



## – APPENDIX 1 – TERMS OF REFERENCE

---

The terms of reference for the Commission of Inquiry into Police Conduct were given by Order in Council on 18 February 2004 (see Appendix 1.1). A subsequent Order in Council on 2 May 2005 modified the directions to the Commission of Inquiry into Police Conduct, and its membership and reporting time (Appendix 1.2).

---

Five other Orders in Council extended the reporting time at various stages during the inquiry: Orders in Council of 1 November 2004, 28 February 2005, 20 February 2006, 23 May 2006, and 25 September 2006 extended the reporting time until 28 February 2005, 2 May 2005, 31 May 2006, 30 September 2006, and 30 March 2007 respectively.



### APPENDIX 1.1: ORDER IN COUNCIL, 18 FEBRUARY 2004

---

Terms of reference for the Commission of Inquiry into Police Conduct at the time of its constitution by Order in Council, 18 February 2004 (published as a supplement to the *New Zealand Gazette* on 20 February 2005, pages 379–381).

---

#### **Commission of Inquiry into Police Conduct**

SILVIA CARTWRIGHT, Governor-General

ORDER IN COUNCIL

To all to whom this order shall come, and to:

The Honourable JAMES BRUCE ROBERTSON of Wellington, a Judge of the High Court of New Zealand; and

Dame MARGARET CLARA BAZLEY of Wellington, retired public servant:

GREETING:

*Recitals*

WHEREAS, in 1993–94, Louise Nicholas made a complaint to the Police at Rotorua alleging that she had been sexually assaulted in the mid-1980s by three members of the Police:

And whereas, following an investigation by the Police, and a further investigation by the Police on behalf of the Police Complaints Authority, none of the three members of the Police was charged with any offence and none of them was subject to any internal Police disciplinary action:

And whereas, when charges were preferred against a fourth member of the Police in relation to sexual assaults against Louise Nicholas, which were alleged to have occurred in the early 1980s, that member of the Police was, after two mistrials, acquitted:

And whereas, in February 2004, *The Dominion Post* reported allegations by Louise Nicholas of defects in the investigations made by both the Police and the Police Complaints Authority into the complaints against the three members of the Police above-mentioned:

And whereas concerns have been raised about the conduct of members of the Police involved in the investigation of allegations about the fourth member of the Police above-mentioned:

And whereas, in February 2004, Judith Garrett also alleged that the investigation carried out by the Police into a complaint that she made that she had been sexually assaulted by a member of the Police in Kaitaia in 1988 was inadequate:

And whereas it has also been alleged that investigations carried out by the Police into other allegations of sexual assault by members of the Police or by associates of the Police or by both have been inadequate:

And whereas these various allegations raise questions about—

- (a) the adequacy and impartiality of the investigation by the Police into complaints in relation to sexual assaults alleged to have been made by members of the Police or by associates of the Police or by both, including the complaints made by Louise Nicholas and Judith Garrett; and
- (b) the extent to which the behaviour that gave rise to those original complaints was subject to disciplinary action; and
- (c) the prevailing attitude or tolerance of the Police, both in the past and now, in respect of complaints alleging sexual assault by members of the Police or by associates of the Police or by both; and
- (d) the general propriety of the conduct of members of the Police in respect of sexual matters:

And whereas the truth of the allegations against the Police and the questions raised by those allegations are matters of public importance:

*Appointment and order of reference*

NOW, THEREFORE, pursuant to the Commissions of Inquiry Act 1908, I, Dame Silvia Cartwright, the Governor-General of New Zealand, acting on the advice and with the consent of the Executive Council, appoint you, the Honourable James Bruce Robertson and Dame Margaret Clara Bazley, to be a Commission to inquire into and report upon the conduct, procedure, and attitude of the Police in relation to allegations of sexual assault by members of the Police or by associates of the Police or by both, the extent (if any) to which unprofessional behaviour within

the Police in the context of such allegations has been or is tolerated, and the manner in which such allegations have been or are investigated and handled by the Police, whether directly, or on behalf of the Police Complaints Authority, and, in particular, to inquire into and report upon:

- (1) the standards and procedures established by the Police as a matter of internal Police policy for the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, in particular, but not limited to,—
  - (a) whether, as a matter of internal Police policy, there have been, and are now, adequate standards and procedures in place regulating the handling of such investigations by members of the Police:
  - (b) whether, if so, any standards and procedures regulating the handling of such investigations by members of the Police have been, and are being, adequately communicated to all members of the Police:
  - (c) whether there have been, and are now, Police procedures adequately supporting and encouraging members of the Police who know of allegations that sexual assault has been committed by Police colleagues or by associates of the Police or by both to report the allegations to an appropriate senior member of the Police (or other appropriate person):
- (2) irrespective of the existence or adequacy of standards or procedures as a matter of Police policy, the practice of Police in the investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, in particular, but not limited to,—
  - (a) the practice of Police in relation to the investigation of the complaints alleging sexual assault by members of the Police or by associates of the Police or by both in Kaitia and Rotorua (or other relevant localities) at the material times:
  - (b) the current practice of Police when investigating complaints alleging sexual assault by members of the Police or by associates of the Police or by both:
  - (c) whether police practice has met and now meets the applicable Police standards and procedures (if any):
  - (d) what requirements (if any), both at a local level and at the level of Police Headquarters, have been in place, or are now in place, to ensure that Police practice complies with any relevant standards and procedures:
  - (e) whether disciplinary action has been and is taken against members of the Police who engage in sexual activity that gives cause for concern or complaint or both, and, if not, why not:
  - (f) whether the attitude of the Police has been, and is now, conducive to the effective and impartial investigation of complaints alleging sexual assault by members of the Police or by associates of the Police or by both:
  - (g) whether Police practice that has been in place, and is now in place, adequately supports and encourages members of the Police who know of allegations that sexual assault has

been committed by Police colleagues or by associates of the Police or by both to report the allegations to an appropriate senior member of the Police (or other appropriate person):

- (3) the adequacy of any investigations which have been carried out by the Police on behalf of the Police Complaints Authority and which have concerned complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, if any of those investigations have not been adequate, the respects in which they were inadequate:
- (4) the standards and codes of conduct in relation to personal behaviour for members of the Police and, in particular, but not limited to,—
  - (a) whether the applicable standards or codes of conduct within the Police in relation to personal behaviour, including sexual conduct, have been and are adequate and effective, and, if they have not been or are not adequate and effective, the respects in which they have been or are inadequate or ineffective:
  - (b) whether action has been or is taken if standards or requirements of codes of conduct are not met:
- (5) any other matter that may be thought by you to be relevant to the general or particular objects of the inquiry:

#### *Definitions*

And it is declared that, in this order, unless the context otherwise requires,—

**associates of the Police** means persons who are not members of the Police but who, whether in the capacity of friends or in any other capacity, associate with members of the Police:

**member of the Police** means—

- (a) a sworn member of the Police of any rank; and
- (b) a non-sworn member of the Police:

**the Police** means the Police of New Zealand; and includes all members of either sex appointed to the Police under the Police Act 1958:

#### *Exclusion from inquiry*

And it is declared that you are not, under this order, to determine the guilt or innocence of any particular individual in relation to any alleged sexual assault or other alleged criminal offence:

#### *Appointment of chairperson*

And, on that advice and with that consent, I appoint you, the Honourable James Bruce Robertson, to be the Chairperson of the Commission:

#### *Power to adjourn*

And, for the better enabling you to carry this order into effect, you are authorised and empowered to make and conduct any inquiry under this order, in accordance with the Commissions of Inquiry Act 1908, at such times and places as you consider expedient, with power to adjourn from time to

## Appendix 1

---

time and from place to place as you think fit, and so that this order will continue in force and the inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

### *General provisions*

And, without limiting any of your other powers to hear proceedings in private or to exclude any person from any of your proceedings, you are empowered to exclude any person from any hearing, including a hearing at which evidence is being taken, if you think it proper to do so:

And you are strictly charged and directed that you may not at any time publish or otherwise disclose, except to me in pursuance of this order or by my direction, the contents or purport of any report so made or to be made by you, or any evidence or information obtained by you in exercise of the powers conferred upon you, except such evidence or information as is received in the course of a sitting open to the public:

And it is declared that you have liberty to report your proceedings and recommendations under this Commission from time to time if you judge it expedient to do so:

### *Reporting date*

And, using all due diligence, you are required to report to me in writing under your hand, not later than 1 November 2004, your findings and opinions on these matters, together with any recommendations that you think fit to make in respect of them.

