



**COMMITTEE ON THE OFFICE OF
THE OMBUDSMAN AND
THE POLICE INTEGRITY COMMISSION**

**RESEARCH REPORT ON TRENDS
IN POLICE CORRUPTION**

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ISBN 0 7347 6899 0

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Chairman's Foreword

This research report is different to the Committee's usual inquiry reports. It arose from the Committee's legislative requirement to conduct research into trends in police corruption, and therefore required a different approach and methodology.

The report aims to consider current trends in police corruption within the theoretical framework of current research into various aspects of police corruption, as well as the historical context specific to New South Wales. Some trends in police corruption have been present at varying levels since Governor Philip established a Night Watch with members drawn from amongst the best behaved convicts. Other trends have waxed and waned at different times but, in general, police corruption has flourished at times when poor police oversight and poorly focused laws have combined to create extensive opportunities for police to engage in corrupt activities.

Given the importance of effective oversight for police, the current arrangements for police complaints are examined in some detail in this report. Evidence of strong support for the current system of oversight was given by senior police, the executive of the Police Association, as well as the Police Integrity Commission and the Office of the Ombudsman during hearings. After hearing this evidence, the Committee considered that the current arrangements are the most suitable.

One issue that emerges clearly from a range of sources, including the testimony of corrupt officers at various inquiries, and research from other jurisdictions, is that police corruption starts with a series of small acts, and, most often, escalates. These acts form a recognisable series of critical indicators that can help identify officers at risk of corruption. Corruption risk indicators can include things such as an officer's complaints history and environmental issues, including working in areas with high levels of community dysfunction or areas with entrenched drug markets.

The two recommendations arising from this report attempt to address the issue of corruption risk. The first recommendation concerns research into officers who are removed from NSW Police under the Commissioner's Confidence provision, or who resign when this provision is invoked. The second recommendation involves consideration of the establishment of an early warning system to identify and assist vulnerable police officers.

This is the first time the Committee has reported under this statutory function, and the evidence gathered far exceeds the scope of this report. As such, I hope that the incoming Committee will consider using this information as the basis for a series of research reports into other aspects of trends in police corruption.

I would like to thank the members of NSW Police, the Police Association, the Police Integrity Commission and the Office of the Ombudsman for the spirit of openness in which they participated in this report. I would also like to thank the members of the Committee for their bipartisan approach to the hearings and report. I hope this has been a fruitful process for all involved. I would also like to thank the committee secretariat.

Paul Lynch MP
Chairman

Executive Summary and Recommendations

This Research Report has set out to consider trends in police corruption in New South Wales, which has proved to be a voluminous task. The information gathered by the Committee in a day and a half of hearings has provided it with sufficient information for a series of research reports on various important aspects of trends in police corruption. This first report considers trends in police corruption within a broad framework of ethics and accountability, supplemented by a historical review of policing in New South Wales.

Chapter One offers a theoretical framework in which to consider the thorny issue of police corruption. The prominence of individual deviance and environmental factors in causing police to become corrupt are discussed, as is their impact on promoting police corruption. Corruption for personal gain and process corruption is also considered, as is the apparent cycle of scandal and reform which often distinguishes police corruption. Ethical and administrative approaches to remedying police corruption are also examined.

The theoretical framework for the discussion of corruption trends is supplemented by a brief and selective history of policing and law and order in New South Wales in Chapter Two. This allows for the current issues in police corruption to be contextualised, and the issue of corruption to be understood as integral to the cultural and historical construction of policing rather than an aberration. Reviewing the history of policing in NSW allows for comparisons to be made about the types of corrupt activity across time, as well as for lessons to be drawn about how to avoid creating organisational environments conducive to corruption.

In Chapter Three the comparison of the pre-Wood Royal Commission oversight and complaints system for police with the existing complaints process, permits an examination and assessment of the effective functioning of the current system. Chapter Four focuses on particular features of the current oversight and complaints system, drug and alcohol testing, integrity testing and joint operations. The relative successes of these three initiatives allows for some generalisations to be made about trends in police corruption.

Chapter Five outlines the difficulties in researching trends in police corruption. Corrupt activities are discovered by accident or investigation. Therefore exposure and reporting occurs in an ad hoc manner. As such, the data used in this report can not be regarded as extensive, or even as an accurate measure of the level of corruption that exists within NSW Police. The data used was gathered from Police Integrity Commission Reports to Parliament, information from NSW Police about integrity testing, drug testing and joint operations, and comparable overseas jurisdictions. Within the strict limitations of the data, some generalisations can be made about trends in police corruption. Policing drugs is a particular problem, especially as societal attitudes to drug use have changed over the past twenty years. Recreational drug use by police officers appears to be an emerging problem. Other aspects of policing drugs are also proving difficult. For example, the most common charge for police who fail integrity tests is possessing prohibited drugs. There also appears to be a persistence of more traditional corrupt activities – ‘greenlighting’ criminals, accepting payments from drug dealers to turn a ‘blind eye’ to their activities, and accepting payments in return for reducing criminal charges.

What emerges clearly from the theoretical framework, the testimony of corrupt officers at Royal Commissions and before the Police Integrity Commission, and research from NSW and other jurisdictions is that police corruption starts with a series of small acts and in most cases escalates from there. These acts form a series of recognised, critical indicators that identify officers at risk of corruption. These indicators can include the officer's personal history such as their complaints records, and environmental issues such as working in areas with high levels of poverty and entrenched drug markets. Chapter Five also discusses the potential for NSW Police to establish an Early Warning System to assist in identifying those officers who are considered to be vulnerable to corruption. Much of the ground work for a system such as this has already been laid by Special Crime and Internal Affairs in a series of research projects into complaints outcomes and officers at risk.

During the course of hearings for the report, the Committee gathered evidence on a wide range of issues dealing with police corruption that have not been addressed in this report. It is proposed that future Committee Research Reports will deal with these matters.

RECOMMENDATIONS

The Committee recommends that the Police Integrity Commission consider conducting research into the officers who are removed from NSW Police under s.181D or who resign when s.181D proceedings are initiated. This research should identify the primary reasons why police are dismissed, and seek to identify any shared characteristics of these officers such as particular features of their career histories and the areas in which they worked.

The Committee also recommends that the Police Integrity Commission and the NSW Ombudsman consider assisting NSW Police in establishing the indicators for an Early Warning System to identify and assist vulnerable police officers. In doing so, the Committee acknowledges the work already done to this end by the Ombudsman in the Report *Improving the management of complaints – identifying and managing officers with complaint histories of significance* and the work done by the Police Integrity Commission in *Project Oracle*. The Committee also acknowledges the work done by the Strategic Projects Team in the Special Crime and Internal Affairs Command to this end.

Introduction

This report arises from the statutory function of the Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission under s.95(1)(c) of the *Police Integrity Commission Act 1996*, 'to examine trends or changes in police corruption, and report to both Houses of Parliament any changes which the Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector'.

Given the Committee's role in overseeing the Police Integrity Commission, which investigates the most serious forms of police corruption, and the Office of the Ombudsman, which oversees NSW Police in dealing with all other complaints about police, the Committee is uniquely placed to examine trends in police corruption. In order to do this effectively, the Committee had to examine the operation of the police oversight system. Indeed, trends in police corruption and the police oversight system are closely linked, as the Wood Royal Commission discovered 'flawed oversight allows corrupt activities to flourish'.

This report is particularly timely given the two principal pieces of legislation that enshrine the current system of police oversight either have been, or are currently being, reviewed. The review of the *Police Integrity Commission Act 1996*, due to be tabled in June 2002, has yet to be presented to the Parliament. The review of the *Police Act 1990* is currently under way and is due to be tabled on 31 December 2002. As such, this report is not only a means of assessing if there are any discernible trends in police corruption, it is also currently the only examination of the existing police oversight and complaints system.

The Report is divided into three main sections. Chapter One provides a theoretical framework for the Committee's consideration of police corruption. Causes of police corruption are considered, as is the impact of individual deviance or 'rotten apples', and the environment within which police work takes place, ie the 'rotten barrel'. A typology of corrupt acts is constructed which allows the idea of the 'slippery-slope' of police corruption, where small acts of misconduct lead to big acts of corruption, to be explored. Evidence given by corrupt police at various Commissions of Inquiry is considered in light of this, along with attempts by police organisations to treat corruption as either an ethical or an administrative problem. Possible reasons for the cyclical nature of police corruption are also considered.

This theoretical framework is supplemented by the second section of the report – a brief and selective historical overview of policing and law and order in New South Wales in Chapter Two. This allows for the current issues in police corruption to be contextualised, and the issue of corruption to be understood as integral to cultural and historical construction of policing rather than an inexplicably recurring aberration. This historical review allows for comparisons to be made about the continuity of types of corrupt activity across time, as well as for lessons to be drawn about how to avoid creating organisational environments conducive to corruption. The review touches on key incidents from the establishment of a Night Watch to the ongoing Police Integrity Commission Operation Florida. It should be noted that in the absence of a primary or authoritative sources, or access to them, the history relies by necessity on accounts provided in secondary sources, particularly media reports and the work of commentators. Such sources are fully attributed.

Chapter Three continues the historical overview with a comparison of the pre-Wood Royal Commission oversight and complaints system and the existing oversight and complaints process. This permits an examination and assessment of the effective functioning of the current system.

The third section of the report is an examination and assessment of the current oversight system. Chapter Four focuses on drug and alcohol testing, integrity testing and joint operations. The relative successes of these three initiatives allow for some generalisations to be made about trends in police corruption.

Chapter Five commences with a warning about the difficulties of research on trends in police corruption. The secretive and consensual nature of corruption means that it is discovered by accident or investigation. As exposure and, therefore, reporting of corruption occurs in an ad hoc manner, the data used in this report cannot be regarded as an extensive, or even an accurate measure of the level of corruption that exists within NSW Police. The data used was gathered from Police Integrity Commission Reports to Parliament, information from NSW Police about integrity testing, drug testing and joint operations, and comparable overseas jurisdictions. Within these strict limitations the Committee was able to draw some conclusions about trends in police corruption.

The Committee held public hearings to gather qualitative evidence about trends in police corruption and the effectiveness of the current oversight arrangements. This included hearing evidence from the Office of the Ombudsman, the Police Integrity Commission, the Commander of Special Crime and Internal Affairs NSW Police, the Commander of Employee Management NSW Police, the Director of Health Services NSW Police and the Police Association.

During these hearings the Committee gathered a large amount of evidence concerning aspects of police corruption, and the complaints and oversight system that were beyond the scope of this report. As such it is proposed that this information should form the basis of a series of reports into corruption and oversight related matters such as the Qualitative and Strategic Audit of the Reform Process during the course of the 53rd Parliament.

Chapter One – A Typology Of Police Corruption

This chapter provides the theoretical framework within which the Committee considered trends in police corruption. There is a large body of work on ethics and accountability in policing, which has grown progressively around each public revelation of police misconduct or corruption. The literature review with which the chapter commences is based on British and American writings which have formed the basis for most of the considerations of Australian policing. Years are included after the writer's names to indicate the year that their work was published. The concerns of the times reverberate through their writings, showing the close links between policing and politics.

Definitions of police corruption are also discussed in this chapter. This is done by considering the types and dimensions of police conduct from an officer receiving some form of material gain without violating the law – for example a free cup of coffee – to planting evidence to assist a flimsy case. Sources of police corruption are considered in terms of the impact of individual deviance, 'rotten apples', and the nature of policing and the environment within which it occurs, 'the rotten barrel'. Evidence given by corrupt police at various Commissions of Inquiry is considered in light of these competing explanations. Finally, cycles of police corruption are briefly addressed, as are ethical and administrative solutions to corruption.

1.1 A brief review of policing and ethics literature¹

This section of the report canvasses the genesis of the main ideas and theories concerning the ethical basis and role of policing, as argued by the leading commentators in the field. Unsurprisingly, these debates are largely generated by the exposure of corruption in policing and aimed at finding ways to resolve ethical and administrative uncertainties that are characteristic of policing. This literature is divided into American and British responses to policing scandals as these are the debates that have fundamentally shaped the Australian response to police corruption.

The American experience

- O.W. Wilson was a police chief during the 1960s at a time when American policing was struggling to free itself from corrupt local democracy. Wilson's vision for policing was of a high-tech, highly trained corps of police officers operating to clear rules, independent of local politics, acting with impartiality and integrity. This is described by Elliston and Feldberg (1985) as the 'moral administrator' role of police and by Klokars (1985) as the 'snappy bureaucrat' model.
- William Westley (1970) and Jerome Skolnick (1975), both sociologists, examined the ability of police to meet Wilson's professional agenda. At a time when American political consensus was breaking down under the weight of the Vietnam War and race riots, Westley studied violence by police officers. For Westley, the police failure to attain Wilson's vision was a product of a culture of isolation and mutually hostile relationships with the public. Westley's solution was for more open and accountable policing. For Skolnick, the problem lay in the inherent tension within the police role. He viewed maintaining order and

¹ The material used in this section comes from P. Neyroud & A. Beckley, *Policing, ethics and human rights*, William Publishing, Cullompton, 2001, pp.5-9.

upholding the law as potentially irreconcilable. How could an officer maintain order by coercive force and still respect the law and uphold individual rights? Skolnick's solution was that legality and upholding the law had to be an officer's priority.

- W.K. Muir (1977) and Herman Goldstein (1977) were both writing about policing against a backdrop of concern about the police use of discretion. Goldstein felt that the answer lay with managers who should formalise informal processes and ensure that officers were trained in the proper exercise of discretion. Muir took a bottom up approach to the same problem and, through observation of officers on patrol, saw morality more as a product of police officers' view of human nature. While trainers and managers could influence behaviour, individual officers had free will to exercise choice about their style of policing. Both Muir and Goldstein are proponents of the idea of free will amongst officers, in contrast to Westley and Skolnick for whom the structural and social conditions of policing predetermine morality.
- For the writings of Elliston and Feldberg (1985) and Garry Marx (1988), the growth of covert policing methods in the US formed the backdrop. A series of high profile scandals had raised questions about privacy and the use of deceptive policing methods. Elliston and Feldberg tried to show that, in debating such issues, standard approaches to moral philosophy such as utilitarianism were flawed. A more complex approach involving other disciplines such as law and sociology was required. They called this approach to police ethics 'joined up thinking'. Marx applied this approach to covert policing and what he termed 'surveillance culture', which he felt was damaging privacy, trust and freedom of expression. He maintained there was a distinction between 'ethical deception' (authorised by the citizenry and controlled by law) and 'deceptive ethics' (the state doing by stealth what it could not do lawfully). The difference between the two was not just a matter of law; the outcome and likely collateral impacts also needed to be considered.
- Edwin Delattre (1989) and Lawrence Sherman (1985) both tried to find solutions to the seemingly endemic problem of corruption. They returned to the ideas of Muir and Skolnick - free will and the nature of policing. For Delattre, the solution was 'character'. The way to achieve ethical policing was to recruit and develop people who had the habit of integrity. For Sherman, the environment of temptation in which the recruit worked was the problem. The 'slippery slope' from small gifts and gratuities to major graft could only be prevented by police managers being intolerant of minor gratuities.
- Joycelyn Pollock (1998) and John Kleinig (1996) were writing after a decade of debate about the role of police, police brutality (particularly after the beating of Rodney King)², problems with covert policing and new corruption scandals. They sought a solution in broadening the definition of police as 'public servants', rather than 'crime fighters' (Pollock) or 'social peacekeepers' (Kleinig), who needed to build trust and reconciliation in communities.
- Tom Barker (1996) has had a longstanding focus on police corruption. His catalyst was the resurgence of corruption in the US and the issues arising from

² In 1991, Rodney King, a black man, was pulled over for traffic violations by four white Los Angeles Police Officers and severely beaten. The beating was videoed by a bystander. The officers were charged with assault, but acquitted in 1992, causing rioting in Los Angeles -- and to a lesser extent in San Francisco, Atlanta, Seattle and Pittsburgh.
<http://www.time.com/time/newsfiles/rodneyking/>

the trial of O.J. Simpson. The resulting crisis of public confidence in policing was typified by adverse jury votes and national calls for investigations into policing. This parallels debates in the UK about the murder of Stephen Lawrence.³ Barker proposed a proactive approach in order to re-establish the police reputation for integrity. This involved opportunity reduction, undermining peer pressure for unethical activities, and deterrence.

The UK experience

- Robert Reiner (1978) first concentrated on police culture in the form of 'police unionism' which was dominant in the 1970s arising from poor pay and conditions. In 1985 he turned to politics and accountability, and focused on the 'democratic deficit' in policing. His writing is in line with Skolnick, that police culture and behaviour is a product of their role, and the external environment. His most direct treatment of police morality has been his studies of police images in the media.
- Lord Scarman (1982), reporting on the Brixton riots,⁴ placed great emphasis on the importance of 'consent and balance' in policing. The community relies on police to have the skills and common sense to exercise discretion and do so in a way that balances maintaining order and upholding the law. Scarman argued maintaining order should always be given the highest priority. By implication then, 'hard policing', which overemphasised enforcement and failed to take into account community support, was not good policing. This approach, which is a reversal of Skolnick's solution to the dilemma of balancing enforcement with upholding the law, became the dominant ideology in British policing by the end of the 1980s.
- John Alderson (1979 and 1984), who as Chief Constable gave evidence to the Scarman Inquiry,⁵ developed the theory of 'community policing'. This concept is grounded in the notion of contractual government. Implicit in this is the idea that policing is an activity for the whole community, within which the police role was one of balancing competing rights. This has become more explicit in Anderson's 1998 work where securing and preserving human rights has become central to the police role.
- Andrew Rutherford (1993) concentrated on the values of the leaders in policing and criminal justice agencies at the end of a long period of conservative government during which the debate about criminal justice had polarised. Rutherford divided the dominant debates into three groups. Punishment – a belief in the punitive degradation of offenders; efficiency – a commitment to

³ In 1993 Stephen Lawrence, a young black man, was murdered in Eltham, England. The police investigation into the matter was inconclusive. The Lawrence family pursued private legal action, and in 1994 the Coroner concluded Stephen Lawrence's death was unlawful killing. The *Daily Mail* named the five white suspects. In 1997 an inquiry led by Sir William Macpherson into the death of Stephen Lawrence was announced, and its findings were handed down in 1999. The inquiry found London's police force 'institutionally racist' and condemned officers for 'fundamental errors'. http://news.bbc.co.uk/1/hi/special_report/1999/02/99/stephen_lawrence/285357.stm

⁴ In 1981 following aggressive targeting of street crime in Lambeth, England, police were assisting an injured young man. A crowd gathered and bottles were thrown at police and the ambulance. Against this backdrop of community tension, police continued stopping and searching young predominantly black men. The next day rioting and looting broke out with an estimated 5000 people involved. <http://www.mylambeth.co.uk/brixton/community-revealed-brixtonriots.htm>

⁵ The Scarman Inquiry examined the events leading to the riots in Brixton. It dismissed the idea of institutionalised racism in the Metropolitan Police and chose instead to locate the problems of police-black community relations at the time in racial discrimination and disadvantage of ethnic minorities. <http://www.irr.org.uk/lawrence/evidence.htm>

pragmatic, expedient management; and caring – dedication to achieving legality and humanity in society. The latter, which is the approach Rutherford clearly supports, is seen to be confronted by the constant dilemma caused by the lack of congruence between the formal mission and the informal practice of police. Rutherford suggests that this is not just a simple divide between ‘street cops’ and ‘management cops’.

- Michael Zander (1994) was a member of the Royal Commission on Criminal Justice, which looked into the spate of miscarriages of justice, many of which arose from terrorist trials such as those of the Guildford Four⁶ and the Birmingham Six.⁷ Zander argued that police officers should not blame the criminal justice system for ‘noble cause corruption’⁸, for actions thus motivated could never be right, no matter how justified by short term outcomes. Zander saw ‘noble cause corruption’ (also known as process corruption) as an action of individual choice that should be controlled by better supervision and management.
- Ralph Crawshaw (Crawshaw, Devlin and Williamson 1999) dealt with the issue of policing and human rights. This was at a time when British policing was becoming increasingly exposed to the case law of the European Convention on Human Rights, and police were losing cases in that court. Crawshaw argued that the purpose of policing has become guardianship and preservation of human rights and that police leaders must change their organisations to meet these standards. In this model, policing standards are absolute.
- Waddington (1999) sees policing in a complex relationship with the citizen and the marginalised underclass. Strong awareness of citizen rights restrain policing and force it to be more respectable. But policing is always waiting for a scandal because ‘it operates in a netherworld just beyond the limits of respectability’. Waddington sees the solution as lying in strong and inclusive citizenship and transparency in policing.

The recent shift towards evidence-based policing (paralleling the move towards evidence-based policy in government) suggests that there will be a volume of research into new policing initiatives. This, as yet, has not been forthcoming in either policing or public policy.

1.2 Defining police corruption

The term corruption is used to describe many activities, from bribery to perverting the course of justice. Commentators vary in the breadth of definitions of corruption – for some, having sex on duty is misconduct, for others it is corruption. However, most agree that police corruption includes the following types of behaviours.

⁶ Paul Hill, Gerry Conlon, Patrick Armstrong and Carole Richardson were given life sentences for bombing public houses in Guildford, Surrey. Each spent 15 years in prison before their convictions were overturned by the Court of Appeal in 1989.
<http://www.guardian.co.uk/Print/0,3858,4026056,00.html>

⁷ Paddy Joe Hill, Hugh Callaghan, Richard McIlkenny, Gerry Hunter, Billy Power and Johnny Walker were convicted of the murder of 21 people after a series of bombings in Birmingham pubs in 1975. An appeals court overturned their convictions in 1991, after 16 years in prison.
http://news.bbc.co.uk/1/hi/northern_ireland/1987928.stm

⁸ Noble cause corruption, or process corruption, involves interfering with evidence in order to gain a conviction.

Types and dimensions of police corruption ⁹	
Corruption of authority	When an officer receives some form of material gain by virtue of their position as a police officer without violating the law <i>per se</i> (for example discounts at MacDonalds).
'Kickbacks'	Receipt of goods or services or money for referring business to particular individuals or companies. In NSW there have been both Ombudsman and ICAC inquiries into kickbacks from tow truck drivers to police. ¹⁰
Opportunistic theft	Stealing from arrestees (sometimes called 'rolling'), from traffic accident victims, crime victims, or the bodies or property of dead citizens.
'Shakedowns'	Acceptance of a bribe for not following through a criminal violation – not making an arrest, filing a complaint or impounding property.
Protection of illegal activities	Police protection of those engaged in illegal activities (prostitution, drugs, pornography) enabling the business to operate. Australian vernacular 'greenlighting'. ¹¹
'The fix'	Undermining criminal investigations or proceedings, or the 'loss' of traffic tickets. Australian vernacular 'gutting', a brief to weaken the case; and 'pulling', withdrawing or losing a brief to prevent prosecution. Also 'running interference', to hamper an investigation.
Direct criminal activities	A police officer commits a crime against a person or a property for personal gain in direct violation of departmental and criminal norms.
Internal payoffs	Prerogatives available to police officers (holidays, shift allocations, promotion) are bought, bartered or sold.
'Flaking or padding'	Planting of or adding to evidence. Australian vernacular 'load up' or 'brick up'.

Police corruption is typified for many people by bribery. Therefore, it follows that corruption is generally about personal pecuniary gain and that it is undertaken by individuals acting in secrecy. This view sits uneasily with evidence from a range of investigations into police corruption which reveal corruption as endemic and systematic, involving networked groups of officers acting for both personal profit and in some cases group glory.

Police corruption necessarily involves an abuse of position. As police officers

⁹ T. Newburn, *Understanding and preventing police corruption: lessons from the literature*, Police Research Series Paper 110, Home Office, 1999, p.4.

¹⁰ For a comprehensive list of judicial and other inquiries into police, see Appendix 5.

¹¹ All examples of Australian vernacular in this section are taken from J. R. T. Wood, *Royal Commission into the New South Wales Police Service, Final Report Volume 1*, 1997, Glossary, pp.xvi – xix.

exercise extraordinary powers over members of the public, any corrupt act by officers is an abuse of the 'special trust' invested in their position. However, corruption that leads to perceived lawful outcomes also can occur – process corruption or noble cause corruption is an example of this. Kleinig's broad definition of corruption, that is when police officers 'in exercising or failing to exercise their authority, ... act with the primary intention of furthering private or departmental/divisional advantage'¹² is useful in that it encompasses both the means and the ends of corrupt acts.

