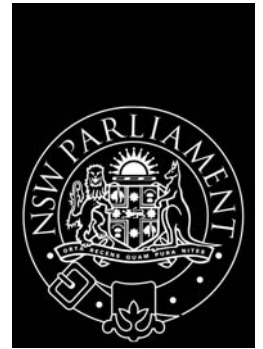


PARLIAMENT OF NEW SOUTH WALES



Committee on the Office of the Ombudsman and  
the Police Integrity Commission

TEN YEAR REVIEW OF THE POLICE OVERSIGHT SYSTEM  
IN NEW SOUTH WALES

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## Terms of Reference

The Committee on the Office of the Ombudsman and the Police Integrity Commission, a joint statutory committee of the NSW Parliament, has resolved, in accordance with its functions under Part 4A of the *Ombudsman Act 1974* and Part 7 of the *Police Integrity Commission Act 1996*, to conduct an inquiry into the system of police oversight in New South Wales as follows:

- (a) the appropriateness of the respective roles and functions of the PIC and the Office of the Ombudsman;
- (b) the extent of the powers available to the Ombudsman and the PIC to perform their functions;
- (c) the management structures, funds and resources available to the Ombudsman and the PIC to perform their functions;
- (d) the accountability mechanisms built into the system;
- (e) the efficiency and effectiveness of the current police oversight system and the scope for further efficiencies and effectiveness;
- (f) any other related matter;

and to report to both Houses of Parliament on the inquiry.





## Chairman's Foreword

The Committee undertook its inquiry into the police oversight system ten years after the Wood Royal Commission and the establishment of the Police Integrity Commission. The inquiry coincided with the culmination of two statutory reviews of direct relevance to the unique system of police oversight in New South Wales, namely the reviews of the *Police Integrity Commission Act 1996* and the *Police Act 1990*.

The Committee's report deals with the inaccuracies in evidence and submissions from NSW Police concerning the legislation and the respective jurisdictions of the Office of the Ombudsman and the Police Integrity Commission. In fact, the evidence supplied by the senior executive of NSW Police only served to obfuscate the critical issues before the Committee. Having to dispel misinformation at the public hearing was an unnecessary diversion for the Committee that detracted from the time available to examine matters, such as internal police processes for assessing and investigating complaints.

In addition, valuable time was spent examining issues surrounding the electronic recording of complaints and the provision of information by NSW Police. It was exasperating to find that the Office of the Ombudsman still experiences problems with the information systems put in place following the Royal Commission. The Committee does not wish to revisit these issues of technical support for police oversight again as it expects these matters to be resolved.

Obvious improvements have occurred in respect of the approach by local commanders and police investigators who deal with police complaints, and the Committee commends these efforts. However, the Committee is not persuaded that substantial changes are needed to the legislative framework under which the current oversight system operates. The case advanced for the Police Integrity Commission to assume the oversight role currently performed by the Office of the Ombudsman, while maintaining its targeted focus on police corruption and serious misconduct, was ill conceived and the Committee does not support a single agency model of oversight.

Nor is the Committee convinced about the desirability of the proposal to change the definition of police conduct within the police complaints legislation. There is scope for some rationalisation of the system through the removal of the distinction between certain categories of complaints. Legislation giving effect to this change was passed by the Parliament on 14 November 2006 and should lead to streamlining of the notification and assessment processes involved in the handling of police complaints. The Committee hopes that this measure will facilitate efficiencies in the handling and investigation of police complaints and allow for improved arrangements between NSW Police, the Ombudsman's Office and the Police Integrity Commission.

The police oversight system has a wider significance in terms of police accountability in New South Wales. It is this Committee's considered view that the balances struck in the oversight system proposed by the Royal Commission are appropriate and that they best support a credible scheme for securing police accountability. Such credibility is dependent upon the confidence of both the public and police. Ultimately, responsibility for further improvements to the police complaints system largely resides with NSW Police. External agencies such as the Office of the Ombudsman and the Police Integrity Commission can identify areas for

Chairman's Foreword

systemic reform within NSW Police and lend support to associated initiatives but realisation of organisational change is a matter for NSW Police.

On behalf of the Committee, I would like to thank the individuals and organisations that made submissions to the inquiry and appeared before the Committee to give evidence. I also would like to express my appreciation to the Members of the Committee for their contribution to this particular inquiry and their participation in the Committee's activities throughout this Parliament. Finally I would like to thank the staff of the Secretariat for their assistance to the Committee.

Paul Lynch MP  
Chairman

## List of Recommendations

- RECOMMENDATION 1:** The Committee recommends the preservation of the status quo in respect of the role and functions of the Ombudsman and the Police Integrity Commission within the police oversight system in New South Wales. .... 138
- RECOMMENDATION 2:** The Committee further recommends that statutory recognition be given within the *Police Act 1990* to: ..... 138
- the NSW Ombudsman’s Office as the primary body for oversight of NSW Police;
  - the responsibility of NSW Police for handling and investigating the majority of complaints about the conduct of its officers, subject to oversight by the NSW Ombudsman’s Office;
  - the PIC’s role as the independent body with an investigative focus targeted at serious police misconduct and police corruption.
- RECOMMENDATION 3:** The Committee recommends that the mechanism of the current class or kind agreement, used to determine the type of matters to be classed as local management issues that are not police complaints, be retained. .... 139
- RECOMMENDATION 4:** The Committee further recommends that the class or kind agreement regarding local management issues should continue to be reached between the Ombudsman and the PIC, in consultation with the Commissioner for Police. .... 140
- RECOMMENDATION 5:** The Committee recommends that NSW Police should fully assess possible additional measures, including increased funding, to further enhance the capacity of Professional Standards Command to undertake centralised investigation of more serious police misconduct, thereby helping to free up resources for Complaint Management Teams and senior police officers to investigate less serious misconduct at local area command level. .... 141
- RECOMMENDATION 6:** The Committee recommends that NSW Police should consider ways in which to encourage the informal resolution of minor complaints at local command level, particularly local managements issues, without the involvement of Complaint Management Teams. .... 141
- RECOMMENDATION 7:** The Committee recommends that Professional Standards Command should continue to provide assistance and support to local area commanders and other senior officers involved in the management and investigation of complaints, and the handling of local management issues. Possible options to consider for advice and guidance include: ..... 142
- (a) circulating and promoting “best practice” examples of complaint handling and investigation by local commands, with particular reference to:
- the appropriate selection of evidence-based or outcome-focussed investigation strategies;
  - the investigation of serious complaints.
  - identification of local management issues as distinct from matters that constitute complaints;
  - complaint assessment processes;
  - appropriate use of risk assessment;

List of Recommendations

- mediation, conciliation and informal resolution of complaints;
  - appropriate management action;
  - ways to strengthen the effectiveness of Complaint Management Teams;
  - strategies to ensure the timely resolution of complaints and to overcome delays in police complaints investigations;
  - wider managerial uses of complaint trends and information obtained from complaints.
- (b) encouraging ways to benefit from the shared experience of Complaint Management Teams and other police officers involved in complaint handling and investigation e.g. through regular internal workshops;
- (c) ensuring sufficient capacity within local command structures to provide for effective and efficient management and investigation of police complaints despite changes in the command leadership;
- (d) encouraging utilisation of complaint handling and police misconduct investigations for broader strategic management purposes, e.g. service delivery improvements, policy reforms, identification of systemic issues and officers at high risk;
- (e) regularly updating practice and procedure manuals to reflect the outcomes and recommendations of the audits undertaken by oversight agencies and any internal evaluations;
- (f) providing targeted assistance to meet the specific needs of local commands or Complaint Management Teams who experience difficulties in particular aspects of complaint handling and/or investigation.

**RECOMMENDATION 8:** The Committee recommends NSW Police should consider the further development of risk assessment approaches to complaint investigation. The Committee intends to monitor the implementation of the Complaint Allocation Risk Appraisal (CARA) guidelines.....143

**RECOMMENDATION 9:** The Committee recommends that until such times as c@ts.i, or an alternative electronic system, is capable of delivering investigation reports to the Office of the Ombudsman in a reliable way that does not impact on the Office's ability to perform its oversight functions, the existing arrangement, whereby NSW Police provides hard copies of investigation reports to the Office of the Ombudsman, should continue and the provision of the reports should be at no cost to the Office.....144

**RECOMMENDATION 10:** The Committee further recommends that NSW Police should fully cost the software changes to c@ts.i needed to support the legislative changes to remove the distinction between Category 1 and Category 2 police complaints, and that consideration should be given to additional funding to facilitate the necessary modifications to the c@ts.i system.....144

**RECOMMENDATION 11:** The Committee recommends that the Office of the Ombudsman and the Police Integrity Commission, for the purpose of carrying out their functions, should be able to access records relating to local management issues raised about police officers and that NSW Police should ensure that any system for the electronic recording of such matters, be it c@ts.i or an alternative system, provides for such access.....144

**RECOMMENDATION 12:** The Committee recommends that the PIC consider making greater use of its statutory functions at s.13(1)(a) and s.14(a), (c) and (d) of the *Police Integrity*

*Commission Act 1996*, for the purpose of drawing attention to areas of police conduct and operations that would benefit from corruption resistance strategies and specific corruption prevention initiatives. .... 144

**RECOMMENDATION 13:** It is further recommended that the PIC consult with the Independent Commission Against Corruption in regard to corruption prevention and education programs that may be of particular relevance to NSW Police, and explore the potential for cooperative efforts between the PIC and the ICAC in this area. .... 144

**RECOMMENDATION 14:** The Committee recommends that the funds and resources required for specific anti-corruption education and prevention projects should not be drawn from the funds and resources available to the PIC for the performance of its investigative functions, and that the PIC should seek supplementation for specific projects not connected with its investigative program, where necessary. .... 144

**RECOMMENDATION 15:** In recognition of the importance of internal police complaints to the exposure and further prevention of serious police misconduct, the Committee recommends that NSW Police continue with measures to support police officers who make complaints about the conduct of their colleagues both during the complaint investigation process and after the completion of the investigation. .... 145

**RECOMMENDATION 16:** The Committee recommends that the *Police Integrity Commission Act 1996* should be amended to clarify that the Inspector is able to report to Parliament at his discretion in relation to any of his statutory functions. .... 145

**RECOMMENDATION 17:** It is further recommended that the Act be amended to make express provision for the Inspector to report to Parliament, as he considers necessary, on any abuse of power, impropriety and other forms of misconduct on the part of the PIC or its officers, regardless of whether or not these matters arise from the making of a complaint to the Inspector. .... 145



## Executive Summary

At the outset, it is important to explain the meaning of the term “oversight”, which appears in the terms of reference for the Committee’s inquiry. The Police Integrity Commission (PIC) interpreted the terms of reference broadly and took the phrase “police oversight system” to mean “the arrangements put in place to deal with police corruption and other forms of misconduct in an accountable and transparent manner”.<sup>1</sup> NSW Police and the Office of the Ombudsman interpreted them in a stricter sense to mean the oversight of police complaints. The submission from NSW Police dealt “only with the oversight functions concerning police complaints”.<sup>2</sup> Similarly, the Ombudsman’s submission concerns the role of the Ombudsman’s Office as the primary police complaints oversight agency, focusing on the management of police complaints.<sup>3</sup>

The Committee approached the inquiry by looking at the way in which the system for scrutinising police misconduct fits together in New South Wales, giving particular attention to the police complaints system. The latter fits into a wider scheme for police accountability, which includes the arrangements for investigating serious police misconduct and police corruption, and needs to be considered in this context.

In police accountability literature the term “oversight” is generally used to refer to systems involving external review of police complaints, as distinct from complaint handling and misconduct investigation undertaken internally by a police organisation.<sup>4</sup> Some of the key features of external oversight systems are that:

- complaint handling occurs to some degree outside the physical and organisational confines of the police force (that is, it is external);
- it is accountable to an autonomous official or body (that is, it is independent); and
- the staff of the complaint agency is in some measure comprised of non-police personnel (that is, it is civilian).<sup>5</sup>

In New South Wales, the current system for handling complaints and investigating police misconduct possesses some of the features of external oversight as well as features of an internal system. However, unlike the system that existed prior to 1996, which involved internal investigation with external oversight, the system that developed as a result of the Royal Commission into the New South Wales Police Service placed new emphasis on police ownership of a managerial or remedial approach to police complaints, an approach seen as integral to the reform agenda proposed by the Royal Commission.<sup>6</sup> The complaints system should fit in with the overall managerial approach of the Police Service and should not be confined to misconduct alone but also should involve recognition of good performance. The

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<sup>1</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, p.1.

<sup>2</sup> Submission No.11. New South Wales Police, dated 1 August 2006 p.1.

<sup>3</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.4.

<sup>4</sup> Andrew J Goldsmith (ed.), *Complaints Against the Police – The Trend to External Review*, Clarendon Press, Oxford 1991, p.6.

<sup>5</sup> *ibid.*

<sup>6</sup> *Royal Commission into the New South Wales Police Service, Final Report, Volume II: Reform*, May 1997, pp.330-1.

Executive Summary

Royal Commission viewed the latter as a “more positive value in the pursuit of integrity and professionalism”.<sup>7</sup>

The proposed new model for handling police complaints and investigating corruption was described as a “combination of internal and external investigation,” in which:

- the Police Service retains a meaningful role in dealing with management matters, customer service complaints, and certain matters of misconduct;

but in which

- there is both oversight of the Police Service, and an external responsibility to investigate serious corruption.<sup>8</sup>

This new approach reflected the Royal Commission’s experience “that a focussed, sophisticated and aggressive approach [was] necessary to uncover and combat serious police misconduct and corruption”.<sup>9</sup> The distinction between the oversight of police complaint investigations, and the investigation of serious police misconduct and corruption, underpins the respective jurisdictions of the Ombudsman and the Police Integrity Commission. This particular distinction is one of the recurrent themes occurring throughout the Committee’s report.

A major issue raised during the inquiry concerned which body should provide external oversight. The Royal Commission did not favour a single agency to perform both the external oversight and corruption investigation roles because of:

- the different approaches needed for supervision of the complaint system, and for corruption investigation;
- the need for a specific focus on corruption with an aggressive and sophisticated investigative capacity; and
- the resources needed for effective monitoring of the complaint system.<sup>10</sup>

Instead, the establishment of a new, purpose-built agency, with a specific focus upon the investigation of serious police misconduct and corruption was recommended.<sup>11</sup> The agency subsequently created to perform this role was the Police Integrity Commission. This model was favoured because:

- police retained a degree of responsibility for self-regulation;
- public confidence would be underpinned by external review of police investigations of complaints and corruption;
- the most serious matters would be investigated externally.

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<sup>7</sup> *ibid.*, p.335.

<sup>8</sup> *Royal Commission into the New South Wales Police Service, Interim Report*, February 1996, p.91.

<sup>9</sup> *ibid.*, p.88.

<sup>10</sup> *ibid.*, p.91.

<sup>11</sup> *ibid.*, pp.93-4.



The PIC has described the current police oversight system as “police investigation with external review, and external investigation of a specified class of matters.”<sup>12</sup> Any constraints upon the PIC’s capacity to investigate matters were to be minimised through adequate resourcing and by equipping it with appropriate powers. It also would not become “bogged down” in complaints processing as that function would remain with the Ombudsman.<sup>13</sup>

The NSW Ombudsman’s role would involve:

- monitoring managerial actions taken by Local Commanders;
- conducting random checks as to the progress of non-reportable matters;
- carrying out investigations as necessary, and reporting to the complainant and to Parliament;
- liaising closely with the PIC.<sup>14</sup>

Under the Royal Commission’s proposed model, NSW Police responsibility for maintaining its own discipline and promoting integrity could be enhanced.<sup>15</sup> However, NSW Police now contends that: the current police complaints legislation and the Ombudsman’s role and functions prevent it from dealing with complaints managerially; external oversight is an excessive burden for NSW Police; and there should be a single external oversight agency.<sup>16</sup>

In order for the Committee to evaluate the extent to which the current system fulfils the scheme originally envisaged by the Royal Commission it is necessary to consider the legislative framework governing police complaints and the oversight system, and how the system operates in practice. Critical to this exercise is an examination of NSW Police’s management of complaints about the conduct of its officers. The submissions to the inquiry and the evidence taken by the Committee are instructive on the extent to which the current oversight system has realised the objectives identified by the Royal Commission ten years after its introduction. Finally, the Committee arrives at the conclusion that the police accountability scheme as proposed by the Royal Commission is still relevant and appropriate today.

### Recent developments

During the drafting of the Committee’s report legislation was introduced into the NSW Legislative Assembly, following on from a statutory review of the Police Act conducted by the Ministry for Police, on behalf of the Minister. When enacted the Police Amendment (Miscellaneous) Bill 2006 will give effect to some of the proposals arising from the Ministry’s report on the review. In particular, the Bill contains amendments that will remove the distinction between certain categories of police complaints as well as some of the requirements for notification of complaints between the NSW Ombudsman, NSW Police and the Police Integrity Commission. These proposed changes to the police complaints system should result in more streamlined processes for assessing and handling police complaints. The Committee supports the rationalisation of the complaint categories along the lines

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<sup>12</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006 p.2.

<sup>13</sup> *ibid.*, pp.2-3.

<sup>14</sup> *Royal Commission into the New South Wales Police Service, Final Report Volume II: Reform*, May 1997, p.548.

<sup>15</sup> *Royal Commission into the New South Wales Police Service, Interim Report*, *op. cit.*, pp.93.

<sup>16</sup> Submission No.11, New South Wales Police, dated 1 August 2006, p.6.

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proposed in the Bill. A fuller discussion of these developments can be found in ss.5.2 and 5.5 of the Committee's report. The Bill was introduced into the Legislative Assembly on 20 October 2006. It was amended in the Legislative Council and was passed on 14 November 2006.

## Introduction

The existence of a police force in New South Wales predates Sir Robert Peel's London reforms by some forty years, having been established by Governor Philip in August 1789.<sup>17</sup>

In the ensuing 117 years, the role of the NSW Police has evolved in response to the extraordinary transmogrification of New South Wales from a penal colony into a thriving cosmopolitan society. During that time its power has been considerable, and there have been numerous Royal Commissions into police.<sup>18</sup> By the 1990s, questions were being raised as to a culture of entrenched corruption within the culture in NSW Police.

### The Wood Royal Commission

It has been said that the need for the Wood Royal Commission:

grew out of a culture that thrived on verballing of witnesses, fabrication of evidence and bribery .... the boys' club of the NSW police force.<sup>19</sup>

On 11 May 1994, the Independent Member for the South Coast, John Hatton MP, moved in the NSW Legislative Assembly that a Royal Commission be established to investigate serious allegations of corruption in the NSW Police Service. Although this was opposed by the Greiner Government, it did not at the time command a majority in the Assembly, and the motion was passed when the remaining Independent Members voted with the Opposition.<sup>20</sup> Thus, on 13 May 1994 the Hon Justice James Wood QC was appointed to chair a Royal Commission into the conduct of the NSW Police Service.

Under the Letters Patent, Justice Wood was authorised and required to investigate into:

- the existence, or otherwise, of systemic or entrenched corruption within NSW Police Service;
- the activities of the Professional Responsibility Command;
- the system of promotions in the Service;
- the impartiality, or otherwise, of the Service in relation to the investigation and prosecution of criminal activities including, but not limited to, paedophile activity; and
- the efficacy of the internal informers policy of NSW Police Service.

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<sup>17</sup> See New South Wales Police Service, [www.police.nsw.gov.au/about\\_us](http://www.police.nsw.gov.au/about_us).

<sup>18</sup> See, eg, the 1936 *Report of the Royal Commission of Inquiry into Allegations against the Police in connection with the Suppression of Illicit Betting*, the 1973 *Report of the Royal Commission into Allegations of Organised Crime in Clubs in NSW*, the 1979 *Report of the Royal Commission into Drug Trafficking*, and the 1997 *Royal Commission into the NSW Police Service Final Report Volume I: Corruption*.

<sup>19</sup> See ABC's *Four Corners*, [www.abc.net.au/4corners/content/2004/s1160316.htm](http://www.abc.net.au/4corners/content/2004/s1160316.htm)

<sup>20</sup> *Royal Commission into the New South Wales Police Service, Final Report, Volume I*, p.1, Footnote 1; NSW Legislative Assembly Hansard, 11 May 1994, Articles 17 & 19.

## Introduction

In 1999, Part 8A of the *Police Act 1990* - dealing with the handling of complaints about police - was amended in line with the recommendations of the Wood Royal Commission. The Royal Commission had been convinced that the existing complaints process was:

- too legalistic, formal, and focused upon punishment;
- insufficiently focused upon behaviour modification;
- "woefully dilatory"; and
- subject to an unnecessarily complex appeal process.<sup>21</sup>

The Royal Commission believed that the existing system needed to be progressively changed to a managerial approach, which would look beyond a reactive and narrow response to individual incidents, and would pass immediate responsibility to commanders to deal with misconduct of those under their command.

The Royal Commission also believed that more serious misconduct should be reserved to an enhanced investigation system in which the Office of Internal Affairs and the newly created Police Integrity Commission would each have a significant role to play. The PIC's role ought to be to:

- monitor the progress of the new system of employee management;
- act in conjunction with the Office of Internal Affairs and monitor investigations into the more serious inquiries for which the Office assumes responsibility;
- exercise its coercive powers to assist the Office of Internal Affairs where that is expedient; and
- take over inquiries into police shootings or serious accidents where that is desirable to ensure impartial investigations.

The perceived advantages of this approach were that:

- along with empowerment of commanders would come true responsibility;
- replacement of a punitive model of complaint handling by a remedial model would encourage openness and a willingness to admit mistakes, rather than the traditional resort to cover up; and
- the opportunity of retraining and keeping an officer who might otherwise have been lost to NSW Police, after a long drawn-out and stressful disciplinary process, would be maximised.<sup>22</sup>

The Royal Commission expected that the Ombudsman would:

- ensure that Local Commanders' decisions were appropriate;
- conduct random checks on the progress of non-reportable matters;

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<sup>21</sup> *Royal Commission into the New South Wales Police Service, Final Report Volume II*, May 1997, paragraph 1.47.

<sup>22</sup> *ibid.*, paragraph 4.82.

- report to complainants on the outcome of any managerial action in respect of reportable matters;
- react to any complaint by a member of the public that the management of any particular matter was ineffective or inappropriate, and carry out its own investigations as necessary;
- maintain close liaison with the PIC;<sup>23</sup> and
- continue to report to Parliament, in relation to matters concerning the complaint system, human resource issues and matters of service delivery.<sup>24</sup>

The Wood Royal Commission identified the following features of an effective system for managing and investigation of police corruption and complaints of police misconduct:

- public confidence;
- credibility in the eyes of serving police, including a genuine belief that misconduct and corruption will be detected and appropriately dealt with;
- reinforcement of high standards of ethical conduct and integrity, which are recognised as having strong leadership support;
- constant alertness to the risks of corruption, and responsible management of those risks;
- the will and capacity to engage in determined investigation of police misconduct and corruption utilising sophisticated methods and resources;
- a swift, effective and fair disciplinary process, which is accessible to the public and not burdened with minor, frivolous or vexatious complaints; and
- a clear division of responsibilities between all.<sup>25</sup>

The Royal Commission also noted that the system needed to accommodate three circumstances of considerable significance, namely that:

- investigation of police is potentially the most difficult area of criminal investigation, for many reasons, including the following:
  - police know the system, and are likely to have early warning of any interest in their activities;
  - they are skilled in investigation techniques and counter-surveillance;
  - they are likely to have corrupt associates willing to cover for them;
  - they are not easily fazed by interview, they are experienced in giving evidence, and they are capable of lying;

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<sup>23</sup> To further this aim, the Ombudsman and the Police Integrity Commissioner currently meet on a regular basis to discuss significant oversight and corruption matters. In addition, they have established officer-level liaison roles which deal effectively with individual matters, and PIC and Ombudsman officers also meet to exchange intelligence information. Officers of both agencies provide co-ordinated feedback on new police policies where appropriate.

<sup>24</sup> *Royal Commission into the New South Wales Police Service, Final Report, Vol II*, op. cit., paragraph 4.85.

<sup>25</sup> *Royal Commission into the New South Wales Police Service, Interim Report*, February 1996, p.48.

## Introduction

- their credibility and character are readily assumed by 6 jurors and tribunals;
- they can exert considerable personal influence over internal informants, and internal investigators, particularly if they hold senior rank;
- honest police are at risk of being discredited, neutralised or diverted from their work by fabricated complaints, at the hands of those whom they have arrested, as well as at the hands of disgruntled members of the community and other police whose paths they have crossed, in promotional competition or otherwise; and
- a formal complaints system is not a good indicator of serious misconduct and corruption within a Police Service because of the notorious under-reporting of those matters, and because in many cases there is not a conventional victim to act as a complainant.<sup>26</sup>

## Conduct of the Inquiry

In 1990, the NSW Parliament established the Committee on the Office of the Ombudsman by amendment to the *Ombudsman Act 1974*, with the role of monitoring and reviewing the functions of the Ombudsman's Office. The Committee's jurisdiction was extended under the *Police Integrity Commission Act 1996* (PIC Act) to include oversight of the Police Integrity Commission and the Inspector of the PIC.

In the early 1990s one of the Committee's predecessors conducted an inquiry into the role of the Office of the Ombudsman in investigating complaints against police.<sup>27</sup> Since that time successor Committees have commented on this area of the Ombudsman's jurisdiction in several reports to Parliament and, following the establishment of the PIC, inquiries have been conducted into trends in police corruption and various aspects of the work of the PIC.

Earlier this year, the current Committee decided that, in view of the period of time that had elapsed since the Royal Commission and the creation of the Police Integrity Commission, it would be timely to conduct a substantial inquiry into the police oversight system in New South Wales.

### *Terms of Reference*

The Committee resolved on the following terms of reference for the inquiry on 29 March 2006:

The Committee on the Office of the Ombudsman and the Police Integrity Commission, a joint statutory committee of the NSW Parliament, has resolved, in accordance with its functions under Part 4A of the *Ombudsman Act 1974* and Part 7 of the *Police Integrity Commission Act 1996*, to conduct an inquiry into the system of police oversight in New South Wales as follows:

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<sup>26</sup> *ibid.*, pp.48-9.

<sup>27</sup> Report of the Joint Committee on the Office of the Ombudsman, *Inquiry Upon the Role of the Office of the Ombudsman in Investigating Complaints Against Police*, Parliament of New South Wales, April 1992.

- (a) the appropriateness of the respective roles and functions of the PIC and the Office of the Ombudsman;
- (b) the extent of the powers available to the Ombudsman and the PIC to perform their functions;
- (c) the management structures, funds and resources available to the Ombudsman and the PIC to perform their functions;
- (d) the accountability mechanisms built into the system;
- (e) the efficiency and effectiveness of the current police oversight system and the scope for further efficiencies and effectiveness;
- (f) any other related matter;

and to report to both Houses of Parliament on the inquiry.

The Committee's jurisdiction is bound by the statutory limitations in the Ombudsman and PIC legislation and, as a result, the Committee's inquiry did not include an examination of the outcomes of any particular investigations into police misconduct or corruption.

### *Submissions*

Advertisements calling for public submissions were placed in the *Sydney Morning Herald*, *The Daily Telegraph* and *The Australian* on 15 April 2006. Submissions were received from the following individuals and organisations:

Submission No. 1	Ms Claire Rankin
Submission No. 2	Confidential
Submission No. 3	Public Interest Advocacy Centre
Submission No. 4	Confidential
Submission No. 5	Inspector of the Police Integrity Commission
Submission No. 5a	Inspector of the Police Integrity Commission
Submission No. 6	Anonymous
Submission No. 7	NSW Council for Civil Liberties
Submission No. 8	Police Integrity Commission
Submission No. 9	Police Association of New South Wales
Submission No. 10	NSW Ombudsman
Submission No. 10a	NSW Ombudsman
Submission No. 11	NSW Police
Submission No. 11a	NSW Police (Answers to Questions Taken on Notice on 24 August 2006)
Submission No. 12	Mr Duncan Kennedy

### *Public Hearings*

The Committee took evidence at public hearings from the following individuals:

#### **Wednesday 28 June 2006**

NSW Police Association

Mr Scott Weber, Vice President

Mr Gregory Chilvers, Director, Research and Resource Centre

Introduction

Mr Philip Tunchon, Assistant Secretary, Legal Services

Public Interest Advocacy Centre

Ms Charmaine Smith, Solicitor, Indigenous Justice Project

Mr Simon Moran, Principal Solicitor

**Thursday 24 August 2006**

NSW Police

Commissioner Ken Moroney

Deputy Commissioner Terrence Collins, Specialist Operations

Assistant Commissioner John Carroll, Professional Standards Command

Assistant Commissioner Nick Kaldas, Counter Terrorism Coordination Command

Inspector of the Police Integrity Commission

The Hon James Wood AO QC

Police Integrity Commission

Mr Terry Griffin, Commissioner

Mr Andrew Nattress, Director, Operations

Mr Allan Kearney, Director, Intelligence and Executive Services

Office of the Ombudsman

Mr Simon Cohen, Assistant Ombudsman (Police)

Mr Greg Andrews, Assistant Ombudsman (General)

NSW Council for Civil Liberties

Mr Cameron Murphy, President

Dr Michael Kennedy, Academic, University of Western Sydney

Following the public hearings, the Committee invited the NSW Ombudsman and the Inspector of the PIC to make supplementary submissions to the inquiry. A copy of the Ombudsman's second submission was provided to NSW Police for a response. The latter was received on 18 October 2006.

**Wednesday 20 September 2006**

NSW Crime Commission

Mr Phillip Bradley, Commissioner

**Report Structure**

The report on the inquiry follows the line of evidence taken during the public hearings and is divided into three parts, concluding with a summary of the Committee's findings and recommendations:

**Part I** – This part of the report examines the appropriateness of the respective roles and functions of the Police Integrity Commission and the Office of the Ombudsman. Detailed analysis is given to the proposal that external oversight of NSW Police should be provided by a single agency, namely the PIC.



**Part II** – The second part of the report examines how the police oversight system works in practice and looks at: the type of conduct that is subject to complaint; the handling of serious misconduct issues; the managerial approach afforded to minor complaints; and whether the system focuses too much on individual complaints at the expense of systemic issues. It explores the scope for achieving greater efficiency and effectiveness in relation to the oversight system. A number of proposals put to the Committee as possible options for rationalising the system are examined, including proposals to increase the accountability of the Office of the Ombudsman.

**Part III** – The third and final part of the report draws together those areas of the inquiry which the Committee felt warranted recommendations. It also contains the Committee’s findings and conclusions about issues that were central to the submissions and evidence provided during the course of the inquiry.



# PART I - The appropriateness of the respective roles and functions of the Police Integrity Commission and the Office of the Ombudsman.



# Chapter One - The Current System

## 1.1 The Theoretical Framework

1.1.1 Any attempt at successfully establishing a structure of police oversight is immediately confronted with the diametrically opposed views that “only police can oversight police” and that “police cannot be trusted to oversight police”.<sup>28</sup>

1.1.2 The position taken in New South Wales is to ensure that NSW Police maintains a stake in policing itself, so that the reporting of infringements of the standards of police probity to be expected in a liberal democracy is not simply imposed by an outside agency. To this end, a combination of external and internal oversight has been adopted, with the hope that individual officers will feel that they have a reciprocity of duty both to each other, and to the community generally, with respect to reporting inappropriate conduct within NSW Police. By actively involving NSW Police in the process, it may evolve into a “responsive institution”, which:

...retains a grasp on what is essential to its integrity while taking account of new forces in its environment. To do so, it builds upon the ways integrity and openness sustain each other as they conflict. It perceives social pressures as a source of knowledge and opportunities for self-correction.<sup>29</sup>

1.1.3 This combined oversight model has recently been supported by the Hon Justice William Fisher QC in presenting his *Review of Professional Standards in the Australian Federal Police* to the Commissioner of the Australian Federal Police. One of the basic conclusions of the Fisher Review was that:

Today, what is really needed is appropriate motivational management. This leads, in relation to policing, to a renewed emphasis on personnel management and less interest in the alleged motivations stemming from military-style discipline.<sup>30</sup>

1.1.4 Even more recently in the NSW context, the NSW Ombudsman noted in his most recent Annual Report that:

There are many good reasons why NSW Police are required to deal with most of the complaints about their own officers. NSW Police have to take responsibility for the conduct of individual officers and the way their organisation is run. Learning from complaints is one part of managing operations effectively. Police commanders are usually best placed to deal immediately with low level management issues in the

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<sup>28</sup> See, eg, T Prenzler and C Ronken, “Models of Police Oversight: A Critique”, *Policing and Society*, 2001, Vol 11, No 3, p 115.

<sup>29</sup> P Nonet and P Selznik, *Law and Society in Transition*, (New York: 1978), p 77.

<sup>30</sup> A Scott, “Professional Standards - charting the way forward”, *Platypus Magazine*, No.82, March 2004, [www.afp.gov.au/\\_\\_data/assets/pdf\\_file/3980/fisher\\_review.pdf](http://www.afp.gov.au/__data/assets/pdf_file/3980/fisher_review.pdf). Similarly, with respect to reforms in Western Australia, it has been noted that:

The whole emphasis is now on the accountability of supervisors and managers to manage and develop their people and get them back on track if they fail to come up to scratch, or attract a justifiable complaint. People who aspire to be managers must now accept this responsibility.

*Newsbeat*, November-December 2005, p 3. The Kennedy Royal Commission into corruption in the Western Australian Police Service had undertaken a similar review. In a report presented in January 2004, the Commission recommended sweeping changes in police oversight mechanisms, drawing strongly on the conclusions of the Fisher Review.

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workplace and, for more serious complaints, police officers have the experience in criminal investigations needed to investigate complaints thoroughly.<sup>31</sup>

## 1.2 The Legislative Provisions

### 1.2.1 The police complaints system

The legislation that underpins this theoretical framework provides that members of the public, or other police officers, can make complaints about unreasonable or improper conduct by police officers to NSW Police, the Ombudsman, or the PIC.

### 1.2.2 Defining complaints

The police complaints scheme established by Part 8A of the Police Act permits the oversight agencies - i.e., the Office of the Ombudsman and the PIC - to agree upon those matters which should be subjected to individual oversight, and those which should be handled by NSW Police without the requirement to notify the Ombudsman or the PIC.<sup>32</sup> There are currently two complaint categories - Category 1 and Category 2 matters - the category being determined by the seriousness of the alleged conduct.

1.2.3 Section 122(2) of the Police Act specifically provides that Part 8A does not apply to the complaints of a kind agreed to by the PIC and the Ombudsman (after consultation with the Police Commissioner) as matters not needing to be dealt with in accordance with Part 8A. Such matters are termed local management issues (LMIs), the classification and notification of which will be examined in detail at 5.7 of this report.

### 1.2.4 Category 1 complaints

The PIC Act enables the PIC Commissioner and the Ombudsman to agree on the class or kind of complaint against an officer which should be referred to the PIC as a Category 1 complaint (s.67(a)).<sup>33</sup> Category 1 complaints involve the most serious types of alleged misconduct.

1.2.5 Accordingly, NSW Police and the Ombudsman must refer them to the PIC (s.130 of the Police Act). The Category 1 class or kind agreement includes any complaints that a police officer:

- has perverted the course of justice, or may have sought or may seek to pervert the course of justice, by giving false evidence, destroying or interfering with evidence, withholding or refraining from giving evidence, fabricating evidence, or influencing another so to act;
- has committed:

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<sup>31</sup> NSW Ombudsman, *Annual Report 2004-2005*, p 41.

<sup>32</sup> However, Part 8A is explicitly subject to the PIC Act, s.70(8) of which provides as follows:

A Category 1 complaint, to the extent that it is taken over by the Commission, cannot be dealt with as a complaint under Part 8A of the Police Act and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations.

<sup>33</sup> The first agreement came into effect on 1 January 1997. These agreements were simplified from 1 October 2004 to reduce the categories of complaints from nine to three. Copies of the agreements can be found at Appendix 2.

- an assault causing serious injury and which could lead to a charge of malicious wounding or inflicting grievous bodily harm;
- a property offence (where the value of the property exceeds \$5000); or an offence where the maximum sentence is imprisonment for five years or more;
- has solicited or accepted, or may solicit or accept, a benefit in return for failing to carry out their duties;
- has interfered, or has sought or may seek to interfere, in a police investigation of an alleged offence;
- investigating an alleged offence by a police officer, has improperly failed to carry out their duties in that investigation; or
- is involved in the manufacture of a prohibited drug or cultivation of a prohibited plant, or the supply of such a drug or plant (where the amount is an indictable quantity).

1.2.6 The PIC must decide whether it will take over the investigation of Category 1 complaints which it receives, or which are referred to it by NSW Police or the Ombudsman (s.70 of the PIC Act). The PIC may also oversight the NSW Police investigation of a Category 1 complaint.

1.2.7 Where the PIC decides not to take over the investigation of a Category 1 complaint, the complaint is dealt with by NSW Police under the oversight of the Ombudsman (s.72 of the PIC Act). In practice, the PIC investigates or overlooks only a small number of Category 1 complaints: only 25 complaints were directly investigated or overlooked by the PIC in 2004-2005, and only 490 Category 1 complaints required assessment during that period.<sup>34</sup>

#### 1.2.8 **Category 2 complaints**

Category 2 complaints involve less serious allegations of misconduct. However, they raise issues which are sufficiently serious - e.g., criminal conduct, serious misconduct, and lack of integrity - to warrant notification to the Ombudsman in order to directly oversight their handling by NSW Police.

1.2.9 Currently, an agreement between the PIC and the Ombudsman places the following complaint allegations within Category 2:

- criminal conduct;
- corrupt conduct;<sup>35</sup>

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<sup>34</sup> Submission No.10, NSW Ombudsman, dated 9 June 2006, p 22.

<sup>35</sup> A workable definition of "corruption" is, broadly, law enforcement behaviour that results in private gains at public expense: C Shearing, *Organisational Police Deviance: Its Structure and Control*, (Toronto: 1981), p 1. The Wood Royal Commission defined it at p 25 as:  
deliberate unlawful conduct (whether by act or omission) on the part of a member of the Police Service, utilising his or her position, whether on or off duty, and the exercise of police powers in bad faith.....In each case, the relevant conduct is considered to be corrupt, whether motivated by an expectation of financial or personal benefit or not, and whether successful or not.

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- conduct that, if substantiated, might warrant the removal of the police officer or some form of reviewable action;
- lack of integrity;
- serious incompetence, including that which results in failed prosecutions or criminal investigations;
- unauthorised secondary employment in high risk industries;
- harassment, victimisation or unlawful discrimination against any person (except where the alleged victim is a member of NSW Police who consents to the complaint being dealt with as a local management matter, and the police officer alleged to have engaged in the conduct in question has not had similar complaints made about them);
- detrimental action or reprisals (including possible payback complaints) against a police officer or person making a protected disclosure, allegation or report;
- any inappropriate conduct resulting in death or injury or significant financial loss, or involving the discharge of a firearm;
- any inappropriate conduct resulting in and/or from the search, arrest or custody of a person;
- complaints about the handling of non-notifiable local management issues, where the Ombudsman requires that the matter be dealt with as a Category 2 complaint; and
- any local management issue which the Ombudsman, following consultation with the Police Commissioner, requires to be notified.

**1.2.10 Local Management Issues (LMIs)**

Complaints that are not dealt with under Part 8A of the Police Act are generally referred to as Local Management Issues. These usually concern issues of customer service and workplace difficulties. According to the Ombudsman, as these complaints need not be directly oversights by his Office, NSW Police is not obliged to notify the Ombudsman of such complaints. Where the Ombudsman or the PIC does receive complaints of this type, they refer them to NSW Police. The Ombudsman may audit the management of these matters (s.160(1) & (2) of the Police Act).<sup>36</sup>

**1.3 Complaint Handling by NSW Police**

**1.3.1** Under Part 8A of the Police Act, NSW Police must determine whether a complaint is a Category 1 complaint which ought to be referred to both the Ombudsman and the PIC (s.139 of the Police Act). NSW Police must also:

- notify the Ombudsman of Category 2 complaints (s.139(3)(a));
- decide whether or not the complaint should be investigated (s.139(2)); and
- advise the Ombudsman of its decision in that respect (s.139(4)(a)).

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<sup>36</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p 7.



1.3.2 NSW Police must consult with the complainant before making a final decision on the action to be taken as a result of their complaint, and advise the complainant of the outcome of the matter, including any action taken or proposed to be taken. NSW Police is also required to provide the Ombudsman with a copy of the investigation report, advice on any action proposed or taken, and advice as to whether the complainant is satisfied with that action (s.150 of the Police Act).

**1.3.3 Options for managing officers**

NSW Police has a number of options from which to select when managing officers who are found to have engaged in unreasonable or improper conduct. The harshest possible result is the removal of a police officer, on the basis that the Commissioner no longer has confidence in that officer (s.181D of the Police Act).

1.3.4 Other stringent management action includes “reviewable” actions, such as a reduction of the police officer’s rank, grade or seniority, or a deferral of the officer’s salary increment (s.173(2) of the Police Act). The relevant processes involve seeking submissions from the officer before any decision is made. An appeal mechanism is available, as the removal of an officer, or the taking of reviewable action, may be the subject of review by the Industrial Relations Commission (s.181E - s.181K).<sup>37</sup>

**1.3.5 NSW Police complaint-handling system in practice**

Most NSW Police complaints are handled directly by local area commanders. They are supported in this role by a civilian executive officer, who provides an administrative function, and a Complaints Management Team (CMT) which usually includes a number of senior officers. Complaints are investigated by local command officers under the direction of the CMT, which ratifies the investigation and outcomes. Where, for reasons such as a potential conflict of interest, a local commander cannot deal with a complaint, it is referred to the Region Commander for reallocation. Nonetheless, local commanders generally make the final decisions about the outcome of a complaint, including any management action for the officers involved.

1.3.6 Of particular importance in the complaint-handling system is the Professional Standards Command (PSC). This command includes:

- a complaints management support unit, which provides guidance to local and specialist commands in the management and investigation of complaints, and monitors overall police complaints management;
- the Employee Management Branch (EMB), which is responsible for providing advice to commanders on appropriate management action, particularly in relation to cases of serious police misconduct; and

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<sup>37</sup> NSW Police can also take “non-reviewable” management action in relation to unreasonable or improper conduct. Non-reviewable action includes: coaching, mentoring, training and development, increased supervision, counselling, reprimand, warning, personal development performance enhancement agreement, non-disciplinary transfer, change of shift (for a limited period and entailing no financial loss), restricted duties, and recording of adverse findings.

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- an investigations unit, which is responsible for investigating allegations of serious misconduct by police, sometimes in conjunction with, or under the oversight of, the PIC.<sup>38</sup>

### 1.3.7 The functions undertaken by the PSC are:

- providing advisory, consultancy and review services with respect to investigations, critical incidents, complaint management and employee management;
- applying investigation, intelligence and integrity testing resources according to risk based prioritisation;
- developing and applying intelligence to identify and support professional standards through analytical support, audits, assessment of probity issues, and strategic research;
- developing, or contributing to, reference materials, standard operating procedures, policies and training that support professional standards and the application of best practice; and
- acting as a primary point of contact within NSW Police for agencies such as the PIC, the Ombudsman, the NSW Coroner, and the Independent Commission Against Corruption.<sup>39</sup>

## 1.4 Functions and Powers of the Ombudsman

1.4.1 Although the Office of the Ombudsman was established under the *Ombudsman Act 1974*, it had no jurisdiction to deal with police complaints until 1979.<sup>40</sup> The Ombudsman's role in relation to police oversight was considerably expanded pursuant to further legislation which mirrored the shift of the Ombudsman's role from review and investigation of individual complaints to an increased focus on systemic issues.<sup>41</sup>

1.4.2 The Ombudsman must assess whether NSW Police has correctly categorised a complaint, in particular, whether the complaint is a Category 1 complaint that has been - or should be - referred to the PIC.<sup>42</sup> The Ombudsman assesses whether the

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<sup>38</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p 10.

<sup>39</sup> [www.police.nsw.gov.au/about\\_us/structure/specialist\\_operations/professional\\_standards\\_command](http://www.police.nsw.gov.au/about_us/structure/specialist_operations/professional_standards_command)

<sup>40</sup> The position derives from the original (1809) Swedish *Justitie-Ombudsman*, whose title loosely translates to "the citizen's defender", or "representative of the people": See [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

<sup>41</sup> Earlier changes include those brought about by the following:

- *Police Regulation (Allegations of Misconduct) Act 1978*;
- *Police Regulation (Allegations of Misconduct) Amendment Act 1985*;
- *Ombudsman (Police Regulation) Amendment Act 1985*; and
- *Police Service (Complaints, Discipline and Appeals) Act 1993*.

Subsequently there were the *Police Service (Complaints) Amendment Act 1994*, the *Police Legislation Amendment Act 1996* (cognate with the *Police Integrity Commission Act 1996* and the *Police Service Amendment (Complaints and Management Reform) Act 1998*.

<sup>42</sup> In the 2004-2005 year the Ombudsman received 4,179 written complaints, including complaints made directly by members of the public and by police officers, and complaints that were referred to by NSW Police and the PIC. The most common type of allegation involved complaints of investigation/prosecution misconduct. NSW Ombudsman, *Annual Report 2004-2005*, p 42. It is important to note that, pursuant to s.12 of the *Ombudsman Act 1974*, any person may make a complaint about the conduct of a public authority, subject to certain enumerated exceptions.

NSW Police decision to decline the investigation of a complaint is appropriate. If the Ombudsman disagrees with the NSW Police decision, the Ombudsman may require the complaint to be investigated (s.140 of the Police Act).

- 1.4.3 The Ombudsman may monitor the NSW Police investigation (s.146 of the Police Act), so that officers of the Ombudsman may observe interviews conducted for the purposes of an investigation, and may confer with the investigating police about the conduct and progress of the investigation (s.146(2)). If the Ombudsman is not satisfied that a complaint is being investigated in a timely manner, the Ombudsman may require NSW Police to provide information about the matter (s.152).
- 1.4.4 NSW Police must provide the Ombudsman with a report on the investigation. The role of the Ombudsman is to decide whether it is satisfied with the investigation report. If unsatisfied, the Ombudsman may:
- request information from NSW Police to determine whether the complaint has been properly investigated (s.151 of the Police Act);
  - request further investigation of the matter (s.153); or
  - request NSW Police to review the action taken as a result of the investigation (s.154).
- 1.4.5 The Ombudsman may prepare reports concerning police complaints and/or the NSW Police investigation of complaints for the complainant, Commissioner of Police and the Minister for Police. These usually contain recommendations designed to overcome deficient investigations, remedy inadequate or inappropriate management action and/or improve NSW Police policies and procedures (s.156 of the Police Act).
- 1.4.6 Significantly, the Ombudsman cannot make binding decisions affecting police officers. The Ombudsman can only make recommendations, which are either accepted or rejected by the Police Commissioner or Local Area Commanders. Nonetheless, the Ombudsman does exercise a range of functions which impact upon the operations of the NSW Police.
- 1.4.7 The Ombudsman is also entitled to conduct direct investigations into complaints and police investigations under ss.156 and 157 of the Police Act. Under s.156 of the Act, the Ombudsman may make a police complaint, the investigation of the complaint, and any related issues the subject of an investigation under the *Ombudsman Act 1974*, where he is of the opinion that it is in the public interest to do so. The Ombudsman's investigation can occur at any stage prior to the commencement of, during or after a complaint investigation by NSW Police. Section 157 of the Police Act provides that where the Ombudsman conducts an investigation pursuant to s.156 of the Act he must prepare a report, which may include such comments and recommendations, as he considers appropriate. These investigations also result in reports to the complainant, Commissioner and Minister for Police, and the police officer subject to complaint.
- 1.4.8 In addition the Ombudsman undertakes an educative role for NSW Police in respect of their complaint-handling procedures by:

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- providing information about the complaints process to students training to become police officers;
- participating in formal training of police complaint investigators; training complaint management teams;
- improving the operation of executive complaint management teams that handle complaints against executive members of NSW Police; and
- helping police to develop critical incident investigation guidelines.<sup>43</sup>

### 1.4.9 **Legislative reviews**

Since 1998, the NSW Parliament has asked the Ombudsman to review the operation of 17 new laws giving police additional powers, in order to assess whether the new police powers are being implemented efficiently, effectively and fairly for both police and the community.

1.4.10 Recent reviews include the *Law Enforcement (Powers and Responsibilities) Act 2002*, the *Law Enforcement (Public Safety) Act 2005*, the *Terrorism Legislation Amendment (Warrants) Act 2005*, the *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005* and the *Police Powers (Drug Detection Dogs) Act 2001*.

1.4.11 Reviews currently being conducted by the Office include:

- *Law Enforcement Legislation Amendment (Public Safety) Act 2005* – introduced following the Cronulla riots;
- Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002* – relating to covert search warrants and prevention detention.

