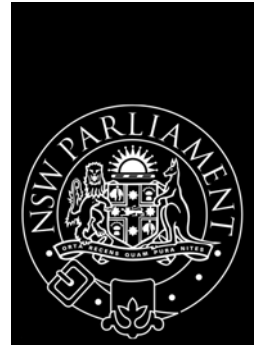


PARLIAMENT OF NEW SOUTH WALES



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

Report on the Twelfth General Meeting with
the Police Integrity Commission

Together with Questions on Notice,
Transcript of Proceedings and Minutes

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Terms of reference

The Committee on the Office of the Ombudsman and the Police Integrity Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the Ombudsman Act are set out in s.31B(1) as follows:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;
- to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

These functions may be exercised in respect of matters occurring before or after the commencement of this section of the Act.

Section 31B(2) of the Ombudsman Act specifies that the Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- to exercise any function referred to in subsection (1) in relation to any report under section 27; or
- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or
- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.

The Committee also has the following functions under the Police Integrity Commission Act 1996:

- to monitor and review the exercise by the Commission and the Inspector of their functions;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;
- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the

Terms of reference

Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and

- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Act further specifies that the Joint Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or
- to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The Statutory Appointments (Parliamentary Veto) Amendment Act, assented to on 19 May 1992, amended the Ombudsman Act by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the Ombudsman Act provides:

- The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- A referral or notification under this section is to be in writing.
- In this section, a reference to the Minister is;
 - in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
 - in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and
 - in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*.

The Committee also oversees the Information Commissioner. The Committee's functions are set out in section 44 of the Information Commissioner Act. Under section 5 of that Act the Committee has the power to veto the appointment of the Commissioner.

Chair's foreword

The Twelfth General Meeting with the Police Integrity Commission was held on 30 November 2009. General Meetings are a valuable tool for the Committee to perform its work of monitoring and reviewing the functions of the Police Integrity Commission and this was the second such meeting to have taken place since I became Chair of the Committee.

Much of the discussion during the General Meeting focussed on the work of the Commission in preventing serious police misconduct, through providing the New South Wales Police Force with informed advice on its systems and practices: The Committee discussed two such projects with the Commission.

The first of these was the Commission's Project Manta which examines the misconduct risks facing the NSWPF and how its commands identify, communicate and manage those risks.

The second was Project Odin, which was undertaken by the Commission to develop a better understanding of how NSWPF commands identify and manage those officers who, because of their histories, pose a risk of engaging in misconduct.

Finally, the Committee also took the opportunity to question the Commission about the progress made by the NSWPF on implementing an early intervention system to address problematic behaviours among police officers before those behaviours worsen.

It was a recommendation of the Committee's in 2009, that an early intervention system be introduced to the NSWPF as soon as practicable and the Committee endorses the work of the Commission in seeking to ensure that there is continued progress on this important issue.

I would like to thank the Members of the Committee for their participation in the General Meeting and their contribution to the reporting process. The Committee's report is a consensus document which represents the bipartisan and constructive approach taken by Members of the Committee to the exercise of its oversight role.



The Hon Kerry Hickey MP
Chair

Chapter One - Commentary

- 1.1 On 30 November 2009, the Committee met with the Commissioner of the Police Integrity Commission and his executive officers for the Twelfth General Meeting. This was the third time that the Committee had met with the Police Integrity Commission (the Commission) during the 54th Parliament.
- 1.2 As with previous General Meetings, the Committee sent questions on notice to the Commissioner about matters raised in the Commission's Annual Report for the year ending June 2009. Some of these questions were asked on a confidential basis as they dealt with certain aspects of the Commission's work that were not a matter of public record. The answers to questions on notice can be found in Chapter Two of this report, apart from those matters which were treated as confidential.
- 1.3 Amongst the range of issues discussed during the General Meeting, a predominant theme was the work of the Commission in preventing serious police misconduct, through providing the New South Wales Police Force (NSWPF) with informed advice on its systems and practices.
- 1.4 The Commission has reported on two such projects during 2009: Project Manta and Project Odin.

Project Manta

- 1.5 The Commission commenced Project Manta in 2007, in order to gain a better understanding of the misconduct risks facing the NSWPF and how its commands identify, communicate and manage those risks.
- 1.6 The NSWPF is divided into commands; this is done on the basis of geographical location (local area commands) and on the basis of those parts of the organisation which provide technical or administrative support to police in the field (specialist commands).
- 1.7 By examining the nature of police work and the working environment, Project Manta differs from the more traditional approaches to preventing misconduct where the focus is placed on individual officers. Thus Project Manta looks at the identification and management of those aspects of policing which pose a risk, rather than at the individuals who occupy the positions in the organisation.
- 1.8 Allan Kearney, Director, Prevention and Information, informed the Committee that whilst corporate policies tended to look at agency-wide misconduct risks such as the inappropriate use of vehicles or phones, Operation Manta looked at the risks that are unique to a command.
- 1.9 These risks might be determined by the locality of the command, its staffing levels and the nature of the population. Any special misconduct risks would need to be communicated to command staff so that they could then identify them if they arose and deal with them appropriately.
- 1.10 The first of two reports on Project Manta was published by the Commission on 25 November 2009. The report describes commanders' views on the nature of the misconduct risks in their commands and how they identify and communicate these risks.
- 1.11 The Commissioner noted that one of the project's findings was that there was not a uniform understanding of misconduct, with officers or commanders having their own

Commentary

ideas about what constituted a misconduct threat. One outcome of the project, in the Commissioner's view, might be the NSWPF seeking to define the nature of each misconduct risk.

