spray, batons and magazines for semi-automatic pistol ammunition.

Chapter One – Current legislative arrangements

- 1.1 The Committee reviewed a recommendation by the Police Integrity Commission (the 'PIC') that legislation be amended to provide its investigators with access to firearms and weapons without requiring a licence or permit. This chapter reviews the current legislative framework in relation to those investigators.
- 1.2 Section 124 of the *Police Integrity Commission Act 1996* (the 'PIC Act') provides that PIC investigators and surveillance officers who are seconded police officers or 'approved former police officers' are exempt from the requirement to hold a permit or licence in relation to semi-automatic pistols, handcuffs and body armour vests. The purpose of this provision is to ensure that Commission investigators and surveillance officers can carry the equipment necessary to perform their duties safely and without the need for specific, individual approval by the New South Wales Commissioner of Police.
- 1.3 During the course of this Inquiry, the PIC gave evidence that Commission officers are only issued with this equipment when operational circumstances require it, such as when executing search warrants.¹

POLICE INTEGRITY COMMISSION OFFICERS

- 1.4 This Inquiry examines the provision of firearms and weapons to PIC investigators. The legislation provides that a Commissioner can designate PIC officers in various roles. This has an impact on the operational roles these officers perform, the risk scenarios they may face and their potential need of firearms and weapons.

Investigation officers

- 1.5 Section 122 of the *Police Integrity Act* provides that the Commissioner of the PIC may designate a PIC Officer as a 'Commission investigator' and may also designate a PIC officer as a 'Commission surveillance officer'.

'Approved former police officers'

- 1.6 Under subsection 10(7) of the *PIC Act 1996*, the PIC may designate a PIC investigator of the PIC as an 'approved former police officer' for the purposes of the Act if the officer has served for at least five years in one or more of the Australian Federal Police, a State Police Force or a Territory Police Force, and the officer is not a police officer or former police officer of New South Wales.

'Seconded police officers'

- 1.7 Subsection 10(4)(b) of the *PIC Act* outlines that the PIC may arrange for a member of the Australian Federal Police or the Police Force of another State or Territory to be seconded or otherwise engaged to assist the PIC. Section 124

¹ Letter dated 23 October 2012 from Police Integrity Commission to the Committee, p.1.

provides the same exemptions to 'seconded police officers' as it provides to 'approved former police officers'.

- 1.8 During the Hearing of 12 November 2012, the Commissioner of the PIC gave evidence that the PIC does not use seconded police officers.²

'Other' staff

- 1.9 Section 10 of the *PIC Act* provides for the employment of staff other than 'approved former police officers' and seconded police officers.
- 1.10 At the Hearing on 12 November 2012, the Commissioner of the PIC noted that some of the PIC's investigators are 'approved former police officers', and that some of the PIC's investigators are not former police officers and consequently not 'approved former police officers'. The Commissioner also noted that such investigators are primarily – but not entirely – in the PIC's Covert Surveillance units, the Physical Surveillance unit and the Technical Surveillance unit.³
- 1.11 The Commissioner noted that such investigators have been able to apply for and obtain licences and permits authorising them to possess or use pistols, ammunition, handcuffs and body armour vests and that they have received the same training in the use of those items as investigators who are 'approved former police officers'.⁴

USE OF WEAPONS

- 1.12 The *PIC Act* provides for the use of semi-automatic pistols, body armour vests, and handcuffs by PIC Investigators who are 'approved former police officers' or 'seconded police officers'. The Act does not currently provide for the use by those investigators of anti-personnel spray, batons or magazines that hold 15 rounds of ammunition.

Semi-automatic pistols and 10 rounds of ammunition

- 1.13 Semi-automatic pistols are prohibited firearms under the *Firearms Act 1996*. The *Firearms Act* requires a licence or permit to possess or use such pistols and ammunition for any such pistol.
- 1.14 Under subsection 124(1) of the *PIC Act*, PIC officers designated as 'approved former police officers' and 'seconded police officers' are exempt from the requirement under the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols, but only when acting in their capacity as officers of the PIC.
- 1.15 By extension, PIC investigators who are not 'approved former police officers' or 'seconded police officers' do not have the exemption. Therefore, in order to possess and use a semi-automatic pistol and appropriate ammunition, PIC

² The Hon. Bruce James QC, Commissioner, Police Integrity Commission, Inquiry into Use of Anti-Personnel Spray and Batons by Police Integrity Commission Officers, Public Hearing 12 November 2012, p. 2 of the Transcript of Hearing.

³ Mr James QC, Public Hearing 12 November 2012, p. 2 of the Transcript of Hearing.

⁴ Mr James QC, Public Hearing 12 November 2012, p. 2 of the Transcript of Hearing.

investigators who are not 'approved former police officers' or 'seconded police officers' would require a licence or permit under the *Firearms Act*.