Given in Executive Council under the hand of Her Excellency the Governor-General, this 18th day of February 2004.

DIANE MORCOM, Clerk of the Executive Council.



## APPENDIX 1.2: ORDER IN COUNCIL, 2 MAY 2005

Directions to the Commission of Inquiry into Police Conduct, and modification of its membership and reporting time, given by Order in Council, 2 May 2005 (published in the *New Zealand Gazette* on 5 May 2005, pp. 1796–97).

### Commissions of Inquiry Act 1908

#### Directions to, and Membership and Reporting Time of, Commission of Inquiry into Police Conduct

SILVIA CARTWRIGHT, Governor-General

ORDER IN COUNCIL

To all to whom this order shall come, and to:

The Honourable JAMES BRUCE ROBERTSON of Wellington, a Judge of the High Court of New Zealand; and

Dame MARGARET CLARA BAZLEY of Wellington, retired public servant:

GREETING:

WHEREAS, by Order in Council made on 18 February 2004\*, you, The Honourable James Bruce Robertson and Dame Margaret Clara Bazley, were appointed to be a Commission to inquire into and report upon the conduct, procedure, and attitude of the Police in relation to allegations of sexual assault by members of the Police or by associates of the Police or by both, the extent (if any) to which unprofessional behaviour within the Police in the context of such allegations has been or is tolerated, and the manner in which such allegations have been or are investigated and handled by the Police, whether directly, or on behalf of the Police Complaints Authority:

*Directions to Commission*

And whereas, since the Commission was appointed,—

- (a) investigations conducted by the Police into matters that are within the Commission's terms of reference have resulted in criminal charges being laid in respect of a number of alleged offences; and
- (b) specific obligations with regard to confidentiality have been imposed on the Commission by the passing of the Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act 2004 and by the undertaking that the Commission is required to give under section 32 (2B) (b) of the Police Complaints Authority Act 1988:

## Appendix 1

---

And whereas ongoing investigations that are being conducted by the Police into matters that are within the Commission's terms of reference may result in further criminal charges being laid:

And whereas there is a need for the Commission to continue with the inquiry but to exercise its powers and discretions—

- (a) in such a way as to avoid prejudice—
  - (i) to prosecutions; and
  - (ii) to any such ongoing investigations; and
- (b) in such a way as to ensure that the Commission is not precluded from complying with any undertaking that the Commission has given or gives under section 32 (2B) (b) of the Police Complaints Authority Act 1988:

And whereas the need for the Commission to so exercise its powers and discretions means that it is necessary that the Commission should be required—

- (a) to conduct its preliminary investigations in private and to limit its public hearings; and
- (b) to make, in its report and in any interim report, findings of a more general nature than those that were envisaged when the Commission was appointed:

And whereas it is expedient that it should be made clear that current investigations by the Police and current criminal proceedings before the courts are not to be affected by the inquiry made by the Commission:

NOW, THEREFORE, pursuant to the Commissions of Inquiry Act 1908, I, Dame Silvia Cartwright, the Governor-General of New Zealand, acting on the advice and with the consent of the Executive Council, do, by this order,—

- (a) direct that you are not, under the Order in Council made on 18 February 2004\*, to inquire into or report upon any allegations that are for the time being the subject of—
  - (i) investigation by the Police; or
  - (ii) any criminal proceeding that has been commenced under any enactment and is for the time being pending or in progress before any court; and
- (b) direct that you must—
  - (i) conduct in private your investigations into the manner in which allegations of sexual assault by members of the Police or by associates of the Police or by both have been investigated and handled by the Police; and
  - (ii) hear any responses to those allegations in private; and
- (c) direct that, subject to paragraph (d) below, you may, to the extent that you consider necessary, refer, in the course of any public hearing, to particular investigations by the Police into allegations of sexual assault that were the subject of your investigations; and