### 1.4.12 **Monitoring functions**

The Ombudsman has a number of responsibilities designed to keep law enforcement agencies accountable when they conduct covert operations. One is to monitor the compliance of NSW Police – and other investigative agencies such as the PIC, the ICAC, and the State Crime Commission – with the recordkeeping requirements of the telecommunications interception legislation (Part 4 of the *Law Enforcement (Controlled Operations) Act 1997*).

1.4.13 Another is to monitor the compliance of NSW Police and other investigative agencies with the requirements of the *Law Enforcement (Controlled Operations) Act 1997*. The third is to hear appeals from decisions of the Commissioner about whether persons should be accepted into, or excluded from, the Witness Protection Program (s.6(3) of the *Witness Protection Act 1995*).

### 1.4.14 **Freedom of information**

The Ombudsman has the power to deal with complaints about decisions by public authorities in response to applications for access to documents under s.52 of the

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<sup>43</sup> NSW Ombudsman, *Annual Report 2004-2005*, p 54.

*Freedom of Information Act.* NSW Police receives the largest number of freedom of information applications of all public authorities.<sup>44</sup>

#### 1.4.15 **Child protection**

The Ombudsman is responsible for overseeing the handling of allegations of child abuse - referred to in the Ombudsman Act as “reportable conduct/allegations” - against employees of NSW Police and other public and private agencies.<sup>45</sup> For police officers, reportable conduct matters – including access to internet child pornography – are also complaints under Part 8A of the Police Act. The Police Team manages these complaints in consultation with the Ombudsman’s Child Protection Team.

#### 1.4.16 **Part 3 of the Ombudsman Act**

The Ombudsman has jurisdiction under Part 3 of the Ombudsman Act to deal with complaints about NSW Police excluding the conduct of a police officer when exercising functions with respect to crime and the preservation of peace (Schedule 1, Clause 13, of the Ombudsman Act). Thus, under the Ombudsman Act, the Ombudsman can deal with complaints concerning maladministration by police officers, and complaints about NSW Police public servants.

### 1.5 **Functions and Powers of the Police Integrity Commission**

1.5.1 The Police Integrity Commission was established in 1996 in response to the findings of the Wood Royal Commission.<sup>46</sup> The PIC Act sets out the principal functions of the PIC, which can be summarised as:

- preventing, detecting or investigating serious police misconduct; and
- managing or overseeing other agencies in the detection and investigation of serious police misconduct and other police misconduct (s.13 of the PIC Act).

1.5.2 In its 2004-2005 *Annual Report*, the PIC states that its business is:

- to detect and expose serious police misconduct;
- to deter police from engaging in serious misconduct;
- to oversight or review certain police activities; and
- to make recommendations for reform in NSW Police,

and by these actions prevent serious police misconduct and assure the community that there is vigilant oversight of police in New South Wales.<sup>47</sup>

1.5.3 In order to effectively carry out these functions, the PIC Commissioner and other PIC officers, may issue search warrants (s.45 of the PIC Act), and seize documents and other things thereunder as evidence (s.47). The PIC Commissioner and other PIC officers are also empowered to seek listening device warrants (s.50).

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<sup>44</sup> *ibid.*, Audit of FOI Annual Reporting, p.1.

<sup>45</sup> This is as a result of the recommendation of the Wood Royal Commission.

<sup>46</sup> See, eg, the second reading speech of the *Police Integrity Commission Amendment Act 2004*, Hon J A Watkins MP, then Minister for Police, Legislative Assembly *Hansard*, 16 September 2004.

<sup>47</sup> [http://www.pic.nsw.gov.au/PDF\\_files/2004-2005.pdf](http://www.pic.nsw.gov.au/PDF_files/2004-2005.pdf)

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1.5.4 Other functions of the PIC set out in the PIC Act relate to:

- police activities and education programs (s.14 of the PIC Act);
- the qualitative and strategic audit of the reform process (s.14A); and
- the collection of evidence and information (s.15).<sup>48</sup>

1.5.5 An important component of the PIC's operations is the fact that current and former NSW police officers are prohibited from working for the PIC (s.10(5) of the PIC Act). This is in line with the concept that any effective means of dealing with corruption must:

provide a place where policemen [sic] as well as the public can come with confidence and without retaliation. Any office designed to achieve this must be staffed by persons wholly unconnected with the Police Department or other agency that routinely deals with it.<sup>49</sup>

1.5.6 Recently, the *Police Integrity Commission Amendment Act 2005* confirmed the independent and accountable nature of the Commission, and clarified some technical issues related to the PIC's operation.<sup>50</sup>

1.5.7 **THE EXTRAORDINARY POWERS OF THE PIC**

1.5.7.1 **Discretionary and Coercive Powers**

The PIC Act provides "special mechanisms" by which the PIC's various functions may be achieved and which are manifested in the PIC's broad powers and discretions (s.3(b)). Amongst other things, the PIC may conduct an investigation "even though no police misconduct is suspected" (s.23(4)), and can require the giving of information and production of documents notwithstanding the privilege against self-incrimination and other forms of privilege (s.40). As an investigative body, the PIC's functions do not form part of the administration of justice,<sup>51</sup> in that they do not include the making of conclusions or findings with regard to criminal or civil liability.

1.5.7.2 In determining whether to hold a hearing in public or in private, or partly in public and partly in private, the PIC is obliged to have regard to any matters that it considers to be related to the public interest (s.33(3)). This involves a discretionary value judgment by reference to the circumstances of the relevant

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<sup>48</sup> The PIC may report on any matter that has been the subject of an investigation, and must report on any matter as to which the Commission has conducted a public hearing: s.96(1) and s.96(2) of the PIC Act respectively.

<sup>49</sup> W Knapp, *The Knapp Commission Report on Police Corruption*, (New York: 1972), p 14.

<sup>50</sup> In addition, amendments to the ICAC Act expanded the scope of the Commission's ambit to include non-sworn (civilian) employees of NSW Police. NSW Police Integrity Commission, *Annual Report 2004-2005*, p 3.

<sup>51</sup> *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625; *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125.

investigation,<sup>52</sup> usually one in which the PIC will have considered and weighed the harm to individual reputation that may result from a public hearing.<sup>53</sup>

#### 1.5.7.3 **Non-publication of evidence**

The PIC's powers to suppress the publication of evidence are contained in s.52 of the PIC Act. Amongst other things, the PIC may direct that any evidence given, or any information that might serve to identify or locate a person who has given or may be about to give evidence before the PIC, must not be published except in such manner, and to such persons, as are specified by the PIC (s.52(1)).

1.5.7.4 The PIC must not give a direction suppressing the publication of evidence unless satisfied that it is "necessary or desirable in the public interest" (s.52(2)).

#### 1.5.7.5 **Notice to provide a statement of information or to produce documents or things**

The PIC may require, by notice, a public authority or public official to produce a statement of information (s.25), or to require any person to produce documents or other things (s.26). These powers may be exercised for the purposes of an investigation, whether or not a hearing is being held (s.31).

1.5.7.6 It is an offence for a person, without reasonable excuse, to fail to comply with a notice (s.25(4) & s.26(3)).

#### 1.5.7.7 **Failure to Attend**

It is an offence for a person who is summoned to attend at a hearing to, "without reasonable excuse", fail to attend in accordance with the summons, to be sworn or make an affirmation, or to answer any question relevant to an investigation as might be put to him or her (s.106). What constitutes a reasonable excuse is a question to be determined by reference to the PIC Act.<sup>54</sup>

1.5.7.8 The absence of a reasonable excuse for a person's non-attendance under a summons is not a prerequisite for the exercise of the PIC's power under s.39 to issue a warrant for their arrest.

#### 1.5.7.9 **Issue of Warrant**

Pursuant to s.39(1), where a person served with a summons to attend the PIC as a witness fails to attend, and the Commissioner has proof as to service of the summons, a warrant may be issued for the arrest of the witness.

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<sup>52</sup> *O'Sullivan v Farrer* (1989) 168 CLR 210, per Mason CJ, Brennan, Dawson and Gaudron JJ at 216.

<sup>53</sup> While harm to reputation usually attracts a duty to observe the rules of procedural fairness, procedural fairness does not require a public hearing to be conducted in such a way as to minimise harm to a person's reputation: *Independent Commission Against Corruption v Chaffey* (1993) 30 NSWLR 21 per Gleeson CJ at 28; Mahoney JA at 60; *Donaldson v Wood* (unreported, NSWSC, 15/09/95) per Hunt CJ at CL. Provided a person affected is ultimately afforded an opportunity to respond to relevant allegations and evidence, questions as to the timing of the opportunity are largely for the Commission to determine according to the circumstances of the investigation.

<sup>54</sup> It has been said in relation to legislative schemes similar to that under which the Commission exercises its functions that "reasonable excuse" does not mean a legal excuse, such as matters of privilege, but rather is intended to cover such things as illness or physical incapacity, or the inability to comply with a requirement to produce documents because of practical difficulties, such as their accidental loss or destruction: *R v Power* [1967] AC 760.

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- 1.5.7.10 Irrespective of whether a summons has been issued (s.39(4)), or whether the time for attendance on a summons has passed (s.39(5)), the Commissioner may issue a warrant for the arrest of a person whose evidence “is desired and is necessary and relevant to an investigation”, if satisfied by evidence on oath or affirmation that it is probable that the person will *not* attend to give evidence without being compelled to do so, or is about to or is making preparations to leave the State, and the person's evidence will not be obtained if he or she departs (s.39(2)).
- 1.5.7.11 **Privilege**  
A witness summoned to attend or appearing before the PIC at a hearing cannot refuse to answer any question or produce any document or other thing on the ground of self-incrimination, “or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction in disclosure, or on any other ground” (s.40(2)).
- 1.5.7.12 The PIC considers that the terms of s.40(2) exclude all forms of privilege, including legal professional privilege, with the exception of an attenuated form of legal professional privilege.<sup>55</sup>
- 1.5.7.13 **Limited legal professional privilege**  
Section 40(5) entitles a legal practitioner or “other person” to refuse to answer a question, or to produce a document or other thing, on the basis that it would disclose a privileged lawyer-client communication for the purpose of the provision or receipt of legal services in relation to the appearance, or reasonably anticipated appearance, of a person at a PIC hearing.
- 1.5.7.14 The PIC does not consider s.40(5) to entitle the client of a lawyer to assert legal professional privilege in refusing to answer a question, etc. According to the PIC, “other person” does not indicate the client of a legal practitioner, but rather other persons who may be privy to confidential lawyer-client communications, such as staff employed by a legal practitioner.<sup>56</sup>
- 1.6 **Difference between the roles of the Ombudsman and the Police Integrity Commission**
- 1.6.1 From the above it can be seen that the PIC exercises the primary role of a police corruption fighting agency, using the intelligence derived from its investigations and monitoring as the basis for research into particular projects of strategic anti-corruption significance. This role is complemented by the Ombudsman’s general oversight of police management of complaints, with the allied power to conduct its own investigations and research and publish the results thereof in the public interest.
- 1.6.2 The fundamental role of the Ombudsman, as the primary oversight agency for police complaints, is to ensure the integrity of the handling of complaints by NSW

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<sup>55</sup> See *PIC Guidelines*, p 21.

<sup>56</sup> *ibid.*, But, *contra*, see S. Donoghue, *Royal Commissions and Permanent Commissions of Inquiry*, Reed International Books, 2001.



Police. However, unlike the PIC, the Ombudsman does not have covert and coercive powers such as:

- the capacity to conduct public hearings where witnesses are compelled to provide evidence;
- the power to issue warrants for the arrest of persons who are required to give evidence and do not attend on summons;
- the power to tap telephones;
- the power to conduct controlled operations, and engage in what would otherwise be unlawful conduct; or
- the power to use listening devices.

1.6.3 Recent reviews in NSW confirm the appropriateness of distinguishing between complaint-handling and corruption-fighting, and for separate agencies to oversight NSW Police in these areas.<sup>57</sup>

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<sup>57</sup> See, e.g., the recent review of the *Police Act* by the Minister for Police, undertaken during the period 2002-2004, which considered in detail Part 8A of the Act. The review included representatives of NSW Police, the Police Association, the Ministry for Police, the PIC and the Ombudsman.



## Chapter Two - The case for oversight by a single agency

### 2.1 Background

In recent years there have been a number of occasions on which proposals have been put forward for the rationalisation of the watchdog bodies responsible for police oversight.

#### 2.1.1 Review of the Police Integrity Commission Act 1996<sup>58</sup>

2.1.1.1 During the review of the *Police Integrity Commission Act 1996*, undertaken by the NSW Ministry for Police from 2001 until 2002 on behalf of the Minister for Police, NSW Police initially suggested that the PIC should oversight all police complaints and that the Ombudsman should focus on matters of public maladministration. This early proposal appears to be based on two assumptions that were questioned by other stakeholders, namely that:

- the Ombudsman's general jurisdiction focuses on complaints about "public administration" rather than complaints about misconduct and
- that similar skills are required in complaints oversight and corruption investigation.<sup>59</sup>

2.1.1.2 The Ministry noted that the proposal was associated with the previous Commissioner for Police, Mr Peter Ryan, and that the current Commissioner, Mr Ken Moroney, did not share this view. The Ombudsman pointed out that it is incorrect to suggest that the traditional focus of the Ombudsman's Office excluded misconduct issues: the Office had been examining misconduct in the police area since 1979.<sup>60</sup>

2.1.1.3 In contrast to the initial Police proposal, the NSW Police Association proposed the introduction of legislation to provide that the Ombudsman should be the primary oversight body of police complaints and the automatic notification of Category 1 complaints to the PIC should be abolished.<sup>61</sup>

2.1.1.4 The Ombudsman supported the Association's one agency proposal as this recognised the reality that it is the Ombudsman's Office that oversees nearly all police complaints: in 2001-02 the Office oversaw well over 99% of all police complaints, whereas in the same period the PIC investigated or monitored only 2.4% of the Category 1 complaints received.

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<sup>58</sup> The Ministry's report on the Review of the Police Integrity Commission Act was due to be tabled in Parliament on or before 21 June 2002. A discussion paper on the Review was presented to the Clerk of the L.A. for tabling on 17 December 2002, after the last sitting day for that year.

<sup>59</sup> Ministry for Police, *Report on the Review of the Police Integrity Commission Act 1996*, Discussion Paper, 2002, p.85.

<sup>60</sup> *ibid.*, p.86.

<sup>61</sup> *ibid.*, pp.87 & 93.

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- 2.1.1.5 The PIC confirmed that from February 1998 until the Ministry's review, only 9 out of 1,574 Category 1 referred complaints (0.57%) formed the basis for an investigation by the PIC, and none of these complaints involved the conduct of public hearings or the issuing of a report. The Ombudsman argued on these statistics that "the reality is that my Office already provides a single coherent overview of police complaints and their investigation". The PIC also acknowledged the advantage of the degree of public recognition of the Ombudsman's Office as a complaints body and the customer service aspect of the Ombudsman's work.<sup>62</sup> However, any change to the PIC's jurisdiction in respect of overseeing police complaints was deferred until the statutory review of the Police Act, due to commence in October 2001.<sup>63</sup>
- 2.1.1.6 While the Ministry rejected the proposal that the PIC should assume the Ombudsman's complaint jurisdiction, noting that the majority of bodies consulted during the review process opposed this suggestion, it did recommend further consideration of opportunities to rationalise the police complaints system arising from the statewide roll out of c@ts.i, (i.e. the electronic complaints management system). It was anticipated that c@ts.i would remove the need for current complaint notification and referral requirements.<sup>64</sup>
- 2.1.1.7 In this regard, the PIC proposed that the Category 1 complaints system should be rationalised to reflect that NSW Police investigates the vast majority of Category 1 complaints, subject to Ombudsman oversight. Instead of the current arrangement whereby the PIC notified the Ombudsman of those matters it did not propose investigating, and the Ombudsman in turn referred the matter back to NSW Police for investigation, the PIC suggested that NSW Police should commence investigating Category 1 complaints, only ceasing to deal with a matter under Part 8A of the Police Act if advised that the PIC had taken it up. The PIC would only need to advise the Ombudsman when it elected to investigate a matter. The PIC's proposal that the referral of Category 2 complaints should be rationalised was earmarked by the Ministry as another matter for further consideration during the Police Act review.<sup>65</sup>

## 2.1.2 Review of the Police Act 1990

- 2.1.2.1 The Ministry for Police's report on the subsequent review of the Police Act 1990<sup>66</sup> recommends that s.125 of the Police Act be amended to include a statement as to the responsibilities of the Commissioner for NSW Police, the Ombudsman and the PIC in respect to the handling of police complaints. It was proposed that the following statement would be read subject to the specific provisions of Part 8A:

*Responsibility for the handling of complaints*

The Commissioner:

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<sup>62</sup> *ibid.*, p.87.

<sup>63</sup> *ibid.*, p.93.

<sup>64</sup> *ibid.*, pp.87 & 93.

<sup>65</sup> *ibid.*, p.88.

<sup>66</sup> Ministry for Police, *Review of the Police Act 1990*, April 2006; tabled in the Legislative Assembly on 25 October 2006.

- (a) to receive and assess complaints
- (b) to take appropriate action on complaints in a timely and effective manner
- (c) to provide information to the Ombudsman, complainants and police officers the subject of complaint about matters dealt with under this Part, where appropriate

The Ombudsman:

- (a) to receive and assess complaints
- (b) to monitor the handling of certain complaints
- (c) to determine whether complaints have been properly dealt with
- (d) to investigate certain complaints and related issues
- (e) to provide reports to complainants, the Commissioner and the Minister
- (f) to inspect NSW Police records with respect to the handling of complaints
- (g) to keep under scrutiny the systems established within NSW Police for dealing with complaints

The Police Integrity Commission:

- (a) to receive complaints
- (b) to refer complaints to the Commissioner of Police and the Ombudsman
- (c) to manage and oversee the investigation of certain complaints by NSW Police
- (d) to investigate or take over the investigation of certain complaints where it considers it appropriate to do so. (To the extent that the investigation of a complaint is taken over by the Police Integrity Commission, the complaint is not to be treated as a complaint for the purposes of Part 8A except as directed by the Police Integrity Commission or as directed by the regulations.)<sup>67</sup>

2.1.2.2 This proposed legislative statement is intended to clarify the distinct roles of the Ombudsman, as the primary complaints oversight body, and the PIC as the external corruption-fighting agency. It was suggested by the Ombudsman and received support from the PIC, which indicated that it would continue to oversight some complaint investigations, particularly investigations of more serious complaints and those less serious complaints where a pattern of misconduct may emerge or the complaint specifically relates to a PIC investigation. NSW Police supported the proposal on the basis that NSW Police should be accountable to only one oversight body for any complaints matter at any one time.<sup>68</sup>

2.1.2.3 This proposed amendment has not been included in the Police Amendment (Miscellaneous) Bill 2006, which brings forward certain recommendations arising from the Ministry's review. The Bill was passed on 14 November 2006.<sup>69</sup>

### 2.1.3 **Government 'Red Tape Review'**

2.1.3.1 In February 2006, the Government released an Issues Paper for its "Red Tape Review", which was aimed at reducing the administrative burden on government. The Issues Paper notes that there were a number of watchdog bodies to which government agencies were accountable and that, given the number of watchdogs that may oversight a government agency, there may be duplication and overlap.<sup>70</sup>

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<sup>67</sup> Ministry for Police, *Review of Police Act 1990*, April 2006, p.55.

<sup>68</sup> *ibid.*, p.39.

<sup>69</sup> Police Amendment (Miscellaneous) Bill 2006, Second reading speech 20/10/06 Mr Neville Newell MP (Parliamentary Secretary).

<sup>70</sup> "Reducing the administrative burden on government: Issues Paper", February 2006, pp.6-7.

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2.1.3.2 The Chairman of the Committee, Mr Paul Lynch MP, wrote to the Premier, the Hon Morris Iemma MP, on 20 March 2006 expressing concern about any proposal to merge, in whole or in part, bodies such as the PIC, the ICAC and the Ombudsman and indicating the Committee's support for the existing watchdog structure. Mr Lynch was of the view that any merger proposals "should be based on sound policy reasons" and "would require a full and public debate". The PIC had been established as "a stand-alone body to investigate serious police misconduct" for reasons made clear during the Royal Commission and merging the PIC with another body "would amount to a repudiation of the Royal Commission report and a return to the previous unsatisfactory schemes". Mr Lynch also stated that a merger of the Ombudsman and the PIC "would inevitably lead to a diminution in focus and resources on serious police corruption, which requires the use of covert and coercive investigations". He anticipated that a merger may "entail false economies with inefficiencies built into any new structures".<sup>71</sup>

2.1.3.3 The Premier's reply, dated 6 June 2006, gave assurance that at that stage the Government was not considering any proposal to merge watchdog bodies, including the Police Integrity Commission, the Independent Commission Against Corruption and the Ombudsman. The Premier indicated that the NSW Audit of Expenditure and Assets suggested a number of possible agency amalgamations, none of which involved the various "watchdog" agencies identified by the Committee. He further clarified that an Issues Paper released as part of the Government Review of Red Tapes noted the potential for duplication and overlap among "watchdog" agencies but that the Review was not considering proposals to merge particular "watchdog" agencies.<sup>72</sup>

2.1.3.4 The Committee has not received further advice from the Premier or the Minister for Police to indicate that this position has changed.

## 2.2 The Committee's Inquiry

2.2.1 Despite previous rejection of the proposal that the PIC should be the sole agency with responsibility for oversight of police complaints, NSW Police, joined by the NSW Police Association, recommended a single agency model of oversight to the Committee's inquiry. The Committee heard considerable evidence from NSW Police and the NSW Police Association to the effect that the Ombudsman's oversight role largely pertained to minor matters and that a single agency should perform the roles carried out by the Ombudsman and the PIC. Given the magnitude of the changes that would result from implementing a single agency model, and the significant departure it represented from the positions taken by and the agreements reached between stakeholders during the Ministry's statutory reviews, the Committee resolved to give a full account of the arguments put for and against a single agency model of oversight.

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<sup>71</sup> Letter from the Chairman, Mr Paul Lynch MP, to the Premier, The Hon Morris Iemma MP, dated 20 March 2006.

<sup>72</sup> Letter from the Premier, The Hon Morris Iemma MP, dated 6 June 2006, to the Chairman, Mr Paul Lynch MP.

- 2.2.2 The NSW Police Association described the current system of oversight as “cumbersome and complex”. In the Association’s view the PIC has become “the pre-eminent expert police oversight body” and “has successfully shown itself to be an effective corruption fighter”. It recommended that there should be one specialist police oversight body, which should logically be the Police Integrity Commission. The PIC should continue to oversight allegations of serious misconduct, corruption and criminality, and investigate preventative strategies and processes.<sup>73</sup> The Association cited Operation Abelia as a good example of the PIC’s move into broader issues that would help police develop strategies for the management of officers to prevent problem conduct emerging. Such a “‘big picture’ operation will have a much more effective impact on the future of the policing profession than simply exposing aberrant behaviour”.<sup>74</sup> On the other hand, the Association proposed that the Ombudsman should continue to have a role in reviewing legislation concerning police powers but should not oversight police complaints.<sup>75</sup>
- 2.2.3 Similarly, NSW Police submitted that “in 2006 there is too much external oversight of police complaints and one external oversight agency too many”.<sup>76</sup> It argued that the roles of the oversight agencies overlap in key respects<sup>77</sup> and that, because of their overlapping roles it would be sensible and cost effective to have one external oversight agency with powers to investigate serious police misconduct and to keep under scrutiny the systems police use to manage complaints.<sup>78</sup>
- 2.2.4 Although NSW Police did not expressly state which body should fill the police oversight role, it was clear from the submission and evidence that their preferred single-agency model centred on the Police Integrity Commission. The NSW Police submission concluded:
- .... the Ombudsman’s current fragmented and historical oversight function is not a constructive model that meets police needs. NSW Police would prefer to respond to one agency with all holdings in relation to police misconduct, including that of which NSW Police is unaware, which is prepared to work with NSW Police to help it to meet challenges in the public interest.<sup>79</sup>
- 2.2.5 The traits sought by NSW Police in the single agency model were clearly associated with the PIC. Assistant Commissioner Carroll explained in his opening statement that:
- Mr CARROLL:** .... Although NSW Police does not seek to choose which agency it should be, it is a business necessity for NSW Police that the agency conduct e-business by the full use of the c@ts.i system; has all intelligence and other holdings in relation to NSW Police officers to be able to investigate serious misconduct but also can thematically look at emerging trends and work with NSW Police to put in place effective corruption prevention measures; follows a consistent and high level approach to auditing systems;

<sup>73</sup> Submission No.9. NSW Police Association, dated 2 June 2006, p.13.

<sup>74</sup> *ibid.*, pp.9-10.

<sup>75</sup> *ibid.*, p.13.

<sup>76</sup> Submission No.11. NSW Police, dated 1 August 2006, p.6.

<sup>77</sup> *ibid.*, p.2.

<sup>78</sup> *ibid.*, p.7.

<sup>79</sup> *ibid.*, p.18.

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and is overseen by an Inspector to reduce the current expenditure by NSW Police on legal advice from the Crown Solicitor.<sup>80</sup>

2.2.6 It also was apparent that the new oversight agency supported by NSW Police and the NSW Police Association would only focus on serious misconduct, and corrupt and criminal conduct. NSW Police claimed that the Ombudsman's jurisdiction was restricted solely to minor police misconduct matters, which should be the managerial responsibility of NSW Police. Assistant Commissioner Carroll explained this in his evidence:

**Ms BURNSWOODS:** But if the Ombudsman were withdrawn from the field would not a whole range of matters and a whole range of staff need to be added to the PIC to deal with the kinds of things that you are not denying the Ombudsman should deal with?

**Mr CARROLL:** Yes. If there was one agency there would have to be a review of what will be the arrangements—the business arrangements—of reporting serious misconduct, corrupt conduct and criminal conduct to that agency.

**Ms BURNSWOODS:** Which are the things that you really have not complained about today in relation to the Ombudsman. In your submission you do not really argue about serious complaints in relation to the criticisms you have made of the current process. You have concentrated on arguing about relatively minor matters and managerial matters.

**Mr CARROLL:** Yes, relatively minor matters and managerial matters. But that is overwhelmingly the role of the Ombudsman on those matters. The Ombudsman really does not deal with the serious end of the complaints. The serious end of the complaints is dealt with by the Police Integrity Commission.<sup>81</sup>

2.2.7 The major problem with this argument, however, is that the Ombudsman's jurisdiction is not confined to minor police misconduct matters. In fact, it is the Ombudsman that oversees nearly all serious police misconduct matters given the PIC's narrow investigation focus. Regard must be had to the primary role of NSW Police in the investigation of serious police misconduct.<sup>82</sup> This is evident from the statistical information available in the Ombudsman's Annual Report, which correlates with the PIC's statistical reporting on its own investigative activities. (See below). As such, the value of oversight by the Ombudsman becomes apparent.

2.2.8 Table 1: Action taken by NSW Police and NSW Ombudsman in response to formal complaints about police.<sup>83</sup>

Action Taken	2004-05	2005-06
Investigated by Police and oversighted by NSW Ombudsman	2,440	2,131
Resolved by Police through conciliation and oversighted by NSW Ombudsman	291	248
Assessed by NSW Ombudsman as local management issues and referred to local commands for direct action	768	524
Assessed by NSW Ombudsman as requiring no action (eg, alternate redress available or too remote in time)	868	930

<sup>80</sup> Transcript of evidence, 24/8/06, p.2.

<sup>81</sup> *ibid.*, p.14.

<sup>82</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, p.3.

<sup>83</sup> NSW Ombudsman *Annual Report 2005-06*, p.39



Table 2: Decisions made by the PIC regarding Category 1 complaints<sup>84</sup>

PIC Cat.1 Complaints	2004-2005	2005-2006
Investigate	7*	17***
Oversight	18**	9****
Refer	472	574
Defer	29	44
nfa	15	28
other	0	0

As can be seen for 2004-05, the PIC reviewed only 18 of the 4,179 formal complaints received i.e. 0.4%.<sup>85</sup> Only 490 Cat.1 complaints were assessed by the PIC in 2004-05.<sup>86</sup>

\* The 7 matters investigated included 2 Category 2 complaints

\*\* The 18 matters oversighted included 6 Category 2 complaints

\*\*\* The 17 matters investigated included 4 Category 2 complaints

\*\*\*\* The 9 matters oversighted included 2 Category 2 complaints

### 2.2.9 The Ombudsman submitted to the Committee that:

In 2004-2005, the Police Integrity Commission investigated or oversighted only 25 of the most serious complaints – Category 1 complaints. 472 Category 1 complaints were referred to NSW Police for investigation with oversight by the Ombudsman. These statistics have been reasonably consistent for many years.

Overwhelmingly, the Ombudsman is the oversight agency for complaints and investigations concerning matters such as conspiracies or cover-up, drug offences, bribery or extortion allegations, perjury allegations and allegations concerning fabrication or suppression of evidence. These are matters that should be known by the commander of the Professional Standards Command. A primary reason for this is that many of the Professional Standards Command's investigations are the subject of Ombudsman oversight.<sup>87</sup>

### 2.2.10 This advice was reiterated during the public hearings when the Assistant Ombudsman (Police), Mr Simon Cohen, told the Committee:

**Mr COHEN:** .... The Ombudsman's role in the oversight of NSW Police is primarily concerned with ensuring that complaints about the conduct of police officers are dealt with in a timely and effective manner. Some 99 per cent of all notifiable complaints, including criminal matters, corruption issues, and other misconduct complaints, are oversighted by the Ombudsman with investigation by police commanders. Almost 95 per cent of the most serious complaints—Category One complaints, including police perjury allegations and complaints about interfering in internal investigations—are investigated by police commands, including the Professional Standards Command, with direct oversight by the Ombudsman.<sup>88</sup>

### 2.2.11 The PIC clarified the respective roles of each agency as follows:

Consistent with the recommendations of the Royal Commission – and subsequent government policy – the roles for the Commission and the Ombudsman in the existing police oversight system are different, yet complementary. The Ombudsman is primarily concerned with issues of administrative efficiency, complaint handling and decision

<sup>84</sup> Police Integrity Commission, *Annual Report 2005-06*, p.37

<sup>85</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, p.7

<sup>86</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.22

<sup>87</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, pp.16-17.

<sup>88</sup> Transcript of evidence, 24/8/06, p.51.

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making with NSW public sector agencies, including NSW Police. It is a complaints administration body where complainants have certain legal rights to be informed of action taken, there is regular communication with complainants and relative openness. Investigation of complaints is not a substantive role of the Ombudsman and tends to concern complaints arising from day to day policing as distinct from corruption.

The Commission, however, is a specialist investigative agency with special powers and resources to assist in its role to detect, investigate and prevent police corruption. The Commission's investigations are usually covert and continuing contact with complainants is unlikely. Complaints administration is not a substantive role for the Commission but rather a means for facilitating the Commission's role in investigations and its focus on serious police corruption.<sup>89</sup>

2.2.12 The PIC considered that the current oversight system effectively addressed the two different but complementary functions of high volume complaints administration and the investigation of serious police corruption. It reasoned that:

- (a) there are significant differences in the techniques and resources applied in complaint handling and corruption investigations. A merged organisation would necessarily be comprised of two discrete parts each with a different focus, approach and culture – two organisations in all but name only. The benefits over the current arrangements are not immediately apparent;
- (b) the current arrangements allow the Commission complete discretion to focus its efforts and specialist powers and resources on the most serious forms of corruption – the very reason for its establishment. Its role is not diluted by legislated obligations to manage a complaint handling process;
- (c) the arrangements are flexible, allowing the Commission, in consultation with the Ombudsman, to review those police misconduct investigations which are particularly relevant to its work or where it has an advantage over the Ombudsman in doing so, thereby eliminating duplication of effort;
- (d) the separation of the functions in two agencies means that the functions are not competing for resources;
- (e) the exclusion of former NSW Police officers from the staff of the Commission enhances the perception of independence – the Office of the Ombudsman has no such prohibition on employment of former NSW Police officers;
- (f) the notion of a “one-stop shop” is largely illusory given that a range of other agencies with an oversighting role, such as the Audit Office and Work Cover would be excluded. In any case, the benefits of a “one-stop shop” are readily accommodated through consultation and a free flow of information. The Commission has access to all relevant complaints information.<sup>90</sup>

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<sup>89</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, p.3.

<sup>90</sup> *ibid.*, pp.4-5.

- 2.2.13 The PIC's description helpfully delineates its role from that of the Ombudsman but it should be noted that the Ombudsman's Office does directly investigate a small number of police complaints. In 2004-05 the Office of the Ombudsman conducted 23 direct investigations into police complaint investigations and complaint handling systems.<sup>91</sup> It also monitored 26 investigations during the same period. The monitoring process generally involves Ombudsman Officers attending all or some of the interviews conducted for the complaint investigation and monitoring its progress.<sup>92</sup>
- 2.2.14 Experience has shown that duplication of effort has not proven to be a problem because of regular communication between the two agencies at all levels.<sup>93</sup>
- 2.2.15 The Committee, therefore, found the NSW Police claim that significant overlap exists between the roles of the Ombudsman and the PIC is not sustained. The roles performed by each agency are quite distinct and separate, which is apparent from the relevant legislation and performance statistics. Assistant Commissioner Carroll's argument relies on the premise that the Ombudsman oversees solely minor police complaints and infers that the PIC oversees and investigates serious police misconduct. However, the material available to the Committee does not support these claims.
- 2.2.16 The Chairman endeavoured to clarify that this was the case during the public hearing with NSW Police. Mr Lynch questioned Assistant Commissioner Carroll on the respective roles and functions of the PIC and the Ombudsman's Office, and challenged the contention that significant overlap was a feature of the oversight system:

**CHAIR:** Assistant Commissioner Carroll, in your opening statement, one argument you used in support of moving towards the one-body model was that the Ombudsman and the Police Integrity Commission were doing the same sort of thing, were the same sort of body. I have to challenge you on that. To me that seems to be quite wrong. The bodies are certainly very different, are they not? Is it not the case that your written submission makes the point that they are very different and have very different charters: one oversees complaints and the other does investigative work with dedicated investigative staff and investigative powers and investigative budgets. Are they not very different bodies?

**Mr CARROLL:** There are some similarities, but they are different in the functional roles, but there are also some similarities. The Ombudsman does conduct, as I indicated in my submission, royal commission type inquiries under its Act, the same as PIC. They both report to Parliament. On occasions both the Ombudsman and the PIC agencies have investigated the serious end. What you said it is correct: PIC does adopt a much more proactive approach in relation to the conducting of high-level investigations. That is what my command does, the Professional Standards Command. That is where we would like to go. We would like to be able to work with agencies to come up with appropriate strategies to be able to identify endemic or systemic issues that are causing NSW Police problems, and work together to come up with the appropriate strategies to be able to reduce, if not eradicate, the type of conduct or behaviour issues that have been raised.

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<sup>91</sup> NSW Ombudsman, *Annual Report 2004-05*, pp.45-46

<sup>92</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.13

<sup>93</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, pp.4-5.

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It is unfortunate that we have not been able to get that....

2.2.17 Having acknowledged, the distinctions between the role and functions of the Ombudsman's Office and the PIC, Assistant Commissioner Carroll then argued that the fundamental issue for consideration was the formal processes mandated by Part 8A of the Police Act:

**Mr CARROLL:** .... Let me say this: it is about the process and it is about the legislation that is in place that in fact requires the Ombudsman to do some of these things that I have outlined in my submission today.<sup>94</sup>

2.2.18 But the Committee found this particular interpretation of the legislative requirements for the handling and investigation of complaints to be inaccurate.

2.2.19 The Ombudsman had difficulty in discerning NSW Police's objective – was it a reduced role for the Ombudsman or a single oversight agency? Regardless, the Ombudsman asserted that there was a lack of evidence to support the changes sought by NSW Police:

Added to this is the evidence of senior police which suggests a lack of a basic understanding of complaints handling in NSW Police. For example, evidence that serious complaints are handled in the same manner as less serious matters is clearly not correct. Another example is the evidence of the commander of the Professional Standards Command, who did not know that the Ombudsman oversighted almost all serious complaints.

If senior police do not fully understand the complaints process, it is difficult to rely upon that evidence to support a reduced role for oversight agencies in ensuring effective handling of complaints.<sup>95</sup>

2.2.20 The Committee also found it difficult to accept the logic of the NSW Police proposal that a single agency oversight model was needed because of the unnecessary level of formality with which complaints are dealt with.

2.2.21 Ms Burnswoods questioned Assistant Commissioner Carroll further on the connection drawn between the level of formality required by the complaints legislation when dealing with minor matters and the NSW Police proposal for a single oversight agency:

**Mr CARROLL:** I see from the Police Integrity Commission's inquiries that they do not unnecessarily bog NSW Police down in overwhelming correspondence in relation to matters.

**Ms BURNSWOODS:** Is that not because their job is different; that they are not a complaints handling body in the way that the Ombudsman is?

**Mr CARROLL:** They are a complaints handling authority. We have requirements to report all of our serious matters, Category One matters to the Police Integrity Commission. To answer your question, the manner in which the Police Integrity Commission uses their oversight powers and functions seems to be a lot less intrusive and to the point in relation to what the issues are as opposed to subjective views of individuals as to what is not or what should be.

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<sup>94</sup> Transcript of evidence, 24/8/06, pp.9-10.

<sup>95</sup> Submission No.10a, NSW Ombudsman, dated 18 September 2006, pp.4-5.

**Ms BURNSWOODS:** You mean subjective views in the Ombudsman's Office.

**Mr CARROLL:** Subjective views, yes, from the Ombudsman's Office. The Ombudsman could say exactly the same about NSW Police. I make that point. We have got 80 local area commanders out there who make subjective views in relation to matters as well. But in the Ombudsman's Office there are a number of people who attend to all of these complaints. So what you do is open up the different range of views in relation to a matter. My point is that I could sit down and probably do a very good brief of evidence in relation to a criminal matter. I could then hand it to the Commissioner—and if he could not improve it within five or 10 minutes I would be very, very surprised—and then hand it to somebody else. This is what I mean about the subjective views and the micro management of individual matters that will not take us to an outcome that is meaningful.<sup>96</sup>

2.2.22 Assistant Commissioner Carroll repeated this description of the input by the Ombudsman's Office in the police complaints system at a later stage of his evidence on the handling of minor police complaints, particularly in relation to matters that are termed local management issues (LMIs). The Ombudsman responded to the description of the Office's input as "micro-management" in his second submission to the inquiry, arguing that the description is problematic: the Office was meeting its statutory role and its handling of LMIs should not consume significant police resources.<sup>97</sup> These issues are examined in detail in section 5.7 of this report, which covers the handling of complaints by NSW Police local commands and the extent of oversight by the Ombudsman's Office.

2.2.23 It is the view of the Committee that the description given by NSW Police of the Ombudsman's role in the police complaints system confuses the statutory basis of the scheme and misrepresents the roles performed by the Ombudsman and the PIC. The submission and evidence from the Inspector of the PIC, the Hon James Wood AO QC offers a more accurate representation of the oversight structure. He emphasised the importance of preserving the distinct corruption investigation role of the PIC and observed:

In the implementation of the system the PIC has accepted, as its charter requires, the primary role of the corruption fighting agency. It has the staff and powers which are needed for that purpose, and the adoption of this primary role is, in my view, important in preventing it from being diverted into the management of lesser complaints, particularly service complaints, which are more appropriate for a management approach and outcome, or for internal investigations.<sup>98</sup>

2.2.24 The Inspector also referred to the capacity for the PIC to monitor those matters referred for investigation by NSW Police, which raise concerns of seriousness or systemic problems. An allied role is to draw on intelligence derived from its direct investigations and monitoring functions, in order to research strategic or management projects that can contribute to an improvement in NSW Police's attitude to professionalism, and its anti-corruption strategies. The Inspector considered that:

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<sup>96</sup> Transcript of evidence, 24/8/06, pp.13-14.

<sup>97</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.13.

<sup>98</sup> Submission No.5. Inspector of the Police Integrity Commission, dated 16 May 2006, p.5.

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these separate strategies are well balanced, and .... any move towards reorganisation of the complaint investigation or oversight structure, particularly one that would exist under a single umbrella would risk upsetting that balance.<sup>99</sup>

2.2.25 He stressed the importance of the Ombudsman's ability to provide general oversight of Police management of complaints, conduct a small number of its own investigations, and conduct research. In the Inspector's opinion the independent role of each agency should be monitored to ensure that each can focus on their primary purpose. Bringing these different purposes under one umbrella would "cause tensions and conflicting priorities that could only be counterproductive".<sup>100</sup>

2.2.26 The Inspector also considered that the Ombudsman and the PIC were suited to their respective roles. The Ombudsman would be able to deal with the Police "in a somewhat more comfortable and cooperative environment than the PIC whose interest is more attuned to a law enforcement and a potentially adversarial role, at least in relation to those officers within the NSW Police who are suspected of engagement in corrupt and/or seriously unlawful behaviour." Although the Inspector clarified that he was not suggesting that relations between NSW Police and the PIC were anything other than cooperative, he foreshadowed that:

.... there will be occasions where adverse interests and pressures, of a serious kind, will arise which justify the PIC adopting a relationship with the Police which is a step back from that of the Office of the Ombudsman.

The latter agency can give greater attention to mediating difficulties, and adopting other strategies, which might lead to a less formal and quicker outcome, with consequent benefits for complainants and for the overall management of the Service. Moreover, it is able, through the reporting and records systems to collect and compile meaningful statistics on a wide range of matters of relevance for the effective management and integrity of the Service, and for the treatment of those members of the public who became the subject of its attention. These general management monitoring, and oversight activities, are not the kind of functions that should take up the resources and time of a focussed anti corruption agency such as the PIC.<sup>101</sup>

2.2.27 The Inspector advocated preservation of the status quo with:

- the PIC performing an essentially investigative role in dealing with corruption and serious Police misconduct, but also maintaining its other functions including the development of prevention and educative programmes (subject to investigation demands and sufficient resources);
- the Ombudsman maintaining its role in oversighting the investigation by Police of those matters that appropriately qualify as complaints (other than minor grievances suitable for local management), assisting in the resolution of complaints, investigating matters that should have been but were ineffectively investigated by Police, keeping the Police complaints handling system and its system for management of minor grievances under scrutiny, and otherwise fulfilling its statutory audit functions (in relation for example to the use of Listening Devices and Telecommunication Interception).<sup>102</sup>

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<sup>99</sup> *ibid.*, pp.5-6.

<sup>100</sup> *ibid.*, p.6.

<sup>101</sup> *ibid.*, p.7.

<sup>102</sup> Submission No.5a. Inspector of the Police Integrity Commission, dated 7 September 2006, p.3.

2.2.28 The Committee agrees with the Inspector's view.

## 2.3 False Economies

2.3.1 Commissioner Moroney advised the Committee that:

... it is my view that the oversight system in NSW can be refocused to recognise the significant improvements within NSW Police while delivering dividends to NSW in the form of reduced expenditures. The change would necessarily lead to increased efficiency of oversight without a reduction in effectiveness.<sup>103</sup>

2.3.2 According to Assistant Commissioner Carroll,

The current model is simply a duplication of resources and efforts in relation to the same subject matter—Part 8A complaints,

2.3.3 and,

A change to a one-agency model will serve to free up considerable police resources from unnecessary and burdensome processes and still provide a level of oversight.<sup>104</sup>

2.3.4 However, a single agency model of oversight would involve a transfer of responsibilities and resources if the Ombudsman were to be removed from the existing scheme. The Committee was not provided with any figures from NSW Police as to the estimated savings or losses that would be involved in the proposed single agency model. In the absence of any such calculations, the Committee is concerned that the case for a PIC single-agency model revolves around questionable short-term administrative efficiencies at the expense of long-term objectives.

2.3.5 Transferring the oversight work undertaken by the Office of the Ombudsman to the PIC runs the real risk of swamping the PIC with complaints oversight at the expense of its targeted corruption investigation focus. The PIC provided the following statistics:

... complaints of police misconduct remain high. While they dropped from 4,998 in 2000-01 to 3099 in 2002-03 this drop was largely attributable to a change in the definition of a complaint – local management issues no longer being included. Since 2002-03 there has been an increase in complaints to 4179 in 2004-05. The number of complaints of police misconduct made is also quite variable. A variation of 30%, or more, over a 1-3 year period is not uncommon.<sup>105</sup>

2.3.6 Consequently, while the PIC acknowledged there might be some appeal in a one-stop-shop single agency oversight model, it advised:

Aggregation of the corruption investigation and complaint administration functions in a single agency runs the risk that one function will be emphasised over the other. Individual members of the public are largely untouched by serious corruption, however, many come into contact with day to day policing operations. A proportion of those

<sup>103</sup> Letter from the Commissioner of Police, Mr K Moroney, to the Chairman of the Committee, Mr Paul Lynch MP, dated 17 July 2006.

<sup>104</sup> Transcript of evidence, 24/8/06, p.3.

<sup>105</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, p.4

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contacts give rise to a complaint. The public has high expectations of the treatment of complaints, and, for the taking of action to reduce corruption, at least at a conceptual level. Resource limitations, however, could make it difficult to meet expectations for both and it will be the capacity to conduct critical, yet discretionary, investigations that will be put at risk in order to manage a significant, growing and highly variable complaints administration process.<sup>106</sup>

2.3.7 However, the Commissioner of the PIC presented a different perspective when giving evidence. He recognised that it was possible to merge the two roles in one agency but argued that to do so effectively would require four essentials: will, resources, management and independence. An amalgamation would not mean significant savings:

**Mr GRIFFIN:** .... What I am trying to say is that the basic building blocks need to be in place, and that once they are how you structure it—assuming it is an effective structure, and the one we have is one effective structure, and you can imagine others—probably does not matter. If we took over all the work of the Ombudsman, or the Ombudsman took all the work of PIC, you would need pretty much the same resources, the same number of people, the same technical skills, the same investigative skills as we now have, and you would need to have managers who could manage the specialist skills that we now deal with and the more structural machine that the Ombudsman uses. I do not think it would make much difference to the end result, assuming that the work that is being done is properly aimed.

**CHAIR:** So it does not matter whether the Police submission gets up or not?

**Mr GRIFFIN:** I do not think it does, no.<sup>107</sup>

2.3.8 Nevertheless, he concluded that the current system worked and there was a lot to be said for that:

**Mr GRIFFIN:** The Ombudsman's role and the PIC's role at the moment are complementary. I do not think there is any doubt about that. We work in different pools. If we were to take on now all the work of the Ombudsman we would need resourcing to deal with it. Quite clearly, we cannot deal with it the way we are. The question of focus would need to be managed. We would have to be able to say the work we do, which is specialist and quite technical investigation work, should not suffer at the expense of putting our staff on to the complaints management stuff, and the work that is now done by the Ombudsman that is now in our division of complaints should not suffer either.

The fact that this is working at the moment is a fairly significant point. There is perhaps an area where there is a slight loss, a marginal loss, because we say we overcome the problems of there being two agencies by consultation....

.... The James Wood approach to dividing it—it does defy commonsense and it is very lateral thinking but it does function. I think that is something to be said in its favour. I still though think the four main points I make—will, resources, management and independence—are the things that matter. I do not think anything else matters a lot. I think if you are fiddling around the margins with structures, savings of very small percentages of the total probably does not matter. The important thing about the management would be that you look at the substance of problems, not the form.<sup>108</sup>

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<sup>106</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, p.4.

<sup>107</sup> Transcript of evidence, 24/8/06 p.44.

<sup>108</sup> *ibid.*, pp.43-44.



2.3.9 Likewise, the Inspector also stressed the fact that the current system was a workable one.<sup>109</sup>

2.3.10 The Commissioner did pose some difficulties that could arise from the volume of complaints to be managed in an amalgamated agency:

**CHAIR:** .... My concern is that if you then move away from the model that allows a stand-alone, specially dedicated agency, with special powers to go after the bad cops, then the chances of them being able to continue to do that becomes a bit more doubtful.