Body armour vests and handcuffs

- 1.16 The *Weapons Prohibition Act 1998* provides that individuals must be authorised by a permit to possess or use handcuffs and body armour vests.
- 1.17 Under subsection 124(2) of the *PIC Act*, PIC investigators designated as 'approved former police officers' or 'seconded police officers' are exempt from the requirement under the *Weapons Prohibition Act* to be authorised by a licence or permit to possess or use handcuffs and body armour vests.
- 1.18 By extension, PIC investigators who are not 'approved former police officers' or 'seconded police officers' do not have the exemption. As such, in order to possess and use handcuffs and body armour vests, such PIC investigators would require a permit under the *Weapons Prohibition Act*.

Anti-personnel spray and batons

- 1.19 Schedule 1 of the *Weapons Prohibition Act 1998* lists anti-personnel spray and batons as prohibited weapons and Division 1 of that Act outlines that a permit is required to possess or use those weapons.
- 1.20 As no exemption exists under the *PIC Act* in relation to anti-personnel spray and batons, all PIC officers – whether 'approved former police officers' or not - must apply for a licence or permit to use anti-personnel spray and batons.

Semi-automatic pistol ammunition magazines

- 1.21 In its letter of 7 November 2012 and at the Hearing, the PIC outlined its concerns not only in relation to anti-personnel spray and batons, but also in relation to magazines for semi-automatic pistol ammunition.
- 1.22 The NSW Police Force's Firearms Registry provided evidence in relation to magazines for semi-automatic pistol ammunition as follows:
- The standard magazine for the semi-automatic pistols used by NSW Police Force Officers and PIC officers holds 15 rounds of ammunition; and
 - An individual with a licence to possess and use a semi-automatic pistol is licensed to carry a magazine that holds 10 rounds of ammunition.

Therefore, the possession of the standard magazine holding 15 rounds is outside the scope of the licence and requires an additional licence or permit.⁵

Operational use

- 1.23 The Committee heard evidence in relation to the operational possession and use of firearms and weapons by PIC officers. The PIC outlined that such items are only issued following risk assessments which are part of each operation that the PIC undertakes. Following a risk assessment, if it is thought that such equipment

⁵ Ms Mison, Public Hearing 12 November 2012, p. 7 of the Transcript of Hearing.

is necessary then it is issued on that basis. The PIC noted that there was no-one in the PIC carrying or accessing firearms and weapons on a daily basis.⁶

⁶ Mr Andrew Stuart Nattress, Assistant Commission and Director Operations, Police Integrity Commission, Inquiry into Use of Anti-Personnel Spray and Batons by Police Integrity Commission Officers, Public Hearing 12 November 2012, p. 4 of the Transcript of Hearing.

Chapter Two – Timeline of review process, including costs involved

- 2.1 During the course of the Inquiry, the Committee noted the delays experienced in reviewing the PIC's recommendation that the *PIC Act* be amended to provide its investigators with access to anti-personnel spray and batons without a licence or permit. An outline of the process is provided below, as is the costs involved in this inquiry.

TIMELINE

- 2.2 The *PIC Act* commenced in 1996. The Committee heard evidence that there have been a number of developments since 1996 in police practice regarding equipment for dealing with conflict situations and managing risk. New South Wales police force officers were equipped with capsicum spray in 1999. Capsicum spray and batons are now standard tactical options for New South Wales police force officers in the field.⁷
- 2.3 In August 2010, the PIC provided a submission to the Government's review of the *PIC Act*. The submission highlighted an anomaly in the existing legislation as PIC investigators are trained in the use of anti-personnel spray and batons but these items are not exempted under section 124 of the *PIC Act* in the same way as semi-automatic pistols, handcuffs and body armour vests.
- 2.4 The PIC recommended that section 124 of the Act should be amended so that the exemption from the requirement to hold a permit is extended to batons and anti-personnel spray in the case of PIC officers who are seconded police officers or 'approved former police officers'.⁸
- 2.5 In November 2011 the Premier, as Minister responsible for the Act, published his *Review of the Police Integrity Commission Act*. This included 'Outcome 13', which outlined that this Committee should be asked to consider the request of the PIC to allow it to use antipersonnel spray and batons.⁹ The Review also outlined that it sought formal advice from the NSW Police Force in respect of the PIC request.
- 2.6 As the Committee was not asked to consider this request at the time of the Review was published, the Committee wrote to the Premier on 9 May 2012 seeking clarification as to whether any action was sought from the Committee in respect of 'Outcome 13'.
- 2.7 The Committee heard evidence that the Firearms Registry provided a proposal to the Department of Premier and Cabinet in August 2012 that amendments to the *Firearms Act* and the *Weapons Prohibition Act* be included in a Statute Law (Miscellaneous Provisions) Bill. The Committee heard further evidence that the Department of Premier and Cabinet did not consider the proposed amendments

⁷ Letter dated 23 October 2012 from Police Integrity Commission to the Committee, p.2.

⁸ Letter dated 23 October 2012 from Police Integrity Commission to the Committee, p.2.

