

PARLIAMENT OF NEW SOUTH WALES



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

## INTERIM REPORT ON AN INQUIRY INTO THE POLICE INTEGRITY COMMISSION'S JURISDICTION TO OVERSIGHT THE PROTECTIVE SECURITY GROUP

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Together with Transcript of Proceedings, Written Responses  
to Questions and Minutes

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Assembly. Committee on the Office of the Ombudsman and the Police Integrity Commission**

Interim report on an inquiry into the Police Integrity Commission's jurisdiction to oversight the Protective Security Group : together with transcript of proceedings, written responses to questions and minutes / Parliament of New South Wales, Committee on the Office of the Ombudsman and the Police Integrity Commission. [Sydney, N.S.W.] : The Committee, 2005. – p. 70; 30 cm. (Report ; no. 8/53, March 2005).

Chair: Paul Lynch.  
"March 2005".

ISBN 1921012005

1. New South Wales. Police Integrity Commission.
2. Protective Security Group.
  - I. Title
  - II. Lynch, Paul.
  - III. Series: New South Wales. Parliament. Legislative Assembly. Committee on the Office of the Ombudsman and the Police Integrity Commission. Report ; no. 53/8

363.289 (DDC22)

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## Terms of Reference

That, in accordance with its statutory functions under s.95 of the *Police Integrity Commission Act 1996*, the Committee on the Office of the Ombudsman and the Police Integrity Commission has resolved to conduct an inquiry into:

- (a) the functions of the PIC under ss.14(e)-(f) of the *Police Integrity Commission Act 1996*;
- (b) the provision of reports to the PIC under Part 3 of the *Police Act 1990*;
- (c) oversight of the conduct of NSW police officers involved in the Counter Terrorism Coordination Command (CTCC); and
- (d) any other matter that the Committee considers relevant to the inquiry;

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





## Chairman's Foreword

This report arises from the Committee's Seventh General Meeting with the Police Integrity Commission, where it became apparent there were ambiguities in section 14(e) of the *Police Integrity Commission Act 1996*. This section required the Commission to monitor and report on the conduct and effectiveness of the annual NSW Police Audits of the Protective Security Group.

The Protective Security Group (PSG) was the successor of Special Branch. While the PSG performed very similar duties to Special Branch, the Government insisted that the PSG be "subject to high standards, and an even higher level of scrutiny than most".<sup>1</sup> These high standards were given effect through the PIC auditing the NSW Police annual audit of the PSG's charter. This arrangement was in place for five years, and during that time the PIC found that the PSG had acted within its charter.

In 2002 the Government decided to create the Counter Terrorism Coordination Command (CTCC), which subsumed the PSG. While the Government was "not prepared to leave...to chance"<sup>2</sup> the oversight arrangements for the powers and functions of the PSG, it did not clearly provide for such oversight arrangements for the new CTCC, an organisation with more than double the budget, staff and resources of the PSG.

Legislative clarification of this anomaly does not appear to be in sight. The review of the *Police Act 1990*, now more than two years overdue,<sup>3</sup> would have provided an appropriate opportunity to deal with this issue. However it appears that this opportunity has not been realised. As such, the Committee resolved to conduct this inquiry.

This report forms an interim report of the inquiry. It briefly reviews the circumstances surrounding the establishment of the PSG, its enhanced powers and the conduct of its oversight arrangements by the PIC.

The report concludes with the PIC's proposal to conduct a risk assessment of the CTCC. On receiving the results of this risk assessment from the PIC, the Committee will conclude this inquiry and table a final report.

Paul Lynch MP  
Chairman

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<sup>1</sup> *Police Legislation Amendment (Protective Security Group) Bill 1998*, Second Reading Speech, 23 June 1998

<sup>2</sup> *ibid*

<sup>3</sup> as at 2 March 2005



## Chapter One - Introduction

- 1.1 This report arises from the Committee's *Report on the Seventh General Meeting with the Police Integrity Commission*. The Report examined, in part, section 14(e) of the *Police Integrity Commission Act 1996* which requires the Police Integrity Commission (PIC) to monitor and report on the conduct and effectiveness of the annual NSW Police audits of the Protective Security Group (PSG). The PIC's Annual Report for 2002 – 2003 noted that the NSW Police audit of the PSG for the year 2002 had yet to be received. The Annual Report further noted that as the PSG had been moved into the newly established Counter Terrorism Coordination Command (CTCC), it would be "interested to see what impact these changes will have on the future of the PSG annual audits".<sup>4</sup>
- 1.2 The Committee heard evidence from the PIC Commissioner during the General Meeting that until the relationship between the activities of the CTCC and the PSG's charter are formalised, the audits should continue. The Solicitor to the Commission noted how the PSG's powers have increased since its inclusion in the CTCC. For example, the body now has the power to conduct investigations, while the PSG was confined to intelligence gathering.<sup>5</sup>
- 1.3 The Committee considered that as the legislative basis for the PSG falls within the *Police Act 1990*, which is currently being reviewed by the Ministry for Police, the review would be a timely and appropriate opportunity to clarify the accountability requirements of the PSG now that it has been incorporated into the CTCC. However the Ministry advised the Committee in a briefing prior to the General Meeting with the PIC, that clarifying the role of the PSG had not been considered in the review of the Act as the issue had not been raised in submissions to the review. The PIC submission to the review of the Act raised the issue of the PSG's new role, as well as the sufficiency of the Police Commissioner's powers to audit the activities of the CTCC.<sup>6</sup>
- 1.4 As such the Committee concluded that:
- In light of the ongoing uncertainty about the accountability arrangements for the Protective Security Group, and the consensus between the Committee and the Police Integrity Commission, that the intended level of oversight for the PSG remains valid, the Committee has resolved to conduct an inquiry into the jurisdiction of the PIC's oversight of the PSG. This inquiry will commence in the first half of 2004.<sup>7</sup>
- 1.5 This inquiry assesses the need for oversight of the CTCC as the body that has taken on, and substantially enhanced, the role of the PSG. The inquiry has been

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<sup>4</sup> *Annual Report 2002 – 2003 of the Police Integrity Commission*, p 37

<sup>5</sup> Committee on the Office of the Ombudsman and the Police Integrity Commission, 2003, *Report on the Seventh General Meeting with the Police Integrity Commission*, p 11

<sup>6</sup> *ibid*, p 12

<sup>7</sup> *ibid*

Introduction

undertaken with a view to recommending how such oversight can best operate within the existing accountability regime. The inquiry will seek to establish a base level of appropriate oversight for the CTCC given that the CTCC has far greater resources and powers than the PSG.

- 1.6 As the powers held by the PSG, and now incorporated in the CTCC, were inherited from Special Branch, Chapter Two of the report briefly recounts the events associated with the establishment and disbanding of Special Branch.
- 1.7 Chapter Three looks at the establishment of the Protective Security Group and arrangements for its oversight.
- 1.8 Chapter Four is concerned with the establishment of the Counter Terrorism Coordination Command and the subsequent incorporation of the Protective Security Groups into this newly established body.
- 1.9 Chapter Five discusses the current legislative uncertainty surrounding the oversight of the former Protective Security Group functions now held by the Counter Terrorism Coordination Command. The PIC's submission to the Inquiry concerning their proposal to conduct a detailed risk assessment, and on the basis of the risk assessment propose an appropriate oversight system will be discussed.
- 1.10 This Report forms an Interim Report of the Committee. On the PIC's completion of the risk assessment, the Committee will table a final report.

## Chapter Two - Special Branch: Intelligence activities in NSW Police 1948 - 1997

- 2.1 At a conference of State Police Commissioners in 1948, it was agreed that each police force should establish a 'Special Branch' to liaise with military intelligence units and D Branch (which in 1949 became the Australian Security Intelligence Organisation<sup>8</sup>) to monitor subversive activity and assist in the maintenance of national security.
- 2.2 Politically motivated crime and acts of violence in NSW were previously the responsibility of the Police Subversive Organisations Investigations Bureau, formed in the mid 1930s. At the start of World War II the Bureau combined with elements of the Commonwealth and armed forces to form the Military/Police Intelligence Branch. This Branch was dissolved at the end of World War II and the Subversive Organisations Investigations Bureau was reconstituted as a police function until 1948, when Special Branch was formed. Special Branch was modelled on New Scotland Yard's Special Branch, and took the same name.<sup>9</sup>
- 2.3 An extremely limited amount of publicly available information about NSW Special Branch exists. There are two primary sources, a 1978 NSW Privacy Committee report on Special Branch's recording keeping practices, and a 1998 report to Parliament by the Police Integrity Commission on the activities of Special Branch. These two snapshots, twenty years apart, provide the most detailed information on the structure, function and activities of Special Branch.

