



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Criminal:JDad:785068

16 October 2013

The Hon Robert McClelland
c/- Department of Premier and Cabinet
Level 2, 2-4 Bent Street
SYDNEY NSW 2000

By email: robert.mcclelland@dpc.nsw.gov.au

Dear Mr McClelland,

Oversight of Police Critical Incidents-Terms of Reference

I write to you on behalf of the Criminal Law and Juvenile Justice Committees ("the Committees") of the Law Society of New South Wales in relation to your Terms of Reference regarding the Oversight of Police Critical Incidents.

I thank you for the opportunity to comment and now attach the Committees' submission for your consideration.

Yours sincerely,

John Dobson
President

OVERSIGHT OF POLICE CRITICAL INCIDENTS

Submission by Criminal Law and Juvenile Justice Committees
("the Committees") of the Law Society of New South Wales

It is the Committees' view that when civilians have been killed or seriously injured as a result of police operations in New South Wales, there is an inherent conflict of interest whenever police are required to investigate their fellow officers. The Committees continue to be concerned that the majority of critical incidents involving the police are investigated only by the police and in most instances no further action is taken. It is, of course, of great importance that such matters are investigated properly and impartially to ensure public confidence in the criminal justice system. Proper and impartial investigation must happen in fact and must also be seen to happen. It is therefore vital for public confidence that a body independent of the police conduct the investigation of critical incidents.

In recent years the Committees have witnessed several controversial incidents which have come under the scrutiny of a number of oversight bodies including the Ombudsman, the Coroner and the NSW Police Integrity Commission ("PIC"). This has occurred only after the matter has been referred to these organisations, sometimes weeks or months after the critical incident occurred.

It is the Committees' view that when the Ombudsman or Coroner investigates a matter they are almost wholly reliant on the initial reports and evidence provided by the internal police inquiry. The Committees are concerned that while these organisations often investigate and criticise police actions, their powers are limited with regard to further steps they can take. Given their limited power these organisations have also had difficulty establishing precisely what has happened which has resulted in diminished ability to hold someone accountable.

The Committees note PIC's recommendations after its inquiry into the Adam Salter case. Amongst other recommendations, PIC acknowledged that there would be benefit if a body, independent of the NSW Police Force was made responsible for investigating critical incidents. PIC also recommended that all critical incident investigation reports be published on the NSW Police Force website after the completion of any inquest and that the guidelines be made publicly available¹.

The Committees agree with the view that NSW requires a single independent police review body which is sufficiently resourced and has its own officers undertake all critical incident reviews. The Committees submit that the logical entity is the Ombudsman who should be given greater investigative and monitoring powers. It is also the Committees' view that any proposed independent body should be able to publish all critical incident investigation reports. The Committees acknowledge that further consideration would be required to determine the details, including the independent body's functions and how the process would operate.

Broadly, the Committees' view is that a protocol should be established outlining the level of monitoring and investigation that should occur. It is the Committees' view that the Ombudsman should be given access to all aspects of any internal police investigation following a critical incident. The Committees submit that once a critical incident takes place, the Ombudsman should be alerted with independent officers being sent immediately to obtain statements from those involved in the critical incident. The Ombudsman should be allowed to make comments or suggestions as to the progress of the investigation and report on any irregularities.

¹ Operation Calyx, Report to Parliament June 2013 (pp 268-269) paragraphs [8.10] [8.11] and [8.14]

It is the Committees' view that the Ombudsman's office should also provide a level of counselling and psychological service to families affected by the critical incident. Investigations and court hearings following critical incidents can be very difficult for affected families. In the Committees' experience it can be traumatic for families when evidence is given in court by police officers, particularly when it is not clear as to the role played by these officers during the critical incident. An investigation and hearing conducted by an independent body may alleviate these difficulties.

The Committees are also of the view that the powers and performance of the Ombudsman's office should be reviewed regularly. The Committees suggest that this occurs every 12 to 18 months.

For the reasons set out above, it is the Committees' view that a genuinely independent body, that is transparent and adequately resourced is clearly required in NSW. The Committees submit that the Ombudsman, with greater investigating and monitoring powers, would be the appropriate body.

The Committees welcome consultation with the Police or other organisation in relation to this submission.

The Committees thank you once again for the opportunity to comment.