⁹ Review by the Minister of the *Police Integrity Commission Act 1996*, 10 November 2012, p. 30

to be machinery in nature and therefore not appropriate for a miscellaneous provisions bill.¹⁰

2.8 The Committee notes that in his second reading speech for the *State Law (Miscellaneous Provisions) Bill (No 2) 2012* the Attorney General described the purpose of Statute Law Miscellaneous Provisions Bills:

The Statute Law (Miscellaneous Provisions) Bill (No 2) 2012 continues the long-standing statute law revision program. Bills of this kind have featured in most sessions of Parliament since 1984 and are recognised as an effective tool for making minor policy changes, repealing redundant legislation and maintaining the quality of the New South Wales statute book.¹¹

2.9 The Committee recognises that the amendments proposed to the *Firearms Act* and the *Weapons Prohibition Act* may not meet the criteria outlined by the Attorney General for inclusion in a Statute Law (Miscellaneous Provisions) Bill and may be more appropriately dealt with by substantive legislative amendment.

2.10 On 18 October 2012, the Committee received correspondence from the Premier, dated 5 October 2012, requesting the Committee consider 'Outcome 13':

- 'Outcome 13' followed a recommendation from the PIC to the *Review of the PIC Act* that legislation be introduced to provide for the officers to use anti-personnel spray and batons to bring practices into line with those of the NSW Police Force officers;
- It is the Government's view that this matter warrants investigation by the Committee before the Government decides whether to introduce enabling legislation; and
- The Committee is asked to examine the matter and report its findings to the Parliament.

2.11 On 18 October 2012, the Committee resolved to examine and report back to Parliament on the PIC recommendation to the Government Review of the Police Integrity Commission Act that legislation be introduced to provide for the officers of the PIC to use anti-personnel spray and batons. On 24 October 2012, the Committee adopted terms of reference in relation to this Inquiry.

2.12 Mindful of its role in expediting the process of considering the PIC's recommendation, the Committee liaised with stakeholders and arranged a Roundtable Hearing to take place on 12 November 2012. The Committee corresponded with each stakeholder after the Roundtable Hearing and, based on the evidence gathered, prepared this draft report in December 2012.

¹⁰ Ms Michelle Margaret O'Brien, Commission Solicitor, Police Integrity Commission, Inquiry into Use of Anti-Personnel Spray and Batons by Police Integrity Commission Officers, Public Hearing 12 November 2012, pp. 5-6 of the Transcript of Hearing.

¹¹ The Hon. Greg Smith MP, Attorney General, *Hansard*, 17 October 2012, 37.

COSTS

2.13 In the interest of transparency, the Committee resolved to publish the costs of conducting this Inquiry. The costs collated by the Committee are as follows:

- Costs of staff involvement: \$6,951.20
- Costs accrued by organisations consulted: \$7,543.00

Chapter Three – Proposed amendments and rationale

- 3.1 The PIC is seeking legislative amendments to enable all of its investigators to be exempt from any requirement to have a permit to possess or use any item of equipment currently used by New South Wales Police Force officers in conflict situations, that is, semi automatic pistols, ammunition for such pistols, handcuffs, body armour vests, spray, batons and magazines for ammunition for pistols.¹²
- 3.2 During the course of the Hearing, the Committee was given the following three reasons in support of the legislative amendments sought by the PIC:
- i Restoring the original equality between PIC officers and New South Wales Police Force officers;
 - ii Avoiding administrative difficulties involved in obtaining licences or permits; and
 - iii Concern that the Commissioner for Police processes applications for permits or licences, which is undesirable given that the PIC investigates alleged misconduct by police officers.¹³

RESTORING ORIGINAL EQUALITY BETWEEN NSW POLICE FORCE OFFICERS AND POLICE INTEGRITY COMMISSION OFFICERS

- 3.3 At the time the *PIC Act* was introduced in 1996, the staple firearm supplied to NSW Police Force officers was a semi-automatic pistol and standard NSW Police Force equipment included body armour vests and handcuffs. It was the intention of section 124 of the *PIC Act* to provide 'approved former police officers' of the PIC with capacity to utilise similar firearms and weaponry to that used by NSW Police Force officers. This intention is apparent when section 124 is read after section 123 of the Act, which is entitled 'Commission investigator who is seconded police officer of approved former police officer to have all powers of NSW police officer'.
- 3.4 Since 1996, the original equality has been eroded as NSW Police Officers have gained access to weapons that are not listed in section 124 of the *PIC Act*. The introduction of a legislative amendment that would have the effect of 'approved former police officers' having access to anti-personnel spray, batons and magazines for semi-automatic pistols would restore the 1996 position, so that such investigators would have access to the firearms and weapons available to NSW Police Force officers. The Committee supports such an amendment.

¹² Mr James QC, Public Hearing 12 November 2012, p.3 of the Transcript of Hearing.

¹³ Mr James QC, Public Hearing 12 November 2012, p.3 of the Transcript of Hearing.