### **STRUCTURE AND FUNCTIONS OF SPECIAL BRANCH**

- 2.4 Special Branch mostly operated as part of the Commissioner's Office. During the latter part of its time, it came under the control of the Deputy Commissioner (Operations), the Special Operations Group, State Intelligence Group, the Tactical Services Group and the State Commander.<sup>10</sup>
- 2.5 Little evidence has been found of formal operating or reporting procedures for the Special Branch since the time of its inception. The earliest evidence found by the Police Integrity Commission of a formal statement of Special Branch's objectives was in a 1978 report by the Privacy Committee, which quoted a 1975 directive by the Commissioner as to the activities of Special Branch. The directive is:

"The activities of the Branch are as follows:

- (a) To be aware of subversive and extremist activities within the boundaries of New South Wales and to keep the Commissioner of Police advised of any

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<sup>8</sup> <http://www.asio.gov.au/About/comp.htm>

<sup>9</sup> Police Integrity Commission. 1998. *Report to Parliament Regarding the Former Special Branch of the New South Wales Police Service*, p 7

<sup>10</sup> *ibid*

incidents likely to occur which would result in violence or civil disorder so that preventative measures can be taken to avoid danger or injury to persons and damage to property.

Also to provide the Commissioner with whatever information might be available in relation to proposed demonstrations and protests where breaches of the peace may occur so that adequate policing can be arranged.

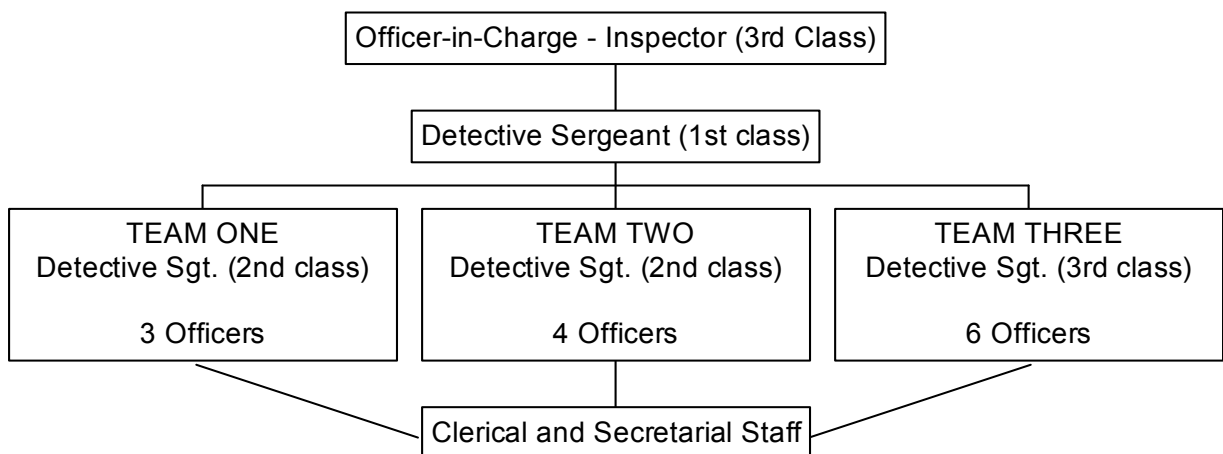
- (b) To gather information in relation to the activities of various factions within the ethnic communities so that preventative action can be taken to avoid outbreaks of violence between opposition groups or against Consular representatives and premises within New South Wales.

Where such outbreaks have occurred and injury or damage has resulted, to assist investigating Police to detect the person or persons responsible.

- (c) Where necessary to assist with Police arrangements and provide security escorts in connection with visits to New South Wales of members of Royalty, Heads of State, Heads of Government, or controversial figures from overseas. Also when the need arises to carry out similar duties in respect of the Governor-General, State Governor, Prime Minister, State Premier and members of Federal and State Parliaments.
- (d) When during the course of these functions the Branch obtains information which would appear to be of a security interest from a national point of view, this information be passed to the Regional Director of ASIO through the Commissioner of Police. Similarly, if information obtained is considered to be of security interest to the State Government it should again be passed to the Commissioner who will in turn advise the Premier.”<sup>11</sup>

2.6 The 1978 structure of Special Branch was as follows:<sup>12</sup>

### Present Structure of the Special Branch



<sup>11</sup> Privacy Committee, 1978. *The Special Branch Criminal Records in N.S.W.* p 4

<sup>12</sup> *ibid*, p 3

At this time Special Branch divided into three teams, whose work areas often overlapped:

- team one - dealing with communists and other “revolutionary” socialist organisations and organisations through which they exert influence, as well as “right wing” racist groups;
- team two - dealing with “the radical left” including revolutionary and terrorist organisations; and
- team three - dealing with ethnic communities, the extreme right wing and certain university based organisations and trade unions.<sup>13</sup>

2.7 Special Branch was also responsible for supervising the security of visiting dignitaries, with the second in command liaising with Premier's Protocol Unit and other sections of the Police Department. Officers were coopted from other branches of the Police Department if necessary during such supervision. Special Branch also shared the responsibility for the control of demonstrations in a similar manner.

2.8 Demonstrations were a particular area of liaison between Special Branch and other parts of the Police Department. In 1976, all demonstrations were notified to Special Branch, who would then report to the Metropolitan Superintendent and suggest the approach police should take in supervising the demonstration. Members of the Branch sometimes attended the demonstrations and liaised with police at the scene.<sup>14</sup>

2.9 The Privacy Committee report offers some details of the methods of contact used by Special Branch when investigating ‘subversive’ and ‘ethnic’ organisations. Branch members would attend meetings, talk to members and establish contact with voluntary informants. They would also routinely monitor newspapers and other publications.<sup>15</sup>

2.10 In ‘community contact’ work, members of Special Branch would make themselves known to the leaders of certain ethnic organisations, unions and social action groups. Some organisations reportedly showed some interest in keeping the Branch aware of their activities by giving them copies of their publications and suggesting the names of members for contact purposes.<sup>16</sup>

2.11 Special Branch also liaised with the Australian Federal Police, other State Special Branches as well as ASIO, for example when the Prime Minister visited NSW. Consulates would contact Special Branch about threatening phone calls and trespass, which would then be handled by the Branch.<sup>17</sup>

2.12 Prior to its disbanding in 1997 – the principle functions and responsibilities of Special Branch were:

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<sup>13</sup> *ibid*, p 3

<sup>14</sup> *ibid*, p 3

<sup>15</sup> *ibid*, p 4

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

1. To be aware of politically motivated violence or extremist activity within the boundaries of New South Wales.
2. To advise the State Commander of any incidents likely to occur which would result in violence or civil disorder so that preventative policing measures can be taken to avoid danger or injury to persons and/or damage to property.
3. To gather information in relation to the activities of rival factions within the Ethnic Communities so that preventative measures can be taken to avoid conflict between opposing groups or violence against Consular representatives or premises within New South Wales. Where such outbreaks have occurred and injury or damage has resulted, to investigate or assist investigating Police to detect the person or persons responsible.
4. To provide security for visiting Royalty, Heads of State, Internationally Protected Persons, the Australian Governor General, State Premier and members of Federal and State Parliaments and other controversial figures, visiting New South Wales.
5. To conduct security reviews and provide advice where necessary.
6. When during the course of these functions information which would appear to be of interest from a national security point of view is obtained, such information is passed to the Regional Director of the Australian Security Intelligence Organisation (A.S.I.O.) through the Commissioner of Police. Similarly, if information is considered to be of security interest to the State Government, it should again be passed to the Commissioner who will in turn advise the Premier.<sup>18</sup>

2.13 The Mission Statement of Special Branch was:

- (a) To provide relevant, current and specialised strategic and tactical intelligence concerning politically motivated violence and or civil disorder, terrorist and extremist activity and
- (b) To plan and implement security procedures to ensure the safety of VIPS and property.<sup>19</sup>