- 1.12 Mr Kearney informed the Committee that the second Project Manta report would be published in 2010. Where the first report examined the identification and communication of misconduct risks, the second report would look at how NSWPF commands manage those risks.
- 1.13 Once the second report has been published, the Commission would then work closely with the NSWPF in order to assist them to make any necessary improvements to policies or training materials.

Project Odin

- 1.14 The Commission reported on Project Odin in September 2009. The project was undertaken by the Commission to develop a better understanding of how NSWPF commands identify and manage high risk officers. The Commission uses the term 'high risk officer' to describe those officers who, because of their histories, pose a risk of engaging in misconduct.¹
- 1.15 The project findings supported the need for the NSWPF to develop its policies on high risk officers and the report makes a number of recommendations aimed at assisting the NSWPF to define the term 'high risk officer' and to identify and manage such officers.
- 1.16 The Commission describes the level of consultation between themselves and the NSWPF as being 'unprecedented' and having contributed 'significantly to strengthening the report, particularly the recommendations.'²
- 1.17 In its answers to questions on notice, the Commission informed the Committee that the NSWPF has been asked to provide a response to each Project Odin recommendation.³ If the NSWPF agreed with the recommendations in the report then the Commission would be available to assist them in progressing matters.

An Early Intervention System for the NSWPF

- 1.18 In 2008, the Committee conducted an inquiry into the utility of an early intervention system for the NSWPF.
- 1.19 The basic idea of an early intervention system is that law enforcement agencies use data on officers with problematic behaviours, mainly identified through their complaints histories, as a management tool to address such behaviours before they worsen. An early intervention system should not be solely confined to a data base of complaints; rather it should be a holistic management system whereby an officer identified by the early intervention system has their particular situation assessed and

¹ It should be noted that the Commission views a high risk officer policy as being distinct from an Early Intervention System (EIS). Though both respond to the same continuum of behaviours, they are at different ends of the scale. The focus of an EIS is to identify and correct minor behavioural problems before they *potentially* escalate into serious misconduct. A high risk officer policy focuses on specific individuals who are past the 'early stage' and have already *demonstrated* that they are a serious current misconduct risk.

See: Police Integrity Commission, [Project Odin: Identifying and Managing High Risk Officers in the NSW Police Force](#) PIC, Sydney, 22 September 2009, p.122.

² Ibid. p.122.

³ See answers to questions on notice, Chapter Two of this report.

the issues arising addressed by the organisation. An early intervention system is designed to prevent misconduct and assist officers rather than punish or discipline them. It is built around a series of indicators, such as the number of complaints and the amount of sick leave taken, rather than using personality traits in an attempt to assess an officer's likelihood of becoming corrupt.

1.20 The Committee's report, which was published in 2009, recommended that an early intervention system be introduced to the NSWPF as soon as practicable and that this work be given budgetary priority.

1.21 During the course of the General Meeting the Commissioner was questioned about the progress made by the NSWPF on an early intervention system. In responding the Commissioner recognised that there was a strong commitment on the part of the NSWPF to developing an early intervention system and that significant progress has been made. However, he noted that:

...While the commitment is there and all the right things are said, and given the prevailing budgetary environment across the sector as a whole, it could be the sort of matter that falls by the wayside. From my dealings with the Commissioner I know there is a commitment, but there is also an obligation on the Commission as the other interested party to ensure there is no backsliding, if I can put it that way. So far we are keeping an eye on it and we are waiting to see what happens.⁴

1.22 The Committee endorses the work of the Commission in seeking to ensure that there is continued progress on this important issue.

⁴ Transcript of evidence, Public Hearing 30/11/09, see Chapter Three of this report.

Chapter Two - Questions on notice and answers

Note: The answers to questions 9, 10 and 11 were provided to the Committee in confidence.

Matters arising from the Report on the Eleventh General Meeting with the Police Integrity Commission

Q1: Can the Commission provide any further advice in relation to its capacity to undertake research into compliance by the NSW Police Force (NSWPF) with relevant policy and procedures during the conduct of searches?

A: In April 2009, the Commission commenced a research project examining the misconduct risks associated with the execution of search warrants by the NSWPF. Amongst other things, the project is seeking to assess whether there are any opportunities to strengthen the misconduct prevention aspects of policies and processes that govern the planning and execution of search warrants. Given the operational sensitivity of this subject area, the Commission has written to all regional commanders explaining the nature and purpose of its project and has consulted closely with the Professional standards Command (PSC). In terms of the status of this project, the Commission is currently in an information collection phase.

Matters arising from the Commission's Annual Report 2008-2009

Q2: The Commission's plans for 2009-10 include giving consideration to developing a complaints and investigations case management system (AR p14). Could you provide any further information as to why this activity has been selected for consideration?

A: The Commission does not have a dedicated case management system. Currently the Commission meets its complaints and investigations information management needs through the use of a number of disparate systems. This has not presented any operating difficulties as the functionality of the Commission's document/record management system in particular has been flexible enough to allow it to also serve as a case management system.