ADDRESSING ADMINISTRATIVE DIFFICULTIES ARISING FROM LICENSING AND PERMIT REQUIREMENTS

- 3.5 When the *PIC Act* was introduced in 1996, the effect was to limit the administrative requirements in relation to the use of firearms and weapons by investigators of the PIC. 'Approved former police officers' had access to the same firearms and weapons as NSW Police Force officers, with only 'other' officers required to apply to use firearms and weapons.
- 3.6 Presently, 'other' officers of the PIC are required to apply to the Commissioner of NSW Police in relation to the possession or use of any firearm or weapon. In addition, all officers are required to apply to the Commissioner of NSW Police in order to possess and use anti-personnel spray, batons and magazines holding 15 rounds of semi-automatic pistol ammunition.
- 3.7 The Committee heard evidence from the NSW Police Force's Firearms Registry, which processes the applications for licences and permits arising from the *Firearms Act* and the *Weapons Prohibition Act*. This evidence included an outline of the time and approach taken to process such applications. Due to the confidential nature of the work undertaken, the Firearms Registry indicated that only one person processes the applications.
- 3.8 Confidentiality is also a consideration in relation to the licensing system, which is available for every NSW Police officer to view. Code names are used, statutory declarations are provided and an onus is placed on the PIC to ensure that every officer with a licence or a permit issued by the Commissioner of NSW Police is vetted daily to ensure that there are no current apprehended violence orders or offences that would normally preclude such officers from having a licence or permit.¹⁴ Other measures to ensure confidentiality include storing documentation in a safe with access by only one officer and cancelling permits and licences when officers cease to be employed by the PIC.
- 3.9 All PIC investigators receive the same training in relation to the possession and use of firearms and weapons. The Commissioner noted during the Hearing that investigators who are not 'approved former police officers' receive the same training in the use of firearms and weapons as investigators who are 'approved former police officers' received during their training.¹⁵
- 3.10 The Committee is concerned that there are unnecessary administrative practices being followed in relation to the use of firearms and weapons by trained officers of the PIC. The Committee considers that a legislative amendment that would limit the administrative difficulties currently arising from the possession and use of firearms and weapons by trained PIC officers would be appropriate.

RECOMMENDATION 1

The Committee recommends that section 124 of the *Police Integrity Commission Act* be amended to provide the same exemption for appropriately trained 'other' PIC officers in relation to the use of firearms and other police

¹⁴ Ms Mison, Public Hearing 12 November 2012, p. 4 of the Transcript of Hearing.

¹⁵ Mr James QC, Public Hearing 12 November 2012, p.2 of the Transcript of Hearing.

equipment. The Committee recommends that this be achieved by way of the proposed section 124 outlined in Recommendation 4.

PROCESSING OF APPLICATIONS BY THE NSW POLICE FORCE

- 3.11 Applications for permits or licences in relation to exemptions from the *Firearms Act* and the *Weapons Prohibition Act* are processed by the Commissioner of the NSW Police Force, with this task undertaken by the NSW Police Force's Firearms Registry.¹⁶
- 3.12 The PIC gave evidence that this process is problematic as applicants for licences or permits are required to disclose personal details and to provide a photograph of the applicant. As a principle function of the PIC is to investigate alleged misconduct by police officers, the PIC contends that it is undesirable that the identity of PIC investigators, especially if they are investigators who are in covert surveillance units, be revealed to the NSW Police Force.¹⁷
- 3.13 The Committee heard evidence from the NSW Police Force's Firearms Registry that the majority of applications it received were from individuals applying under assumed identities and covert officers.¹⁸
- 3.14 The Committee supports a system that protects the anonymity of PIC officers when liaising with NSW Police Force.

RECOMMENDATION 2

The Committee recommends that in any circumstances where officers of the PIC are required to provide personal details to the NSW Police Force in relation to licensing and permits for firearms and weapons, consideration be given to permitting those applications to be provided on an unidentified basis.

ALTERNATIVES TO AMENDMENT OF LEGISLATION

- 3.15 The NSW Police Firearms Registry manages the applications for licences submitted by the PIC. The Committee heard evidence that the Firearms Registry had proposed the issuing of a corporate licence to the PIC to enable all officers to carry weapons and firearms that would have otherwise required individual licences.¹⁹ The PIC indicated that it doubted whether such a system would comply with the existing legislation.
- 3.16 The Committee notes that section 124 of the *PIC Act* clearly outlines which officers may possess and use weapons and firearms without a licence. The use of a corporate licence to provide an exception to clear legislative intent is not the preference of the Committee.

¹⁶ Mr James QC, Public Hearing 12 November 2012, p.3 of the Transcript of Hearing.

¹⁷ Mr James QC, Public Hearing 12 November 2012, p.3 of the Transcript of Hearing.

¹⁸ Ms Mison, Public Hearing 12 November 2012, p. 4 of the Transcript of Hearing.

¹⁹ Mr James QC, Public Hearing 12 November 2012, p.3 of the Transcript of Hearing.

RECOMMENDATION 3

The Committee recommends that the provision of firearms and weapons to officers of the PIC should be granted by way of clear legislative statement, and not by way of a corporate licence. The Committee recommends that this be achieved by way of the proposed section 124 outlined in Recommendation 4.

AMENDING THE LEGISLATION – TWO POSSIBILITIES

3.17 The Committee heard evidence from the PIC that administrative issues raised during the inquiry could be addressed in one of two ways:

- i Amending the *Police Integrity Commission Act*; or
- ii Amending both the *Firearms Act* and the *Weapons Prohibition Act*.

Amending the Police Integrity Commission Act

3.18 Section 124 of the *PIC Act* could be amended to include additional items – such as anti-personnel spray, batons and semi-automatic pistol ammunition magazines - that 'approved former police officers' could possess or use without the requirement of a licence or permit.