2.14 It appears that the Special Branch redrafted its Mission Statement from time to time to conform with the prevailing expectations of the day. According to the PIC, during the period of time that John Avery was Commissioner of Police and community-based policing was being implemented, the Special Branch Mission Statement was reworded to fit with the contemporary policing ethos. In 1996, it was again reworded following criticisms of Special Branch by the Wood Royal Commission. However the PIC noted in its *Special Report to Parliament Regarding the Former Special Branch of the New South Wales Police Service* that there was no attempt to publicise each reworking of the Mission Statement, or to modify the activities of Special Branch to correspond with each new Statement. The PIC considered that:

“tinkering with the Mission Statement was a transparent gesture which amounted to no more than window dressing. It had no impact on the day to day activities of the Special Branch which were never held up for close scrutiny or revision.”<sup>20</sup>

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<sup>18</sup> Police Integrity Commission, 1998, *Report to Parliament regarding the former Special Branch of the New South Wales Police Service*, pp 9-10

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*, p 10



2.15 At the time of disbandment, Special Branch was led by a Commander and had an Operations Coordinator, Intelligence Officer and six teams consisting of a Sergeant and a number of Constables. In total there were 32 officers attached to Special Branch, along with four non-sworn public servants and six to eight trainees.<sup>21</sup>

## RECORD KEEPING AND SPECIAL BRANCH - 1978

2.16 As much of Special Branch's raison d'être was intelligence gathering, its capacity to keep accurate, detailed and easily accessible records was crucial. However the Privacy Commission's 1978 report shows the reality differed from the ideal.

2.17 At this time Special Branch kept seven different types of records (both active and inactive), including cards, dossiers, monthly reports, 'contact' files, S files (AISO), incident files and photographs.<sup>22</sup>

### Cards

2.18 In 1978, Special Branch had over 20 000 current cards, the bulk of which were concerned with individuals, with 1 500 concerning organisations. Additionally, a card system was maintained on the basis of the address of the subject, and until mid 1977 there was also an index of vehicle registrations numbers.<sup>23</sup>

2.19 The card system operated as more than an index. While firstly indicating that a person had come to the attention of Special Branch, the card often contained information about the individual, effectively making the card a dossier. A dossier was generally created when the information on the subject exceeded several cards. The card then became a point of reference to the dossier.<sup>24</sup>

### Dossiers

2.20 At the time the Privacy Committee inspected Special Branch's records in 1978, there were 3 500 active dossiers. A dossier consisted of a 'running sheet': a summary of the subject's activities for which they came under notice listed in chronological order. Relevant publications were included. Numbered subfiles were also used which were copies of reports and documents related to specific events in which the subject had been involved. In 1976, Special Branch had 6 000 inactive dossiers.<sup>25</sup>

2.21 Special Branch also kept a variety of other files including:

- contact files made up of information conveyed to it by various voluntary contacts in the community;
- 'S' files of all information formally received from and conveyed to ASIO;
- incident files which were prepared in relation to major investigations, activities or events;
- photographs, including those of about 4 800 individuals. The photographs come from a variety of sources such as police arrests, passports, newspapers, Special Branch and ASIO; and

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<sup>21</sup> *ibid*, p 11

<sup>22</sup> Privacy Committee, 1978, *The Special Branch: Criminal Records in NSW*, p 5

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*, p 6

- monthly reports, a term used by Special Branch to refer to miscellaneous correspondence reports and other items.<sup>26</sup>

## **SUBJECT MATTER OF SPECIAL BRANCH FILES – 1978**

### **Communists**

2.22 Almost 35% of the cards sampled by the Privacy Committee, and a large number of the dossiers, were concerned with communism. Some examples of the types of data noted were:

- X was seen at a communist meeting;
- Y was the author of an article in a communist publication;
- Z's name appeared on a list of subscribers to a communist publication;
- the subject's car was seen in the vicinity of a building where a meeting of a communist organisation was being held;
- the subject's name was found in the address book of a known communist.<sup>27</sup>

2.23 One particular file consisted of data collected on individuals with communist affiliations and certain racial connections in a particular country town. The survey was carried out jointly by ASIO and Special Branch with the assistance of the local police.<sup>28</sup>

2.24 Special Branch stated that this data was collected to monitor communist infiltration, trade unions and front organisations.<sup>29</sup>

### **Social Action Groups**

2.25 About 15% of Special Branch's card holdings were concerned with social action groups. These included such diverse organisations as:

- civil liberties organisations;
- peace movements;
- anti-racist groups;
- environmental protection organisations;
- resident action groups;
- prison reform groups; and
- women's liberations groups.

2.26 The major reason for individuals coming to the attention of Special Branch was because of their attendance or involvement in demonstrations and protests organised around particular social issues.

2.27 Examples of the types of data kept by Special Branch in relation to these groups included:

- solicitors and barristers coming under notice by acting for one of these bodies or their members;
- owners of cars displaying certain political or social slogans or stickers;

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<sup>26</sup> *ibid*, p 7

<sup>27</sup> *ibid*, p 8

<sup>28</sup> *ibid*

<sup>29</sup> *ibid*

- being a sponsor or patron of one of these bodies;
- signing a petition organised by such a group or related to a matter of conscience;
- an individual mentioned on an official publication of one of these groups; and
- an individual who spoke at a meeting organised by one of these groups.<sup>30</sup>

2.28 Special Branch maintained that it gathered information on the members of these groups to help liaise effectively with organisers prior to the protest, and to recognise the more volatile participants in the demonstration.<sup>31</sup>

### **Ethnic Groups**

2.29 According to the Privacy Committee, the information maintained on ethnic groups was the most diverse and often detailed of any category. This was the third largest group in the card sample. Examples of the data noted was:

- the executive and members of ethnic, sporting, recreational and social groups;
- certain migrant friendly societies;
- prominent members and clergy of certain ethnic churches;
- some persons attending certain functions eg balls, dinners, church meetings etc.

2.30 The Committee noted that members of Special Branch were often invited to particular functions, and made no attempt to hide their identities.<sup>32</sup>

### **Trade Unions**

2.31 Many trade unions and members were the subject of cards and dossiers. The records of individuals show the trade union and political affiliations of members, and the records of unions show the political affiliations of prominent members. Records were kept on office bearers, their nominators and seconders, as well as any representatives of factions or outspoken members. The progress of certain industrial disputes was recorded, primarily those that lead to public confrontations such as sit-ins and picketing. The Privacy Committee noted that these files were mostly confined to left wing unions and members.<sup>33</sup>

### **The Right Wing**

2.32 This category dealt with a small number of individuals who either by their association with one of several extremist groups, or by their independent actions had come under notice. Some data was maintained on certain nationalist and racist organisations and right wing factions within established political parties and certain unions. Special Branch explained the few references to right wing activity when compared with its interest in the left as simply corresponding with the lack of right wing activity in the community as a whole.<sup>34</sup>

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<sup>30</sup> *ibid*, p 9

<sup>31</sup> *ibid*

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*, pp 9-10

<sup>34</sup> *ibid*, p 10

### **Activist Groups**

2.33 Special Branch maintained information on individuals and organisations that could reasonably be considered to have a potential for violent activity. The Privacy Committee noted that such subjects were also usually from ethnic groups and some political organisations.<sup>35</sup>

### **The Australian Labor Party**

2.34 The Privacy Committee noted a dossier, kept in the Branch's safe, called "Australian Labor Party". The dossier was started in 1963, but was not extensive. The last three entries were December 1975, November 1976 and November 1977. The information in the dossier related primarily to security arrangements at major party conferences and demonstrations attended by party officials and parliamentarians. There was also information relating to the alleged theft of documents and matters raised for comment by party members. In several cases it noted that certain members of the ALP were associated with communist organisations. Similar information was recorded on other major and minor parties but kept in the records of visits or in the general system. Occasionally there was a similar file on a minor party. The Branch could give no reason for the ALP file's existence other than it had begun in 1963 and was continued as a convenient storage of relevant information.<sup>36</sup>