**Mr GRIFFIN:** That is certainly unarguable. The danger is that if you amalgamate and you swamp one agency with a different form of complaints, or a huge increase in the number of complaints, you have to dilute, because the work you do in the investigative area is elective. You have to manage complaints, and you dilute the work of that elective area, and you fail at the pointy end. I am sure that is true. That is why I go back to the resourcing. If it is properly resourced, that is not an issue. That is why I go back to those four things. If you have got them, you are all right. Probably, in the real world, it is never going to be perfectly resourced, and that may make everything a real issue.<sup>110</sup>

2.3.11 Potential problems arising from a single agency model also were pointed out by the Inspector who gave evidence of negative consequences in terms of resource management. He suggested that any potential efficiencies, which could result from information sharing, could be obtained through the existing complaints databases and told the Committee:

**Mr WOOD:** .... There is, of course, a case to be made to put everything under one supervising or monitoring agency. However, that has a real problem in that it would perhaps tie up too many of the agency's resources, which should be focusing on corruption and serious misconduct. The one advantage of having the two together is the capacity for there to be intelligence emerging from a pattern of complaints and so on. However, that can be achieved as long as the PIC examines the c@ts.i system and what is coming through the Office of the Ombudsman or from the police. I would prefer to see much the same structure as currently exists. There might be a lot of room for improvement to ensure it is working together, but I would be concerned about bringing the two under the one umbrella.<sup>111</sup>

2.3.12 According to the Inspector, a single agency would require two divisions to perform the separate tasks currently undertaken by the Ombudsman's Office and the PIC, which would involve a significant increase in resources. He was of the view that because of the volume of complaints "the corruption fighting function would be lost"<sup>112</sup>, a point the Inspector reiterated in his supplementary submission:

If brought under one umbrella, there is a risk of the critical function now assigned to the PIC being swamped by that currently assigned to the Ombudsman. While it could be achieved, there would need to be a significant increase in PIC's resources, and possibly the creation of two divisions. That would require a very delicate readjustment of the relationship between the PIC and the Police, since the more direct law enforcement role required for corruption investigation, would not sit entirely happily with that required for

<sup>109</sup> Transcript of evidence, 24/8/06 p.21; see also Submission No.5a. Inspector of the Police Integrity Commission, dated 7 September 2006, p.5

<sup>110</sup> Transcript of evidence, 24/8/06 p.45.

<sup>111</sup> *ibid.*, p.21.

<sup>112</sup> *ibid.*, p.22.

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the area of activity now consigned to the Ombudsman, which is better suited to encouraging or assisting longer term organisational change and improvement in the service provided by the NSW Police.<sup>113</sup>

### 2.3.13 Analogous jurisdictions (QLD, WA, VIC)

2.3.13.1 NSW Police referred to analogous bodies in other jurisdictions to support a single-agency oversight model. Assistant Commissioner Carroll argued that police oversight in NSW far exceeds that of police in other Australian States or Territories, which by comparison do not involve two agencies overseeing complaints management by police. However, by presenting his case in this way, the Assistant Commissioner failed to acknowledge that the oversight models found in other jurisdictions, although only one agency, in effect, often combine the different Ombudsman and PIC roles as separate divisions of the one body: a structure that is not without its own problems. The Committee found that the most relevant examples available do not enable direct comparisons.

#### 2.3.13.2 *The Queensland Crime and Misconduct Commission*

For instance, in Queensland in 2002 the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) were merged to form a new body called the Queensland Crime and Misconduct Commission (CMC). However, the synergies achieved from this merger were the outcome of circumstances particular to the agencies involved. The CJC could not be considered to perform a role similar to the oversight role performed by the Office of the Ombudsman. In fact, the CJC's powers and functions in many ways were more akin to those of the PIC.

2.3.13.3 The CJC had an anti-corruption focus and originally had a statutory jurisdiction to investigate organised and major crime but exercised this function only in relation to matters that could not be effectively discharged by the Police Service or other law enforcement agencies. The QCC was a crime commission agency created in 1997, which targeted high-risk criminal activity (modelled on the NSW Crime Commission). The creation of the Crime and Misconduct Commission amalgamated anti-corruption and crime commission functions into one organisation.<sup>114</sup>

2.3.13.4 The CMC actually performs roles that are carried out in New South Wales by the NSW Crime Commission, the Independent Commission Against Corruption, the Police Integrity Commission, the Police Complaints Section of the Ombudsman's office and the NSW Police Witness Protection unit. It also has an independent research unit.<sup>115</sup> The new CMC retained the CJC's public sector wide anti-corruption jurisdiction.

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<sup>113</sup> Submission No.5a, Inspector of the Police Integrity Commission, dated 7 September 2006, p.3.

<sup>114</sup> Joint Standing Committee on the Anti-Corruption Commission, *National Conference of Parliamentary Oversight Committees of Anti-corruption/crime bodies*, Report No. 7, 36th Parliament, Western Australia 2003, pp.93-94. Paper given by Mr Brendan Butler SC, Chairperson of the CMC, entitled "The Pros and Cons of Amalgamation of Crime and Corruption Functions".

<sup>115</sup> *ibid.*, p.99.

2.3.13.5 Preserving the independence of the misconduct function (which involves the oversight and investigation of police misconduct) and the crime function within the one body required the following structure:

Within the structure of the CMC the performance of the crime function retained a significant practical independence from the misconduct function. The flow of information between the two functional areas is strictly controlled. The investigative areas are separately located on different floors and have different permanent personnel. Each operates independently from the other and information systems and operational management practices create chinese walls within the organisation. Information is disseminated between crime and misconduct through a Strategic Intelligence Unit where intelligence officers determine if any information received by one function should be disseminated to the other. This has resulted in a careful control of information and the operation of a need to know principal within the different areas of the Commission.

Both the legislative structure and the administrative and management processes within the CMC have maintained the operational independence of the crime and misconduct functions. This approach continues in the relationship the Commission has with the QPS [Queensland Police Service]. The legislation provides for two Assistant Commissioners, one Misconduct and the other Crime who head the respective functions. They each have regular liaison meetings with their counterparts in the QPS, but those meetings are separate and different.<sup>116</sup>

2.3.13.6 In 2003, after 20 months of operation for the CMC, Mr Brendan Butler SC, the CMC's first Chairman (formerly Chairperson of the CJC), stated that the amalgamation of the CJC and QCC was achieved without any apparent adverse consequences and with significant benefits flowing to the crime function. However, he observed that the extent to which crime and anti-corruption commissions can be effectively amalgamated within the same body will depend very much on the needs of a particular jurisdiction and local circumstances.

2.3.13.7 The main synergies that flowed from the Queensland amalgamation pertained to the new resources and powers available for the CMC's crime function, which had not been previously available to the QCC. For instance:

- the QCC had no surveillance and technical resources of its own;
- the QCC had no in-house forensic computing expertise;
- the strategic intelligence capacity of the CJC and the QCC were merged into a central unit in the new CMC;
- the crime function had access to broader administrative and IT resources in the larger commission;
- the CMC's research capability was re-structured to incorporate a new focus on crime research and crime prevention in Queensland;
- the new Criminal Proceeds Confiscation Unit created within the CMC following the introduction of a civil based confiscation scheme, was established without the need for additional funding because of the efficiencies achieved during the merger.<sup>117</sup>

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<sup>116</sup> *ibid.*, p.96.

<sup>117</sup> *ibid.*, p.98.

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2.3.13.8 It is significant when assessing the NSW Police arguments during this Committee's inquiry, that the primary synergies in the Queensland experience resulted from combining the crime and anti-corruption investigation functions, rather than the combination of police complaint handling and anti-corruption investigation functions.

2.3.13.9 *Western Australia*

The Western Australian and Victorian jurisdictions similarly highlight the difficulties associated with trying to draw direct comparisons between states.

2.3.13.10 The WA Corruption and Crime Commission (CCC) was established on 1 January 2004 with a public sector wide jurisdiction covering public officers in more than 550 agencies, including government departments and boards, universities and local government. Its two main purposes are to combat and reduce the incidence of organised crime (by granting the Police Commissioner exceptional powers rather than conducting investigations itself) and to reduce the incidence of misconduct in the public service through corruption prevention, education and research activities. The functions of the CCC relate to the investigation of misconduct and organised crime, and prevention and education work.<sup>118</sup> Therefore, like the CMC in Queensland, the CCC represents the combined jurisdiction of bodies such as the PIC, the ICAC, the NSW Crime Commission and the Ombudsman (in respect of police misconduct).

2.3.13.11 It also possesses the extensive powers of an investigative commission, including the capacity to carry out telecommunications interception, hold public examinations, use surveillance devices, undertake controlled operations, assume identities, and conduct integrity tests. Most of these powers were not available to its predecessor, the Anti-Corruption Commission (ACC). The CCC can exercise its functions in relation to matters referred for investigation from the WA Police Royal Commission and the ACC. The type of conduct covered includes police misconduct and conduct relating to a lack of honesty or impartiality in performing a public duty or involving a breach of trust, provided that the conduct could also constitute a breach of any written law or constitute grounds for dismissal.<sup>119</sup>

2.3.13.12 *Victoria*

The Victorian Office of Police Integrity (OPI) was established in November 2004 as a new independent, statutory body with jurisdiction to investigate police corruption and misconduct, and enhance the integrity and accountability of Victoria Police. Previously, the Ombudsman had the role of monitoring and reviewing complaint investigations conducted by police but could investigate complaints only in limited circumstances. Prior to the establishment of OPI, there was no investigative commission for police corruption.<sup>120</sup>

2.3.13.13 OPI can conduct "own motion" investigations into the conduct of a Victorian police officer, police corruption or serious misconduct generally, and any of the

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<sup>118</sup> <http://www.ccc.wa.gov.au/about.php>

<sup>119</sup> *ibid.*

<sup>120</sup> <http://www.opi.vic.gov.au/OPI2005AnnualReport.pdf> p.6.

policies, practices or procedures of the Victoria Police or a member of the Victoria Police, or the failure of those policies, practices or procedures.<sup>121</sup> The Office has royal commission powers and can use surveillance devices and assumed identities. Under forthcoming legislation it will be empowered to conduct telecommunication interceptions and controlled operations.<sup>122</sup>

2.3.13.14 While the Victorian OPI may offer an example of a body performing the type of roles undertaken in NSW by the Ombudsman and the PIC, its development has occurred in the context of recent events and developments in Victorian policing, and stems from measures originally taken to strengthen the role of the Ombudsman's police jurisdiction in the absence of a dedicated investigative commission for police such as the PIC. Although the Office is separate and independent from that of the Victorian Ombudsman, it is a statutory requirement that the Director of OPI must be the same person as the person who holds the office of Ombudsman.<sup>123</sup>

### 2.3.14 **Conclusion**

2.3.14.1 It is the view of the Committee that there is limited benefit in looking to examples of watchdog mergers in other jurisdictions as a guide to possible mergers in New South Wales. The bodies involved are not strictly analogous to local bodies and the critical factors that will determine the merits of a watchdog merger in New South Wales will be specific to circumstances within this State. The current oversight structure is a direct product of the history of policing in New South Wales and the reforms that arose from the Wood Royal Commission to address the inadequacies of the previous system for dealing with police misconduct and corruption.

2.3.14.2 Also, the merged watchdog agencies in other jurisdictions within Australia were established relatively recently, none having been in operation for a period of more than five years. Consequently, the Committee considers that the advantages and disadvantages flowing from the structures in each jurisdiction may not be completely evident at this stage.

2.3.14.3 In the absence of a full quantification and analysis of the effects of a rationalised oversight model the Committee is reluctant to accept the argument that a single-agency model will result in substantial savings, including savings to NSW Police. The experience of other jurisdictions shows that a single oversight agency involving anti-corruption investigation, and complaint monitoring and investigation functions, can require the creation of separate divisions within the one organisation.

2.3.14.4 A single oversight agency in New South Wales would still need to replicate the complaints oversight and investigation role currently performed by the NSW Ombudsman's Office, for which skilled complaint handling staff and resources are needed. The combined agency also would need to preserve the strict security

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<sup>121</sup> *ibid.*, p.10.

<sup>122</sup> [http://www.opi.vic.gov.au/O1788\\_Annual\\_Report\\_05\\_06.pdf](http://www.opi.vic.gov.au/O1788_Annual_Report_05_06.pdf) p.23.

<sup>123</sup> *Police Regulation Act 1958* s.102A.  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/pral958187/s102a.html](http://www.austlii.edu.au/au/legis/vic/consol_act/pral958187/s102a.html)

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regime surrounding the PIC's investigations, including the embargo on engaging serving or former NSW Police: an embargo that has this Committee's full support and does not apply to the Ombudsman's Office in its complaint handling role. Notably, in the CMC model, which draws on the historical relationship between the CJC and the Queensland Police Service, a large number of serving police officers are employed as investigators and in other roles with the CMC.<sup>124</sup>

## 2.4 The Value of the present Oversight System

2.4.1 Any case for complete police self-regulation is a naïve one that overlooks the history of policing. In the context of New South Wales reference must be had to the Wood Royal Commission. As Dr Andrew Goldsmith has noted:

....to conceive of perfect self-regulation by police forces in the face of the historical evidence is simply utopian, so that the disappearance of a role for external review in the complaints process is for all intents and purposes inconceivable.<sup>125</sup>

2.4.2 None of the stakeholders to the Committee's inquiry put the case for complete self-regulation. However, there was considerable debate during the inquiry about the extent of police self-regulation that should exist in New South Wales. The Committee heard arguments from both NSW Police and the NSW Police Association for increased self-regulation of police misconduct. Diametrically opposed views were expressed by the Public Interest Advocacy Centre (PIAC) and NSW Council for Civil Liberties, who presented the case against self-regulation.

2.4.3 The Public Interest Advocacy Centre submitted that the legislative scheme for making police complaints, set out in Part 8A of the Police Act, is fundamentally flawed as the current system is ostensibly one of self-regulation.<sup>126</sup> PIAC also recommended that independent police officers, not associated with the station or local command subject to complaint, should undertake the investigation into a complaint. It proposed that the Police Commissioner should require all investigation officers to demonstrate that they do not know and do not have a close relationship with the officer the subject of complaint.<sup>127</sup>

2.4.4 The President of the NSW Council for Civil Liberties, Mr Cameron Murphy gave evidence that his organisation was concerned about the lack of independent investigation of Category 2 police complaints:

**Mr MURPHY:** We are of the view that there is a serious problem in the way that Category 2 complaints are dealt with. The Ombudsman and the Ombudsman's Office are doing a fantastic job of investigating complaints, but they are dealing with those matters in circumstances where they either do not have sufficient legislative scope to fully investigate them or do not have the funding to do that adequately.

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<sup>124</sup> At the time of his conference paper, Mr Butler noted that the CMC had a police complement of 80 including officers from the rank of Assistant Commissioner down, reflecting a high level of commitment over a long period of time by senior police management to maintaining the relationship with the commission. Joint Standing Committee on the Anti-Corruption Commission, *National Conference of Parliamentary Oversight Committees of Anti-corruption/crime bodies*, Report No. 7, 36th Parliament, Western Australia 2003, p.97.

<sup>125</sup> A Goldsmith, op. cit. p.56.

<sup>126</sup> Submission No.3. Public Interest Advocacy Centre, dated 15 May 2006, p.1.

<sup>127</sup> *ibid.*, p.2.

The Police Integrity Commission has about three times the resources of the New South Wales Ombudsman, and in our view the Ombudsman is reliant on local area commanders investigating complaints and simply oversighting that process. That leads to a situation where most people who complain to our organisation and discover this cannot believe that police are effectively investigating police and that the Ombudsman is not conducting the full investigation independently of police.<sup>128</sup>

2.4.5 In the Council's view there were specific impediments to proper internal police investigation of serious Category 2 complaints:

**Mr MURPHY:** .... there is a clear conflict of interest because at the moment Category 2 complaints—the complaints that are about serious police corruption that should go to the Police Integrity Committee—they are dealt with by the Ombudsman. The process is that the Ombudsman will refer the complaint to the local area commander to investigate. The local area commander who investigates that has performance targets and in their packages they are able to receive a 12.5 per cent bonus if they reach the performance targets, and those targets include, amongst other things, reducing the level of complaints.

So it creates a conflict of interest because there is an interest for the police in reducing the number of complaints or not sustaining them, and they are the people who are primarily involved in the investigation. The Ombudsman simply, it seems to us, oversights that process. So they can audit it, can look at the response from the local area commander and can further investigate, if that is necessary, but, .... [it] just does not have the resources or the funding to go and investigate all of those matters themselves and to do it properly. In our view it would be better to have a single complaints body or certainly to have the Ombudsman investigating all Category 2 complaints themselves; not relying on local area commanders but conducting an independent investigation.<sup>129</sup>

2.4.6 The Council's concerns stems from what it perceives to be the capacity for such statistical information to be manipulated, for example, through the under-reporting of matters, to give a more positive account of the performance by local commanders than is actually the case.

2.4.7 In fact, the inclusion of measures for effective complaints management in Commander's performance agreements was a recommendation of the Ombudsman, which was viewed as one incentive for NSW Police to monitor and act on poor complaint management trends.<sup>130</sup> In its latest submission NSW Police indicates that it does not regard this performance measure as a conflict of interest because there is no conflict between a Commander's public duty and private interest in handling complaints in a timely manner. It indicated that it is committed to ensuring that complaint handling performance is a key indicator of the ethical health of commands, which it would continue to measure.

2.4.8 The Professional Standards Command advised that it provides "comprehensive high quality statistics" for Commanders at all levels, as well as overviews for the Senior Executive, in keeping with the high importance placed on improving the timeliness of complaints management. The latter can be monitored through c@ts.i which has

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<sup>128</sup> Transcript of evidence, 24/8/06 p.69.

<sup>129</sup> *ibid.*, p.72.

<sup>130</sup> *ibid.*, pp.51-52.

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enabled NSW Police to produce management reports against which commanders can measure their own performance and by which the Senior Executive can compare performance and identify weaknesses and areas for improvement.<sup>131</sup>

2.4.9 The Council also wanted the Ombudsman to assess and investigate minor matters, including LMIs, as well as serious complaints:

**CHAIR:** You do not go so far as to say that what we have been talking about is local management issues, LMIs, that they should be investigated by the Ombudsman? You are content for those to be investigated by police?

**Mr MURPHY:** The police, as I understand it, have given evidence this morning saying that there are a lot of spurious complaints that are lodged, small issues people are complaining about, police being rude and so forth, that consume a lot of police resources. I think it would be better to have one organisation and that may fix the problem where there are gaps between the organisations at the moment and it should be investigated independently. If the complaint from the police is that there are many complaints that are not serious, there are already systems in place to categorise them and deal with them appropriately according to the level of seriousness involved.

What I think should be done is to remove them into another organisation—perhaps the Ombudsman's office—where you resource them appropriately so they can come in, extract the information they need to examine the complaint, can deal with it and report on it. At the moment the Ombudsman's office is relying on police to do that.

2.4.10 Essentially, it was the Council's position that an external, independent body should investigate all police complaints:

**CHAIR:** Are there any circumstances in which you think the police should be able to investigate allegations against police?

**Mr MURPHY:** I think that it is best to have an independent body investigating police. If you really want to ensure that there is not going to be a perception of bias, that the public have confidence that it is going to be treated seriously and investigated appropriately, it is best to have another organisation properly resourced to do that.<sup>132</sup>

2.4.11 While the Council recognised a distinction between managing the police profession and dealing with complaints, the critical issue was the need for an independent investigation process properly resourced:

**Mr MURPHY:** .... I think you can distinguish complaints on the type of basis where it is simply about someone's perhaps professional conduct is obviously going to be a different complaint to something that may involve serious allegations of corruption or perhaps if a police officer is alleged to have been rude; it is quite different to police corruption.

Maybe police could investigate management issues and deal with the way they manage themselves as a profession, but I think you can separate that from dealing with complaints. We are not talking about frivolous complaints here, they are quite serious.

**The Hon DAVID CLARKE:** But you did mention rudeness, for instance. Unless I am wrong did you not say that police should not investigate complaints of rudeness by other police?

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<sup>131</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.18

<sup>132</sup> Transcript of evidence, 24/8/06 p.72.



**Mr MURPHY:** No, what I am saying is I think there are different issues here: one is about how you manage yourselves as a profession—the police force, its role in educating its officers and training them—and an issue of accountability of senior police over the actions of junior police. I think the second issue is when a member of the public complains about a specific issue and the way it is dealt with by a police officer in an investigation or some other way. I think you can separate the management issues in that sense and there should be a separate body investigating serious complaints.

**The Hon DAVID CLARKE:** Should police investigate minor complaints against themselves?

**Mr MURPHY:** What I say is that at the moment you have different organisations with different responsibilities and what is happening is complaints are not being investigated appropriately. That system is not working. Perhaps it is better to have a system where all the complaints are investigated by one body which is properly resourced.

**The Hon DAVID CLARKE:** But not involving police?

**Mr MURPHY:** I think that the investigative process should be one where police have an opportunity to respond, but the process of investigating and fact finding is one that should be done independently. And if there is an issue then police should be brought in, given an opportunity to respond, of course, as a matter of fairness, and then recommendations about the complaint or issue should be put forward.<sup>133</sup>

#### 2.4.12 Public confidence was essential to the effectiveness of the system:

**CHAIR:** Is your concern the substance of the police investigating police or the public perception of that and the fact that people do not have faith in it?

**Mr MURPHY:** I think the probability is both, that in some cases there are certainly conflicts there if police attain a direct benefit from reducing the number of complaints or making it look as though the number of complaints have been reduced, and I think that provides a view that there may be bias involved in the way that they address them or look at it, but I think more importantly that most of the people who decide to complain it takes a lot of courage to do so and they expect that their complaint is going to be dealt with independently and they fear reprisals from police and they are just astounded to know that the first thing that happens in the process is that their complaint goes from the Ombudsman to other police who work with the police who they are complaining about.<sup>134</sup>

2.4.13 Several case studies put to the Committee as part of the PIAC's submission presented complaints made by some of its indigenous clients. The experiences relayed to the Committee were of particular concern and served as a strong reminder of the perspective held by a section of the community that may have more frequent interactions with police officers than other sections of the community.

#### 2.4.14 Case study 1

PIAC assisted Mr A, a homeless Aboriginal man, to make a complaint to the Ombudsman. He alleged that a police officer assaulted him and on another occasion while in custody at the police station the same officer, noticing fresh scars on his arm following a recent suicide attempt, demonstrated a more effective method to take his life, which was to cut up the length of his vein. This act was captured on CCTV footage.

<sup>133</sup> *ibid.*, p.73.

<sup>134</sup> *ibid.*, p.74.

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The investigating officers asked Mr A to attend the police station where the incident occurred to give his statement. Mr A was apprehensive about returning to that station and, after some negotiation by PIAC, the interview took place on neutral premises.

During the course of the interview the complainant provided names and descriptions of various witnesses to the incidents. However, the investigating officer did not attempt to locate or interview any of the witnesses. Nor did the investigating officer take a statement from the police officer involved in the incidents. At one stage during the course of the investigation, the police officer that was on duty with the police officer named in the complaint (and who was a witness to the events) had charge of the investigation.

The outcome of the investigation was reported verbally to PIAC and neither the written report or the CCTV video surveillance footage was made available to Mr A.

Following the investigation there was no further contact from the Ombudsman to advise of any outcomes or follow-up.

### Case Study 2

Ms B alleged that police officers had verbally harassed her outside her home. During the course of investigating her complaint, the investigating officer repeatedly referred to the police officer named in the complaint by his nickname, 'Dean-o'.

In addition he made inappropriate and adverse comments about the complainant's character, which was irrelevant to the complaint and indicated to the complainant his bias against her.

### Case Study 3

PIAC represented Mr D, a young Aboriginal man alleging ongoing police harassment, false imprisonment and an assault, which required medical treatment.

Mr D was initially asked to attend at the station to provide a recorded statement. The complainant felt apprehensive about attending at the station as the officers he had complained about worked at the station. The complainant was permitted to submit a previously prepared written statement.

A number of witnesses to the incident had been named in the complainant's statement. PIAC was contacted by a distressed witness after the investigating officer and his partner arrived unannounced at her home on the weekend to interview her in relation to the incident. He had not contacted her beforehand to make an appointment. The investigating officer had also made a number of comments that suggested that he had looked up her police file prior to the visit.

The outcome of the investigation was reported verbally to complainant but no written report was provided. Even though the Office of the Ombudsman had earlier indicated that it would be overseeing this investigation, there was no further contact from the Ombudsman to advise of any outcomes.

2.4.15 Having heard the PIAC client case studies, the Committee was mindful of the Ombudsman's comment that there was an "almost total absence of any reference to the rights or expectations of complainants" in the NSW Police and NSW Police Association submissions.<sup>135</sup> But NSW Police did state its belief that external oversight of police misconduct is critical to ongoing public confidence in the complaints process and is an important corruption prevention measure.<sup>136</sup> However, NSW Police advocates a single agency model of oversight, with provision for external oversight of a narrower range of misconduct than is presently the case, as the best means to reach public confidence. The Committee considers that this approach is flawed.

2.4.16 The fact that the oversight system in New South Wales has features that are both external to and independent of NSW Police contributes to the system's strength and public confidence in it. The Ombudsman emphasised the value of the independent, non-police perspective brought to the oversight system by his Office:

First, the Ombudsman brings a non-police perspective in dealing with complaints. This is an underlying principle of civilian oversight of police and provides some assurance that police are acting not only consistent with the expectations of their commanders or peers, but also in a manner consistent with the expectations of the community at large. That is not to say that the Ombudsman does not have available to it the expertise of persons who have worked in policing organisations and other criminal justice agencies, and the expertise build up over 30 years of experience in dealing with NSW Police and complaints about police officers. This is balanced by a broad cross-section of the community who contribute to the Ombudsman's policing function, including those with wide public and community sector experience.

Another particular benefit of Ombudsman oversight is the contribution of a broader public service perspective to NSW Police. We bring best practice initiatives in complaints handling and managing internal witnesses to our considerations in dealing with NSW Police. We build on our relationships across the Ombudsman's office, and in the broader public sector, to inform and improve the practice of police officers.

Moving to a model where only the stand alone and specialist Police Integrity Commission oversees an organisation which, unlike much of the remainder of the public sector, very rarely recruits outside its ranks for senior positions (or indeed for any management positions), increases even further the risks that NSW Police will be isolated in many of its practices.<sup>137</sup>

2.4.17 The contribution made by the Ombudsman's Office to the police oversight system also benefited from its other public sector oversight functions:

**Mr COHEN:** I believe that our focus on complaints has delivered real results for New South Wales Police and the broader community. The debate seems to be whether the PIC should be able to do it all or whether the Ombudsman should do it all. In defence of the current system, the Office of the Ombudsman brings its broader public sector experience. We share that both ways. We undertook an investigation in relation to transit officers last year. Part of our expertise in police investigations was able to be directly transferred to our examination of the complaints system for people who exercise some similar functions.

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<sup>135</sup> Submission No.10a. NSW Ombudsman, dated 15 September 2006, pp.17.

<sup>136</sup> Submission No.11. NSW Police, dated 1 August 2006 p.17.

<sup>137</sup> Submission No.10a. NSW Ombudsman, dated 15 September 2006, pp.7-8.

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It goes the other way as well. We have two projects on foot in which the Ombudsman has a reasonably significant role. One involves examining difficult complainants and the other involves examining whistleblowers. That broader public sector experience will feed back into our complaints work with police as well. That is a real support for maintaining a generalist agency having a role in complaints handling. It is a real strength that we bring to it. It would be a real loss to the detriment of NSW Police if that were not continued. I could speak of the other advantages for some time, but that is a particular one.<sup>138</sup>

2.4.18 The PIC Commissioner referred to the importance of the Ombudsman's recognition as a complaints body: the Ombudsman is "a very good brand name" for complaints work.<sup>139</sup>

2.4.19 Both the Ombudsman and the Police Integrity Commission held that external police oversight was a contributing factor in the changes that had occurred within NSW Police since the Royal Commission. According to the Ombudsman:

.... given the consensus that there have been significant and positive changes within NSW Police since the current corruption and complaints oversight arrangements were established, strong evidence should be required before substantial reforms are made to these arrangements. Rigorous oversight of NSW Police by the Ombudsman and the Police Integrity Commission has been integral to the improvements made. Without this oversight, it is unlikely that positive changes would have occurred to anything like the extent they have, if at all. History has not reflected well on the capacity of NSW Police, without close oversight, to either resist corruption or deal effectively with complaints.<sup>140</sup>

2.4.20 NSW Police took exception to this assessment, claiming that oversight was not a significant factor in achieving police reform. Reform could only be achieved through the efforts of committed NSW police officers:

It is the view of NSW Police that oversight is not the key to reform. The key to reform is in the commitment of NSW Police from the senior executive to the new recruit, to embracing a culture that does not accept or endorse corrupt conduct and is willing to report on and deal with those officers that do not conform. Without that commitment oversight does not have any real effect, as is evidenced by the fact that the Wood Royal Commission occurred at all.

NSW Police is indebted to Justice Wood for his vision in recommending the creation of a standing Royal Commission and to the NSW Government for creating the Police Integrity Commission. This provided NSW Police with access to an agency that had coercive powers specifically tailored to the needs of NSW Police, which NSW Police could utilise for its own corruption investigation needs. However, NSW Police is confident the Police Integrity Commission would agree, that without the commitment of NSW Police, that agency may not be the success that it is today.

The Ombudsman fails to recognise the real achievements by the committed officers of NSW Police. The inference that police still cannot be trusted only serves to undermine the community's confidence in police officers and makes building relationships with the community, a fundamental building aspect of modern policing, all the more difficult.<sup>141</sup>

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<sup>138</sup> Transcript of evidence, 24/8/06, p.63

<sup>139</sup> *ibid.*, p.48.

<sup>140</sup> Submission No.10a, NSW Ombudsman, dated 15 September 2006, p.4.

<sup>141</sup> NSW Police Response to Submission No.10a, NSW Ombudsman, p.2.

2.4.21 This latest NSW Police submission needs closer examination. The PIC does bring covert and coercive powers to the task of investigating serious misconduct and police corruption, including powers that are not available to NSW Police, e.g. the power to hold public hearings. This gets to the heart of the relationship between NSW Police and the PIC. The PIC and NSW Police share the common perspective of investigators, whereas the perspective of the Police Area within the Ombudsman's office is that of an oversight agency: a completely different outlook. This differing perspective needs to be recognised, as does the fact that the bulk of serious misconduct by police officers, whether identified through complaint allegations or from other sources, is actually investigated by NSW Police. The statistics below confirm this feature of the police accountability system in New South Wales, which leads to debates such as the one on police self-regulation that occurred during the Committee's inquiry.

2.4.22 During the 2004/2005, the Professional Standards Command NSW Police conducted 84 investigations into the following types of serious matters:

- the need for a corporate response to specific issues arising out of an investigation;
- dissatisfaction with a local investigation due to the inherent complexity, seriousness or protracted nature of the complaint investigation;
- direct referral due to the seriousness and sensitive nature of the material;
- requests for assistance from the field as the matter is beyond the resources of the LACs;
- links between the new complaint and existing PSC investigation;
- referrals from the PIC and the NSWCC due to the sensitive nature of the matter.<sup>142</sup>

It intends to take over approximately 250 investigations of serious indictable offences per year.

2.4.23 This is not to say that the Committee disagrees with the direct responsibility of NSW Police for investigation of such conduct, or underestimates the police commitment to reform, but it is one of the reasons why a credible oversight system that commands public confidence is so important.

2.4.24 In addition to the need for public confidence in the police complaints system, witnesses reminded the Committee that it was critical that police officers making internal complaints should also have confidence in the system:

**Dr KENNEDY:** This is not just about public perception, it is also about police themselves that complain about their own organisation.... If with minor complaints police were involved and it was used as an education process rather than as a serious weapon to try and rid the organisation of someone who is doing serious damage, in other words, criminal allegations, I do not think there is anything wrong with the organisation then using their own resources in order to have an education process that they can then bring

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<sup>142</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.15.

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serious flaws to light. But I think even that has to be oversighted by someone who is independent, and that is not just for the public.

That is what the rank and file want as well. They want to be able to be reassured that if they complain about their senior colleagues, or senior counterparts, that they will be reassured that they are not going to be treated like whistleblowers, that they are not going to suffer the fate that whistleblowers suffer, that their careers will not be sidelined and that they are not going to have to be looking for something else to do for a living, that they are going to be treated fairly.... You can use it as a weapon or as an education tool whereby everybody benefits. I think somehow or another that is what the complaints process has to sort of do; it has to address both those issues so that serious matters can be dealt with seriously and others can be dealt with in terms of exit interviews and that sort of stuff.<sup>143</sup>

2.4.25 The NSW Police Association expressed concern that because of the cumbersome and complex nature of the oversight system,

[officers] often feel fearful and uncertain while they await the outcome of the complaint process. They do not treat the process as a learning experience and remain unlikely to admit to even genuine error while the prospect of permanent records hover over the outcome of investigations.<sup>144</sup>

## 2.5 Conclusion

2.5.1 The oversight role performed by the NSW Ombudsman is not analogous to the role performed by the PIC and while the roles are complementary, the capacity for both roles to be performed effectively in one organisation has not been clearly made out. As both the Inspector of the PIC and the Commissioner of the PIC have pointed out, there is much to be said for the fact that the current police oversight system in New South Wales actually works. It is also a concern to the Committee that any administrative efficiencies that may be achieved in a merged body may be countered by the loss of less quantifiable but nevertheless important aspects of the oversight system, in particular public confidence.

2.5.2 It is the Committee's view that the role of the oversight agencies of the Office of the Ombudsman and the Police Integrity Commission, combined with NSW Police's predominant responsibility for investigating misconduct, represents the balanced system advocated by the Royal Commission which aimed to enhance police ownership of the management of police conduct while preserving public confidence in the system. It is apparent to the Committee from the evidence taken and the submissions received, particularly those from the NSW Council for Civil Liberties and the Public Interest Advocacy Centre, that the level of public confidence in the police oversight system is critical to its ongoing effectiveness.

2.5.3 NSW Police measured the Ombudsman's oversight role in terms of what it contributes to the management outcomes resulting from complaints. It submitted to the Committee that:

.... over the past 12 months 5082 complaint issues were investigated and completed. Of those issues only 35 resulted in reviewable actions (0.69%), 1414 were assigned non-

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<sup>143</sup> Transcript of evidence, 24/8/06 p.74.

<sup>144</sup> Submission No.9. NSW Police Association, dated 2 June 2006, p.9.

reviewable actions (27.8%) and 3049 resulted in no action being taken at all (59.9%). Given these results, it is the NSW Police view that there is excessive oversight and review by the Ombudsman. The results do not justify the current level of scrutiny and it is a measure of success by NSW Police that these figures have been achieved. That success should be counter-balanced by a winding back of the level of scrutiny required. The resources allocated by the Ombudsman to reviewing these matters, that more often than not lead to no significant management outcomes, would be better utilised focussing at the more serious end of complaints.<sup>145</sup>

- 2.5.4 This assessment of the value of the Ombudsman's oversight role, however, is a limited one that centres on the benefits to the policing organisation rather than looking at the value of oversight in the wider context of policing within the community. The range of the debate that took place on the issue of police self-regulation emphasised that the value of the present oversight system revolves around the level of credibility it gives to police accountability in New South Wales.
- 2.5.5 The powers that police may exercise are considerable and often involve discretionary decisions. For instance, the power to stop and search individuals, move-on powers, and the use of drug detection dogs have the potential to impact significantly on the civil liberties of individuals in their daily life. Questions about how these powers have been used in a situation may require an explanation of the discretions exercised by a police officer in view of operational considerations in specific circumstances. The wider public policy considerations are quite separate and distinct from issues surrounding the need to investigate serious police misconduct and police corruption.
- 2.5.6 The issue is not merely that police complaint investigations are conducted effectively but that they are credible, especially among those groups that may find themselves the target of police attention or who have more frequent contact with police than other sections of the community.<sup>146</sup> The extent to which police powers have increased in recent times underscores the critical importance of public confidence in a credible police oversight system.
- 2.5.7 In the same way that public confidence is needed in the oversight system, so is the confidence of police officers. However, it is not possible, on the information available to it, for the Committee to form a view as to the representative nature of the comments made by Assistant Commissioner Carroll. Of concern to the Committee is the apparent lack of confidence shown in the current oversight system by the senior executive of NSW Police and the NSW Police Association. Anecdotal evidence provided by Assistant Commissioner Carroll seemed at odds to the findings of the Ombudsman's recent audits of local area commands, which describe some commanders and other police investigators as coming to grips with the management of police complaints and utilising the complaints exercise for wider management purposes.<sup>147</sup>

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<sup>145</sup> Submission No.11. NSW Police, dated 1 August 2006, p.8.

<sup>146</sup> A Goldsmith, *op. cit.* p.28.

<sup>147</sup> NSW Ombudsman's Office, "Discussion Paper: NSW Ombudsman's observations of Complaint Management Team meetings", paper tabled by Mr S Cohen on 24 August 2006.

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2.5.8 The Committee has not underestimated the importance of the change that has occurred within NSW Police since the Royal Commission. It fully concurs with the comment contained in the NSW Police's latest submission that:

The key to reform is in the commitment of NSW Police from the senior executive to the new recruit, to embracing a culture that does not accept or endorse corrupt conduct and is willing to report on and deal with those officers that do not conform.<sup>148</sup>

2.5.9 Nevertheless, the police oversight system is an important part of the reform equation and the Committee regards the report of the Royal Commission as a strong endorsement of the respective roles to be played by the PIC and the Ombudsman within the police accountability framework.

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<sup>148</sup> NSW Police Response to Submission No.10a, NSW Ombudsman, p.2.



## Chapter Three - Does the Ombudsman's role within the current oversight system support a managerial approach?

3.1 NSW Police submitted that the police complaints system had changed little in the ten years since the Royal Commission when the system at the time was described "as a disciplinary [one] with the tendency to:

- overburden the complaints system and waste valuable police investigative resources on lesser complaints which could be dealt with informally.
- lose any opportunity to reach a managerial solution to complaint matters at a local level.
- place unnecessary stress on subject officers.
- discourage honesty and a willingness to admit mistakes.
- impose unnecessary disruption to the careers of officers involved in complaints.<sup>149</sup>

3.2 Despite having undertaken significant reforms in respect of internal investigations and complaints management, as well as having statutory responsibility for managing its own complaints, NSW Police considered that external oversight "has become an even more intrusive burden"<sup>150</sup> and "effectively prevents police from managing their own people outside a formal process".<sup>151</sup>

3.3 According to NSW Police, it "is still unable to deal with complaints managerially due to the Ombudsman's role and functions":

This is due to the overly broad definition of 'complaints' under the Police Act that captures even the most minor grievance about police conduct, provided it is in writing. 'Class or kind' agreements determine what complaints NSW Police must notify to the Ombudsman and which complaints police can deal with. These agreements are made by the PIC and the Ombudsman in consultation with the Police Commissioner, however NSW Police is not a party to the agreements. This means that the categorisation of matters police can deal with managerially is outside NSW Police's control.<sup>152</sup>

3.4 Although the Ombudsman's Annual Report for 2004-05 contained the following description of the managerial approach to police complaints, NSW Police argued that this was not representative of how the majority of police complaints are managed:

There are many good reasons why NSW Police, like all other government agencies, are required to deal with most of the complaints about their own officers. NSW Police have to take responsibility for the conduct of individual officers and the way their organisation is run. Learning from complaints is one part of managing operations effectively. Police commanders are usually best placed to deal immediately with low level management

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<sup>149</sup> Submission No.11. NSW Police, dated 1 August 2006, p.5; also see *Royal Commission into the New South Wales Police Service, Final Report, Volume III*, p.329.

<sup>150</sup> Submission No.11. NSW Police, dated 1 August 2006, p.5.

<sup>151</sup> *ibid.*, p.6.

<sup>152</sup> *ibid.*, p.4.

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issues in the workplace and for more serious complaints police officers have the experience in criminal investigations needed to investigate complaints thoroughly.<sup>153</sup>

3.5 Similarly, the NSW Police Association claimed that the current system for oversight is "both cumbersome and duplicates resources and coverage". The Association argued that the system is confusing to the public and police, including managers:

The current system of intrusive oversight by the Ombudsman has resulted in confusion among managers and a feeling that they are unable to manage their people. Often the officers of the Ombudsman have little, if any, experience of the reality of policing or the environment in which police operate. They are not the ones who have to manage an officer on a daily basis, and yet they wield extraordinary influence over managers in this area. Managers often feel disempowered in dealing with their people.<sup>154</sup>

3.6 The Association also asserted that:

In the struggle to establish a jurisdictional foothold, it could appear that the Ombudsman's office has intruded into the area of employee management which should be the prerogative and responsibility of the police and their managers. The result is that police managers are being prevented from carrying out their responsibilities as managers. Too many resources and too much time is being spent on investigating minor matters in order to satisfy officers of the Ombudsman's office.<sup>155</sup>

3.7 The Association advanced a business management model and argued that the current police complaints system captured performance or customer service complaints in the formal processes subject to oversight and audit by the Ombudsman.<sup>156</sup>

3.8 In contrast, the Assistant Ombudsman (Police), Mr Simon Cohen, gave evidence that effective oversight and management of police complaints provided police commanders with a valuable general management tool as well as a means of dealing with misconduct:

**Mr COHEN:** We continue to intervene, case by case, in circumstances where complaints are not well handled and the action of police commanders are unreasonable. Importantly the complaints system has shown success in identifying those officers who conduct themselves criminally. In past years hundreds of charges have been made against officers where there is strong evidence of criminal offences being committed. Many officers have been dismissed, demoted or the subject of disciplinary transfers. Last year almost 1,000 substantive management actions, performance agreements, increased supervision, training and counselling resulted from complaint investigations. This is clear evidence of an organisation that sees value in dealing with complaints properly and that is prepared to take action when that conduct is identified. It is clear evidence also of effective oversight by the Ombudsman to force Commanders to deal with complaints properly and respond firmly and fairly where appropriate.<sup>157</sup>

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<sup>153</sup> Submission No.11. NSW Police, dated 1 August 2006, p.4; see NSW Ombudsman, *Annual Report for 2004-05*, p.41

<sup>154</sup> Submission No.9. NSW Police Association, dated 2 June 2006, pp.8-9.

<sup>155</sup> *ibid.*, p.10.

<sup>156</sup> *ibid.*, pp.7-8.

<sup>157</sup> Transcript of evidence, 24/8/06 p.52.

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3.9 Several case studies were supplied in the submission and evidence from NSW Police to show how trivial and minor matters are captured and formally handled under the police complaints system. According to Assistant Commissioner Carroll,

Under the current oversight regime, the need of the Ombudsman to find any minor flaw in the process followed can override the needs of the complainant and the subject officers to have their issues quickly resolved. The parties to the complaint can actually be secondary considerations to the needs of the Ombudsman.<sup>158</sup>

3.10 Interested to follow-up on these concrete examples of the problems NSW Police perceive with the police complaints system and the level of external oversight by the Ombudsman, the Committee sought a response from the Ombudsman's Office on the case studies provided.

3.11 The information initially obtained by the Committee is instructive on critical aspects of this inquiry and highlights the extent to which many of the criticisms presented by NSW Police about the police oversight system to some degree are matters of perception. The Committee was very concerned about the way in which the case studies were initially presented by NSW Police, particularly in view of the Ombudsman's criticism about the extent to which they contained inaccuracies. The Ombudsman has advised that the very case used by NSW Police to illustrate the burdensome nature of external oversight and the constraints that prevent informal management of their own people is a hypothetical rather than an actual case.<sup>159</sup>

3.12 In brief, the Ombudsman advised the Committee that:

- NSW Police had accepted the Office's recommendations on the categorising of one matter as a systemic Category 2 complaint rather than a local management issue;<sup>160</sup>
- the account given in one case that the allegations against the police officer were not supported is incorrect - informal management of the complaint was dependent on agreement by NSW Police that the police officer the subject of complaint would be spoken to regarding his aggressive behaviour. Two senior police officers were critical of the police investigation. The matter was audited as part of a wider risk assessment audit in which NSW Police had accepted the Ombudsman's recommendations arising from the audit;<sup>161</sup>
- in one case the evidence provided by NSW Police was incorrect as a further investigation of the complaint had not been required by the Ombudsman's Office. The request was for further information on the incident, by way of existing records, and the Ombudsman noted that the information given in evidence by NSW Police to the Committee on this particular matter was more

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<sup>158</sup> *ibid.*, p.2.

<sup>159</sup> In his second submission, dated 15 September 2006, the NSW Ombudsman indicated that an actual complaint matter had been identified that "fairly closely" resembled the hypothetical complaint matter, and that it "demonstrates the clear risks such issues present, and some options for commanders in managing these matters". Submission No.10a, NSW Ombudsman, dated 15 September 2006, p.9.

<sup>160</sup> *ibid.*, p.8

<sup>161</sup> *ibid.*

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fulsome than that provided to the Ombudsman in response to his requests to NSW Police at the time;<sup>162</sup>

- another matter requiring the provision of additional information did not lead to further investigation;<sup>163</sup>
- the NSW Police submission account of another matter little resembled the facts.<sup>164</sup>

3.13 From the Ombudsman's perspective, close examination of the case studies "demonstrates a mature complaints system" which includes the following features:

- the Ombudsman ensuring that relevant information is provided to oversight serious complaints, while declining any investigation in respect of matters with no substance.
- commanders doing their job investigating complaints raising serious issues.
- the Ombudsman holding commanders to account for the management of those matters, including identifying investigative deficiencies and opportunities to improve the conduct of police officers.
- police officers and Ombudsman staff resolving issues by discussion with, or review by, senior officers of both organisations.
- the Ombudsman identifying system issues as a result of our oversight, for consideration and action by NSW Police.<sup>165</sup>

3.14 In the Ombudsman's view the case studies cited by NSW Police "are, if anything, compelling evidence to retain the existing arrangements for oversight of police complaints."<sup>166</sup>

3.15 At a minimum, the perspective given on each case study by the Ombudsman seriously undermined the strength of the matters as initially presented by NSW Police. It was the Ombudsman's opinion that:

.... [the NSW Police] submission puts forward a number of examples to demonstrate a need for change. A close examination of those examples shows that, in a number of instances, incomplete or wrong information has been provided to the Committee. If NSW Police cannot provide full and correct information to the Committee for so important an inquiry, this weighs heavily against making recommendations to reduce current oversight arrangements.

Other than these examples, there is little hard evidence in either the submission of NSW Police or the Police Association to demonstrate the need for an overhaul of the current oversight of complaints.<sup>167</sup>

3.16 The Committee invited NSW Police to respond to the Ombudsman's second submission. It is important when reporting on the way in which the evidence was

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<sup>162</sup> *ibid.*, p.9.

<sup>163</sup> *ibid.*

<sup>164</sup> *ibid.*

<sup>165</sup> *ibid.*,p.10.

<sup>166</sup> *ibid.*

<sup>167</sup> *ibid.*, p.4.

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presented to the Committee to understand that the final NSW Police responses on each case were received at the report writing stage of the inquiry.

- 3.17 The Committee's consideration of the criticisms made by NSW Police in each case study has led to the conclusion that there is still room for improvement in adopting a managerial approach on minor matters that do not constitute complaints for the purpose of the Police Act. It is the view of the Committee that the capacity of NSW Police to fully realise the managerial approach to complaints recommended by the Royal Commission, is ultimately determined by the approach of NSW Police. On the basis of the information before the Committee it appears that a managerial approach is being actively practiced in local commands in a number of regions, and that the outcome of this approach has been constructive in terms of broader areas of management in addition to complaints management. Current problems with the management of minor police complaints and ways to fully realise the potential of the managerial approach are discussed in Part II of the report.
- 3.18 **Client satisfaction** - Another example provided by NSW Police to demonstrate the burdens arising from the Ombudsman's oversight role concerned a survey of satisfaction levels among 500 complainants. One of the conditions to be met by NSW Police under the Class or Kind agreement governing local management issues (LMIs) is that if, when advised by NSW Police of the outcome of their matter, a complainant expresses dissatisfaction with that outcome NSW Police must advise the complainant that they may make a written complaint about how the matter was handled (Condition 2). The third condition in the agreement specifies that proper records must be kept of all complaints dealt with as LMIs and any action taken in respect of them: such complaints from the public must be receipted and registered on c@ts.i "to allow NSW Police and the Ombudsman to run reports to measure the number and percentage of s.122(2) matters handled by way of informal resolution and the rate of customer satisfaction for these complaints". For this purpose, a standard checklist is completed by police officers handling LMIs and it includes a question as to whether or not the complainant is satisfied with the action taken on their matter.<sup>168</sup>

- 3.19 Assistant Commissioner Carroll gave evidence that:

One significant example is recently from the Office of the Ombudsman we received a notice to contact in excess of 500 individual complainants for minor matters to establish their level of satisfaction, despite these matters being agreed upon in the 122 (2) agreement that they were not to be treated as complaints. That is very intense resource allocation for NSW. I hope these limited examples highlight the level of micromanagement of individual complaints that the Ombudsman has engaged in over many years. I see no value to the community in tying up senior police resources in following lines of inquiry that are not likely to lead to a meaningful outcome and are quite simply not justified or warranted.<sup>169</sup>

- 3.20 In response to questioning from Mr Clarke, Assistant Commissioner Carroll indicated that this matter involved the commitment of a significant level of NSW Police resources:

<sup>168</sup> See class or kind agreement re s.122(2) of the Police Act 1990 at p.172 of this report; see also Submission No.10a, NSW Ombudsman, dated 15 September 2006, p.11

<sup>169</sup> Transcript of evidence, 24/8/06 p.2.