3.19 Revising section 124 of the *PIC Act* would have a number of consequences. While 'approved former police officers' would have access to anti-personnel spray, batons and semi-automatic pistol ammunition magazines, 'other' investigators would still be required to apply for individual licences and permits. As policing methods adapt over time, future amendment to section 124 might be required to add other weapons and firearms to the list of exempt firearms and weapons included in section 124 of the *PIC Act*.

3.20 However, given the importance of transparency in the work of the PIC, the Committee considers that clearly stating the weapons and firearms available to PIC investigators in the *PIC Act* is preferable to other methods of legislative amendment.

Amending the Firearms Act and the Weapons Prohibition Act

3.21 Subsections 6(2) of both the *Firearms Act* and the *Weapons Prohibition Act* provide that a person is not guilty of an offence under either Act if something is done by the person while acting in the ordinary course of the person's duties and if that person belongs to a stated group. Including investigation officers of the PIC on the list of persons to whom the subsections apply would have the practical effect of providing 'approved former police officers' and 'other' investigators of the PIC with the capacity to possess or use any of the firearms and weapons regulated by those Acts. This would include semi-automatic pistols, ammunition and magazines for semi-automatic pistols, handcuffs, body armour vests, anti-personnel spray and batons.

3.22 Schedule 1 of the *Weapons Prohibition Act* outlines a list of prohibited weapons. This list currently includes, but is not limited to:

- Knives;

- Military-style weapons, including bomb, grenade, rocket, missile or mine; and
 - Miscellaneous weapons, including crossbow, Taser gun, knuckle dusters.
- 3.23 Limiting legislative amendment to including officers of the PIC in the list of persons to whom subsections 6(2) of the *Firearms Act* and the *Weapons Prohibition Act* would result in the following:
- All officers of the PIC being provided with an exception to the requirement to hold licences and permits in relation to firearms and weapons necessary for the ordinary course of the person's duties; and
 - Rather than a specific list of weapons and firearms being available to officers of the PIC, as currently listed in section 124 of the *PIC Act*, a list of weapons in the Schedule 1 of the *Weapons Prohibition Act* would be available to PIC officers if necessary for the ordinary course of the officer's duties. The Committee notes that subschedule 1(2)(18A) of the *Weapons Prohibition Act* includes a reference to a Taser gun.
- 3.24 The Committee considers it appropriate that legislation be amended to clearly provide 'approved former police officers' and other appropriately trained investigators of the PIC with the authority to possess and use firearms and weapons in a manner consistent with NSW Police Force officers.
- 3.25 The Committee has considered the two possible mechanisms to achieve this, and on balance prefers amending section 124 of the *PIC Act*. This would provide an opportunity to clearly outline the kinds of firearms and weapons possessed and used by 'approved former police officers' and other appropriately trained investigators of the PIC. The Committee has a preference for this approach for two reasons. First, it is appropriate that the legislation governing the PIC outlines the powers and functions of officers of the PIC. Secondly, listing the items available to officers provides a level of transparency that the Committee considers to be appropriate for officers of an integrity organisation such as the PIC.

RECOMMENDATION 4

The Committee recommends that section 124 of the *Police Integrity Commission Act 1996* be amended to clearly provide 'approved former police officers' and other appropriately trained investigators of the PIC with the authority to possess and use firearms and weapons in a manner consistent with NSW Police Force officers, by including in section 124(2) a list of approved weapons.

The Committee recommends that consideration be given to replacing section 124 with the following text:

Section 124 Firearms and other police equipment

- (1) Commissioner investigators, and Commission surveillance officers, who are seconded police officers, approved former police officers, or certified by the Commissioner as appropriately trained, are exempt from the requirement**

made by the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), but only when acting in their capacity as officers of the Commission.

- (2) Commissioner investigators, and Commission surveillance officers, who are seconded police officers, approved former police officers, or certified by the Commissioner as appropriately trained, are exempt from the requirement under the *Weapons Prohibition Act 1998* to be authorised by a permit to possess or use handcuffs, body armour vests, anti-personnel spray, batons and magazines holding 15 rounds of semi-automatic pistol ammunition, but only when acting in their capacity as officers of the Commission.**

INTERIM MEASURES

- 3.26 The PIC has indicated that, because of delays which may occur in the passing of any legislation, it seeks amendments to the Regulations of the *Firearms Act* and the *Weapons Prohibition Act* that would have the effect of providing officers of the PIC with the capacity to possess and use anti-personnel spray, batons and magazines for semi-automatic pistol ammunition.²⁰
- 3.27 The Committee notes that clause 4 of the *Weapons Prohibition Regulation 2009* provides for specified 'persons' to be exempt from requirements for permits as required by the *Weapons Prohibition Act*, with Schedule 1 of the Regulation providing a list of those 'persons'.
- 3.28 The Committee also notes that Part 12 of the *Firearms Regulation 2006* provides exemptions for certain classes of 'persons' with respect to required licences and permits under the *Firearms Act*.
- 3.29 The Committee is of the opinion that as an interim measure, amendments could be made to the *Weapons Prohibition Regulation* and the *Firearms Regulation* to provide investigators of the PIC with exemptions from the requirements of the *Firearms Act* and the *Weapons Prohibition Act* with respect to the use of semi-automatic pistols, ammunition and magazines for such pistols, body armour vests, handcuffs, anti-personnel spray and batons.
- 3.30 However, the Committee has a preference for the timely amendment of the principal legislation in order to provide legislative clarity in relation to these exemptions and the opportunity for Parliamentary debate. The Committee also consider that section 124 of the *PIC Act* provides an express legislative intent, and does not consider it appropriate that the Executive amend such express intent in the *Firearms Regulation* and the *Weapons Prohibition Regulation*.
- 3.31 Whilst the Committee supports the proposed interim measure, the Committee expresses its reservation in relation to this approach, with a clear preference for amending legislation to provide for such exemptions. However, as an interim measure, the Committee considers – on balance – this approach to be necessary