### **Files on Members of Parliament**

2.35 In only one instance was a dossier on a Member of State Parliament found. This person was a Member of Parliament in 1978. It had been marked "No Further Interest Feb 1975", and Special Branch explained that its presence in the system was due to an administrative error as it should have been destroyed. The file had notes in it dated 1973 and had been in existence since 1957 when the subject had entered Parliament. The Privacy Committee stated they were assured that no dossiers had been maintained on MPs since the then head of Special Branch had taken the post in 1975. Special Branch further stated that if a MP came under their notice, the dossier would be kept in the Branch head's safe and destroyed as soon as he was satisfied there was no need for further monitoring. No other files on State MPs were found.<sup>37</sup>

### **Miscellaneous files**

2.36 A range of information was also held that does not fall within the above categories. This included:

- shareholders of a company with certain political associations;
- companies which provided trucks for May Day celebrations;
- members of a pensioners' welfare association where communist infiltration was suspected;
- eccentrics or vexatious letter writers;
- a particular person in attendance at a trade union picnic; and

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<sup>35</sup> *ibid*

<sup>36</sup> *ibid*

<sup>37</sup> *ibid*, p 6

- notable church figures, particularly any who use their position to speak out on matters of conscience.<sup>38</sup>
- 2.37 One card and a number of references in dossiers were found regarding some members of the judiciary, but these related to times before they were appointed as judges. The information related to their membership of social action groups, and not their activities as judges. The Privacy Committee noted that there was virtually no evidence of surveillance of personal life.<sup>39</sup>
- 2.38 The Privacy Committee reported that Special Branch gained information from a number of sources other than what could be considered normal police sources such as informants. For example, Special Branch received a list of all applicants for passports, as well as copies of their applications and copies of the passport photos. The application form not only included personal information, but also countries the applicant would be visiting, as well as the address of the person who witnessed the application.<sup>40</sup>
- 2.39 Special Branch also received copies of applications for private enquiry agents, gun licenses, special constables and press passes. In the case of press passes, the Branch advised the Commissioner on who should be granted a pass. In view of the privilege of access to information and locations a press pass carries, Special Branch was reluctant to allow a pass to be held by either a private enquiry agent or a Special Constable, or someone with a gun license.<sup>41</sup>
- 2.40 Special Branch also had an arrangement with Telecom and Australia Post whereby the details of a person who had sent a threatening or abusive telegram was provided to them on request. The Privacy Committee stated that no evidence was found that Special Branch had engaged in phone tapping, or had interfered with the mail. The Branch stated that it did not and had never engaged in such practices. The Privacy Committee noted that "no study can however be conclusive".<sup>42</sup>
- 2.41 Information was also exchanged between the various State Special Branches and ASIO where considered necessary.<sup>43</sup>

## **DISSEMINATION AND ACCESS TO SPECIAL BRANCH HOLDINGS**

- 2.42 The Privacy Committee noted that because of the absence of any logging system, it was impossible to determine the extent or nature of all information disseminations by Special Branch. It appeared that ASIO and Military Intelligence were the only external bodies with formal access to information held by the Branch. Crime Intelligence and some other sections of the Police Force also had formal access. The Privacy Committee was able to estimate the frequency of ASIO access to Special Branch files, and gave the figure for 1977 as 400. The Committee noted that informal accessing of information also occurred, but no records of this were kept.<sup>44</sup>

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<sup>38</sup> *ibid*

<sup>39</sup> *ibid*, p 9

<sup>40</sup> *ibid*, p 11

<sup>41</sup> *ibid*

<sup>42</sup> *ibid*

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*, p 13

## RECOMMENDATIONS OF THE PRIVACY COMMITTEE

2.43 The recommendations made by the Privacy Committee started from a consideration of where the loyalties of Special Branch lay. The report stated that:

The position even of the ordinary policeman cannot be that merely of an ordinary servant of existing government, for his responsibilities for even handed administration of the criminal law are in conflict with complete subservience to any politician or those operating under a politician's direction, at least in their individual capacities. His duty must be in some degree to a legal system or legal institutions rather than to those operating or occupying them at a given time.<sup>45</sup>

2.44 Most of the Committee's concerns revolved around the directive that Special Branch was to "be aware of subversion". The Committee noted that an existing government is in some ways in a much stronger position than others to subvert the system of government and institutions. Special Branch's focus on subversion meant it was inevitable that at some point in time, some members of Parliament would come under surveillance. The Report further stated that this raised the possibility of the Police Force taking a more assertive political role, independent from the Government of which it is an instrumentality.<sup>46</sup>

2.45 The Privacy Committee considered that citizens should be interested in the efficiency with which Special Branch performed its functions. The Committee stated that it was not a proper or practical function for Special Branch record information about individuals simply on the ground that they advocated political dissent, whether that involved fundamental change or not. The Privacy Committee suggested instead that Special Branch concern itself with the collection of information to prevent calculated political violence.<sup>47</sup>

2.46 The Privacy Committee recommended that:

- Special Branch should collect information on individuals only where it was required by its special functions and the information should be destroyed when those special functions no longer required it to be kept.
- Special Branch should not undertake surveillance of individuals merely because they held dissenting opinions on political matters or because they were a member of an organisation with a revolutionary platform. There must be an additional significant factor. The prevention of subversion in the directives of the Branch was dangerous to privacy and inimical to the proper focussing the Branch's energies.
- Special Branch was concerned with calculated political violence in certain areas under the Commissioner's directives. The Branch should have a general function to collect information involving possible violent incidents in NSW. This should be confined to serious rather than trivial violence.
- The other function of the Branch should relate to the control of violent disorder in politically-charged situations.
- Special Branch should not undertake surveillance of individuals who might become security risks because of foreign allegiances in time of war or of espionage in times of peace. These matters should be left to the Commonwealth as defence matters.

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<sup>45</sup> *ibid*, p 15

<sup>46</sup> *ibid*, p 16

<sup>47</sup> *ibid*, p 17

- Special Branch should temporarily appoint a special adviser from outside the Police Force to assist in closely identifying sources of potential violence.
- A Manual of Practice should be prepared setting out relevant practices and procedures, and in particular clarifying the Branch's functions, controlling the opening of cards and dossiers, limiting collection of data, controlling external accesses and specifying logging, culling and destruction procedures.
- Special Branch should establish some procedures to govern the creation of cards, and the culling and destruction of data to avoid excessive records and surveillance.

In a dissenting report included within the Privacy Committee's report, John Dowd and Adrian Deamer made some additional recommendations including:

- If Special Branch's functions were to be amended to remove subversion, the Branch should be disbanded, as dealing with violence, political or otherwise, is part of the normal function of police.
- If Special Branch were to be maintained, some form of external supervision was required. Supervision of the Branch should be carried out by a judge, with Royal Commission powers or powers sufficient to enable him to have complete and random access to the Branch's premises and all documents held there. The judge should be able to make recommendations to the Commissioner of Police or the Minister regarding the record keeping practices of the Branch. He should also be able to make special reports to Parliament when he considers it necessary or appropriate.

## **IMPLEMENTATION OF THE PRIVACY COMMITTEE'S RECOMMENDATIONS**

2.47 Some of the Privacy Committee's recommendations were implemented. The Commissioner's directive regarding the activities of the Branch was reworded to remove the reference to "subversive and extremist activities". A Practice Manual was introduced some years later. However the recommendation that some form of temporary adviser be appointed was not acted on, nor was Dowd and Deamer's recommendation for external oversight.<sup>48</sup>

## **PRIVACY COMMITTEE'S 1989 INSPECTION OF SPECIAL BRANCH HOLDINGS**

2.48 Following scandals about the Victorian Special Branch holding a large volume of inappropriate information, Commissioner Avery invited the Privacy Committee to review the Special Branch holdings again. Avery reportedly told the Commander of Special Branch to "clean up the files and get rid of any rubbish".<sup>49</sup> The Special Branch Intelligence Coordinator at the time carried out a "fairly substantial cull" of the records in late 1989/1990 "in conjunction with" the Privacy Committee visit.<sup>50</sup> The Intelligence Coordinator also conferred with the Privacy Committee about a more effective system of culling so that files could come up automatically for review over a period of time, and be destroyed if appropriate.<sup>51</sup>

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<sup>48</sup> PIC op cit, p 9

<sup>49</sup> Royal Commission transcripts 5 December 1996, cited in PIC, loc cit

<sup>50</sup> ibid

<sup>51</sup> ibid

## **SPECIAL BRANCH 1997**

- 2.49 At the time of its disbandment, Special Branch was lead by a Commander. Under him was an Operations Coordinator, an Intelligence Officer and six teams comprising a sergeant and a number of constables. In total there were approximately 32 officers attached to Special Branch, with four non-sworn public service staff and six to eight trainees. The last Commander of Special Branch had led the Branch since 1974. Apart from a four year period (1984-1988) when he was seconded to provide personal protection for the Premier of NSW, he spent a period of 23 years in the Branch. The last Operations Commander had been in the Branch since 1981, an uninterrupted period of 16 years. These periods of tenure were entirely at odds with the rotation policies applying to the rest of the then Police Service.<sup>52</sup>
- 2.50 The activities of Special Branch at this time fell into a number of broad categories including provision of VIP security, attending demonstrations, conducting or assisting major investigations, ministerial enquiries and employment checks, and information gathering.