During 2008–2009 a business process and systems review was undertaken to identify improvement strategies to the different stages of work that comprise the Commission's complaints and investigations life cycle. The review culminated in a report recommending the acquisition of a Complaints and Investigations Case Management solution in order to improve overall efficiency and effectiveness.

Given the costs involved in developing from scratch a dedicated stand-alone case management solution for the Commission, the Commission has been examining the case management solutions of other Australian oversight agencies in order to identify available options suited to its core business of complaints and investigations management. Of particular interest is the case management solution that the ICAC has recently acquired following a tender process and selection that was completed in 2008 (referred to as MOCCA). The Commission is currently moving to a test of MOCCA in the context of its complaint and investigation handling procedures.

Q3: The Annual Report notes that the Commission has introduced a new operating model this reporting year (AR pp 22-23). Has this improved the operations of the PIC? Will there be ongoing assessment and review of the model?

A. The new operating model is based on the UK National Intelligence Model which has been implemented in many UK and Australian law enforcement agencies in the past decade. The principle aim of the model is to more effectively align business planning with business outcomes.

At the core of model is the Tasking and Coordination Group (T&CG) which comprises operational level business unit managers from across the Commission. The role of T&CG is to provide operational advice in regard to resources and priorities to the Commission's strategic management group, the OAG.

The other key structure within the model is the Research and Development team (R&D) who support the T&CG. This team produces the operational (T&CG) and strategic (OAG) business activity reporting and provides intelligence advice to inform decisions in regard to new investigative opportunities.

The new operating model represents an evolution and formalisation of many existing Commission operational level processes. Although still in its infancy, the new operating model has delivered a number of improvements:

1. Created a formal operational level management forum (T&CG) to determine the tactical investigative and intelligence priorities for the Commission;
2. Developed a suite of intelligence products to inform operational and strategic decision making;
3. Enhanced coordination between the operational and strategic management groups; and
4. Improved business activity reporting by providing a defined set of reports available to managers in line with the weekly operational and three weekly strategic management forums.

Will there be ongoing assessment and review of the model?

Yes. The post implementation review of the Tasking and Coordination Group and related processes was conducted in October 2009 and involved all of the operational business unit managers. As a result of the review minor changes were made to the T&CG's charter and outputs. The review found that the new operating model had enhanced operational priority setting, resource management and improved workflow between business units. It also found that the new business activity reporting tools were providing a more informed view of operational activity to the Commission's Operations Advisory Group which provides general strategic direction and oversees the Commission's investigation activities.

The new operating model is to be reviewed annually as a part of the existing business planning process.

Project Manta

Q4: At the end of 2008/09 the Commission was awaiting clarification from the NSWPF on a number of outstanding issues prior to publishing its first report (AR p32). Has the NSWPF now provided the Commission with the clarification it sought?

A: Yes. Project Manta Report 1 is being prepared for printing and release. It is currently envisaged that members of the Parliamentary Committee will receive a copy of this report prior to the Twelfth General Meeting.

Project Marrella

Q5: In using complaints as a measure for misconduct, the findings of Project Marrella did not support the perception that students trained in larger than usual intakes were more likely to engage in misconduct as police officers (Research and Issues Paper No.3, 2009). Does the Commission consider there is merit in conducting further research to analyse the relationship between complaints and the number of students per intake over a longer timeframe?

A: Yes. There may be merit in conducting research at some point in the future to analyse the relationship between complaints and the number of students per intake over a longer timeframe (ie approximately five years). This would assist in determining whether the pattern identified in Project Marrella has continued. Any decision to repeat the Marrella research would need to take into consideration the value of such a project relative to the Commission's other research and prevention priorities and its available resources.

Q6: Does the Commission consider there to be merit in conducting research into whether there may be other problems associated with training students in large intakes?

A: In all probability, no, not in the context of the functions of the Commission. The Commission is required to turn its attention to serious police misconduct. Project Marrella was concerned with misconduct by officers in their first two years of service. The level of misconduct, of course, cannot be measured. However, as complaints data captures a very large range of behaviours by police officers including the most serious types of problems and misconduct, complaints were selected as a proxy for police misconduct. It is doubtful that other non-complaints data could be used as a reliable proxy for police misconduct.

Project Odin

Q7: The Commission reports that it has consulted extensively with the NSWPF on the findings and recommendations in the Project Odin report (AR p34). Following the publication of the report, has the NSWPF advised the Commission as to whether it intends to develop the means to identify and manage high risk officers and if so, how might the Commission assist in this process?

A: The Commission wrote to the Commissioner of Police on 20 October 2009 requesting a response to the Project Odin report and recommendations by 1 December 2009. The Commission requested that the NSWPF provide a response to each Project Odin recommendation, indicating:

- whether or not the NSWPF supports the recommendation;
- the reasons for not supporting any particular recommendation;
- in general terms, how the NSWPF intends to implement those recommendations it supports;
- in general terms, how the NSWPF intends to address the issues raised in the report and addressed by the recommendations, in the case of recommendations that the NSWPF does not support; and
- the projected timeframe for implementation of the recommendations that the NSWPF supports as well of any alternative measures proposed by the NSWPF in the place of any recommendation that it does not support.