The Royal Commission into the New South Police Service employed a similar, but broader definition:

Corruption had accordingly been taken to comprise 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.¹³

Wood specifies a number of acts as corrupt, including neglect of duty, fabricating evidence, applying trickery, and concealing any form of misconduct by another member of the Police Service.¹⁴ This definition includes Kleinig's means and ends of corrupt acts – but also encompasses a number of acts such as having sex on duty, which fall outside other definitions of corruption.

Implicit in any typology of corruption is an ordering of acts from least serious to most serious. This carries with it the idea that corruption is a slippery slope. For example, accepting the free coffee will lead inevitably to accepting bribes. Two schools of thought exist about the 'slippery slope' argument. The logical version argues that the acceptance of a minor gift, the cup of coffee, involves the same implicit rationale as the acceptance of a major gratuity, the bribe. Both acts are not only wrong, they are wrong for the same reason. A variation on this version is that while there is a gap between the coffee and the bribe, there are other levels of gifts and gratuities between these two that make setting a logical boundary impossible.¹⁵

The second version of the 'slippery slope' is the psychological version. Sherman's 1985 paper 'Becoming Bent' charts what he calls the police officer's 'moral career', the process of self-labelling that takes place as an officer moves from minor forms of corruption to major. The basis of Sherman's argument is that once a certain practice is accepted, people are likely to go on to accept other practices that are increasingly unacceptable. Two particular practices prompt officers to step onto the slope and make it difficult for police to stop the slide. These practices are affiliation, the social ties that bind police together, and signification, the way in which police represent their behaviour to themselves to link the various stages of corruption.¹⁶

As Sherman sees it, almost immediately the young police recruit learns that being a police officer binds them to one particular group and alienates them from another. Membership of their group gives access to a range of things, including power over

¹² J. Kleinig, *The ethics of policing*, Cambridge University Press, Cambridge, 1996, p.166.

¹³ J.R.T. Wood, *Final Report. Royal Commission into the New South Wales Police Service*, 1997, p.25.

¹⁴ *ibid.*

¹⁵ Kleinig, *op. cit.*, p.174.

¹⁶ *ibid.*, p.178.

the public and access to 'perks'. In tightly identified groups, peer pressure is a major influence on group norms, such as the acceptance of perks. Studies of Australian police officers have shown a correlation between years of service and a drop in the perceived seriousness of incidences such as potential conflicts of interest for officers and reasonable use of force. This study shows that recruits, particularly male recruits, acculturate within one year of service.¹⁷ The results of the study supports Sherman's assertion that the 'slippery slope' of corruption is greased by the relatively small moral gaps between each act of corruption.¹⁸

Evidence from inquiries into the activities of corrupt officers supports Sherman's idea that corruption starts with small acts. For example, Trevor Haken, the detective sergeant who 'rolled over' and formed the central part of the Wood Royal Commission's inquiry into corruption admitted that his first corrupt act involved accepting gratuities from tow truck drivers and undertakers. As a junior detective he engaged in opportunistic theft. When he later joined the Drug Squad CIB, he became an active participant in systematic, organised corruption.¹⁹

Other commentators, such as Feldberg, argue that most police are clearly able to grasp the difference between a cup of coffee and a bribe. Furthermore most officers are able to accept the coffee and understand the risks inherent in accepting such a gift. That an officer is prepared to accept a cup of coffee is not an indication that the same officer is prepared to lie under oath.²⁰ Such 'line drawing' was memorably described during the 1971 Knapp Commission into corruption in the New York Police Department:

There are three kinds of men in the department... I call them the birds, the grass eaters and the meat eaters. The birds just fly up high. They don't eat anything either because they are honest or because they don't have any good opportunities. The grass eaters, well they'll accept a cup of coffee or a free meal or a television set wholesale from a merchant, but they draw a line. The meat eaters are different. They're out looking. They're on a pad with gamblers, they deal in junk, or they'd compromise a homicide investigation for money.²¹

Wood also reported similar 'line drawing' activities in the Royal Commission into the New South Wales Police Service. The witness codenamed JTF6 testified that he held a strong belief about acceptable and unacceptable forms of corruption. So entrenched was this distinction that he risked exposing his own corrupt activities by reporting those whose conduct he believed to be 'beyond the pale'. JTF6's corrupt activities revolved around planting evidence on those people he believed to be involved in the drug trade. At the end of his career, he was sharing in money stolen by officers from raids on dealers, but justified this as recompense for paying informants from his own pocket. On becoming aware of Trevor Haken's connections to the Bayeh group²² and the involvement of other police with drug dealers, JTF6 reported Haken and the other officers to his patrol commander and the Professional

¹⁷ G.F. Huon, B. L. Hesketh, M.G. Frank, K.M. McConkey, G. M. McGrath, *Perceptions of ethical dilemmas: ethics and policing – Study 1*, Report Series No 125.1, Australasian Centre for Policing Research, 1995, p.15.

¹⁸ Kleinig, op. cit., p.178.

¹⁹ J.R.T. Wood, *Final Report of the Royal Commission into the New South Wales Police Service, Volume 1*, 1997, p.167.

²⁰ Kleinig op. cit., p.179.

²¹ Barker and Roebuck, cited in M. Punch, *Conduct unbecoming: the social construction of police deviance and control*, Tavistock, London, 1985, pp.7-8.

²² Brothers Bill and Louis Bayeh controlled the Kings Cross heroin trade during the early 1990s.

Integrity Branch, urging the formation of a task force to investigate their activities.²³

JTF6 gave evidence at the Wood Royal Commission that he reported Haken and the others although he risked exposing his own corrupt activities because:

I'd had enough of the corruption and that sort of corruption.... I could see a difference between helping a brief along or picking up some money here and there and the sort of allowing drug dealers to do what they do. I just couldn't see the morality of it...²⁴

Police corruption is a complex issue. While operating in an environment that offers both temptation and opportunity, clearly most police officers do not participate in corruption. Evidence from those that do and have been caught shows a range of motivations from not wanting to be ostracised by other officers, to the genuine belief in a suspect's guilt despite the lack of evidence. They consistently believe that once they have committed the act, they are compromised. Sergeant Ray Peattie, giving evidence at the Police Integrity Commission hearings into corruption in the Manly Davidson Local Area Command said:

I wasn't strong enough to stop. I remember every time I got money, I didn't really want it. But I didn't say no Once you are on the dark side, you are always on the dark side.²⁵

1.3 Rotten apple vs rotten barrel

Competing explanations seek to locate the source of the corruption either in individual deviance – the 'rotten apple' – or in the nature of policing – the 'rotten barrel'.

A series of Commissions of Inquiry have debunked individual moral failure amongst police officers as the overwhelming cause of corruption. The Knapp Commission, reporting on corruption amongst New York Police, stated that the New York Police Department's reliance on the 'rotten apple' theory had been a significant obstacle to reform. Justice Lusher, in his 1981 Commission of Inquiry into police administration, rejected the narrow perspective of the 'rotten apple' theory of police corruption. Wood, in the final report of his Royal Commission into the New South Wales Police Service wrote:

In truth the rotten apple theory has always involved a distorted image of policing which has aided the interests of the police services in resisting any suspicion of organisational deviance.²⁶

Clearly, in any large policing organisation it is impossible to ensure that all those recruited will have the strength of character and integrity required to resist, or will not be exposed to a situation where it will be easy to slip into corrupt behaviour. However Knapp, Lusher and Wood all agree that it is dangerous for a police service to hold that any corruption that is exposed is a result of individual deviance. Dismissing such events as 'one offs' means that broader, underlying problems will remain unexamined and inevitably lead to greater damage.

²³ Wood op. cit., p.171-172.

²⁴ ibid., p.172.

²⁵ 'Dark Side of the Force', *The Bulletin*, October 24, 2001.

²⁶ Wood, op. cit., p.27.

The nature of policing has a number of distinct features that are generally agreed to increase the likelihood of officers becoming corrupt. The very nature of policing, where enormous coercive and largely unsupervised discretionary powers are vested in young officers, means that those least experienced are continually faced with the temptation and the opportunity to engage in corrupt behaviour. Thus officers operate within a 'rotten barrel'.

One of the earliest proponents of the 'rotten barrel' theory was Howard Vincent, a barrister assisting the then Commissioner of the London Metropolitan Police, to inquire into the state, discipline and organisation of the Metropolitan Detectives in 1877, Vincent wrote:

I am also of the opinion that it is impossible for the majority of men to be in contact for any length of time with all the worst features of human nature, in its most repulsive aspects, without incurring the most enormous danger of moral contagion. Proofs of this are not, unfortunately, wanting.²⁷

Wood offers a modern take on the same theme. He identifies exposure to horrific crime scenes and accidents; the establishment of informal friendships with criminal elements; and an awareness of the huge difference between their take home pay and the financial rewards of corrupt activities as important features of the policing environment. Perhaps most importantly, Wood states that corruption is most likely to occur in policing areas of great vulnerability, such as prostitution and drugs. In these cases, the crime is either victimless, or is one for which there is such a high demand by users that there are unlikely to be any complaints about police misuse of their powers.²⁸

There are two further elements of policing which add to this potent mix of work circumstances. These are police culture and the political environment in which police operate.

Given the environment that police operate in, it is little wonder that officers form close bonds with each other, often socialising only with other officers and having clear and rigid ideas about who is a respectable member of the public and who is a likely criminal. The nature of police work often engenders a suspicious approach to people and a cynical view of society. While this work culture allows for very strong support of one's colleagues in times of crisis, some of the more visible negative aspects of police culture include high levels of sexism, alcohol abuse and a code of silence in relation to the conduct of fellow officers.

The Mollen Commission into the New York Police Department in 1994 found that:

These aspects of police culture facilitate corruption primarily in two ways. First, they encourage corruption by setting a standard that nothing is more important than the unswerving loyalty of officers to one another – not even stopping the most serious forms of corruption. This emboldens corrupt cops and those susceptible to corruption. Second, these attitudes thwart efforts to control corruption. They lead officers to protect or cover up for others' crimes – even crimes of which they heartily disapprove.²⁹

²⁷ Howard Vincent, 1880, quoted by J. Morton, *Bent coppers: a survey of police corruption*, Warner Books, London, 1993, pp.49-50.

²⁸ Wood, op. cit., pp.28-29.

²⁹ M. Mollen, *Commission Report: Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*, New York, 1994, pp.51-52.

Within New South Wales the foundations of this solidarity have been described by officers as 'covering your arse' and protecting your colleagues. One of the officers who appeared before the Wood Royal Commission told of how his colleagues repeatedly discussed who may have 'rolled' to the Royal Commission and how they might best protect themselves. He said that even when presented with video tape of his wrong doing, his colleagues had told him that 'they've [the Royal Commission] got to prove you are lying'.³⁰

Wood noted that the code of silence also operates within the ranks of senior officers, although it was marked by more altruistic notions of maintaining morale and protecting the reputation of the service. However, as senior officers progressed through the ranks and were exposed to the same influences as those in the non-commissioned ranks, many commanders became comfortable with the brotherhood principle.³¹

Law and order campaigns by politicians also impact substantially on the way in which police work. This occurs in a spectrum of which the evidence before the Fitzgerald Commission of Inquiry in Queensland in 1987 offers one extreme example.³² However, as Wood acknowledges, political campaigns in which law and order is loudly proclaimed and the police commissioner or local area commanders are publicly called on to produce satisfactory crime clear-up rates, or explain their inability to do so are also detrimental. Such political pressure allows the ends to easily justify the means, and for some officers, process corruption becomes a method of crime control.³³

1.4 Cycles of corruption

Any cursory examination of the history of policing reveals a scandal-reform cycle. Neyroud and Beckley use the example of the Brixton Riots in the early 1980s to illustrate the stages in the cycle. In Brixton in the early 1980s there was a heavy police emphasis on fighting street robberies. This led to major community disorder and substantial national concerns about police actions and relations with ethnic community groups. The riots led to changes to the legal framework of policing, producing new consultative arrangements and changes to the police complaints system. These changes were followed by a general drift back to crime fighting, in part due to the political benefits for the Home Secretary in using crime fighting to revive his party's electoral fortunes.³⁴

The cycle of crisis can be divided into four distinct stages. The first stage is crime fighting, where police are focused on a 'war' against crime or criminals. The second stage is corruption and scandal. The third stage is societal and institutional reaction, often through rule tightening and reorganisation. The fourth stage is a commitment to new norms, followed by a drift back to crime fighting.³⁵ In this model it is clear that reform is only possible during the reactionary phase.

³⁰ Wood, op. cit., pp.135-136.

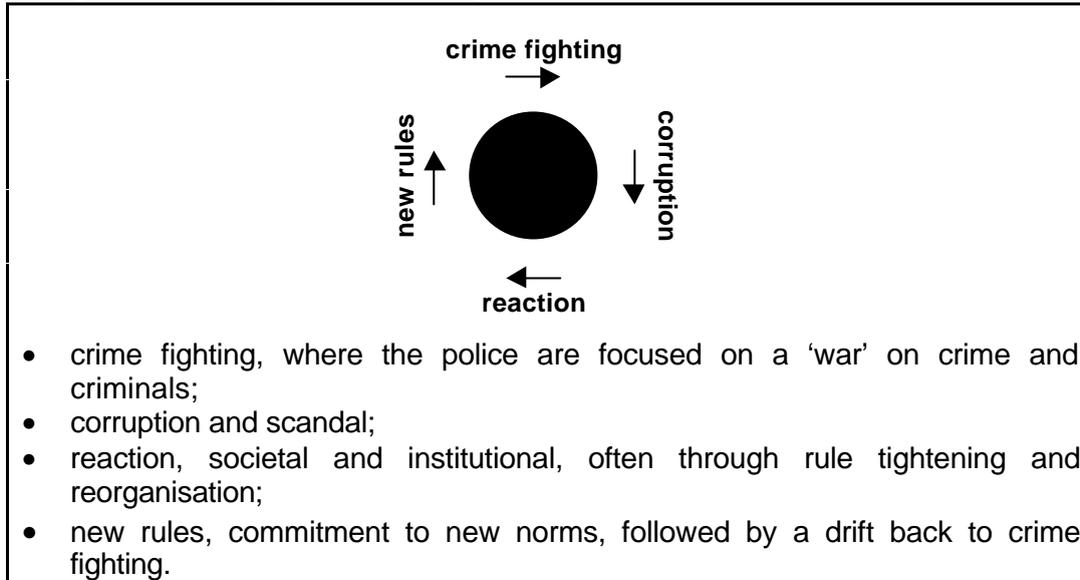
³¹ *ibid.*, p.135.

³² The Fitzgerald Commission of Inquiry conducted in 1987 found substantial links between police, politicians and organised crime.

³³ Wood, op. cit., p.37.

³⁴ Neyroud and Beckley, op. cit., p.9.

³⁵ *ibid.*, p.10.

Figure 1: The Cycle of Corruption³⁶

1.5 Corruption – an ethical or administrative problem?

As can be seen from the literature review, commentators tend to treat corruption as either an ethical or administrative problem. For Sherman, corruption is essentially an administrative problem that can be substantially dealt with by preventing officers from accepting gifts. The challenge in this approach is to find the right kind and combination of administrative safeguards which will ensure corruption will not occur.

Goldstein, Muir and Delattre adopt an ethical approach, finding that the solution to corruption lies in the officer's free will or character. While these authors' approaches differ, they agree that officers' decisions are grounded in free will and moral choice. The solution, therefore, is to recruit and develop officers with the habit of integrity.

There are shortfalls apparent in both the purely administrative and ethical approaches. No matter how many administrative rules exist, such is the nature of policing that an unethical officer will sooner or later have the opportunity to engage in corrupt behaviour. A purely ethical approach relies on officers internalising a set of ethical standards, with no accompanying attempt to rectify any organisational issues that can lead to corrupt behaviour.

In practice, police departments have adopted a mixture of ethical and administrative measures to combat corruption. This has involved recruitment screening processes, enhanced training, and the introduction of organisational codes of conduct and integrity testing, amongst other initiatives. Particular measures adopted by NSW Police will be discussed in detail in Chapter Four.

³⁶ *ibid.*

Chapter Two – A Short and Selective History of Law and Order in New South Wales and the New South Wales Police

In order to understand the current oversight arrangement for NSW Police, it is necessary to understand the events leading to the Wood Royal Commission. To arrive at this understanding, the historical dimension of policing in New South Wales needs to be considered. This allows corruption to be considered as integral to the cultural and historical experience of policing in NSW, rather than as an inexplicable 'alien excrescence'.³⁷

An historical review permits comparisons to be made about the continuity of types of corrupt activity across time, and lessons to be drawn about how to avoid creating organisational climates conducive to corruption. Key incidents from the establishment of a Night Watch to the ongoing Police Integrity Commission Operation Florida are also discussed.

2.1 The origins of policing in New South Wales

While modern policing is usually dated from the establishment of the Metropolitan Police in London in 1829, the model for Australian policing was drawn instead from Peel's paramilitary Peace Preservation Force in Ireland in 1814. Designed to be a highly mobile rapid response force for dealing with rural disorder, this model of policing was very different to the Metropolitan Police whose founding principles included the idea that 'the police are the public and the public are the police'.³⁸

Peel's Nine Principles of Policing

The ideology behind the establishment of the New Police is clearly articulated in Peel's Nine Principles of Policing. These are:

- The basic mission for which the police exist is to prevent crime and disorder.
- The ability of the police to perform their duties is dependent upon public approval of police actions.
- Police must secure the willing co-operation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.
- The degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force.
- Police seek and preserve public favour not by catering to public opinion but by constantly demonstrating absolute impartial service to the law.
- Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient.
- Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police;

³⁷ D. Dixon, *A Culture of Corruption: changing an Australian police service*, Hawkins Press, Leichhardt, 1999, p.168.

³⁸ <http://www.newwestpolice.org/peel.html>

the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.

- Police should always direct their action strictly towards their functions and never appear to usurp the powers of the judiciary.
- The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.³⁹

Initially, a night watch was drawn from the best-behaved of the convicts, with the possibility of early emancipation. By 1796, the Night Watch was supplemented by elected constables from amongst the free men in the hope of reducing abuses practiced by the regular officers, such as extortion of money from prisoners.⁴⁰

The first attempt at reform was the establishment of a body of full-time constables through the Sydney Police Scheme, which commenced in 1811 under the command of D'Arcy Wentworth. By 1833 policing began to develop a clear structure with the introduction of the *Sydney Police Act 1833* and the recruitment of experienced former London policemen.⁴¹

The first Commander appointed under the new Act, Henry Wilson, resigned his office in 1839 after complaints of impropriety. He was replaced by an Englishman, William Augustus Miles, who was rumoured to be a son of King William IV. Miles was removed from office in 1848 on the grounds of misbehaviour. He was followed by Captain Joseph Innes and Captain Edward Day, both of whom were removed in succession for misbehaviour.⁴²

In 1850 the *Police Regulation Act 1850* was passed. The new law had been triggered by wild rioting in Sydney on New Year's Eve that had overwhelmed police. The statute reorganised police under an Inspector General of Police, and was structured along the same lines as the Royal Irish Constabulary (see boxed text for the Peace Preservation Force, Ireland). This included Mounted Road Patrols along the Great Western Road between Parramatta and Bathurst. The Act commenced in 1851 with the appointment of the first Inspector General, William Spain. However in 1852 the new organisation was dealt two fatal blows. The British government disallowed the *Police Regulation Act* and Spain was forced to resign because of administrative laxity.⁴³

The Peace Preservation Force, Ireland

Serious disorder was a prominent feature of Irish life in the late 18th and early 19th centuries, as the country struggled under British occupation. This manifested in rural Ireland as a variety of rival oath-bound secret societies motivated by agrarian and sectarian grievances. They operated under a variety of names, including Whiteboys, Rightboys, Ribbonmen, Thrashers, Peep O' Day Boys, and Levellers. One notorious group was called the Carders from their habit of slashing the backs of their victims with wire brushes used to card wool. Rural 'faction fighting' at fairs and markets,

³⁹ <http://www.newwestpolice.org/peel.html>

⁴⁰ B. Swanton and R.W. Page, 'NSW Police', in B. Swanton and G. Hannigan (eds). *Police Source Book 2*, Australian Institute of Criminology, Canberra, p.377.

⁴¹ *ibid*, p.380.

⁴² *ibid*, pp.380-381.

⁴³ *ibid*.

usually between groups of men from rival townlands, was also a common occurrence contributing to the general lawlessness. (On 24th June 1834 over 200 people were killed and several hundred injured when an estimated 3000 people participated in one of the bloodiest faction fights of the century, between the Coolens and the Lawlor-Black Mulvihills at Ballyveigh Strand, Co. Kerry). The question of Orange demonstrations, and the associated rise in 'party feeling' and threat to public order, was similarly a cause for concern. The widespread practice of illicit distillation was yet another problem faced by the authorities in Dublin Castle, particularly in relation to the gangs of illicit distillers who operated in the glens and mountains in large groups of up to sixty or eighty men.

Peel's idea of public order that resulted in the establishment of a uniformed, civil police force to keep the peace in England, evolved from his experiment with police enforcing the peace in Ireland. This found expression in the Peace Preservation Act of 1814, which empowered the Lord Lieutenant to send a chief magistrate and a specially appointed body of armed men to any part of the country 'proclaimed' to be in a state of disturbance. Officially titled 'The Peace Preservation Force', this body was partly composed of soldiers returning from the Napoleonic Wars. They often wore, as a consequence, a variety of military uniforms. Although Peel left Ireland in 1818, he reintroduced his plans for the comprehensive policing of the whole island when he became Home Secretary in 1822. On 5th August 1822 the Constabulary Act was passed and a new force called the Constabulary Police was formed. This Act allowed for the first time for the systematic establishment of an organised police force on a national basis.

The Irish Constabulary Act of 1822 allowed for the appointment of sixteen constables and sub-constables in each barony commanded by a chief constable. These chief constables in turn were to be under the supervision of four inspectors general, one for each province. From its inception the Irish Constabulary was a barracked force. It was spread thinly throughout the country, with four or five policemen living in each barrack the norm. In its first few years the constabulary continued to wear an inconsistent uniform, although by 1828 dress was standard. A year after the police were established in Kildare a prominent landowner and liberal, Lord Cloncurry, called for uniformity of dress. He reported that some constables affected orange decorations, others green, and still others black.⁴⁴

The discovery of gold further stretched the government's ability to maintain law and order, especially in the countryside. Race riots at Lambing Flat in 1860 underlined the limits of the government's law enforcement capacity. The Lambing Flat riots provided the impetus to successfully consolidate NSW's various police bodies. The Police Force proper was established by the *Police Regulation Act 1862*, which provided for a centralised police force under the command of an Inspector-General who was subject to Ministerial control.⁴⁵ With the establishment of the Criminal Investigation Branch in 1879,⁴⁶ the basic structure of the NSW Police was formed.

The kind of divisions that arose at this time in the newly formed Police Force have been repeated in various forms throughout the history of the NSW Police, and have not escaped public attention. For example deep rifts between the mounted police and the foot police in the early part of the 20th century were common knowledge, as

⁴⁴ <http://www.psni.police.uk/museum/text/early.htm>

⁴⁵ Swanton and Page, op. cit., p.382.