### **Provision of VIP security**

- 2.51 Special Branch provided escorts and close personal protection for dignitaries, politicians and high profile figures visiting NSW. This was the principle activity of Special Branch and, according to the PIC's assessment, this work was performed conscientiously and competently.<sup>53</sup>
- 2.52 As well as providing security for visiting VIPs, Special Branch also provided protection for State Parliamentarians and others when necessary, according to the assessed levels of security required. For example, a full time escort was provided for the Premier, security escorts were provided for a Minister's child who had been the subject of a threat, and protection patrols of various premises were conducted. Special Branch also responded to random incidents of violence or threats directed towards MPs, such as break-ins at electorate offices.<sup>54</sup>
- 2.53 It appears that judges were accorded the same VIP status and service as MPs, even though judges were not mentioned in any of the Special Branch directives or mission statements. A former Chief Justice of the NSW Supreme Court, who retired in 1988, gave evidence to the PIC hearings into Special Branch regarding the relationship between the court and the police. He said he always kept the police at arm's length and that any dealings with the police were conducted through the Sheriff's officers at court. For example, if a judge needed protection at his home because of a high profile case, a request would go through the Sheriff to the police. In 1989 the Police Service published a *Judicial Officers Security Plan*, which provided that any threat to a judge or a member of their family was to be reported by the Sheriff's officer at the Court to the Duty Operations Inspector, Sydney Police Centre. Special Branch was not mentioned in the Plan. Despite the existence of the *Judicial Officers Security Plan*, when the private addresses and telephone numbers of the judges of the Family Court and the NSW Supreme Court were supplied to the Police Commissioner for security

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<sup>52</sup> *ibid*, p 12

<sup>53</sup> *ibid*, p 13

<sup>54</sup> *ibid*



purposes, both before and after 1989, the information was passed on to Special Branch.<sup>55</sup>

- 2.54 On inspecting the Special Branch information holdings, the PIC found a dossier on a Supreme Court judge who had received a series of harassing phone calls at his home. The Deputy Chief Executive Officer of the Court made direct contact with Special Branch, who investigated the calls. This response did not involve the Sheriff or his officers. The PIC noted that while there was nothing inappropriate about the Chief Executive Officer making direct contact with Special Branch, the lack of written acknowledgement of such a relationship could lead to difficulties.<sup>56</sup>
- 2.55 The case of Justice David Yeldham is such an example. A segment of the Royal Commission into the New South Wales Police Service, conducted by the Hon Justice James Wood, focused on paedophilia. During this part of the Commission's inquiries, evidence was presented alleging that Justice David Yeldham had engaged in sexual activities in various Sydney beats, notably Wynyard Station (in 1989 and 1990) and Central Station (1988). Allegations were aired that Mr Yeldham had approached a young man under the age of 18 and offered money for sex. Later that day he was apparently seen indulging in sexual activity on the stairs at Wynyard in front of a young boy. Transit officers attended the scene, and reported the incident to Special Branch. Special Branch officers arrived soon after and left with Mr Yeldham.<sup>57</sup> It also appeared that Special Branch had been involved in smoothing over the Central Station incident the previous year.<sup>58</sup>
- 2.56 All the Special Branch officers involved with this incident denied any knowledge of it to the Royal Commission. Later, one officer admitted his previous evidence was untrue, and that the transit police had called Special Branch. He named two officers and the former Commander of Special Branch, Detective Superintendent Peter Ryan, as having dealt with this matter. All three officers again denied any knowledge of it.<sup>59</sup>
- 2.57 Both the former Commander of Special Branch, Peter Ryan, and the then Commander, Detective Superintendent Neville Ireland, gave evidence to the Royal Commission that the involvement of Special Branch in a matter involving an allegation of indecency on the part of a judge or former judge, was "absolutely outside the charter of Special Branch"<sup>60</sup>, and that neither knew anything about the matter.<sup>61</sup> The Royal Commission was unable to determine the truth of the matter, other than to state that Special Branch was acting outside its jurisdiction and that it was inappropriate for the Branch to intrude to "smother or sort out matters of potential embarrassment to public officials or to the government".<sup>62</sup>
- 2.58 While the Royal Commission found no other evidence of similar occurrences of Special Branch providing protection to other public officials to the extent of creating

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<sup>55</sup> *ibid*, p 14

<sup>56</sup> *ibid*

<sup>57</sup> *Royal Commission into the New South Wales Police Service, Final Report Volume IV: The Paedophile Inquiry* August 1997, pp 807-812

<sup>58</sup> *ibid*, p 810

<sup>59</sup> *ibid*, pp 811-12

<sup>60</sup> *ibid*, p 810

<sup>61</sup> *ibid*

<sup>62</sup> *ibid*, p 823

false records, the Yeldham case raises the possibility that other incidents may have occurred and Special Branch destroyed the documentation.<sup>63</sup>

### **Attending demonstrations and responding to occurrences of politically motivated violence**

2.59 Special Branch officers attended demonstrations and protests and advised the Commissioner of Police regarding forthcoming events so that adequate policing could be arranged. In the event of an unexpected civil disturbance, or act of violence towards an individual or organisation associated with a political cause, Special Branch would be called in either with the local police or alone. Special Branch also on occasion undertook security assessments for individuals or organisations. Often the individual or organisation would be invited to maintain ongoing contact with Special Branch in relation to their security concerns.<sup>64</sup>

### **Conducting or assisting in major investigations**

2.60 On rare occasions Special Branch initiated investigations. An example of this was an investigation conducted in the early 1990s into the activities of Australian National Action. This led to convictions against a member of the group for shooting into the home of the Australian representative of the African National Congress in 1989, as well as other matters. On other occasions Special Branch officers were assigned to assist investigations for example, the secondment of two officers to work on the John Newman murder investigation.<sup>65</sup>

### **Ministerial enquiries and employment checks**

2.61 Special Branch was frequently called on to supply information to the Minister for Police to enable him to answer questions from other MPs, consulates and constituents about matters within the area of Special Branch responsibility. These queries were generally about security work rather than information-gathering activities. Sometimes Special Branch received requests from various government departments for more personal information. For example, in 1989 a request for information on the character of an individual was received from the office of a senior Minister. Special Branch had no holdings on the individual but newspaper clippings and information reports were obtained from other sections of the Police Service. The contents of the information reports were not passed on. Only the information in the newspaper articles, and, therefore, already in the public arena, were supplied to the Minister's office.<sup>66</sup>

2.62 Sometimes Special Branch was approached for employee checks by Ministers, consulates, and on one occasion a Commonwealth law enforcement agency. Special Branch told the PIC that these checks were conducted only with the consent of the individual in question. The PIC noted that no evidence of such checks could be found, but also that there were no examples of Special Branch information being released to the detriment of an individual. However, the PIC also found that this was not to discount the possibility that the release of detrimental information could have occurred without the knowledge of the individual concerned. Nothing in the Special Branch Mission Statements or directives would have justified the use of its information in this manner<sup>67</sup>, and when some of the information-gathering techniques

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<sup>63</sup> PIC, loc cit, p 15

<sup>64</sup> ibid

<sup>65</sup> ibid

<sup>66</sup> ibid, p 16

<sup>67</sup> ibid

used by the Branch are considered, the prospect of information being released about individuals would be of concern.

