

26 August 2016



Hon. Nick Goiran, MLC
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament of Western Australia
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Dear Mr Goiran

REQUEST TO ASSIST THE JOINT STANDING COMMITTEE'S INQUIRY

I have received the invitation sent by Dr David Worth to meet whilst the JSCCC is in Wellington on the 5th and 6th October.

I will be available over those days and will be happy to meet at your convenience. Our General Manager Dr Warren Young would also be available to discuss these issues with you whilst you are in Wellington.

I see that the purpose of your inquiry relates to the prosecution of offences and submissions are invited about that issue.

The legislation that we operate under here is the Independent Police Conduct Authority Act 1988. The Authority is an independent Crown Entity established under the Crown Entities Act.

The legislation does not allow the IPCA to charge and prosecute for the enforcement of the findings in its reports.

I have often been invited as Chair by politicians and others to recommend to Parliament that it should have this power but I have resisted that for reasons which I will elaborate on.

The power to charge and prosecute for criminal offending in this country largely resides with Police. In difficult complex or finely balanced cases Police will normally obtain an opinion from the Solicitor General as the Senior Crown Legal Advisor on whether to proceed or not.

In New Zealand the Solicitor General's guidelines on prosecution govern that decision. Briefly what is involved is an assessment of evidential sufficiency and then, providing that is positive, an assessment about the public interest.

Instead of having the power to charge and prosecute the Authority has recommendation powers only.

Section 29 of the IPCA Act covers the implementation of recommendations. In the first instance recommendations are made to the Police Commissioner. If the Commissioner does not accept and implement the recommendations the Authority must, after considering any comments made by the Commissioner, send a copy of its opinion (report) and recommendations together with

Commissioner's comments to the Attorney General and the Minister of Police. If it considers it appropriate the Authority can transmit to the Attorney General for tabling in Parliament such report as it thinks fit.

I am now into the last year of my five year term and I have not had to resort to those steps in order to secure the acceptance and implementation of any recommendation we make.

There are a number of reasons for this.

The first lies, I hope, in the care and attention which is given to our public reports and the way in which our investigators and legally qualified report writers, analysts and others work here to ensure that the reports that are produced and published are based on reliable information and are honest and accurate.

In addition we have an arrangement where if we are going to make any recommendations, we run those past Police at a very senior level to see that they are actionable and doable before we make them.

So whilst retaining our independence we talk with Police about what it is that we propose to recommend to ensure that it is sensible, practical, arises out of the report, is based on the report and in fact addresses the mischief.

Another reason for ensuring that recommendations are well grounded lies in the way that reports are completed in the first instance.

Section 31 of the Act contains a requirement based on principles of natural justice, which means that when the Authority is minded to be critical of Police, a draft with the criticism is first sent to those Police Officers involved and to the Police Commissioner for comment ahead of publication.

We have found that such comments are always helpful. Very often we alter the report because the responses throw new light on the circumstances or require us to re-check some evidence which we thought was reliable but turns out to be more uncertain. It has been a very useful process.

And so the end result is that the reports which we produce are of a very high standard and have their own credibility. We understand completely that we will be considered to be only as good as our last report and so we are conscious that each report must be of that standard.

As an aside I should tell you that we publically publish all reports arising from independent investigations. At any one time we have roughly 70 independent investigations in hand at this office.

Of course even in the most optimistic of circumstances there is always room for honest differences. In one case recently we were minded to recommend criminal proceedings but late information about the personal circumstances of the officer involved caused us to change our mind at the last minute. Otherwise that would have been a case where we recommended criminal proceedings but the Commissioner was not minded to bring them and there would have been a direct conflict. We would then have filed the reports in Parliament in the way previously described.

We have another case coming up soon where there already differences of opinion between our investigators and Police about whether criminal proceedings should be launched. We are extremely conscious here of our independence and our ability to differ from the Police view but we have found

that very often when we demonstrate our careful and honest appraisal and it's reliability, then Police will accede to the view that we take.

The reason that I have said this at some length is that I have visited jurisdictions overseas which have oversight bodies with powers to charge and prosecute and I have not found them successful.

Inevitably Police "lawyer up" for any interviews or claim the right of silence in accordance with the usual great criminal traditions, and no one is advantaged.

There is yet another reason why we have avoided that sort of hostility and conflict with Police.

Under Section 32 of our Act the Authority and every member of it is required to maintain "secrecy" in respect of all matters that come into their knowledge in the exercise of their functions.

There is therefore an absolute protection for officers speaking to the Authority about any particular incident. Nothing that is said can be used in criminal and civil proceedings or can be made available to anyone else including any Court. There have been attempts made by the High Court of New Zealand to extract information from our files and that has been successfully resisted on the basis of Section 32.

The public policy reason for that is very clear, I think. It is so that Police Officers can speak to us honestly about what happened and what went wrong so that we can look at what is necessary to prevent things going wrong again.

When we produce our reports we anonymise the officers involved so there can be no identification of those who took particular actions.

It occurs to me that some of our reports might be of use to you in considering the issues that you face at the present time.

Access to our website www.ipca.govt.nz will give you access to these reports.

As a guide to how the Authority works in New Zealand you might care to look at the report into Operation 8 which was a major piece of work for us; and the report of the fatal Police shooting of Adam Morehu. Another interesting report is the report into Missing Person Nicholas Stevens.

If these are of interest to you and you would like hard copies please let me know and I will arrange to have them couriered to you immediately.

I hope that these broad and general observations are of interest to you.

Dr Young and I are happy to meet at your convenience when you are here and assist you in any way we can.

Yours sincerely