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**The Hon DAVID CLARKE:** Assistant Commissioner Carroll, you gave an example of the Police Service having to do a survey of satisfaction levels among 500 complainants. Can you give us an idea of the resources that had to go into carrying out that required survey?

**Mr CARROLL:** Yes. In my command, our complaints management consultant area, all of the consultants—the whole team in there is about 30 staff—were involved in some way or other in facilitating that section 16 notice. You would have had 80 local area commanders at some stage individually involved in the process and 40 specialist commands. When I say that I do not want it to be taken that there were 120 commands involved in this because I do not know that. It may have only been across 40 or 50 commands. So I cannot give you the exact answer to what you have asked. But what I can say is that each of these matters requires significant resources. Over 30 from my area are dedicated to it. You have got all the executive officers out in the field. They then have to go to the investigators and say, "We want you to contact the complainant" and get a customer survey satisfaction rate done and then it has all got to come back in. So the resources would be very, very significant.

**The Hon DAVID CLARKE:** Several hundred working hours, in fact?

**Mr CARROLL:** Yes.<sup>170</sup>

- 3.21 However, information provided by the NSW Ombudsman in his second submission to the inquiry gave a different account of this matter. The Ombudsman submitted that the Office had no record of an investigation or requirement upon NSW Police to contact individual complainants in 500 minor matters but presumed this was a reference to an investigation commenced in December 2004, prompted by the "widespread failure" of local commands to collect information required under NSW Police's standard operating procedures for the handling of local management issues.
- 3.22 Apparently, the Ombudsman had raised the issue of collecting this information in February 2003 but although the standard requirements and procedures were in place from July 2004 onwards, reports provided to the Ombudsman showed that local commands completed the LMI checklists in less than one-quarter of matters. The Ombudsman explained to the Committee that as a result, both his Office and NSW Police were unable to make any assessment as to whether local commanders were effectively handling less serious matters.
- 3.23 Unable to resolve the issue, the Ombudsman commenced a direct investigation requiring the completion of the checklist for matters finalised in the first half of 2005. The gathering of this information was intended to occur as new matters were completed. The investigation resulted in 97% compliance and almost a 90% level of satisfaction with the handling of LMI matters.<sup>171</sup> The Ombudsman's report on the investigation, which was prepared in April 2006, recommended the collection by local commands of complainant satisfaction information for the first half of 2006, and the development and implementation of strategies to ensure compliance with NSW Police's standard operating procedures. Advice was sought on compliance in relation to a number of matters again in July 2006 and at that stage compliance had significantly improved.

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<sup>170</sup> *ibid.*, p.14.

<sup>171</sup> Submission No.10a. NSW Ombudsman, dated 15 September 2006, pp.11-12.

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- 3.24 NSW Police has since confirmed that the 500 matters result from the class or kind agreement on LMIs, which requires that a complainant satisfaction checklist, designed to the Ombudsman's specifications, is to be completed for every LMI matter of which there is approximately 500 per quarter and that the checklist be scanned onto the c@ts.i system. The submission goes on to explain that because the Ombudsman does not utilise c@ts.i NSW Police had to centrally collate the information and provide quarterly reports.<sup>172</sup>
- 3.25 NSW Police indicated that compliance rates were low for the first quarter and the Ombudsman expected a level of 100% compliance. According to the NSW Police account it was this factor that apparently prompted the Ombudsman to undertake a s.16 investigation into the low compliance rates. The Ombudsman also had expressed concern about the accuracy of the data as it could not be verified or said with absolute certainty that the investigator had asked the right questions of the complainant. Consequently, a checking mechanism was needed to confirm the investigator had recorded the information correctly.<sup>173</sup>
- 3.26 NSW Police also submitted that the Ombudsman's Office uses ss.150 and 151 of the Police Act to obtain all documents on an LMI for the purpose of reviewing complainant satisfaction, whereas s.150 should be used by the Ombudsman to identify matters that require more thorough review and, hence, the production of relevant documents under s.151. On this point, NSW Police argued that:
- It is the NSW Police view that s.150 of the Police Act is not a section inserted for the purpose of collecting statistics on complainant satisfaction. Statistics are collected to inform decisions makers about many things, including how to improve service delivery. This is not achieved by an investigator asking a complainant whether they are satisfied with the investigation that he has undertaken. There is no independence in this process. It also does not measure why a complainant is dissatisfied, which of course should be the aim of the exercise. For example a complainant may be dissatisfied with the time the matter took to complete but not the outcome; or the way the investigator spoke to him or her; or with the action to be taken against the officer; or that the complaint has not been sustained; or that a matter was declined and not investigated at all; and any number of other reasons. This can only be achieved by a properly constructed survey, properly tailored to collect data which the agency decides should be measured.<sup>174</sup>
- 3.27 NSW Police sought the Committee's view on the relevance of s.151 of the Act, which it did not regard as well suited to measuring complainant satisfaction. It claimed that as the Ombudsman did not adopt a strategic approach to reviewing complaints the section was redundant.<sup>175</sup>
- 3.28 Nevertheless, in his response to the investigation, Assistant Commissioner Carroll said that he agreed with the Ombudsman that monitoring and analysing complainant satisfaction was important for good complaint management practice but that he preferred if options other than closure checklists were used for this purpose. At the

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<sup>172</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.19.

<sup>173</sup> *ibid.*, pp.19-20.

<sup>174</sup> NSW Police Response to Submission No.10a, NSW Ombudsman, pp.26-27.

<sup>175</sup> *ibid.*, p.28.

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time the Ombudsman made his second submission to the Committee in September 2006, NSW Police had yet to suggest an alternative procedure.<sup>176</sup>

3.29 More recently, NSW Police has put an alternative to what it sees as the "inefficient and poorly designed" complainant satisfaction checklist required under the class or kind agreement. Professional Standards Command has proposed to conduct "a central and independent survey by way of random sample" but it noted that it was not in a position to undertake such a survey while it was bound by the class or kind agreement on LMIs. NSW Police also expressed a preference to report on complainant satisfaction in its own Annual Report to Parliament, indicating that the Ombudsman's Office could conduct its own survey at any time, view NSW Police survey results, or measure the number of second complaints, for the purposes of its own reporting requirements.<sup>177</sup>

3.30 In weighing up the material on this issue, the Committee noted a number of factors raised by the Inspector of the PIC. Asked about the case of 500 complaints, the Inspector commented on the importance of the Ombudsman's audit role in relation to LMIs:

**Mr GEOFF CORRIGAN:** .... When the police argued here about removal of the Ombudsman from the process—what they call local management investigations (LMI)—they gave the example of 500 investigations that were completed, and the Ombudsman issuing a section 16 notice to contact 500 complainants to see their level of satisfaction with the process. The police argued that took a lot of time.... I wanted your view as to whether the Ombudsman should be removed from local management investigation.

**Mr WOOD:** I do not think so. I think someone has to audit the performance of those local investigations, and the only way to do that is for someone to speak to those who are caught up to see what their impression was. Though 500 seems a fairly large number, it depends how often that is done, and whether that 500 is done in one batch or whatever. I do not know what was said in that regard. But there has to be some audit process, and that is really the only way to do it. Otherwise you have not the faintest idea whether it is working or not.<sup>178</sup>

3.31 It is relevant to note that the Royal Commission pointed to the importance of analysis of complaints and disciplinary outcomes as a means of:

- providing feedback about how police services are operating and the state of police-community relations; and
- assisting in informing the Service on corruption prevention initiatives and education and training; and
- helping to ensure consistency of decision making.<sup>179</sup>

3.32 If the new complaints and disciplinary system were to be adopted, the Royal Commission recommended that in order to evaluate its effectiveness, the NSW Police Service or the Ombudsman should conduct research on the level of public satisfaction

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<sup>176</sup> Submission No.10a. NSW Ombudsman, dated 15 September 2006, p.12.

<sup>177</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.20.

<sup>178</sup> Transcript of evidence, 24/8/06 p.28.

<sup>179</sup> *Royal Commission into the New South Wales Police Service, Final Report, Volume II: Reform*, May 1997, p.345.



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with the system and that such research should be repeated at regular intervals e.g. every two years.<sup>180</sup>

- 3.33 The issue of how NSW Police collects information about the satisfaction levels among individuals who raise LMIs needs to be resolved. The Committee has formed the view that complainant satisfaction with the processes by which their matter was handled, as much as the outcome, can provide valuable information to NSW Police on the credibility of the police complaints system. It is critical that the information on satisfaction levels is meaningful and that the method for its collection is valid and is seen to be so. As the LMI class or kind agreement is a recent one, client satisfaction has only been measured for a relatively short time. The Committee considers it appropriate that client satisfaction should be monitored and assessed by NSW Police, as an extension of its "ownership" of the police complaints system. How NSW Police goes about this exercise is a matter that requires agreement with the Ombudsman's Office if the procedure adopted is to appear convincing and serve as a valuable indicator that the LMI system is working in a way that maintains public confidence.
- 3.34 On the matter of the operation of s.150 and s.151 of the Police Act, the Committee is not prepared to declare these provisions to be redundant, as it is not persuaded by the NSW Police argument. The discussion of this issue was located within a section of the latest NSW Police submission pertaining to the measurement of complainant satisfaction in relation to the handling of local management issues. In the Committee's view the discussion in this context appears misplaced and, presumably, relates to the Ombudsman's use of his powers to obtain information from NSW Police during the Office's specific investigation into compliance with the complainant satisfaction checklists regarding LMIs.
- 3.35 Section 150 of the Police Act concerns the information that is to be provided by NSW Police on the finalisation of a complaint investigation. Section 151 of the Act operates as a safeguard by providing the Ombudsman with an avenue to obtain additional information following the police investigation of a complaint should this prove necessary e.g. because the material provided under s.150 was not adequate or did not cover all aspects of the conduct of an investigation under review. The provisions would not appear to be generally relevant to matters such as local management issues, which are not notifiable to the Ombudsman, and are not caught as complaints under Part 8A of the Police Act. Moreover, removing either or both provisions from the Act would seriously compromise the Ombudsman's oversight role in respect of police complaints of a more serious nature than LMIs.

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<sup>180</sup> *ibid.*, pp.345 & 549.



## Chapter Four - Does the oversight system support organisational change within NSW Police?

### 4.1 NSW Police Position

4.1.1 NSW Police questioned the value of the Ombudsman's focus on police decision-making and auditing processes instead of long term organisational change and submitted that "an approach to oversight that focuses on auditing systems and finding fault with processes is unlikely to lead to much organisation or cultural change".<sup>181</sup>

4.1.2 Assistant Commissioner Carroll argued that unnecessary oversight requests for customer satisfaction information diverted valuable resources away from corruption prevention and education initiatives:

**The Hon DAVID CLARKE:** So I guess the thrust of your submission is that the present investigative system means that resources are being used to investigate minor matters thus diverting important resources away from investigating more serious matters. That is the thrust of it.

**Mr CARROLL:** That is the thrust, and putting the resources into corruption prevention and corruption-resistance strategies aimed at not stopping our police officers from getting involved in the complaints system. Every time one of our police officers gets charged or whatever we should all hang our heads down a bit—I do—because in some way or other there has been a failing somewhere. I feel that if we can do a lot more proactively and put the valuable resources that we have got—and I am not flush with resources.

**The Hon DAVID CLARKE:** I guess you would say that the mistakes that occur, particularly among younger members of the Police Force, are bound to arise quite frequently simply because of the type of work they are doing, where they have got to make judgments on the spur of the moment and in difficult situations.

**Mr CARROLL:** Yes.<sup>182</sup>

4.1.3 NSW Police also called for "effective deterrence measures to prevent corruption and deny opportunities for serious misconduct to go undetected":<sup>183</sup> a need that the PIC could help to provide. Conversely, a confidential submission received by the Committee argued that the Ombudsman's "big picture", systemic focus occurs at the expense of individual complaints. Yet NSW Police claimed that the Ombudsman does not need to formally oversight every notifiable complaint.<sup>184</sup> These criticisms raise a number of significant questions about the operation of the police complaints system and the outcomes to be realised from police oversight, including how to ensure the system affords important individual cases do not go without oversight at an appropriate level.

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<sup>181</sup> Submission No.11. NSW Police, dated 1 August 2006, p.15.

<sup>182</sup> Transcript of evidence, 24/8/06, pp.14-15.

<sup>183</sup> Submission No.11. NSW Police, dated 1 August 2006, p.18.

<sup>184</sup> *ibid.*, p.7.

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4.1.4 The NSW Police criticism of the Ombudsman's focus on processes and decision-making fails to recognise the parameters of the role associated with the traditional form of ombudsman, which has been described as:

An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports.<sup>185</sup>

4.1.5 Ombudsmen also are recognised as being concerned with “patterns of misconduct and procedural reform and... as a check or audit upon internal control mechanisms”.<sup>186</sup> Ombudsmen are not intended to supplant entirely or substantially the role of internal control mechanisms but are designed to assist in the recognition of patterns of organisational misconduct and to recommend suitable reforms, in addition to assisting individual complainants.<sup>187</sup>

The inquiry [into complaints] need not .... be made in the first instance by a critic external to the administration. Responsibility for investigation belongs to the supervisory ranks of the administration itself. The external critic's [i.e. the ombudsman's] concern should be less with the merits of the particular grievance than with the adequacy of the steps taken to discover what merit it has. Numerous personalised complaints of the same general tenor may add up to a different story altogether. In the aggregate they may suggest possibly defective supervision, structure or method – assuredly a broad enough matter to claim the external critic's attention without this assuming to be a government-wide sleuth dedicated to ferreting out the rights and wrongs of every civilian-official disturbance.<sup>188</sup>

4.1.6 The model of oversight proposed by the Royal Commission is consistent with this description.

4.1.7 According to this view, a policing organisation would become a “responsive institution” in the sense that it:

.... retains a grasp on what is essential to its integrity while taking account of new forces in its environment. To do so, it builds upon the ways integrity and openness sustain each other even as they conflict. It perceives social pressures as sources of knowledge and opportunities for self-correction.<sup>189</sup>

4.1.8 The Assistant Ombudsman (Police) gave the following evidence on the broader contribution of the Office to police oversight:

**Mr COHEN:** .... We have two projects on foot at the moment, one dealing with policing domestic violence and the other dealing with police pursuits that are informed partly by

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<sup>185</sup> Definition of the International Bar Association 1974; originally G. Caiden, N. MacDermot and A Sandler (1981) “The Institution of Ombudsman” in G. Caiden (ed) *International Handbook of the Ombudsman: Evolution and Present Function* (Westport, Conn.: Greenwood Press); cited in Andrew Goldsmith (ed.) op.cit., p.39.

<sup>186</sup> A. Goldsmith, op. cit. p.39.

<sup>187</sup> *ibid.*

<sup>188</sup> W.Gelhorn (1966) *When Americans Complain: Governmental Grievance Procedures* Cambridge, Mass.: Harvard University Press); cited in A Goldsmith, op. cit. p.39.

<sup>189</sup> P Nonet and P Selznick (1978), *Law and Society in Transition: Towards Responsive Law*, (New York: Harper Torchbooks); cited in A. Goldsmith, op. cit. p.15.

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our complaints work and partly by other investigative work. Not only do I hope they improve the outcomes for the community but also that they will result in a commensurate decrease in conduct allegations coming out of those matters. We have done projects looking at the use of OC spray and the use of confidential information by police. That is a particular area in which there has been a real change in the way that police view the use of confidential information. Our investigations and the setting of clear rules that were explained to all officers with good enforcement have unquestionably resulted in cultural change. Complaints are part of that, but I certainly do not think they are all of it. Corruption prevention more broadly is a much bigger brief, perhaps lying more naturally with the agency that is most focused on corruption.<sup>190</sup>

4.1.9 Clearly, the merits of the Ombudsman's auditing function and oversight of processes is a separate issue to corruption prevention and education: confusing the two detracts from the significance of each activity. In the Committee's view, achieving organisational and cultural change is a matter for NSW Police, drawing on expert advice and assistance. The PIC is well placed to offer such advice because it is a targeted anti-corruption body. This is not a role that an Ombudsman's Office performs, nor should it do so.

4.1.10 The Ombudsman's oversight of NSW Police complaint handling processes centres on the potential for such monitoring to highlight significant operational problems and areas for systemic improvements in policing. This is evidenced by the project work undertaken by the Ombudsman's Office and the reports it generates on wide-ranging issues such as:

- conflicts of interest
- the management of police officers adversely mentioned at the Royal Commission
- the impact of stressful or traumatic incidents on police
- police relations with young people
- the policing of domestic violence
- improper accessing of computer information
- improper use of police email
- risk assessment of police officers
- the preparation of police statements
- seeking advice from the Director of Public Prosecutions
- the section 181D process for removal of police officers
- the use of capsicum spray
- identifying and managing officers with complaint histories of significance
- assessing the police management of complaints
- analysing who makes complaints about police
- use of closed circuit television (CCTV) facilities at police stations

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<sup>190</sup> Transcript of evidence, 24/8/06, p.63.

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- the police use of the Young Offenders Act
- police relations with local communities
- speeding fines
- police vehicle pursuits<sup>191</sup>

4.1.11 The Ombudsman's auditing role relates to local management issues dealt with by local commanders and concerns the issue of compliance with the requirements of the police complaints legislation, e.g. whether matters have been correctly classified as local management issues and whether record-keeping about the Police response and action taken is adequate.<sup>192</sup> Trends in the management of complaints are monitored by the Office and inform its audit function. The Office explained that it monitors the performance of local commands in terms of:

- the rate of deficiencies in complaint investigations, including whether those deficiencies are remedied following a request from the Ombudsman
- the timeliness of complaint investigations, including the percentage of matters finalised within 90 days and those complaint matters not finalised within 12 months
- complainant satisfaction with complaint investigations conducted by local commanders (as recorded by NSW Police)
- the use of alternative dispute resolution by local commanders.

4.1.12 It also monitors the number of complaints received in each local command, the proportion of matters investigated and declined, and whether the complaints are from internal witnesses or members of the public. This information is used to raise issues at a corporate level with NSW Police – particularly in relation to the timeliness of complaint investigations. The Office also attempts to identify good or poor complaint handling practice.<sup>193</sup>

4.1.13 The Ombudsman also submitted that the Intelligence Section of the Office develops profiles on officers with complaint histories of concern and this information is used in the assessment of new complaints and the scrutiny of management action taken following particular complaint investigations. At present the Office monitors more than 100 “high risk” officers and raises the management of these officers and officers with significant complaints histories when meeting with local commanders.<sup>194</sup> The Ombudsman is part of a working group that provides assistance to NSW Police in its efforts to develop its system for risk identification and management of officers. The working group includes NSW Police, the Police Association and the Police Integrity Commission.

4.1.14 NSW Police advised that there are some limitations on the use of complaint histories of officers. It also noted that a Commander cannot search on c@ts.i against

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<sup>191</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, pp.15-16.

<sup>192</sup> *ibid.*, p.14.

<sup>193</sup> *ibid.*, p.15.

<sup>194</sup> *ibid.*

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an officer's name and be confident of obtaining comprehensive profile by this means alone. A fuller analysis of the holdings is required, including assessing the contents of investigation reports to determine the background to each matter. NSW Police also claimed that levels of seriousness cannot be determined by referring to the complaint's category, as the Ombudsman expects c@ts.i input to be based on the literal wording of a written complaint, rather than NSW Police's approach of assessing the complaint in context.<sup>195</sup>

- 4.1.15 Nevertheless, NSW Police's submission indicated that an officer's complaint history can be examined to identify any previous complaints that may be relevant or related to the matter under investigation. A complaints history is only used for the purposes of informing an investigation, not for deciding whether a matter should be dealt with remedially at the outset. The Complaint Management Team (CMT) or investigator should use a complaint history fairly with judgement and discretion through all stages of the complaint management process: a complaint history may be of significance to the contemporary complaint even where past allegations were not substantiated. NSW Police advised that its Complaints Management Manual provides guidelines for CMTs on the desirability of examining an officer's history at the point of assessing a complaint and the PIC expects that NSW Police will use complaints histories at some stage in all complaints investigations.<sup>196</sup>
- 4.1.16 As noted previously, the credibility of the police complaints system is a critical factor in police accountability. The Ombudsman's Office has an Aboriginal Complaints Unit, as recommended by the Royal Commission, which:
- focuses upon the significant volume of complaints by Aboriginal people concerning
  - police misconduct
  - researches and monitors issues concerning the complex and often troubled relationship between police and Aboriginal communities
  - assists in establishing better liaison, particularly in remote areas
  - assists in the implementation of the Aboriginal Strategic Plan and the recommendations of the Royal Commission into Aboriginal Deaths in Custody
- 4.1.17 In the first four years of its operation, the unit focused on access and awareness programs to support Aboriginal complainants and establish better liaison between Aboriginal communities and police. The Unit also has begun new strategies to improve relationships between Aboriginal people and police. For this purpose the Office has undertaken a series of "audits" since 2002, of 20 local area commands in areas with significant Aboriginal communities, which involve:
- reviewing projects and initiatives aimed at assisting police to work more effectively with local Aboriginal communities

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<sup>195</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, pp.1-2.

<sup>196</sup> Ibid., p.1.

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- meeting with local area commanders, other police officers, local service providers, and key community people to discuss practical issues affecting the relationship between police and Aboriginal people
- giving each command a “report card” and “rating” against the six key objectives contained in the NSW Police Aboriginal Strategic Direction, with recommendations on how the command could perform better
- monitoring each command’s compliance with our recommendations and the implementation of the objectives of the Aboriginal Strategic Direction.

4.1.18 Police Commanders report directly to the Commissioner, through the Police Aboriginal Strategic Advisory Council, on their dealings with local Aboriginal communities, including their responses to matters raised in the Ombudsman’s audits. The Ombudsman made a special report to Parliament on this aspect of the Office’s work in April 2005.<sup>197</sup>

## 4.2 Corruption Prevention and Education

4.2.1 While NSW Police considered that the roles and functions performed by the PIC “are generally appropriate to enable it to achieve its investigative charter of focussing on serious police misconduct” it did not consider that the PIC “[had] been appropriately structured to perform its deterrence function and prevention services”. NSW Police submitted that:

NSW Police regards PIC special reports made to Parliament in prior years as benchmarks against which it can measure organisational performance. The reports into police complaint investigations (Operation Oracle) and off duty assaults (Operation Dresden) were well considered and signified what a corruption prevention unit could have achieved in other key reform areas.<sup>198</sup>

4.2.2 This criticism was put to the Commissioner of the PIC who indicated that there was potential project work the PIC could undertake in relation to corruption prevention and education:

**CHAIR:** This morning the police and their submission argued that it is a significant failing of the current complaints system that no corruption prevention function is required of either the PIC or the Ombudsman, and that recommended changes to processes occur only following an investigation that has been overlooked by the Ombudsman or run by the PIC. Do you share that concern? Do you make recommendations to the police on procedural or systemic reforms as it currently operates?

**Mr GRIFFIN:** Yes, there is always a concern that there is not enough done in corruption prevention. I think probably most of our reports would have areas dealing with prevention issues that arise. We always look at things with a view to finding out whether there are things we could do or talk about in relation to corruption prevention. Abelia, perhaps, focussed on drugs, but part of what we hope to get from that was aimed at prevention, or, perhaps even wider than that, what was happening out there that might be changed to benefit the police and the community—which is prevention in the broad sense.

One of the most important areas for corruption prevention is the training that police or would-be police are given at very early stages. To some extent, we have been involved in

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<sup>197</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, pp.16-17.

<sup>198</sup> Submission No.11. NSW Police, dated 1 August 2006, p.3.



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that. It is one of the things that could easily be a project. But it is an issue, and it probably always will be one. Currently, the ball on prevention education in relation to police is perhaps not squarely with us, and maybe ICAC has an interest in that general prevention area. If you were going to develop PIC in a way such that it was resourced to deal with some other avenue, I would have thought that prevention area would be something that you could effectively provide to PIC....<sup>199</sup>

- 4.2.3 In his supplementary submission to the inquiry the Inspector of the PIC indicated his support for the PIC performing a function directed at deterring and preventing police misconduct and corruption. However, he did not see the need for a legislative amendment to facilitate such a role because s.13(1)(a) and s.14(a), (c) and (d) of the PIC Act provide adequate statutory authority to carry out that function. He noted that each PIC report and investigation served as a general deterrent and that the PIC had directly or indirectly drawn attention to areas to be addressed in terms of corruption resistance in its reports.<sup>200</sup>

### 4.3 Statutory Review of Police Powers Legislation

- 4.3.1 Outside of the police complaints legislation, the Ombudsman's scrutiny of police powers has been extended in recent years to include a statutory review role: when new police powers are conferred, provision is made for a statutory review of the outcomes of the legislation and whether or not it is securing its intended objectives. The Office described its work in this regard as follows:

Since 1998, the NSW Parliament has asked the Ombudsman to review the operation of 17 new laws giving police additional powers. The purpose of these reviews is to assess whether the new police powers are being implemented efficiently, effectively and fairly for both police and the community. Our 2005 annual report (at page 60) sets out the various legislation that we have reviewed or are reviewing, the nature of the police powers in question, and the progress of our reviews. It should be noted that, since the time at which the table was prepared, we have commenced our reviews under the Law Enforcement (Powers and Responsibilities) Act 2002, the Law Enforcement (Public Safety) Act 2005, the Terrorism Legislation Amendment (Warrants) Act 2005, and the Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005.<sup>201</sup>

- 4.3.2 The Committee noted that the NSW Police Association supports this area of the Office's work.<sup>202</sup>
- 4.3.3 The Office's capacity for monitoring the exercise of police powers is also apparent in its monitoring of covert powers exercised by law enforcement bodies. It monitors compliance with the record-keeping requirements of the telecommunications interception legislation and the requirements of the controlled operations legislation.<sup>203</sup>
- 4.3.4 In conclusion, the Committee considers that there may be scope for the PIC to give greater attention to corrupt prevention and education initiatives. However, the

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<sup>199</sup> Transcript of evidence, 24/8/06, p.46.

<sup>200</sup> Submission No.5a. Inspector of the Police Integrity Commission, dated 1 September 06, p.1.

<sup>201</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.19.

<sup>202</sup> Submission No.9. NSW Police Association, dated 2 June 2006, p.13.

<sup>203</sup> Submission No.10. NSW Ombudsman, op. cit., p.19.

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Committee reached the view that oversight of the police complaints system does contribute to systemic reform of policing. Striking a balance between the investigation of individual complaints and analysis of systemic issues is a difficult exercise. They are complementary activities and it is the Committee's view that close examination of police decision-making and police handling of complaints is an essential part of the process by which systemic improvements in policing are made.

## Part II - The efficiency and effectiveness of the current police oversight system and the scope for further efficiencies and effectiveness



## Chapter Five - Rationalising the police complaints system

### 5.1 Developments since the Royal Commission

5.1.1 NSW Police maintained that its response to the Royal Commission obviated the need for the current level of police oversight.<sup>204</sup> The Police Association also emphasised the range of reforms that had occurred since the Royal Commission including:

- a move into the tertiary sector for education, with increased emphasis on ethical and professional education;
- reforms to the structure of the organisation to ensure clearer accountability lines and better supervision;
- reforms to criminal investigation procedures (e.g. informant management, brief management, service of process, search warrants etc.);
- drug and alcohol testing and education;
- changes to legislative powers and accountabilities;
- reforms to reporting procedures;
- a better resourced Professional Standards Command, with a well-resourced investigation arm; and
- reforms to the complainant management procedures, including the introduction of the Employee Management programme.

5.1.2 The Association concluded that these changes have given NSW Police the capacity to respond to integrity issues within the organisation.<sup>205</sup>

5.1.3 There was general agreement apparent in the evidence and submissions to the inquiry that significant improvements have occurred in respect of the outlook and performance of police officers. One of the suggested indices of improvement is the increase in the number of internal police complaints made. The Ombudsman indicated that for the 2004-05 annual reporting period, more than 40% of the 5716 complaints received about police officers were made by police officers (including about 30% of the more serious matters).<sup>206</sup> NSW Police provided different statistical data from the c@ts.i electronic complaints system for the same reporting period and indicated that 5865 complaints had been received of which 2578 or 44% were made by police officers. Of the 5865 complaints recorded on c@ts.i 3169 were categorised as Category 1 or Category 2 complaints. Of those matters 1176 (37%) were made by police officers.<sup>207</sup>

5.1.4 NSW Police advised that any interpretation of the statistics provided by the Ombudsman's Office should take into consideration that internal complaints are

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<sup>204</sup> Submission No.11. NSW Police, dated 1 August 2006, p.11.

<sup>205</sup> Submission No.9. NSW Police Association, dated 2 June 2006, p.4.

<sup>206</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.7.

<sup>207</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.4.

different from protected disclosures. Every internal complaint is registered on c@ts.i and reviewed by the Internal Witness Support Unit Manager to determine if the complaint meets the definition of an internal witness. NSW Police advised that from January 2004 until 31 December 2005 183 complainants had been offered a place in the internal witness program.<sup>208</sup> Also, internal complaints made by police officers the subject of disciplinary proceedings were to be distinguished from more genuinely motivated internal police complaints<sup>209</sup>. NSW Police declared that it does not rely wholly on internal police complaint statistics as a measure of the ethical health of the organisation but it viewed the willingness of NSW Police officers to complain as “extremely significant culturally”.<sup>210</sup> Regardless of these finer points of classification, a marked increase obviously has occurred in the number of police officers reporting or complaining about misconduct by their fellow officers.

5.1.5 The Inspector of the PIC thought that developments since the Royal Commission were significant, as was evident in the following exchange with Ms Burnswoods:

**Ms BURNSWOODS:** On a couple of occasions when giving evidence this morning Assistant Commissioner Carroll and Commissioner Moroney made the point that 50 per cent of complaints that go to the Ombudsman et cetera are now coming internally from the police themselves. Do you have a comment to make on the significance of that figure? I think they said that at the time of your royal commission the figure was 5 per cent.

**Mr WOOD:** That is about right. I think that is a most remarkable and very impressive result. If that be true, and it continues, then it is a very healthy sign for the police, but what follows is whether those police thereafter are being in any way punished, or do they feel comfortable about bringing forward material under their own name or are they doing that anonymously? As to the latter, I do not know the proportion that is anonymous and the proportion of those prepared to name themselves. But I think it is a very healthy sign.

5.1.6 He saw the increase in internal complaints as a reflection of the “preparedness by honest police not to be associated with, or not be placed in jeopardy by, having to work with corrupt police”.<sup>211</sup> It was important to ensure that support was provided to internal complainants. The extent to which internal complaints were not genuine, used for example as payback, could only be determined by proper investigation.<sup>212</sup>

5.1.7 The Inspector considered that the handling of police complaints had improved considerably since the Royal Commission and that the local area command system works well with complaint management teams. He pointed out that the success of this system depended very much on the commitment of the local area commander and those entrusted by the commander to manage complaints, and observed that some commands deal with complaints very well and some are less interested.<sup>213</sup> In response to a question from Mr Kerr, he told the Committee:

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<sup>208</sup> *ibid.*, pp.8-9; notably 97 declined the offer to participate in the program because they felt appropriately supported in their command.

<sup>209</sup> *ibid.*, p.5.

<sup>210</sup> *ibid.*, p.4.

<sup>211</sup> Transcript of evidence, 24/8/06, p.25.

<sup>212</sup> *ibid.*, p.26.

<sup>213</sup> *ibid.*, p.21.

**Mr WOOD:** I think there has been a vast improvement not only in performance but in attitude. I think there is an appreciation now that there is a degree of professionalism involved—in fact, a significant degree of professionalism involved. As you know, I retired as a judge last September, but in the years following the commission when I sat as a judge I saw, I believe, a very significant improvement in the quality of investigations, a resort to forensic evidence and objectively collected evidence in preference to the old and lazy ways of collecting evidence, by dubious means. I have been very impressed by some of the local area commanders who I have come into contact with who are not only intelligent and articulate but understand their role.

Just recently in another context I was up at Dubbo, and I have to say I was significantly impressed by the local area commander there who has adopted a real interest in crime prevention in addition to crime detection. I would hope that that is spread through other regions because I think crime prevention is now a very important role for police, and I think they are turning to that more than they ever did in the past. There will always obviously be some police who are corrupt or incompetent or who will resort to crude attempts to deal with problems. I guess I would like to see some more training in that area. I do not particularly want to go into the police college matter because I know nothing about it, except to say that I would be concerned that the college is used both for training new police and at the same time giving courses to more experienced police. Quite frankly, I do not think the two should mix. I would like to see training courses for serving, sworn police conducted either somewhere else or in some way to have the two groups significantly separated.<sup>214</sup>

- 5.1.8 The Inspector suggested that the existence of the oversight system may have been one factor of several that contributed to the low proportion of investigations found wanting.<sup>215</sup>
- 5.1.9 The question for the Committee was whether these changes removed the need for oversight in its current form and, if so, what level of oversight should be provided for in a reformed system.

## 5.2 **The Immediate Background to the Inquiry**

### 5.2.1 ***Review of the Police Act 1990***

- 5.2.1.1 As a result of its review of the Police Integrity Commission Act, the Ministry recommended consideration be given to further streamlining of the referral and notification processes required under the Act, following on from the state-wide roll-out of the electronic complaints management system c@ts.i.<sup>216</sup> The following proposals were identified by the Ministry as matters for further consideration:

- whether the Ombudsmen should oversight all police complaints, with the PIC focussing on the investigation of police corruption and serious misconduct;
- whether the Category 1/Category 2 complaint distinction can be rationalised;
- whether NSW Police should commence investigation of Category 1 complaints, subject to the Ombudsman's oversight, and only cease

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<sup>214</sup> *ibid.*, p.24.

<sup>215</sup> Submission No.5a. Inspector of the Police Integrity Commission, dated 7 September 2006, p.2.

<sup>216</sup> Ministry for Police, *Report on the Review of the Police Integrity Commission Act 1996*, Discussion Paper, 2002, pp.86-87.

investigating the matter if the Commission advises it wishes to deal with the matter under the PIC Act;

- whether the requirement for the PIC to advise the Ombudsman when it determines not to investigate a Category 1 complaint should be removed, with the PIC only being required to advise when it determines to investigate a matter;
- whether the PIC should obtain the consent of the complainant before referring a complaint to NSW Police or the Ombudsman for investigation; and
- whether the Ombudsman should obtain the consent of the complainant before referring a complaint to NSW Police for investigation.<sup>217</sup>

5.2.1.2 The Committee followed the Ministry's progress in conducting the review of the Police Act with interest and held meetings with representatives of the Ministry on 19 November 2003 and 7 September 2004 to obtain advice on the issues being considered during the review. In response to correspondence from the Chairman, the then Minister for Police, the Hon John Watkins MP, confirmed in May 2004 that NSW Police, the Ombudsman, the PIC and the NSW Police Association had been invited to make submissions on Parts 8A and 9 of the Police Act. No submissions were received on Part 9 but the submissions made on Part 8A were shared between all agencies shortly after their receipt and a roundtable on Part 8A, involving senior representatives of each agency, was convened by the Ministry on 10 March 2004.<sup>218</sup>

5.2.1.3 The Ministry's report on the review was due to be tabled in Parliament by 31 December 2002 but it was not finalised until April 2006. The delay was attributed to "the need to consult comprehensively".<sup>219</sup> The Ministry supplied the Committee with a copy of its report shortly before it was tabled in Parliament on 25 October 2006. Some of the proposals contained within the Ministry's report were brought forward in the Police Amendment (Miscellaneous) Bill 2006 but several proposals were not progressed as they are still the subject of negotiation by the Ministry. Specific proposals contained within the report will be referred to in this report where relevant to the Committee's inquiry.

## 5.2.2 **Ministry's current review of the police complaints legislation**

5.2.2.1 The Committee advertised its inquiry on 15 April 2006. Prior to that, it wrote to the relevant stakeholders on 30 March 2006 inviting submissions. Some extensions were given to a number of interested parties but the NSW Police submission was considerably delayed and was not received from the Ministry for Police until 1 August 2006, two weeks after it had been signed out by the Commissioner for Police.

5.2.2.2 The submission made by NSW Police to the Committee's inquiry declared "the NSW Government has recently announced a review to examine whether the current

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<sup>217</sup> *ibid.*, p.93.

<sup>218</sup> Letter from the Minister for Police, The Hon John Watkins MP, to the Chairman, dated 26 May 2004.

<sup>219</sup> Ministry for Police, *Report on the Review of the Police Act 1990*, April 2006, p.3.



complaints investigation system should be restricted to serious misconduct or other criminal actions". NSW Police envisaged that this change would assist it to effectively manage its own complaints, as many would become local management issues.<sup>220</sup>

5.2.2.3 However, the letter from the Director-General of the Ministry for Police, which accompanied the Police submission advised that:

I would observe that the issues raised by NSW Police in its response concerning the police oversight system are currently the subject of the interagency review of the NSW Police complaints management system, convened by the Ministry for Police. In particular, I would point out that the review has not made any recommendation in relation to a proposal by NSW Police to amend the Police Act 1990 to remove matters that are not criminal allegations or violations of the police Code of Conduct and Ethics from the definition of "complaints". Similarly, no such proposal has been put to Cabinet.<sup>221</sup>

5.2.2.4 The Premier had announced the Ministry's current review of the police complaints system on 21 May 2006, following his address to the NSW Police Association Conference. The Ministry would investigate whether on the spot management action following minor performance issues would be more suitable than a formal investigation overseen by a complaints committee. It also would consider whether the current complaints investigation system should be restricted to serious misconduct or other criminal actions.<sup>222</sup> Consequently, for a large part of the Committee's inquiry, it would appear that the Ministry for Police has been concurrently considering the same proposals that NSW Police and NSW Police Association put to the Committee in their submissions.

5.2.2.5 Mr Tree's advice goes some way towards explaining the delay in receipt of the NSW Police submission and highlights the change that had occurred in the position taken by NSW Police since the roundtable negotiations for the review of the Police Act in March 2004.

5.2.2.6 The Ombudsman also had informed the Committee that the Government was awaiting the outcome of the Committee's inquiry and the review commenced by the Ministry for Police before reaching a view in respect of the definitional changes proposed by NSW Police.<sup>223</sup> He gave the following account of the apparent change in the position taken by NSW Police:

Between 2002 and 2005 the Ministry for Police conducted a number of consultations on amendments as part of a review of the Police Act 1990, including consultations about Part 8A. The recommendations arising out of those discussions, reached largely by consensus, emphasised the role of each agency in the handling of complaints about police officers. Never in those discussions did any agency or interested party, including NSW Police or the Police Association, suggest the need for a radical change to the oversight arrangements of the type put in evidence before the Committee.

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<sup>220</sup> Submission No.11. NSW Police, dated 1 August 2006, p,11.

<sup>221</sup> Letter from Mr Tree, NSW Ministry for Police, to the Chairman dated 1 August 2006.

<sup>222</sup> Premier's Press Release, 21 May 2006.

<sup>223</sup> Submission No.10a. NSW Ombudsman, dated 15 September 2006, p.17.

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Nor was this view expressed in meetings between the Ombudsman and Police Commissioner, and between senior officers of both organisations.

Given the long history of cooperation and the open relationship between the Ombudsman and NSW Police, it is particularly disappointing that the first time these and other issues have been brought to the table is in the evidence from senior police officers before the Committee.

By way of contrast, there is nothing in the Ombudsman's submission or our views about how police complaints might be better handled that has not previously been communicated to NSW Police or the subject of formal or informal discussions.

5.2.2.7 The Ombudsman asserted that this lack of openness by NSW Police is further evidence as to why there would be little confidence in entrusting that agency to deal properly with complaints in the proposed circumstance of reduced oversight by external agencies.<sup>224</sup>

### 5.3 **What type of conduct is subject to complaint and how does the oversight system work in practice?**

5.3.1 NSW Police submitted to the inquiry that it was necessary to rationalise the current oversight system by implementing the following:

- acknowledgement that the NSW Police's own complaints administration system is a best practice system and is effective and fit for purpose;
- rationalising the external oversight functions of investigating serious criminal and corrupt conduct and the administrative function of complaints oversight;
- amending legislation to ensure that minor managerial complaints are not dealt with in the same way as criminal complaints or corrupt conduct;
- mandating use of existing electronic options for oversight in keeping with government e-business policy, together with reduced procedural and administrative compliance requirements;
- creating a more targeted and specific oversight system that oversees matters managed by police by using 'dip sample' techniques; and
- targeting identified major risk areas that could lead to organisation improvement.<sup>225</sup>

5.3.2 NSW Police contend that the majority of complaints made about police officers concern minor matters. Assistant Commissioner Carroll also gave evidence that the breadth of matters caught by the police complaints legislation is very wide:

**Mr CARROLL:** .... Under the definition of "conduct", unfortunately as it presently stands I think just about anything would fit the definition of complaint, to such an extent that even if the police officers are out there executing their duty in accordance with their statement of values and their oaths of office and it is legislation that they are using and it is perceived by somebody that that legislation is unreasonable, that is a complaint

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<sup>224</sup> *ibid.*, pp.6-7.

<sup>225</sup> Submission No.11. NSW Police, dated 1 August 2006, pp.16-17.

against the police. It is not a complaint against the legislators or the Government; it is a complaint against the police officers and it is recorded on their complaints history.<sup>226</sup>

- 5.3.3 Information from the Ombudsman's Annual Report for 2004-05, however, suggests that the major type of allegations contained in police complaints are not minor matters e.g. customer service issues.

Table 3: Type of Police complaints<sup>227</sup>

Type of allegation	No of allegations
Criminal conduct	1,077
Assault	756
Investigator/prosecution misconduct	1,128
Stop/search/seize	409
Abuse/rudeness	518
Administration wrong conduct	361
Breach of rights	616
Inadvertent wrong treatment	52
Information	782
Other misconduct	3,359
Total	9,058

- 5.3.4 The NSW Police Association submitted that:

The vast majority of matters that are categorised as complaints fall broadly under two classes – customer service issues (that arise directly from police-public interaction) and performance matters (where there is a suggestion or allegation that an officer hasn't come up to scratch in his performance). There is no suggestion of either criminality or corruption in respect to these allegations.<sup>228</sup>

- 5.3.5 The Association strongly believed that “all complaints that allege serious misconduct that is criminal or corrupt in nature should be vigorously investigated with the full resources of the NSW Police and the Police Integrity Commission”.<sup>229</sup> However, the Committee understands that this is what the system presently provides for.

- 5.3.6 In his evidence, the Assistant Ombudsman described the NSW Police Association interpretation of the complaint categorisation as a simplistic, incorrect representation of how the system works:

**Mr COHEN:** .... it is particularly disappointing to note the wrong information conveyed to the Committee by representatives of the Police Association about how the complaint system works. In particular, the Association submitted that every complaint about serious conduct through to a complaint about being late to court, or being rude to a member of the public, must be notified to the Ombudsman. That is simply not correct. If a commander forwarded to the Ombudsman a complaint about an officer being late to court we would send it back and say, "Deal with it yourself." While we insist that serious

<sup>226</sup> Transcript of evidence, 24/8/06, p.11.

<sup>227</sup> NSW Ombudsman *Annual Report 2004-05*, p.43.

<sup>228</sup> Submission No.9. NSW Police Association, dated 2 June 2006, p.7.

<sup>229</sup> *ibid.*, p.8.

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complaints are notified and the investigation of those matters closely reviewed, we equally insist that commanders deal directly with minor complaints without Ombudsman involvement.

Such a fundamental misunderstanding of the complaint system suggests a lack of knowledge by the Police Association representatives as to how it works. This, in turn, feeds ongoing myths and wrong perceptions as to how the complaint system impacts on police officers. More disturbingly, the Police Association proposal to limit external oversight to criminal and corruption matters would remove many serious complaints from review. Complaints about strip searches, police pursuits that result in serious injury, failure to provide medical attention while in police custody, miscarriages of justice because of police errors, or gross incompetence leading to failed criminal proceedings would no longer be the subject of scrutiny.

No hard evidence is provided to support this substantial downscaling in oversight. Significantly, the position of the Police Association sits in marked contrast with the many change indicators in its written submission that demonstrate the success of current oversight arrangements. Indeed, by most measures the current complaints system for police officers is delivering good outcomes. A primary reason for this is the oversight by the Ombudsman of police complaints. There remains, of course, room for improvement. In our submission we have made a number of recommendations to improve the operation of the Police Act.<sup>230</sup>

5.3.7 The Assistant Ombudsman (Police) also disputed the claim that a complaint can be captured under Part 8A of the Police Act merely because it is made in writing:

**CHAIR:** If a matter is submitted in writing, does that mean it is automatically captured as a complaint under part 8A and cannot be treated as an LMI?

**Mr COHEN:** No, if a written document making allegations in relation to police conduct is received, a decision has to be made as to whether it is a matter that requires notification to the Ombudsman or the Police Integrity Commission or whether it is a matter that can be dealt with locally and that it is going to be on the basis of the allegation that is raised. For example, if it is an allegation of somebody being late for court, that is a matter that could be dealt with as a local issue. If it is a matter that somebody was assaulted while being arrested or that there had been police misconduct in a prosecution, that would be a matter that would have to be treated as a complaint. An initial decision has to be made as to whether it is a matter that is notified or a matter that can be dealt with locally.

**CHAIR:** So the short answer is that it does not matter whether it is in writing or not?

**Mr COHEN:** There is a requirement if a matter raises criminal or other serious misconduct issues to reduce it to writing.

**CHAIR:** But the mere fact that it is in writing does not necessarily mean that it is caught under Category One or Category Two?

**Mr COHEN:** That is exactly right.<sup>231</sup>

5.3.8 Further, the PIC's resources are fully focussed on the investigation of serious misconduct. The PIC provided the following description of its end of the oversight system in practice:

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<sup>230</sup> Transcript of evidence, 24/8/06 p.52.

<sup>231</sup> *ibid.*, p.55.

Commission investigations can originate from complaints of serious police misconduct made to NSW Police, the Ombudsman or directly to the Commission. The oversight system facilitates the Commission's focus on serious police corruption by requiring NSW Police and the Ombudsman to refer all serious complaints (Category 1 complaints) to the Commission. The Commission makes a decision whether to investigate, review any subsequent investigation or refer complaints to the NSW police and the Ombudsman. The Commission investigates the most serious complaints and reviews the investigation by NSW Police of a small proportion of the remainder. However, the majority of complaints of police misconduct are investigated by NSW Police and reviewed by the Office of the Ombudsman.<sup>232</sup>

## 5.4 Should the definition of "police complaint" be narrowed?

### 5.4.1 Proposals to narrow the definition

5.4.1.1 Both NSW Police and the NSW Police Association presented proposals to the Committee that would involve narrowing the definition of police complaint under Part 8A of the Police Act. NSW Police supported the removal from Part 8A of the Police Act of complaints that are not criminal allegations or violations of the police Code of Conduct and Ethics.<sup>233</sup> Likewise, the NSW Police Association submitted that any allegation not suggesting criminality or corruption should be dealt with by local police managers.<sup>234</sup>

5.4.1.2 The Assistant Ombudsman (Police) provided the Committee with the following account of this proposal, as put to the Ministry for Police during its current police complaints review, and expressed reservations as these latest proposals would remove significant types of matters from the Ombudsman's scrutiny:

**Mr COHEN:** .... There is a further review that has been announced and we have been the subject of one meeting and some consultation. The present proposal that has been put on the table in relation to that review has been to reduce the range of complaints that would be the subject of oversight of criminal and serious misconduct matters. We have advised the ministry secretariat of a number of views about that. Firstly, we do not think that the problems with police complaints management will simply be solved by changing the definition of "complaints". We do not think that is a solution.

.... But, more importantly—and I suppose to take a complainant's perspective—there are some matters that, if the submission of the police in relation to that review were accepted, would not be the subject of our review. These are matters that the Committee itself has referred to our office. There was a complaint about somebody who was held in custody for a number of days and received only one meal a day and was charged unnecessarily with a matter. That matter would be excluded from external oversight. For example, complaints about police failing to properly investigate a murder matter and treating it as a suicide in the first instance are not a criminal matter but a very serious issue that, in our view, the community would expect there to be external oversight in relation to.

So we have raised our concerns that limiting the complaints system to only the most serious matters has, firstly, the potential to substantially disenfranchise complainants. But, secondly, there is a range of less serious matters—non-criminal matters—that if

<sup>232</sup> Submission No.8. Police Integrity Commission, dated 23 May 2006, p.3.

<sup>233</sup> Submission No.11. NSW Police, dated 1 August 2006, p.7.

<sup>234</sup> Submission No.9. NSW Police Association, dated 1 June 2006, p.8.