### **Information Gathering**

- 2.63 The practices observed by the Privacy Committee in 1978 seem to have remained substantially unchanged between then and 1997 when the Branch was disbanded. Apart from no longer recording vehicle registrations for cars with 'subversive' bumper stickers, Special Branch still used the same avenues for information gathering. Branch personnel were grouped into teams, each of which had responsibility for monitoring and recording the political activities of particular groups. A Police Service review of the Branch prior to disbanding found that there was little evidence of the team leaders being supervised in some of the areas relating to information gathering.<sup>68</sup>
- 2.64 New stories would often lead to the creation of reports about particular individuals attending or addressing demonstrations or public meetings. This included anti-Vietnam War rallies, trade union marches, anti logging protests, demonstrations against the Third Runway and protests against Commonwealth cuts to Legal Aid. The PIC noted that the majority of the people who became the subject of index cards in this manner could not reasonably have been described as representing a security risk. Rather,
- an almost inflexible routine of creating an index record of all identified persons was slavishly followed, without the application of an objective set of criteria as to what constituted behaviour which demonstrated or implied a possibility of politically motivated violence, or subversive or extremist activity.<sup>69</sup>
- 2.65 A number of MPs became the subject of index cards prior to their election to Parliament, when they attended meetings or demonstrations in support of particular causes. Some subsequent attendances of the Members at a public meeting or protest became the subject of further cross-referenced entries on dossiers and index cards.<sup>70</sup>
- 2.66 Letters to the Editor in support of particular causes could also become the subject of a report.<sup>71</sup>
- 2.67 Members of Special Branch continued to attend demonstrations. On occasion Branch members would attend organising meetings and participate in demonstrations as an information-gathering exercise. However the PIC found no evidence of infiltration or undercover police targeting of particular organisations by Special Branch members.<sup>72</sup> Photographs were taken covertly by Branch members at meetings and demonstrations. Special Branch also had a practice of recording the number plates of cars parked outside venues, for example the Town Hall, when certain meetings were taking place. In 1979 Special Branch recorded details of a car parked outside the headquarters of an extremist organisation and created an index card on the registered owner of the vehicle, describing the car owner as a suspected member of that organisation. The PIC found no evidence of such records being put to any use, although there is the possibility that such use had not been documented.<sup>73</sup>

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<sup>68</sup> *ibid*, p 17

<sup>69</sup> *ibid*

<sup>70</sup> *ibid*

<sup>71</sup> *ibid*

<sup>72</sup> *ibid*

<sup>73</sup> *ibid*, p 19

### **Use of informants**

2.68 Prior to 1994 there was no satisfactory system in place for the registration and management of informants. There may have been a list kept by the Commander on which the informants names were recorded. There was no formal procedure for recording information obtained from informants. An all-purpose cash fund had been established in the 1970s ostensibly to pay informants, but there is no evidence that informants were ever paid. A Special Branch officer gave evidence at the Royal Commission that for a 12 month period when he was having weekly meetings with an informant, he would sign for \$100 at a time and record it as a payment in the cash book, but the money was used to buy lunch for the officer and the informant. This practice spread when more senior officers started to use the informant's payments for their long lunches.<sup>74</sup> On the introduction of the Informant Management Plan in March 1994, there appears to have been some attempt by Special Branch to conform, but a practice developed where unreceipted payments were made to community contacts, as informants were now known.<sup>75</sup>

### **Special Branch 'dirt' files**

2.69 Information about Members of Parliament was sent to Special Branch by other sections of the Police Service. Examples reported by PIC included a complaint made to a local police station about alleged harassing phone calls from a Member to an ex-lover, a discovery by detectives investigating a drug dealer that the dealer's step daughter was a friend of the daughter of a Minister, and the discovery by detectives that a suspect charged with fraud offences was an associate of a senior Minister. The justification given for keeping such information was that it could prove relevant in the future if there was any sort of threat or action, such as blackmail or extortion, taken against the Member of Parliament which Special Branch would investigate. The PIC considered that while this argument might justify the gathering of certain information, there is clearly a point beyond which gathering information, such as allegations concerning the personal relationships of a Member, constitutes nothing more than a 'dirt file', the existence of which significantly increases the risk to the Member of blackmail or extortion, either by members of the Police Service or others to whom the information could be leaked.<sup>76</sup>

2.70 Deliberately compiling dirt files was denied by the last Commander of the Special Branch and the PIC found no evidence in their 1998 investigation to suggest there was covert surveillance or other forms of deliberate information gathering by Special Branch on the private lives of any visitor to or resident of the State. However the PIC also found no evidence suggesting that any of the information retained on public figures was ever subjected to any kind of processing or analysis beyond recording on card files and storing. This is contrary to the stated position of Special Branch even in 1978 when the Privacy Committee inspected the records and was told Special Branch's policy was to remove and destroy dossiers of prominent people, particularly Members of Parliament.<sup>77</sup> The PIC found no evidence of such a policy being either being written down or implemented.<sup>78</sup>

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<sup>74</sup> *ibid*

<sup>75</sup> *ibid*, p 20

<sup>76</sup> *ibid*, pp 20-21

<sup>77</sup> Privacy Committee, *op cit*, p 18

<sup>78</sup> PIC, *op cit*, p 21

## **Record Keeping**

2.71 The PIC found Special Branch's record keeping system had changed little since the Privacy Committee review in 1978. For example, there was continued failure to destroy records. Five hundred and ninety six records on individual withdrawn from the filing system for destruction following the Privacy Committee report in 1978 were found by the PIC audit of Special Branch records in 1997.<sup>79</sup> Destruction of dossiers was better managed. The Privacy Committee found 6000 inactive dossiers in 1978. By 1980, 5500 of the inactive dossiers had been destroyed and the balance of 500 were being progressively destroyed.<sup>80</sup> No dates were kept or lists created about the index cards and dossiers being destroyed. There was a master list of dossiers in chronological order, in which it was noted when a dossier had been destroyed, but no reason was given.<sup>81</sup> While Special Branch was bound by section 2(1) of the *Archives Act*, which provided that records should not have been destroyed without the approval of the Archives Authority (now State Records), there is no record that they were ever consulted. It appears that non-sworn clerical staff made decisions about culling, without consulting the management of Special Branch.<sup>82</sup>

## **PIC Report to Parliament concerning Special Branch**

2.72 Following evidence led at the Royal Commission into NSW Police Service during December 1996 and March 1997, the then Commissioner of Police announced on 12 March 1997 that Special Branch had been disbanded. The Special Branch records room at Police Headquarters was secured and locked. On 13 March 1997 the PIC informed the Police Commissioner that it would commence an investigation, and in June 1998 the PIC tabled a report in Parliament on the outcomes of that investigation.

2.73 The PIC found a number of matters of concern regarding the practices and operation of Special Branch. In particular, the PIC found:

- There was a closed shop approach to recruitment, leading to cronyism and the perpetuation of outdated cultures and work practices. There was little rotation in and out of Special Branch, especially at management level.
- Special Branch was virtually unaccountable. The Mission Statement was varied to reflect broader Police Service practice, but there was no effective scrutiny of Special Branch activities and no attempt was made to bring those activities into line with the changing charter. Information gathering on people who posed no threat of politically motivated violence or similar matters continued, despite criticisms of this practice by the Privacy Committee in 1978 and a recommendation for the implementation of guidelines to avoid it.
- There was an unacceptable overlap between the functions of information gathering and protection of VIPs, with unnecessary information being held about VIPs and public figures, rather than about those who posed a threat to the VIPs and public figures.
- The relationship between Special Branch and VIPs appeared capable of extending beyond the provision of protection against threats to safety to protection from the consequence of the individual's own misconduct (for example the Yeldham case).

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<sup>79</sup> *ibid*, p 24

<sup>80</sup> Privacy Committee news released, 5 May 1980, cited by PIC *op cit*, p 25

<sup>81</sup> *ibid*, p 26

<sup>82</sup> *ibid*

There is no indication that the provision of this service by Special Branch involved any blackmail or the requirement for return favours.