⁴⁶ Wood, op. cit., p.51.

was the antagonism between the Catholics and the Masons,⁴⁷ and CIB detectives and the rest of the police.⁴⁸

Policing in the remainder of the 19th century was marked by two Royal Commissions of Inquiry. The first, in 1867, inquired into the activities of some police officers and magistrates in the Braidwood district, concerning the extent to which they had colluded with bushrangers (see boxed text). The second inquiry was the Royal Commission on Alleged Chinese Gambling and Immorality and Charges of Bribery Against Members of the Police Force, which reported in 1892. This Royal Commission was instigated after allegations that police were being paid to keep their eyes shut, and were afraid to take action because they believed that the wealthy and influential people who owned the gambling houses would use their influence to have them removed from the Force. The report found that the claims were unsubstantiated and the allegations of bribery 'extremely improbable'.⁴⁹ It has been claimed that in the 19th century, despite the high turnover and widespread drunkenness, the unspecialised nature of the Force, with the exception of the CIB, inhibited corruption.⁵⁰

The First Royal Commission

Five years after the establishment of the Police Force, the first Royal Commission commenced into the activities of some of police officers and magistrates in the Braidwood district, and the extent to which bushrangers had been shielded and assisted by police connivance or inactivity. The Commissioner's identified several instances of misconduct and inefficiency on the part of certain members of the police and noted that 'such misconduct is not solely confined to that portion of the Force which has come under our more especial notice'.⁵¹ They further reported that his situation could not have existed if the Superintendent of Police had exercised 'strict and proper control over his men'.⁵² The Inquiry concluded that 'improper intimacy and familiarity between members of the Police Force and certain connections of the bushrangers' had occurred.⁵³

2.2 Policing in NSW 1900 – 1960: laying the foundations

In the early part of the 20th century, the mandate to keep the peace meant that police were increasingly involved in the surveillance of dissenting political figures and groups. During World War One, this included members of the pacifist movement as well as the anti-conscription activists. Consequently, the next series of Commissions of Inquiry dealt with the arrest and conviction in 1916 of 12 members of the Industrial Workers of the World group. The case attracted a large amount of publicity and included allegations of police verballing, planting evidence, bribery and manipulation of informants. It resulted in two inquiries. The first inquiry in 1918 under Justice Street found that allegations of corruption were not sustained, but that the conduct of

⁴⁷ It was widely rumoured that these groups rotated control of the Police and the Office of the Commissioner. It should be noted that the *Colonial Police Act 1850* prohibited police from belonging to any political or secret society other than the Society of Freemasons.

⁴⁸ Wood, op. cit., p.51.

⁴⁹ *ibid.*, p.52.

⁵⁰ *ibid.*

⁵¹ Report of the Commissioners, *State of Crime in the Braidwood District*, 30 July 1867, cited in Wood, op. cit., p.52.

⁵² *ibid.*

⁵³ *ibid.*

several officers deserved censure. The Royal Commission of 1920 reviewed the convictions of the Workers of the World and found that many of the convictions were not 'right and just'⁵⁴ largely because of the prosecution's reliance on uncorroborated evidence of police informants.⁵⁵

Three pieces of legislation in the first 15 years of the 20th century encouraged the beginnings of vice rackets in NSW. These were the *Amended Vagrancy Act 1905*, *Police Offences (Amendment) Act 1908* and *Liquor Act 1915*.

The *Vagrancy Act* prohibited vagrancy, consorting, public drunkenness and indecent or obscene behaviour. The later *Police Offences Act* built on these powers by making brothel keeping a summary offence and creating the offences of soliciting, males living on a prostitute's earnings, and being a landlord or proprietor suffering the conduct of prostitution on the premises.⁵⁶ It also banned all off-course betting on horse races and outlawed most forms of gambling, even the traditional two-up.⁵⁷ The *Liquor Act* restricted alcohol sales after 6pm, creating the infamous 'six o'clock swill', and led to the rise of the 'sly grog' industry based on after hours liquor sales.⁵⁸ This opened up opportunities for police to have direct control over the management of prostitution and gambling and, correspondingly, created opportunities for corruption.

These Acts were followed by increasing government regulation of cocaine. Freely available from pharmacists as a 'nerve tonic', cocaine had become the drug of choice for those engaged in the sly grog and prostitution rackets in the inner eastern suburbs of Sydney. Cocaine had been legally obtainable from chemists, but community concerns about returned servicemen becoming addicted, amongst other social concerns, led the state government to pass the *Dangerous Drugs Amendment Act 1927* that prohibited all narcotics.⁵⁹ In effect, this legislation created a whole new vice market which sprang up to meet the now criminalised demand. For the first time, truly large amounts of money could be made from illegal gambling, illegal alcohol sales, prostitution and illicit drugs. The struggle to control these lucrative industries sparked vicious gang fighting known as the Razor Gang Wars.

The Razor Gang Wars

Gang warfare erupted in Darlinghurst in 1927-1928. Dubbed 'Razorhurst' by the tabloid newspaper *Truth*, underworld entrepreneurs and their standover men fought to control prostitution, sly-grog, gambling and cocaine. In an effort to curb gang shootings, the government had passed legislation banning hand guns. Gang members' weapon of choice became the cut throat razor because it was easily concealed and, as well as being an effective weapon for killing, it also produced fearsome scars when slashed across the face. There were four main syndicate leaders. Norman Bruhn, originally from Melbourne, made his money by extorting Darlinghurst prostitutes. He was shot and killed in 1927 after a number of raids on the establishments of his competitors. Tilly Devine and Kate Leigh both exploited the loophole in the law that forbade men from living off prostitute's earnings. They ran

⁵⁴ *Royal Commission of Inquiry into the Matter of the Trial and Conviction and Sentences Imposed on Charles Reeve and Others*, cited Wood, op. cit., p.53.

⁵⁵ *ibid.*

⁵⁶ *ibid.*, p.53.

⁵⁷ A. McCoy, 'Two cities and their syndicates: a comparative urban history of organised crime, in J. Davidson (ed), *The Sydney-Melbourne Book*, Allen & Unwin, 1986, p.105.

⁵⁸ *ibid.*

⁵⁹ L. Writer, *Razor*, Pan McMillan Australia, 2001, p.xxix – xxx.

rival brothels, dealt cocaine and ran sly-grog houses. While some of their standover men died, they survived the razor wars. Phil Jeffs also managed to survive. He dealt mainly in cocaine and sly-grog. When he died in 1945, his obituary in the *Truth* read 'Phil the Jew, Sydney racketeer, gangster, drug pedlar, procurer, sly grogger, alleged phiz gig⁶⁰ for some detectives, gunman, wealthy friend of some politicians and many police....'⁶¹

The 1930s brought a lull in the vice economy after the passage of the *Vagrancy (Amendment) Act 1929* which provided for the establishment of the Consorting Squad to target those associating with known criminals. Tilly Devine spent two years in exile in England and Kate Leigh was barred from within 200 miles of Sydney for a period of five years. The cocaine trade was largely suppressed by police.⁶²

Allegations of impropriety amongst police in their attempts to secure arrests and convictions for street betting and starting price betting led to the appointment of a Royal Commission in 1936 under Justice Markell. The Commission found the allegations of framing persons for offences, giving false evidence, wrongly inducing accused to plead guilty and wrongly entering private premises, to be substantially justified. The Commission also commented adversely on the use of paid police agents whose evidence was described as being entirely untrustworthy.⁶³

Restructuring of the Force occurred at this time under Commissioner MacKay. His more compartmentalised structure endured until the Avery era in the mid 1980s. In particular, the CIB was enhanced with increased numbers of detectives and a division of responsibilities according to the targets of police work, for example, vice, homicide and arson. Wood, in his final report on the *Royal Commission into the New South Wales Police Service*,⁶⁴ noted that the consequences of this specialisation included the emergence, by the 1960s, of police leaders who had detailed knowledge of only one area of police work, the development of a high degree of corporate identity within the CIB, and the establishment of a substantial power block that was to forcefully resist change in the future. Further, in some cases specialisation allowed for the formation of close relationships between police officers and crime figures through long term work association.

Another important factor affecting the profile of police officers up until the 1980s was the system for recruiting and training new police. Officers were recruited on the basis of an extremely narrow selection criteria that for a long time placed physical size over all else. An absolute minimum of educational qualifications were required and very basic skills were taught to officers.⁶⁵ The effects of this system lingered for a long time. In 1985, the typical Australian police officer had left school at 14.⁶⁶

In 1941 Commissioner MacKay introduced another new section to the Police Force when he formed the Prosecuting Branch. Originally it was attached to the CIB, but in 1965 it was established as a separate section. The close associations and identification of interest between some of those who appeared as witnesses and the

⁶⁰ Police informer

⁶¹ Cited in McCoy op. cit., p107. Other information derived from Writer op. cit.

⁶² McCoy, op. cit., p.107.

⁶³ Wood, op. cit., p.54.

⁶⁴ *ibid.*, p.56.

⁶⁵ *ibid.*

⁶⁶ G. Brown, 'The "Typical" Police Officer', in B. Swanton and G. Hannigan (eds), *Police Source Book 2*, Australian Institute of Criminology, Canberra, 1985. p.124.

prosecutors in the Police Court (now the Local Court), particularly when the prosecutors were working out of the CIB, was a cause for concern in relation to the objectivity of the advice given and the manner in which prosecutions were run. It also inhibited the disclosure or reporting of any police misconduct that emerged in the course of a prosecution.⁶⁷

World War Two was a boom time for Sydney's illicit economy. Several hundred thousand American troops passing through the city lead to a surge in the demand for traditional vice services - prostitution, gambling and sly-grog.⁶⁸ The freeze on recruiting police during the war meant that the Police Force emerged from the war years depleted, while a new generation of criminals had flourished.⁶⁹

In 1954 the reports of two Royal Commissions were handed down. The Report of the Royal Commission on Liquor Laws in NSW under Justice Maxwell (see boxed text), reached a number of conclusions. Firstly the Justice noted the suspicion that 'wholesale unchecked breaches of the liquor law could in part be explained by police connivance'.⁷⁰ The Justice agreed with the Counsel for the Police Force that it was not possible on the evidence to find that there was corruption amongst members of the Vice Squad. However, the Counsel for the Police Force did admit that 'it is quite possible, indeed it may well be probable that certain members of the Vice Squad have succumbed to the bribes offered them (and that) a certain amount of corruption may have existed.'⁷¹ The Royal Commission further noted an apparent lack of leadership, enthusiasm and ingenuity amongst the Police Force. It acknowledged that several senior officers had accrued various assets, but that it could not make specific findings in relation to them as there was no evidence that these assets had been acquired as result of the administration of, or the failure to administer, the *Liquor Act*.⁷²

The Ubiquitous Mr Saffron

Abraham Gilbert Saffron made his first appearance on the public stage when he gave evidence to the Maxwell Royal Commission into Liquor. According to this Royal Commission, the 'most notorious and disreputable nightclub in the city' was the Roosevelt Club in Kings Cross which was run by Saffron. Convicted in 1940 for the possession of stolen car radios, Saffron had £80 of identifiable assets. A decade later, the Liquor Royal Commission discovered that he held, amongst other assets, seven public-hotel licenses worth £84,500. The Commissioner attributed Saffron's financial success to his practice of diverting beer rations from his public hotels to the Roosevelt Club where he sold it to American troops at 'extortionate prices'.⁷³ At the time, Saffron complained 'My name seems to be linked with everything notorious around this town. You'd be staggered at the things I'm supposed to be mixed up in.'⁷⁴

Throughout the 1950s Saffron remained in the public eye, with questions being

⁶⁷ Wood, op. cit., p.57.

⁶⁸ McCoy, op. cit., p.108-109.

⁶⁹ Wood, op. cit., p.58.

⁷⁰ *Report of the Royal Commission on Liquor Laws in NSW 1951*, cited in Wood, op. cit. Volume 3, Appendix, p.198.

⁷¹ *ibid.*, p.58.

⁷² *ibid.*, Volume 3, Appendix, p.198.

⁷³ McCoy, op. cit., pp.109-110.

⁷⁴ D. Hickie, *The Prince and the Premier: the story of Perce Galea, Bob Askin and the others who gave organised crime its start in Australia*, Angus & Robertson Publishers, North Ryde, 1985, p.115.

asked about his hotel ownership in Western Australia,⁷⁵ and a court case in 1957 in which it was alleged that Saffron had committed an unnatural offence with a woman. This charge was later dismissed.⁷⁶ In the 1960s he was charged with receiving stolen goods, a charge that was later dropped. During the 1970s Saffron opened a strip club in Adelaide. His interests also expanded into Queensland and Victoria at this time.⁷⁷

Saffron's second Royal Commission appearance was at the Moffitt Royal Commission into Organised Crime in 1974. The core of the allegations about Saffron were his reported connections to the Chicago crime syndicates. These were outlined in an Australian Federal Police investigation into Bally poker machines in 1972.⁷⁸ Saffron gave evidence before Commissioner Moffitt that while his companies controlled two clubs, the Pink Parrot and the Pink Pussycat, he didn't know they were strip tease venues.⁷⁹ He also denied knowing Leonard McPherson (see boxed text 'Mr Big'), a man described at the Royal Commission as the 'Mr Big of Sydney organised crime', as well as denying that he knew any Members of Parliament.⁸⁰

While the Moffitt Royal Commission progressed, the tabloid newspapers ran a series of stories on a notorious crime figure they dubbed 'Mr Sin'. During the Moffitt Royal Commission when asked by Commissioner Moffitt if he was the person referred to as 'Mr Sin', Saffron denied it. In 1978 Saffron was named in the South Australian Parliament by the then Attorney General as 'Mr Sin', one of the principal characters in Australian organised crime, and an associate of the people responsible for the disappearance of Juanita Nielson.⁸¹ Saffron subsequently gave a series of press interviews denying that he was 'Mr Sin'.⁸²

In 1980 a report of the Commonwealth-NSW Joint Task Force on Drug Trafficking linked Saffron to the Nugan Hand Bank⁸³ (see boxed text 'Mr Asia and Nugan Hand').

Saffron's regular visits to Assistant Commissioner Bill Allen at Police Headquarters were instrumental in Allen's removal from office in 1982. At the Police Tribunal Inquiry into this matter, Saffron gave evidence that he was associated with more than 60 companies in NSW.⁸⁴

At the 1983 inquest into the disappearance of Juanita Nielson, evidence was taken that Saffron was financing drugs – an allegation that he denied.⁸⁵

In 1987 Saffron was found guilty of using two sets of books for his Kings Cross nightclubs and restaurants between 1969 and 1981. It was estimated that he defrauded the Commonwealth of \$1.5 million in taxes. He was sentenced to three years imprisonment and was jailed for 16 months.⁸⁶ In 2001 Saffron asked the Federal Attorney General for a pardon as the principal witness against him had been

⁷⁵ *ibid.*, p.118.

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ *ibid.*, p.116.

⁸⁰ *ibid.*, p.119.

⁸¹ *ibid.*

⁸² *ibid.*, p.116.

⁸³ *ibid.*, p.20.

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ 'A mellowing Abe fits into fatherly role', *The Daily Telegraph*, 13 February 2002.

discredited as a witness in other trials.⁸⁷

During 2001-2002 Saffron was again in court in NSW claiming that he had forgotten his conviction for tax fraud when applying for a liquor license.⁸⁸ He is currently appealing against the decision by the Licensing Court of NSW that he is not a fit and proper person to hold a liquor licence.⁸⁹

The Royal Commission of Inquiry into certain matters relating to David Edward Studely-Ruxton handed down its report in October 1955. While the Commissioner rejected the allegations of police brutality, he was unable to find how the injuries to Studely-Ruxton's face and arms were received. The Commissioner noted that there is 'more than a slight suspicion'⁹⁰ that these injuries may have been caused by police.⁹¹

Continuing until 1950, Sydney's decade of wartime economic control was a period of enrichment for the local criminal economy. One of its lasting legacies was the fostering of systematic police corruption. In 1950, accounts of two public occasions reflect the quality of postwar police administration. Retiring as Metropolitan Superintendent, Mr Sweeny's passing was honoured with a banquet hosted by 300 vice operators who presented him with a cheque for £600. A colleague was feted with a similar function. Inspector Noonan, retiring as Metropolitan Licensing Inspector with responsibility for liquor law enforcement was given a farewell at the Australia Hotel and presented with a cheque for £1000. The 1951 Liquor Royal Commission found such practices indiscrete, but not illegal.⁹²

2.3 Policing in NSW 1960–1970: boom time

The 1960s and 1970s mark the entrenchment of corruption amongst police and politicians. While the ALP had established the Totaliser Agency Board (TAB), in an attempt to eradicate SP bookies, and had legalised poker machines, the expanded profits amplified the economic base of syndicated crime in Sydney.⁹³ Pay-offs to police from gaming and vice interests were an open secret, but never seriously targeted. Despite this, Robert Askin leading the Liberal Party won the 1965 state election on one of Australia's first law and order campaigns.⁹⁴

In 1967 gang warfare again broke out in Sydney. McCoy notes that over the nineteen year period from 1944 to 1963 there were only eight murders in the Sydney gang scene. Most sprang from personal conflicts and involved face to face combat with knives, chains or revolvers. This represents an average of one killing every two and a quarter years. However, in 1967 the figures leapt to five killings a year at the rate of one every five weeks. They were impersonal killings involving machine guns, snipers and dynamite.⁹⁵ The profits were clearly worth fighting over (see boxed text).

By 1976 it was estimated that Sydney's various vice trade turned over approximately

⁸⁷ 'Saffron to request a pardon from A-G', *The Australian Financial Review*, 31 October 2001.

⁸⁸ 'Saffron 'forgot' record', *The Daily Telegraph*, 29 March 2001.

⁸⁹ 'Speaking up for Mr Sin', *The Sydney Morning Herald*, 19 October 2002.

⁹⁰ Wood, op. cit., Appendix, p.198.

⁹¹ *ibid.*

⁹² Hickie, op. cit., pp.262-263.

⁹³ McCoy, op. cit., p.112.

⁹⁴ Wood, op. cit., p.59.

⁹⁵ McCoy, op. cit., p.114.

\$2,219 million, comparable to the national defence budget at the time.⁹⁶

Baccarat and profits

After the gang wars of 1967, five major and 21 minor London-style gambling clubs opened across Sydney. They were lavish casinos and included roulette wheels, blackjack tables, uniformed hostesses and floor-space for up to 200 patrons. A survey of their operations in 1974 calculated their combined annual turnover at \$650 million with a profit of \$15 million.⁹⁷

Apart from the enormous profits to be made in vice, the other distinguishing feature of this period is the number of lost opportunities to address police corruption. The first of these occurred in 1968 when Ng Biu Kuen, a Chinese restaurant owner, reported the presence of senior police in an illegal casino on Dixon Street. He claimed that he was assaulted by police and loaded with opium as a payback. Kuen's conviction was overturned on appeal and two officers were departmentally charged in relation to the search on his premises. However calls for a Royal Commission into the affair as well as the alleged association between senior police and gambling interests went unheeded.⁹⁸

Other scandals at the time suggested serious abuses of police detention and interrogation powers were not investigated. This included the hospitalisation of William Stanevics with serious injuries sustained during his detention at the Sydney Police Centre in 1965 and the assault by police of Geoffrey Rixon in 1968. Rixon brought a successful civil case against police in this matter. There were a number of calls for judicial inquiries into these cases, which did not eventuate. In 1971 the Leader of the Opposition unsuccessfully attempted to establish a Select Committee to inquire into all aspects of the police administration.⁹⁹

The Commissioner of Police from 1962 to 1971 was Norman Thomas William 'The Foreman'¹⁰⁰ Allan, one of the more colourful men to hold the office. Allan's tenure as Commissioner was marked by a number of incidents that are revealing of the state of the Police Force at this time. Soon after he became commissioner, Allan had cause to report to Parliament on the state of gambling in Broken Hill. Gambling, particularly two-up, was part of the culture in this big mining town. Despite common knowledge of its existence, Commissioner Allan reported to Parliament that there was no illegal gambling in Broken Hill. Ridicule by the media followed swiftly.¹⁰¹

An instance of Commissioner Allan's rather outlandish behaviour occurred in 1968 when he took charge of a siege involving a man called Walter Mellish who had taken a number of hostages. During the course of the siege, Allan apparently gave an Armalite rifle and 200 rounds of ammunition to Mellish. The siege culminated in Allan witnessing the marriage ceremony between Mellish and one of the hostage's girlfriends, as well as providing the wedding ring.¹⁰² This time the Police Association as well as the media were outraged, and the Association met with the Premier to

⁹⁶ *ibid.*, p.115.

⁹⁷ *ibid.*

⁹⁸ Wood, *op. cit.*, p.59.

⁹⁹ *ibid.*

¹⁰⁰ Hickie, *op. cit.*, p.265.

¹⁰¹ Swanton and Page, *op. cit.*, p.389.

¹⁰² Hickie, *op. cit.*, p.268.

protest Allan's behaviour.¹⁰³

Allan's career as Commissioner ended in 1971 when Detective Sergeant Phillip Arantz disclosed crime statistics that were much higher than those reported by the Commissioner to the Premier. Since the 1940s the Police Force had kept a dual system of books on crime statistics. This system involved entering official crime in the Crime Book, and unofficial crime – ie crime that was to be ignored – into what was known as the Paddy Book. Commissioner Allan responded to Arantz's whistleblowing by arranging to have him scheduled in a psychiatric hospital, where staff quickly issued him with a certificate saying he was perfectly normal.¹⁰⁴ At the time, Premier Askin told Parliament that Arantz was probably mentally ill, and added 'If that is not true and he did it deliberately when he was well, he deserves nothing but contempt.'¹⁰⁵ Arantz was later dismissed from the Force.¹⁰⁶ It took Arantz until 1989 to have this situation partially rectified when the Greiner Government passed a Special Act of Parliament that deemed he was retired from the Police Service without rank or pension, rather than dismissed.¹⁰⁷

Interestingly, a semi-official¹⁰⁸ police history recounts this incident as arising from a glitch in loading crime statistics into the Force's new Univac 9400 computer. This caused the computer to produce two sets of crime statistics. The faulty one was released by the Commissioner who refused to acknowledge the possibility of defective statistics being produced by the department.¹⁰⁹

Another lost opportunity to investigate police corruption concerned allegations made in 1971 by Queensland sex worker Shirley Brifman. Brifman named 34 NSW and Queensland Police who were allegedly engaged in a variety of illegal activities. Her 64-page statutory declaration, detailing regular payments to police to avoid prosecution, and arrangements between NSW and Queensland detectives when planning robberies on each other's home ground by using each other's teams of local criminals, was tabled in Queensland Parliament in 1971.¹¹⁰ Brifman was later found dead in Brisbane. Commissioner Hanson who replaced the discredited Allan in 1972 was alleged to have allowed the officers named in the Brifman allegations to retire from the Service 'Hurt on Duty'. The investigation into these allegations was never fully resolved.¹¹¹ Coincidentally, Brifman's alleged lover and prominent figure in her allegations of corruption, NSW Detective Sergeant Fred Krahe, was also linked to the disappearance of Juanita Neilson and was named in Parliament as being instrumental in the collapse of the Nugan Hand Bank (see boxed text Mr Asia and Nugan Hand).¹¹²

The remainder of the 1970s saw three Commissioners in quick succession. Fred Hanson served from 1972 to 1976, Merv Wood from 1976 to 1979 and Jim Lees

¹⁰³ Swanton and Page, op. cit., p.390.

¹⁰⁴ Hickie, op. cit., p.271.

¹⁰⁵ Askin cited *ibid.*, p.271.

¹⁰⁶ Wood, op. cit., p.60.

¹⁰⁷ *ibid.*

¹⁰⁸ Swanton, B. and Page, R. W. 'New South Wales', in Swanton, B. and Hannigan, G. 1985. *Police Source Book 2* Australian Institute of Criminology, Canberra. Swanton is acknowledged as a Senior Research Officer with the Australian Institute of Criminology and Page is a acknowledged as the Secretary of the Police Association of New South Wales.

¹⁰⁹ Swanton and Page op. cit. p.391.

¹¹⁰ J. Birmingham, *Leviathan*, Knopf, Sydney, 2002, p.470.

¹¹¹ Wood, op. cit., p.60.