- (d) direct that, in exercising the powers conferred by paragraph (c) above, you must not give names or particulars that are likely to lead to the identification of any person who made an allegation of sexual assault or of any person alleged to have committed a sexual assault or any other criminal offence; and
- (e) direct that you must not, in your report or in any interim report or in any findings made by you, report on investigations into particular allegations of sexual assault unless—
  - (i) you consider it necessary to do so; and
  - (ii) you can do so without giving names or particulars that are likely to lead to the identification of any person who made an allegation of sexual assault or of any person alleged to have committed a sexual assault or any other criminal offence; and
- (f) direct that the paragraph that appears immediately under the heading General provisions in the Order in Council made on 18 February 2004\* must be read subject to the directions contained in this Order in Council.

*Change in membership*

And whereas, by the Order in Council made on 18 February 2004\*, you, The Honourable James Bruce Robertson, were appointed to be both a member and the Chairperson of the Commission.

And whereas it is expedient that you, The Honourable James Bruce Robertson, should, by reason of the demands placed on you by your responsibilities as a Judge of the High Court of New Zealand and as the President of the Law Commission, be relieved from performance of the duty imposed on you by your appointment as both a member and the chairperson of the Commission constituted by the Order in Council made on 18 February 2004\*:

NOW, THEREFORE, pursuant to the Commissions of Inquiry Act 1908, I, Dame Silvia Cartwright, the Governor-General of New Zealand, acting on the advice and with the consent of the Executive Council and while continuing to repose especial trust and confidence in the integrity, learning, and ability of you, The Honourable James Bruce Robertson and Dame Margaret Clara Bazley, do, by this order,—

- (a) revoke the appointment of you, The Honourable James Bruce Robertson, as both a member and the chairperson of the Commission; and
- (b) confirm you, Dame Margaret Clara Bazley, in office as the sole member of the Commission:

And it is hereby declared that nothing in this Order in Council affects any act or thing done or decision made by the Commission or any of its members, in the exercise of its powers, before the making of this Order in Council.

*Extension of time and confirmation*

And whereas, by the Order in Council made on 18 February 2004\*, you were required to submit, not later than 1 November 2004, your findings and opinions on the matters specified in the Order in Council made on 18 February 2004\*, together with any recommendations that you thought fit to make in respect of those matters:

## Appendix 1

---

And whereas, by Order in Council made on 1 November 2004<sup>†</sup>, the time within which you were so required to report was extended until 28 February 2005:

And whereas, by Order in Council made on 28 February 2005<sup>‡</sup>, the time within which you were so required to report was extended until 2 May 2005:

And whereas it is expedient that the time within which the Commission established by the Order in Council made on 18 February 2004\* is required to report should be further extended as hereinafter provided:

NOW THEREFORE, pursuant to the Commissions of Inquiry Act 1908, I, Dame Silvia Cartwright, the Governor-General of New Zealand, acting on the advice and with the consent of the Executive Council, do, by this order,—

- (a) extend until 3 March 2006 the time within which you, Dame Margaret Clara Bazley, are so required to report, without prejudice to the continuation of the liberty conferred upon you by the Order in Council made on 18 February 2004\* to report your proceedings and recommendations from time to time if you should judge it expedient to do so; and
- (b) confirm the Order in Council made on 18 February 2004\* and the Order in Council made on 1 November 2004<sup>†</sup> and the Order in Council made on 28 February 2005<sup>‡</sup> and the Commission thereby constituted, except as modified by this order.

Given in Executive Council under the hand of Her Excellency the Governor-General this 2nd day of May 2005.

DIANE MORCOM, Clerk of the Executive Council.

\**New Zealand Gazette*, 20 February 2004, page 379

<sup>†</sup>*New Zealand Gazette*, 4 November 2004, page 3587

<sup>‡</sup>*New Zealand Gazette*, 3 March 2005, page 1107