In view of the fact that the Commissioner of Police has not yet responded to this correspondence, it would be premature to comment on the means by which the Commission may assist the NSWPF in developing the means to identify and manage high risk officers.

Assuming the Commissioner concurs with the recommendations in the report, however, the Commission will be available to assist the NSWPF by monitoring its development and implementation of the relevant resources required to identify and manage high risk officers. The Commission will also be available to consult with the NSWPF on the development of the relevant resources and to review any identification and management tools or processes prior to their implementation across the agency.

Project Rhodium

Responses to questions 9, 10 and 11 are provided to the Committee in Confidence. The Commission requests that any further release of the answers beyond the Committee be referred to the Commission before doing so.

Q8: Project Rhodium (pages 48-49) is described in some detail. Will this report be made public?

A: Given the background to the request for the Operation Rhodium review and in particular the request that it focus on the sensitive issue of informant handling by the NSW Crime Commission it was not envisaged that the resulting report would be made a public document by the Commission. A large amount of material was provided as part of the review by the NSWCC and on the understanding that any final report would not be made public by the Commission. The NSWCC would also have its own views on whether it is appropriate for that information to be safely and properly placed into the public domain. As indicated in the AR the report of the review was provided to the Minister for Police as Chair of the Management Committee of the NSWCC in early July this year.

....

Q12: Has the Crime Commission been successfully integrated into the PIC's oversight systems?

A. While the Commission has reviewed and adjusted relevant policies and procedures in order to accommodate the oversight of the NSWCC and systems have been adjusted to accommodate additional activity reporting obligations, oversight systems have some way to go in order to reach the level of maturity associated with Commission oversight of the NSWPF. For example, the Commission has access to various NSWPF systems, which support the Commission in the exercise its oversight functions, including:

- the NSWPF complaint management system, c@ts.i;
- the NSWPF intranet; and
- complaints and other officer related data extracted from systems to populate the Commission's Police Oversight Data Store.

At present that Commission does not have direct access to comparable NSWCC data and is dependant on the NSWCC for relevant information. As a much smaller organisation relative to the NSWPF it is not envisaged this will give rise to any particular difficulties for the Commission.

Tracking the Commission's recommendations

Q13: The NSWPF has yet to implement some significant Operation Abelia recommendations (AR p36). How does the Commission propose to monitor the NSWPF's progress toward implementation of those recommendations and what does it regard as a reasonable timeframe for completion?

A: The Commission proposes to continue to monitor the NSWPF's progress through regular quarterly meetings with the NSWPF staff responsible for implementing the Operation Abelia recommendations. The most recent meeting was held on 8 October 2009 and the next meeting is scheduled for 17 December 2009. Between these formal meetings, informal contact is made and the Commission provides advice on drafts of material to be used.

It should be noted that since the end of the financial year an additional recommendation has been implemented, bringing the total number of recommendations implemented to 43 of the 54 recommendations that were accepted by the NSWPF.

In broad terms, the 11 recommendations yet to be implemented relate to: finalisation of Targeted Drug Testing Procedures (including approval by the NSWPF Commissioner's Executive Team); training and support for those who are responsible for deciding whether a targeted drug test should be conducted as well as training and support for supervisors; and evaluation of the effectiveness of the deterrence and education strategies employed as a result of Operation Abelia. The implementation of these remaining recommendations can be considered as involving two stages:

1. the finalisation of the procedural, training and evaluation materials,
2. the promotion, delivery and use of the materials, that is, the promotion of the new procedures, providing the training to the relevant groups, undertaking the surveys and reporting on the results.

The Commission considers that it would be reasonable to expect that the materials (e.g. training materials, guidelines, questionnaires) to be finalised by the end of the 2009 calendar year and that the use, promotion and delivery of these materials would have commenced in the first quarter of 2010. However, whether this occurs within this timeframe is a matter for the NSWPF.

It has been more than four years since the publication and release of the Operation Abelia report. Monitoring the implementation of these recommendations has been a protracted process. While the Commission has considered that progress has been slow and at times disappointing, the Commission also is of the opinion that its recommendations represent the most direct opportunity the Commission has to change the factors that may affect the likelihood of misconduct. Hence, the Commission sees that following up on whether and how its recommendations are implemented is an important area in which to commit resources.

When considering why the implementation is taking so long, it is important to consider:

1. there is no legislative requirement for the NSWPF to implement the Commission's recommendations
2. Operation Abelia's recommendations affect a wide range of NSWPF business areas involving legislative changes, recruitment, training, drug testing, employee management amongst others
3. There is a lot of movement of officers between positions within the NSWPF with little corporate memory, hence implementation strategies may change or need to recommence with staff movement.

The Commission continues to seek ways of improving the way we go about our work, including improving the strategies that we use to monitor the implementation of our recommendations. This is one of a number of reasons that the Commission has begun discussions with the NSWPF about the possibility of the two agencies working together to develop a NSWPF Agency-Level Misconduct Prevention Plan.

Q14: By what means might the Commission engage with the NSWPF over implementation of strategies to minimise unauthorised disclosures of confidential information? (AR p44).