¹¹² Birmingham, op. cit., p.471.

from 1979 to 1981. A semi-official history of NSW police offers the following assessment of their leadership: 'none of these officers were greatly reform oriented and, accordingly, certain structural problems within the organisation persisted.'¹¹³

2.4 Policing in NSW 1970s: The return of judicial inquiries

In the early 1970s, concerns about the management of licensed premises and the poker machine industry extended to the question of involvement of criminal elements in NSW clubs. The Moffitt Royal Commission into allegations of organised crime in clubs examined whether the Government, and the police who had conducted a special inquiry into the allegations, had covered up the true situation. The Royal Commission also considered whether the Bally Corporation posed a risk to Australia through the infiltration of organised crime. When Justice Moffitt handed down the Commission's report, he found insufficient evidence of a cover-up by police in their investigations, but criticised several members of Special branch for failing to carry out a proper investigation. Officers McNeill, Knight and Ballard were criticised for compiling a report that masked the true nature of organised crime in relation to the Bally Corporation. The Commission found that the inquiries that were conducted were ineffective, and marked by disinterest, a lack of ability and over-friendliness towards those investigated. Finally, the reports that were presented by these officers were found to be inconsistent.¹¹⁴

Mr Asia and Nugan Hand

Unlike the more traditional vice trades, heroin trafficking required alliances with new organisations, most notably the 'Mr Asia' group and the Nugan Hand Bank. Operating between Sydney and South East Asia between 1976 and 1979, the Mr Asia syndicate, comprising young New Zealanders in Sydney, moved substantial heroin shipments for several years before the organisation imploded and the leader, Terry Clark, executed six members and fled to England.¹¹⁵ In 1984 *Four Corners* aired allegations by Stephen Bazley, a former member of the Mr Asia syndicate, that seven NSW police officers were involved in heroin trafficking, protecting drug dealers, using standover tactics and redistributing drugs for their own profit. It was further claimed that these allegations had been investigated by the Australian Federal Police and that a 254 page report was supplied to NSW Police in 1983.¹¹⁶ The Nugan Hand Bank provided financial services for both the Mr Asia syndicate and former NSW police detective Murray Riley. Riley had transferred his interests from poker machines after his exposure at the Moffitt Royal Commission to drug trafficking. Founded in 1973 by a Sydney solicitor called Frank Nugan and an ex-Green Beret and CIA employee, Michael Jon Hand, the Bank grew spectacularly. Four years after its establishment the Bank claimed assets of \$21.8 million and an annual turnover of \$100 million. The bank collapsed in 1980 when Nugan was found dead with a bullet in his head. Fifty million dollars disappeared from the Bank's accounts and Hand fled Sydney.¹¹⁷

In 1975 allegations arose that the police who arrested drug dealers Mark Kruse and Steve McGill had conspired to steal large sums of money and a quantity of illicit drugs from the men, as well as conspiring to pervert the course of justice by enabling

¹¹³ Swanton and Page, op. cit., p.391.

¹¹⁴ Wood, op. cit., p.60.

¹¹⁵ McCoy, op. cit., p.117.

¹¹⁶ Wood, op. cit., Appendix, p.206.

¹¹⁷ McCoy, op. cit., p.117.

them to escape prosecution. It was also alleged that a solicitor and possibly a magistrate, became part of a conspiracy in which false passports were obtained to enable these men to abscond and leave Australia while on bail. Once again, these allegations were not investigated and resolved.¹¹⁸

During 1966, John Wesley Egan, a member of Special Branch, made a number of significant heroin connections in both Hong Kong and the United States. Seeing the opportunity to traffic the drug from Hong Kong through Australia and on to the United States, Egan initially took leave from work to set up his smuggling racket, before resigning to concentrate full time on this operation. In 1969 he was reportedly tipped off by a New South Wales detective that there was to be a raid on his trafficking ring. By this time Egan had shifted approximately \$22.5 million dollars worth of heroin through Australia. He immediately called off his smuggling operation, but one of his couriers did not destroy the heroin as instructed and was caught bringing it into Australia. Egan was eventually arrested in Paris in 1970.¹¹⁹ In 1975 he returned to Sydney where he claimed publicly that there was corruption in the highest echelons of the police force and that organised crime and highly placed policemen were often the same people.¹²⁰

'Mr Big'

The Moffitt Royal Commission focused public attention on the career of Arthur Leonard McPherson. A standover man, it is reputed that McPherson once complained to police, who were investigating a murder for which he was later charged, that 'It's a funny thing that whenever anyone is shot in Sydney, the first thing they (the police) do is run to me'.¹²¹ Commonwealth police documents submitted to the Moffitt Royal Commission described McPherson as 'a vicious, powerful criminal who is so well entrenched in organised crime activity in New South Wales that he is often referred to in the media and by his associates as 'Mr Big'.¹²² McPherson helped Abe Saffron entertain Chicago Mafia figure Joseph Testa during his four week visit to Sydney in 1969 by taking him pig shooting in Bourke.¹²³ When questioned about his source of income at the Moffitt Royal Commission McPherson replied 'I do the best I can'.¹²⁴ More recently McPherson gave evidence at the Wood Royal Commission about the 'open door policy' some senior members of the Police Service in the early 1980s had for himself and Abe Saffron.¹²⁵ Lennie McPherson died of a heart attack in Cessnock prison in 1996.¹²⁶

Two important events occurred in 1977. One was an internal undercover police operation to investigate allegations that police at almost every level of the Force, had been involved in organised crime and its protection. These allegations include: up to \$14 million a year had been paid to police and politicians to protect illegal gambling and other criminal activities; organised crime was extensively conducted with the co-operation, protection and direct assistance of certain NSW police; and certain CIB officers were heavily involved in organising a variety of crimes including drug

¹¹⁸ Wood, op. cit., p.60.

¹¹⁹ Hickie, op. cit., pp.301-306.

¹²⁰ Wood, op. cit., p.60; and Hickie, loc. cit.

¹²¹ Hickie, op. cit., p.242.

¹²² ibid.

¹²³ ibid., p.245.

¹²⁴ ibid., p.243.

¹²⁵ Wood, op. cit., p.62.

¹²⁶ 'Crime boss's front man found dead with shotgun'. *The Daily Telegraph* 5 June 1998.

trafficking, prostitution and armed hold ups. In the course of this operation, officers of the Crime Intelligence Unit (CIU) engaged in the illegal telephone tapping of police, crime figures and prominent citizens. Commissioner Merv Wood ordered that the CIU offices be raided for the recovery of these tapes and their transcripts. As a result of the raid, the investigation which had begun into the allegations of serious corruption and police associations with organised crime ground to a halt.¹²⁷

Perhaps the more important event of 1977 took place on 15 July, when local Liberal Party politician and anti-drugs campaigner Donald McKay disappeared in Griffith. During the 1970s, Griffith had gained notoriety as the centre for the cannabis industry. The local police investigation into MacKay's disappearance failed to reveal his whereabouts or the identity of anyone who might have been responsible for his disappearance.¹²⁸

MacKay's disappearance, amongst other events including the arrest of former NSW police officer Murray Riley for attempting to import 4.1 tons of Thai cannabis worth \$46.8 million,¹²⁹ led to the establishment in 1979 of the Woodward Royal Commission into drug trafficking. In relation to the disappearance of MacKay, the Commission concluded that his disappearance was probably arranged either by, or on behalf of a Griffith-based drugs organisation because his activities represented a threat to their illicit activities. Further, there was a reason to suspect that some police officers stationed in Griffith were not trustworthy. Specifically, the Commission was of the opinion that Detective Sergeant Ellis was involved in covering up for Antonio Sergi either as an active participant in a conspiracy to cultivate cannabis or in order to aid and abet Sergi in his involvement in that crime. The behaviour of Detective Sergeant Ellis and Detectives Borthwick and Robins left much to be desired, the Commission stated. Finally the Commission found that there was justification for a belief that there was an organisation in existence involved with the growing of marijuana, which was receiving benevolent treatment from certain members of the local police force.¹³⁰ Certainly there were connections between more senior police and well-known Griffith criminal identities. Fred Hanson, Police Commissioner from 1972 to 1977 apparently went duck shooting with Robert Trimbole, one of the suspected conspirators in the MacKay disappearance.¹³¹

The matter of the disappearance of Donald MacKay dragged on until 1986 when a Special Commission of Inquiry was set up to investigate the adequacy and propriety of the police investigation into MacKay's death. The Special Commission supported Woodward's main conclusions in relation to the matter. It criticised the conduct of the police investigation, found that police procedures in filing and recording information were inadequate and concluded that there was a lack of proper liaison between the NSW Police and the Victoria Police, as well as within NSW Police itself.¹³²

In 1978 and 1979 allegations arose that the Chief Stipendiary Magistrate Murray Farquhar was associating with criminal identities, in particular, that he had been attending the Randwick races with George Freeman and Dr Nick Paltos. In a 1978 NSW Parliamentary Select Committee hearing, testimony was received from the Attorney General's Department that Freeman was either number one or two in the

¹²⁷ Wood, op. cit., p.61.

¹²⁸ McCoy, op. cit., p.116.

¹²⁹ *ibid.*

¹³⁰ Wood, op. cit., p.62.

¹³¹ Birmingham, op. cit., p.429.

¹³² *ibid.*

underworld, and that he controlled a large gambling network of more than twenty phone betting agencies with 200 telephones across Sydney.¹³³ Paltos was later convicted of conspiracy to import 7.2 tons of Lebanese cannabis valued at \$40 million. In 1986, after pleading guilty, he was sentenced for 20 years. In 1992 Paltos was convicted of the offence of conspiring to pervert the course of justice. He apparently hatched this particular plan while serving the previous sentence. His co-offender in this case was Roger Rogerson.¹³⁴

In 1979 more allegations arose concerning Murray Farquhar. These allegations centred on the claim that Farquhar, a solicitor called Morgan Ryan, and Police Commissioner Merv Wood, had conspired to pervert the course of justice in relation to the sentencing of two drug offenders, Roy Cessna and Timothy Milner. Cessna and Milner had been charged with the possession of 137 kilograms of cannabis. Both were dealt with summarily, supposedly by agreement between the parties, although there was opposition to this agreement by some members of the Police Prosecutions Branch. On 5 June 1979 Commissioner Merv Wood resigned amidst allegations of widespread police corruption.¹³⁵

In the same month the new Commissioner, Jim Lees, directed an investigation into the Cessna-Milner affair. The report exonerated all those involved in this matter from any wrongdoing. However in March 1985 material which had been disclosed in the Age Tapes Royal Commission was produced in the NSW Parliament leading to a police task force to reinvestigate the matter. The task force recommended that consideration be given to laying charges of conspiracy to pervert the course of justice. Merv Wood was charged with conspiracy to pervert the course of justice, but in 1991 an order was made for a permanent stay of proceedings.¹³⁶

1979 was also notable for the establishment of the Commonwealth – New South Wales Joint Task Force into Drug Trafficking (JTF). Established to target high-level drug dealing, the JTF made many arrests and convictions before being wound up in 1988. However, evidence given at the Wood Royal Commission into the New South Wales Police Service in 1994-1996 indicated that many of the JTF members were involved in seriously corrupt practices. Further, the connections between corrupt officers that were formed in the JTF lasted well beyond the conclusion of the JTF. Wood also found that the Joint Task Force was quite unable to stem the trade in narcotics.¹³⁷

During this time, the power base of the Police Force was the CIB and its various squads, elements of which were regarded as seriously corrupt. Transfers to and from the CIB could take place overnight on the grounds that such transfers were in the interest of the Service. Those from the squads were recognised as having shortcut systems for achieving results such as 'verbals' and 'loads', ie false confessions and planting evidence. Investigations were seen by other police to become unpredictable if the CIB, which had the power to take over any investigation, decided to take charge.¹³⁸

The Darlinghurst – Kings Cross area, long a focus of questionable police activity,

¹³³ McCoy, op. cit., pp.113, 115.

¹³⁴ Wood, op. cit., p.63.

¹³⁵ *ibid.*, p.63.

¹³⁶ *ibid.*

¹³⁷ *ibid.*, p.63-64.

¹³⁸ *ibid.*, p.64.

again emerged as an area of concern as the Vice Squad, the Consorting Squad and No. 21 Special Squads (formerly No. 21 Division) were located at Darlinghurst Station.¹³⁹ Wood extensively explored this area as a recruiting ground for corrupt police during the course of his Royal Commission.

2.5 Policing in NSW 1970s to 1980s: The Barbecue Set

Police corruption within NSW was dominated at this time by a group of people reported to have included corrupt police, casino operators, SP bookmakers and a couple of politicians who held regular Sunday barbecues.¹⁴⁰ Evidence tendered in the Wood Royal Commission indicated that the Barbecue Set, as they were known, included senior figures from CIB, who were very powerful within the Police Force.¹⁴¹ A prominent member of the Barbecue Set was Detective Sergeant Roger Rogerson of the Armed Hold-Up Squad.¹⁴²

This period was marked by a strong network of corrupt police, whose members wined and dined members of the Police Association, had strong influence with the media and were skilled at using those connections. These strong ties enabled those police who were so minded to maintain influence within the Police Force even after they had left it. Such influence was used to foster corrupt relations with criminals and to gain access to confidential information, especially by those former officers who became private inquiry agents. Also typical of this period was the expectation of officers that there would be no aggressive investigation of internal complaints. Wood remarked that this expectation lingered well into the early 1990s.¹⁴³

Commissioner Avery (1984-1991) claimed that the 'high water mark' for syndicated police corruption was police involvement in gaming and betting.¹⁴⁴ The Labor Government of the time had tried to end SP bookmaking by legalising off-course betting in 1965. This led to a dual off-course betting system, with a massive, efficient illegal SP network rooted in the telephone system and in public bars, and a smaller, legal Totaliser Agency Board (TAB) network.¹⁴⁵ In 1977 a Royal Commission under Justice Lusher had recommended that casinos be legalised.¹⁴⁶ In a NSW Parliament Select Committee hearing in 1978, George Freeman was identified by the Attorney General's Department as being one of the top two men of Sydney's underworld, who controlled an extremely large SP betting network.¹⁴⁷ The Labor Government decided to opt for eventual legislation, and the last of the big illegal casinos was closed down in 1982¹⁴⁸ (see boxed text Merv Beck vs the Barbecue Set).

Merv Beck vs the Barbecue Set

Merv Beck was a third generation police officer. He had served in many of the most notorious squads in the Force, including Vice, Consorting and 21 Division. In 1976 he was offered a position at Darlinghurst Police Station and was told by his superiors

¹³⁹ *ibid.*

¹⁴⁰ Q. Dempster, *Honest Cops*, ABC Books, Sydney, 1992, p.167.

¹⁴¹ Wood, *op. cit.*, p.65.

¹⁴² D. Goodsir, *Line of Fire*, 2nd edn, Allen & Unwin, Sydney, 1995, p.64.

¹⁴³ Wood, *op. cit.*, p.65.

¹⁴⁴ *ibid.*

¹⁴⁵ McCoy, *op. cit.*, p.112.

¹⁴⁶ Wood, *op. cit.*, Volume 3, Appendix, p.201.

¹⁴⁷ McCoy, *op. cit.*, p.113.

¹⁴⁸ *ibid.*, p.114.

that he was the only person they knew who could clean the place up. At this time Darlinghurst was considered a punishment posting by many police. In 1977 when Beck started his posting at Darlinghurst, he allegedly found that a cell in the station operated as a bar, that things could be borrowed from the exhibit room on an honesty system, and that drug exhibits were mingled with the firearms exhibits and could be found scattered throughout the station, often in officer's lockers. Beck improved security, transferred some officers out, and had others counselled. Beck claims that about this time he was approached by a local business man, who offered him \$500 a week to do nothing about the local gambling clubs. Beck says he refused this offer and, after some successful joint operations, he asked the Licensing Branch for a list of the illegal casinos operating in Kings Cross. Gambling was the responsibility of 21 Division which was under the direct control of the Commissioner, and Beck forwarded the three page list to 21 Division for comparison with their records. He heard nothing further and soon afterwards was abruptly transferred to Chatswood Police Station. Beck claimed he later found out that Abe Saffron, on behalf of several Kings Cross businessmen, had instigated Beck's removal from Darlinghurst because they were concerned that he was going to raid their casinos.¹⁴⁹

After Commissioner Merv Wood's resignation in 1979, Commissioner Lees appointed Beck the head of 21 Division, under Assistant Commissioner Bill Allen. Allen and Beck clashed, and Beck claimed that Allen demanded he go slow on casino busts. After a final confrontation, Allen allowed Beck to begin conducting raids, but Beck's squad found that by the time they arrived, the casinos had moved on. By taking out the 'cockatoos' (men acting as lookouts) Beck found his success rate improving. In ten months he reportedly made 900 arrests for SP offences and 3300 arrests for all offences.¹⁵⁰

By this time Beck had come to the attention of the Barbecue Set, who were interested in ways to stop him. There was talk of having Beck shot or a petrol bomb thrown into his car. His family were harassed by phone calls in the middle of night, and their house would often be watched by strangers in cars. A concerted campaign of hate mail was sent to Beck on Police Department stationery.¹⁵¹

Ten months after he was appointed the head of 21 Division, Beck claimed that his senior officer Bill Allen told him he had closed down all the casinos, and that he had done his job. Soon after Beck was promoted to the rank of superintendent, which made him unable to keep his position as head of 21 Division, an inspector's position. Assistant Commissioner Bill Allen again resumed control of 21 Division.¹⁵²

In 1981, with three months to be served before his retirement, and Bill Allen facing disciplinary hearings at a Police Tribunal, Merv Beck was again running the new Special Gaming Squad. Harassment of his family immediately began again. In three and half months Beck had closed down all the major gaming operations, arrested 1055 people and left enough criminal intelligence to keep his successor going for 12 months. But after he left, nothing happened. Even in his retirement, he continued to receive phone calls from members of the Barbecue Set, threatening reprisals for the damage he had done.¹⁵³

¹⁴⁹ Dempster, op. cit., p.164-165.

¹⁵⁰ *ibid.*, p.165.

¹⁵¹ *ibid.*, p.167.

¹⁵² *ibid.*, p.170.

¹⁵³ *ibid.*, p.171.

Commissioner Wood was not the only senior officer to maintain dubious connections. It was reported that Assistant Commissioner Bill Allen, the officer with responsibility for 21 Division had been visited at Police Headquarters on six or seven occasions by Abe Saffron, between March and September 1981, to discuss licensing matters. At this time Allen had allegedly been passing payments to the head of Special Licensing Branch, Acting First Class Sergeant Warren Molloy. He told Molloy that Saffron had been visiting him to discuss a grievance that Saffron felt Molloy had against him. Molloy confided in two fellow officers, Ernie Shepherd of the Vice Squad and John Avery. At this time the Australian Federal Police were conducting their own investigations into Allen. Soon after, NSW Internal Affairs began investigating Allen. In November 1981, this matter was raised in Parliament and a Police Tribunal was set up soon after to investigate the matter. Allen was demoted, then retired. The matter did go to court, but was subject to numerous appeals.¹⁵⁴

Wood, in the report of the Royal Commission into the New South Wales Police Service, stated that there were three main factors that allowed corruption to flourish in this period. Firstly, he noted that corrupt police were able to select and encourage junior officers who showed a willingness to participate in corrupt activities, to join up with them and then follow them through the ranks.¹⁵⁵ Allen's mentoring relationship with Molloy is indicative of this.¹⁵⁶ Wood comments that while this initially meant that corrupt police tended to be concentrated in CIB, once CIB was devolved, these corrupt networks were transplanted across the regions as well as the specialists squads that remained.¹⁵⁷

Secondly, Wood noted that corrupt or inept management ensured that there was nowhere an officer could safely go with a complaint about improper or criminal behaviour.¹⁵⁸ Those in Internal Affairs were unable to protect whistleblowers, and the case of Phillip Arantz's scheduling in a psychiatric hospital for whistleblowing lingered in officers' minds.¹⁵⁹ It was widely considered that to speak out about corruption was to effectively end one's career.¹⁶⁰ This dovetails with Wood's third observation – that there was a general unwillingness or inability to target the corrupt police who had well-established links to senior officers.¹⁶¹

In 1981 Justice Lusher handed down the report of his inquiry into NSW Police Administration. The broad terms of reference for this inquiry enabled the first systematic evaluation of the Police Force since its establishment. Lusher made more than 200 recommendations focused mainly on administration and training. Amongst the more important of these, Lusher found that there were no management procedures directed towards the possibilities of corruption.¹⁶² He also found that the existence of corruption pointed to serious management deficiencies that, in the absence of any procedures to deal with it, lead to a focus on individual deviance rather than addressing the complaint in the context of wider, institutionalised corruption.¹⁶³

¹⁵⁴ *ibid.*, p.172-181.

¹⁵⁵ Wood, *op. cit.* p.66.

¹⁵⁶ Dempster, *op. cit.*, pp.172-181.

¹⁵⁷ Wood, *op. cit.*, p.66.

¹⁵⁸ *ibid.*

¹⁵⁹ Dempster, *op. cit.*, p.176.

¹⁶⁰ Wood, *op. cit.*, p.66.

¹⁶¹ *ibid.*

¹⁶² *ibid.*

¹⁶³ *ibid.*, p.67.

One of the legacies of the Lusher inquiry was the reorganisation of recruit education and the general move to professionalise police. Until this point, it had always been presumed that police training should be a police matter, and it was rare that there was input from any other organisation. Lusher recommended changes in police education that would bring recruits into contact with students from other academic disciplines as well as teachers who were not drawn solely from the ranks of sworn police officers. Fitzgerald, in his inquiry into Queensland Police some eight years later, would make very similar recommendations.¹⁶⁴

A number of oversight agencies with direct responsibilities towards police were established at this time. While the Office of the Ombudsman had been in place since 1975, its oversight had been restricted to complaints about police rather than police corruption. The establishment of the Independent Commission Against Corruption in 1988 with the specific mandate to investigate public sector corruption, provided for independent investigation of police corruption for the first time. In 1984 the Police Board was formed. This gave the Government an additional source of advice on police administration and education, breaking the monopoly of the Commissioner as the sole source of advice, a tradition in place since 1860.

John Avery became Commissioner in 1984. His appointment led to a major restructure of the Police Force designed to enhance the level of service provided by police to the community, and to make the police more accountable to the community they serve.¹⁶⁵ Avery's philosophy of policing as laid out in his book *Police, Force or Service?*, attempted to move the Police Force from a militaristic - bureaucratic model to one of community-based policing.¹⁶⁶ Avery's program of reform was far reaching enough for the then Assistant Commissioner of Police, Christine Nixon, to remark in 1996 'These reforms are still being implemented today'.¹⁶⁷

Avery effected a major restructure of the Police Force in 1987, with the establishment of four police regions, along with the devolution of centralised police agencies and squads to decentralised, geographically based patrols. The regions were to be microcosms of the whole organisation, sharing all functions equally. The most dramatic change in the restructure was the dismantling of the CIB, with the detectives relocated to the Regional Crime Squads and new patrols. It was anticipated that this restructure would break up the power of the CIB and thus bring to an end the now widely acknowledged corruption that had flourished. Needless to say these changes met with strong resistance. Justice Wood reported that in retrospect, disbanding the CIB led to the spread of corruption throughout the Police Force and the State.¹⁶⁸

Avery was the first Commissioner to recognise that corruption was a serious issue that required a comprehensive response. In evidence before the Wood Royal Commission he stated that to address corruption it was his plan to educate members to be ethical and to imbue them with a sense of responsibility and accountability to the community. Institutionalised corruption was to be dealt with as a management

¹⁶⁴ M. Finnane, *Police and Government: Histories of policing in Australia*, Oxford University Press, Melbourne, 1994, p.147-149.

¹⁶⁵ D. Chappell, Introduction, in D. Chappell and P. Wilson (eds), *Australian Policing: contemporary issues*, 2nd edn, Butterworths, 1996, p.2.

¹⁶⁶ C. Nixon and C. Reynolds, 'Producing Change in Police Organisations: the story of the New South Wales Police Service', in D. Chappell and P. Wilson (eds), *Australian Policing: contemporary issues*, 2nd edn, Butterworths, 1996, p.45.

¹⁶⁷ *ibid.*

¹⁶⁸ Wood, *op. cit.*, p.69.

issue and that management responsibility would be encouraged through regionalisation. He further planned to re-engineer the promotions system to ensure that ethical police officers held the senior positions.¹⁶⁹

Yet while these changes were taking place, police scandals kept on surfacing. For example, the 'open door' policy that had allowed Abe Saffron to visit Bill Allen in Police Headquarters continued into the first half of the 1980s, as notorious Sydney identity Lennie McPherson testified before the Wood Royal Commission.¹⁷⁰ Furthermore, the early 1980s was the time Detective Sergeant Roger Rogerson gained public notoriety.