²⁰ Mr James QC, Public Hearing 12 November 2012, p.3 of the Transcript of Hearing.

in order to alleviate the ongoing administrative burden that has arisen from the current approach.

RECOMMENDATION 5

The Committee recommends that, as an interim measure, the *Weapons Prohibition Regulation* and the *Firearms Regulation* be amended to provide PIC investigators with an exemption under the *Weapons Prohibition Act* and the *Firearms Act* with respect to anti-personnel spray, batons and magazines for semi-automatic pistol ammunition.

Chapter Four – Conclusion

- 4.1 At the Roundtable Hearing conducted by the Committee on 12 November 2012, the Committee heard from the PIC that it proposed legislative amendments that would have the effect of enabling officers of the PIC to possess and use anti-personnel spray, batons and magazines for semi-automatic pistol ammunition. The Inspector of the Police Integrity Commission, the Hon. David Levine QC, indicated that he supported the PIC's submission in every respect.²¹ The NSW Police Force's Firearms Registry also outlined that it supported the PIC's proposal.²² Support for the proposal was also received from the Office of the NSW Ombudsman.²³
- 4.2 The Committee did not hear any evidence or receive any submissions that did not support the PIC's proposal.
- 4.3 Having investigated this matter, the Committee is satisfied that the PIC's request for legislative amendments in order to provide its investigators with an exemption under the *Firearms Act* and the *Weapons Prohibition Act* is both appropriate and necessary.
- 4.4 However, of particular concern to the Committee is the time that it has taken to rectify the administrative issues arising from the legislation falling behind police practices. Through its oversight function outlined at section 95(1)(a) of the *PIC Act*, the Committee will be monitoring and reviewing any other instances of administrative 'red tape' which is placing an undue burden on the important work of the PIC.
- 4.5 The Committee commends the Government for bringing this matter to the urgent attention of the Committee, and the Committee is pleased to respond to the Premier's request by tabling its report to Parliament in a timely manner.

²¹ The Hon. David Levine QC, Inspector of the Police Integrity Commission, Inquiry into Use of Anti-Personnel Spray and Batons by Police Integrity Commission Officers, Public Hearing 12 November 2012, p. 4 of the Transcript of Hearing.

²² Ms Giovanna Mison, Manager, Compliance and Intelligence, NSW Police Firearms Registry, Inquiry into Use of Anti-Personnel Spray and Batons by Police Integrity Commission Officers, Public Hearing 12 November 2012, p. 4 of the Transcript of Hearing.

²³ Ms Linda Michelle Waugh, Deputy Ombudsman, Police and Compliance, NSW Ombudsman, Inquiry into Use of Anti-Personnel Spray and Batons by Police Integrity Commission Officers, Public Hearing 12 November 2012, p. 4 of the Transcript of Hearing.

Appendix One – Extracts of legislation

POLICE INTEGRITY COMMISSION ACT 1996

Part 11 Special powers and weapons

Section 122 Definitions (cf RC (PS) Act s 37J)

In this Part:

Commission investigator means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued by the Commissioner with means of identification as such an investigator.

Commission surveillance officer means an officer of the Commission who is designated by the Commissioner as a surveillance officer and who is issued by the Commissioner with means of identification as such an officer.

Section 123 Commission investigator who is seconded police officer or approved former police officer to have all powers of NSW police officer (cf RC (PS) Act s 37K)

- (1) A Commission investigator who is a seconded police officer or an approved former police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Act 1990* has and may exercise under any law of the State (including the common law and this Act).
- (2) Those functions extend to functions conferred after the commencement of this Part.
- (3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.
- (4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission.
- (5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under Part 8A of the *Police Act 1990*, but may be made to the Inspector.

Section 124 Firearms and other police equipment (cf RC (PS) Act s 37L)

- (1) Commission investigators, and Commission surveillance officers, who are seconded police officers or approved former police officers are exempt from the requirement made by the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), but only when acting in their capacity as officers of the Commission.
- (2) Commission investigators, and Commission surveillance officers, who are seconded police officers or approved former police officers are exempt from the requirement under the *Weapons Prohibition Act 1998* to be authorised by a permit to possess or use handcuffs and body armour vests, but only when acting in their capacity as officers of the Commission.