A: As at the end of 2008-2009, the NSWPF was yet to implement the strategies contained in the Commission's paper entitled *Unauthorised Disclosure of Confidential Information by NSWPF Officers*. It would appear that the efforts of PSC with regard to the management of risks associated with the unauthorised disclosure of confidential information have been focused on developing policy options in relation to that part of the *Police Regulations 2000* that govern the use and management of confidential information. In late October, however, the Commission prompted PSC regarding the need for NSWPF to provide advice as to how it proposes to implement the strategies contained in the above mentioned paper. PSC has undertaken to respond to this request. It is envisaged that, following the receipt of this response, the means by which the Commission will engage with the NSWPF over the implementation of these strategies will be through reviewing and providing feedback on such documents as draft policy proposals and resources to assist officers in understanding and complying with their obligations.

Q15: How would the Commission assess the progress of consultations with the NSWPF over addressing outstanding issues arising from the Review of Complaint Allocation Risk Assessment (CARA) process? (AR p44).

A: The existence of other project priorities has meant that the Commission has not had the opportunity to progress its consultation with the NSWPF in connection with the recommendations arising from the Review of Complaint Allocation Risk Assessment (CARA) process. The Commission aims to complete the consultation process by the end of the first quarter of 2010.

Q16: Has the Minister for Police formally responded to the Commission's recommendation that consideration be given to creating a statutory offence of unauthorised release of confidential police information? (AR 46).

A: The Commission has received advice from the Department of Premier and Cabinet (which has subsumed the functions of the former Ministry for Police as part of the recent restructuring of the NSW public sector) that the recommendation remains under consideration in consultation with a number of other interested government agencies.

Chapter Three - Transcript of proceedings

NOTE: The Twelfth General Meeting with the Police Integrity Commission was held on Monday 30 November 2009 at 10.00 am in the Jubilee Room, Parliament House.

Mr John William Pritchard, Commissioner; Mr Andrew Stewart Nattress, Director of Operations; Mr Allan Kearney, Director, Prevention and Information; and Ms MICHELLE O'BRIEN, Solicitor, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: In what capacity do you appear before the Committee?

Mr PRITCHARD: As Commissioner.

Mr NATTRESS: As Director of Operations.

Mr KEARNEY: As Director of Prevention and Information.

Ms O'BRIEN: As Commission Solicitor.

CHAIR: Thank you for your appearance before the Committee. Your appearance before the Committee is to provide information to the General Meeting in relation to a wide range of matters concerned your office in accordance with the Committee's statutory functions. Mr Pritchard, the Committee has received a submission from you dated 19 November 2009. This submission consists of responses provided to questions on notice in relation to the 2008-09 annual report. Do you want that submission to form part of your formal evidence, apart from your answers to questions 9, 10 and 11 which you request to be kept confidential?

Mr PRITCHARD: Yes, I do.

CHAIR: Do you want to make an opening statement?

Mr PRITCHARD: No, I am happy to use the time to answer questions from members.

CHAIR: I propose to deal with your confidential answers to questions on notice in camera at the end of the public hearing.

Mr PAUL PEARCE: I move that way.

Mr MALCOLM KERR: I second it.

CHAIR: Is the Commission planning to report publicly on its research into the NSW Police Force compliance with relevant policies and procedures relating to the conduct of searches?

Mr PRITCHARD: Yes, I imagine that will be the end result. We have commenced a project, as we indicated in the answers to questions on notice, Project Ostara, which is looking into the question of search warrants and issues surrounding them. It is in the early

stages at this stage in terms of collecting some information but the ultimate project plan, I think, would—unless Mr Kearney corrects me—involve something of that kind.

Mr KEARNEY: I have nothing to add further there. We are somewhat bound by how long the data collection process takes and then subsequently consultation with NSW Police which can take time, given the numbers of people involved.

CHAIR: Has the Commissioner of Police responded to your correspondence regarding Project Odin, which looked at the capacity of the NSW Police Force to identify and manage high-risk police officers?

Mr PRITCHARD: Mr Kearney just reminded me that we have asked the Commissioner to respond but that was by 1 December so at this stage we have not yet got back a response.

CHAIR: It is a day early?

Mr PRITCHARD: Yes.

Mr PAUL PEARCE: Has the NSW Police Force been receptive to the Commission's suggestion that they work together to develop a NSW Police Force Agency Level Misconduct Prevention Plan?

Mr PRITCHARD: It is in the early stages at the moment but certainly the response from the executive level, and certainly the response I have had from the Commissioner himself, has been very positive. We are in the process of engaging the Professional Standards Command in a little bit more detail on that at the moment. The response we have had so far is encouraging but the nature of this sort of work, given that it is quite a long-term commitment and it is a long-term goal, can often be very hard to get agencies to focus on that sort of project, given particularly an institution such as the NSW Police Force it has a myriad of short-term matters that it constantly has to react to and deal with. I think there is a recognition that there is a lot of this work going on in other jurisdictions where there is engagement between similar bodies and police forces with a view to developing an over-arching plan. It is early days. I am encouraged by the signs so far, but we do not underestimate that there will be a challenge in getting the relevant officers to focus given the commitment and the longer-term aspect that it involves.

Mr PAUL PEARCE: You referred to the data. Are you confident that the data exists and in a form that can be coherently addressed? Are there people in the New South Wales Police Force who have been maintaining this data or will you find that there are many bits and pieces without any real coherence?