Roger 'the Dodger' Rogerson

By his own service record Detective Sergeant Roger Rogerson was a talented officer. In 1967 he became a partner in the Special Crime Squad while simultaneously he joined the Emergency Squad (later known as Special Weapons and Operations squad).¹⁷¹ Rogerson worked on some of the biggest cases of the time – the Toecutter Gang murder and the Whisky Au Go-Go Fire in Brisbane. During this time he also made a number of important contacts in the criminal world, including Lennie McPherson, who was described in court at the time as 'having the reputation of being a leader of organised crime in this state'.¹⁷²

In 1974 Rogerson joined the Armed Hold-Up Squad and in an encounter that earned Rogerson great credit, that same year he arrested a Melbourne robber called Christopher Dale Flannery.¹⁷³ Rogerson's career success continued and his position in the Squad put him at the centre of crimes of great importance. In 1976 he recruited an informant called Arthur 'Neddy' Smith, who at that time was reportedly linked to a blooming heroin importation and distribution network.¹⁷⁴

By 1978 Rogerson's reputation was such that he was gaining convictions on the strength of unsigned records of interview with prisoners. Despite not being connected to Special Branch, Rogerson was brought in to interview Ananda Marga sect members when they were arrested by police for suspicion of conspiracy to murder following the Hilton Bombing. Tim Anderson later claimed that the confession Rogerson extracted was fabricated, and that he and others were convicted because Rogerson verballled them.¹⁷⁵

In 1980, after being arrested by Rogerson, escaped armed robber Gary Purdey claimed that Rogerson assaulted him, prevented him from ringing his solicitor and typed up to five different records of interview. For this arrest, Rogerson was awarded the Peter Mitchell Award for the most outstanding piece of police work in any phase of duty.¹⁷⁶

In 1981 Rogerson shot and killed a drug dealer called Warren Lanfranchi. The Coroner found that Lanfranchi had been shot while Rogerson was trying to arrest

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid.*, p.71.

¹⁷¹ Goodsir, *op. cit.*, p.64-65.

¹⁷² *ibid.*

¹⁷³ *ibid.*, p.66 .

¹⁷⁴ *ibid.*, p.68.

¹⁷⁵ *ibid.*, p.69.

¹⁷⁶ *ibid.*, p.71.

him, the jury having declined to find that the shot had been fired in self-defence.¹⁷⁷ This event marked the beginning of the end of Rogerson's career in NSW Police. In late 1982, the State Opposition leader John Dowd claimed in Parliament that Lanfranchi had been shot because he had ripped off police over a heroin deal. Rogerson supposedly rang Dowd at home to protest his innocence, even passing on a message through Dowd's daughter.¹⁷⁸

In September 1983 it is alleged that Rogerson approached Detective Sergeant Michael Drury of the Drug Squad to offer him a bribe of between \$15,000 to \$25,000 to drop charges against a Melbourne drug dealer called Alan Williams. Drury refused.¹⁷⁹ Rogerson apparently made a further series of approaches to Drury about this matter, each time Drury refused his advances. Then on 6 June 1984 Drury was shot while in his own home. It was subsequently believed that Williams, using Rogerson as negotiator, had hired Flannery to kill Drury.¹⁸⁰

The initial investigation of the shooting lead by Superintendent Angus MacDonald who had trained Rogerson at Central Station in 1964¹⁸¹ was inconclusive and generated a whole new round of accusations. Charges were brought against Rogerson for attempting to bribe Drury, but Rogerson was found not guilty at trial in 1985.¹⁸² Investigations were reopened in 1985 which lead to Rogerson's dismissal from the Force in 1986 for impairing the efficiency of the force and improperly associating with known criminals. Criminal charges were also brought for attempting to pervert the course of justice and he was convicted in March 1990 for conspiracy.¹⁸³ In 1989 Rogerson was charged with conspiracy to murder Drury, but that charge was dismissed in trial in 1989.¹⁸⁴

Rogerson denies he ever acted corruptly.

Two Commonwealth/State Royal Commissions presided over by Justice Stewart in 1982 and 1983 confirmed that corruption within the Police Force was ongoing. Evidence was heard that corrupt police practices persisted, including the theft of drugs and money from offenders and suspected drug traffickers, the planting of drugs on suspected persons, falsifying evidence in return for money or some other advantage and taking money for supply of confidential information.¹⁸⁵ The Royal Commission into Alleged Telephone Interceptions found that members of the NSW Police Force had been illegally tapping telephones for almost 20 years. It emerged from the Royal Commission that because of concerns held by the NSW Technical Surveillance Unit in investigating corruption within NSW Police Force it had found it necessary to leave documents with the Bureau of Criminal Intelligence within Victoria Police. This liaison was maintained on an informal basis without official sanction.¹⁸⁶

The 1980s were also punctuated by a series of incidents that lead to closer scrutiny of police practices. These included the 1985 inquiry into the convictions of Ananda Marga sect members for the Hilton bombing and inquiries into the activities of the

¹⁷⁷ Wood, op. cit., p.71.

¹⁷⁸ Goodsir, op. cit., p.78.

¹⁷⁹ *ibid.*, p.82.

¹⁸⁰ *ibid.*, p.101.

¹⁸¹ *ibid.*, p.64.

¹⁸² Wood, op. cit. p.72.

¹⁸³ *ibid.*

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*, p.73.

¹⁸⁶ *ibid.*, p.74.

Tactical Response Group and the Special Weapons Operations Team, in relation to the fatal shooting of David Gundy in 1989.¹⁸⁷

1989 also saw one of the most spectacular examples of a form of police corruption that involved group glory rather than personal gain. This was the arrest of Harry Blackburn for a series of rapes committed between 1969-1970 and 1985-1988.

The Harry Blackburn Affair

On 24 July 1989, Harold Blackburn, a former Superintendent in the NSW Police Service, then working with the War Crimes Commission in the Federal Attorney General's Department, was arrested and later charged with 13 accounts of sexual assault on women as well as assault, robbery and detaining for advantage.¹⁸⁸ His spectacular arrest included notification of the media and the walking of Blackburn through the waiting media. The investigation team lead by Detective Chief Inspector Thornwaite, Detective Senior Sergeant Carl Spain and Detective Sergeant Minkley constructed a case against Blackburn based largely on Thornwaite's suspicion that Blackburn knew the area in which the rapes occurred and that he bore a resemblance to a sketch of the rapist.¹⁸⁹ The rapes for which Blackburn was arrested and charged occurred in two groups. The first series took place in the Sutherland district between 1969 and 1970 and the second series took place in the southern suburbs of Miranda, Gympie and Earlwood nearly twenty years later. During the course of the investigation into the 1985-1988 rapes, Thornwaite, Spain and Minkley ignored fingerprint evidence that was favourable for Blackburn,¹⁹⁰ reports from three of the second group of rape victims that Blackburn was not the rapist¹⁹¹ and substantial forensic evidence which excluded Blackburn from being the attacker.¹⁹² Minkley at one point of the investigation hypnotised a potential witness in an effort to obtain the registration number for a van seen near the scene of an assault.¹⁹³ The one positive identification of Blackburn as the attacker was made by one of the victims from the first series of assaults. After prompting by Minkley some 20 years after the attack, the victim identified Blackburn from a current photograph.¹⁹⁴ Later, one of the male victims of a 1980 attack offered a 75% identification of Blackburn, even though his original statement said the attacker had worn a mask completely covering his face.¹⁹⁵

In the early hours of the morning of 25 July 1989, the morning after the arrest of Blackburn, Sergeant Minkley was involved in a car accident and suffered severe head injuries.¹⁹⁶ Inspector Clive Small was brought into the investigation to fill in for Minkley who was responsible for preparing the brief of evidence to be submitted to the Director of Public Prosecutions. Small found the evidence to be in such disarray that he reinterviewed a number of the witnesses and made some of his own inquiries. He quickly found that the preponderance of the evidence supported

¹⁸⁷ *ibid.*

¹⁸⁸ J.A. Lee, *Report of the Royal Commission into the Arrest, Charging and Withdrawal of Charges Against Harold James Blackburn and Matters Associated Therewith*, 1990, p.1.

¹⁸⁹ *ibid.*, pp.33 – 35.

¹⁹⁰ *ibid.*, p.142.

¹⁹¹ *ibid.*, pp.132-148.

¹⁹² *ibid.*, pp. 241-275.

¹⁹³ *ibid.*, p.152.

¹⁹⁴ *ibid.*, p.207.

¹⁹⁵ *ibid.*, pp.215-218.

¹⁹⁶ *ibid.*, p.23.

Blackburn's innocence, and the charges were withdrawn.¹⁹⁷

2.6 Policing in NSW 1990–2002: Change and continuity

The beginning of the 1990s was different for police, not because corrupt activity had ceased, but because Avery's restructuring had had a masking effect on some of the worst excesses. Disbanding the CIB had diluted the concentration of corrupt officers in key areas, but evidence presented at the Wood Royal Commission showed that this had merely spread the problem around. Former Assistant Commissioner Christine Nixon, now Commissioner of Victoria Police, noted in 1996 that Avery's approach of community based policing became 'too readily part of the rhetoric, rather than the common practice, of policing'.¹⁹⁸ The further strategy identified by Avery, that of putting in place procedures to assist in addressing corruption, appears to have had some difficulty translating into practice. For example, in 1992 a Task Force was set up to identify the nature, scale and trend of corruption within the Service.¹⁹⁹ A review of 7000 files was undertaken, but the analysis and reports proved inconclusive and did not lead to any further action.

Problems with police practice continued. In 1990 the Ombudsman made a special report to Parliament about the failure of the police to take satisfactory action following his report on the operations of the Special Weapons and Operations Squad. The Report noted that the recommended changes had not been made and the critical aspects of arrest, detention and interrogation had not been addressed.²⁰⁰ Two months later Darren Brennan was shot in the face during a raid on his home in a similar incident to the shooting of David Gundy.²⁰¹ Mr Brennan, lived, however.

In 1993, the Independent Commission Against Corruption produced a significant report, known as Milloo, into the relationship between certain police and criminals. The ICAC further outlined Rogerson's corrupt activities, looked at some allegations of 'fixed' police prosecutions and examined the treatment of a Police Service whistleblower.²⁰² Despite making quite specific allegations of 'greenlighting', no prosecutions followed. Some prosecutions and internal disciplinary proceedings did commence. However, the main outcome from Milloo was the disbanding of the Gaming Squad in 1994 and the adoption of a new Informants Management Plan and Internal Informers Policy for the Service. A new case management system was also introduced.²⁰³

In 1994, as the result of a Parliamentary motion by Independent MP John Hatton, a Royal Commission into the NSW Police Service was established.²⁰⁴ The scope of the Commission was reasonably broad and authorised Justice Wood to investigate, amongst other activities, the existence or otherwise of systemic or entrenched corruption within the New South Wales Police Service and the activities of the Professional Responsibility Command. Wood was required to report by June 1997.²⁰⁵

¹⁹⁷ *ibid.*, p.24.

¹⁹⁸ Nixon and Reynolds, *op. cit.*, p.42.

¹⁹⁹ The NSW Police Force was renamed the NSW Police Service by the *Police Service Act 1990*.

²⁰⁰ Wood, *op. cit.*, Appendix, p.211.

²⁰¹ *ibid.*, p.74.

²⁰² ICAC, *Investigation into the Relationship Between Police and Criminals*, 1994.

²⁰³ Wood, *op. cit.*, p.77.

²⁰⁴ Dixon, *op. cit.*, p.1.

²⁰⁵ Wood, *op. cit.*, p.1.

In February 1996 Wood issued the First Interim Report of the Commission. This report concluded that the existing investigative framework of the Office of Professional Responsibility (Police Service), the Independent Commission Against Corruption and the Office of the Ombudsman was inadequate and that a state of entrenched corruption had provisionally been shown to exist.²⁰⁶

In November 1996 Wood issued the Second Interim Report which urged the Service to capitalise on the momentum gained from the Royal Commission and begin the process of reform. The reform process would involve removal of officers still in the Service against whom there were well founded allegations of corruption, implementation of the new Police Commissioner's reform agenda and reorganisation of the command ranks to place the best qualified officers in positions where they could join the fight against corruption, thereby overcoming the ineffective past management and supervision of the police.²⁰⁷ One of Wood's main recommendations from this report was that a new agency be established with a full range of coercive powers to detect and investigate police corruption.²⁰⁸ The Police Integrity Commission was established in 1996 on the basis of this recommendation.

The Final Report, handed down in May 1997, was a comprehensive examination of police corruption in New South Wales that, like the Lusher Report, placed police corruption within the context of the 'rotten barrel' rather than focusing on individual 'rotten apples' (see boxed text Trevor Haken and 'The Laugh'). The three volume Royal Commission Report examined corruption and the necessary reform of the Police Service. The final volume of the Report contained the appendices, and within them was a document that set the Wood Royal Commission apart from all those that had gone before. Wood recognised that reforming the Service would be difficult and in order to keep reform a focused process, he set in place the Qualitative and Strategic Audit of the Reform Process (QSARP) as contained in Appendix 31.

The substantial difference between the Wood Royal Commission and previous commissions of inquiry into police lay in the fact that Wood was given a mandate to specifically investigate the police, rather than either investigating a symptom of corruption (such as the various Royal Commission's into aspects of police brutality and abuse of powers) or investigating a powerful inducement to corrupt behaviour (such as the Liquor Royal Commission and the Woodward Royal Commission). The Wood Royal Commission was also marked by the successful use of a number of techniques to access corrupt networks. For example, the use of listening devices and hidden cameras, as well as the 'rolling over' of corrupt police officers working covertly for the Commission in order to expose networks of corruption.

Trevor Haken and 'The Laugh'

Detective Sergeant Trevor Haken was one of the Wood Royal Commission's key witnesses. An officer with 25 years experience, he came to the attention of the Crime Commission in 1994 and agreed to work covertly for the Commission to expose networks of corruption within the Service. Haken had joined the police when he was 19, and had progressed through postings in 21 Division and CIB Drug Squad. By his own account it was in these squads that he became a participant in systematic manipulation of evidence, the abuse of police powers, breaching criminal law in

²⁰⁶ *ibid.*, p.3.

²⁰⁷ *ibid.*, p.4-5.

²⁰⁸ J.R.T. Wood, *Royal Commission into the New South Wales Police Service Interim Report*, 1996, p.110.

pursuit of a conviction, and opportunistic theft.²⁰⁹ In 1983 he joined the Commonwealth-NSW Joint Task Force on Drug Trafficking (JTF). His experiences in the taskforce reinforced for him the notion that corruption was simply part of being a police officer and that involvement in such conduct enhanced his reputation amongst officers who 'played the A grade'.²¹⁰ He was eventually transferred to Kings Cross where he was introduced by other officers to 'the laugh' – a system of payments from drug dealers and strip club operators. Haken eventually became the person who collected 'the laugh' and divided it up amongst the other officers. In 1991 Haken was appointed the head of the Kings Cross Drug Unit. In this position he assigned jobs with a corruption potential to officers whom he knew to be corrupt. Wood commented that Haken remained unnoticed for many years because the volume of work was high and the turnover of officers was low.²¹¹

2.7 The Legacy of the Wood Royal Commission - the Police Integrity Commission

Established following the release of the Royal Commission's Interim Report in February 1996, the Police Integrity Commission (PIC) was designed with the dual purpose of investigating matters brought to the attention of the Royal Commission which the Commission did not have time to investigate, as well as being a permanent investigative agency focused solely on police corruption. The role and statutory functions of the PIC are examined in greater detail in Chapter Three.

The PIC has conducted a number of investigations into police corruption including references from the Wood Royal Commission, joint operations with other agencies such as NSW Police Internal Affairs and the Crime Commission as well as instigating own motion investigations. Some of the more recent matters the PIC has inquired into include allegations of improper associations between Bondi police and officers and drug dealers (Operation Saigon) and links between current and former police officers and Kostas Kontorinakis and Roger Rogerson (Operation Oslo). The PIC also published research projects, notably Project Dresden, an audit of the quality of NSW Police Service Investigations and Project Oracle, a review of assault complaints involving officers of the NSW Police Service.

Most recently the PIC, in a joint investigation with Internal Affairs and the Crime Commission, uncovered substantial corruption in the former Manly-Davidson Local Area Command. Networks of corrupt officers, who maintained their activities throughout the course of the Wood Royal Commission, were exposed as having engaged in such activities as 'greenlighting' and networking drug dealers, taxing drug dealers, stealing money while conducting searches of properties and perverting the course of justice. This investigation, known as Operation Florida, is ongoing.

²⁰⁹ Wood, 1997, op. cit., p.167.

²¹⁰ *ibid.*

²¹¹ *ibid.*, p.168.

Chapter Three – The Complaints System And Oversight Arrangements

This chapter examines the current police complaints system and oversight arrangements. It begins with a brief review of the pre-Wood system before examining current practice. Comparison of the two periods enables an assessment of the effectiveness of the current complaints and oversight system. Different oversight models are discussed, as are the possibilities of streamlining the current system. This chapter considers the important distinction between the nature of police misconduct and corruption and the systems for dealing with such activity.

3.1 The pre-Wood oversight system

The police oversight system that existed prior to the Wood Royal Commission consisted of two external agencies: the Office of the Ombudsman and the Independent Commission Against Corruption (ICAC). With the establishment of these two agencies, a significantly greater degree of oversight of police conduct was available, as evidenced by the increased number of reports concerning the activities of some police from the early 1980s onwards.

However, there were still significant shortcomings with the powers held by these two agencies to perform their oversight functions. For example, both agencies had charters to oversight many other public agencies and officials and had limited staff and resources for this purpose. Both agencies relied substantially on seconding members of NSW Police as investigators. The power of the Office of the Ombudsman also was limited by inability to deploy coercive powers or undertake proactive investigations. In the case of the ICAC, there was no specific division focused on police corruption.²¹²

The ICAC's problems with conducting successful corruption investigations into police deserve further explanation. Most of the ICAC's investigators were either former or seconded police officers. It was generally considered that seconding police as investigators at the ICAC was a mutually beneficial arrangement for both agencies. It was believed that police were best able to improve policing and put their house in order. Conventional wisdom held that police who had been seconded to a multi-disciplinary external agency were exposed to broader views, ethics and investigative techniques, and were more likely to understand and accept the role of that agency and communicate this to other officers on their return.²¹³ It was further argued that police knowledge of investigative techniques, policies, procedures, practices, reputations and associations were an advantage and that non-police investigators might have difficulties interrogating detectives.²¹⁴

These advantages, however, carried considerable disadvantages. Officers were often imbued with the negative aspects of police culture, with 'mates' protecting 'mates' through leaks and cover-ups, along with having a general reluctance to produce reports that would embarrass the Service. Officers also held concerns for their subsequent career advancement within the Police Service, particularly if the targeted officer held a senior rank.²¹⁵ Moreover, the general regard in which

²¹² Wood, 1997, op. cit., p.202.

²¹³ Wood, 1996, op. cit., p.68.

²¹⁴ *ibid.*

²¹⁵ *ibid.*

seconded police investigators to both the Ombudsman and the ICAC were held by their fellow police officers can be gauged by a former head of the Police Association, who described officers seconded to the Ombudsman's Office as being 'spies'.²¹⁶

3.2 The pre-Wood police complaints system

Prior to 1996 complaints about police could be made either to the Police Service or the Ombudsman. Police officers were required to report to a senior officer the conduct of another officer they believed was misconduct or a criminal offence. Failure to meet this reporting obligation was a disciplinary offence. With certain exceptions, complaints received by the Police Service had to be sent to the Ombudsman. Exceptions included those matters deemed to concern the 'internal management' of the Service, such as failure to attend court or notify witnesses, absence from duty, debts, loss of firearms in certain circumstances and promotion and recruitment complaints except those alleging corruption or misconduct.²¹⁷

Such matters were classified as not warranting notification and were determined by a 'class or kind' agreement between the Ombudsman and the Police Commissioner. A similar agreement existed in relation to those complaint matters which were appropriate for conciliation. The Ombudsman conducted random audits of conciliated complaints to ensure this process was not being abused.²¹⁸

The Ombudsman determined if a complaint should be declined, conciliated, made the subject of preliminary inquiries or of a full investigation (by either the Police Service or the Ombudsman). The Ombudsman also had the discretion to determine if an investigation should be deferred or discontinued. The Police Service had to report to the Ombudsman on any conciliation or investigation.²¹⁹

An officer interviewed during an internal investigation, proceeding on the basis that it may involve a departmental charge was advised accordingly and could be directed to answer questions. Failure to comply attracted disciplinary action. However, an officer had the option of exercising the right to silence if an investigation into a criminal matter was being conducted.²²⁰

Complaints that were found to be sustained were sent to the Office of Professional Responsibility (OPR) for decisions on disciplinary action. Matters that were concluded by the investigation officer not to be sustained, were reviewed by another officer. If there was sufficient evidence for a criminal prosecution, proceedings were to be instituted upon approval of the Commissioner, or the Assistant Commissioner Professional Responsibility, who had delegated responsibility.²²¹

The Office of Professional Responsibility (OPR) was responsible for the investigation of serious complaints and police corruption. The Command was made up of the Professional Integrity Branch (PIB) and the Office of Internal Affairs (Central IA), both of which managed complaints. Central IA was responsible for initiating formal complaints and for allocating them for investigation either centrally through Regional IA Units, or by the reference of less serious complaints to Line Commands within

²¹⁶ Wood, 1997, op. cit., p.149.

²¹⁷ Wood, 1996, op. cit., p.4-5.

²¹⁸ *ibid.*

²¹⁹ *ibid.*, p.5.

²²⁰ *ibid.*

²²¹ *ibid.*

Regions. Complaints about corruption or complaints about agencies not attached to a specific region (for example the Drug Enforcement Agency) were dealt with by PIB.²²²

Investigations carried out in this system were largely reactive to single instances of misconduct. It did not allow for classification of complaints in a way that reflected their variety or their differing levels of seriousness. More importantly, the structure of the system meant it was issues-driven, without regard to broader management and intelligence considerations. It also concealed the links between those involved in organised corrupt activities. Minor complaints also suffered in this system as they had to be dealt with in the same way as major complaints, thus locking officers into the disciplinary system for relatively minor matters. The complaints system was found to be a time-consuming process that affected morale and reduced productivity.²²³

Evidence presented before the Wood Royal Commission indicated that police internal investigations suffered from bias in investigations and discouragement of complainants. They were obstructed by leaked information and collaboration between investigators and those the subject of complaint. This situation made officers reluctant to report their colleagues because of the general lack of confidence in internal investigations.²²⁴

3.3 The pre-Wood police disciplinary system

In the case of a sustained complaint, all powers to impose a penalty on the officer rested with the Commissioner of Police. The officer had a right of appeal to the Government and Related Employee Appeal Tribunal (GREAT) and ultimately the Supreme Court. If the officer the subject of a sustained complaint was from the Police Service Senior Executive Service (PSSSES), and the penalty included a demotion or dismissal, the Commissioner had to make a recommendation to the Minister about the matter. Similarly, if the Police Tribunal found a complaint sustained against a member of the PSSSES, it too had to make a recommendation for demotion or dismissal to the Minister. The Minister then invited a submission from the officer about the matter, before recommending to the Governor if there should be a demotion or dismissal. If the Minister considered that there should not be a demotion or dismissal, the matter was referred back to the Commissioner of Police to consider other penalty options,²²⁵ for example, admonishment or transfer. The Wood Royal Commission noted the inappropriateness of these options.

The complexity and inflexibility of this system, as well as the jurisdictional overlap it created, made outcomes uncertain, especially for police with minor complaints against them. The system was particularly vulnerable to the lack of uniform standards because of the involvement of the GREAT, the Police Tribunal and the Minister in deciding appropriate penalties.²²⁶ Furthermore, this system required a great deal of time for the making of determinations. The Wood Royal Commission noted that 38 percent of investigations were completed within 6 months and a further 32 percent within 7-12 months and 30 percent taking over 13 months. Some

²²² *ibid.*

²²³ *ibid.*

²²⁴ *ibid.*, see pages 55-60 for a detailed elaboration of these issues.

²²⁵ *ibid.*

²²⁶ *ibid.*, p.65.

investigations even took 7-9 years to complete.²²⁷ If criminal charges were preferred, it usually took 2-3 years for the matter to work through the court system, although in one case it took 7 years.²²⁸

3.4 The post-Wood police complaints system and oversight arrangements

Wood's Interim Report released in February 1996 made it clear that the existing system for dealing with police complaints and corruption was inadequate and that fundamental changes had to be made. A number of different models for investigating police complaints and corruption were examined by Wood in the Interim Report, assessing the strengths and weaknesses of each.