FIREARMS ACT 1996 NO 46

6 Application of Act

(cf 1989 Act s 4, 1990 Reg cl 96A)

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities (except as provided otherwise by this section).
- (2) A person is not guilty of an offence under this Act or the regulations only because of something done by the person while acting in the ordinary course of the person's duties:
 - (a) as a police officer (or as a student police officer enrolled in the New South Wales Police Academy), or
 - (b) as a prison officer employed in the Department of Corrective Services, or
 - (c) as a police officer, or as a prison officer, of the Commonwealth, another State or a Territory, or
 - (d) as a member of the armed forces of the Commonwealth, or of any government that is allied or associated with the Commonwealth in any war or joint military exercise in which the Commonwealth is engaged, or
 - (e) (Repealed)
 - (f) as, or under the authority of, the person in charge of a ship or an aircraft, but only for the purpose of having equipment of or on the ship or aircraft repaired or tested by a person authorised to do so by a licence.
- (3) A person is not guilty of an offence under section 7 or 7A only because of possessing a firearm or firearm part:
 - (a) that is being conveyed or stored in the ordinary course of the person's duties in the business of a carrier or warehouse operator, or
 - (b) that has been seized by the person, under the authority of any Act or other law, in the course of the person's duties as an employee or officer of a government agency or public authority, or
 - (c) while acting in the ordinary course of the person's duties as a member (other than a police officer) of the Police Force.
- (4) A person who is a member of the Australian Navy Cadets, the Australian Cadet Corps or the Air Training Corps is not required to be the holder of a licence or permit to authorise the person to possess a firearm, but only while possessing it:
 - (a) for the purposes of activities of the Cadets or the Corps of which the person is a member, and
 - (b) in accordance with such guidelines as may be fixed by order of the Commissioner.

WEAPONS PROHIBITION ACT 1998 NO 127

6 Application of Act

- (1) This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities (except as otherwise provided by this section).
- (2) A person is not guilty of an offence under this Act or the regulations only because of something done by the person while acting in the ordinary course of the person's duties:
 - (a) as a police officer (or as a student police officer), or
 - (b) as a correctional officer employed in the Department of Corrective Services, or
 - (c) as a member of the police force, or as a custodial officer (however described), of the Commonwealth or of another State or Territory, or
 - (d) as a member of the armed forces of the Commonwealth, or of any government that is allied or associated with the Commonwealth in any war or joint military exercise in which the Commonwealth is engaged.
- (3) A person is not guilty of an offence under Part 2 only because of possessing a prohibited weapon:
 - (a) that is being conveyed or stored in the ordinary course of the person's duties in the business of a carrier or warehouse operator, or
 - (b) that has been seized by the person, under the authority of any Act or other law, in the course of the person's duties as an employee or officer of a government agency or public authority, or
 - (c) while acting in the ordinary course of the person's duties as a member (other than a police officer) of the NSW Police Force.
- (4) The regulations may exempt any person or class of persons from the operation of any provision or requirement of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.

Appendix Two – List of Submissions

1	Police Integrity Commission, correspondence dated 23 October 2012 and 7 November 2012
2	Firearms Registry, NSW Police Force, correspondence dated 8 November 2012

Appendix Three – List of Witnesses

12 November 2012, Macquarie Room, Parliament House

Witness	Position and Organisation
The Hon. Bruce Meredith James QC	Commissioner, Police Integrity Commission
Ms Giovanna Mison	Manager, Compliance and Intelligence, NSW Police Firearms Registry
The Hon. David Daniel Levine QC	Inspector of the Police Integrity Commission
Ms Michelle Margaret O'Brien	Commission Solicitor, Police Integrity Commission
Mr Andrew Stuart Nattress	Assistant Commissioner and Director Operations, Police Integrity Commission
Linda Michelle Waugh	Deputy Ombudsman, Police and Compliance, NSW Ombudsman

Appendix Four – Extracts from Minutes

MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 17)

5:00PM, Wednesday, 18 October 2012
Room 1254, Parliament House

Members Present

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

Apologies

An apology was received from Mr Park

Confidentiality

The Committee noted the confidentiality clause as outlined at section 31H of the *Ombudsman Act 1974*.

1.***

2.***

3.General Business

The Committee noted the letter from the Premier received 18 October 2012 requesting that the Committee examine and report back to Parliament the PIC recommendation to the Government Review of the PIC Act that legislation be introduced to provide for the officers of the PIC to use anti-personnel spray and batons.

Resolved, on the motion of Mr Lynch

'That the Committee examine and report back to Parliament the PIC recommendation to the Government Review of the PICA Act that legislation be introduced to provide for the officers of the PIC to use anti-personnel spray and batons, and that a letter be sent to the Premier advising him of this resolution.'

The Committee adjourned at 5:27PM until 10:00AM on 24 October 2012.

MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OMBUDSMAN, THE POLICE INTEGRITY COMMISSION AND THE CRIME COMMISSION (NO. 18)

10:00 am, 24 October 2012
Room 1136, Parliament House

Members Present

The Hon. Catherine Cusack MLC (Chair), Mr Kevin Anderson, Mr Lee Evans MP, the Hon. Paul Lynch MP and the Hon. Sarah Mitchell MLC

Apologies

Apologies were received from Mr Ryan Park MP and the Hon. Adam Searle MLC

Officers in Attendance

Rachel Simpson, Emma Matthews, Clara Hawker and Jacqui Isles.