- As well as the lack of external supervision, there was minimal internal supervision of the Special Branch administrative activities, such as the creation and destruction of index cards and dossiers, and decision-making about what went on to cards and dossiers. Decisions were made by unsworn clerical staff and police officers about what types of information they should contain.
- The destruction of some records may have been in breach of the *Archives Act 1960*. Special Branch management, and at times, senior police, allowed destruction to occur without regard to that Act.
- The manual filing systems were anachronistic and unreliable. Additionally, documents and firearms which should be accounted for and properly stored were found in safes and other locations, with no satisfactory explanation of why they were there and how long they had been there. In many cases, it is apparent the items were left by retiring senior officers and their successors had not reviewed the material.
- There were no satisfactory procedures for the management of informants and inadequate procedures for managing the cash fund which was ostensibly drawn upon to pay informants but was used at times to fund personal expenses by Special Branch officers. A new procedure was introduced which required closer supervision of payments but this was circumvented by describing the transactions as payments to “community contacts”.

## Chapter Three - The Protective Security Group: intelligence activities in NSW Police 1998 - 2003

- 3.1 The abolition of Special Branch occurred at a critical time, when Special Branch's legitimate functions could reasonably have been expected to make an active and valuable contribution to security during the 2000 Olympics. In June 1998 the PIC tabled their *Report to Parliament Regarding the Former Special Branch of the New South Wales Police Service* which recommended, among other things, that the proposal of the Royal Commission that a new agency be created to replace Special Branch "be enacted as a priority"<sup>83</sup>.
- 3.2 On 23 June 1998 the Government introduced the *Police Legislation Amendment (Protective Security Group) Bill* into Parliament for the creation of the Protective Security Group (PSG). In the second reading speech, the then Minister for Police, stated that the legitimate functions of the former Special Branch needed to be maintained and in order to do this, the Government was creating a new, highly accountable agency. This agency would undertake operation and tactical analysis, intelligence gathering and liaison with relevant agencies in relation to persons who represented a risk of politically-motivated violence or terrorism activity.<sup>84</sup>
- 3.3 The accountability regime established in the Bill conformed with the Government's view that "any unit with these unusual functions should be subject to high standards, and an even higher level of scrutiny than most"<sup>85</sup>. Accordingly, the PSG was to operate strictly according to a charter that set out the roles and functions of the Group. The charter outlined the activities that the Group would be authorised to engage in, provided a formal mechanism for approval of targets, and set strict limits on the keeping of records and files by the group. In the second reading speech the Minister stated "the Government is not prepared to leave this to chance and is putting in place a mechanism to ensure that the charter is adhered to."<sup>86</sup>
- 3.4 This strict accountability mechanism had two parts. Firstly the *Police Service Act 1990* was amended to provide that the Commissioner of Police was to conduct an annual audit of the operations, policies and procedures of the PSG. The audit was to include an examination of whether the Group and individual members were effectively adhering to its charter, whether proper procedures were in place and have been followed in the use and payment of informants, and whether proper procedures were in place and had been followed for the recording and use of intelligence gathered by the Group. Secondly, section 14 of the *Police Integrity Commission Act 1996* was amended to provide that the PIC monitored and reported on the conduct and effectiveness of the annual audit performed by the Commissioner of Police. This structure was designed to ensure that "the Commissioner of Police takes responsibility for very close scrutiny of the Protective Security Group."<sup>87</sup>
- 3.5 Additionally the Bill provided for a thorough review of the Protective Security Group following the 2000 Olympics, as well as a review of the Group's operations to ensure

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<sup>83</sup> Police Integrity Commission, 1998. *Report to Parliament Regarding the Former Special Branch of the New South Wales Police Service*, p iv

<sup>84</sup> *Police Legislation Amendment (Protective Security Group) Bill 1998*, Second Reading Speech, 23 June 1998

<sup>85</sup> *ibid*

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*

that it had remained within its charter and still had an effective role to perform. The review was to be performed by a Deputy Commissioner, who was to make recommendations about any future role of the Group. The PIC was required to monitor and evaluate the effectiveness of this review and its recommendations. The Minister noted that “the Government is not necessarily committed to the ongoing need for a group with all the functions of the proposed Protective Security Group after the completion of the Olympic Games.”<sup>88</sup>

3.6 The Bill was assented on 2 July 1998, and NSW Police established the Protective Security Group (PSG).

## OVERSIGHT BY THE PIC

3.7 In keeping with the Government’s view that “any unit with these unusual functions should be subject to high standards, and an even higher level of scrutiny than most”<sup>89</sup>, Part 3 of the *Police Act 1990* was amended to provide for the establishment of the PSG and laid out a regime of strict accountability:

### 16 Audit of Group

- (1) The [Police] Commissioner is required to carry out an annual audit of the operations, policies and procedures of the Group.
- (2) The audit is to include the following matters:
  - (a) whether the Group as a whole is adhering to its charter and is effectively performing its role as provided in its charter,
  - (b) whether the members of the Group are adhering to its charter,
  - (c) whether proper procedures exist and are being adhered to by the group in connection with the use and payment of informants,
  - (d) whether proper procedures exist and are being adhered to by the Group for the recording and use of intelligence gathered by the Group.
- (3) An audit is to be made in respect of each calendar year commencing with the year in which this subsection commences.
- (4) A written report of the annual audit is to be furnished to the Police Integrity Commission as soon as practicable after the end of the year concerned.

3.8 Section 14(e) and (f) of the *Police Integrity Commission Act 1996* was also amended to provide that the Commission must monitor and report on the conduct and effectiveness of the annual NSW Police Audits of the PSG:

- (e) to monitor and report on the conduct and effectiveness of the annual audits of the Protective Security Group of NSW Police under Part 3 of the *Police Act 1990*,
- (f) to assess and report on the recommendations as to the future of the Protective Security Group of NSW Police contained in the report of the special review of the Group under Part 3 of the *Police Act 1990*, and to monitor and report on the conduct and effectiveness of that review.

## PIC’S ANNUAL AUDITS OF THE PROTECTIVE SECURITY GROUP

3.9 One of the main criticisms of Special Branch made by both the Royal Commission and the PIC was its lack of accountability and external scrutiny. The process whereby the PIC monitored the results of the Police Commissioner’s audit was designed to bring an

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<sup>88</sup> *ibid*

<sup>89</sup> *ibid*



appropriate element of external scrutiny to the PSG. The PIC monitoring was concerned not with the performance of the PSG itself, but with the conduct and effectiveness of the annual audits.

### **1998 Audit**

3.10 In May 1999, the PIC received a copy of the first annual audit of the PSG, covering its operations, policies and procedures from its inception in July 1998 to April 1999. After discussion between the PIC's officers and NSW Police, a second, supplementary audit report was given to the PIC on 23 August 1999. During August, September and October 1999, PIC staff met with NSW Police to discuss issues raised in the initial audit report and the supplementary audit report. The PIC did not consider the initial audit report to be satisfactory in that the report's overall conclusion, that the PSG was 'performing to a high standard', did not appear to be supported. However, the supplementary audit report addressed this issue, which appeared to be one of how the audit results were reported, rather than deficiencies in the audit process itself. As a result of the information contained in both audit reports, the PIC reported that, in accordance with section 14(e) of the Act, it was satisfied as to the conduct and effectiveness of the 1998 audit of the PSG.<sup>90</sup>

### **1999 Audit**

3.11 On 4 May 2000, the Commission received the report on the audit of the PSG for the 1999 calendar year, excluding those records up to April 1999 which had been included in the previous year's audit. The report concluded that the PSG was performing satisfactorily in accordance with its charter, but identified a number of opportunities for improvements to the PSG's practices and procedures. The PIC noted that this report represented a significant improvement over the previous year in terms of explaining the audit methodology. The PIC reported that the findings of this report were, on the whole, supported by the information contained in the report and that therefore it was satisfied as to the conduct and effectiveness of the 1999 audit of the PSG.<sup>91</sup>

### **2000 Audit**

3.12 During 2000, officers of the PIC met with NSW Police to discuss the methodology for the proposed 2000 audit of the PSG. An audit plan was drawn up by NSW Police and sent to the PIC for comment. Police conducted the audit in March 2001 and reported to the Commission in April 2001. The PIC noted that the basis for the audit findings could be found in the material provided in the audit report. Further, opportunities for improvement identified in the previous audit had been monitored with generally pleasing results. The auditors considered a delay in implementing some of the opportunities identified in the 1999 audit was justified because of an increase in the workload generated by the Olympic and Paralympic games. In addition to the analysis of work areas and practices within the Group, the audit considered how the PSG charter was being addressed. Consequently, the PIC reported that it was satisfied as to the conduct and effectiveness of the 2000 audit of the PSG.<sup>92</sup>