Complete self-regulation is one possible model for police complaints and oversight. Under this scheme, police have complete responsibility for resolving complaints, investigating corruption and initiating disciplinary action. This model is characteristic of most professional bodies and fits within the broader program of professionalising policing. It allows police to be considered as conscientious and responsible as members of other professions. Further, it encourages accountability and engenders organisational pride.²²⁹ In favour of such a model it can be argued that the possession of specialist insider knowledge makes police far more effective as anti-corruption investigators;²³⁰ this fits neatly with the proposition that police are best placed to put their house in order.

Wood commented that, at the time of the Interim Report, no submission had been made to the Royal Commission that advocated self-regulation.²³¹ As can be gathered from briefly perusing any history of police in New South Wales (or any other Western democracy), a cavalcade of Royal Commissions and other inquiries have highlighted the shortcomings of police internal investigations especially when there was no external, independent body to oversight police. Examples are numerous, and include the Fitzgerald Inquiry (Queensland), Knapp Inquiry (New York Police Department), Scarman Inquiry (UK), Mollen Inquiry (New York Police Department),²³² the Macpherson Inquiry into the murder of Stephen Lawrence (UK) and most recently the Royal Commission into the Western Australian Police Force. However, while it is generally accepted that police should have some form of civilian oversight, the debate centres mainly around what form this oversight should take.

Complete external investigation, whereby all complaints about conduct and corruption are investigated and disciplinary action is initiated by an external body, is the model that provides the greatest degree of independent oversight and should inspire the greatest degree of public confidence.²³³ However, major concerns have been raised about this model. By removing internal responsibility for misconduct from police, there is nothing to guarantee responsible management practices, integrity or discipline. A degree of police ownership is essential for recognition of

²²⁷ *ibid.*, p.73.

²²⁸ *ibid.*

²²⁹ *ibid.*, p.74.

²³⁰ 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, p.xiv.

²³¹ Wood, *op. cit.*, p.75.

²³² D. Land, and C. Lewis, 'Making the police accountable for their conduct', in D. Chappell and P. Wilson (eds), *Australian Policing: contemporary issues*, Butterworths, 1996, p.13.

²³³ Wood, *op. cit.*, p.75.

such conduct as a police problem requiring a police response. It has also been suggested that when supervisory attention and scrutiny of conduct comes solely from outside an organisation there are risks to the morale of employees.²³⁴ There is further risk that an entirely external civilian agency 'will never earn the co-operation from police which is necessary to glean the information (most of which comes from police sources) and investigate the offence effectively'.²³⁵

Wood advocated a combination of internal and external investigation, arguing that such a system would allow the Service to retain a meaningful role in dealing with management matters, customer service complaints and certain matters of misconduct, as well as retaining oversight of the police and an external responsibility to investigate serious corruption. It would allow the Service to take responsibility for maintaining its own discipline and promoting integrity amongst its officers.²³⁶

While this was the model largely in place pre-1996, Wood preferred the addition of a new purpose-built agency for the aggressive investigation of the most serious instances of police corruption. He based this opinion on public perceptions about the perceived inability and unwillingness of the ICAC to tackle police corruption; the difficulty in structuring a division in the ICAC that could be kept separate and independent from the rest of the organisation; the difficulties in maintaining security of a police division given the common organisational culture and social contact between staff from different sections; and finally, the drain that the level of resourcing for the police division would place on ICAC's other oversight areas.²³⁷

Consequently, the police oversight function was removed from the ICAC and vested in the newly established Police Integrity Commission (PIC). The PIC's functions as provided for by s.13 of the *Police Integrity Commission Act 1996* are:

- (a) to prevent serious police misconduct and other police misconduct,
- (b) to detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct,
- (c) to detect or investigate, or oversee other agencies in the detection or investigation or, other police misconduct, as it thinks fit,
- (d) to receive and assess all matters not completed by the Police Royal Commission, to treat all investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigations of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.

The Office of the Ombudsman retained its role of monitoring and reviewing police internal investigations, and continues to report to Parliament issues concerning the exercise of police powers. As was the case pre-Wood, the Ombudsman may still initiate 'own motion' inquiries into allegations of police misconduct. The Police Service retained its role as the primary investigation body for complaints against police.

²³⁴ *ibid.*

²³⁵ NSW Crime Commission submission to the Wood Royal Commission, *ibid.*, p.76.

²³⁶ Wood, *op. cit.*, p.91.

²³⁷ *ibid.*, pp.91-92.

Essentially the current system for overseeing police complaints and corruption is based on classifying police misconduct according to two categories. Category 1 matters concerning corruption and serious police misconduct are classified under a 'class or kind' agreement between the Ombudsman and the Commissioner for the PIC, on request of the PIC or by regulation.²³⁸ This category includes misconduct such as perverting the course of justice, malicious wounding, grievous bodily harm, accepting bribes, improper interference in a police investigation of a complaint and manufacturing prohibited drugs. The 'class or kind' agreement system provides a flexible administrative mechanism through which the Ombudsman, PIC and NSW Police can regulate the scheduling of those matters which must be referred to the PIC.

All other police misconduct not classified as a Category 1 complaint falls within Category 2. Section 122(1) of the *Police Act 1990* provides that certain Category 2 complaints are required to be notified to the Ombudsman in accordance with guidelines agreed between the Ombudsman and the PIC, in consultation with the Commissioner of Police. Under s.122(2) of the Act, certain complaints of a kind specified in the guidelines between the Ombudsman and the PIC, in consultation with the Commissioner, need not be dealt with as complaints. The Ombudsman conducts audits of police records which include those matters that fall within these guidelines.²³⁹

On 1 January 2002, legislative amendments recommended by the Ombudsman came into effect, removing the requirement for NSW Police to notify the Ombudsman of every complaint they receive from members of the public. The 'class or kind' agreement between the PIC, Ombudsman and NSW Police was amended to allow NSW Police to deal with minor matters characterised as 'local management issues' without notifying the Ombudsman. Instead of reviewing these matters individually, the Ombudsman audits the police systems to ensure that Local Area Commanders are dealing with these matters appropriately and that all serious allegations continue to be notified.²⁴⁰

This arrangement makes Local Area Commanders responsible for handling complaints about officers under their command. The Commanders conduct all aspects of the investigation and management of complaints, including keeping the complainants informed and seeking their views on the outcome. Complaints may reveal a number of things such as the existence of serious misconduct, or that an officer under stress has made an honest mistake, is poorly managed or needs further training. Retaining responsibility for complaints at a local level, allows Local Area Commanders to better manage their officers and develop a clearer understanding of the community they are policing.²⁴¹ For a schematic representation of the police complaints system, see Appendix Six.

The division of responsibility for police oversight under this system works in the following way. The PIC conducts intensive, often covert, investigations into the most

²³⁸ Category 1 schedule of matters covered by the agreement which was first made in 20 December 1996 was revised and the schedule updated on 15 January 1998, effective from 1 February 1998.

²³⁹ A fuller explanation of the current agreement structure can be found in the Minister's second reading speech on the Police Service Amendment (Complaints) Bill 2001, Legislative Assembly Hansard, 19 September 2001, p.16875.

²⁴⁰ *NSW Ombudsman Annual Report 2001-2002*, p.88.

²⁴¹ *ibid.*, p.84.

serious forms of police corruption. This means that the PIC runs a small number of resource intensive investigations. For example during 2001-2002, of the 719 complaints received, the PIC investigated 12.²⁴² The remainder were either referred back to police to investigate with the PIC providing oversight (12), deferred or no further action taken (48), or referred to the Ombudsman (437). The majority of the PIC's investigations derive from intelligence gathering rather than complaints of misconduct.

This means that the Ombudsman oversees the overwhelming majority of police complaints, the bulk of which will be investigated by the police. During 2001-2002 the Ombudsman received 2804 written complaints about police, and scrutinised 4501 complaints dealt with by NSW Police.²⁴³ The Police Team within the Ombudsman's Office has a number of roles, in addition to scrutinising the handling of particular complaints. The police team examines systemic policing issues, and conducts legislative reviews of Acts that give police extra powers such as the *Police Powers (Drug Premises) Act 2001*, the *Police Powers (Internally Concealed Drugs) Act 2001*, and *Police Powers (Drug Detection Dogs) Act 2001*.

3.5 The post-Wood disciplinary system

Wood recommended a series of fundamental changes to the disciplinary process in the Police Service. These included devolving responsibility to Local Area Commanders for decisions on disciplinary action and broadening the range of options available for Commanders to take management action. Such management action is governed by s.173 of the *Police Act 1990* and can take the form of demotion or loss of pay increment, which is reviewable by the Industrial Relations Commission. The Act also allows for less severe penalties such as being managerially counselled. These penalties are known as non-reviewable management action. Reviewable and non-reviewable management action will be examined in greater detail in the following chapter.

The other important feature of the new disciplinary system is the 'Commissioner's Confidence' provisions which allow for the removal from the Service of officers who are deemed by the Commissioner of Police unable to carry out their duties because of their competence, integrity, performance or conduct.²⁴⁴ Decisions made under s.181D of the *Police Act 1990* are reviewable by the Industrial Relations Commission. It should be noted that officers removed under s.181D provisions, or who retire because of the potential of s.181D provisions being invoked against them, suffer no loss of benefits normally available on resignation.

3.6 Streamlining the oversight and complaints system

One criticism that is often raised about the current system for scrutinising police conduct is that police are the subject to far more oversight than any other part of the public sector. The extent of oversight can be defended on the grounds that police have far more power than any other member of the community. However, the assertion that police are subject to greater levels of oversight is misleading. A police officer is subject to the same level of oversight as any other public servant. Within the mainstream public sector, the Ombudsman can be called on to deal with issues

²⁴² *Police Integrity Commission Annual Report 2001-2002*, p.38.

²⁴³ *NSW Ombudsman Annual Report 2001-2002*, p.87.

²⁴⁴ *Police Act 1990* s.181D(1).

of misconduct and the Independent Commission Against Corruption investigates corruption in a focused and sometimes covert way. The recent ICAC inquiry into Rockdale Council is an example of such an investigation. For police, the Ombudsman fulfils the same role with regard to misconduct, while the PIC investigates corruption. In terms of broader oversight, bodies such as the Audit Office oversight all public sector agencies.

The possibility of streamlining the police oversight system is an issue worth revisiting in some detail, as the original reasons for establishing the current police complaints and oversight system may have receded in the memory of some organisations and policy makers.

Merging the Ombudsman's police complaints functions with the PIC

One of the more commonly advocated ideas for streamlining the current system is based on the idea that the Ombudsman's police functions should be merged with the Police Integrity Commission. While there may be advantages of a 'one stop shop' for both police complaints and corruption, there are significant shortcomings with this model. The Committee has been advised by the Ministry for Police that this idea was raised in submissions to the yet to be tabled Review of the PIC Act.

The roles performed by the PIC and the Office of the Ombudsman clearly differ in function and in terms of the proportion of complaint matters examined. Marrying those roles and functions in any practical sense would prove challenging. At the very least, if the Ombudsman's police jurisdiction was placed with the PIC, it would result in a loss of focus for the PIC on targeted investigations.

The former Inspector of the Police Integrity Commission saw the proposal in the following terms:

I am extremely conscious that the legislation concerning the Police Integrity Commission is tailor-made legislation for it to be free to deal with matters of serious police corruption, serious police misconduct, and even then, necessarily has to be limited to investigate those ones in which it feels there is a public interest involved. Otherwise the volume of work just makes it impossible for it to effectively carry out its custom-made role.²⁴⁵

The previous Commissioner of the PIC, the Hon P.D. Urquart QC, gave evidence to the Committee during its Fifth Annual Meeting with the Commissioner of the PIC that:

If all of the matters relating to police were taken away from the Ombudsman and moved across to the Police Integrity Commission, the Commission would not be able to carry out its principal function to the extent to which it was created. There would be more than a blunting.....it would be my view, based on experience, that what the Ombudsman's Office does in relation to its area of responsibility, it does very well. I would not wish anyone to think that the Police Integrity Commission could do it better or worse, but I would not wish anyone to think that by taking on board those other activities it would sharpen the Commission's ability to attend to what it attends to now.²⁴⁶

²⁴⁵ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Fourth General Meeting with the Inspector of the Police Integrity Commission*, February 2001, p.21.

²⁴⁶ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Fifth General Meeting with the Commissioner for the Police Integrity Commission*, February 2001, pp.32-33.

The current Commissioner, Terry Griffin, gave evidence before the Committee during hearings into this Report, that he too supported the current complaints and oversight regime.²⁴⁷ The PIC Commissioner noted that 'the advantage of the current system is that it works'.²⁴⁸

There also seems to be a high degree of uniformity of opinion about the current oversight and complaints arrangement within NSW Police. The Commanders of both Special Crime and Internal Affairs and Employee Management, who work within the current oversight and complaints system, gave evidence that the current process is working. Commander Gallagher gave evidence that his Command's relationship with the Ombudsman is 'excellent'.²⁴⁹ Commander Reith, of Special Crime and Internal Affairs gave evidence that in his opinion the current process is working and does not need to be changed.²⁵⁰ The Police Association's May 2002 conference recommended that the Ombudsman be the primary oversight body for police, as distinct from an investigative body,²⁵¹ thereby providing a further measure of acceptance and support for current arrangements.

Moreover, the making of a convincing case for merging the police jurisdiction of the Ombudsman with the PIC, would require clear evidence of problems with the existing system. A strong case would have to be made that overlap between the two agencies' jurisdictions exists to the degree that the system is confusing and counterproductive. The Committee has not been shown such evidence. In fact, the Committee has taken evidence to the contrary. The PIC has indicated that this is not the case²⁵² and senior members of NSW Police²⁵³ as well as the Police Association²⁵⁴ are happy with the system as it stands.

Clearly, the major stakeholders are satisfied with the way that the current complaints and oversight arrangements are working. Oversight by the PIC has been in place since 1996 and the regular reports on its operations by the Inspector of the PIC and the Parliamentary Committee have not exposed any substantial issues to indicate that the PIC is not performing its functions appropriately or effectively, and that it requires further powers to carry out its functions.

The current complaints arrangements between NSW Police and the Ombudsman have been in place since 1999. Evidence which would suggest a need to remove the Ombudsman's police jurisdiction could include matters such as confusion about the role of the Ombudsman in the oversight process, jurisdictional overlap leading to conflict about roles and outcomes between the Ombudsman and other oversight agencies, or the Ombudsman making ineffective and inappropriate recommendations. Evidence of this type has not been presented to the Committee.

²⁴⁷ Committee on the Office of the Ombudsman and the Police Integrity Commission, hearing on Trends in Police Corruption Friday 20 September 2002, p 50.

²⁴⁸ PIC response to Questions on Notice, p. 9.

²⁴⁹ Committee on the Office of the Ombudsman and Police Integrity Commission, transcript of hearing on Friday 20 September, pp 32.

²⁵⁰ Committee on the Office of the Ombudsman and the Police Integrity Commission, hearing on Trends in Police Corruption Friday 20 September 2002, p 8.

²⁵¹ Committee on the Office of the Ombudsman and Police Integrity Commission, transcript of hearing on Friday 20 September, pp.32, 33.

²⁵² Committee on the Office of the Ombudsman and Police Integrity Commission, transcript of hearing on Friday 20 September, p.50.

²⁵³ Committee on the Office of the Ombudsman and Police Integrity Commission, transcript of hearing on Friday 20 September, p.7.

²⁵⁴ Committee on the Office of the Ombudsman and Police Integrity Commission, transcript of hearing on Friday 20 September, pp.32.

Indeed, senior police place high value on the role and functions performed by the Ombudsman in the police oversight system. Commander Peter Gallagher testified before the Committee that:

I think the relationship we have with the Ombudsman is excellent. They provide, in I think very much equal proportions, a strong pressure mechanism. In relation to the Ombudsman overseeing individual complaints in the complaints management system as a whole, they are absolutely not backwards in providing that pressure... but at the same time they do provide an enormous amount of support and guidance.²⁵⁵

The role of Ombudsman in making effective and appropriate recommendations to NSW Police in relation to the investigation of complaints is clearly understood, and obviously appreciated. Commander Gallagher gave evidence that:

We were conducting investigations (into both major and minor complaints) and pouring resources into those investigations. The Ombudsman provided advice and guidance some time ago saying, look, you really have to ...decide what the likely outcome would be. If the matter is proven to be correct, the worst that is going to happen is that the officer will end up formally charged and before a court; so for those matters, be evidence-based, stick to the rules of evidence, prepare your inquiry as if it is going to be later analysed in formal proceedings ...for these other matters where it is never going to get to that, where even if it is proven to be true you are looking at 173(1) action or below, be outcome-focused and get there as quickly as possible. So they [the Ombudsman] provided all that advice and guidance and assisted us in actually providing that training on occasion...²⁵⁶

The Ombudsman has recently tabled a series of reports²⁵⁷ in Parliament that assess these current arrangements in relation to the management of complaints by police. The Ombudsman found that 83 percent of police complaints about serious Category 2 matters such as culpable driving and drug use were being handled adequately.²⁵⁸ The timeliness of police responses to complaints has improved significantly and complainant satisfaction remains high at 70 percent.²⁵⁹ Such improvements in the operation of the complaints system suggest that the Ombudsman is accurately targeting issues of concern and working effectively to assist in resolving such issues.

The Committee considered that it is important to recognise the level of scrutiny which the Ombudsman has brought to police complaint handling and investigation processes, and the constructive way in which this independent source of advice generally appears to have been received within NSW Police.

Merging the PIC with the ICAC

As both the PIC and the ICAC possess similar coercive and investigative powers this may be regarded as a logical proposition. However, the PIC sprang out of the ICAC's poor handling of police investigations. This problem arose in part because of the ICAC's dual function of investigation and education. As Wood noted, the dual role of investigation and education can involve a conflict of interest. The finding of corruption by the ICAC could suggest that it had failed in its corruption prevention and education strategies, thereby creating an incentive for it to ignore, or trivialise,

²⁵⁵ *ibid*, p.7.

²⁵⁶ *ibid*.

²⁵⁷ NSW Ombudsman, *Identifying and managing officers with complaints histories of significance; Assessing police performance in complaints management; and Police complaints and repeat offenders*, March 2002.

²⁵⁸ *NSW Ombudsman Annual Report 2001-2002*, p.88.

²⁵⁹ *ibid*.

that form of conduct.²⁶⁰

Further, legislative aspects of the structure of the ICAC make it unsuitable for the role of conducting highly secretive police investigations. For example, the Operations Review Committee which advises the ICAC Commissioner whether the ICAC should commence or discontinue an investigation, includes in its membership the Commissioner for Police, the Attorney General or his appointee and four people recommended by the Premier. Clearly the composition of this Committee holds the potential to compromise the complete independence and impartiality that characterises the PIC.

The ICAC also uses seconded police officers as investigators. Section 3.1: Pre-Wood Oversight System of this report discusses some of the problems associated with this practice. The risk of seconded police officers leaking information still appears to be current. For example, the ICAC's 1998 investigation into Liverpool Council was compromised because a police officer seconded to the ICAC passed information on through an intermediary police officer that alerted one of the targets of the investigation, former police officer Roger Rogerson. This matter was ultimately investigated by the PIC in Operation Oslo. Such compromises to security raise broader issues especially in relation to risk management and the credibility of targeted covert operations against police.

Merging the PIC with the NSW Crime Commission

Another potential way to streamline the current complaints and oversight system would be to merge the PIC with the NSW Crime Commission. Again, similar problems to merging the PIC with the ICAC are apparent. The NSW Crime Commission has a charter to investigate organised crime and drug trafficking in NSW. Its legislative structure provides that its operations are carried out by Task Forces that are under the control and direction of the Commissioner of Police. Its Operations Management Committee includes the Commissioner of Police and the Minister for Police (or the Minister's representative). On this basis, the ability of the Crime Commission to carry out independent covert operations against police appears to be limited and the composition of the Operations Management Committee also risks the independence and impartiality of the PIC.

To give consideration to substantially changing investigation of police corruption, and the existing police complaints and oversight system, such as merging the PIC with either the ICAC or the NSW Crime Commission, there would need to be persuasive evidence that the PIC is not functioning as it was intended. This evidence could take the form of repeated failed investigations by the PIC, repeated failure by the PIC to gain evidence to commence criminal investigations, or evidence of corruption on the part of the PIC. To date, no evidence of this nature has been presented to either of the PIC's two oversight bodies, ie the Inspector of the PIC or the Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission. Furthermore, such a merger would require substantial legislative review of the host agency to ensure that the independence of investigations into corrupt police and the current targeted approach were retained.

The Committee has expressed its views on the current system in previous reports to Parliament on General Meetings with the Commissioner of the Police Integrity Commission and the Inspector of the Police Integrity Commission:

²⁶⁰ Wood, op. cit., p.67.

The Committee considers that any proposed streamlining of the police complaints system should not substantially change the existing structure of police oversight, the safeguards built into the complaints system, or the respective roles of the PIC and the Office of the Ombudsman. Furthermore, the Committee would strongly oppose any changes that substantially increase the PIC's jurisdiction in such a way that would compromise its targeted corruption investigation focus.²⁶¹

To date the Committee has not heard any evidence which would advance a case of significant amendments to the current police oversight and complaints system. However, it has been advised of scope for possible efficiencies within the system through measures aimed at streamlining processes, for example in the area of notification of matters between agencies.

The Committee notes that in respect of two recent matters concerning the issue of a listening devices warrant and the disclosure of evidence to the PIC in the media prior to its introduction into evidence, the NSW Crime Commission appears to have been the source of these difficulties. It is the Committee's intention to review possible mechanisms and structures by which the conduct of agencies working jointly with the PIC, and impacting on the PIC's operations, can be the subject of oversight, possibly by the PIC Inspector.

²⁶¹ Report of the Committee on the Office of the Ombudsman and the Police Integrity Commission, *Report of the Sixth General Meeting with the Commissioner for the Police Integrity Commission*, June 2002, p.xi.

Chapter Four – Some Specific Anti-Corruption Measures

Police corruption is an extremely difficult area in which to gather any reliable data. Most incidents of corruption are never reported or recorded and generally may only come to light by accident or investigation. Consequently, the most accurate reporting mechanism for corrupt activity is the result of a number of anti-corruption measures contained in both the police oversight and complaints processes. This chapter examines some of the more prominent anti-corruption features of the current oversight and complaints system, in particular random drug and alcohol testing, targeted integrity testing and joint operations between the PIC, Special Crime and Internal Affairs NSW Police and the NSW Crime Commission.

4.1 Drug and alcohol testing

NSW Police conduct random drug and alcohol testing, targeted drug testing and mandatory drug testing. Any officer can be tested under the random program. A combination of intelligence and complaints history can lead to an officer being the subject of targeted drug testing. Any officer who is involved in a critical incident, such as a police shooting, a pursuit or a death in custody, is subject to mandatory drug testing.

Recommendations from the Wood Royal Commission resulted in the legislative power for drug testing officers, but it was the death of Roni Levi²⁶² that spurred its implementation. Mandatory drug testing following a critical incident where someone has been seriously injured or killed while in custody, has been in place since 1 July 1998.²⁶³

It is useful to consider NSW Police drug testing policies in comparison to the comprehensive drug testing program employed by New York Police Department (NYPD). The NYPD tests all police probationers several times during the course of their probationary period. It tests all candidates for promotion and assignment to sensitive units. It also conducts annual random testing of 20 percent of the members from each departmental unit. Additionally, the NYPD has an extensive 'for cause' testing program in which supervisors and commanders may require personnel to undergo drug testing on the showing of reasonable evidence.²⁶⁴ A 2002 study of career-ending misconduct amongst NYPD officers found that drug-related offences are the modal cause for dismissal. It found that most police drug offences have occurred in recent years and their discovery is related to the NYPD's drug-testing

²⁶² Roni Levi was a mentally ill man who was fatally shot by police officers on Bondi Beach on 28 June 1997. The officers who shot Levi, Senior Constable Anthony Dilorenzo and Constable Rodney Podesta, at that time were the subject of Internal Affairs inquiries into possible drug use and associations with drug dealers. They later became the subject of the PIC investigation, Operation Saigon. The death of Roni Levi led to a number of initiatives in the Police Service including mandatory drug testing of officers following a critical incident where someone is seriously injured or killed while in police custody and the arming of officers with capsicum spray to assist in subduing violent people.