The Chair commenced the meeting at 10:02am.

1. Minutes of previous meeting

Resolved, on the motion of Mrs Mitchell:

'That the Committee resolve to adopt the draft minutes as circulated for the meetings held on 19 September 2012, 17 October 2012 and 18 October 2012.

2. ***

3. ***

4. ***

5. Inquiries

Resolved, on the motions of Mr Anderson:

'That the Committee adopt the following of Terms of Reference for an **Inquiry into the use of anti-personnel spray and batons by Police Integrity Commission Officers:**

The Joint Standing Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission is to inquire into and report on whether legislation ought to be introduced to enable Police Integrity Commission officers to use anti-personnel spray and batons, to bring practices into line with those of NSW Police Force officers; and

That the Committee invite relevant stakeholders to provide submissions and to give evidence at a Public Hearing; and

That the Committee advertise the Inquiry.'

6. ***

The Committee adjourned at 10:44am until 8:55am on 12 November 2012.

MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OMBUDSMAN, THE POLICE INTEGRITY COMMISSION AND THE CRIME COMMISSION (NO. 19)

8:55 am, 12 November 2012

Macquarie Room, Parliament House

Members Present

The Hon. Catherine Cusack MLC (Chair), Mr Lee Evans MP, the Hon. Sarah Mitchell MLC, Mr Ryan Park MP and the Hon. Adam Searle MLC

Apologies

Apologies were received from Mr Kevin Anderson MP and the Hon. Paul Lynch MP

Officers in Attendance

Rachel Simpson, Emma Matthews, Hilary Parker and Jacqui Isles.

The Chair commenced the meeting at 8:58am.

1. Correspondence Received

Item 1: E-mail from Department of Premier and Cabinet, dated 18 October 2012, attaching correspondence from the Premier, dated 5 October 2012, requesting inquiry

Item 2: Correspondence from Police Integrity Commissioner, dated 23 October 2012, in response to the Committee's request of 19 October for information

Item 3: Correspondence from Police Integrity Commissioner, dated 7 November 2012

Item 4: Correspondence from the Firearms Registry dated 8 November 2012

Resolved, on the motion of Mr Evans:

'That the Correspondence from the Police Integrity Commissioner dated 23 October and 7 November 2012, and the correspondence from the Firearms Registry dated 8 November 2012, be published and placed on the Committee's website.'

2. Round table – inquiry into the use of anti-personnel spray and batons by Police Integrity Commission officers

Resolved, on the motion of Mr Searle:

'That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 12 November 2012 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.'

The Chair admitted the witnesses, media and public.

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

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

Ms Giovanna Mison, Manager Compliance and Intelligence, NSW Police Force Firearms Registry, was sworn and examined.

Mr Andrew Nattress, Assistant Commissioner Police Integrity Commission, was affirmed and examined.

Ms Michelle O'Brien, Solicitor, Police Integrity Commission, was sworn and examined.

Mr Linda Waugh, Deputy Ombudsman, was sworn and examined.

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

Evidence completed, Mr James, Mr Levine, Ms Mison, Mr Nattress, Ms O'Brien and Ms Waugh withdrew.

Resolution, on the motion of Mrs Mitchell:

'That the corrected transcript be made available to the public and answers to questions on notice be published subject to corrections.'

As the Hearing was concluded, the public and the media withdrew.

3. General Business

Resolved, on the motion of Mr Evans:

'That the Committee write to the Premier.'

Resolved, on the motion of Mr Searle:

'That the Committee append the costs of the Inquiry to the report.'

The Committee adjourned at 9:55am until 10:00am on Wednesday, 21 November 2012.

[relevant minutes of 10 December to be inserted]

MINUTES OF PROCEEDINGS OF THE COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND POLICE INTEGRITY COMMISSION (NO. 21)

3:30 PM, Monday, 10 December 2012

Room 1153, Parliament House

Members Present

Ms Cusack (Chair) and Mr Searle

Via teleconference: Mr Anderson, Mr Evans, Mr Lynch, Mrs Mitchell and Mr Park

Staff in attendance: Rachel Simpson, Emma Matthews, Hilary Parker, Todd Buttsworth and Rohan Tyler

The meeting commenced at 3:33 PM.

1. ...

2. ...

3. Consideration of the Chair's draft report: Use of anti-personnel spray and batons by Police Integrity Commission officers

Members noted Standing Order 301(3) in relation to report consideration, and resolved on the motion of Mrs Mitchell:

'That the Committee consider the draft report on the use of anti-personnel spray and batons by PIC officers chapter by chapter'.

In relation to Report 6/55: *Inquiry into the use of anti-personnel spray and batons by Police Integrity Commission Officers*, resolved on the motion of Mr Searle:

- that the draft Report be the Report of the Committee and that it be signed by the Chair and presented to the House;
- that the Chair and the Secretariat be permitted to correct stylistic, typographical and grammatical errors; and
- that, once tabled, the Report be placed on the Committee's website.

The Committee thanked the secretariat for its assistance in the preparation of the report.