Mr KEARNEY: This relates to Project Ostara, which deals with search warrants and police compliance with their own policies and procedures around search warrants. We have approached it in two stages. In the first stage we went out to police looking at a very small number of searches but gathered a large amount of data—that is, a large number of documents and other data—about each of the searches. From that data we are able to identify those pieces of information that we will need to assess police compliance with procedures. Based on that, we will then go to a wider sample of commands in regard to a larger sample of searches, but with a much smaller data set in mind. We are only at the very

preliminary stages at the moment. It is a document rich area in the New South Wales Police Force.

CHAIR: That in itself could create a problem for the Commission in going through all those documents and collating them to get to the end result.

Mr KEARNEY: It will take some time. However, I am expecting to see a lot of documents that look the same—for example, the name of the independent officer or the command that they come from will be in the same kind of location within the same documentation. While there will be a lot of data, we should be able to get to the bits we need reasonably easily.

Mr PAUL PEARCE: You said earlier that you are encouraged by the police response. I presume that is at a senior level. Has there been any indication that a senior officer will be given a brief to work with you on this?

Mr PRITCHARD: A dedicated officer has not been allocated yet. However, we anticipate from how we have engaged so far that the Professional Standards Command, and therefore Assistant Commissioner Carey, who is in charge, would take the running. The idea is that it would also operate at the higher level between the Commissioner and me. At this stage, in terms of progressing further with the detail, we have not had any formal announcement along those lines. That is whom we have engaged and it is our understanding of where the running would be taken.

CHAIR: Are you are happy with the way that the New South Wales Police Force is making progress with early intervention systems?

Mr PRITCHARD: It has stalled a bit at the moment. As this Committee would know from its own inquiry, some significant progress has been made. An application has been made for supplementary funding to develop the necessary systems to capture the information that the EIS relies upon very heavily. We have not had any word about the outcome of that. There were some other hiccups along the way with a change in the project manager. These things could always be done faster, but we have not encountered any resistance, if I can put it that way. There is a strong commitment to do it and to advance it. Like everything else and as was anticipated, it will come at a price. That is where we are a bit held up at the moment.

Mr MALCOLM KERR: Have the police made an application for further funding?

Mr PRITCHARD: I stand corrected. Mr Kearney advises me that the application is internal as opposed to any bid to Treasury. It is an internal application seeking funding within the existing police resources.

Mr PAUL PEARCE: From what level in the Police Force would that application have come?

Mr KEARNEY: I do not think we can say specifically. The originating agent was the Professional Standards Command, and I know it has the support of the Assistant Commissioner responsible. As to whether it has been taken any further, I cannot say.

Mr PAUL PEARCE: Anything of this nature needs to be pushed from above and at a very senior level. Unless it is being pushed at that senior level it will simply not progress, particularly if we are talking about movement of moneys within the department.

Mr PRITCHARD: I agree entirely. That has always been a concern. While the commitment is there and all the right things are said, and given the prevailing budgetary environment across the sector as a whole, it could be the sort of matter that falls by the wayside. From my dealings with the Commissioner I know there is a commitment, but there is also an obligation on the Commission as the other interested party to ensure there is no backsliding, if I can put it that way. So far we are keeping an eye on it and we are waiting to see what happens.

Ms SYLVIA HALE: Unfortunately I received a copy of the report on Operation Manta only on Friday, so I have had an opportunity only to skim it in the most superficial way. I was struck by the sheer diversity of the commands and the different influences that could be brought to bear on officers. This is a very roundabout way of getting to the question. One of things that I have been conscious of while I have been in this Parliament is complaints about infractions of rules by fairly junior officers. A consistent theme in those complaints has been, for example, the failure to wear identification tags. I am wondering, given that if you have this preparedness to turn a blind eye to the rules at that very junior level, should there be a focus at some time to emphasise the importance of acting in accordance with the rules at that very junior level, when people are first starting out their careers? Would that in some way overcome that preparedness to breach the rules and regulations when people arrive at a more senior level?

Mr PRITCHARD: As a general principle, I do not think there is any doubt, particularly for younger officers who join, that it is very important that there not be slippage, if I can put it that way, in the sense that the minor matters that you referred to, in certain situations and for certain officers I suppose, can lead to, I suppose, more serious misconduct if not checked or reined in at that time. I do not know whether there is anything particular in relation to Project Manta in the sense of some sort of uneven or ad hoc compliance or enforcement of minor infractions across commands that came out. I do not think anything suggested that.

Mr KEARNEY: The emphasis in Manta was more on what was special about commands, what was unique about them. Corporate policies and the like tend to deal with agency-wide risks in misconduct; inappropriate use of phones and motor vehicles, those kinds of things. Current policies do not take into account significantly those risks that are unique to a command. What is it about its environment—where the command is located, the nature of its population, the nature of its staffing levels and what not—that make it unique, that present special risks that need to be communicated to staff so that they can identify them when they occur and deal with them appropriately.

Mr PRITCHARD: What came out of it too, as Mr Kearney touched on, was that there was not a uniform understanding of misconduct. Officers, commanders or local area commanders tended to have, I suppose, their own individual personal ideas of what was a misconduct threat. There were similarities across commands, as Mr Kearney said, with the misuse of phones or cars. But they did not say in what way that would be a misconduct risk. Perhaps there was a bit of an inability to articulate how that manifested itself in some way. That was something in particular that was highlighted and there was some suggestion, or

emphasis, on the need to even define basic terms such as that across the force as a whole. That may be a reflection of the geographical or particular features of a particular command: rural, urban, specialised, things like that.