²⁶³ Committee on the Office of the Ombudsman and the Police Integrity Commission, hearings 20 September 2002, p.16

²⁶⁴ J. J. Fyfe, P.R. Jones, R. J. Kane, R. Tilman, *Bad Cops: a study of career ending misconduct in the New York City Police Department*, Presidential Panel Session Paper, American Society of Criminology, 2002 Annual Meeting, p.3.

program.²⁶⁵ By comparison, the NSW Police program does not test officers as frequently, or on promotion to sensitive units. NSW Police random drug testing program is much smaller, with approximately four per cent of officers being tested across the organisation.²⁶⁶ This is not to imply that these features of the NYPD program should automatically be adopted by NSW Police. However, the desirability of their inclusion in the NSW Police drug testing strategies may be considered in light of further experience with the adequacy of the current Drug and Alcohol Policy and its outcomes.

NSW Police Drug and Alcohol Policy

Random drug testing for police commenced in NSW on 1 September 2001.²⁶⁷ However, random alcohol testing has been conducted since 1 September 1997.²⁶⁸ These two testing regimes are administered under the Police Drug and Alcohol Policy, which is designed to offer rehabilitation and education services to officers, while acting as a deterrent to inappropriate and unethical behaviour.²⁶⁹ The counselling and support sections of the Drug and Alcohol Policy offer a wide range of services to employees who experience dependency problems. These services are coupled with a state-wide education program on drug and alcohol matters for officers that has been conducted since the introduction of the Policy in 1997. Each year, some 2 500 officers participate in the education program.²⁷⁰

In the months leading up to the introduction of the 2001 Drug and Alcohol Program, an amnesty system was in place for officers who chose to seek professional help for addiction problems without the fear of disciplinary action. To take advantage of the amnesty, officers had to seek help voluntarily rather than following a positive random, targeted or mandatory test.²⁷¹

At this stage, the policy has achieved the following outcomes. Independent research records that the number of officers who drink to harmful or hazardous levels²⁷² has substantially reduced since the introduction of the Drug and Alcohol Policy. In 1995-96, the year prior to the Drug and Alcohol Policy's introduction, St Vincent's Hospital found that 48 per cent of police drank at harmful levels. In 1997-98, one year following its implementation, research conducted by Westmead Hospital found this figure had dropped to 27 per cent.²⁷³

Some 34 958 random alcohol tests were carried out between 1 September 1997 and 31 July 2002. There have been 52 positive tests in this time, the majority of which have been relatively minor readings. Most have been as a result of officers returning to duty too soon after consuming alcohol while off duty.²⁷⁴

²⁶⁵ *ibid.*

²⁶⁶ This figure is calculated from NSW Police having approximately 13 000 sworn police officers and 511 random drug tests conducted between September 2001 and September 2002.

²⁶⁷ Random drug tests start soon, *Police Service Weekly* Vol 13 No 29 23 July 2001, p.6.

²⁶⁸ NSW Police response to Questions on Notice p.16.

²⁶⁹ *ibid.*, p.15.

²⁷⁰ *ibid.*

²⁷¹ Random drug tests start soon, *Police Service Weekly* Vol 13 No 29 23 July 2001, p.6-7; Random drug testing starts, *Police Service Weekly* Vol 13 No 34 27 August 2001 p.4-5.

²⁷² World Health Organisation defines harmful as more than three standard drinks a day for men (21 per week) and two standard drinks a day for women (14 per week).

<http://www.who.int/msa/mnh/ems/primacare/edukit/wepalc.pdf>

²⁷³ NSW Police response to Questions on Notice, p.15.

²⁷⁴ *ibid.*, p.16.

Officers who test positive to alcohol (provided they have not acted inappropriately while intoxicated) are given an option of either participating in a rehabilitation program or having their result dealt with as a disciplinary matter. To date, all but one officer has opted for rehabilitation. While undergoing rehabilitation officers are closely monitored and required to comply with the advice given to them by the department's Drug and Alcohol Counsellors. They are also subject to follow-up testing for a period of three years. If an officer fails to comply with counselling advice, the matter reverts to disciplinary action.²⁷⁵

Anecdotal evidence supporting the apparent cultural change in consumption of alcohol was provided by Ian Ball, President of the Police Association:

The easiest way to tell if there has been a cultural change [in drinking amongst officers] is to go to a police send-off. These days the average send-off finishes at midnight. If they are working the next day, if they are on a day shift the next day, they will have been gone for hours. There is no drinking at work any more. Years ago, when I first started in the cops, drinking at work was common, it was quite common as Wood found, and it is a bit hard to say that it was not, but the reality today is that it would not happen. That is why the vast majority of cops are so supportive of alcohol testing. They do not want to work with drunks.²⁷⁶

Random drug testing

All random drug tests are carried out to the Australian Drug Testing Standard (AS 4308-1995).²⁷⁷ The standard requires strict formalities at the test site including officers to be tested removing their appointments belt, emptying their pockets and washing their hands to remove any possible contaminants. As a precaution, the toilet has blue dye placed in the bowl and the cistern taped is closed. Tests should take no longer than ten minutes.²⁷⁸

During the first twelve months of random drug testing, of the 511 officers tested none returned a positive test.²⁷⁹ During the same period 14 targeted drug tests were carried out and five officers tested positive.²⁸⁰ All officers who test positive to drug tests are nominated for consideration under s.181D of the *Police Act 1990*, also known as the Commissioner's Confidence provision. This provision allows for them to be removed from NSW Police.

However, evidence from the PIC shows testing processes are susceptible to manipulation by informed police:

There is evidence of police warning other police away when drug testing is occurring. There is evidence of police being aware that some drugs either leave the body quickly or are broken down into components which might just as easily have originated from 'cold and flu' tablets, and then planning to take drugs at the end of their rostered shift. Test samples can also be physically tampered with and substitute samples provided or drug content masked with the consumption of large quantities of water or possibly

²⁷⁵ *ibid.*

²⁷⁶ Committee on the Office of the Ombudsman and the Police Integrity Commission transcript of hearings 20 September 2002, p.27.

²⁷⁷ Random drug tests start soon, *Police Service Weekly* Vol 13 No 29 23 July 2001, p.6; Committee on the Office of the Ombudsman and the Police Integrity Commission transcript of hearings 20 September 2002, p.8.

²⁷⁸ Random drug tests start soon, *loc. cit.*

²⁷⁹ Committee on the Office of the Ombudsman and the Police Integrity Commission transcript of hearings 20 September 2002, p.16.

²⁸⁰ *ibid.*, p.17.

quinine.²⁸¹

Support amongst officers for random drug testing is surprisingly high. A survey conducted as part of an independent research study into the extent of illicit drug use within NSW Police found that 80 percent of officers surveyed stated that random drug testing was very useful.²⁸²

Mandatory and targeted drug testing

Although the number of officers detected as drug users is very low as a percentage of the total number of officers, the use of illicit drugs must be recognised as a problem. Four officers failed mandatory drug testing during 2000-2001.²⁸³ Of those four, one resigned, one was the subject of a s.181D nomination, one officer was allowed to return to duty and is now subject to follow up random drug testing for the next five years, and for one officer no further action was taken when follow-up testing of the sample by Westmead Hospital proved inconclusive.²⁸⁴

There were also positive results from targeted drug testing. During the last reporting period, 24 targeted tests were carried out and five officers tested positive.²⁸⁵ The majority of officers who tested positive have tested positive to cannabis. This is primarily because cannabis stays within the system a lot longer than other drugs. However, officers have also tested positive to speed, ecstasy, cocaine and amphetamines.²⁸⁶

Generally, the low rate of positive alcohol tests and no positive returns from random drug testing for NSW Police officers during the last reporting year is very encouraging. The police figures stand in contrast to those for the rest of the population of NSW, 15.8 percent of whom report using illicit drugs,²⁸⁷ and the 36.4 percent of people in NSW who drink to a risky level.²⁸⁸ Nevertheless, it is clear that there are a small number of officers who engage in drug taking and who are aware of potential ways in which to avoid testing or circumvent test results. This matter will be discussed further in the following chapter.

4.2 Integrity testing

Integrity testing originated with the Knapp Commission into the New York Police Department and was used to obtain evidence to supplement the limited results achieved from the traditional investigative technique of interviewing witnesses. It obtained dramatic success using undercover police, many of whom were facing corruption charges, to simulate corruption opportunities where there were strong

²⁸¹ PIC response to Questions on Notice, p.2.

²⁸² Committee on the Office of the Ombudsman and the Police Integrity Commission transcript of hearings 20 September 2002, p.18; NSW Police response to Questions on Notice, p.15.

²⁸³ NSW Police response to Questions on Notice p.15.

²⁸⁴ *ibid.*

²⁸⁵ Committee on the Office of the Ombudsman and the Police Integrity Commission transcript of hearings 20 September 2002, p.17.

²⁸⁶ Committee on the Office of the Ombudsman and the Police Integrity Commission transcript of hearings 20 September 2002, p.10.

²⁸⁷ Illicit drugs include cannabis, amphetamines, ecstasy, heroin, steroids and methadone. Australian Institute of Health and Welfare 2001 National Drug Strategy Household Survey, August 2002, p.8.

²⁸⁸ For males this is the consumption of 7 or more standard drinks on one occasion and for females the consumption of 5 or more standard drinks on one occasion. Australian Institute of Health and Welfare 2001 National Drug Strategy Household Survey, August 2002, p.6.

suspicions that officers were corrupt.²⁸⁹ The Wood Royal Commission's characteristic method of integrity testing was to use an officer who had 'rolled-over' (admitted to corrupt activities) to expose networks of police corruption by carrying out corrupt activities while being covertly filmed or when carrying a concealed recording device.

Integrity tests fall in two categories. Targeted integrity testing is directed at an officer or officers suspected of corrupt activities in response to other intelligence or complaints, but where there is not enough proof to take action. Random integrity testing involves placing randomly selected officers in a situation where corruption is possible and monitoring their reaction. In certain types of situations this involves a double test – for example offering an officer a bribe to see if the officer refuses it and also reports it.²⁹⁰

Under reforms following the Mollen Commission into New York Police Department (NYPD) in 1994, the NYPD extended its random testing program. KPMG reviewed the random testing program in 1996 and concluded that the results did not justify the expense of the program. During the sample period reviewed, 355 tests involving 762 officers produced no 'criminal failures' and only seven 'procedural failures'. The review concluded that random checks could not be used as a barometer for corruption. In contrast, the review noted that targeted integrity tests produce a much higher failure rate amongst officers because realistic test scenarios could be tailored to the profile of suspected officers.²⁹¹

Integrity testing is not without ethical and legal concerns. It raises serious issues about privacy, deception, entrapment and provocation. Depending on the form it takes, integrity testing may even result in the loss of an officer's freedom to act without concern that every action may be subject to secret scrutiny.²⁹² However, some commentators such as Delattre hold that:

police apply distinctive powers to citizens and are much more visible than many other government officials.....Although police should not be judged and punished differently, the work of law enforcers does differ from that of law makers. Some of these differences suggest the appropriateness of different responses to misconduct.²⁹³

Perhaps the most complex ethical issue in integrity testing concerns the step from discovering already existing misconduct to testing an officer's corruptibility.²⁹⁴ This is linked to questions of entrapment. It has been argued that integrity testing cannot be considered entrapment because it merely places officers in situations where they make decisions about their own behaviour.²⁹⁵ In the case of targeted testing, where a situation is created in response to existing intelligence about an officer's behaviour, the argument of entrapment is weakened. Clearly, specific circumstances need to be taken into account in judging the fairness of integrity tests.²⁹⁶

In response to the Interim Report of the Wood Royal Commission in 1996, NSW Police implemented a system of targeted integrity testing. Targets are selected on

²⁸⁹ T. Prenzler, and C. Ronken, 'Police integrity testing in Australia', *Criminal Justice* Vol1(3), 2001, p.320.

²⁹⁰ *ibid.*, p.321.

²⁹¹ *ibid.*

²⁹² *ibid.*, p.322.

²⁹³ Delattre cited in Prenzler and Ronken, *op. cit.*, p.322.

²⁹⁴ Marx, cited *ibid.*, p.325.

²⁹⁵ Newton, cited *ibid.*

²⁹⁶ Prenzler and Ronken, *op. cit.*, p.325.

the basis of complaints patterns and other intelligence about possible misconduct.²⁹⁷ A state-wide education program ran prior to the introduction of integrity testing, and the initial resistance to integrity testing seems to have faded. NSW Police now state that:

It is dangerous to assume that complaints alone can identify all instances of corruption. The investigation of corruption must be primarily proactive and supported by strategic analysis of intelligence....Integrity testing becomes an important option in all investigations into corrupt behaviour. Integrity testing achieves a number of goals. It tests for both corrupt and ethical behaviour, the appropriateness of organisational systems and procedures, and as a deterrent to officers who may be exposed to a corruption opportunity.²⁹⁸

Figures from all completed integrity tests finalised in 1999 are contained in Table 1. It is important to note that although police officers and unsworn staff (other non-police employees) are subject to integrity testing, practically all of the tests have been on police officers. The forms of reporting shift between 'individuals' and 'operations', with operations having the potential to involve multiple targets. The results of the tests show a high failure rate. Of the 90 operations finalised in 1999, 37 percent were failed, 27 percent were passed, 12 percent were forwarded for further investigation and 24 percent were inconclusive or discontinued.²⁹⁹

A total of 51 criminal charges followed from these failed tests. Of these, 54 percent were against police, 23 percent were against unsworn staff and 23 percent were against civilians.³⁰⁰

Table 1³⁰¹ Finalised police integrity tests as at 31 October 1999

Element	Number
Number of targets	126
Police officers	122
Staff	4
Outcomes	
Number of operations finalised since inception of integrity testing (involves multiple targets)	90
Passed	24
Failed	33
Inconclusive	2
Discontinued	20
Forwarded for investigation	11
Criminal charges preferred	51
Police	27
Staff	12
Civilians	12
NSW Police response	
Managerial issues identified	96

²⁹⁷ *ibid.*, p.328.

²⁹⁸ *ibid.*, p.328-329.

²⁹⁹ *ibid.*, p.329.

³⁰⁰ *ibid.*

³⁰¹ Internal Affairs Command, NSW Police cited in Prenzler and Ronken, *op. cit.*, p.329.

Nominated for loss of Commissioner's confidence	22
Removed under loss of Commissioner's confidence	3
Performance warning notice	3
Resigned prior to Commissioner's confidence being invoked	10

These outcomes indicate that integrity tests targeted at police officers are likely to snare a considerable number of other people, including general staff and members of the public, which supports the assertion that corruption is likely to be a consensual act.³⁰² Further, the high rate of failure of integrity tests indicates that the combination of intelligence and complaints used to identify targets is accurate, and that the resources required to conduct tests are being efficiently used. The then Minister for Police, the Hon Paul Whelan MP, gave evidence before an Estimates Committee in June 1998, that officers who had failed integrity tests included those at the rank of sergeant and superintendent.³⁰³

The following table details the criminal charges resulting from finalised integrity testing. The clustering of these charges around drug related offences is striking and accords with the concerns of the PIC about the use of recreational drugs amongst police officers.

Table 2³⁰⁴ Criminal charges resulting from finalised integrity tests, as at 31 October 1999

Offence type	Number of charges
Assault	1
Assault occasioning actual bodily harm	1
Drive prescribed concentration of alcohol	2
Operator cause driving wheel to lose traction	1
Larceny	4
Good in custody	5
Obtain benefit by deception	2
Unlawful use of police vehicle	1
Unlawful computer access	2
Possess prohibited weapon	4
Unlicensed firearm	1
Supply prohibited drug	5
Possess prohibited drug	6
Cultivate prohibited drug	1
Self-administer prohibited drug	2
Possession of implements (drug)	1
Take part in the manufacture of prohibited drug	1
Drive motor vehicle while cancelled driver	5
Embezzlement	1
Not keep firearm safe	3
Possess police uniform	1
Drive under the influence of intoxicating liquor	1
TOTAL	51*

*27 were against police, 12 against unsworn personnel, 12 against civilians

PIC and Integrity Testing

In 1998, the PIC set in place systems for conducting its own integrity tests,

³⁰² *ibid.*, p.330.

³⁰³ R. Morris, 'Six officers charged in police sting', *The Daily Telegraph*, 24/6/98.

³⁰⁴ Internal Affairs Command, NSW police cited in Prenzler and Ronken, *op. cit.*, p.330.

independent of NSW Police, through the development of a code of conduct and guidelines for conducting operations under the New South Wales *Law Enforcement (Controlled Operations) Act 1997*. The Act represents a widening of the capacity for integrity testing by permitting prescribed agencies to engage in unlawful actions for investigative purposes.³⁰⁵ However, in practice the additional opportunities presented by these integrity testing powers has been utilised. For the year ending 30 June 2002, the Commissioner of the PIC granted authority for PIC officers to conduct three controlled operations. No approvals were granted to either renew or vary existing controlled operations.³⁰⁶ This compares with one renewal for a controlled operation in the 2000-2001 period and no new or varied operations approved.³⁰⁷ This is a steep drop from the 1999-2000 reporting period when three controlled operations were approved and four variations granted.³⁰⁸

Another estimate of the PIC's activity in integrity testing comes from its applications made in accordance with the provisions of the *Law Enforcement (Assumed Identities) Act 1998*. This Act provides for the chief executive officer of law enforcement agencies to authorise officers of the agency to use assumed identities in the course of their duties. Each agency is required to keep a record of assumed identities granted, varied or revoked under s.10 of the Act, and s.11 requires that these records be audited at least once every twelve months. Section 12 of the Act requires that these approvals, variations or revocations be reported in each agency's annual report.

During the 2001-2002 reporting period of the PIC, five assumed identity approvals were granted by the Commissioner, two were varied and eight were revoked.³⁰⁹ This is roughly comparable to the 2000-2001 reporting period, where four approvals were granted and two applications for assumed identities were revoked, but a steep drop from the 1999-2000 reporting period, where 26 applications for assumed identities were granted, and seven were revoked.³¹⁰

4.3 Joint Operations with the PIC, Special Crime and Internal Affairs and NSW Crime Commission

Sections 17–18 of the *Police Integrity Commission Act 1996* empower the PIC to make arrangements for the establishment of State or Commonwealth task forces, as well as allowing the PIC to work in co-operation with such task forces or with other investigative agencies. This is an important provision for a number of reasons. The PIC can engage in direct intelligence sharing with other agencies, accessing whatever specialist information or knowledge is held by NSW Police officers without the concomitant risk of employing or seconding these officers directly. It also allows the PIC to target police officers who may be acting corruptly but fall within the jurisdiction of other agencies.

Two of the PIC's joint operations which involved public hearings were Operation Jetz and Operation Florida. Operation Jetz arose from a January 2001 NSW Police investigation into possible corrupt manipulation of the promotions system. NSW Police sought the assistance of the PIC to investigate these matters and a joint task

³⁰⁵ Prenzler and Ronken, op. cit., p.331.

³⁰⁶ *PIC Annual Report 2001-2002*, p.65.

³⁰⁷ *ibid.*

³⁰⁸ *ibid.*

³⁰⁹ *ibid.*, p.63.

³¹⁰ *ibid.*, p.65.

force was formed comprised of PIC officers and Special Crime and Internal Affairs (SCIA) officers. In June 2001 a full investigation commenced and evidence was taken in public hearings in August and November 2001. The PIC made extensive use of covert surveillance material during the hearings which was instrumental in obtaining evidence from witnesses. The key figure in Operation Jetz, former Inspector Robert Gordon Menzies, was one of the officers who provided such evidence during the course of the hearings. It is expected that the PIC will provide its report to Parliament on this matter before the end of the year.

The most prominent joint operation that has been carried out by the PIC is Operation Florida which is being jointly conducted with the NSW Crime Commission and SCIA. Operation Florida's origins lie in the NSW Crime Commission Operation Mascot in 1998.

Operation Mascot lead to 25 arrests, including three police officers, and 62 charges including the supply of heroin, cannabis, cocaine and ecstasy, receiving bribes and armed robbery. Intelligence gathered during Mascot lead to a range of referrals including:

- a new Crime Commission reference concerning a murder and armed robbery;
- two arrests by South Australian Police which netted 6 kilograms of cannabis;
- a National Crime Authority reference concerning drug importation;
- an Australian Federal Police reference concerning an ecstasy network; and
- an audit of Manly Local Area Command management procedures which revealed severe management deficiencies especially in relation to search warrant procedures and informant management.³¹¹

The PIC intends that Operation Florida be viewed as a microcosm of the Police Service that is equally as revealing of poor management and leadership, as it is of corrupt activities.

Evidence presented at the hearings so far includes:

- detectives and uniformed officers stealing large sums of money from drug dealers;
- detectives and uniformed officers stealing while executing search warrants;
- detectives and uniformed officers 'greenlighting' drug dealers and a house breaker in return for regular payments;
- detectives and uniformed officers perverting the course of justice; and
- detectives and uniformed officers facilitating networks of drug dealers.³¹²

Evidence was also presented of former members of the Armed Hold Up Unit stationed at Chatswood stockpiling unregistered firearms to use in 'loading up' suspects. In one case, after searching the premises of a man suspected of armed robbery and finding nothing, Chatswood detectives threw a gun into the water under the Roseville Bridge. They told police divers that the suspect had confessed to throwing the weapon into the water under the bridge. It took three attempts by the

³¹¹ Evidence presented at PIC hearings into Operation Florida, 8 October 2001.

³¹² *ibid.*

police divers to find the weapons, with the detectives giving the divers increasingly explicit directions. Finally, during the Wood Royal Commission, two officers took all the weapons from the Chatswood Police Station and dumped them in the Hawkesbury River, near the Brooklyn Bridge. A number of those firearms were retrieved by divers in 1999.³¹³

To date eleven people have been charged with criminal offences including six police officers. Charges include soliciting bribes, receiving bribes, offering bribes, conspiracy to solicit a bribe, goods in custody, stealing, perverting the course of justice and supplying a prohibited drug (heroin).³¹⁴

Mr Hastings, QC, counsel for the PIC has stated that Manly-Davidson Local Area Command should be viewed as a microcosm of NSW Police Service. He further noted that this is the most extensive case of corruption since the Wood Royal Commission. In some cases, the corrupt acts predate the Wood Commission, and continued until sometime shortly after.

While Operation Florida provides evidence that corruption on the scale of that uncovered by the Wood Commission still exists within the Police Service, there are a number of features of the investigation that also show significant change within NSW Police. Most important is the leak-free running of the investigation for more than two years. This represents a significant change from the pre-Wood Commission days when Internal Affairs investigations were common knowledge amongst corrupt officers. The success of Operations Mascot and Florida thus far shows that the corruption detection systems currently in place are flexible and responsive, and that agencies are willing and able to work together to combat it.

It is anticipated that hearings for Operation Florida will finish during the 2002 - 2003 reporting year and that a report to Parliament will be made after the conclusion of public hearings.

³¹³ *ibid.*

³¹⁴ PIC Annual Report 2001 - 2002, p. 18.

Chapter Five – Trends In Police Corruption

5.1 Difficulties with research on corruption

It must be noted from the outset that significant limitations exist in conducting research into trends in police corruption. The experience of the PIC in attempting to establish a series of indicators for trends in police corruption is instructive. In the PIC's 1999–2000 Annual Report, a research project on trends in serious police misconduct is outlined. The difficulties in conducting such a project are acknowledged as follows:

Ordinary police misconduct, so to speak, which is relatively common and covers matters such as low level assaults, rudeness and drug/alcohol abuse, is susceptible to specific purpose research by, for example, various kinds of surveys and random testing. Serious police misconduct...is relatively uncommon and not susceptible to such specific purpose research. Much police misconduct (bribery is a good example) consists of acts of consensual corruption, where it is in the interests of both parties to remain silent.³¹⁵

Nonetheless, the PIC identified a range of potential indicators of corrupt activity from anti-corruption measures such as integrity testing, as well indicators from their completed investigations into police misconduct. These indicators were:

1. Section 181D nominations – Under s.181D of the *Police Act 1990* the Commissioner of Police may remove officers from NSW Police, if the Commissioner feels that the officer does not have the integrity, competence, performance or conduct to be a police officer. The problems with this indicator are numerous, and include that it counts nominations rather than removals, incompetence may trigger the process rather than corruption, some officers obtain a medical discharge when nominated for s.181D and others resign when the prospect of a nomination appears.
2. Integrity tests – Part 10A of the *Police Act 1990* allows the Commissioner of Police to conduct or authorise programs to test the integrity of any particular police officer or class of officer. The main limitation of this indicator is that, by comparison with other indicators, the numbers are very small.
3. Complaints against police – The Office of the Ombudsman keeps statistics on police complaints and the figures used by the PIC were drawn from the Ombudsman's statistics on criminal conduct, as well as investigations and prosecutions.
4. Officers charged with criminal offences – The problem with this indicator is that not all charges arise from abuse of office, and there are often delays caused by seeking legal advice before charges are preferred.
5. Officers suspended from duty with or without pay – If the Commissioner of Police has reasonable cause to believe that the conduct of a police officer has been such as to justify disciplinary action or the institution of criminal proceedings against the officer, then the Commissioner may suspend the officer with or without pay. This action cannot be taken against a commissioned officer. A limitation of this indicator is that it also includes those officers whose suspensions have been lifted after further investigation.