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they are not the subject of appropriate rigour and review reduces the corruption resistance of NSW Police. I think in evidence earlier today the issue of improper association was raised. That is a very clear matter. It is not criminal but it is a matter that needs to be thoroughly looked at otherwise much of the hard work in the past 10 years to increase the corruption resistance of NSW Police would be in jeopardy. That is something that, from our perspective, we simply could not support.<sup>235</sup>

5.4.1.3 One of the problems with the NSW Police and Police Association position is that it is not possible to rely on the outcome of a complaint as the basis for its classification: essentially, such an approach would involve prejudging the complaint. The Ombudsman pointed out that:

Importantly, in order to determine whether a reviewable or non-reviewable action needs to be taken in respect of a complaint, enquiries must be conducted to establish whether there is any substance to the complaint issue. In many instances there will be no substance to the complaint issue or, alternatively, it will not be able to be proved to a sufficient standard. But that is not to say that those enquiries need not be conducted, nor for more serious issues that they ought not be the subject of external oversight by the Ombudsman. Indeed, experience has demonstrated that external oversight is the only safeguard to ensure that complaints are properly investigated by NSW Police.<sup>236</sup>

5.4.1.4 He submitted further that:

There are a number of difficulties with this approach. First, the Class or Kind Agreements provided for in the Police Act have already removed thousands of management and customer service matters from external oversight.

More significantly, adopting a restricted definition of complaint as proposed could remove many matters from any possibility of external oversight including:

- conflict of interest issues
- improper associations
- issues of race, sex, and other discrimination falling short of criminal conduct or serious misconduct
- issues of poor police service which result in death or serious injury, where it is clear at the outset that the matter involves a question of judgement as opposed to misconduct
- complaints concerning matters such as DNA testing and mistaken or wrong records being kept by police of such matters, despite the potential for a miscarriage of justice
- complaints about search and arrest by police where complainants allege inappropriate or unreasonable conduct as opposed to criminal conduct or serious misconduct
- police actions which result in significant financial impact on complainants, where the conduct is unreasonable but is not alleged to be criminal conduct or serious misconduct – such as police damage to property while executing searches, or wrongful police seizure of property

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<sup>235</sup> Transcript of evidence, 24/8/06 pp.56-57.

<sup>236</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.17.

- a failure to properly observe custody procedures including ensuring attendance by ambulance officers upon injured persons in custody, or otherwise complying with lawful requirements of custody – matters that may not be criminal conduct or serious misconduct
- gross incompetence in investigations or prosecutions leading to the failure of criminal charges and significant costs orders being made against police
- poor treatment of internal police complainants (whistleblowers) that falls short of criminal conduct or serious misconduct
- inappropriate access and use of information falling short of criminal conduct or serious misconduct.<sup>237</sup>

5.4.1.5 NSW Police claims that the Ombudsman has sought to misrepresent its position on the issue of narrowing the definition of complaint. It advised that the purpose of the proposal is to “merely [seek] to draw a distinction between performance or competence issues and misconduct issues in line with [the] Public Sector Employment and Management Act”.<sup>238</sup> All matters would still be able to be viewed by oversight agencies to ensure transparency but there would be a resolution of the process of categorising the type of conduct subject to complaint.

5.4.1.6 To illustrate this point, NSW Police provided the following example centred on the category of conduct termed “serious incompetence”, which is covered by the Category 2 class or kind agreement:

Each of the categories listed by the Ombudsman needs to be viewed as having different levels of seriousness contained within them. For example, the Ombudsman has included the category:

*gross incompetence in investigations or prosecutions leading to the failure of criminal charges and significant costs orders being made against police*

The term, ‘gross incompetence’ is subjective and given a broad definition by the Ombudsman. A reasonable interpretation would be that ‘gross incompetence’ is a matter that would warrant serious management action or dismissal. The status of these matters would not change.

However a relatively junior officer, who on one occasion forgets to summons a witness resulting in a matter being dismissed, but who otherwise has an exemplary work record and great potential, would be managed and not be the subject of an investigation under Part 8A.<sup>239</sup>

5.4.1.7 However, a close reading of the Category 2 agreement suggests that the example given about a junior officer would not be caught by the terms of the current agreement anyway. The agreement specifies that the Ombudsman must be notified of complaints alleging:

Serious incompetence (including serious incompetence which results in failed prosecutions and criminal investigations).

5.4.1.8 Clarification is provided by way of a footnote that gives the following guidance:

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<sup>237</sup> *ibid.*, pp.5-6.

<sup>238</sup> NSW Police response to Submission No.10a, NSW Ombudsman, p.5.

<sup>239</sup> *ibid.*, pp.5-6.

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In assessing whether a complaint alleges serious incompetence, factors to be considered include the seniority of the involved officer, the nature of the competence issues, the outcome of the alleged conduct and, for prosecutions, any costs awarded against police and/or comments of the Court.<sup>240</sup>

5.4.1.9 Consequently, it does not appear to the Committee that there is a need to narrow the definition of notifiable Category 2 complaints regarding “serious incompetence” as the definition already meets the narrow interpretation sought by NSW Police.

5.4.1.10 Another indicator that the Category 2 agreement is meant to cover complaints of a certain degree of seriousness, rather than minor performance issues, is given at point 11 in the agreement. This point explains that complaints about the way local management issues have been handled only need to be dealt with under Part 8A as a Category 2 complaint, where the Ombudsman requires it. As a guide the agreement indicates that:

These may include (but are not restricted to) complaints about the assessment of the matter; the treatment of the complainant and/or subject officer; the outcome of the matter; or delays in dealing with the matter.... The Ombudsman will only require these matters to be dealt with as Category 2 complaints where substantial concerns arise about the police handling of the matter.<sup>241</sup>

5.4.1.11 For example, this would ensure oversight of a complaint that was classed as a LMI but where the complainant subsequently alleged that they were intimidated during the conciliation of the matter.

5.4.1.12 The only local management issues required to be notified by NSW Police to the Ombudsman are those identified by the Ombudsman, following consultation with the Commissioner of Police. The class or kind agreement explains that this point is designed

to address the legislative difficulty created for matters that fall within the s.122(2) agreement. It ensures that, where appropriate, individually identified matters can still be oversights or investigated by the Ombudsman under Part 8A of the Act.<sup>242</sup>

5.4.1.13 The purpose of this particular exception does not appear to be to introduce a raft of matters that would be classed as local management issues back into the Category 2 agreement as notifiable complaints. The intention would seem to be to ensure that in limited cases the legislation will not operate so as to prevent oversight of appropriate matters. One situation where the Committee envisages that this provision could be utilised would be in relation to a minor matter that is closely connected with, or has a direct bearing on, the substance of a more serious misconduct allegation.

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<sup>240</sup> “Guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner of Police under the Police Act” dated June 2004 and effective from 1 October 2004, covering Category 2 complaints and local management issues, p.4.

<sup>241</sup> *ibid.*, p.6.

<sup>242</sup> *ibid.*



5.4.1.14 The Ombudsman concluded that in light of community concerns about police investigating police, the types of matters he had identified should remain subject to rigorous external oversight.<sup>243</sup> Based on the evidence taken during the course of its inquiry, the Committee concurs with the Ombudsman's view.

## 5.5 Rationalising the complaint categories

### 5.5.1 Background

5.5.1.1 The NSW Police proposal to narrow the definition of police complaint was a significant departure from the agreement reached between key stakeholders during the Ministry's statutory reviews about how the police complaints system could be rationalised.

5.5.1.2 The Ombudsman made a proposal during the review of the Police Integrity Commission Act, which was raised again during the review of the Police Act, that in view of the PIC's access to c@ts.i and its capacity to investigate or take over the investigation of any complaint in the complaints system, there was no longer any need for the legislation to include:

- any formal distinction between "Category 1" and "Category 2" complaints;
- the related provisions requiring the "notification" of Category 1 complaints to the PIC;
- the provisions requiring the referral by the PIC to the Ombudsman of Category 1 complaints that the PIC does not wish to investigate; and
- the provisions requiring the referral by the PIC to the Ombudsman and/or NSW Police of Category 2 complaints.<sup>244</sup>

5.5.1.3 The Ombudsman's proposal to remove the distinction between Category 1 and 2 complaints was supported by NSW Police as it would remove the need for complaints to be classified as either Category 1 or Category 2 in the field, with the classification to be conducted at a business level. NSW Police agreed to make administrative changes to support the rationalisation of complaint categories in the short term and planned to make the necessary modifications to c@ts.i in the long term.<sup>245</sup>

5.5.1.4 The interagency discussions between NSW Police, the Ombudsman, the PIC and the Police Association resolved that the legislative distinction between Category 1 and Category 2 matters should be abolished. The PIC would retain the power to investigate any matter it likes and administrative arrangements could be made for the PIC to be alerted of matters it may have an interest in. Section 129 of the Police Act already contains the legislative requirement to record complaints on the complaints information system. NSW Police would make administrative changes to support the rationalisation of complaint categories and develop modifications to

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<sup>243</sup> Submission No.10a, NSW Ombudsman, dated 15 September 2006, p.6.

<sup>244</sup> NSW Ministry for Police, *Report on the Review of the Police Act 1990*, April 2006, p.42.

<sup>245</sup> *ibid.*, p.41.

c@ts.i.<sup>246</sup> If implemented this proposal would in effect recognise the way in which the complaints process works in reality.

## 5.5.2 The class or kind agreements

5.5.2.1 Complaint matters are currently categorised under two “class or kind” agreements. Mr Cohen explained that the agreements provide a flexible mechanism by which responsibility for complaint matters could be transferred to police:

**Mr COHEN:** The definition of "complaint" in Part 8A is unquestionably a wide definition but the use of the class in kind agreements, which were agreed by the Ombudsman with the Police Integrity Commissioner, after consultation with the Police Commissioner, mean that there is flexibility to hand back management issues and low level customer service matters to commanders to handle directly. That has been done from the very time those provisions were put in place. In the last year more than 2,000 customer service and management issues—somewhere in the vicinity of 40 per cent of the total number of complaints received by NSW Police—were handled locally without any oversight or intervention by the Ombudsman.<sup>247</sup>

5.5.2.2 The Inspector of the PIC, the Hon James Wood submitted that:

It is clear that there has to be a class or kind criteria for the potential division of responsibility for investigation. So far as I can see the existing criteria remain appropriate, and the reporting system appears to be such that each oversight agency can readily identify and target matters of interest.<sup>248</sup>

5.5.2.3 According to NSW Police reliance on class or kind agreements to determine what matters are notifiable is inefficient.<sup>249</sup> But the Ombudsman’s proposal to remove the distinction between Category 1 and 2 complaints would eliminate some of these notification requirements:

**Mr COHEN:** Some of the recommendations, if adopted, will significantly streamline the complaints system. It removes the Category One, Category Two distinction. That will remove a lot of the requirements to notify the Police Integrity Commission of matters and will reflect the way it goes about doing its business, which is primarily to look across the whole range of complaints for intelligence and other opportunities where it can move to investigate.

It will also free up our capacity to communicate with the Minister. For example, there is currently a restriction on us providing critical police information to the Minister unless the Commissioner agrees to that course and the legislation removes that anomaly. Those recommendations, we think, will significantly streamline the complaints process.

5.5.2.4 NSW Police later indicated support for rationalising the complaint categories in its response to the Ombudsman’s’ second submission:

The current class and kind agreements designed to classify what complaints need to be notified to oversight agencies, are no longer relevant as the oversight agencies have direct access to the electronic complaints files from the moment of registration. Removal

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<sup>246</sup> *ibid.*, pp.41-42.

<sup>247</sup> Transcript of evidence, 24/8/06 p.53.

<sup>248</sup> Submission No.5. Inspector of the Police Integrity Commission, dated 11 May 2006, p.5.

<sup>249</sup> Submission No.11. NSW Police, dated 1 August 2006, p.13.

of the class and kind agreements will provide greater certainty for complaints handlers and remove key areas of inconsistency and dispute.<sup>250</sup>

5.5.2.5 Again when referring to less serious complaints in its latest submission, NSW Police states:

The current regime which focuses on assessment and categorisation of complaints, followed up by audits and arguments about whether a matter is a complaint and what category it falls in to, is no longer sustainable. A fundamental shift is required from complaints administration based on checking boxes, to a focus on resolution, risk assessment, sound judgment, and sound management practices.<sup>251</sup>

5.5.2.6 The Committee couldn't agree more regarding the need for NSW Police to utilise these techniques but it considers that the rationale behind the class or kind agreements remains valid. The Committee hopes that the removal of the legislative distinction between Category 1 and Category 2 complaints will reduce the level of bureaucracy attached to the classification and assessment of police complaints, thereby, assisting local commanders in their decision-making. However, it will still be necessary for the types of matters that would constitute local management issues to be identified by way of a class or kind agreement so that they can continue to be excluded as complaints under Part 8A.

5.5.2.7 NSW Police were also critical of the fact that the class or kind agreements are determined by the oversight agencies, without the Commissioner of Police being a party to the agreement. The Ombudsman and the PIC are only required to consult with the Commissioner:

**Mr CARROLL:** The class or kind agreement is open to debate. The class or kind agreement is an agreement between the PIC Commissioner and the Ombudsman. The Police Commissioner has got no say. He is consulted but he is not a signatory to his own complaints. In fairness to the Ombudsman and the PIC, both consult with us widely in relation to class or kind agreements but the Commissioner is no signatory to that agreement. The legislation only provides for consultation. What we have is that the CEO of the agency, who is responsible under the Act for the management of the complaints, cannot even set what his own complaints are.<sup>252</sup>

5.5.2.8 The Commissioner of Police had previously sought to become a party to the class or kind agreements but this proposal was rejected by the Ombudsman and the Police Integrity Commission. According to the Ombudsman, the Commissioner of Police had been advised that the Office of the Ombudsman and the Police Integrity Commission did not support the proposal "for reasons including the public interest being traded off for the sake of agreement, and the potential impact on the independence of the oversight agencies".<sup>253</sup>

5.5.2.9 The Committee understands that there has not been any instance where the Commissioner of Police has disagreed with the class or kind agreements that have

<sup>250</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.16.

<sup>251</sup> NSW Police response to Submission No.10a, NSW Ombudsman, p.4.

<sup>252</sup> Transcript of evidence, 24/8/06, p.10.

<sup>253</sup> Submission No.10a, NSW Ombudsman, dated 15 September 2006, p.13.

been put in place. In fact, it has been the Ombudsman who has brought forward proposals leading to the simplification of the class or kind agreements.

5.5.2.10 Changes to the class or kind agreements, arising from legislative changes to the definition of notifiable complaints in 2001, resulted in a complex categorisation of complaints.<sup>254</sup> In 2002-03 the Office of the Ombudsman initiated discussions with the PIC and NSW Police as a precursor to proposing a rationalisation of the complaint categories, which were subsequently reduced in 2004 from nine to three in total.<sup>255</sup>

## 5.6 Investigation of serious complaints

5.6.1 The Commissioner of the PIC emphasised the relatively small number of investigations of serious police complaints found to be deficient:

**CHAIR:** What is PIC's experience generally of the quality and the manner of police investigations into serious police misconduct?

**Mr GRIFFIN:** We do not oversight a lot of them, although we oversight some. I notice that, looking at the figures for the Ombudsman, out of the total number of complaints—and there are a lot of them—they find only something like 9 or 10 per cent to be deficient across the board in any event, which I think is an interesting figure. It is something we should all keep in mind when talking about how the police are going with this stuff. The matters that we look at and oversight ourselves generally are approved as acceptable, I would think probably at the same 10 per cent level, significantly they are done appropriately.

One of the problems with police investigating misconduct that seems to have been lost sight of is that a lot of this is done by the regions. Though the figures would come from the police, the bulk of it would be done by the regions and they are not specially resourced to do that. In country areas in particular, it is a very big impost if you suddenly have thrust upon an investigation of a complaint that must be done properly. They do not have access to electronic surveillance, and perhaps physical surveillance and often specialist resources. That is a failing, if you were to look at structural failings, which might run across the board in relation to investigations by police. But, in broad terms, I think the Ombudsman's figures—if it is right that they run at about 9 per cent—would be consistent with what we see, and it is not a bad figure.<sup>256</sup>

5.6.2 The Ombudsman's Annual Report for 2004-05 reports that of the 2,379 complaints investigated and closed that year, 90% were satisfactory. There were 242 complaints investigations where the investigations or actions taken were unsatisfactory.<sup>257</sup>

5.6.3 The Ombudsman advised that most deficiencies are raised about the investigation of Category 1 complaints and some of the reasons for this are identified as lack of expertise on the part of local commands, competing policing priorities, and resources.

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<sup>254</sup> Ministry for Police, *Report on the Review of the Police Integrity Commission Act 1996*, op. cit. p.88.

<sup>255</sup> The current complaint categories – Category 1, Category 2, and “local management issues” – are classified according to two agreements: the Category 2 agreement (which covers local management issues) agreed upon 25 June 2004, dated 1 October 2004; and the Category 1 agreement, agreed upon 25 June 2004 (previously reached in 1999). The operation of the Category 2 and LMI agreement is to be reviewed after 12 months of operation. Submission No.10, NSW Ombudsman, dated 9 June 2006, p.5.

<sup>256</sup> Transcript of evidence, 24/8/06 p.46.

<sup>257</sup> NSW Ombudsman *Annual Report 2004-05*, p.41.

The Committee was told that local commands often will not have available to them the expert and technical resources to effectively plan for and execute complex corruption investigations, including access to electronic resources (such as listening devices or telecommunication interception devices), integrity testing, and investigators with expertise in dealing with serious misconduct allegations. The shortage of expertise and resources meant that Category 1 complaint matters often compete with other serious crime issues and there is little incentive to devote time or resources to serious complaints matters. Consequently, the Ombudsman proposed a central professional conduct unit, or increasing the resources available to Professional Standards Command to overcome this problem in relation to the investigation of serious misconduct matters.<sup>258</sup>

5.6.4 It should be noted that, NSW Police, having reviewed the statistics used by the Ombudsman, argues that for the twelve month period 1 January 2005 to 31 December 2005 it found a significant number of complaints (58%) relied on by the Ombudsman were in fact Category 2 complaints, not Category 1.<sup>259</sup>

5.6.5 Support for enhancements to the Professional Standards Command also came from the Inspector who considered that it might be appropriate to develop the system further and encourage an enhancement of this particular Command so that it can investigate a larger proportion of the complaints received than it has in the past, thereby preserving for Local Area Commanders and the Complaint Management Teams lesser matters utilising a significantly management orientated approach:

An enlargement of the role of the PSC would lead to more expert and consistent handling of the complaints that are of intermediate seriousness, provide more opportunity for covert inquiries and integrity testing where an at risk officer is involved, and enhance the intelligence gathering capacity of the PSC.<sup>260</sup>

5.6.6 NSW Police rejected the claim that Local Area Commanders lacked expertise and countered that “the problem for Commanders is that they do not have the resources to act as individual corruption prevention agencies”.<sup>261</sup> The point also was made that the Ombudsman had not provided any guidance to NSW Police about how it determined that an investigation was deficient.<sup>262</sup>

5.6.7 NSW Police also informed the Committee that the central investigation of serious misconduct issues is a current initiative of the Professional Standards Command, flowing from the programs conducted within NSW Police to adapt to changes in the complaints environment.<sup>263</sup> It claimed that the Professional Standards Command resolved early in 2006 to take over the investigation of all serious criminal matters, as distinct from Category 1 categories of complaint.<sup>264</sup> This would result in an additional 250 investigations into serious indictable offences being conducted by the Command annually. NSW Police stressed that the Ombudsman has an

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<sup>258</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.32.

<sup>259</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.10.

<sup>260</sup> Submission No.5a. Inspector of the Police Integrity Commission, dated 7 September 2006, p.10.

<sup>261</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.14

<sup>262</sup> *ibid.*, p.11

<sup>263</sup> *ibid.*, p.12

<sup>264</sup> *ibid.*, p.13

administrative, process-driven interest in such investigations whereas the primary concern of the PSC is building a criminal investigation.<sup>265</sup> It seems unrealistic to expect the perspective of the Ombudsman's Office as an oversight agency would directly converge with that of a law enforcement body such as NSW Police.

5.6.8 The Committee has noted NSW Police's latest advice but remains concerned about the investigation of serious police complaints, not all of which will be picked up by the PSC for investigation as matters of a criminal nature. Also, it may not always be apparent at the outset of an investigation into a serious complaint that it will result in criminal charges. Approaching the handling of a complaint based on the likely outcome may prejudice the complaint. The Committee envisages that there is still a need to strengthen the capacity of local commands to investigate the serious end of complaints. It also seems strange to the Committee that the PSC should have such disregard for the Ombudsman's observations, particularly as it has consulted with the Ombudsman (as well as the PIC) when assessing the potential for promoting risk management strategies to local commands. The Committee also has accepted recommendations made by the Ombudsman for improvements to the roll out of these strategies.

5.6.9 The Committee gave particular weight to the Inspector's specific concern about the investigation of serious misconduct matters, which was evident in the following exchange with the Chairman:

**Mr WOOD:** .... The one concern I have had, and it has led me to have a couple of matters re-examined, is the circumstance where a local area deals with what are potentially serious matters within the same area as the officer concerned. If it is something serious, such as suggested perjury or something of that kind, in relation to a minor matter in the local courts that should be examined by a different area from the one to which the officer is connected. As far as they are service or conduct-type matters, it is very important that they be investigated locally on a management basis with a view to dealing with that matter perhaps informally without tying up the officer in lengthy investigations, which tend eventually to destroy the officer's career and do not produce the result of changing behaviour.

I have a concern about local area commands looking at serious matters within their own command. I think it should go elsewhere. The Dresden recommendations raised that; they have not always been respected.<sup>266</sup>

5.6.10 *The Dresden protocols and a risk managements approach*

5.6.10.1 In April 2000 the PIC published its report on Operation Dresden, an audit of the quality of NSW Police Service internal investigations. In terms of complaints management, the key recommendations in the report led to the adoption of what became known as the Dresden protocols, which included amongst other practices that:

- Category 1 complaints against an officer should always be investigated by an officer of at least the same rank;

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<sup>265</sup> *ibid.*, p.15

<sup>266</sup> Transcript of evidence, 24/8/06, p.22.

- it should be mandatory for a Category 1 complaint about an officer in a particular local area command be investigated by an officer from another local area command or unit, to avoid conflicts of interests;
- investigation planning should be mandatory for Category 1 complaint investigations.<sup>267</sup>

5.6.10.2 Logistical problems were experienced with the implementation of the Dresden protocols as it became apparent that it was difficult for local commands in regional areas to meet the procedural requirements involved. Also, there was little incentive for police officers to investigate officers who were not from their own command.<sup>268</sup> The PIC Inspector acknowledged these difficulties:

The NSW Police have had some difficulties, as I understand it, in giving effect to the Dresden recommendations, particularly in Rural Commands because of the resources required where a complaint is referred to an Independent Local Area Command. I believed that this is likely to be addressed following trials of a modified process pursuant to the draft CARA (Complaint Allocation Risk Appraisal) guidelines, which appear to me to be satisfactory if properly implemented.

The potential will always remain for potential dissatisfaction however if a complaint is investigated by an officer from the same Station or Command, no matter what the rank of the investigator.<sup>269</sup>

5.6.10.3 To assist local commands with the Dresden protocols, NSW Police developed the Complaints Allocation Risk Appraisal (CARA) system, in consultation with the PIC and Office of the Ombudsman. It provides guidance on whether a complaint should be investigated by an external command.<sup>270</sup> A twelve-month trial of the system occurred in two areas of NSW. The Ombudsman subsequently conducted an assessment of the trial and found CARA to be generally effective.

5.6.10.4 Two of the improvements which were recommended by the Ombudsman and accepted by NSW Police were:

- the referral of all serious complaints about senior local police to other commands;
- a requirement that local police record their risk management strategies.<sup>271</sup>

5.6.10.5 Mr Cohen spoke to the Committee about some of the recent discussions that had been held to help improve the investigation of more serious complaints, including the potential benefits of a risk management approach:

**CHAIR:** You indicated in your evidence earlier that there were more deficiencies in investigation of Category One complaints than in other matters where the police pursue them. I think in your submission you have identified things like lack of expertise on the part of local commands, competing police priorities and resources and so forth as the reasons for that. I think you proposed a central professional conduct unit or increasing

<sup>267</sup> Police Integrity Commission, *Special Report to Parliament – Project Dresden: An audit of the quality of NSW Police Service internal investigations*, April 2000, pp.51-53.

<sup>268</sup> Transcript of evidence, 24/8/06, p.65.

<sup>269</sup> Submission No.5a. Inspector of the Police Integrity Commission, dated 7 September 2006, p.10.

<sup>270</sup> NSW Ombudsman *Annual Report 2005-06*, p.45.

<sup>271</sup> *ibid.*, p.45.

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the resources available to the Professional Standards Command to try to overcome that problem. Have those proposals been raised with the police, and what was their response?

**Mr COHEN:** The proposals have been discussed informally, and I understand the police were considering those matters themselves. One of the problems with Category One complaints was a requirement under what were called the Dresden protocols, which arose out of the Police Integrity Commission's investigation, that they be moved to another command to be investigated. All local commands have a number of competing priorities. Where I guess something does not directly affect their officers there is less of an incentive to deal with those matters quickly and effectively. We think that the proposal to put in place a risk assessment process should mean that more of those matters should be able to be dealt with locally, provided there is rigorous oversight.

In addition, there is a range of smaller, more serious matters, particularly some of the serious drug allegation matters, where we have agreed with suggestions from local commands that they should be dealt with centrally. However, the Professional Standards Command, rightly given its limited resources, I suppose, has said that it is unable to deal with it at that time. So individually we have raised those matters and certainly they have been the subject of informal discussion but in terms of a formal request we have not made that at this stage.<sup>272</sup>

5.6.10.6 The Committee understands that NSW Police is in the process of rolling out CARA and anticipates further evaluations of this system.

5.6.10.7 It is relevant to note that the Royal Commission placed considerable importance on the use of risk assessment as a tool in identifying and preventing serious misconduct and corrupt conduct. The Royal Commission reported that there should be constant monitoring and attention applied by the PIC and NSW Police to areas where there is heightened risk of exposure to corrupt influences. Towards this end, it was essential to develop a sophisticated database to highlight problems areas and relationships, and for communication and coordination between Internal Affairs and local commanders. The Royal Commission reported that:

Individual managers need to identify high-risk areas and implement strategies to reduce that risk. They also need to be aware of the conditions which allow or lead to corruption, and of the staff who are vulnerable. In this regard, they need to look for a pattern of disciplinary charges or complaints involving matters such as excessive force and identify any danger signs.

Risk assessment and management should be part of a comprehensive anti-corruption program of the Service in which supervisors are given specific training.<sup>273</sup>

## 5.7 Local Management Issues (LMIs)

5.7.1 The NSW Police Association proposed that:

Complaints that are about performance or customer service issues be removed from the formal complaints process and become the sole responsibility of managers to be resolved through management action.

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<sup>272</sup> Transcript of evidence, 24/8/06, p.65.

<sup>273</sup> *Royal Commission into the New South Wales Police Service, Final Report Volume II: Reform, May 1997, p.531.*



- Such complaints should be recorded on a separate database and subject to internal audit procedures that link into managers' performance agreements.
- Surveys should be regularly conducted by either the NSW Police Force or the Auditor General to establish levels of service satisfaction among the public.
- The Auditor General should also audit the management database to ensure best practice in human resource management.<sup>274</sup>

5.7.2 NSW Police submitted that "the current oversight regime effectively prevents police from managing their own people outside a formal process".<sup>275</sup> It also argued that the definition of police complaint under Part 8A is so broad as to capture "even the most minor grievance about police conduct, provided it is in writing".<sup>276</sup>

5.7.3 The Chairman questioned Assistant Commissioner Carroll on the assertion that local management issues and minor complaints are captured by Part 8A and dealt with formally rather than managerially. In doing so he referred to the reduction in the number of minor matters notified to the Ombudsman:

**CHAIR:** I turn to one of the key issues that was raised in your submission and in the oral statements today and that is the mantra almost that the most minor grievances are captured as a complaint under Part 8A and that Part 8A prevents you adopting a managerial model for the way that complaints are managed. That seems to fly directly in the face of the advice that the Committee has received from both the Ombudsman and the PIC. They tell us that several years ago, as a result of a class or kind agreement, local management issues (LMIs] were no longer dealt with as complaints under Part 8A. The PIC says that that change was responsible for a drop in the number of complaints from about 5,000 in 2000-2001 to 3,099 in 2002-2003; that is, 40 per cent of complaints were removed because things were no longer being captured by Part 8A. If that is true it seems to me you have already won the battle and I am wondering why you are still fighting it.

**Mr CARROLL:** If that were the case, you certainly would not have received my submission today to you. What you have said is, on the face of it, quite true, but in reality what is occurring is that the Ombudsman has got the administrative legislation to audit all of those complaints, and I gave the example of a recent notice served on NSW Police to contact 500 individual complainants to see if they are satisfied. I do not personally blame the Ombudsman for that. The legislation is there for them to do that. What I am saying, though, is that is a significant waste of our resources to have to comply with that type of legislation.

...

**CHAIR:** You have just agreed with me that 40 per cent of complaints have been reduced because they are no longer caught under Part 8A; they are local management issues, so they are not complaints anymore. It is just wrong to say there has been no change in the last 10 years.

**Mr CARROLL:** There has been some change, Mr Chair, but they can easily become complaints because, on the audits that are picked up, the Ombudsman may have a view that this is not a local management issue; it should be a Category Two notifiable matter. We then go into this paper trail of uselessness, I think, is probably the right word.

<sup>274</sup> Submission No.9. NSW Police Association, dated 1 June 2006, p.13.

<sup>275</sup> Submission No.11. NSW Police, dated 1 August 2006, p.6.

<sup>276</sup> *ibid.*, p.4.

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Sometimes the Ombudsman is right; we have made a mistake and it should have gone in as a Category Two notifiable matter. Sometimes we go into significant conversations in relation to whether these matters are not.<sup>277</sup>

5.7.4 Assistant Commissioner Carroll then cited the recent referral of in excess of 100 police complaints from the ICAC to the Ombudsman, in which the Assistant Ombudsman (Police) and his staff spent considerable time determining what matters were complaints. However, the Chair clarified with the Assistant Commissioner that this particular referral of matters was a one-off situation, resulting from an oversight by the ICAC. Nevertheless, Assistant Commissioner Carroll persisted that:

**Mr CARROLL:** The magnitude of that problem is a one-off but the logic of where we are coming out of this is that I have to put the resources in to get this stuff done and while I am putting those resources in, the sharp end of the business, the pro-active end of the business, the corruption prevention is also suffering. If we can put into play our resources into corruption prevention and corruption resistance strategies instead of allocating the resources for these minor matters, to have to go in and contact 500 individual complainants to see if they are satisfied—the satisfaction rate for NSW Police in relation to complaint investigations averages about 80 per cent. Personally, I think that is excellent.<sup>278</sup>

5.7.5 The Chairman pressed the Assistant Commissioner to confirm the amount of matters subject to audit by the Ombudsman:

**CHAIR:** If I can go back to the scale of the issue, as I understand it the number of local management issue matters that are not caught by Part 8A that are audited are only a proportion of that total number we are talking about. Only about 20 to 30 per cent of matters are actually audited?

**Mr CARROLL:** No, I think the auditing is a lot higher.

**CHAIR:** Do you have any idea what the figure might be?

**Mr CARROLL:** I would say closer to 99 per cent.<sup>279</sup>

5.7.6 The Ombudsman's submission indicated that from 1 October 2004, when the LMI class or kind agreement had commenced, 1339 such matters were receipted on c@ts.i of which 350 matters were subject to a "desktop audit", representing 25% of these matters.<sup>280</sup> During the current financial year the Office is conducting audits of six local area commands, one in each region, which comprises approximately 6 or 7 per cent of the total number of regions in NSW Police.<sup>281</sup>

5.7.7 It was Mr Carroll's view that the extent of the further action required by the Ombudsman after auditing of LMIs also is a significant concern:

**Mr CARROLL:** .... That is the micro management that I have referred to. If they are not complaints, why do we not legislate and say that the matters agreed upon in the 122 (2) are not complaints. That does not mean that local area commanders and managers do

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<sup>277</sup> Transcript of evidence, 24/8/06 p.10.

<sup>278</sup> *ibid.*, p.11.

<sup>279</sup> *ibid.*

<sup>280</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.14

<sup>281</sup> Transcript of evidence, 24/8/06 p.56.

not have to manage them. It means that they do have to manage them and they have to satisfy the community that they are dealing with those matters appropriately but if they are under a 122 (2) agreement, which clearly says at the beginning of it, "These matters are not to be treated as complaints", why are we doing all of this work and putting all of these resources into doing this.<sup>282</sup>

5.7.8 But the NSW Ombudsman disagreed that the audits consumed significant Police resources. He indicated that the audit was done by Ombudsman officers and required no resources from NSW Police: 240 of the 350 matters were registered by 5 local area commands and one specialist command; the remaining 110 matters were registered by an additional 24 local area commands.<sup>283</sup>

5.7.9 Assistant Commissioner Carroll initially told the Committee that the Ombudsman could disagree with the police assessment of local management issues:

**CHAIR:** In relation to local management issues, when a matter comes in, my understanding is that it is the police that will then determine whether it is a local management issue or whether it can be dealt with under part 8A, is that a correct assessment?

**Mr CARROLL:** Not necessarily. Police officers do assess their own commands but so does the Ombudsman. The Ombudsman may disagree with that assessment right at the beginning of the process.<sup>284</sup>

5.7.10 However, on further questioning from Mr Lynch, Assistant Commissioner Carroll corrected his evidence and confirmed that the Ombudsman only advised NSW Police of instances where he disagreed with the NSW Police classification of a matter following a later audit:

**CHAIR:** If the issue comes into the police station how does the Ombudsman get involved in overruling the police officer's decision about whether it is a LMI or not?

**Mr CARROLL:** The ombudsmen are notified of the complaint.

**CHAIR:** But even if it is an LMI?

**Mr CARROLL:** Yes. No, they pick it up on audit, I apologise.<sup>285</sup>

5.7.11 Assistant Commissioner Carroll then advised that the number of agencies to which complainants wrote further complicated the decision-making process:

**CHAIR:** So it comes in, the police make a determination that it is an LMI and there is no Ombudsman involvement at all. The steps that the local police commander takes in relation to the LMI, what he does, how he deals with it, where does that come from? Is it simply left up to him? Is there a set of directions about how he is to deal with it? Can he deal with it simply as a managerial issue without trying to treat it as though it is a formal three-ring circus complaint?

**Mr CARROLL:** Theoretically they should be able to, but what can occur and what we have noticed is that complainants sometimes write to multiple areas when they complain. A situation which is not uncommon to arise is that they have written to PIC, the Ombudsman, the Minister and other areas as well, so that whilst NSW Police have made

<sup>282</sup> *ibid.*, p.12.

<sup>283</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.14.

<sup>284</sup> Transcript of evidence, 24/8/06 p.12.

<sup>285</sup> *ibid.*

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a determination that it is a local management issue, a week later they may get a phone call when the matter is three-quarters dealt with, or perhaps dealt with hopefully, that the Ombudsman disagrees, and the PIC may disagree and say that is not a local management issue.

That raises the point, as I said, about commanders taking ownership and responsibility for dealing with the matters then to be second-guessed all the time and then they have to go back to the officer.<sup>286</sup>

5.7.12 The Ombudsman's Office explained that it had actively worked towards ensuring that minor matters were not caught up in formal investigations but were dealt with appropriately by police commanders:

**Mr COHEN:** ... A vital challenge for an effective complaints system is to deliver fairness to officers who have made honest mistakes and vindication to officers when their conduct is found not to be of concern. Recent changes pushed by the Ombudsman have clarified what effect, if any, a complaint will have on an officer's prospect of promotion. This is one of a number of positive steps to better support police officers caught up in complaints. Another has been to ensure less serious matters, customer service complaints and management issues are generally kept out of the complaints system. Changes to legislation in 1999 and again in 2001 committed the Ombudsman, with the agreement of the Police Integrity Commissioner and after consultation with the Commissioner of Police, to hand back less serious complaints to Commanders to be dealt with directly and without Ombudsman oversight.<sup>287</sup>

Since then, literally thousands of lower-level management and customer service issues have been dealt with locally by Commanders without any involvement by the Ombudsman. These steps have been taken only because most police commanders have demonstrated a willingness and capacity to deal effectively with complaints. Our auditing ensures that decisions to deal with matters locally are made in an accountable manner, but we do not intervene in the handling of these matters by local commanders. We will review matters where persons involved, be they police officers or members of the public, are not satisfied. However, we do this for any public agency.<sup>288</sup>

5.7.13 The purpose of the Ombudsman's audits of LMIs was clearly to act as a safeguard:

**Mr COHEN:** There are two reasons why we conduct audits. The first is to determine that they have been correctly categorised. Sometimes police might categorise a matter as a less serious matter when it has criminal allegations. That is the first thing we consider in relation to those matters. We then, for some of those matters, do a brief quality audit. I think of the 350 records we looked at, we did a quality audit of 100 of them or 96 I think it was, and 93 proved to be satisfactory, but we do not require further action in relation to matters other than requiring that we be notified of matters should that be necessary having regard to the allegations that are raised.<sup>289</sup>

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<sup>286</sup> *ibid.*

<sup>287</sup> The *Police Service (Complaints Management Reform) Act 1998*, which commenced in March 1999, introduced a new Part 8A of the Police Act including the provision covering local management issues found at s.122(2) of the Police Act, which are types of matters that do not have to be notified to the Ombudsman just recorded. The *Police Service Amendment (Complaints) Act 2001*, changed the definition of notifiable complaints so that some complaints no longer had to be notified to the NSW Ombudsman. These changes are reflected in the number of complaints received/notified to the Ombudsman's Office, which dropped from 5,124 in 1999/2000 to 3,099 in 2002-03. NSW Ombudsman, *Annual Report 2002-03*, p.64; NSW Ombudsman, *Annual Report 2001-02*, p.88.

<sup>288</sup> Transcript of evidence, 24/8/06, p.52.

<sup>289</sup> *ibid.*, p.56.

- 5.7.14 The results of the Ombudsman's physical audits of local commands for 2006 were provided in his second submission to the inquiry. One Category 1 and five Category 2 complaints were identified as not having been notified to the Ombudsman when this should have occurred. Of these six matters the Office was otherwise satisfied with the actions taken by NSW Police in relation to two of them but further investigation or advice was needed in respect of four matters. Advice also was required from other local area commands on two other matters.
- 5.7.15 The Office had formed a preliminary view that with regard to the other commands the subject of audit matters generally are being notified as required, although there are a range of issues, including compliance with computer access audits and local record keeping procedures, that needed to be discussed with certain of the local area commands audited and, if required, recommendations made. The Office advised that it had identified some very good practice by NSW Police as a result of the audits. The Ombudsman viewed these results as a demonstration that there are few matters on which his Office requires further action upon following the audits and that those matters that do require further action raise issues appropriate for external oversight. The Ombudsman rejected the argument that his monitoring of NSW Police compliance with registering and reporting of LMIs constituted "micro-management".<sup>290</sup>
- 5.7.16 It began to emerge to the Committee that one of the problems with local management issues was the approach taken by the police officers handling such matters rather than the contention that they are caught up as formal complaints under the legislation, which clearly is not the case.
- 5.7.17 The perspective of local commanders was highlighted by the NSW Police Association:

The current system of intrusive oversight by the Ombudsman has resulted in confusion among managers and a feeling that they are unable to manage their people. Often the officers of the Ombudsman have little, if any, experience of the reality of policing or the environment in which police operate. They are not the ones who have to manage an officer on a daily basis, and yet they wield extraordinary influence over managers in this area. Managers often feel disempowered in dealing with their people.

They feel that they have to go to extraordinary lengths to justify their actions to the Ombudsman's Office, with the result that matters that should be dealt with managerially and quickly languish for months within the system while every t is crossed and i dotted. The result is typically that the wood is lost in the trees and there remains a real risk that serious corruption opportunities escape notice while time is absorbed with the small stuff.

In other words, many of the issues that were identified by Justice Wood remain a problem today.

There has been a concerted effort by the NSW Police Force to change this atmosphere, and the Professional Standards Command has done much to raise standards and

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<sup>290</sup> Submission 10a, NSW Ombudsman, dated 18 September 2006, p.15.

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encourage police to embrace a system that theoretically promises a fair process. However, the reality for many is that not much has changed over the last ten years.<sup>291</sup>

5.7.18 In his evidence, Assistant Commissioner Carroll stated that NSW Police are still dealing with minor management issues using the same processes as used to deal with serious complaints. However, the Ombudsman pointed out that there was no legislative requirement to do so as the procedures for handling LMIs and serious complaints are different:

Serious matters, including criminal allegations or complaints alleging serious misconduct, must be notified to the Ombudsman, and in some circumstances the Police Integrity Commission. These matters are to be dealt with in accordance with the requirements of Part 8A of the Police Act.

Management issues and customer service issues are not required to be notified to the Ombudsman or Police Integrity Commission. Commanders are free to deal with those matters in the manner they see fit provided an appropriate record is made.<sup>292</sup>

5.7.19 The Ombudsman explained that minor complaints should not be oversighted by the Ombudsman and if they are referred to the Ombudsman they would be returned to commanders for them to manage.<sup>293</sup> He further clarified that:

In the first place, only serious complaints (Category 1 and Category 2 complaints) are required to be notified to the Ombudsman. Many other matters, although they may lead to some management action – such as counselling, a warning or additional training – are not required to be notified to the Ombudsman.

In addition, while the Ombudsman does require a report of some form following the management of a notifiable complaint, we have consistently emphasised to commanders that we are happy to rely upon their own working documents and records for less serious complaints. Further, we have encouraged commanders and investigators, for matters that will not result in criminal or reviewable outcomes, to approach these matters in a less formal manner. NSW Police's own Complaint Practice Note, arrived at following consultation with the Ombudsman, emphasises flexibility in providing investigation reports to the Ombudsman, including principles such as having a minimum resource impost and being flexible and proportionate.<sup>294</sup>

5.7.20 The Assistant Ombudsman (Police) suspected there is a tendency on the part of local commanders to over-manage some complaints.<sup>295</sup> This suspicion carries some weight given the comments by some commanders included in NSW Police's latest submission to the effect that more attention is on occasion put into minor matters than is the case with some murder inquiries.<sup>296</sup> The Ombudsman's Office advised that it had endeavoured to communicate with commanders about such instances and explain its expectations to them. The Office also went into the field and observed the complaints management system in process and provided advice to commanders on less resource intensive methods for dealing with complaints.<sup>297</sup>

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<sup>291</sup> Submission No.9. NSW Police Association, dated 2 June 2006, pp.8-9.

<sup>292</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.13.

<sup>293</sup> *ibid.*, p.18.

<sup>294</sup> *ibid.*, pp.18-19.

<sup>295</sup> Transcript of evidence, 24/8/06 p.56.

<sup>296</sup> NSW Police response to Submission No.10a, NSW Ombudsman, p.5.

<sup>297</sup> Transcript of evidence, 24/8/06 p.56.

- 5.7.21 Based on the Office's audits of LMIs the Ombudsman had formed the opinion that some commanders deal with LMIs very effectively, requiring little paperwork and quick decisions, whereas some commanders do not use such an approach. The Ombudsman observed that the management of LMIs "are matters entirely within commanders' purview, and how they are handled is not the consequence of the current complaints system mandated under Part 8A of the Police Act."<sup>298</sup>
- 5.7.22 The categorisation of LMIs was one of the problems revealed through the Ombudsman's desk top audit, the outcomes of which were:
- 24 complaints that were wrongly classified by NSW Police as Category 2 complaints were reclassified as LMIs.
  - 18 complaints incorrectly classified as LMIs were reclassified as Category 2. After considering available material on c@ts.i, the Ombudsman required NSW Police to provide an investigation report in relation to 4 of the 18 complaints, but did not require further investigation of any of these matters.
  - NSW Police complied with all recommendations by 8 November 2005.<sup>299</sup>
- 5.7.23 In Mr Cohen's view the capacity to reform and improve the complaints system with respect to the management of more minor matters was clearly a NSW Police issue:
- Mr COHEN:**.... It is NSW Police's complaints system and it is for NSW Police to determine how it deals with matters. Our role is to require investigation should that be necessary and then to assess the quality of the investigation of those matters that we are notified of. For those matters that fall below that threshold—and my own view is that it is a reasonably high threshold and includes the sorts of matters you would expect there to be external oversight of; it does not include lower level management matters—police are free to do with them as they will. We would encourage them to take a managerial approach to dealing with those matters. I suspect that sometimes they have a fear that if they do not deal with them in a particular way they will be the subject of some form of criticism. But that is certainly not the reality from our office's perspective because we simply do not look at most of them.<sup>300</sup>
- 5.7.24 The Inspector of the PIC considered that it would be appropriate for greater attention to be given to the processing of minor matters, particularly conduct or service complaints, which could be managed less formally for the officer's benefit and to improve performance. He noted the importance placed upon this approach in the report on the Royal Commission but expressed concern that it had not been fully implemented or investigations may have been transferred to another Local Area Command as a more palatable or prudent option.<sup>301</sup>
- 5.7.25 The Inspector also described the "natural tendency" for police to conduct investigations in a formal way, in the event that there is criticism of a cover-up or of protection being extended to the officer concerned. He observed that such formal processes and investigations where the volume of complaints is high would

<sup>298</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.13.

<sup>299</sup> *ibid.*, pp.14-15.

<sup>300</sup> Transcript of evidence, 24/8/06, p.58.

<sup>301</sup> Submission No.5. Inspector of the Police Integrity Commission, dated 7 September 2006, pp.10-11.

inevitably add stress to the officer the subject of complaint, and would likely result in the officer leaving NSW Police “hurt on duty”. However, shifting away from a formalised approach:

.... would require a careful balance to ensure the maintenance of discipline and public satisfaction, and, on the other hand, the preservation of the careers of officers, who have either been unfairly accused of misconduct, or whose misdemeanours or indiscretions were relatively minor, or involved honest mistakes.

It is a process which I believe should involve a good deal of flexibility, and continued monitoring by the PIC and by the Ombudsman who could supply independent assessment and advice to the NSW Police. It is one in which I do see room for the useful deployment of mediation, counselling and ongoing support in place of a strict disciplinarian approach.<sup>302</sup>

5.7.26 The Inspector remained of the view he had formed during the Royal Commission that minor grievances and service type complaints should be resolved promptly and informally at local area command level, “with an eye to improving standards and counselling Police who had fallen short of the conduct expected, so as to preserve and enhance their careers”. However, he maintained that matters dealt with on this basis should be subject to:

- appropriate recording for intelligence and promotion purposes; along with
- an opportunity for the PIC or Ombudsman to intervene in specific cases where there is a pattern of unacceptable conduct that is systematic or of a more serious or endemic problem; and on a random audit basis to ensure that the process is being managed effectively.<sup>303</sup>

5.7.27 Maintaining a general oversight of the management of this lower level of matters to ensure that there was no relaxation of standards would be appropriate and the Inspector proposed tripartite arrangements, to which NSW Police should be a party, or otherwise at least consulted, as a way of establishing the extent of the matters to be dealt with in this less formal way.<sup>304</sup>

## 5.8 The role of the Complaints Management Team

5.8.1 The role of the complaints management teams at local command level is central to the NSW Police approach to the handling of complaints. The Ombudsman described the role of CMTs as follows:

Most complaints are handled directly by local area commanders. They are supported in this role by a civilian executive officer, who provides an administrative function, and a complaints management team (CMT) which usually includes a number of senior officers. Complaints are investigated by local command officers under the direction of the CMT, which ratifies the investigation and outcomes. Where, for reasons such as a potential conflict of interest, a local commander cannot deal with a complaint, it is referred to the region commander for reallocation. Generally local commanders will make the final

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<sup>302</sup> *ibid.*, p.11.

<sup>303</sup> Submission No.5a. Inspector of the Police Integrity Commission, dated 7 September 2006, p.2.

<sup>304</sup> *ibid.*, p.2.



decisions about the outcome of a complaint, including any management action for the officers involved.<sup>305</sup>

5.8.2 The PIC provided a similar explanation:

**Mr KEARNEY:** The CMTs are responsible for the management of complaints. They own complaints within each of the commands. So there is a CMT in each command. They make decisions about complaints—whether there will be action in regard to them, whether they will be investigated, how they might be investigated—and they then sign off on whatever outcomes are achieved....<sup>306</sup>

5.8.3 The Assistant Ombudsman (Police) gave evidence that:

**Mr COHEN:** .... The complaints management team usually involves the commander, another senior officer, the duty officer usually, an executive officer who is the administrative officer in charge of complaints within most commands and sometimes a number of other officers. The purpose of those, when they work well, is to monitor how serious matters are being dealt with in the command, to keep an overall view of professional standards within the commands, [and] to consider whether there are any particular risks within the commands from a corruption or a conduct perspective, but we do not think they should be used to handle every single conduct or management issue that arises. We think that that is pretty ineffective....<sup>307</sup>

5.8.4 According to Mr Cohen, there was sufficient flexibility within the CMT approach to complaints to deal with the very distinct treatments of serious versus minor matters:

**Mr COHEN:** I have certainly raised with NSW Police my concerns about the way that less serious matters are managed but I do not want to create a wrong perception. There are many very serious complaints that are made against police officers; complaints about assaults, complaints about misusing confidential information, complaints about inappropriate searches and poor treatment in custody and my own view about those matters is that the beginning point when you receive one of those complaints should be to try and find out what happened and then make a decision about what action, if any, should be taken. I think that is in the interests not only of complainants but also of officers the subject of those matters.