I thought that was very stark as a result of the project—at least it could lead to the force being able to give some thought to, well, when it is said to be misconduct, there appears to be perhaps not an agreed position as regards misconduct of what. Things like that were very helpful. Coming back to your question, no. As Mr Kearney said, we did not identify or pinpoint anything like that that would suggest that it could lead to greater or higher levels of misconduct that was not checked or brought under control at that level straight away.

Mr KEARNEY: So, not to do with the slippery slope, more to do with special risks, the unique risks.

Ms SYLVIA HALE: One point in the report was that officers in country commands, particularly long-serving officers, may exert great influence that is not reflected in their level of seniority. How do you overcome something like that? In those areas people have been in the job for a long time and are obviously incredibly well known and influential within their communities.

Mr PRITCHARD: I suppose it is a two-edged sword, in a sense, in that it can have the benefit of the local officers' experience. They know the particular features, or the particular demographics and so on, of a particular command, which can feed into effective policing. The message is the same one that goes to the Police Force as a whole: awareness of those sorts of risks. We have seen that in a couple of investigations where that very matter has come to the fore, because an officer has been seen in that way and it is almost expected—not by other police officers—by other members of the community that somehow or other that is a benefit that can be bestowed that otherwise would not be. The same messages that go out in terms of preventing misconduct generally would have the same application to that particular circumstance as well.

Ms SYLVIA HALE: How will you build on the research you have undertaken for research of Project Manta? How will that direct your efforts in future?

Mr KEARNEY: There are three parts to Manta. There are two reports and three parts. The first two parts have been dealt with in the first report; that is the identification of misconduct risks and the communication of those risks. The next part will concern how police manage those risks, and whether there is any scope for some improvement based on the analysis of the material we have obtained. Once that second report has been published, we will work with police in a fairly ongoing way to assist them in the development of policies, potentially even training material. We are probably in a position to commit resources to produce product for them: information sheets for commands, or for communication purposes, and those kinds of things. We will maintain a fairly close involvement with police.

Ms SYLVIA HALE: When do you expect that second report to be published?

Mr KEARNEY: Again, we are somewhat bound by the consultation process, which can take time. Next year definitely, whether towards the end of the financial year or later I cannot say at this stage. But definitely next year.

CHAIR: Commissioner, a few times you have raised the issue of reporting and the amount of reports you have to work with as Commissioner. Do you think the Police Force reports too much? Or do you think the level of reporting is adequate?

Mr PRITCHARD: Sorry, Mr Chair, I might ask you to clarify that. Do you mean reporting by police?

CHAIR: Yes, reporting by the police. We seem to be tying up your officers for quite considerable lengths of time, when they are doing their job.

Mr PRITCHARD: Well, a balance always has to be struck. At the moment it is not a complaint from my position, given the level of officer that my position gets exposed to in terms of the Commission's activities. Police officers are bound by, or bogged down in, red tape or fighting crime with one hand tied behind their backs, those sorts of shorthand expressions if I can use those. No, I do not think so. I do not think there is any doubt that there is an argument that if putting in place prevention measures or building capacity can be an administrative burden. The balance for commissions like these is to understand the sole purpose of the existence of the New South Wales Police Force is not to be investigated and that we deal with a specific aspect of what is a very large range of functions that the Police Force does.

At the moment, as I said, the cost of having oversight is that it can be seen—and I think it is probably more of a perception rather than anything real—as bogging down or tying up people, or putting people through red tape. The flipside of that, which we may come to in the in-camera session, I suppose, is what came out in the Rhodium review with the Crime Commission, which may be the other extreme, if I can put it that way. But there is a balance. I suppose there are a lot of police officers out there operationally who would put that as an argument. We are mindful of it when we make recommendations or we see misconduct. I think there is a need for agencies of this kind not to rush to judgement or think that merely because misconduct has been exposed, therefore some elaborate regime of checking has to be put in place to deal with it. You have to be sensible about that. However, I do not think at the same time you could say that the balance that you do strike is not going to have some sort of effect in tying or getting officers bogged down in some degree of red tape. But, at the moment, as I said, to the extent that I come into contact with officers in the field, as it were, yes, it is a complaint you hear but it is not a refrain that we hear a lot of.

CHAIR: These questions were posed to me over the weekend when I ran into an off-duty officer. The other issue is work hours. Do you think that the 12-hour shift has any bearing because of the high level of turnover of police and them working three days on, four days off, four days on, three days off? Do you think that in any way inhibits an officer or helps an officer do his job without getting involved in secondary job issues, which could create some corruption down the track? It is a long bow?

Mr PRITCHARD: I do not think there is any doubt that the block rostering system, as it is referred to, which allows for those sorts of periods of long shift work followed by extended days off, in terms of it providing opportunity for secondary employment for other officers, which they are entitled to do, raises risks; from a customer service point of view too, if I can use that term. There is a complaint that is often heard that people who wish to contact an officer who may have been assigned to a matter is often not available.