³¹⁵ Police Integrity Commission Annual Report 1999 – 2000, p.23.

6. Officers participating in the Internal Witness Support Program – The Witness Support Program offers support to those officers both sworn and unsworn who provide information alleging corruption, maladministration, substantial waste or other misconduct by another member of NSW Police. The limitation on this indicator is that the allegations made are not confined to serious police misconduct, nor are they confined to serious misconduct by police officers.³¹⁶

Another overriding problem with these indicators is that a single officer can fall into almost all the categories with a single instance of misconduct. For example, an officer can fail an integrity test, be nominated for removal under s.181D, be suspended without pay and be charged with criminal offences.

However, the PIC considered that three indicators – s.181D nominations, complaints and internal witnesses – were sufficiently independent of each other to be regarded as valid indicators to provide a guide rather than a measure of trends in police corruption.³¹⁷

The PIC's Annual Report 2000-2001 noted that while the range of statistical indicators for serious police misconduct had gradually fallen since 1997-1998, other issues had emerged that raised questions about the efficacy of the chosen methodology as a means of accurately identifying trends in serious police misconduct. In short, the PIC had found that current indicators showed police corruption to be declining in 'stark contrast' to evidence arising from internal police investigations and the Commission's investigations.³¹⁸

The PIC noted in its response to Questions on Notice concerning the shortfalls in indicators for this project that:

In the absence of a reliable means of directly measuring serious police misconduct, the Commission is not able to provide a definitive view as to how widespread serious police misconduct might be. The Commission can rely on indirect indicators, and then only within the scope of individual investigations and research projects... Extreme caution must be exercised in extrapolating across the whole state results from a relatively small number of investigations of corrupt activities with a narrow scope.³¹⁹

Taking these words of caution into account, some generalisations can be made about trends in police corruption. The following sections of this chapter briefly compare historical and contemporary corrupt activities to try and assess if any new forms of corrupt behaviour are occurring. They briefly address the apparent 'spikes' of police corruption at particular times and discuss some of the activities exposed by the PIC that have also been revealed in integrity testing and drug and alcohol testing. However, as these activities are exposed only by discovery rather than standardised reporting, it is prudent to draw only tentative conclusions. Possible early warning systems are also discussed.

5.2 Corrupt activities

From the preceding history of law enforcement in NSW it can be quickly deduced that very little in the way of new acts of corruption have occurred since the 1796

³¹⁶ *ibid.*, pp.24-25.

³¹⁷ *ibid.*, p.26.

³¹⁸ *PIC Annual Report 2000-2001*, p. 30.

³¹⁹ PIC response to Questions on Notice, p. 4.

election of free men to act as constables to the Night Watch in an attempt to prevent the regular officers from extorting money from prisoners.³²⁰ Parallels also can be drawn, for example, between the conduct of those identified in the 1867 report *State of Crime in the Braidwood District* which found 'improper intimacy and familiarity between members of the Police Force and certain connections of the bushrangers'³²¹ and the conduct associated with the 1980s Barbecue Set. Both the Commission of Inquiry under Justice Street in 1916 and the Royal Commission in 1920 into the arrests and convictions of several members of Workers of the World revolved around allegations of police verballing, bribery, planting evidence and manipulation of informants.³²² All of these types of allegations were present during the Wood Royal Commission.

However, it is generally agreed that police corruption in New South Wales experienced a fundamental transformation between the mid-1960s to the mid-1970s.³²³ This has been seen as a period of active alliances between police, politicians and criminals to control particular aspects of the vice trade. During this period police became active participants in drug dealing, prostitution and backyard abortions, and police corruption began to include a wider range of offences than brutality, bribery and process corruption. This period not only marks the high point of police corruption in NSW,³²⁴ it also marks the beginning of police running rackets in partnership with criminals and politicians ignoring such activity.

Current forms of police corruption can be assessed by comparing criminal charges arising from failed integrity tests by Internal Affairs with charges referred to the Director of Public Prosecutions by the PIC. The two sets of offences are revealing because of their reasonably homogenous nature. Such an overlap in types of offences is reassuring on two counts. Firstly, it offers some evidence that Internal Affairs is working reasonably well – if their offences were for very different or much lesser matters it could be cause for concern. Secondly, the two agencies finding very similar offences allows for some measure of corrupt activity amongst police to be gauged.

Three clusters of offences form a pattern in both sets of charges. Assault and assault occasioning actual bodily harm form the first cluster. The second cluster occurs around goods in custody. The third, and biggest cluster involves supplying and possessing prohibited drugs, self-administer prohibited drugs, possession of implements (drugs), and cultivate prohibited drug.

The clustering of drug related offences as a recent phenomena is borne out in other jurisdictions. A 2002 study of New York police who were dismissed or resigned for reasons of misconduct during the 22 years from 1975 to 1996 found that the single largest primary charge against those officers was drug offences. This was not consistent through the 22 year period studied. Profit-motivated crime was the most frequent offence in the early years of the period, while drug-related crime occurred more frequently towards the end of the period.³²⁵

³²⁰ Swanton and Page, op. cit., p.377.

³²¹ Report of the Commissioners, *State of Crime in the Braidwood District*, 30 July 1867, cited in Wood, op. cit., p.53.

³²² *Royal Commission of Inquiry into the Matter of the Trial and Conviction and Sentences Imposed on Charles Reeve and Others*, cited Wood, op. cit., p.53.

³²³ McCoy, op. cit., p.112; Hickie, op. cit., p.259; Wood op cit, p.59.

³²⁴ *ibid.* all.

³²⁵ Fyfe et. al., op. cit., p.3.

Table 1

CHARGES PREFERRED BY NSW INTERNAL AFFAIRS³²⁶

Assault
Assault occasioning actual bodily harm
Drive prescribed concentration of alcohol
Operator cause driving wheel to lose traction
Larceny
Goods in custody
Obtain benefit by deception
Unlawful use of police vehicle
Unlawful computer access
Possess prohibited weapon
Unlicensed firearm
Supply prohibited drug
Possess prohibited drug
Cultivate prohibited drug
Self-administer prohibited drug
Possession of implements (drug)
Take part in the manufacture of prohibited drug
Drive motor vehicle while cancelled driver
Embezzlement
Not keep firearm safe
Possess police uniform
Drive under the influence of intoxicating liquor

Table 2

**CHARGES REFERRED TO THE DPP BY THE POLICE INTEGRITY
COMMISSION**³²⁷

Assault
Assault occasioning actual bodily harm
Common assault
Goods in custody
Obtain benefit by deception
Corruptly give benefit
Larceny
Fraud
Conspiracy to bribe
Conspiracy to make corrupt payment
Conspiracy to receive corruption commission or reward
Corrupt commissions or reward
Theft
Fraudulent misappropriation
Incite supply prohibited drugs
Supply prohibited drug
Possess equipment administer prohibited drug
Possess prohibited drug
Possess prohibited drug - traffickable quantity
Supply prohibited drug on ongoing basis
Conspire to supply prohibited drug
Breach of secrecy provisions

³²⁶ Internal Affairs, cited Prenzler and Ronken op. cit., p.325.

³²⁷ PIC response to Questions on Notice, pp.6-8

Unlawful and or unauthorised access to data stored in a computer
Fabricate evidence with intent to mislead a judicial tribunal
False testimony with intent thereby to pervert the course of justice
Destroy a document knowing it may be required in evidence
Conspiracy to pervert the course of justice
Knowingly give false evidence
Make false statement with intent to obtain advantage
Hinder investigation
Hinder investigation for serious criminal offence
Furnish false and misleading statement to the Royal Commission
Perjury
Pervert the course of justice
Give false or misleading evidence
Use false statement
Make false statement
Tamper with evidence
Attempt to pervert the course of justice
False imprisonment
Aid and abet false pretence
Former key official knowingly have business or financial association with a person known to be a close associate of licensee

5.3 A climate for corruption

Apart from the relative continuity of the forms of corrupt behaviour, another feature from the historical review of police corruption is the critical spiking of police corruption at particular moments in time. This suggests that forces which are broader and more powerful than individual deviance are at work. The period from the 1960s to the 1970s is an example of one such period when the general climate in NSW was conducive to corruption. One man who worked with senior police during this time explained that there was one essential fact to remember in understanding the working of crime in NSW in this period – any illegal activity was run only with the patronage of police:

There was an extraordinary number of police who did nothing but pick up money...For example, Detective Sergeant ----- who was a bagman for the abortion rackets, did nothing else – and I mean had no other official responsibilities at all – for years.³²⁸

These peaks of corruption have occurred at times of regulatory responses to social problems that increase police powers to control those particular problems. For example, the raft of legislation introduced in the first fifteen years of the twentieth century afforded police direct control over prostitution and gambling, arguably creating conditions more conducive to police corruption.³²⁹

Wood, in his Final Report, noted that in the case of laws that are at best only partially enforceable, corruption can become an attractive proposition for some police. Within this context, where the suppression of prohibited services or substances is effectively impossible yet governments insist on maintaining the law and its enforcement, the police priority is to get the best control it can over the activity. Consequently the police function becomes not one of enforcing the law, but

³²⁸ Hickie, op. cit., p.260.

³²⁹ Dixon, op. cit., p.8.

regulation of an illegal activity. As such, corruption almost inevitably emerges in the process of enforcing unenforceable laws because it becomes a means by which police can influence or control who is involved in the prohibited activity, where it occurs, and how it is done.³³⁰ This position was frankly expressed by then Police Commissioner Merv Wood in an interview with the *Sydney Morning Herald* in 1976:

It's a big city and you can't drive everything underground. You're foolish to try. We've tried it with dire results. It's better to let a thing exist where you know everything about it. I remember years ago we tried to eradicate prostitution. The next thing we knew they were popping up in the better suburbs. None of these things are felonies, They're what we call social offences, SP betting and so forth. While you don't condone them, it's better to know what they're doing than have them hidden and under the control of people we don't want to see in Sydney.³³¹

This is not to condone police corruption as a product of inappropriate legislation, rather it is to highlight the important role that regulatory legislation plays in creating environments in which corruption can occur. As Finnane sees it, 'Bad laws help sustain corruption, though they may not directly foster it'.³³²

5.4 Sydney's cyclical drug issues

While the laws relating to gambling provided the peak levels of police corruption in NSW, drug regulation has also proved to be a difficult area. Cocaine provides an illuminating example. Initially a nerve tonic and freely available from chemists, cocaine became widely used in the inner suburbs of Sydney during the first thirty years of the 1900s. When the State Government passed the *Dangerous Drugs Amendment Act 1927* prohibiting narcotics, suddenly enormous profits were to be made selling cocaine. The conjunction of the drop in the economy during the 1930s and the establishment of the Consorting Squad enabled police to largely suppress the cocaine trade.³³³ After decades of extremely low usage, by the late 1990s the National Drug and Alcohol Research Centre was warning of a cocaine epidemic.³³⁴ By November 2001, cocaine was being injected more frequently than heroin in the supervised injecting centre in Kings Cross.³³⁵

The perceived resurgence of cocaine use in the general community is important, because acts of police corruption cannot be separated from the broader community context in which they occur. As can be seen from the Internal Affairs list of charges arising from failed integrity tests and the PIC's list of charges referred to the DPP from completed investigations, illicit drugs are an issue. In fact, they are the single biggest group of charges arising from Internal Affairs integrity tests, with six charges of possession, five of supply, two of self administer, and one each of possession of implements and taking part in the manufacture of prohibited drugs.³³⁶

NSW is not alone in rising levels of drug-related corruption. Victoria Police recently dissolved their Drug Squad, replacing it with a new drug investigations division.³³⁷ This followed a serving member and two former members of the Drug Squad being

³³⁰ Wood, 1987, op. cit., p.35.

³³¹ Cited in Hickie, op. cit., p.313.

³³² Finnane, op. cit., p.176.

³³³ McCoy, op. cit., p.107.

³³⁴ 'Cocaine tightens grip on our cities', *The Australian*, 25 June 1998.

³³⁵ 'Cocaine overtakes heroin in injecting room', *The Sydney Morning Herald*, 28 November 2001.

³³⁶ Prenzler and Ronken, op. cit., p.330.

³³⁷ 'Cleaning out the drug squad', *The Age*, 14 December 2001.

charged with drug trafficking.³³⁸ A 2002 study of New York police who were dismissed or resigned for reasons of misconduct during the 22 years from 1975 – 1996 found that the single largest primary charge against those officers was drug offences, and that those offences were detected primarily through a combination of targeted and randomised drug testing programs.³³⁹ Research by the UK Association of Chief Police Officers and the Home Office found that recreational drug use amongst British police was an issue of concern, as well as drug dealing by police officers.³⁴⁰

In its response to Questions on Notice for this Report, the PIC noted the following issue in response to questions about new or emerging areas of police corruption:

During the course of its investigations, the Commission has noticed a disturbing increase in the incidence of a form of serious police misconduct which received little attention from the Royal Commission but which poses similar risks for the NSW Police.

Commission investigations such as Saigon, Regal and Dakota have identified a number of examples of younger, uniformed officers attending nightclubs, taking illicit drugs and associating with drug dealers. The Commission has received evidence from such officers that when they are off-duty, they no longer have responsibilities that go with being a police officer. They appear to see no conflict in taking recreational drugs when off-duty.

In its report on Operation Saigon, the Commission noted its concern that the officers involved viewed recreational drug use as acceptable and failed to taken any action against people using or supplying prohibited drugs as they were off-duty at the time.³⁴¹

The PIC's report on Operation Saigon provides an illustration of this issue. Operation Saigon originated in part from a 1996 Internal Affairs investigation into Senior Constable Anthony Dilorenzo of Bondi Patrol who was allegedly associating with drug dealers. In 1997 Internal Affairs also commenced an investigation into Constable Rodney Podesta's alleged use and supply of prohibited drugs. Podesta was also part of the Bondi Patrol. In June 1997, Roni Levi was shot and killed on Bondi beach by Podesta and Dilorenzo. The Internal Affairs investigation into Podesta lead to the identification of several other officers suspected for the use and supply of prohibited drugs. In 1998, this information was provided to the PIC by Internal Affairs for further investigation.³⁴²

Operation Saigon found that six officers at Bondi were using illegal drugs, specifically cocaine, cannabis and ecstasy, and that they were supplied in part by a former police officer.³⁴³ The problems with officers using illicit drugs are clear. Buying and taking recreational drugs can compromise an officer's ability to carry out their duties, particularly in relation to those from whom they have bought drugs. It places them in a position where they may form personal associations with criminals - an outcome that both the Wood Royal Commission and the PIC have warned against as being a major causal factor in police engaging in corrupt conduct.³⁴⁴

³³⁸ 'New major drug investigation division', www.police.vic.gov.au, 14 December 2001.

³³⁹ Fyfe et. al., op. cit., Figure 1.

³⁴⁰ M. Outram, 'The London Met - strengthening our integrity', Paper to the Police and Governance Conference, Australian and New Zealand Society of Criminology, Brisbane, 2001, p.24.

³⁴¹ PIC response to Questions on Notice page 1.

³⁴² PIC Report to Parliament – Operation Saigon June 2001 p.i.

³⁴³ *ibid.*, p.ii.

³⁴⁴ PIC response to Questions on Notice, p.1-2.

That there have been no positive results from NSW Police random drug testing program is excellent. However, it is equally clear from the number of positive results from targeted drug testing that a small number of police do participate in drug-related corruption and serious misconduct. Evidence from the PIC suggests that not only is the 'mates' network still in operation to some extent, but that the testing processes themselves may also be open to manipulation by informed police:

There is evidence of police warning other police away when drug testing is occurring. There is evidence of police being aware that some drugs either leave the body quickly or of are broken down into components which might just as easily have originated from 'cold and flu' tablets, and then planning to take drugs at the end of their rostered shift. Test samples can also be physically tampered with and substitute samples provided or drug content masked with the consumption of large quantities of water or possibly quinine.³⁴⁵

It is also noteworthy that the other source of positive drug tests for police comes from critical incident testing. This is an area that requires careful observation for any emerging patterns, as theoretically those involved in critical incidents would most likely be a random selection of officers.

There is also evidence of police dealing drugs, accepting payments from drug dealers and in one particular case, networking dealers in order to receive regular payments from them. The public phase of the PIC's ongoing Operation Florida began with an explosion of publicity about such corruption, with *The Australian* proclaiming 'Ryan facing police cocaine crisis',³⁴⁶ the *Sydney Morning Herald* 'Drugs, violence focus of new police inquiry',³⁴⁷ and the ABC's Four Corners program running an episode entirely on the inquiry. Initially focusing on police corruption in the Manly and Northern Beaches area, Operation Florida is looking at relationships between police and drug dealers, including police stealing from drug dealers and accepting payments from them. The PIC has stated from the outset of this investigation that the situation in Manly and the Northern Beaches should be considered a microcosm of policing

5.5 Early warning systems

On the one hand, the Wood Royal Commission recognised the cyclical nature of police corruption in NSW, but it held out the promise that 'this Royal Commission, and the strength of the present climate for change, provide an opportunity to challenge the inevitability of that cycle'.³⁴⁸ Historically, corruption in NSW Police has been a regular feature of the organisation, and given that the PIC is using Operation Florida as a microcosm for policing, it appears that there is some continuity in this approach.

As discussed in Chapter One, reform can only occur during the reaction phase in the corruption cycle. As NSW Police has turned back into a 'force' and organisational structures that were highly criticised by Wood are re-implemented, in particular specialist squads or taskforces, perhaps modest goals would be more likely to be achieved than the wholesale rooting out of corruption.

³⁴⁵ *ibid.*, p.2.

³⁴⁶ 'Ryan facing police cocaine crisis', *The Australian*, 4 October 2001.

³⁴⁷ 'Drugs, violence focus of new police inquiry', *Sydney Morning Herald*, 5 October 2001.

³⁴⁸ Wood, *op. cit.*, p.523.

One initiative that is gaining currency in a number of policing organisations around the world is that of an early warning system. The basic idea of an early warning system is that law enforcement agencies should use data on problematic officer performance, such as complaints, to identify those officers who appear to be experiencing recurring problems or apparent problems interacting with the community or other officers. An early warning system is preventative in the sense that it can be used to alert police managers to problems before they get any worse, rather than predict officer performance based on particular personality characteristics.³⁴⁹ It is a system designed to prevent misconduct and assist officers rather than to punish or discipline them.³⁵⁰

NSW Police Special Crime and Internal Affairs undertook a research project called Analysis of Sustained Criminal Allegations 1999-2001, the outcomes of which have some relevance to the proposal for an early warning system, as well as general corruption prevention. The conclusions of the project were:

- Police officers involved in behaviour of a corrupt nature should be addressed in relation to their particular offence not by a 'blanket approach' for all complaints and offences. As is the case for the general crime population, different interventions exist for police offenders depending on the crime they have committed. Such interventions need to be tailored towards the offender group to hopefully dissuade the offence being committed.
- Recruitment should continue to encourage females to join the NSW Police. On the basis of SCIA's results and previous studies it can be concluded that females generally exhibit more ethical behaviour than male police officers.
- Discrimination on the basis of age should not exist as this research found no findings to support the notion that younger employees are more vulnerable to corruption. This research highlighted police officers 28-31 years of age were at a higher risk of receiving sustained criminal allegations.
- Further research and the establishment of an Early Warning System is recommended to highlight at-risk officers.
- The promotion of positive reduction in corruption or complaints is recommended to increase morale and decrease the continuing negative impact the media and investigations may have on current employees.
- Ongoing research should be conducted to further explore the findings evidenced in the study. Some future research may involve an examination of the assault complaints, further analysis of location and transfer issues, and exploration into the mid age anomaly.³⁵¹

The Commander of Special Crime and Internal Affairs gave evidence to the Committee that the arrival of new staff members to his Command will give the capacity to implement some of the above recommendations, as well as conduct further regional assessment under the Corruption Identification and Management Process. Assessment under this process involves conducting research based on a

³⁴⁹ S. Walker, G. P. Alpert, & D. J. Kenney, 'Early warning systems for police: concept, history and issues', *Police Quarterly*, 3(2), 2000, p.133.

³⁵⁰ M. Bassett, Proactive Integrity Management, Risk Identification and Profiling: a case study. Paper to the Police and Governance Conference, Australian and New Zealand Society of Criminology, Brisbane, 2001, p.4.

³⁵¹ NSW Police response to Questions on Notice pp.5-6.

region, and then on a local area command, to identify high risk officers and the behavioural patterns that could be associated with the types of complaints that those officers are attracting. Some of the staff involved in the research have psychology backgrounds and were able to make recommendations about interventions with officers. The Commander gave evidence to the Committee that his Command is currently working on a process to encourage local area commanders to put in place interventions which are appropriate to the types of behaviour that have been identified.³⁵²

The Strategic Projects Team within the Special Crime and Internal Affairs Command, has also undertaken research into the identification and management of officers at risk of inappropriate and improper conduct. This project arose in part from the PIC's Project Oracle which looked at allegations of assault by police officers. The methodology used in Project Oracle involved examining officers with sustained criminal allegations across a variety of demographics and variables to identify those officers whose behavioural indiscretions deviate substantially from the normative police officer population.³⁵³ Generally the project found that a high-risk officer may be identified by the number of previous criminal allegations, previous adverse findings and number of complaints they have received throughout their career. Age, length of service and duty type provided specific indicators on an officer's susceptibility to various complaint categories.³⁵⁴

SCIA's research findings are mostly borne out by research conducted in other jurisdictions. The results of a study of career ending misconduct amongst officers of the NYPD are outlined in the table below.

Table 5³⁵⁵

CHARACTERISTIC	INVOLUNTARILY SEPARATED	CONTROL GROUP
White officers	56.8%	78.9%
Black officers	30.5%	10.6%
Hispanic officers	11.9%	9.6%
Juvenile justice proceedings	9.7%	4.2%
Previously arrested	23.3%	13.9%
Military service	40.8%	32.5%
Attended college	37.7%	50.2%
Employed despite pre-employment check recommendation	16.3%	6.8%
High record of achievement at academy	18.9%	39.8%
Demerits for minor violations	70.9%	51.7%
Disciplinary actions	31.4%	8.34%
Reported sick for reasons not related to injuries received at work	37.8%	17.3%
Late for duty	21.6%	12.2%
Graduation held over	15.5%	3.3%

The study found that patrol officers in particular precincts were more likely to be involuntarily separated (dismissed) than officers in specialists units. It further found,

³⁵² Committee on the Office of the Ombudsman and the Police Integrity Commission, transcript of hearings 20 September 2002, p.20.

³⁵³ NSW Police response to Questions on Notice, p.6.

³⁵⁴ *ibid.*

³⁵⁵ Fyfe, et. al., *op. cit.*, pp.3-5.

in research not elaborated upon in the paper, that involuntary separations across the various NYPD precincts were positively associated with variables that measure community disorganisation such as poverty, welfare, transiency, single parent households and rates of crime.³⁵⁶

There are clear indicators in this study that merit further research in an Australian policing context. Comparable indicators such as number of complaints, length of service and duty type seem to have been touched on by the Strategic Projects Team in the Special Crime and Internal Affairs Command, in their recent research on at-risk officers.³⁵⁷ From this it appears that some of the groundwork in establishing personal history, situation and environmental indicators for an effective early warning system has already been undertaken. The Committee fully supports such an initiative.

³⁵⁶ *ibid.*, p.5.

³⁵⁷ NSW Police response to Questions on Notice, p.6.