I certainly think that outside of that there are minor grievances or minor issues that are raised every day in police workplaces, as indeed in many other workplaces, that should be dealt with on the spot and I think that commanders should be freed up to do that.

**CHAIR:** If it goes to the CMT process, does that mean formal taking of statements from witnesses and those sorts of things?

**Mr COHEN:** It does not have to mean that. Certainly the more serious allegations, criminal allegations or those that may have proved true result in the removal of officers, if there appears to be some substance to them they need to be dealt with in a formal way so that at the end of the day, should they be proven to be true, appropriate action can be taken in respect of them. But many other matters can be the subject of, for example, a brief notebook statement taken by the investigator, a very brief report back to the complaints management team and then a record of their decision making in respect of those

<sup>305</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.10.

<sup>306</sup> Transcript of evidence, 24/8/06 p.49.

<sup>307</sup> *ibid.*, p.54.

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matters. Other matters, matters that are pure management matters, should be dealt with in even a less formal manner than that.<sup>308</sup>

5.8.5 The potential for CMTs to become less effective and the handling of minor matters to be unnecessarily formalised was one of the observations made by the Ombudsman in a discussion paper on complaint management team meetings, arising from a program of visits by the Office to local area commands during 2003 and 2004.<sup>309</sup> The Ombudsman's observations help to understand where CMTs can work well and where problems may occur, for example:

- relying overly during the assessment phase on c@ts.i classifications to determine the legislative category of a complaint and whether or not it should be notified to the Ombudsman's Office or the PIC;
- spending too much time determining whether or not the matter was notifiable when it was more productive to focus on the best method for handling the complaint (for instance, an outcome-focussed or evidence-based approach);
- confusing the inquiries made to determine whether a matter should be treated as a complaint with the actual "investigation" of the complaint (for instance, if after initial inquiries a satisfactory explanation is provided, the matter need not be recorded on c@ts.i);
- relying too heavily when dealing with less complex, minor matters on a formal risk assessment strategy when commonsense could prevail;
- lack of confidence in decision-making on the part of some CMTs;
- insufficient support from the CMT for the Executive Officer when the latter is dealing with delayed investigations;
- ad hoc or irregular review of complaint trends by some commands.<sup>310</sup>

5.8.6 The Discussion Paper also highlights several examples of best practice and good planning and consultation by CMTs. The latter included some targeted community consultation, for example, with local Aboriginal legal services. Additionally, some commands were realising the potential for the monitoring of complaint trends to assist CMTs and commands more generally, e.g. in relation to employee management, improving service delivery, identifying officers at high risk of misconduct or complaints, identifying systemic shortcomings, modifying individual behaviours and changing policies and procedures.

5.8.7 Commenting on the Ombudsman's Discussion Paper, NSW Police submitted that:

- the CMT approach to the initial assessment of complaints is dictated by the cumbersome assessment process contained in the class or kind agreement, which requires a lengthy assessment as to whether or not the matter can be classified as a local management issue before treatment options can be determined;

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<sup>308</sup> *ibid.*, p.55.

<sup>309</sup> NSW Ombudsman, Discussion paper, *op. cit.* tabled on 24 August 2006.

<sup>310</sup> *ibid.*

- the Ombudsman view of a complaint is based on its literal wording rather than the NSW Police approach which is to see the complaint in context and objectively assess the likely management outcome;
- what the Ombudsman writes in a report is often contradictory and confusing to complaint handlers and is not the experience of commanders in practice.<sup>311</sup>

5.8.8 However, the Ombudsman's Office was firmly of the view that the capacity for improvements in NSW Police's managerial approach to minor complaints was not a result of legislative constraints:

**Mr COHEN:** I would say that one of the difficulties in complaints management for police commanders is that they are not being freed up to manage some of the less serious matters in a managerial model but my own view is that that is not because of Part 8A of the Police Act; that is because of requirements placed on commanders by NSW Police in terms of how those matters are being dealt with. I will give you a particular example. We conducted an investigation to try and identify the reasons why some commanders were not dealing with the substantial body of their matters with reasonable expedition.

One of the issues that we noted through that and through our own observation of complaints handling in local commands was that many of the less serious matters continue to get dealt with through the complaints management team rather than being handled at the time that they arise by supervisors. We suggested to NSW Police that for that body of matters there may be an opportunity to remove them from the complaints management team process. That recommendation was not accepted by NSW Police, but my own view is that that is a recommendation that has substantial merit to it and would reduce much of the red tape involved in the management-type matters that police deal with.<sup>312</sup>

5.8.9 The Office had put forward proposals that this area of complaint handling be simplified:

**CHAIR:** Just to make sure we are clear about this: the decision as to whether to deal with it by supervising officer or by the CMT is a decision purely for the local police?

**Mr COHEN:** It is a decision for NSW Police. At the moment there is a requirement for some of those matters to be dealt with through complaints management teams. We would like to see those matters being dealt with much more instantly locally. I have certainly communicated both to the Professional Standards Command in a report and to local commanders at forums my own views about those matters.<sup>313</sup>

5.8.10 The Committee learnt that the Ombudsman recommended changes to allow commanders to deal with less serious complaints without the involvement of complaints management teams. Such a proposal would simplify the processes which was important as:

There is a need, becoming increasingly urgent as commands are having to reduce their administrative staff, to free up commanders to take charge of how they manage less serious complaints.<sup>314</sup>

<sup>311</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, p.28.

<sup>312</sup> Transcript of evidence, 24/8/06 p.54.

<sup>313</sup> *ibid.*

<sup>314</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.5.

5.8.11 The Ombudsman submitted that CMT's should not be involved in the handling of local management issues:

Part of the solution, and something that we believe is consistent with the approach taken by the Royal Commission, is to ensure that management issues and less serious complaints are dealt with on the spot by commanders and supervisors without the need for substantial administrative overheads.

At present, NSW Police prefer to deal with many of these matters through CMTs. While we are of the view that appropriate documentation of decision making, and providing information to senior command officers, remain essential, it may not be necessary for such minor issues to be dealt with through CMT processes. In addition to improving the timeliness of these matters, we are strongly of the view that this will result in more effective outcomes for officers and complainants.<sup>315</sup>

5.8.12 Mr Cohen confirmed that this proposal had been put by the Ombudsman to the Ministry for Police in its review of the Police Act:

**CHAIR:** .... I take it you will be putting up in the review proposals you have discussed about not requiring local commanders to issue LMIs through the CMT process?

**Mr COHEN:** That is right. We have already raised that issue with the Ministry review, and certainly it is something we will continue to press as the review takes place, and indeed in any forum that we get an opportunity to do it.<sup>316</sup>

## 5.9 Police Training and Support

### 5.9.1 Managing complaints

5.9.1.1 Another area for recommendation by the Committee relates to the support and training available to commanders and other police officers involved in managing complaints. The Ombudsman noted that:

....new commanders receive no training for complaints management, despite the expectations of them to manage complaints effectively. NSW Police advice states that a significant failing of the current complaints system is that officers can move into supervisory positions without experience in dealing with less serious management issues and progressively, more complex matters. This is something, however, we believe can be achieved within the current complaints environment, particularly if less serious matters are handled more directly.

While experience in dealing with complaints is valuable, it is not a replacement for proper instruction for new commanders about managing complaints.

Increasing the training provided to local commanders and reducing the administrative burdens upon them when dealing with less serious complaints are part of the solution to foster more efficient and effective management of less serious complaints.<sup>317</sup>

5.9.1.2 NSW Police submitted that the Ombudsman's recommendation that new commanders should receive complaints management training stems from an investigation into turnaround times for complaints. It equated the term "complaint

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<sup>315</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.33.

<sup>316</sup> Transcript of evidence, 24/8/06 p.66.

<sup>317</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.5.

management” as used by the Ombudsman with “complaint administration” and argued:

The Ombudsman is well aware of the NSW Police view that Commanders do not need training in complaints administration, but rather, Commanders need a complaints regime that provides a basic structure for complaints management with the primary focus being on exercising sound judgment that is both fair to the rights of the complainant to have the matter resolved and also recognises the right of the subject officer to have the matter dealt with quickly, fairly and in proportion to the conduct alleged.<sup>318</sup>

5.9.1.3 Having considered the Ombudsman’s Discussion Paper on complaint management teams, the Committee is of the view that training for local commanders should include training in relation to risk management strategies and techniques, promotion of best practice decision-making, and alternative dispute resolution. Moreover, training in the aforementioned areas would seem to the Committee to be particularly valuable to local commanders, CMTs and other police officers involved in the investigation of more serious police complaints.

5.9.1.4 The more administrative processes referred to by NSW Police, e.g. the recording of complaint details and other documentation, are not irrelevant to the adequacy of the police response to a complaint. Pinpointing problems with delays is one way of identifying the problems occurring in this decision-making process. The Committee has indicated that it is undesirable to maintain a bureaucracy around the management of minor complaints but it is important to recognise that record keeping has a real significance when checks on the efficacy of those systems in place to deal with more minor complaint matters depends upon this documentation.

## 5.9.2 Making complaints

5.9.2.1 The level of support given to internal police complainants is particularly important given the proportion of those complaints that relate to serious misconduct. NSW Police advised that between 1 January 2004 and 31 December 2005 183 internal police complainants were offered the Internal Witness Support program but that 97 declined the offer because they felt that they were appropriately supported in their Command and did not have any concerns.

5.9.2.2 NSW Police further advised that it has well-established support systems in place for police and administrative officers seeking to report misconduct by others:

As previously discussed, all complaints are registered on the c@ts.i system and electronically delivered by the system to the Manager, Internal Witness Support Unit. That officer assesses every complaint to determine whether the IPC meets the definition of an internal witness. The officer is then offered the services of the Internal Witness Support Unit.

Additionally, NSW Police policy states that Commanders and Managers have the following responsibilities in relation to all internal police complainants:

- to provide the employee with acknowledgment, support and positive reinforcement;

<sup>318</sup> NSW Police response to Submission No.10a, NSW Ombudsman, p.4.

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- provide the employee with support and protection from victimisation and harassment;
- take positive action when it has been identified that the employee has been the subject of victimisation and harassment and ensure appropriate management action is implemented in the circumstances;
- prevent or eliminate any actions against the employee by other persons which might be detrimental or contrary to the Police act 1990, Protected Disclosures Act 1994, Witness Protection Act 1995 or NSW Police Handbook;
- maintain an environment where members of the organisation are confident in coming forward as an Internal police Complainant reporting corrupt conduct, maladministration, serious and substantial waste, that they will receive support and protection from their superiors and other members of NSW Police;
- respond promptly, genuinely and with sensitivity to the needs of that employee.

The Professional Standards Command Internal Witness Support Unit provides internal witnesses with an Information and Support Kit which includes:

- a copy of the Internal witness Support Policy and frequently asked questions;
- details of support services available;
- a letter of support from the Police Association;
- information from Health Services in relation to likely physiological and psychological response as an internal witness;
- contact details of further information and support.

A Support Officer may be appointed under the Internal Witness Support Program, according to the preference of the internal witness.

A mentor in terms of the Internal Witness Support Program is a senior officer of the organisation who is responsible for providing support and positive reinforcement and pursuing issues on behalf of the internal witness

The IWSU applies regular vetting and monitoring procedures to check the status of internal witnesses, support officers and mentors to verify that all necessary support is being employed and received. The internal witness and support personnel are encouraged to contact the IWSU to discuss clarify and address concerns in the intervening periods between contact with the IWSU. This process also provides feedback from the internal witness regarding satisfaction with the program

If the internal witness leaves the organisation, the IWSU Manager assesses the case to determine whether there is a need to maintain ongoing assistance for the internal witness.<sup>319</sup>

5.9.2.3 However, Mr Cohen told the Committee that a recent survey had revealed some areas for further attention:

**Ms BURNSWOODS:** ....In your snapshot you say more than 40 per cent and almost 30 per cent of the more serious matters were reported by police officers. Can you comment on the significance of that statistic? I gather it is a huge increase over the past 10 years.

**Mr COHEN:** That is right. I think the proportionality of member-of-the-public complaints and police complaints is stabilising. Internal police complaints tend to relate to the more

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<sup>319</sup> Submission No.11a. NSW Police, Answers to Questions Taken on Notice, dated 18 October 2006, pp.8-10.

serious matters. About 70 per cent of those complaints that result in criminal charges are lodged by police officers. They are matters that raise very serious issues. Because police officers are often witnesses in those matters, the complaints are given a lot of credibility. A matter of some concern to us is how some of the people who make those complaints are treated. A recent report by Urbis Keys Young<sup>320</sup> in relation to people who access the internal witness support unit found that some 75 per cent of people surveyed complained about harassment as a result making a complaint and some 45 per cent said that they did not feel supported by senior officers in making their complaints.

We have raised with police through the Internal Witness Advisory Council two particular things that we hope will assist in redressing that situation. The first is that we would like to see commanders freed up to protect whistleblowers. At the moment some of the constraints in legislation prevent them from defending people who have come forward with serious misconduct issues. We would also like to see better tracking of how the whistleblowers go in commands. We would like to examine why some commands are working so well and share that information. We would also like to see some action taken in those commands doing a bad job to improve their performance.<sup>321</sup>

## 5.10 Recording of complaints and database systems

### 5.10.1 Royal Commission findings and recommendations

- 5.10.1.1 The Wood Royal Commission identified record keeping as a weakness of the NSW Police Service, a conclusion confirmed by its own requests for documents from the Office of Professional Responsibility. The Royal Commission reported “an absence of integration in the complaints, intelligence and registry systems”.<sup>322</sup> Although some improvements to the system had occurred following the introduction in 1994 of an on-line case management system called COPS, the case file management system used by the Office of Professional Responsibility was archaic and “not conducive to easy progress and monitoring, nor to follow-up, and the volume of documentation generated for each case [was] formidable.”<sup>323</sup>
- 5.10.1.2 In terms of complaint management, the Royal Commission noted that the Ombudsman had repeatedly requested NSW Police to establish a centralised system to analyse complaints. One deficiency encountered was that a record of a complaint was not kept unless the matter proceeded to formal investigation. Consequently, an officer who might be the subject of several complaints that collectively justified counselling or other remedial action, would not be subject to such action because the prior incidents were unrecorded. The Royal Commission observed that only in rare circumstances was counselling or proactive investigation initiated as the result of repeated complaints. At the same time, the Ombudsman warned that in correcting this deficiency it was important to ensure that inferences were not drawn merely from the number of complaints made against a particular police officer, which in some cases might only indicate that the officer was performing his job effectively and well.<sup>324</sup>

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<sup>320</sup> Urbis Keys Young, *The Health and Well-being of internal witnesses in NSW Police 2002-04*, Final Report March 2006.

<sup>321</sup> Transcript of evidence, 24 August 2006, p.62.

<sup>322</sup> *Royal Commission into the New South Wales Police Service, Interim Report*, February 1996, p.60.

<sup>323</sup> *Royal Commission into the New South Wales Police Service, Final Report*, Volume II: Reform, May 1997, p.473.

<sup>324</sup> *Royal Commission into the New South Wales Police Service, Interim Report*, op. cit., p.61.

5.10.1.3 In its interim report, the Royal Commission recommended that complaints received by the Police Service, Ombudsman and the Police Integrity Commission should be recorded centrally on the Police's existing Complaints Information System (CIS) and that Central Internal Affairs Branch should forward copies of all complaints to the Ombudsman, and specific categories of complaints to the Police Integrity Commission. The recommendation also was made that the Police Service should provide open access to its files and the CIS to the Ombudsman and the PIC.<sup>325</sup> The intention was that the CIS would be available as an accurate and accessible central intelligence reference point for all complaints.<sup>326</sup> The Royal Commission highlighted the need for accurate recording of complaints, their notification to the appropriate agencies, and the intelligence and managerial value of complaints.

#### 5.10.2 *Developments since the Royal Commission*

5.10.2.1 Following the release of the Royal Commission's Interim Report, an inter-agency Steering Committee was formed to create a system to electronically record information and intelligence concerning complaints against police, and to provide an in-built case management system to manage investigations into police corruption i.e. the Police Complaints/Case Management program (PCCM). The objective of the system was for information and intelligence to be utilised to their full potential. It comprised a police complaints case management system (c@ts.i), an investigations case management system (e@gle.i)<sup>327</sup> and the Police Oversight Data Store (PODS).<sup>328</sup>

5.10.2.2 The PCCM Steering Committee was chaired by the Premier's Department and included representatives of the PIC, the Office of the Ombudsman, NSW Police Service and the Department of Public Works and Services.<sup>329</sup> The overall requirement of the PCCM was outlined as:

.... a suite of systems to record police complaints and compliments, and to support the complaints investigation, monitoring and intelligence functions of the Police Service and oversight agencies.

The overall system must provide an integrated and authoritative database of complaints, that can be accessed by all agencies. It must provide facilities to electronically record information and intelligence concerning complaints against police, and to provide an in-built case management system to manage investigations and to coordinate investigations between agencies. There must be sufficient integration of system components to provide full support for intelligence, investigation and administration functions.

The system must provide security of access to ensure that police officers have confidence that reports about the misconduct will not be inappropriately accessed or used.

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<sup>325</sup> *ibid.*, p.112.

<sup>326</sup> *ibid.*, p.101.

<sup>327</sup> The e@gle.i system was later removed from the PCCM Program to NSW Police.

<sup>328</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Sixth General Meeting with the Police Integrity Commission*, June 2002. p.17.

<sup>329</sup> *Royal Commission into the New South Wales Police Service, Final Report Volume II: Reform*, May 1997, p.479.



The system must provide extensive facilities to analyse and report complaints and outcomes, report on the performance of corruption prevention activities, and ensure consistency of decision-making. There must be consistency in definitions, counting rules and recording practices to make effective and unambiguous cross-agency comparisons of police complaints.

As a component of the system, oversight agencies require full and covert access to information within operational Police Service systems. This facility will need to be highly flexible to endure the changing Police systems environment.<sup>330</sup>

- 5.10.2.3 The user requirements for stakeholders of the PCCM differed considerably as the Ombudsman's Office operated very differently from the PIC and Internal Affairs: its volume of direct complaints is much higher; its investigation activity is lower; and it monitors and oversees investigations rather than investigating them.<sup>331</sup>
- 5.10.2.4 The PIC would be the prime user of the information warehouse called PODS and was the lead agency responsible for its development and implementation. The information warehouse is a dedicated computer system that uses database software for analytical purposes. It was designed for large-scale analysis of relatively static data, by a small number of users. Data is extracted from all Police operational systems, processed and transferred to the warehouse system.<sup>332</sup> The PIC also is a key user of the c@ts.i system and a consumer of e@gle.i data.<sup>333</sup> The Complaints Administration Tracking System or c@ts.i, gives NSW Police live coverage of all complaints handling functions and lets the Ombudsman and the PIC access the system to examine the progress of police complaint investigations. It was designed to cover strategic and trend analysis, notification and communication, complaint monitoring, complaint investigations and data extracts between c@ts.i and PODS.<sup>334</sup> NSW Police is responsible for managing c@ts.i on behalf of the oversight agencies and bears costs beyond the funding supplied by Treasury.<sup>335</sup>
- 5.10.2.5 The contract to deliver c@ts.i was signed in August 2000. By the time the sixth General Meeting was held between the Parliamentary Committee and the PIC in June 2002, the final stage of the development of PODS had begun and was progressing well. Some minor delays were experienced because of the unexpected complexity of certain source data/systems and in sourcing critical hardware components but the project was due for implementation in September 2002.<sup>336</sup> However, the progress of the c@ts.i system was not as straightforward, especially from the perspective of the Ombudsman's Office. The c@ts.i system was implemented in July 2002 and was accepted by all agencies on 7 April 2003.

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<sup>330</sup> Police Complaints/Case Management System, *The Requirements Report*, September 1997, p.13.

<sup>331</sup> Correspondence from Dr C Gellatly, Director-General, NSW Premier's Department, to the former Chairman Mr Bryce Gaudry MP, dated 27 October 1997; containing the Police Complaints/Case Management System, *The requirements report*, September 1997p.48.

<sup>332</sup> *ibid.*, p.2.

<sup>333</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Sixth General Meeting with the Police Integrity Commission*, June 2002. p.17.

<sup>334</sup> NSW Police, c@ts.i Application Architecture Review, 28/10/03 p.4.

<sup>335</sup> Submission No.11. NSW Police, dated 1 August 2006, p.9.

<sup>336</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Sixth General Meeting with the Police Integrity Commission*, June 2002. p.16.

However, the Ombudsman's acceptance of c@ts.i was dependent on the completion of a range of identified tasks.<sup>337</sup> As at 27 August 2003 the total cost of the project amounted to over \$10.8m.<sup>338</sup>

5.10.2.6 Evidence and submissions to the Committee's inquiry show that c@ts.i has failed to realise its potential as a shared complaints information system. This is of great concern to the Committee as NSW Police has submitted that over the last decade the NSW Government has invested more than \$20million in the police complaints information system and the oversight data store, i.e. c@ts.i/PODS. Consequently, the Committee was keen to examine the difficulties experienced by the Office of the Ombudsman when using c@ts.i and any scope that exists to resolve some, if not all, of these problems.

### 5.10.3 *The Committee's Inquiry*

5.10.3.1 NSW Police submitted to the inquiry that despite being a significant contributor and stakeholder in the development and modification of c@ts.i, the Ombudsman's Office had ceased to be a primary user of the system in 2005 "on the basis that it was a conflict of interest for it to rely on a police system to oversight police complaints". NSW Police viewed this situation as unacceptable because of the additional resource implications of having to maintain both electronic and manual systems.<sup>339</sup> Assistant Commissioner Carroll gave evidence that:

**CHAIR:** .... in your submission you deal with c@ts.i and you ascribe to the Ombudsman a view about why they are not primary users of c@ts.i. Who, in particular, was it in the Ombudsman's office who put that view to the police, do you know?

**Mr CARROLL:** It was the Ombudsman and the Assistant Ombudsman.

5.10.3.2 When the Chairman put the NSW Police claims to Mr Cohen, he was told:

**Mr COHEN:** .... I think it is important to distinguish how we use c@ts.i from how the Police Integrity Commission use c@ts.i. It was envisaged that the Ombudsman would use c@ts.i as our own business system—that we would use it to record our own information on it, that we would use it to record reports on and that we actually would not maintain our own independent complaints system at all. We would have no business system to do our business other than c@ts.i. That stands in marked distinction to the Police Integrity Commission, who use it as I think what is called technically a "read-only system". So they use it for the purpose of looking for information but they do not use it as a business system—a system to do their business on.<sup>340</sup>

5.10.3.3 The PIC confirmed that its use of c@ts.i was more limited than that of the Ombudsman's Office:

**CHAIR:** Are there any difficulties with c@ts.i from the PIC's perspective?

**Mr GRIFFIN:** .... c@ts.i serves us very well because it provides us with an opportunity to dip into what is around. We do not have to rely on it extraordinarily heavily for information because we can go and get our own if we decide to develop investigations....

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<sup>337</sup> These tasks were listed in a handover document compiled at the end of the project.

<sup>338</sup> NSW Police, c@ts.i Application Architecture Review, 28/10/03 p.4.

<sup>339</sup> Submission No.11. NSW Police, dated 1 August 2006, p.9.

<sup>340</sup> Transcript of evidence 24/8/06, p.60.

**Mr KEARNEY:** .... c@ts.i is the repository of police complaints. It serves our purposes well as a system. We can get immediate access to complaints once they are input to the system. The only issues that occur in relation to it are not to do with the system, but more to do with how it is used. That is: Do complaints get on there in a timely way? And are adequate records made of decisions that occur in regard to complaints? But, as a system, it is quite useful from our perspective.<sup>341</sup>

5.10.3.4 Mr Cohen explained the Office's efforts to work with NSW Police towards resolving the issues that prevented it from using c@ts.i more extensively:

**Mr COHEN:** We, for a number of years, engaged with police to try to make a workable system that we could both share. In January 2004, after a number of years of development and eight months after NSW Police had promised to fix substantial problems in c@ts.i, we advised police that we were going to downgrade our use of it until those problems were fixed. They were pretty substantial problems. In a technical sense, I understood that they were called a flawed data structure, a flawed security, flawed code and no disaster recovery plan. But what it meant in real terms for our people was that the system was unstable. They were frequently being blocked out of the system. It would take literally seconds and seconds to move from one function to the other. That meant that they could not do their job and, as an organisation, we could not do our job.

Following our decision to reduce our involvement, NSW Police received \$1.4 million to remediate the c@ts.i project. That [remediation] project was supposed to begin in late 2004 and be fully delivered by June 2005. We were assured at the time that we agreed to participate in the steering committee process for that project that it would deliver on all of our outstanding matters—on our reports, it would give reliability, it would have appropriate security and there would be an appropriate disaster recovery plan. I sat on that committee and continually raised my concerns that it would not deliver on our needs and it would not deliver in time. By the end of July 2005—a month after it was supposed to have been fully delivered—it was still not completed and it was clear that our requirements would not be met. I think of the 10 reports we required, seven had been delivered and all of them had failed user acceptance. Another three reports had not been delivered at all. There was still no disaster recovery plan in place or a future plan to make sure it was in place. All the money that had been put aside for the remediation project had been spent.

In February 2006—eight months after it was supposed to be delivered—it was finally delivered. As recently as last month, we received a letter from the Acting Chief Information Officer from NSW Police and as part of that letter he stated, "On behalf of BTS, I sincerely regret the longstanding production and performance issues you and other stakeholders have experienced with the c@ts.i system and we are working hard to achieve some fundamental improvements." When I met with the same Acting Chief Information Officer this month he expressed the view that the c@ts.i remediation project had failed to deliver on its objectives. There is no question about that. For those reasons, we determined that we could not effectively go about doing our business, relying on c@ts.i....

In response to your particular question about why we cannot use it for the delivery of reports, my understanding is that presently because of unrealistic commitments, quite frankly, given by the Professional Standards Command to local commands, they no longer have to print out those reports. That is in fact done by the Professional Standards Command on their behalf. We agreed to receive reports electronically through c@ts.i on the basis that it was a fully functioning system that would let us do all our work. It does

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<sup>341</sup> *ibid.*, p.45.

not do that. It fails on almost every measure to deliver a workable complaints system for us. To then turn around and say, "We didn't deliver you what we said we would but we're going to make you carry the cost of printing out all the reports that you need to do your work" the Ombudsman thought was simply not something that we could countenance given our own resource constrictions.

5.10.3.5 The Office did however still utilise c@ts.i for certain purposes:

**Mr COHEN:** .... We use it for our monitoring of complaint investigations. We use it for our own intelligence functions. We use it for our auditing functions. We did use it to receive new complaint notifications and we put on the table to police that we were happy to do that, even though we were downscaling our involvement. They made a unilateral decision to stop that process from happening. So they in fact took the first steps to reduce the electronic transfer of information to us through c@ts.i. We have been working constructively to try to solve some of those problems and it looks as though a work-around in terms of receiving complaints electronically in the first instance has been achieved. We are trialling it, I think starting next week, for a month and if it works we will agree to do business in terms of new complaint notifications electronically. In terms of s.150 reports, I have offered to the Assistant Commissioner of Professional Standards to look at options to receive smaller of those reports electronically. But I do not think it is fair, given what we were promised through c@ts.i, to then take on the responsibility of having to print out the voluminous reports in some matters that need to be gone through page by page, given the serious nature of the allegations that are raised in them.<sup>342</sup>

5.10.3.6 In his second submission to the inquiry, the Ombudsman claimed that the NSW Police account of the situation misrepresents his decision on c@ts.i:

The primary reason the Ombudsman reduced the use of c@ts.i was that it did not work properly, and could not meet the Ombudsman's business needs. The sorry history of NSW Police in managing the c@ts.i system, and the complete lack of confidence that any further requirements of the Ombudsman would be met in a timely manner, if at all, meant that any decision to rely on that system would have a significant risk to the independence and effectiveness of the Ombudsman's office. The NSW Police submission in this respect is yet another example of incomplete or incorrect information being provided to the Committee.<sup>343</sup>

5.10.3.7 NSW Police has submitted that all it wants is for the Ombudsman to access the c@ts.i system for the purposes of viewing and printing investigation reports.<sup>344</sup> It was suggested that the Ombudsman's failure to use c@ts.i can be reduced to a reluctance on the Office's part to incur the cost of printing the hard copies of investigation reports into police complaints provided to the Ombudsman's Office by NSW Police in accordance with s.150 of the Police Act:

The Ombudsman's Office uses c@ts.i for conducting audits and apparently 'intelligence gathering', but refuses to agree to push a button on a computer system to print the investigation reports. To reduce the administrative burden on Commands, the Professional Standards Command now prints the s.150 reports from the c@ts.i system and delivers hardcopy reports to the Office of the Ombudsman. There is no material included in the hardcopy reports that is not scanned onto the c@ts.i system, and that

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<sup>342</sup> *ibid.*, pp.60-61.

<sup>343</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.18.

<sup>344</sup> NSW Police response to Submission No.10a, NSW Ombudsman, p.17.

the Ombudsman cannot view and print. This is quite simply unacceptable and cannot be justified on the basis of a comment that it is 'not fair'.<sup>345</sup>

5.10.3.8 The NSW Police submission goes on to explain that the Ombudsman's Office was a partner in the shared complaints information system and both the Office and the PIC had dedicated c@ts.i Business Manager positions to manage the business requirements of each agency. According to the NSW Police, the aim of the shared system was to depart from paper based transactions:

The system was developed, among other things, to deliver s.150 reports to the Ombudsman electronically to create a 'paperless office'. Ombudsman officers were to view the material in its electronic form to remove the administrative burden of providing hard copy reports and the cost to Government of photocopy paper. The fact that the Ombudsman's Office has later found that it prefers to work from hard copy reports is not an issue for NSW Police, or a failing of the c@ts.i system, but an internal business decision for the Ombudsman.<sup>346</sup>

5.10.3.9 The Committee has found that the NSW Police account doesn't provide a full appreciation of the difficulties experienced by the Ombudsman's Office with the c@ts.i system or the reasons for the Ombudsman's decisions about the system. The situation was far more complicated. Indeed, it is manifest from the correspondence that the Ombudsman's Office finds itself in difficult circumstances not of its own making and where it has few options, despite having repeatedly tried to reach a solution with NSW Police about c@ts.i that would not impact adversely on the ability of the Office to meet the Ombudsman's statutory obligations. The following account derives from the correspondence and other sources available to the Committee in relation to the negotiations between NSW Police and the Ombudsman's Office over c@ts.i. It is lengthy and somewhat disproportionate in comparison to the other sections of the report, partly a reflection of the project's complexity and the extensive inter-agency consultation required for such a large and costly exercise.

5.10.3.10 **Account of more recent c@ts.i negotiations** - At the time the PCCM Program concluded in 2003 there were several outstanding issues relating to c@ts.i in need of attention. Of particular relevance, given the evidence provided to this inquiry, is the recognition by NSW Police of the additional work the system imposed on Ombudsman officers to view and print s.150 investigation reports. As a result, NSW Police agreed to provide the Ombudsman's Office with hard copy printouts (as well as electronic versions) of s.150 investigation reports on all complaints where the printing functionality had not been implemented. NSW Police also undertook to fix several outstanding reports from the Complaints Data Warehouse and to provide adequate resources to resolve a number of production faults identified by the Ombudsman.<sup>347</sup> Provision also was needed for a disaster

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<sup>345</sup> *ibid.*, pp.17-18.

<sup>346</sup> *ibid.*

<sup>347</sup> Letter from the Commander Special Crime and Internal Affairs, Brian Reith, to Steve Kinmond, dated 4 April 2003 containing a copy of an agreement between NSW Police and the Ombudsman's office called the CAMS Handover Management Plan.

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recovery plan for c@ts.i.<sup>348</sup> However, the additional \$1.3 million to achieve these corrections was not forthcoming.<sup>349</sup>

5.10.3.11 Ongoing frustration with the operation of c@ts.i led NSW Police to commission a consultant's report, which was supplied in October 2003. That report describes the c@ts.i application at the time as being "in a parlous state."<sup>350</sup> The system had been unavailable for approximately 83 hours over the previous 3 months, sometimes for hours and occasionally for days at a time. In addition to being continually unavailable since April 2003 the stability of the system had been "severely impaired". The system's performance was described as poor for extended periods of time and "periodically drastically slow".<sup>351</sup>

5.10.3.12 The consultant's report confirms that remedial action was needed in seven key areas:

1. The c@ts.i data structure is deficient. It does not cater for the accurate, consistent and complete tracking of complaints over time. This has fatal consequences for any trend reporting or the like on such data. A complete review of the data structure is required and requisite remediation undertaken.
2. The Security Model for c@ts.i, that governs the access and authorisation rules for using the system, is extremely complex and over-engineered. It imposes a drastic performance overhead and complicates support of the system. A complete review of the security model is required and requisite remediation undertaken.
3. The reporting database, known as the Complaints Data Warehouse (CDW), is bug-ridden and not required. A simpler "Snapshot" database is required, and the PIC interface requirements for CIS and c@ts.i data be catered for by alternate means.
4. The Actuate Reporting Tool is flawed and needs to be replaced with a more industrial-strength product that can be locally supported and provides the flexible, end-user reporting and analytical reporting functionality essential to all three Agencies.
5. Users are currently unable to adequately perform Text Searching, a critical requirement for the management and oversight of Complaints. The Excalibur Tool, currently used by both e@gle.i and c@ts.i, needs to be replaced immediately.
6. The method by which Investigation Management is implemented within c@ts.i is flawed and should cease immediately. A solution to adequately cater for the investigation of Complaints using up-to-date e@gle.i application should be implemented ASAP.
7. The specification and coding practices undertaken in developing the application appear dubious. A formal Technical Quality Review is required to uncover and remedy all coding flaws.<sup>352</sup>

5.10.3.13 The consultant's observations highlight important problems some of which directly affected the Office of the Ombudsman, e.g. the c@ts.i data structure did not consistently and accurately support the key business requirement of tracking

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<sup>348</sup> *ibid.*

<sup>349</sup> Internal Ombudsman's Office memo, 9 October 2003.

<sup>350</sup> NSW Police, c@ts.i Application Architecture Review, 28/10/03 p.3

<sup>351</sup> *ibid.*, pp.3&4.

<sup>352</sup> *ibid.*, p.3

a complaint and its associated details over time. The report noted that it was a pivotal requirement of NSW Police, Ombudsman and the PIC to track the status of a complaint over time and to be able to query or derive trends on information about a complaint at specific points in time. Reports that attempted to gather and derive trends in complaints, therefore, were inaccurate or incomplete. Also, the quality of the trend reports was affected by complaint information being lost in the process of being uploaded from the Complaints Data Warehouse. For example, it was noted that the specific biographical information about a complaint, such as the location and position of the investigating officer, was not supported by the system.<sup>353</sup>

- 5.10.3.14 Another issue was that the Complaints Data Warehouse did not deliver as a separate reporting database. Of the 29 c@ts.i reports developed only 14 were of interest to the NSW Ombudsman; the remaining 15 attempted to report on trends combining complaints data from c@ts.i and CIS with inaccurate and inconsistent results.<sup>354</sup> The existing text searching tool within the system was “wholly unsatisfactory”, probably because it was poorly configured and implemented: the most basic search requirements were left unmet.<sup>355</sup>
- 5.10.3.15 Although investigation management was implemented in c@ts.i in July 2002 it wasn't used to any great extent until April 2003 and as the number of users increased the system's stability deteriorated. The system would freeze when users attempted to enter the investigation management function requiring the entire c@ts.i application to be shut down and re-started. However, investigation management wasn't critical to the core requirement of c@ts.i, and did not need to be tightly coupled with complaints tracking. Consequently, it was recommended that the investigation management function be removed from c@ts.i altogether and that e@gle.i be utilised for this purpose where possible.<sup>356</sup> The consultant had not dealt in detail with the issue of the quality of coding used in the c@ts.i system but had noted that anecdotal evidence suggested there had been several deficient coding practices during the system's development.<sup>357</sup>
- 5.10.3.16 Despite the extent of all of these difficulties, the consultant concluded that the situation could be remedied.<sup>358</sup>
- 5.10.3.17 In December 2003, the then Assistant Ombudsman (Police), Mr Steven Kinmond, advised NSW Police of the significant adverse impact c@ts.i was having on the work of the Ombudsman's police team, including:
- a decrease in the number of s.150 reports assessed by Ombudsman officers, due to factors such as the slow response of c@ts.i, and the lack of consolidated s.150 reports on c@ts.i;

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<sup>353</sup> *ibid.*

<sup>354</sup> *ibid.*, p.7.

<sup>355</sup> *ibid.*, p.9.

<sup>356</sup> *ibid.*, p.10.

<sup>357</sup> *ibid.*, p.11.

<sup>358</sup> *ibid.*, p.3

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- the necessity, for more than one year, for my office to continue to run our Resolve database, while committing significant resources to the ongoing development of c@ts.i. This need to continue with Resolve arises for a variety of reasons including the lack of an effective search function on c@ts.i and the unavailability of complaint trend reports;
- frustration for my officers because, instead of performing analysis and assessment of complaint matters, they are instead left wrestling with a slow and inefficient computer system.

5.10.3.18 Mr Kinmond indicated that he remained committed to an effective and shared complaint oversight database but for the foreseeable future the Office could not use c@ts.i to provide for all of its police oversight functions. Effective from 19 January 2004, the Office's use of the system would be scaled back and would be limited to continuing to assess new complaints using c@ts.i. Other than this, the Office would not use c@ts.i in dealing with individual complaint matters and NSW Police would be required to forward any correspondence, and the full s.150 investigation reports for all complaint matters in hard copy. The Office would assess matters and advise of those assessments via written correspondence.<sup>359</sup>

5.10.3.19 An internal Ombudsman's Office memorandum indicates that the problems with the system meant the Office was unable to do trend reporting and annual reporting, could not conduct complex searches and was unable to monitor internal workloads. In addition to poor and slow performance, printing of documents was time consuming as NSW Police did not comply, or had not been trained in a particular function (called Brief of Evidence) that allowed one-step printing of s.150 reports. Down times had been extensive in July and August of that year but recently were significantly reduced. The problems resulted in:

- the necessity to concurrently run the Resolve system;
- the ongoing commitment of significant resources to support the further development of the system;
- the handling of complaints in general is laborious because of the system's limitations; and
- the Office is unable to fully carry out its statutory responsibilities.<sup>360</sup>

5.10.3.20 Also by around about this time most of the NSW Police c@ts.i development team had resigned.<sup>361</sup>

5.10.3.21 Assistant Commissioner Carroll wrote to the Ombudsman in March 2004, advising of recent technical improvements to c@ts.i and concerns expressed by local commanders about the impact of the Office's scaled back use of c@ts.i. He advised that:

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<sup>359</sup> Signed letter not sighted but confirmation of receipt noted in subsequent letter from Assistant Commissioner Carroll to Mr Barbour dated 29 March 2004; original correspondence between Mr S. Kinmond and the Commissioner of Police most probably dated 19 December 2003.

<sup>360</sup> Internal Ombudsman's Office Memorandum, re Briefing for meeting with Premier's and NSW Police on 8 January 2004.

<sup>361</sup> Letter from Assistant Commissioner Carroll to Mr Barbour, 30 March 2004.



Because NSW Police continues to use c@ts.i as its own complaints information systems and find[s] it suitable for such purposes it is expected that the Ombudsman will use the system for oversight purposes to the extent possible, while additional features and functionality are developed over time.

- 5.10.3.22 Assistant Commissioner Carroll asked the Ombudsman if the Office could again trial the use of c@ts.i for oversight purposes while NSW Police continued to address the problems with the system.<sup>362</sup> In a detailed response, the Assistant Ombudsman (Police), Mr Simon Cohen, clarified the remaining work that needed to be done and emphasised that these functions were the minimum mandatory requirements from the original specifications in the project and were not “change requests”. He confirmed that one of the Office’s aims in supporting the completion of c@ts.i was to decommission its own system and share a police complaints information system with NSW Police but the Ombudsman would need to be satisfied that adequate resources were being committed by NSW Police to the resolution of the problems with the system and that it would be maintained to standards agreed to by the users.
- 5.10.3.23 In Mr Cohen’s view it would be premature for the Office to agree to trialling the use of the electronic functions of c@ts.i until the remediation work had progressed significantly further, so as not to impede the Office’s ability to meet its legislative obligations and process complaints, or reduce service levels to the public.<sup>363</sup> Over the next few months of negotiations between NSW Police and central agencies, and between NSW Police and the Ombudsman’s Office and the PIC, the Office expressed concern that the amount of funds being sought for the remediation project to fix c@ts.i would be inadequate.<sup>364</sup> It also disputed the claim by NSW Police that remediation would result in an \$800,000 saving from the decommissioning of the office’s Resolve system and raised doubts about the estimated additional cost for NSW Police of \$1,050,000 per annum, reportedly incurred by NSW Police as a result of the Office’s limited use of c@ts.i.
- 5.10.3.24 In November 2004 additional funding of \$1.4million was provided for a remediation project, leading to the production of c@ts.i version 5.0.<sup>365</sup> The Ombudsman’s Office generally supported additional funding to remediate c@ts.i on the understanding that the system would then be able to deliver the business requirements of the Office as envisaged by the PCCM program. The Office had repeatedly identified the ongoing difficulties in terms of its business requirements in correspondence with NSW Police and at meetings.<sup>366</sup>

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<sup>362</sup> *ibid.*

<sup>363</sup> Letter from Mr Cohen to Assistant Commissioner Carroll, 10 April 2004.

<sup>364</sup> Correspondence from the Ombudsman’s Office to consultant, dated 3 June 2004; Minutes of Meeting between representatives of the Ombudsman’s Office, NSW Police and the project consultant dated 26 July 2004; Letter from Assistant Ombudsman, Mr Simon Cohen to Deputy Commissioner Scipione sent 24 August 2004; Letter from Assistant Commissioner R Mahoney to S. Cohen 16 September 2004.

<sup>365</sup> Letter from the Ombudsman to the Minister for Police, The Hon C. Scully MP, dated 18 April 2006.

<sup>366</sup> Documentation was provided in relation to: the CAM Handover Plan 7 April 2003; letter from Simon Cohen to John Carroll 4 April 2004; correspondence to NSW Police re the draft business case for the remediation project 3 June 2004, and in consultation with NSW Police re the statement of scope within the c@ts.i Remediation Project Execution Plan – cited in internal memorandum from Michael Gleeson to Bruce Barbour 5 April 2005.

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5.10.3.25 Throughout the development and implementation of the remediation project from March 2004 onwards the Ombudsman's Office expressed concerns that the review was not fully analysing the work that was needed to address the deficiencies pertaining to the Office's business requirements, as well as the security of the system. The Office warned that the remediation project would need more funding and may not be completed on time. On a number of occasions NSW Police provided reassurances that funding was sufficient and that the outstanding work to the system would be done.<sup>367</sup>

5.10.3.26 By April 2005 it appeared to the Office that the remediation project would not deliver the Ombudsman's requirements.<sup>368</sup> The project was not completed by the end of the financial year and was at that stage estimated for completion by mid August 2005. This led the Ombudsman to write to the Commissioner of Police on 27 July 2005 confirming that the Office would not reconsider increasing its use of c@ts.i until its business requirements were met.<sup>369</sup> Mr Barbour understood that the additional \$1.4million provided by Treasury for the remediation project had been spent and that completion of the project would be funded from the resources set aside to maintain and support c@ts.i. He expressed concern that the project was not on track to deliver the essential business requirements of his Office and that it was unrealistic to consider that these requirements would be met in a timely manner. Because of the history of the project Mr Barbour was not supportive of further additional funds being sought from Treasury to remedy these outstanding problems and indicated that he had decided it was not in the Office's interest to require NSW Police to maintain and support a single shared complaint system. He wrote:

After long reflection, and a thorough consideration of the history of the c@ts.i project and the current position, I have decided that it is no longer in the interest of my office to require NSW Police to maintain and support a single shared complaint system. Consequently, I have determined to retain the Resolve system as our core business system for managing complaints about police, and to further reduce the involvement of my office in the development of the c@ts.i....

Briefly, I have reached this decision because of the ongoing failure by NSW Police to meet Ombudsman business requirements in a timely manner, my concerns about maintaining the independence of this office, and my view that there will be a continuing significant resource impact on both agencies arising from any further attempts to complete and maintain a fully integrated complaints system.

5.10.3.27 The Ombudsman gave a detailed outline of the reasons for his decision and also indicated that, as requested by NSW Police, the Office would consult with Professional Standards Command, on its ongoing needs regarding c@ts.i, the fifth version of which was anticipated to be delivered in October 2005. The Ombudsman indicated that the business requirements of his Office were nowhere near being completed, including:

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<sup>367</sup> Ombudsman's letter to Assistant Commissioner Carroll, dated 14 March 2005; Assistant Commissioner R Mahoney to Mr Simon Cohen 16 September 2004; Letter from the Ombudsman to Deputy Commissioner Scipione dated 15 July 2004 and the reply dated 13 August 2004.

<sup>368</sup> Internal Ombudsman's Office Memorandum from Mr Gleeson to Mr Barbour, dated 5 April 2005, concerning the progress of the c@ts.i remediation project.

<sup>369</sup> Letter from Mr Barbour to Mr Moroney, dated 27 July 2005.

- remediation of the c@ts.i data model, which was required to ensure the validity of standard reports and to generate accurate ad hoc queries by the Office - c@ts.i did not provide reliable data for measuring basic performance indicators including the information required for the Ombudsman's annual report. Deficiencies had been identified in 2003 but a detailed analysis of the problems and the work required to fix them had yet to be completed;
- completion of a number of standard reports, including one to measure the rate of complainant satisfaction on complaints handled by NSW Police as local management issues under the s.122(2) Class or Kind Agreement;
- remediation of performance problems and data flaws of the Complaints Monitoring Database, which was included in the remediation project but in which work had not commenced;
- configuration and implementation of an Ad Hoc Reporting Tool.<sup>370</sup>

5.10.3.28 Additionally, the following requirements had not been completed by June 2005:

- completion of a business review of the c@ts.i security model and implementation of essential changes;
- completion of a disaster recovery plan for c@ts.i including a business continuity plan – also identified in April 2003;
- completion of a project regarding the authentication of NSW Police c@ts.i users.<sup>371</sup>

5.10.3.29 The Ombudsman expressed doubt that these requirements would be delivered. He advised Commissioner Moroney that the resource implications for his Office were considerable as it had supported c@ts.i at the same time as maintaining its own system, Resolve, to ensure the Office could meet its legislative obligations. Even if c@ts.i version 5 was delivered and included all of the outstanding business requirements of the Office, the Resolve system could not be decommissioned until c@ts.i proved to be reliable for a reasonable period of time. The Office could no longer budget to support two complaint systems.

5.10.3.30 In terms of the Ombudsman's independence, Mr Barbour went on to write:

Given the history of this matter, I am now firmly convinced that a significant risk to the independence and the effectiveness of my office would arise from the integration of our core business system for police complaints.

As you know, under the Police Act I am obliged to keep under scrutiny the systems established within NSW police for dealing with complaints. At this stage the c@ts.i system does not support the data capture required by my office to fulfil these obligations.

To effectively fulfil its legislative role my office requires the flexibility to continually develop and implement changes to our business processes and to enhance and modify the information being captured about complaints. The integration of our business

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<sup>370</sup> *ibid.*

<sup>371</sup> *ibid.*

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systems for police complaints within c@ts.i will make my office dependent on NSW Police for any changes that require enhancements to the c@ts.i system. A significant risk to my office that arises from an integrated business system is that NSW Police must consent to enhancements required by my office as they may impact on NSW Police business processes and because it would require the expenditure of NSW Police resources for development and implementation.

Given our experience to date, I have little confidence that NSW Police would deliver any future enhancements required by the Ombudsman in a timely manner, if at all.

A further consideration about a fully integrated complaint system is that it would make effective Ombudsman oversight fully dependent on NSW Police employees properly and fully entering data on c@ts.i. I do not believe that this is a realistic, proper or reliable basis for ongoing oversight of police complaints.