But from the point of view of the Commission and its interest in things like secondary employment, yes, I do think that having that amount of time off does mean that there is greater scope for not only secondary employment issues but idle hands. I suppose in those areas where we have seen secondary employment is creating risks or where complaints of misconduct have come to our notice as a result of secondary employment activities, it is usually associated with those officers who are participating and gain from the benefits of the block rostering. Other than that sort of perspective, I probably could not comment any more on that, sorry, Mr Chair.

Mr KEARNEY: We are doing a little bit of work at the moment on secondary employment and improper associations. We will probably get a paper out in the near future.

The Hon. LYNDA VOLTZ: I ask a follow-up question. When you are looking at those issues of secondary employment, are you looking at other police forces that work on more stable rosters, eight-hour shifts, five days a week and doing comparisons?

Mr KEARNEY: We are not looking at the shift arrangement. We are more focused on the associations that arise from secondary employment. I think, as the Commissioner has pointed out, there may be a relationship between the block rostering system and the capacity of an officer to engage in secondary employment but we are not focused on that but rather the next step—what are the relationships that are formed because of the secondary employment? Are they with people who you might think it would be inappropriate for an officer to have an association with?

The Hon. LYNDA VOLTZ: I am wondering if other police forces with different models of employment, five day a week employment, have a higher incidence of secondary employment than police forces that work on these large 12-hour shift rosters?

Mr PRITCHARD: I suppose the short answer to your question is not at the moment and I imagine that Commissioner Scipione would say that the number of officers who do benefit from the block rostering given the overall number of police numbers in New South Wales is not huge, but certainly to the extent that we see it in that it has manifested itself in the form of complaints about officers with secondary employment, as Mr Kearney said, our interest tends to relate to the industry or the area: licensing, the motor vehicle trade, things of that nature where there is high risk associated with the activity, for a police officer at least any way, bringing them into contract with, say motor vehicle rebirthing, undesirables, if I can put it that way.

That is probably, I suppose, the only angle at which we come from it, and those officers that we do see tend to be those who benefit from the block rostering. You do not see many detectives, as it were, having complaints made about their secondary employment activities, if only because, as you pointed out, they are not in a position really to benefit from it. Most of the secondary employment we do see tends to be with officers who have trades, I suppose, and therefore can carry out the trade as it suits them when they are not working, whereas detectives, who work on a set roster, are not really in a position to pursue another job, as it were, outside of the main one they have.

Mr PAUL PEARCE: Has the Commission received a response from the Professional Standards Command about the implementation of the Commission's strategies regarding the unauthorised disclosure of confidential information?

Mr KEARNEY: This one is a bit complicated. We approached this issue with police a little bit differently than we would normally. In most of our matters we do research, we produce a report that contains recommendations, we might consult with the police in regard to the recommendations, finalise the report and publish. We approached this one a little bit differently. We had a roundtable with police and with the Ombudsman. We came up with essentially what is an agreement about how these matters should be dealt with. The agreement addressed issues such as clarifying the terminology, for example, what is confidential information and what is not; clarifying circumstances when that information may be communicated and when it may not—those kinds of things.

That agreement has been essentially implemented; we are all as one. I am not sure whether we expect a formal response from police supporting the agreement. We have not asked for one. Police have agreed at appropriate officer level and are proceeding to get on with the work that needs to be done.

Ms SYLVIA HALE: You were talking about the New South Wales Police Force being document rich. Apart from someone's notebook, are all documents consistent across all commands and are all documents in electronic form so that the data contained within them can be readily accessed?

Mr KEARNEY: There is a wide range of documents held by police for a number of purposes, some administrative, some operational. Many documents, mostly operational, are not held centrally whereas many documents of an administrative nature may well be held centrally. Many documents, particularly operational ones, are held locally within the command, which means if you want to get a hold of those documents or the information they contain, you need to go to the command.

(Evidence continued in camera)

(Public hearing resumed)

(The witnesses withdrew)

(The Committee adjourned at 11.22 a.m.)

Appendix 1 - Minutes of meetings

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 22)

10:00 am Monday 30 November 2009
Jubilee Room, Parliament House

Members Present

Ms Hale MLC	Mr Hickey MP	Mr Kerr MP
Mr Lynn MLC	Mr Pearce MP	Ms Voltz MLC

Apologies

Mr Draper MP

Also Present

Nina Barrett, Jonathan Elliott, Hilary Parker, Pru Sheaves

The meeting commenced at 10:05am.

TWELFTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION

Mr John Pritchard, Commissioner; Mr Andrew Nattress, Director of Operations; Mr Allan Kearney, Director, Prevention and Information; and Ms Michelle O'Brien, Commission Solicitor, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, affirmed. The Commissioner tabled his answers to questions on notice, with the omission of questions 9, 10 and 11 which he had requested remain confidential to the Committee.

Resolved on the motion of Mr Pearce, seconded by Mr Kerr, that the PIC's confidential answers to questions on notice be dealt with in camera at the end of the public hearing.

The Chair questioned the witnesses followed by other members of the committee.

In Camera Evidence

The Chair commenced the in camera hearing at 10.40am for the purpose of clarifying matters arising from the PIC's answers to questions on notice numbers 9, 10 and 11.

The Chair questioned the witnesses, followed by other members of the committee.

Evidence concluded, the witnesses withdrew. The committee adjourned at 11.22pm until 2.00pm.

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