In addition, on a practical level, it is problematic for my office to keep under scrutiny the development and implementation of c@ts.i by NSW Police and at the same time to participate in the project as a user and beneficiary of the system.<sup>372</sup>

5.10.3.31 The Ombudsman envisaged that his decision might benefit NSW Police by allowing the application of limited recurrent funding on resources that would enhance the c@ts.i system for NSW Police users. He also expected that some of the advantages that would have derived from a single shared complaints system might still be delivered by other means. Mr Barbour undertook to have his office help develop procedures with Professional Standards Command to allow regular exchange of complaint data to support the development of reports by NSW Police for use by police users of c@ts.i. The Ombudsman also made clear that c@ts.i would continue to have benefits to his Office as a **secondary** business system. After identifying deficiencies that no longer needed to be rectified, the Ombudsman pointed out that the Office would continue to use c@ts.i functions to:

- receive notifications of new complaints from NSW Police and record an initial response (but c@ts.i would not be used to receive other correspondence or notifications after the initial notification);
- fulfil some legislative functions such as inspection of records and for keeping the complaints system under scrutiny, for legislative review functions and intelligence analysis; and
- to run ad hoc queries using the reporting tool and work with Professional Standards Command to develop complaint reports for use by the agencies.

5.10.3.32 Consequently, the Office would continue to require access to c@ts.i and maintenance of the PCCM network.<sup>373</sup>

5.10.3.33 The Commissioner of Police responded on 8 September 2005 as follows:

I acknowledge and accept both your right and responsibility as the NSW Ombudsman to identify and resolve any conflict of interest that may impinge upon your statutory role and any adverse public perceptions of the impartiality of that role. I therefore

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<sup>372</sup> *ibid.*

<sup>373</sup> *ibid.*

accept your decision that it is no longer possible for your office to rely principally on a NSW Police system to perform statutory oversight functions and will regard this as your final position on the issue.<sup>374</sup>

- 5.10.3.34 However, at this point, Mr Moroney advised that NSW Police would continue to provide the Office with access to c@ts.i, but would stop work on any business requirements as specified in the Ombudsman's letter on the basis that these are no longer required. He acknowledged the Office's continued use of c@ts.i to perform a range of legislative functions and for intelligence, but with regard to the notification of new complaints, NSW Police would begin notifying the Office of all new notifiable complaints in an alternative electronic form (not on c@ts.i). The Office would be able to run reports and inquiries over c@ts.i data but NSW Police would not provide the hardware, software or technical support for such purposes.
- 5.10.3.35 The Commissioner confirmed the invitation for the Ombudsman to provide a submission to the current review of the "triagency" agreement on the performance of the system, and indicated that NSW Police would finalise and communicate its position on the Office's participation when the review was completed. The Commissioner further advised that, for budgetary and administrative reasons, NSW Police would no longer be able to provide s.150 investigation reports in a hard copy form after the print facility on c@ts.i became available on 1 November 2005 but that Professional Standards Command would provide the reports to the Office in an electronic form e.g. CD-ROM. Commissioner Moroney concluded that the Professional Standards Command would continue to give cooperation, support and commitment to help ensure the independence and effectiveness of the Ombudsman's oversight role in relation to police complaints.<sup>375</sup>
- 5.10.3.36 The Ombudsman wrote to the Commissioner on 5 October 2005, welcoming the assurances of support from NSW Police but advising that he would not agree to any new arrangements for the provision of s.150 reports until he was satisfied that the format for electronic delivery met the Office's requirements and was properly developed and resourced by NSW Police. Mr Barbour explained that he would not accept a new arrangement if it resulted in increased timeframes for the delivery of s.150 reports or additional resource burdens on his Office. The Ombudsman was disappointed that NSW Police had decided not to support the Office with technical assistance for running reports using c@ts.i data but hoped that his officers could work through the issue of sharing reports for key performance indicators and complaint trends, which he regarded as significant for effective oversight.<sup>376</sup>
- 5.10.3.37 Subsequently, Assistant Commissioner Carroll informed the Ombudsman that he fully accepted that the electronic delivery of s.150 investigation reports would "need to meet the requirements of your office" and if such agreement could not

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<sup>374</sup> NSW Police response to Submission No.10a, NSW Ombudsman, p.17; originally Letter from Commissioner Moroney to Mr Barbour dated 8 September 2005.

<sup>375</sup> Letter from Commissioner Moroney to Mr Barbour, dated 8 September 2005.

<sup>376</sup> Letter from Mr Barbour to Commissioner Moroney, dated 5 October 2005.

be reached NSW Police would make alternative arrangements to ensure that no disadvantage to the Office occurred. The Ombudsman was advised that he could raise issues of delay in the provision of s.150 reports exclusively with the Professional Standards Command, which now played a coordinating role in the provision of these reports. Assistant Commissioner Carroll expressed regret that support could not be provided to the Ombudsman to run reports using c@ts.i data but he stated that NSW Police would give transitional technical support to ensure that the c@ts.i data was delivered to the Office in a usable form. He also stated that NSW Police intended to work closely with the Office on shared reports for key performance indicators and complaints trends.<sup>377</sup>

5.10.3.38 Professional Standards Command met with representatives of the Ombudsman's Office on 27 January 2006 to discuss proposed changes to NSW Police business processes as a result of the release of c@ts.i version 5, which was scheduled for 12 February 2006. Changes to the security model also had been made. The Ombudsman objected to the changes to the NSW Police business processes having occurred without any consultation with his Office about the potential operational impact of the proposals, and sought agreement that consultation would occur in future.<sup>378</sup>

5.10.3.39 A robust correspondence then took place between the then Minister for Police, Mr Scully, and the Ombudsman, which was initiated by the Minister on 4 April 2006. Mr Scully emphasised the cost to NSW Police of printing hard copy investigation reports for the Ombudsman and expressed disappointment if the c@ts.i system could not be used to its full potential. The Minister also said he was disappointed that the Ombudsman had withdrawn from the c@ts.i remediation project. Mr Scully wrote that electronic communication of documents was becoming the standard for the public sector and that the veracity of such documents did not need to be established by providing them in hard copy. He strongly commended the Ombudsman to participate in a trial of electronic complaint notifications and also requested that the Ombudsman reconsider his decision to receive s.150 investigation reports only in hard copy.<sup>379</sup>

5.10.3.40 The Ombudsman's response reiterates the details of the deficiencies with c@ts.i and his inability to continue to support it as a single shared complaints system. Mr Barbour pointed out that despite the passage of eight years since the c@ts.i project's commencement and the millions of dollars spent on it, the system still did not meet essential business requirements of the Office. The delivery of the new version of the system had not resolved any of the issues that had caused him to reduce the Office's use of c@ts.i. Mr Barbour also disputed that the Minister's portfolio had done all it could to address the Office's business requirements:

With respect, I disagree with that statement. Often, NSW Police only acted upon matters affecting this office following very considerable urging by us. Our business

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<sup>377</sup> Letter from Assistant Commissioner Carroll to the Ombudsman, 13 October 2005.

<sup>378</sup> Letter from the Assistant Ombudsman (Police), Mr Cohen, to Assistant Commissioner Carroll, dated 22 March 2006.

<sup>379</sup> Letter from Mr Scully to Mr Barbour 4 April 2006.

requirements were frequently ignored or placed as a low priority. Realistically, by July 2005, there was no prospect of a satisfactory result.

- 5.10.3.41 Having pointed out that NSW Police had been providing the Office with investigations reports for more than 20 years, to meet legislative requirements, Mr Barbour wrote:

In 2002 and 2003, we trialled electronic delivery of reports via c@ts.i. That proved to be entirely unsuitable for the needs of this office, for reasons including the very poor performance of c@ts.i. In addition our complaint oversight, requiring as it does the detailed examination and analysis of investigation documents, could not be conducted effectively using electronic versions only. As a result, investigation reports were often printed by our officers. Given the benefits c@ts.i was supposed to deliver to the Ombudsman we agreed to bear the costs of this task.

C@ts.i proved unworkable for this office, and ultimately failed to deliver any of these benefits. This is why, as part of the decision of this office in December 2003 to reduce our use of c@ts.i pending remediation, we required hard copies of investigation reports. At this time, It was made clear to NSW Police that we would not again accept electronic delivery of investigation reports until c@ts.i delivered against all our business requirements.

Since the commencement of the version 5 of c@ts.i, the Professional Standards Command (PSC) now undertakes the task of printing all investigation reports on behalf of Local Area Commands. This task is being performed centrally because of undertakings given by PSC officers to local commands that on the introduction of the new version of c@ts.i, hard copy reports would no longer be required for the Ombudsman. This undertaking could not be met. The undertaking was given without any consultation with my office.

Without hard copy investigation reports in most matters, I cannot effectively perform my functions. Because c@ts.i has failed to provide an appropriate business system for my office, there is no reason why the Ombudsman should bear additional costs in printing police reports. While it is for NSW Police to determine which internal department provides reports, it is not appropriate that, should existing arrangements prove unsuitable, NSW Police seek to shift the printing function to the Ombudsman.

- 5.10.3.42 The Ombudsman stated that his Office had demonstrated its willingness to work towards resolving this issues but from his perspective:

....a key failing of c@ts.i is that it does not perform functions efficiently. It can take several minutes for our officers to simply log on to c@ts.i. Movements between screens are extraordinarily slow. There is nothing efficient or economical, ....in electronic s.150 reports being provided to this office by NSW Police via c@ts.i.<sup>380</sup>

- 5.10.3.43 The Committee is not in a position to confirm the cost to NSW Police of providing hard copies of s.150 investigation reports. The Office has since estimated that during the 2003-04 financial year NSW Police provided approximately 2000 reports to the Ombudsman,<sup>381</sup> whereas, NSW Police estimated earlier this year that it was centrally printing around sixty s.150

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<sup>380</sup> Letter from Mr Barbour to the Minister for Police, dated 18 April 2006.

<sup>381</sup> Letter from Simon Cohen to Andrew Scipione, 24 August 2004.

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complaint investigation reports per week, and that the total printouts of new notifications and s.150 reports totalled more than 250,000 per year.<sup>382</sup>

- 5.10.3.44 The best indicator of the number of investigation reports needing to be referred to the Office is the statistics on investigations. For instance, in 2005-06 NSW Police investigated 2,131 complaints which were oversighted by the Ombudsman's Office and a further 248 police complaint conciliations also were subject to oversight.<sup>383</sup> Therefore, at least a total of 2,379 reports would have been provided by NSW Police to the Ombudsman's Office. The Ombudsman submitted that in 2004-05 his Office received 2,440 police investigations for review.<sup>384</sup> The average size of these investigation reports is not known and so the Committee is not in a position to put a dollar figure on the cost of providing such reports to the Office.
- 5.10.3.45 Some progress seems to have been made in that NSW Police coordinates supply of the electronic c@ts.i investigations reports from local commands, which can be viewed by the Office on c@ts.i and hard copies are posted to the Office. Also, discussions have occurred regarding an electronic complaints notification system and Assistant Commissioner Carroll undertook to advise the Ombudsman on any changes arising from the new version of c@ts.i.<sup>385</sup>
- 5.10.3.46 Ironically and not unexpectedly, the difficulties with c@ts.i rolled on and in the months preceding the Committee's public hearing for this inquiry, an incident occurred in which a number of files lodged by NSW Police on c@ts.i were corrupted during the scanning process, requiring action to fix the problem.<sup>386</sup>
- 5.10.3.47 **Conclusion** - The Committee regards it as highly unfortunate that the Ombudsman's ongoing issues with the provision of information from NSW Police to facilitate his oversight role remain unresolved. It notes that there seems to have been some movement in coming to agreement on notifications and the provision of some investigation reports electronically. But the negotiation process has been unduly protracted and the outstanding issues are eminently capable of a speedy resolution and should be so resolved.
- 5.10.3.48 In the Committee's view there seems to be little point in the Office trying to depend solely on a system that does not currently support its business requirements and increasingly appears that it cannot be fixed to do so. However, it would seem desirable for the Office to utilise those aspects of the c@ts.i system that do work efficiently, e.g. the initial notification and assessment of complaints. The Committee would encourage NSW Police and the Ombudsman's Office to salvage as much as possible from c@ts.i, without impeding the Office's capacity to perform its functions, and to explore alternative electronic provision of information as far as is possible. For instance, it is understood that there may be the capacity for the Office to receive smaller s.150 investigation reports

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<sup>382</sup> Letter from the Minister for Police to the Ombudsman, dated 4 April 2006.

<sup>383</sup> NSW Ombudsman, *Annual Report 2005-06*, p.39.

<sup>384</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.13.

<sup>385</sup> Letter from Assistant Commissioner Carroll to Mr Cohen, dated 21 April 2006.

<sup>386</sup> Letter from Business and Technology Service, NSW Police to the Ombudsman dated 3 July 2006.



electronically. While there now appears to be scope to provide larger investigation reports electronically on CD-ROM, the Committee is of the view that any negotiated arrangements should not impose additional burdens on the Office, including financial burdens.

5.10.3.49 Pending the formulation of new arrangements between NSW Police and the Office, the Committee recommends that NSW Police should continue to provide any documentation needed by the Office, including s.150 investigation reports, in hard copy at no cost. The Ombudsman's capacity to work effectively as an oversight mechanism in respect of police complaints depends heavily on the quality of information provided to it by NSW Police and the efficiency of the system for doing so. The capacity of the Office to analyse and report on complaint trends, and to assess the outcomes of police complaint investigation reports, is fundamental to the Ombudsman's oversight role.

#### 5.10.4 **Access to records concerning Local Management Issues**

5.10.4.1 In keeping with its proposal that performance or customer service issues should be removed from the formal police complaints system, the NSW Police Association also proposed that such complaints should be recorded on a separate database and be subject to internal audit procedures linked into manager's performance agreements.<sup>387</sup>

5.10.4.2 However, the issue for the oversight agencies appears to be one of access to electronic records. The PIC Commissioner expressed concern during his appearance before the Committee should such matters be removed from the PIC's view:

**Mr GEOFF CORRIGAN:** Assistant Commissioner Carroll raised the point this morning: What is a complaint? He was arguing that LMIs should not be treated as complaints and should be put on a system other than c@ts.i, because everything that goes onto c@ts.i becomes a complaint.

I would be interested if you have any idea or sense of how many matters that started out as LMIs have now become matters that PIC could investigate?

**Mr GRIFFIN:** .... We are a little concerned about the separate system too in as much as it is not a difficult matter to categorise a low- level Category 2 complaint as an LMI, if you like, if you were either devious or not quite on the ball, and some of the LMIs might be indicative of a systemic low-level problem. We want to see all those so that we can say, "That is actually a Category 2", and all these LMIs about beating up ladies between nine and 11 at night, we want to see what the story is there. So we want to know about the LMIs. That has been satisfactorily dealt with, I think, in the sense that the police have promised us at this stage that we will have access to SAPS, or whatever that is— ....

But we would be very uncomfortable if they could categorise down and take away from our vision a whole number of complaints which they call LMIs....

**Mr KEARNEY:** I do not have a sense of figures, and LMIs are not something we would normally pay much attention to. They may come up incidentally during investigations and for the sake of completeness they will be bundled up with any other

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<sup>387</sup> Submission No.9. NSW Police Association, dated 2 June 2006, p.13

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recommendations for disciplinary action, but they are not something we focus on normally. Where we might pay them particular attention is where they are miscategorised, as the Commissioner just alluded to. Sometimes you get Category 2 complaints miscategorised as LMIs and they fall below the radar. Things like, for example, inappropriate associations can be referred to or categorised as a breach of the code of conduct and therefore an LMI rather than a Category 2. Some of those we can pick up because we can see the systems and have them elevated.<sup>388</sup>

5.10.4.3 Any reduction in the recording of LMIs on the c@ts.i system could be reached by agreement with the oversight agencies, as explained by the Ombudsman:

As part of the current review by the Ministry for Police in relation to the police complaints system, the Ombudsman has suggested an amendment to the Police Act that would relax the current strict requirement that any complaint against a police officer must be registered on the complaints information system, but would at the same time maintain the integrity of the system as a record for police complaints. In brief, our suggested amendment would allow matters not to be registered if both the Ombudsman and NSW Police agree to this course. Such an amendment would provide additional flexibility when dealing with complaints which clearly have no substance, so as not to require them to be entered on the complaints information system.<sup>389</sup>

5.10.4.4 However, it is noted that NSW Police in its latest submission rejects the Ombudsman's proposed amendment on the basis that:

Again the Ombudsman's solution is to add further 'red tape' with another process step.

It should be noted that the Ombudsman's full suggestion, as communicated to NSW Police in recent discussions, is that where there is any disagreement, the Ombudsman's view will be final. This is not in line with a model that seeks to make Commanders accountable for complaints management within their Commands, or for NSW police to take full responsibility for their decisions. This will not be supported by NSW Police.<sup>390</sup>

5.10.4.5 Conversely, the Committee does not envisage that the Ombudsman, or the PIC, would be prepared for police complaints to slip completely from their view, except by way of agreement. There seems little potential for obtaining agreement between the parties on the Police Association's proposal.

5.10.4.6 It appears to the Committee that the main consideration is that any reduction in the recording of LMIs on c@ts.i should not occur without retaining the capacity of oversight agencies to access such information if required.

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<sup>388</sup> Transcript of evidence, 24/8/06 p.47.

<sup>389</sup> Submission No.10a. NSW Ombudsman, dated 18 September 2006, p.10.

<sup>390</sup> NSW Police response to Submission No.10a, NSW Ombudsman, pp8-9.

## Chapter Six - The accountability mechanisms built into the system

### 6.1 For the Police Integrity Commission

#### 6.1.1 The PIC Inspector

6.1.2 The provision of an Inspector to oversee the PIC's activities is one way in which sensitive information relating to current operational matters can be examined as part of accountability, without compromising the confidentiality of such material. The principal functions of the PIC Inspector are contained in s.89(1) of the PIC Act. They are to:

- (a) audit the operations of the PIC for the purpose of monitoring compliance with the law of the State;
- (b) deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the PIC or PIC officers; and
- (c) assess the effectiveness and appropriateness of the procedures of the PIC relating to the legality or propriety of its activities.

6.1.3 The Inspector is completely independent of the PIC and may exercise the functions of the Office on his or her own initiative, or in response to a complaint, a reference by the Ombudsman, the ICAC, the NSW Crime Commission, the Joint Parliamentary Committee or any other agency (s.89(2)). Pursuant to s.90(1), the Inspector:

- may investigate any aspect of the PIC's operations or any conduct of PIC officers;
- is entitled to full access to the PIC's records and to take or have copies made of any of them;
- may require PIC officers to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the PIC's operations or any conduct of PIC officers;
- may require PIC officers to attend before the Inspector to answer questions or produce documents or other things relating to the PIC's operations or any conduct of PIC officers;
- may investigate and assess complaints about the PIC or PIC officers;
- may refer matters relating to the PIC or PIC officers to other agencies for consideration or action; and
- may recommend disciplinary action or criminal prosecution against PIC officers.

6.1.4 The Inspector is also granted the power to hold inquires, and, in doing so, he or she may exercise "the powers, authorities, protections and immunities" of a Royal

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Commissioner (s.91).<sup>391</sup> Section 93 further provides that the Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of his or her functions.

6.1.5 The Inspector described the PIC's accountability system as satisfactory and considered his powers sufficient to oversight all aspects of the PIC's operations, with the exception of certain limitations in respect of telecommunications interception. The PIC had cooperated fully with the Inspector in relation to the disclosure, or provision of information or documents, and the Inspector advised that he was able to effectively monitor the PIC's operations for efficiency and compliance with the law.<sup>392</sup> He also made the following comments about the structures, funds and resources available to the PIC in the performance of its functions:

So far as I can see the management structure of the PIC is correct, with sufficient controls and audit capacity in place. The exceedingly low levels of complaints in relation to the performance of its work supports the conclusion. The majority of the complaints received by me are those which involve the contention that the PIC rather than the NSW Police should have taken up the matter for investigation.

Almost universally these complaints lack substance and involve an assumption that the PIC can and should respond to every complaint that is made concerning Police. With those complaints running in the order of 4000 per year that is an impossible expectation, and the PIC must refer the vast preponderance of them to the Police or Ombudsman.<sup>393</sup>

6.1.6 In the Inspector's view the internal oversight of investigations through the Operations Advisory Group is effective and appropriate, as is the structure for and work of those involved in projects and in Hearing Room Procedures. He also is satisfied with the arrangements that exist for the security of operations, and of the IT system. The Inspector considered the PIC's funds and resources to be adequate and warned against any reduction in funding.<sup>394</sup>

6.1.7 One particular limitation on the Inspector's jurisdiction occurred in respect of his inability to investigate former PIC officers, a loophole that he advised was to be the subject of an amendment to the Act. He advised the Committee that he had seen the Bill and anticipated that it would be going before the House at the next sittings. The Committee considers that this amendment to the PIC Act should be brought forward as a matter of priority.

6.1.8 The Inspector also referred to his lack of power to do more than make a recommendation to correct or overcome some perceived deficiency.<sup>395</sup> The Committee fully supports the need to amend the jurisdictional gap in relation to

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<sup>391</sup> The *Royal Commissions Act 1923* provides that a Royal Commissioner shall have all such powers, rights, and privileges as are vested in the Supreme Court or in any judge thereof in or in relation to any action or trial, in respect of compelling the attendance of witnesses, compelling witnesses to answer questions which the commissioner deems to be relevant to the inquiry; and compelling the production of documents and other things: s.18(1).

<sup>392</sup> Submission No.5. Inspector of the Police Integrity Commission, dated 16 May 2006, p.9.

<sup>393</sup> *ibid.*, p.8.

<sup>394</sup> *ibid.*

<sup>395</sup> *ibid.*, p.9.

former PIC officers. However, it has not been fully consulted about the perceived deficiency with the Inspector's power to direct or order the PIC on a formal basis to implement recommendations. In the absence of specific details about this particular proposal the Committee is not in a position to comment fully on the proposed amendment, which would appear to involve taking the Inspector's powers beyond the ability to make recommendations. It is noted that the Inspector stated in his submission and evidence that this deficiency has not proved to be a problem to date.<sup>396</sup> The Committee interprets the Inspector's reporting provisions widely and considers that he has the capacity to report to Parliament in the event that his recommendations are not implemented. He also has the avenue of raising such issues with this Committee.

6.1.9 Another issue raised by the Inspector related to his view that the legislation lacked clarity in respect of where he was to submit his reports. Section 89(1)(b) of the Police Integrity Commission Act provides that it is one of the Inspector's principal functions to:

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.

6.1.10 However, this section does not specify to whom the Inspector is to make such reports about complaints concerning the PIC or the conduct of Commission officers.

6.1.11 The Inspector explained that:

**Mr WOOD:** .... the Inspector has the power to issue a report but it is by no means clear to whom the report should go. I know that Mr Finlay, when he was the Inspector, did provide a report in relation to Operation Florida and the exposure of the proposed investigation through a television program, but the legislation does not make it entirely clear to whom the Inspector should report. My understanding in the past is really if there have been reports they have primarily gone to the PIC itself and in each case, where necessary, there has been a follow-up and a change in procedures. I think probably the Inspector can report to either Parliament or to this Committee.

**CHAIR:** I must say I had thought that the legislation allowed you to report to the Parliament.

**Mr WOOD:** It just says "report", as I understand. The legislation is not clear. If it said, "Report to Parliament", that would be clear.<sup>397</sup>

6.1.12 The reporting provisions at ss.101 and 102 relate to Special Reports and Annual Reports and do not seem to provide for the situation in which the Inspector may wish to make a report in relation to a complaint. These sections provide:

**101 Special reports**

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:

- (a) any matters affecting the Commission, including, for example, its operational effectiveness or needs,

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<sup>396</sup> *ibid.*

<sup>397</sup> Transcript of evidence, 24/8/06 p.29.

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- (b) any administrative or general policy matter relating to the functions of the Inspector.

## 102 Annual reports

The Inspector is required to prepare, within the period of 4 months after each 30 June, a report of the Inspector's operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

6.1.13 The Committee tried to clarify the matter further:

**Mr GEOFF CORRIGAN:** I was just looking at section 101 of the Act, which says, "Reports by Inspectors: Special reports. The Inspector may at any time make a special report to the presiding officer of each House of Parliament". Is that not clear?

**Mr WOOD:** That is probably clear enough in that respect .... That is not included in part 6, it is a separate matter.... It is a report on the matters referred to, A and B, it is not actually a report on investigation of a complaint. Obviously, of course, the annual report is a separate matter. I fully understand that is to be provided to the presiding officer of each House. In fact, I have completed that report and it will be available as soon as it is printed. But section 101 does not deal with the problem I had in mind.<sup>398</sup>

6.1.14 Formal reports by the Inspector are confined to complaints where an inquiry is conducted or where a major matter requires attention. However, the majority of complaints to the Inspector expressed dissatisfaction with the PIC's decision as to whether or not to investigate a complaint and did not usually result in a report:

**Mr WOOD:** .... for a large number of the actual complaints that come in—in fact, the vast bulk of them—the complaint is really misguided or not of that kind that would require the Inspector to intervene, because a decision, for example, by the PIC not to investigate a matter has to really be unreasonable before the Inspector can make a recommendation that the PIC relook at it. So in those cases the practice has been followed that where the complaint is dismissed both the PIC and the complainant are informed of that fact and of the reasons for it; it has not led to any formal report....<sup>399</sup>

6.1.15 The Committee considers that the Police Integrity Commission Act 1996 should be amended to make express provision for the Inspector to be able to report to Parliament at his discretion in relation to any of his statutory functions. This proposal would ensure that there is no doubt that the Inspector can report to Parliament, where he considers this to be appropriate, on any matter that is connected with his oversight of the PIC but which may not be captured by the current reporting provisions contained in the Act. The proposed amendment should extend to the Inspector's capacity to report to Parliament as necessary on issues of misconduct, impropriety or abuse of power on the part of the PIC or its officers, including matters the Inspector becomes aware of other than by way of a complaint. While the Committee interprets the Special Report provision found at s.101 of the Act widely, it is not specific to the Inspector's functions at s.89(1)(b), which state that he is to deal with complaints by way of reports and recommendations.

6.1.16 It is relevant to note that the example provided by the Inspector in his evidence gives a concrete demonstration of the need for such amendment: this matter did not

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<sup>398</sup> *ibid.*, p.30.

<sup>399</sup> *ibid.*, p.29.

stem from a complaint and there was a public interest to report. The report in question was compiled by one of his predecessors, the Hon M. D. Finlay QC, concerning the broadcast by ABC's *Four Corners* program of evidence obtained in relation to Operation Florida, prior to the introduction of the material at a hearing of the PIC. The incident was revealed in a censure motion made in the NSW Legislative Assembly on 16 October 2001 by Mr Andrew Tink, after which Inspector Finlay wrote to the Commissioner of the PIC to advise that he was exercising his functions as Inspector, on his own initiative, to investigate the incident. Inspector Finlay's report was published by the Committee as part of its report on the sixth General Meeting with the Inspector.<sup>400</sup>

- 6.1.17 Therefore, the Committee recommends that the *Police Integrity Commission Act 1996* should be amended to clarify that the Inspector is able to report to Parliament at his discretion in relation to any of his statutory functions. It is further recommended that the Act be amended to make express provision for the Inspector to report to Parliament, as he considers necessary, on any abuse of power, impropriety and other forms of misconduct on the part of the PIC or its officers, regardless of whether or not these matters arose from the making of a complaint to the Inspector.

## 6.2 The case for an Ombudsman Inspector

- 6.2.1 In the view of the PIC Inspector, the accountability provided by the PIC and the Office of the Ombudsman is "both sufficient and workable".<sup>401</sup> But NSW Police argued that,

The NSW Ombudsman is now an anomaly in comparison to the other oversight agencies as it has no inspector that can examine specific complaints or concerns raised by police about the exercise of its powers, including whether they are lawfully exercised. A practical result of this for NSW police is that it is unable to resolve disputes with that agency other than by recourse to costly legal advice which the Ombudsman may choose not to accept.<sup>402</sup>

- 6.2.2 The meaning of the reference to costly legal advice, was not understood by the NSW Ombudsman. It appears to relate to advice sought by NSW Police as to whether a Statement of Claim made by a plaintiff would constitute a complaint under Part 8A of the Police Act, thereby needing to be assessed and registered on c@ts.i.<sup>403</sup> Legal advice also appears to have been sought from the Crown Solicitor on the question of whether reports of misconduct and unsatisfactory performance, made by police officers in accordance with the obligation under cl.20 of the Police Regulation 2000, are complaints for the purposes of Part 8A of the Police Act.

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<sup>400</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, *Sixth General Meeting with the Commissioner for the Police Integrity Commission*, June 2002.

<sup>401</sup> Submission No.5. Inspector of the Police Integrity Commission, dated 16 May 2006, p.8.

<sup>402</sup> Submission No.11. Police, dated 1 August 2006, p.10.

<sup>403</sup> NSW Police response to Submission No.10a, NSW Ombudsman, pp.10-11.

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6.2.3 Moreover, even if an Inspector was put in place, the Ombudsman argued that this “should have no impact on the requirement or otherwise of NSW Police to obtain legal advice in particular matters”.<sup>404</sup>

6.2.4 The creation of an Inspector for the PIC and the ICAC was a response to the covert and coercive powers afforded such investigative commissions. As the Ombudsman explained:

The Royal Commission recommended establishing the Inspector to deal with the risk that an agency such as the PIC, being heavily committed to covert investigations, reliant on informants, and possessing powers that are both coercive and of the kind that might involve substantial infringements of rights of privacy, may overstep its powers. Similar reasons have resulted in the recent creation of an Inspector for the ICAC.<sup>405</sup>

6.2.5 But the Ombudsman’s Office cannot exercise such powers. It does not possess:

- the capacity to conduct public hearings where witnesses are compelled to provide evidence;
- the power to issue warrants for the arrest of persons who are required to give evidence and do not attend on summons;
- the power to tap telephones;
- the power to conduct controlled operations, and engage in what would otherwise be unlawful conduct;
- the power to use listening devices.

Nor can the Ombudsman make binding decisions affecting police officers. He can only make recommendations which are either accepted or rejected by the Police Commissioner or Local Area Commanders.

For these reasons, the Ombudsman held that it is unnecessary for an Inspector to oversight the exercise of functions by the Ombudsman.<sup>406</sup>

6.2.6 The Committee has concluded that in the Police area of the Ombudsman’s jurisdiction decisions are not legally binding as is the case with a court, therefore an appeal mechanism is not necessary.

6.2.7 This important distinction underlies the extent of this Committee’s jurisdiction as emphasised by the then Attorney General, the Hon John Dowd MP, in his second reading speech on the Ombudsman (Amendment) Bill 1990:

The bill provides that the committee is not to investigate any matter relating to particular conduct. As foreshadowed earlier this year it is intended that the committee will be responsible for examining the general conduct and procedures of the Office of the Ombudsman and will not become involved in reviewing specific cases. The Ombudsman supports this proposal and in his special report indicated that a provision preventing the joint committee from reviewing specific cases was essential to ensure the integrity of his investigations.

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<sup>404</sup> Submission No.10a. NSW Ombudsman, dated 15 September 2006, p.18.

<sup>405</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.26.

<sup>406</sup> *ibid.*, pp.26-27.



The joint committee is not intended to operate as an appeal body or tribunal. It will not review or enforce the Ombudsman's recommendations. That would clearly be inappropriate. Rather, it is intended that the committee will look at general operational and policy matters.... The Ombudsman recommended in his special report that the committee be specifically required to consider not only the Ombudsman's annual report but also special reports and reports prepared under section 27 of the Ombudsman Act. Section 27 reports are prepared by the Ombudsman when he is not satisfied that sufficient steps have been taken as a consequence of him making a finding of wrong conduct.

....However, consistent with the proposal that the joint committee will look only at general operational and policy matters, the committee will not be permitted to review section 27 reports or reconsider any particular conduct the subject of a section 27 report. To require the joint committee to review section 27 reports may lead to the committee being seen as a body to review or enforce the Ombudsman's recommendations. That would clearly not be desirable.<sup>407</sup>

6.2.8 Challenges to the Ombudsman's jurisdiction can be made through the courts and the Committee considers that this is still the most appropriate course.<sup>408</sup>

### 6.3 Reporting on Complaints

6.3.1 The Royal Commission reported that:

Public confidence in the Service and in the integrity of its complaints system requires the process to be transparent. It must, as a consequence, include ways of:

- informing complainants of the progress of investigations and of any managerial or disciplinary outcome; and
- involving them in the resolution of appropriate complaints.<sup>409</sup>

6.3.2 The Royal Commission's observations were supported by evidence taken during the Committee's inquiry.

6.3.3 Section 150 of the *Police Act 1990* provides that:

#### **150 Information to be sent to complainant and Ombudsman**

As soon as practicable after the investigation of a complaint has been concluded and a report of the investigation finalised, the Commissioner:

- (a) if practicable, must consult with the complainant before making a decision concerning any action to be taken as a result of the complaint, and
- (b) must provide the complainant with advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, as a result of the complaint, and
- (c) must provide the Ombudsman with:
  - (i) a copy of the finalised report, and

<sup>407</sup> NSW Legislative Assembly, Hansard, Ombudsman (Amendment) Bill 1990, 13 November 1990, p.9483.

<sup>408</sup> s.35B of the *Ombudsman Act 1974*.

<sup>409</sup> *Royal Commission into the New South Wales Police Service, Final Report Volume II: Reform*, May 1997, p.342.

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- (ii) advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, as a result of the complaint, and
- (iii) advice as to whether or not the complainant is satisfied with the action taken, or to be taken, as a result of the complaint.

6.3.4 Evidence from the Public Interest Advocacy Centre suggested that freedom of information applications were being used to compensate for deficiencies in the amount of information provided to complainants.

6.3.5 The submission received from the Public Interest Advocacy Centre drew on some of their clients' experiences with the police complaints system and, in respect of the information provided to complainants, submitted the following:

A major limitation of the complaints process is the level of reporting of the investigation when it is completed. Reporting to the complainant is limited to 'advice as to action to be taken': sub-section 150(b). The Ombudsman does however receive a copy of the finalised report into the investigation: sub-section 150(c).

There is no reason why a person who makes a complaint into behaviour that they feel is unfair or unlawful should not be provided with a copy of the report into the investigation of their complaint. The integrity of the complaint mechanism is put in question by this failure.

This lack of accountability appears even more odd in light of the statutory reporting duty placed upon the Office of the Ombudsman when it investigates a complaint. Sub-section 157(3) of the Act compels the Ombudsman to give a copy of a report of an investigation to a complainant.<sup>410</sup>

6.3.6 The experience of PIAC's clients led the organisation to recommend that the Police Act be amended to ensure that complainants are provided with a detailed written report into the investigation of their complaints and outcome. The PIAC recounted the following complaint in support of its recommendation:

PIAC represented Mr C, a young Aboriginal man, who was involved in a series of incidents with police officers involving allegations of false imprisonment and assault. The matter was classified as a Category One due to the seriousness of the allegations. The complaint was investigated but a copy of the written report was not provided to the complainant. The Ombudsman, who had sat in on a number of the interviews, did not contact the complainant to advise of the findings or follow-ups. When the Office of the Ombudsman was asked to provide a copy of the final written report, it advised that its policy was not to supply copies of reports and suggested PIAC raise the issue directly with the police. The police also refused to provide a copy of the report. The complainant then made an application pursuant to the *Freedom of Information Act 1989* (NSW) at his own expense to obtain a copy of the report. The NSW Police Service provided some but not all the requested documents. The complainant then sought an internal review at further expense to obtain a complete copy of the documents. It has been ten months since the complaint sought a review of the initial FOI decision and he has still not received an adequate response.<sup>411</sup>

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<sup>410</sup> Submission No.3. Public Interest Advocacy Centre, dated 15 May 2006, p.7.

<sup>411</sup> *ibid.*, p.8.

6.3.7 Members of the Committee raised the particular cases cited by the PIAC with its representatives and sought an indication of the timeframes experienced in relation to FOI applications:

**Ms BURNSWOODS:** In some of the examples you give, you seem to have asked the police for the report, and in others you ask the Ombudsman. Maybe you generally ask both: I am not quite sure from the way you have worded it. For instance with Mr A you say there was no further contact from the Ombudsman to advise of any outcomes or follow-up, but I think with Mr C you have sought the report from the police service under FOI.

**Ms SMITH:** Yes.

**Ms BURNSWOODS:** I am sort of trying to get straight how you approached them and why you perhaps approached them slightly differently.

**Ms SMITH:** Yes.

**Mr MORAN:** I think our general experience over the last five years, and that is the time frame in which we have been undertaking this sort of work, is that we have not been able to obtain reports—a copy of the investigation report—from either the Ombudsman or the investigating police directly. So what we have tended to do is make freedom of information applications and then try to obtain whatever documentation we can through that process. But even that process, as Charmaine has explained, can be difficult, time-consuming and, in the end, not provide us with a full report.

**Ms BURNSWOODS:** If I am right, of the FOI attempts you have made, only one of them has produced anything. That is what you have said.

**Ms SMITH:** Yes. As the process becomes more and more protracted, in some cases we simply lose contact with our clients or our clients might instruct us to put the issue to bed and not pursue it further, or there are other issues that come into play, which might not see us see the matter to fruition.

**Ms BURNSWOODS:** Can you give us an indication of how protracted? What would be an average length of time between a complaint coming in and you getting some outcome?

**Ms SMITH:** It is difficult to say.

**Ms BURNSWOODS:** Six months, a year, 18 months?

**Ms SMITH:** Longer than a year.

**Mr MORAN:** I suppose there are two different time frames here. There is one to have the resolution of the complaint and then for the client to actually get information, to get the report about the complaint. I think three to six months probably to deal with the complaint itself, and then getting copies of the investigation report can be open-ended, as we have found.

**Ms SMITH:** Yes.<sup>412</sup>

6.3.8 The Ombudsman indicated that he had been concerned for some time about the failure of NSW Police to meet the statutory requirements in processing FOI applications and had reported on this to the Commissioner of Police and the Minister for Police.<sup>413</sup> As well, the Office of the Ombudsman had taken two approaches towards trying to reduce the use of FOI for this purpose and to improve reporting on the outcome of complaints:

<sup>412</sup> Transcript of evidence, 28 June 2006, pp.21-22.

<sup>413</sup> Submission No.10, NSW Ombudsman, dated 9 June 2006, p.19.

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- Since 2004 the Ombudsman has been aware of a reluctance of some local commanders to release anything other than the minimum of information to complainants (and often subject officers) in respect of complaint matters. Since that time we have been pushing NSW Police to provide clear guidance to commanders about what information might be provided to complainants at the end of an investigation, including what documents might be provided to them. This approach is intended to prevent commanders advising complainants who requested further information to make an application under the Freedom of Information (FOI) Act. Progress in relation to these matters has been somewhat slow, and recently the Ombudsman offered to prepare a first draft of procedures for consideration by NSW Police. We are hopeful to have some resolution of these matters, and better information provided to complainants, in the near future.
- The Ombudsman has also investigated the failure of NSW Police since at least November 2004 to meet its statutory requirement as regards timeliness for dealing with FOI applications. While there was some progress in reducing the backlog of matters during 2005, the situation had again deteriorated such that in 2006 the backlog of applications was approaching 1000. As a result of our investigation and the implementation of a workload analysis as recommended by us, another 9 positions are presently being recruited within the NSW Police FOI Unit.<sup>414</sup>

6.3.9 The extent to which complainants use FOI as an alternative source of information about the outcomes of their complaint is not known by the Committee. However, the evidence given during the inquiry indicates that this course has been used by the PIAC on behalf of some of its clients to overcome their inability to obtain clarification about the resolution of their complaints. The Committee was surprised that complainants felt the need to resort to the often lengthy and complicated process of making an FOI application in order to be fully informed about the results of their complaint.

6.3.10 The Committee has had regard to the comments of the Royal Commission in relation to the expectations of individuals who make police complaints. The Royal Commission observed that complainants frequently do not seek legalistic responses or solutions when making a complaint but that they do need to know as much as possible about decisions made and the reasons for them. It noted that the legislation required that the NSW Police Service report to the Ombudsman and the Ombudsman has the discretion to report to a complainant on the progress, and is obligated to report on the outcome.

6.3.11 The Royal Commission expressed the view that “the standard of any such report is very important in terms of ensuring complainant satisfaction since a failure to properly inform the complainant can only engender suspicion and mistrust”.<sup>415</sup> The Committee agrees with this statement and is of the view that adequate reporting by NSW Police to complainants on the outcome of the matters the complainant has raised is another important factor in maintaining the credibility of the police complaints system and public confidence in police accountability.

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<sup>414</sup> Submission No.10a, NSW Ombudsman, dated 15 September 2006, pp.19-20.

<sup>415</sup> *Royal Commission into the New South Wales Police Service, Final Report Volume II: Reform, May 1997, p.344-345.*

## PART III - Findings and Recommendations



## Chapter Seven - Findings and Recommendations

- 7.1 This Committee continues to endorse the system for oversight of police in New South Wales that developed as a direct result of the Wood Royal Commission. It is the Committee's view that the oversight system as conceived by the Royal Commission provides an innovative approach to the management of police complaints and the conduct of police officers, the fundamentals of which are still relevant and appropriate today. The system is a dynamic one in which the balance between internal accountability and external oversight can shift according to a range of factors such as the quality of police internal investigations, the strength of the managerial approach taken by NSW Police to complaints, and public confidence in police internal complaint handling procedures.
- 7.2 The Wood Royal Commission proposed a police complaints system aimed at satisfying individual complainants, assisting the police administration to manage and monitor the conduct of its officers, and promoting systemic reform.<sup>416</sup> Corruption investigation and prevention was a separate functional area. As these objectives remain valid, the issue for the Committee centred upon the extent to which the current oversight system in practice manages to realise these objectives. An essential factor in whether or not the system remains credible, as well as efficient and effective, is the level of confidence in the system on the part of both the public and police.
- 7.3 On commencing its inquiry the Committee was faced with calls from NSW Police and the NSW Police Association for substantial reform to the system for oversight of police in NSW, primarily because of duplication within the existing system. Assistant Commissioner Carroll summed up the NSW Police position as follows:
- Mr CARROLL:** The PIC is a standing royal commission with royal commission powers. The Ombudsman also exercises royal commission powers under section 19 of the Ombudsman Act. They both exercise their investigative powers over the same subject matter, part 8A complaints. Both agencies can report to Parliament. The only discernible difference is that the Ombudsman's hearings are conducted in private. Both agencies review complaints. The PIC scans c@ts.i, our complaints recording system, and raises anomalies with NSW Police. The Ombudsman has declined to use c@ts.i and has to be provided with manual copies of all investigations, then enters into lengthy argument about issues that are not going to take the issues further for either the complainant or the organisation. Both agencies conduct reviews of systems through their investigations.<sup>417</sup>
- 7.4 At first glance, these arguments appear to present a reasonably compelling case for rationalisation of the number of oversight agencies and other aspects of the police oversight system. However, a full examination of the arguments presented by NSW Police and the NSW Police Association during the Committee's inquiry reveals that the underlying premises behind these arguments are flawed and the case for fundamental change to the police oversight system is not made out.

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<sup>416</sup> A. Goldsmith writing in early 1990s referred to the general absence of any articulated objectives for police complaints systems at the time. A. Goldsmith op. cit. pp.29-30.

<sup>417</sup> Transcript of evidence, 24/8/06 p.3.

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- 7.5 Firstly, while it is correct to say that the Ombudsman and the PIC both possess Royal Commission powers, their powers are not the same. The PIC can exercise covert and coercive powers not available to the Ombudsman's Office, including telecommunication interception, listening devices and controlled operations. These powers are extraordinary, reflecting the fact that the PIC is charged with detecting, investigating and preventing serious police misconduct and other corruption. Public hearings utilising information obtained through the use of covert powers is one of the ways in which the PIC, as an investigative commission, exposes police corruption. Consequently, it is misleading to say that the only discernible difference is that the Ombudsman's hearings are conducted in private.
- 7.6 Secondly, although the PIC and the Ombudsman both have a jurisdiction in respect of police complaints under Part 8A of the Police Act 1990, the purposes for which each body examines police complaints under this Part of the Act are completely different. The PIC's statutory functions are quite distinct and separate from those performed by the Ombudsman. The PIC has a limited interest in complaints captured by Part 8A to the extent that they are indicative of serious misconduct or corrupt conduct by police. While it can and does examine the categorisation of police complaints by NSW Police, the PIC predominantly scans c@ts.i, the electronic complaints management system, as a valuable source of intelligence for its targeted investigative role.
- 7.7 In contrast, the Ombudsman's interest in police complaints is for the purpose of overseeing the handling and investigation of complaints. The Ombudsman scrutinises whether or not complaints have been investigated in accordance with the requirements of the Police Act and in a timely fashion. The Office does not rely purely on its royal commission and private hearing powers to exercise the Ombudsman's oversight role. With regard to local management issues that are not complaints under the Act, e.g. service delivery matters, the Ombudsman performs a limited scrutiny role that is exercised through the use of random audits and inspections. These audits are aimed at giving an indication as to whether the police classification of such matters is being undertaken correctly and that the action taken is appropriate. They are a safeguard for those matters that are not meant to be caught by the Act as complaints and should not be dealt with formally.
- 7.8 The Ombudsman's focus is on systemic issues relating to complaint handling and investigation by NSW Police, whereas the PIC tends to examine systemic issues where they relate to its investigations. It is the Ombudsman who oversees the investigation by NSW Police of nearly all police complaints and misconduct investigations, including matters such as conspiracies or cover-up, drug offences, bribery or extortion allegations, perjury allegations and allegations concerning fabrication or suppression of evidence. The PIC investigates or oversees only a small portion of the most serious complaints, i.e. Category 1 complaints.
- 7.9 Finally, the Ombudsman has presented a case to the Committee as to why the Office does not utilise c@ts.i in relation to all of its complaints oversight functions: a situation of which NSW Police was highly critical. The Office advised that the difficulties with the electronic complaints management system were the responsibility of NSW Police and that it was the police who first reduced the amount



of information provided to the Office through c@ts.i. The Office explained that it does use the system for monitoring complaint investigations, and intelligence and auditing functions. However, the Office does not rely on the system for its business functions because of concerns about its reliability, security, business continuity and disaster recovery. Procedures were being trialled by NSW Police to enable the Office to receive new complaints electronically. Copies of correspondence and other documentation that passed between the Office and NSW Police on this issue validate the Office's account of the problems experienced with the system.

7.10 The level of inaccurate, misleading information and uninformed opinion that featured in the debate that took place during the inquiry was a matter of particular concern to the Committee. The public hearings for the inquiry attracted press coverage and the Committee found that the degree of misinformation provided to it, largely from senior representatives of NSW Police, detracted from the evidence given on the day about important issues. It appeared that at times the Chair and Committee Members had a better appreciation of the legal framework surrounding the police complaints system than the officers who had day-to-day familiarity with and experience of the system. If it was envisaged that the misinformation provided to the Committee would demonstrate that the complaints system in practice fails to work as intended, then the case made out was a weak one and it deserved to be supported with a higher standard of evidence and quantitative and empirical research. Comment on specific instances where the Committee found the debate to be misinformed is contained in the relevant sections of the body of the report.

7.11 In his evidence to the Committee, the Commissioner of NSW Police emphasised the balance between the interests of the complainant and the interests of the police officer subject to complaint:

**Mr MORONEY:** Nothing that we have said, either by written submissions or in oral submissions today, ought to take away from the fundamental importance of what underpins an effective system of probity with NSW Police—a requirement for openness, transparency and honesty. Nothing that has been said or written ought to take away from that basic premise. It is important then that any system that exists, or will exist in future, has as its underpinning theme openness and transparency, but not a one-side openness or transparency totally in favour of one party or the other. Both the complainant and the officer or officers complained of need to be satisfied with the system and the process and the openness and the transparency that brings about the resolution of the matters.<sup>418</sup>

7.12 The Committee concurs with the Commissioner's view on the need for openness, transparency and honesty, and the emphasis he places on professional conduct. Commissioner Moroney went on to tell the Committee:

**Mr MORONEY:** .... We are talking about the underpinning and fundamental importance of the Commissioner's statement of professional conduct: that is, if you make an honest mistake, let us identify that mistake now and resolve it now, not six, nine or 12 months down the track. Let us resolve the matter now, but resolve it in an atmosphere that is open and honest. If I am to encourage my officers to be open and honest in all of their dealings, both internally and externally, they need to have faith in the current complaints

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<sup>418</sup> Transcript of evidence, 24/8/06, p.8.

Findings and Recommendations

system. I assure you that faith does not exist at this point in time, because of a perceived absence of fairness and balance.<sup>419</sup>

7.13 The Commissioner held that this perceived lack of fairness and balance derives from a complaints system that inevitably leads to detailed investigation of complaints that are predominantly low-level managerial issues, such as rudeness and failure to respond, which could be resolved by way of explanation or apology.<sup>420</sup> However, the Committee did not find that the Commissioner's summation of the current oversight system was borne out by the submissions to the inquiry, the evidence taken by the Committee and available statistical information.

7.14 There certainly appears to be a perception within NSW Police - how widely held is not clear - that the current system is not fair or balanced. However, the basis for this perception appears misplaced. Assistant Commissioner Carroll told the Committee:

**Mr CARROLL:** The system is significantly out of balance. NSW Police is seeking to restore balance and some proportionality to its internal management process and human resource systems. We need real reform in the complaints system, reform that ensures supervisors and managers do not evade professional standards but, indeed, enforce them. The present micromanagement of the NSW Police complaints system does not support supervisors and managers to do their job efficiently and, in my view, it is the precise reason why early intervention in a lot of these matters is not taken by supervisors and managers because of the process wrapped around it, that they cannot supervise efficiently without putting it into the process and making the complaint.

7.15 He argued that the legislation does not allow for a managerial approach to complaints and that the definition of police complaint contained within Part 8A ensures honest mistakes and genuine errors of judgement by police officers cannot be forgiven without being recorded on a complaints system and in a lot of cases requiring action by the Ombudsman.<sup>421</sup>

7.16 In fact, the material before the Committee leads to several conclusions that not only run counter to this view but emphasise that the solution to many of the difficulties encountered by NSW Police with the operation of the police complaints system lies with the organisation itself rather than with statutory reform. It is the Committee's finding that the extent to which the complaints system is overly formal, or prone to unnecessary investigation of managerial matters, appears to be a direct function of the approach taken by NSW Police to dealing with complaints. The information provided by the Ombudsman indicated:

- some very good standards of practice in relation to local management issues but varying standards between commands;
- the tendency to over-manage minor matters;
- some issues with local record keeping procedures;
- some reluctance to deal with matters informally;
- the need for further training in alternative dispute resolution techniques.

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<sup>419</sup> *ibid.*, p.9.

<sup>420</sup> *ibid.*

<sup>421</sup> *ibid.*, p.5.

- 7.17 Therefore, the Committee contends that the capacity for further efficiency and effectiveness within the current police oversight system are matters that largely reside in the ability of NSW Police to improve its internal complaint handling processes and foster a stronger managerial approach among those officers dealing with local management issues. If there are problems with the length of time taken to resolve LMIs and less serious complaints then the periods involved should be monitored, the cause of the delay pinpointed and turnaround times should be improved as a result.
- 7.18 After hearing evidence from all stakeholders the Committee found the case for significant reform of the police oversight system to be weak and largely based on inaccurate, unsubstantiated premises. For instance, the Committee found that there is no overlap between the jurisdiction of the Ombudsman and the PIC that is sufficient to justify a merger of both agencies. A sufficient case has yet to be made out that would convince the Committee of the need to alter the status quo and merge the roles performed by the PIC and the Ombudsman into a single oversight agency, as proposed by NSW Police. Consequently, the Committee has concluded that the fundamentals of the police oversight system proposed by the Royal Commission should be retained.
- 7.19 The oversight system as presently structured comprises a framework for police accountability in which a number of fundamental balances are struck, as follows:
- police responsibility for the handling and investigation of complaints alleging police misconduct is balanced against external scrutiny to monitor the appropriateness and adequacy of the NSW Police response;
  - police can deal with certain matters managerially, rather than as formal complaints, and there is the capacity to check on the management of such matters through an appropriate level of external oversight;
  - the handling and investigation of minor complaints and local management issues does not occur at the expense of the investigation of complaints alleging serious misconduct or corruption;
  - there is a balance between the rights of complainants and police officers the subject of complaint;
  - individual complaints receive proper attention by NSW Police and systemic issues arising from complaints are recognised and addressed.
- 7.20 The framework for the current system embodies an appropriate balance between self-regulation and completely external oversight: it is more the case that the system needs to be streamlined and refocussed. However, any initiatives to promote further efficiencies and effectiveness within the police oversight system should accord with the following key principles, which the Committee considers to be necessary pre-requisites for shifting the balances between self-regulation and external oversight:
- (a) any shift towards greater police self-regulation needs empirical justification;
  - (b) a distinct approach needs to be preserved between complaint handling and corruption investigation;

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- (c) the external investigation of police corruption must be recognised as being in the public interest;
- (d) the resources and powers available to external agencies must be adequate to ensure an effective, targeted focus on the investigation of serious police misconduct and corruption;
- (e) there must be provision for a sufficient level of oversight to ensure the proper and effective handling of complaints and to maintain public confidence in the police complaints system;
- (f) the resources and powers available to NSW Police must be adequate to ensure prompt and proper handling of complaints and investigations, particularly into serious misconduct;
- (g) provision needs to be made for sufficient staff and resources to improve provision of information to complainants by NSW Police e.g. through the mechanism of FOI applications;
- (h) the police complaints system and the NSW Police's managerial approach to complaints needs to contain incentives for NSW Police officers to admit to honest mistakes as part of their professional development, without fearing the repercussions of doing so;
- (i) adequate support needs to be available to police officers making internal complaints or reports of serious misconduct and corrupt conduct by fellow officers.

7.21 The Committee recommends a number of measures that may support a more effective police oversight system as follows:

7.22 **The roles of NSW Police, the Ombudsman and the Police Integrity Commission**

7.22.1 **Finding:** The Committee does not support the amalgamation of the Office of the Ombudsman with the Police Integrity Commission into a single agency and is not convinced that such an amalgamation would result in efficiencies or synergies of sufficient benefit to advance this proposal.

**RECOMMENDATION 1:** The Committee recommends the preservation of the status quo in respect of the role and functions of the Ombudsman and the Police Integrity Commission within the police oversight system in New South Wales.

**RECOMMENDATION 2:** The Committee further recommends that statutory recognition be given within the *Police Act 1990* to:

- the NSW Ombudsman's Office as the primary body for oversight of NSW Police;
- the responsibility of NSW Police for handling and investigating the majority of complaints about the conduct of its officers, subject to oversight by the NSW Ombudsman's Office;
- the PIC's role as the independent body with an investigative focus targeted at serious police misconduct and police corruption.

7.22.2 The Committee notes that the report by the Ministry for Police on the review of the *Police Act 1990* recommends the replacement of s.125 of the Police Act with a statement outlining the respective roles of the Commissioner, the Ombudsman and the PIC in respect of Part 8A of the Act (Recommendation 31).<sup>422</sup> The Committee also notes the level of support that the Ministry indicated existed among stakeholders for the insertion of such a statement. The Committee does not have any difficulty with this particular recommendation by the Ministry and considers that the amendment may bring further clarification to the structure and intent of Part 8A by clarifying the respective roles and jurisdiction of the key stakeholders involved in the police complaints system.

7.23 **Clarification of s.122 of the Police Act 1990.**

7.23.1 **Finding:** The Committee finds s.122 of the Police Act, as presently structured, provides that Part 8A of the Act does not apply to minor matters of a class or kind as agreed to by the Ombudsman and the PIC, in consultation with the Commissioner of Police, and that these local management issues do not need to be dealt with in accordance with Part 8A of the Act. Nevertheless there exists a strongly held perception within NSW Police and the NSW Police Association that, despite s.122(2) of the Police Act, local management issues, such as customer service and performance matters, are captured by and subject to the provisions of Part 8A of the Act.

7.23.2 The Ministry for Police concluded at the end of the review of the Police Act that the interagency roundtable held in March 2004 agreed the class or kind agreement for local management issues already excluded a wide range of matters from the application of Part 8A, including those grievance and minor customer service matters, about which NSW Police has expressed concern.

7.23.3 The Ministry reported that the Ombudsman only audits whether the matter ought to have been notified and many police were attempting to classify matters in accordance with s.122(1) of the Act without first considering the class or kind agreement. The Ministry considered that this problem should be addressed by NSW Police Professional Standards Command through training courses and advisory material such as a complaints practice note. The Ministry also reported that the parties to the Roundtable did not consider any amendment to the legislation was required and, therefore, no legislative change was recommended. The Committee concurs with the Ministry's finding but considers an amendment may be desirable to put beyond doubt that matters classed as local management issues are not subject to Part 8A of the Police Act, and are not required to be dealt with in accordance with the provisions of this Part.

**RECOMMENDATION 3:** The Committee recommends that the mechanism of the current class or kind agreement, used to determine the type of matters to be classed as local management issues that are not police complaints, be retained.

<sup>422</sup> Ministry for Police, *Review of Police Act 1990*, April 2006, p.55.

**RECOMMENDATION 4:** The Committee further recommends that the class or kind agreement regarding local management issues should continue to be reached between the Ombudsman and the PIC, in consultation with the Commissioner for Police.

**7.24 Categorisation and notification of complaints**

7.24.1 **Finding:** The Committee is unconvinced of the desirability of proposals put by NSW Police and the NSW Police Association to narrow the definition of police complaint so that it is limited to matters of criminality or corrupt conduct.

7.24.2 The Committee notes the proposal for rationalising the categories of police complaints made by the Ministry for Police at Recommendation 32 of its report on the review of the Police Act,<sup>423</sup> and acknowledges the level of stakeholder support at the time among NSW Police, the NSW Police Association, the Ombudsman, and the PIC for the proposal.

7.24.3 The Ombudsman, originally suggested that the PIC's access to c@ts.i and its capacity to take over any police complaint investigation removes the need for the Police Act to include the following:

- any formal distinction between “Category 1” and “Category 2” complaints;
- the related provisions requiring the “notification” of Category 1 complaints to the PIC;
- the provisions requiring the referral by the PIC to the Ombudsman of Category 1 complaints that the PIC does not wish to investigate;
- the provisions requiring the referral by the PIC to the Ombudsman and/or NSW Police of Category 2 complaints.<sup>424</sup>

7.24.4 The Ministry for Police has reported that NSW Police, the Ombudsman, the PIC and the Police Association agreed that NSW Police should commence handling all complaints upon receipt and only cease an investigation where the PIC or the Ombudsman advise they are assuming responsibility for investigating the matter.

7.24.5 The Committee endorses the proposal as a means of further streamlining the police complaints system, subject to retention of the current oversight arrangements.

7.24.6 The Police Amendment (Miscellaneous) Bill 2006 introduced in the NSW Legislative Assembly on 20 October 2006 and passed on 14 November makes provision for the removal of the legislative distinction between Category 1 and Category 2, and consequential amendments to the PIC Act.

**7.25 Investigation of serious complaints**

7.25.1 The Committee notes the recent initiatives concerning central investigation of serious misconduct issues by Professional Standards Command NSW Police, and

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<sup>423</sup> *ibid.*

<sup>424</sup> *ibid.*, p.42.

the Command's intention to take over the investigation of all serious criminal matters.

7.25.2 The Committee was informed about difficulties experienced by NSW Police that were specific to the investigation of complaints about serious police misconduct, e.g. impediments blocking adherence by local area commands in regional areas to the "Dresden protocols". In this regard, the Committee noted developments in relation to the introduction and use of a complaint allocation risk assessment (CARA), which provides guidance on whether a complaint should be investigated by an external command, and which has been the subject of audit and recommendations for further improvements.

7.25.3 **Finding:** The Committee considers that risk management strategies and systems have significant potential to be utilised by NSW Police in the management of police complaints and will await the outcomes of the next CARA evaluation with interest.

**RECOMMENDATION 5:** The Committee recommends that NSW Police should fully assess possible additional measures, including increased funding, to further enhance the capacity of Professional Standards Command to undertake centralised investigation of more serious police misconduct, thereby helping to free up resources for Complaint Management Teams and senior police officers to investigate less serious misconduct at local area command level.

## 7.26 **Local Management Issues (LMIs)**

7.26.1 **Finding:** The Committee supports management issues and less serious complaints being dealt with as appropriate by commanders and supervisors without the involvement of the command's Complaint Management Team, providing adequate documentation and record keeping occurs.

7.26.2 The Committee also supports the Ombudsman's continuing audit of police complaint systems and the handling of local management issues, particularly for the purpose of monitoring the appropriate classification of such matters.

**RECOMMENDATION 6:** The Committee recommends that NSW Police should consider ways in which to encourage the informal resolution of minor complaints at local command level, particularly local managements issues, without the involvement of Complaint Management Teams.

## 7.27 **Support for Local Commanders and Complaint Management Teams (CMTs)**

7.27.1 **Finding:** The Committee is of the view that the effectiveness of the police complaints system to a large degree depends on the capacity of key police personnel, such as local area commanders and other senior officers, who are responsible for complaint handling and investigation. The approach taken by local area commanders can also determine the extent to which the complaints system can be utilised to benefit the general management of local area commands, for example, through employee management of police officers with performance issues or police officers at high risk of misconduct.

7.27.2 The Committee notes that:

- the Professional Standards Command includes a complaints management support unit and the Employee Management Branch, both of which provide guidance and advice on the management and investigation of complaints, and appropriate management action;
- NSW Police have a number of internal documents to assist local commands, e.g. the Complaints Management Manual and the Standard Operating Procedures for Failed Prosecutions;
- staff of the Ombudsman's Office address police officers as part of NSW Police internal investigation courses, and complaint management team and executive officer training;<sup>425</sup>
- the Ombudsman's Discussion Paper re observations of meetings held by 17 complaint management teams over a period of 14 months, was made available to local area commanders.

7.27.3 However, the Committee is of a view that more options should be examined to provide support to local area commanders and officers involved in the management of complaints and local management issues.

**RECOMMENDATION 7:** The Committee recommends that Professional Standards Command should continue to provide assistance and support to local area commanders and other senior officers involved in the management and investigation of complaints, and the handling of local management issues. Possible options to consider for advice and guidance include:

(a) circulating and promoting "best practice" examples of complaint handling and investigation by local commands, with particular reference to:

- the appropriate selection of evidence-based or outcome-focussed investigation strategies;
- the investigation of serious complaints.
- identification of local management issues as distinct from matters that constitute complaints;
- complaint assessment processes;
- appropriate use of risk assessment;
- mediation, conciliation and informal resolution of complaints;
- appropriate management action;
- ways to strengthen the effectiveness of Complaint Management Teams;
- strategies to ensure the timely resolution of complaints and to overcome delays in police complaints investigations;
- wider managerial uses of complaint trends and information obtained from complaints.

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<sup>425</sup> Submission No.10. NSW Ombudsman, dated 9 June 2006, p.18.



- (b) encouraging ways to benefit from the shared experience of Complaint Management Teams and other police officers involved in complaint handling and investigation e.g. through regular internal workshops;
- (c) ensuring sufficient capacity within local command structures to provide for effective and efficient management and investigation of police complaints despite changes in the command leadership;
- (d) encouraging utilisation of complaint handling and police misconduct investigations for broader strategic management purposes, e.g. service delivery improvements, policy reforms, identification of systemic issues and officers at high risk;
- (e) regularly updating practice and procedure manuals to reflect the outcomes and recommendations of the audits undertaken by oversight agencies and any internal evaluations;
- (f) providing targeted assistance to meet the specific needs of local commands or Complaint Management Teams who experience difficulties in particular aspects of complaint handling and/or investigation.

**RECOMMENDATION 8:** The Committee recommends NSW Police should consider the further development of risk assessment approaches to complaint investigation. The Committee intends to monitor the implementation of the Complaint Allocation Risk Appraisal (CARA) guidelines.

## 7.28 **Electronic recording of complaints and database management**

7.28.1 **Finding:** The Committee found that the use of c@ts.i by the Ombudsman's Office and the PIC differed significantly, as a result of legislative requirements and the distinct purposes for which they utilised the complaints information held within the system. While the c@ts.i system met the largely intelligence-based needs of the Police Integrity Commission there were issues about the capacity of the system to meet the needs of the Ombudsman's Office.

7.28.2 The history to the development of a single shared electronic police complaints management system (c@ts.i) between NSW Police, the PIC and the Ombudsman's Office has been long and protracted. Expenditure on initiatives to achieve an efficient single shared system and to improve deficiencies with c@ts.i has been considerable. However, it is still not possible for the Ombudsman to obtain investigation reports direct from c@ts.i in a reliable way. Recent steps have been taken towards developing a method of electronic notification by NSW Police of new complaints to the Ombudsman and the Committee understands this notification system is about to be trialled. The Committee also was advised that the Ombudsman's Office has approached NSW Police Professional Standards Command to discuss options for receiving smaller investigation reports.

7.28.3 The Committee would encourage NSW Police and the Office of the Ombudsman to consult further in order to identify the deficiencies within c@ts.i, particularly in terms of the provision of larger complaint investigation reports, assess if these deficiencies can be remedied and, if not, examine other electronic systems available to NSW Police compatible with the Office's business systems that may be used to

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provide the Ombudsman's Office with necessary complaint investigation documents and records. The Committee will monitor progress in respect of negotiations between the Ombudsman's Office and NSW Police on the trialling of a new system for receiving new complaints electronically.

**RECOMMENDATION 9:** The Committee recommends that until such times as c@ts.i, or an alternative electronic system, is capable of delivering investigation reports to the Office of the Ombudsman in a reliable way that does not impact on the Office's ability to perform its oversight functions, the existing arrangement, whereby NSW Police provides hard copies of investigation reports to the Office of the Ombudsman, should continue and the provision of the reports should be at no cost to the Office.

**RECOMMENDATION 10:** The Committee further recommends that NSW Police should fully cost the software changes to c@ts.i needed to support the legislative changes to remove the distinction between Category 1 and Category 2 police complaints, and that consideration should be given to additional funding to facilitate the necessary modifications to the c@ts.i system.

**RECOMMENDATION 11:** The Committee recommends that the Office of the Ombudsman and the Police Integrity Commission, for the purpose of carrying out their functions, should be able to access records relating to local management issues raised about police officers and that NSW Police should ensure that any system for the electronic recording of such matters, be it c@ts.i or an alternative system, provides for such access.

7.29 **Corruption prevention and training**

**RECOMMENDATION 12:** The Committee recommends that the PIC consider making greater use of its statutory functions at s.13(1)(a) and s.14(a), (c) and (d) of the *Police Integrity Commission Act 1996*, for the purpose of drawing attention to areas of police conduct and operations that would benefit from corruption resistance strategies and specific corruption prevention initiatives.

**RECOMMENDATION 13:** It is further recommended that the PIC consult with the Independent Commission Against Corruption in regard to corruption prevention and education programs that may be of particular relevance to NSW Police, and explore the potential for cooperative efforts between the PIC and the ICAC in this area.

**RECOMMENDATION 14:** The Committee recommends that the funds and resources required for specific anti-corruption education and prevention projects should not be drawn from the funds and resources available to the PIC for the performance of its investigative functions, and that the PIC should seek supplementation for specific projects not connected with its investigative program, where necessary.

7.30 **Support for internal police complaints**

7.30.1 The Committee considers that officers of NSW Police may witness serious or corrupt conduct of other police officers and may subsequently report such conduct either by way of an internal police complaint or by way of a protected disclosure. The Committee has noted the support structure that has been put in place by NSW Police to assist officers.

**RECOMMENDATION 15:** In recognition of the importance of internal police complaints to the exposure and further prevention of serious police misconduct, the Committee recommends that NSW Police continue with measures to support police officers who make complaints about the conduct of their colleagues both during the complaint investigation process and after the completion of the investigation.

7.31 **Freedom of information (FOI) assistance and reports to complainants**

7.31.1 It is recognised that there may be issues concerning privacy or operational matters that might reasonably prevent NSW Police from providing complainants with a copy of the final investigation report on their complaint. However, it is the Committee's view that complainants should receive as much information on the outcome of their complaint as is possible, particularly complaints about serious misconduct.

7.31.2 Evidence was taken during the inquiry about the use of FOI applications by complainants as a means of obtaining information about the outcomes of their police complaints. The Committee is concerned that the avenue of FOI is being used for this purpose but it did not receive any evidence as to the extent to which this is occurring. The number of freedom of information applications received by NSW Police (not just those concerning complainant requests), has increased by over 300% since 1995-96.

7.31.3 In the Committee's view information on the outcome of a complaint should be provided to the complainant as a part of the complaints process. Nevertheless, given the use of FOI by the public to obtain information about complaints, the Committee was reassured that the recent allocation of nine additional staff members to the Police FOI Unit may assist in the timely provision of such information by this means.

7.32 **The Inspector of the Police Integrity Commission**

**RECOMMENDATION 16:** The Committee recommends that the *Police Integrity Commission Act 1996* should be amended to clarify that the Inspector is able to report to Parliament at his discretion in relation to any of his statutory functions.

**RECOMMENDATION 17:** It is further recommended that the Act be amended to make express provision for the Inspector to report to Parliament, as he considers necessary, on any abuse of power, impropriety and other forms of misconduct on the part of the PIC or its officers, regardless of whether or not these matters arise from the making of a complaint to the Inspector.

7.33 **Further Review**

7.33.1 The Committee intends to follow up all of the recommendations contained within this report with the Ombudsman and Police Integrity Commission as part of its regular program of General Meetings.

7.34 **Funds and Resources**

7.34.1 The Committee intends to consider the issue of the funds and resources available to the Office of the Ombudsman and the Police Integrity Commission as part of its General Meeting program with each body. The General Meetings provide an opportunity to examine each body's annual report in detail and as these reports were not tabled until towards the end of this Parliamentary session, the Committee will conduct its examination of the Ombudsman and the Police Integrity Commission on these issues in the next Parliament. It is open to the Office of the Ombudsman and the Police Integrity Commission to advise the Committee of any urgent funding and resource issues in the interim.

## Chapter Eight - Appendices

Appendix One – Committee Minutes

Appendix Two – Class or Kind Agreements

Appendix Three – Police Complaints



## Appendix One – Committee Minutes



PARLIAMENT OF NEW SOUTH WALES  
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION

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### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 29 March 2006 at 6.30pm  
Room 1153, Parliament House

#### **Members Present**

Mr Lynch (Chair), Ms Burnswoods (Vice-Chair), Mr Breen, Mr Chaytor, Mr Clarke, and Mr Corrigan

#### **Apologies**

Mr Kerr

In attendance: Helen Minnican, Pru Sheaves, Jennifer North.

The Chairman commenced proceedings at 6.30pm.

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#### **4. Inquiry Program: Reports and new inquiries**

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##### *(e) New inquiries:*

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- ii. Review of the Police Integrity Commission and the Ombudsman and external oversight of police.

The Committee discussed the briefing note on the proposed inquiry (previously circulated). Resolved on the motion of Mr Corrigan, seconded Mr Chaytor, that in accordance with its functions under Part 4A of the *Ombudsman Act 1974* and Part 7 of the *Police Integrity Commission Act 1996*, the Committee will conduct an inquiry into the system of police oversight in New South Wales, including:

- (a) the appropriateness of the respective roles and functions of the PIC and the Office of the Ombudsman;
- (b) the extent of the powers available to the Ombudsman and the PIC to perform their functions;
- (c) the management structures, funds and resources available to the Ombudsman and the PIC to perform their functions;
- (d) the accountability mechanisms built into the system;

Appendix One

- (e) the efficiency and effectiveness of the current police oversight system and the scope for further efficiencies and effectiveness;
- (f) any other related matter;

and report to both Houses of Parliament on the inquiry.

The Committee's jurisdiction is bound by the statutory limitations in the Ombudsman and PIC legislation and, as a result, the Committee's inquiry will not include an examination of the outcomes of any particular investigations into police misconduct or corruption.

Further resolved on the motion of Mr Corrigan, seconded Mr Chaytor, that the Committee advertise the inquiry and call for public submissions, and invite submissions from key agencies and individuals.

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The Committee adjourned at 7.05pm *sine die*.

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Chairman

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Committee Manager





PARLIAMENT OF NEW SOUTH WALES  
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION

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**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 28 June 2006 at 1 .00pm  
Room 814/815, Parliament House

**Members Present**

Mr Lynch (Chairman), Ms Burnswoods, Mr Clarke, Mr Corrigan and Mr Kerr

**Apologies**

Mr Chaytor, Ms Rhiannon

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

**Witnesses present:**

Mr Scott Weber, Mr Gregory Chilvers, Mr Philip Tunchon, Ms Charmaine Smith and Mr Simon Moran.

**PUBLIC HEARING: TEN YEAR REVIEW OF THE NSW POLICE OVERSIGHT SYSTEM**

Mr Scott David Weber, Vice President, Police Association of New South Wales; Mr Gregory Thomas Chilvers, Director, Research and Resource Centre, Police Association of New South Wales; and Mr Philip James Tunchon, Assistant Secretary, Legal Services, Police Association of New South Wales, took the oath. The Police Association's submission was tabled and included in the evidence. Mr Chilvers made an opening statement. The Chairman questioned the witnesses, followed by other Members of the Committee.

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew.

Ms Charmaine Lee Smith, Solicitor, Indigenous Justice Project of the Public Interest Advocacy Centre, and Mr Simon James Moran, Principal Solicitor, Public Interest Advocacy Centre, took the oath. The Centre's submission was tabled and included in the evidence. Mr Moran requested an amendment to the submission, that references to "Part 8" should read "Part 8A", and made an opening statement.

The Chairman questioned the witnesses, followed by other Members of the Committee.

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew.

The public hearing concluded at 2.31pm.

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**4. Inquiry Program: Scrutiny of NSW Police Counter-terrorism and Other Powers and Ten-year Review of the Police Oversight System in New South Wales**

The Committee noted the draft timetable for the hearing on Thursday 24 August 2006.

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The Committee adjourned at 2.54pm until Thursday 24 August 2006.

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Chairman

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Committee Manager



PARLIAMENT OF NEW SOUTH WALES  
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION

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**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Thursday 3 August 2006 at 10.00am  
Room 1043, Parliament House

**Members Present**

Mr Lynch (Chairman), Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan and Ms Rhiannon

**Apologies**

Mr Kerr

In attendance: Helen Minnican, Jennifer North and Hilary Parker

....

**2. Inquiry Program**

*Counter Terror Inquiry and Ten Year Review of Police Oversight System*

....

The Chairman informed the Committee that the Ombudsman was unable to appear at the public hearing on 24 August 2006. Discussion ensued and the Committee agreed to hear evidence from Mr Steve Kinmond, Deputy Ombudsman (Community Services Division), and Mr Simon Cohen, Assistant Ombudsman (Police) and to hear from Mr Barbour at a later date, should that be considered necessary.

Submissions from the witnesses appearing in relation to both the Counter Terror Inquiry and the Ten Year Review on 24 August were distributed to Committee Members in preparation for the public hearing. Also distributed were answers provided by Dr Martin Bibby, NSW Council for Civil Liberties, to questions taken on notice at the hearing on 14 June 2006.

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The Committee adjourned at 10.25am until Thursday 24 August 2006.

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Chairman

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Committee Manager



**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Thursday 24 August 2006 at 10.00am  
Room 814/815, Parliament House

**Members Present**

Mr Lynch (Chairman), Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan, Mr Kerr and Ms Rhiannon

In attendance: Mel Keenan, Helen Minnican, Jennifer North, Hilary Parker, Indira Rosenthal, Pru Sheaves

**Witnesses present:**

Commissioner Moroney, Deputy Commissioner Collins, Assistant Commissioners Carroll and Kaldas, the Hon James Wood QC, Mr Colin Forrest, Commissioner Terry Griffin, Mr Andy Nattress, Mr Allan Kearney, Mr Simon Cohen, Mr Greg Andrews, Mr Cameron Murphy and Dr Michael Kennedy.

**PUBLIC HEARING: TEN YEAR REVIEW OF THE NSW POLICE OVERSIGHT SYSTEM; SCRUTINY OF NSW POLICE COUNTER-TERRORISM AND OTHER POWERS**

Mr Kenneth Edward Moroney, Commissioner, NSW Police, Mr Terrence Walter Collins, Deputy Commissioner of Police, Specialist Operations, Mr John Thomas Carroll, Assistant Commissioner, Professional Standards, NSW Police, and Mr Naguib Kaldas, Assistant Commissioner, NSW Police, took the oath. NSW Police's submissions to both inquiries were tabled and included in the evidence. Commissioner Moroney made an opening statement, followed by Assistant Commissioners Carroll and Kaldas, then Deputy Commissioner Collins.

The Chairman questioned the witnesses, followed by other Members of the Committee. Commissioner Moroney provided the Committee with his Statement of Professional Conduct (a public document).

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew.

The Hon James Roland Thompson Wood AO QC, Inspector of the Police Integrity Commission, took the oath. The Inspector's submission, dealing with both inquiries, was tabled and included in the evidence. The Inspector then made a brief opening statement. The Chairman questioned the witness, followed by other Members of the Committee.

Questioning concluded, the Chairman thanked the witness and the witness withdrew.

A luncheon adjournment commenced at 12.10pm. The public hearing resumed at 12.50pm.

Mr Colin James Forrest, Queensland Public Interest Monitor, took the oath and made an opening statement in relation to the Committee's inquiry into the scrutiny of NSW Police counter-terrorism and other powers. The Chairman questioned the witness, followed by other Members of the Committee.

Questioning concluded, the Chairman thanked the witness and the witness withdrew.

Mr Terrence Peter Griffin, Commissioner, Police Integrity Commission, took the oath. Mr Andrew Stewart Nattress, Director, Operations, Police Integrity Commission, and Mr Allan Geoffrey Kearney, Director, Intelligence and Executive Services, Police Integrity Commission, affirmed. The Commission's submission to the Ten Year Review was tabled and included in the evidence. The Chairman noted the Commission had provided background material about its current project concerning the Counter Terrorist Co-ordination Command for the information of Committee Members and that this material was to be treated confidentially until the consultation process with NSW Police was settled.

The Chairman questioned the witnesses, followed by other Members of the Committee.

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew.

There was a short adjournment at 2.30pm. The public hearing resumed at 2.45pm.

Mr Simon Justin Cohen, Assistant Ombudsman (Police), and Mr Gregory Robert Andrews, Assistant Ombudsman (General), NSW Ombudsman's Office, affirmed. The Ombudsman's submissions to both inquiries were tabled and included in the evidence. Mr Cohen made an opening statement on behalf of the NSW Ombudsman, who was unable to attend.

The Chairman questioned the witnesses, followed by other Members of the Committee. Mr Cohen provided for the information of Committee Members only a complete list of correspondence between the Office and NSW Police concerning c@ts.i and a discussion paper: *NSW Ombudsman's observations of complaint management team meetings*.

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew.

Mr Cameron Lionel Murphy, President, NSW Council for Civil Liberties, and Dr Michael Hartley Kennedy, academic, University of Western Sydney, affirmed. The Council's submission to the Committee's ten year review of the NSW Police oversight system was tabled and included in the evidence. Both Mr Murphy and Dr Kennedy made an opening statement in relation to the Ten Year Review.

The Chairman questioned the witnesses, followed by other Members of the Committee.

At 4.50pm the hearing went *in camera* and the Chair addressed the Committee as to the procedural reasons for doing so. Mr Murphy and Dr Kennedy provided further evidence to the Committee.

Questioning concluded, the Chairman thanked the witnesses.

Appendix One

The hearing concluded at 5.10pm and the Committee went into deliberative session (witnesses still present).

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The witnesses withdrew and the Committee adjourned at 5.15pm.

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Chairman

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Committee Manager



PARLIAMENT OF NEW SOUTH WALES  
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION

**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 6 September 2006 at 6.30pm  
Waratah Room, Parliament House

**Members Present**

Mr Lynch (Chairman), Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan, Mr Kerr and Ms Rhiannon

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

....

**IN CAMERA SESSION: TEN YEAR REVIEW OF THE NSW POLICE OVERSIGHT SYSTEM**

....

**4. Inquiry Program**

The Committee considered confidential submissions and those not tabled during public hearings. The Chair spoke to each submission.

*Ten Year Review*

Resolved on the motion of Mr Corrigan, seconded by Mr Chaytor, that, in relation to:

Submission 2: the submission be treated confidentially and the writer not be called to give evidence;

Submission 4: due to difficulties experienced in contacting the author, the submission be treated confidentially;

Submission 6: no action be taken and the submission not be published;

Submission 12: no action be taken and the submission not be published.

Resolved on the motion of Mr Chaytor, seconded by Mr Clarke, that, in relation to:

Submission 1: the Committee write to Ms Rankin advising the submission is outside jurisdiction and that the submission not be published.

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Chairman

\_\_\_\_\_  
Committee Manager



**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 20 September 2006 at 6.30pm  
Waratah Room, Parliament House

**Members Present**

Mr Lynch (Chairman), Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan, Mr Kerr and Ms Rhiannon

In attendance: Helen Minnican, Jennifer North, Hilary Parker, Indira Rosenthal, Pru Sheaves

**Witness present:**

Mr Phillip Bradley

**PUBLIC HEARING: TEN YEAR REVIEW OF THE NSW POLICE OVERSIGHT SYSTEM; SCRUTINY OF NSW POLICE COUNTER-TERRORISM AND OTHER POWERS**

The Chairman commenced the hearing at 6.35pm, announced the witness and made a brief statement concerning the Committee's views on Mr Bradley's request that his image not be published by the media.

Mr Phillip Alexander Bradley, Commissioner, NSW Crime Commission, affirmed.

The Chairman questioned the witness, followed by other members of the Committee.

Questioning concluded, the Chairman thanked the witness for his attendance and the witness withdrew.

The public hearing concluded at 7.15pm.

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**DELIBERATIVE MEETING**

**1. Inquiry Program**

- i) Supplementary submission from the Inspector of the Police Integrity Commission and answers to questions taken on notice by the NSW Law Society on 14 June 2006.

Resolved on the motion of Mr Kerr, seconded by Mr Corrigan, that the Inspector's supplementary submission and the Law Society's answers be tabled and published on the Committee's website.

- ii) Supplementary submission from the NSW Ombudsman on the ten year review of the NSW Police oversight system.



The submission was distributed to Committee Members. The Committee agreed to defer consideration of the submission until its next deliberative meeting on 18 October 2006.

- iii) Supplementary submission, dated 11 September 2006, from the Hon Peter Breen MLC.

The Committee agreed to defer consideration of the submission.

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The Committee adjourned at 7.55pm until 18 October 2006.

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Chairman

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Committee Manager



PARLIAMENT OF NEW SOUTH WALES  
COMMITTEE ON THE OFFICE OF THE OMBUDSMAN AND THE POLICE INTEGRITY COMMISSION

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**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 15 November 2006 at 6.30pm  
Room 1043, Parliament House

**Members Present**

Mr Lynch (Chairman), Ms Burnswoods, Mr Chaytor, Mr Clarke, Mr Corrigan, Mr Kerr and Ms Rhiannon

In attendance: Ms Helen Minnican, Jennifer North, Pru Sheaves

The Chairman commenced proceedings at 6.35pm ....

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**3. Inquiry Program – Draft Reports**

- i. The Committee considered the following draft reports and schedule of amendments as previously circulated:

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- Draft report on the 10 year review of the police oversight system in New South Wales and proposed amendments

Recommendation 3 as amended read and agreed to.

Recommendation 4 as amended read and agreed to.

Recommendation 5 (i.e. renumbered no.4) as amended read and agreed to.

Recommendation 7 (i.e. renumbered no.6) as amended read and agreed to.

Appendix One

Recommendation 10 (i.e. renumbered no.9) as amended read and agreed to.  
Recommendation 13 (i.e. renumbered no.12) as amended read and agreed to.  
Recommendation 15 (i.e. renumbered no.14) as amended read and agreed to.  
Recommendation 17 (i.e. renumbered no.16) as amended read and agreed to.

Chapter 2.1 as amended read and agreed to.  
Chapter 2.2 as amended read and agreed to.  
Chapter 3 as amended read and agreed to.  
Chapter 4 title as amended read and agreed to.  
Chapter 4 as amended read and agreed to.  
Chapter 5.1 as amended read and agreed to.  
Chapter 5.2 as amended read and agreed to.  
Chapter 5.3 as amended read and agreed to.  
Chapter 5.4 as amended read and agreed to.  
Chapter 5.6 as amended read and agreed to.  
Chapter 5.7 as amended read and agreed to.  
Chapter 5.9 as amended read and agreed to.  
Chapter 5.10 as amended read and agreed to.  
Chapter 6.1 as amended read and agreed to.  
Chapter 7 as amended read and agreed to.

Report adopted.

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Resolved on the motion of Mr Chaytor, seconded by Ms Rhiannon, that the draft reports, as amended, be the Reports of the Committee, that they be signed by the Chairman and presented to the House, together with the minutes of evidence and that the Chairman, Committee Manager and Senior Committee Officer be permitted to correct minor stylistic, typographical and grammatical errors.

The Committee discussed the proposed case studies for the 10 year review, which were distributed with the draft report on the inquiry. The Chairman advised the Committee that NSW Police had indicated it did not object to the publication of its latest submissions. Resolved on the motion of Mr Kerr, seconded Ms Burnswoods, that:

- the proposed case studies not be included as an appendix to the report; and
- the Committee publish on its website the latest submissions from NSW Police dated 18 October 2006, in response to the Ombudsman's second submission and questions taken on notice at the public hearing on 24 August 2006, with the exception of information of a confidential nature from which individuals may be identified.

The Committee adjourned at 7:00 pm *sine die*.

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Chairman


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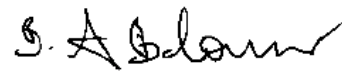
Committee Manager

## Appendix Two – Class or Kind Agreements

**AGREEMENT BETWEEN  
THE COMMISSIONER OF THE  
POLICE INTEGRITY COMMISSION  
AND  
THE OMBUDSMAN  
UNDER THE POLICE INTEGRITY ACT**

These guidelines, agreed upon 25 June 2004  
take effect immediately upon signing

  
T Griffin  
Commissioner  
Police Integrity Commission

  
B A Barbour  
Ombudsman

## **INTRODUCTION**

Part 4 of the Police Integrity Commission Act (the Act) concerns the handling of police complaints that are Category 1 complaints by the Police Integrity Commission (PIC). It requires Category 1 complaints to be referred to the PIC in accordance with Part 8A of the Police Act and allows the PIC to take over the investigation of Category 1 complaints.

### **Defining police complaints**

Under the Act police complaints are complaints to which Part 8A of the Police Act applies. Part 8A of the Police Act applies to complaints that allege or indicate police conduct which is:

- an offence (s.122(1)(a)).
- corrupt (s.122(1)(b)).
- unlawful (but not criminal or corrupt) (s.122(1)(c)).
- conduct that, although not unlawful (s.122(1)(d)):
  - is unreasonable, unjust, oppressive or improperly discriminatory in its effect.
  - arises from improper motives.
  - arises from a decision that has taken irrelevant matters into consideration.
  - arises from a mistake in law or fact.
  - is conduct of a kind for which reasons should have (but have not) been given.
  - in accordance with a law or established practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect (s.122(1)(e)).

### **Defining Category 1 complaints**

A Category 1 complaint is defined under section 67 of the Act as a police complaint:

- (a) that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission, or
- (b) that the PIC Commissioner has requested should be referred to the Commission, or
- (c) that is of a class or kind prescribed by the regulations.

**AGREEMENT MADE PURSUANT TO S 67(a) OF THE POLICE INTEGRITY COMMISSION ACT BETWEEN THE COMMISSIONER FOR THE POLICE INTEGRITY COMMISSION AND THE OMBUDSMAN**

The Commissioner of the Police Integrity Commission and the Ombudsman hereby agree that the following types of complaints should be referred to the Police Integrity Commission as Category 1 complaints:

- A. A complaint that a police officer has or may have sought or may seek to pervert the course of justice by giving false evidence, by destroying or interfering with evidence, by withholding or refraining from giving evidence, by fabricating evidence or by influencing another so to act.
- B. A complaint that a police officer has or may have committed or may commit
  - (i) an assault which has caused or may cause a serious injury and which could lead to a charge of maliciously wounding or inflicting grievous bodily harm upon a person pursuant to section 35 of the *Crimes Act 1900*; or
  - (ii) an offence (including larceny) relating to property where the value exceeds \$5000; or
  - (iii) any offence (other than assault occasioning actual bodily harm) punishable on conviction on indictment by a maximum sentence of imprisonment or penal servitude for five years or more.
- C. A complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit for himself/herself or for another in return for failing to carry out his/her duties.
- D. A complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence.
- E. A complaint that a police officer investigating an offence alleged to have been committed by another police officer has or may have improperly failed to carry

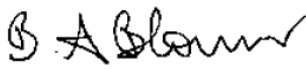
out, or may improperly fail to carry out, his/her duties in the course of that investigation.

- F. A complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivated or may cultivate a prohibited plant, or supplied or may supply a prohibited drug or a prohibited plant, unless the amount or number of such drug or plant is less than the indictable quantity therefor as specified in the *Drug Misuse and Trafficking Act 1985*.

**GUIDELINES AGREED BETWEEN  
THE POLICE INTEGRITY COMMISSION  
AND  
THE OMBUDSMAN  
AFTER CONSULTATION WITH THE COMMISSIONER OF POLICE  
UNDER THE POLICE ACT**

These guidelines, agreed upon *25 June 2004*  
are to take effect on a date no later than 1 October 2004. The operation of the  
guidelines is to be reviewed after twelve months.

  
T Griffin  
Commissioner  
Police Integrity Commission

  
B A Barbour  
Ombudsman

## **INTRODUCTION**

Part 8A of the Police Act concerns the handling of complaints about the conduct of police.

### **Defining conduct**

Police conduct is broadly defined as "any action or inaction (or alleged action or inaction) of a police officer" (s.121).

### **Defining complaints**

Part 8A of the Police Act applies to and in respect of complaints that allege or indicate police conduct which is:

- an offence (s.122(1)(a)).
- corrupt (s.122(1)(b)).
- unlawful (but not criminal or corrupt) (s.122(1)(c)).
- conduct that, although not unlawful (s.122(1)(d)):
  - is unreasonable, unjust, oppressive or improperly discriminatory in its effect.
  - arises from improper motives.
  - arises from a decision that has taken irrelevant matters into consideration.
  - arises from a mistake in law or fact.
  - is conduct of a kind for which reasons should have (but have not) been given.
- in accordance with a law or established practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect (s.122(1)(e)).

Because not all complaints about police conduct require formal oversight (for example, complaints about customer service or rudeness) Parliament has enacted various provisions within Part 8A which permit the Police Integrity Commission and the Ombudsman, after consultation with the Commissioner of Police, to agree that



certain types of complaints need not be notified to the Ombudsman. However, in accordance with obligations under section 160 of the Police Act, complaints which are not required to be notified may still be inspected by the Ombudsman to ensure that Part 8A is being complied with and to keep under scrutiny systems within NSW Police for dealing with complaints.

The following agreements seek to give effect to the purpose behind these provisions. They ensure that allegations of serious misconduct receive rigorous civilian oversight while allowing for the most appropriate and effective handling of less serious matters.

**SECTION 121 AGREEMENT – CATEGORY 2 COMPLAINTS WHICH  
MUST BE NOTIFIED TO THE OMBUDSMAN**

All Category 1 complaints must be notified to the Police Integrity Commission and the Ombudsman (Police Act; s130(2) and 132(1)).

Complaints which do not fall within Category 1 are called Category 2 complaints.

The definition of "notifiable complaint" in section 121 allows the Police Integrity Commission and the Ombudsman to agree, after consultation with the Commissioner of Police, that only some types of Category 2 complaints must be notified to the Ombudsman.

The Police Integrity Commission and the Ombudsman, after consultation with the Commissioner of Police, hereby agree that the following types of Category 2 complaints (whether by a member of the public or an internal police complainant) must be notified to the Ombudsman:

1. Criminal conduct.
2. Corrupt conduct.
3. Conduct which is of a nature that, if substantiated, might warrant the taking of action under sections 73(3) or 181D of the Police Act or "reviewable action" as defined by section 173 of the Police Act.
4. Lack of integrity.
5. Serious incompetence<sup>1</sup> (including serious incompetence which results in failed prosecutions and criminal investigations).

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<sup>1</sup>In assessing whether a complaint alleges serious incompetence, factors to be considered include the seniority of the involved officer, the nature of the competence issues, the outcome of the alleged conduct and, for prosecutions, any costs awarded against police and/or comments of the Court.

6. Unauthorised secondary employment in high risk industries<sup>2</sup>.
7. Harassment, victimisation or unlawful discrimination of any person except complaints that involve:
  - Harassment, victimisation or unlawful discrimination on the basis of sex, race, marital status, age, disability, homosexuality, transgender and carer responsibilities;
  - where the alleged conduct has been committed against a member of NSW Police;
  - that person consents to the complaint being dealt with as a local management matter; and
  - the police officer(s) who is alleged to have committed the conduct has not had similar complaints made against them.
8. Detrimental action or reprisals (including possible payback complaints) against a police officer or other person making a protected disclosure, protected allegations or protected reports.
9. Any inappropriate conduct (including a failure to provide customer service):
  - (a) resulting in death or injury
  - (b) resulting in significant<sup>3</sup> financial loss
  - (c) involving the discharge of firearms.
10. Any inappropriate conduct resulting in and/or from the search, arrest or custody of a person.

<sup>2</sup> These industries are nominated in NSW Police's *Secondary Employment Policy and Guidelines* and include Security, Liquor, Commercial and Private Inquiry Agents, Gaming and Racing and Transport Industries.

<sup>3</sup> In assessing whether a loss is significant, factors to be considered include the value of the goods, property or money involved and the financial position or means of the person who has sustained the loss. For example, a loss of goods of a small monetary value may be significant to a person who is without an income or who is on a pension.

11. Complaints about the way that matters dealt with in accordance with section 122(2) of the Police Act have been handled, but only where the Ombudsman requires they be dealt with as Category 2 complaints<sup>4</sup>.
  
12. Any complaint dealt with in accordance with section 122(2) of the Police Act which the Ombudsman, following consultation with the Police Commissioner, requires to be notified<sup>5</sup>.

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<sup>4</sup> These may include (but are not restricted to) complaints about the assessment of the matter; the treatment of the complainant and/or subject officer; the outcome of the matter; or delays in dealing with the matter. Condition 2 under the section 122(2) agreement sets out the obligations upon NSW Police at the conclusion of a section 122(2) matter to advise complainants, who state that they are dissatisfied, of their right to make a further written complaint about the handling of the matter. The Ombudsman will only require these matters to be dealt with as Category 2 complaints where substantial concerns arise about the police handling of the matter.

<sup>5</sup> This provision is designed to address the legislative difficulty created for matters that fall within the s122(2) agreement. It ensures that, where appropriate, individually identified matters can still be oversighted or investigated by the Ombudsman under Part 8A of the Act.

**SECTION 122(2) AGREEMENT - MATTERS WHICH NEED NOT BE TREATED AS COMPLAINTS****Background**

The effect of section 122(2) is that the Police Integrity Commission and the Ombudsman, after consultation with the Commissioner of Police, may agree that certain kinds of complaints need not be dealt with in accordance with Part 8A. These complaints therefore do not need to be notified to the Ombudsman.

This agreement under section 122(2) ensures that issues of police conduct that are not of a significant nature are not dealt with under the full provisions of Part 8A of the Police Act.

However, in accordance with section 160 of the Police Act, the Ombudsman may still inspect records relating to these complaints. This is to ensure that Part 8A is being complied with and to keep under scrutiny the systems in place within NSW Police for dealing with complaints. The current system for recording and managing these types of matters is the s122(2) function of the Customer Assistance Tracking System (c@ts.i).

**Agreement**

The Police Integrity Commission and the Ombudsman, after consultation with the Commissioner, hereby agree that - subject to the conditions discussed below - complaints, other than Category 1 complaints, and Category 2 complaints which must be notified to the Ombudsman, need not be dealt with under Part 8A of the Police Act.

Conditions:

1. Even if a complaint is dealt with under section 122(2) of the Police Act, NSW Police should take appropriate action in relation to it. This includes any investigation, conciliation and such managerial action as may be necessary in all the circumstances of the matter.

2. When advising complainants of the outcome of a complaint dealt with under section 122(2) of the Police Act, if the complainant states that they are dissatisfied with the way the matter was dealt with, NSW Police must advise the complainant that they may make a further written complaint about how the complaint was handled. These complaints will only be recorded as Category 2 complaints if required by the Ombudsman.
3. Proper records must be kept of all complaints dealt with under section 122(2) of the Police Act and any action taken in respect of them. In particular, complaints made by members of the public (except for those complaints referred to in Conditions 4 and 5 below which relate only to the issuing of traffic and parking infringement notices or to requests for reviews of criminal charges) must be receipted and registered on the c@ts.i to allow NSW Police and the Ombudsman to run reports to measure the number and percentage of section 122(2) matters handled by way of informal resolution and the rate of customer satisfaction for these complaints.
4. Where the complaint is only about the issuing of traffic or parking infringement notices and raises no other issues (for example, rudeness or a specific allegation of lack of integrity) the complaint should be forwarded to the Infringement Processing Bureau for review and need not be recorded on the c@ts.i. If any other issues are raised they shall be dealt with in accordance with these agreements.
5. Where a complaint is only a legal representation for review of criminal charges and raises no other issues (for example, a specific allegation of lack of integrity) the complaint should be referred to Prosecuting Services for consideration and need not be recorded on the c@ts.i. If any other issues are raised they shall be dealt with in accordance with these agreements.

### Appendix Three – Police Complaints System Flowchart