### **2001 Audit**

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<sup>90</sup> PIC Annual Report 2000 – 2001, p 37

<sup>91</sup> *ibid*

<sup>92</sup> *ibid*

3.13 The PIC advised NSW Police on the planning process for the audit. A PIC officer observed part of the audit while it was being conducted at the PSG offices. After receiving the NSW Police report on the PSG, the PIC sought clarification of some issues. At the time of the PIC Annual Report, they had yet to finalise their report on the annual audit for 2001.<sup>93</sup> However the PIC later reported that the PSG was not performing any function outside its charter, the records of the PSG were being appropriately maintained, and information and intelligence were being appropriately released in accordance with the PSG charter. On this basis, the PIC was satisfied with the conduct and effectiveness of the audit of the PSG for 2001.<sup>94</sup>

### **2002 Audit**

3.14 On 28 April 2003, NSW Police provided the PIC with a proposed audit plan outlining details of the annual audit. The audit was initially scheduled to take place in June 2003, however due to delays it did not take place until early August. At the time of writing the PIC's annual report for 2002 – 2003, the PIC had not received the report for the 2002 PSG audit.<sup>95</sup> The audit report was received by the PIC in December 2003. After discussions with the PIC, NSW Police submitted a supplementary audit report. The two reports stated that the PSG did not perform any function outside its charter, the records of the PSG were being appropriately maintained and information and intelligence were being released in accordance with the PSG charter. However, on the basis of the original and supplementary reports, the PIC assessed the conduct and effectiveness of the 2002 audit to be less than satisfactory. The PIC had concerns about the degree to which the audit actions were shown to be valid and representative, with reference to the criteria applied, samples taken and the methods used, and considered that it was not demonstrated that the audit actions were adequate to support the overall findings of the Audit Group, with reference to the extent to which the audit actions addressed adherence to the PSG charter and other statutory inclusions of the audit. While the supplementary report was an improvement on the original audit in a number of instances, it fell short of satisfactorily addressing the PIC's concerns and of meeting the criteria provided by NSW Police.<sup>96</sup>

## **THE SPECIAL REVIEW OF THE PSG**

3.15 As required by section 17 of the *Police Act 1990*, a Deputy Commissioner of NSW Police was to carry out a special review of the operations, policies and procedures of the PSG as soon as practicable after the Olympic Games. The Special Review was to specifically examine whether the PSG had adhered to its charter, particularly in relation to matters associated with the Sydney Olympic Games, and whether the Group would have an effective role to perform in the future.

3.16 Section 14 (f) of the *Police Integrity Commission Act 1996* required the PIC to assess and report on the recommendations as to the future of the PSG contained in the report of the Special Review by the Deputy Commissioner, and to monitor and report on the conduct and effectiveness of that review.

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<sup>93</sup> PIC Annual Report 2001 – 2002, p 35

<sup>94</sup> PIC Annual Report 2003 – 2004, p 27

<sup>95</sup> PIC Annual Report 2002 – 2003, p 37

<sup>96</sup> PIC Annual Report 2003 – 2004, pp 28-29.

- 3.17 Some initial consultation took place between the PIC and NSW Police in preparing the plan for the Special Review. The PIC received a copy of the plan in May 2002, and a copy of the Special Review in December 2002.<sup>97</sup>
- 3.18 The findings of the Special Review were:
- since establishment in 1998, the PSG had conducted itself in accordance with its charter both generally and in relation to the Sydney Olympics;
  - it had appropriate policies and procedures in place; and
  - it had an effective role to perform after the Olympics.<sup>98</sup>
- 3.19 The Special Review recommended that:
- the PSG continue to perform its role;
  - the requirement for annual audits be reconsidered with a view to discontinuing them;
  - changes be made to the PSG charter to remove the requirement that PSG members provide financial statements; and
  - changes be made to the PSG charter to remove the requirement that Management Committee provide approval prior to the collection and storage of information concerning sensitive targets.<sup>99</sup>
- 3.20 The PIC, in assessing and reporting on the conduct and effectiveness of the Special Review, reported that it did not consider that sufficient information had been provided by the Review for a complete assessment of the recommendation that the PSG continue with unchanged structure and functions. The PIC found that in relation to the recommendations to modify the PSG charter, the Special Review did not adequately address the reasons for the changes or demonstrate that these functions could be achieved by other means. Regarding the recommendation that the annual audits be reconsidered, the PIC was of the opinion that the audits are a preventative, rather than curative, anti-corruption measure, and that the Special Review fell short of showing adequate grounds to conclude that there had been a reduction or cessation of the risks identified by the Minister for Police at the time of the establishment of the PSG and its oversight system.<sup>100</sup>
- 3.21 The PIC, in its Annual Report for 2003 – 2004, stated that it had assessed the conduct and effectiveness of the Special Review to be less than satisfactory. The intended central purpose of the review was to appraise the activities of the PSG in order to make recommendations regarding its future functions. The PIC considered that the Special Review extended this purpose by making recommendations regarding the risks associated with these functions and the measures for their management, in the form of charter elements and audits, and that the review fell short of providing the level and quality of information and analysis that would support the findings and recommendations made in the review. Given the purpose of the review and the experience of five years of annual audits, PIC was of the opinion that it would be appropriate to expect the Special Review to provide such an analysis.<sup>101</sup>

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<sup>97</sup> *ibid*, pp 27–28

<sup>98</sup> *ibid*, p 28

<sup>99</sup> *ibid*

<sup>100</sup> *ibid*

<sup>101</sup> *ibid*

3.22 While finding a number of problems with the conduct and effectiveness of the Special Review, the PIC commented that given the establishment of the Counter Terrorism Coordination Command which absorbed the structure and functions of the PSG, both the Special Review and the PIC's assessment were of little relevance.<sup>102</sup>

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<sup>102</sup> *ibid*

## Chapter Four - The Counter Terrorism Coordination Command: Beyond Intelligence

- 4.1 The events of September 11 2001 in the United States generated a new interest in the intelligence activities and capacities of NSW Police. In May 2002, the Police Commissioner Ken Moroney undertook an internal review of NSW Police counter terrorism capacity<sup>103</sup>. On 12 October 2002 the bombing of two night clubs in Bali increased the sense of imminent threat in Australia. On announcing the establishment of the Counter Terrorism Coordination Command on 30 October 2002, the Premier said, "Sadly, in the modern world we can no longer ask ourselves 'if'. With due vigilance we must prepare for 'when'."<sup>104</sup>
- 4.2 The establishment of the CTCC was unlike the creation of any other command within NSW Police. The results of the Police Commissioner's internal review of NSW Police counter terrorism capacity was reported to the then newly established Cabinet Sub-Committee on Counter Terrorism<sup>105</sup>. Cabinet agreed to the creation of the CTCC with approximately 70 staff under the leadership of Chief Superintendent Norm Hazzard and that the CTCC's specific responsibilities would be:
- public order management;
  - tactical response;
  - counter terrorist intelligence response;
  - critical infrastructure protection;
  - consequence management; and
  - training.<sup>106</sup>
- 4.3 Cabinet made the following financial allocations to the CTCC:
- \$5 million for bomb disposal and forensic services detection, inspection and containment equipment and the employment of chemists;
  - acquisition of an eight seat Eurocopter BK 117 helicopter to transport bomb specialists, forensic analysts or State Protection Group teams to critical incidents at a cost of \$4.8 million;
  - \$1.9 million for officer protection, communication and transport for the State Protection Group;
  - \$2.5 million for equipment and protective gear to combat biological, chemical and radiological threats; and
  - \$1.8 million for enhanced electronic surveillance.<sup>107</sup>
- 4.4 In April 2003, the Protective Security Group was amalgamated into the CTCC.<sup>108</sup>
- 4.5 In July 2003 three new Assistant Commissioners were appointed, including an Assistant Commissioner for Counter Terrorism.<sup>109</sup> Commander Norm Hazzard was appointed to this position. Assistant Commissioner Hazzard assumed responsibility for

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<sup>103</sup> Premier of New South Wales News Release *Counter Terrorism Coordination Command*, 30 October 2002

<sup>104</sup> *ibid*

<sup>105</sup> *ibid*

<sup>106</sup> *ibid*

<sup>107</sup> *ibid*

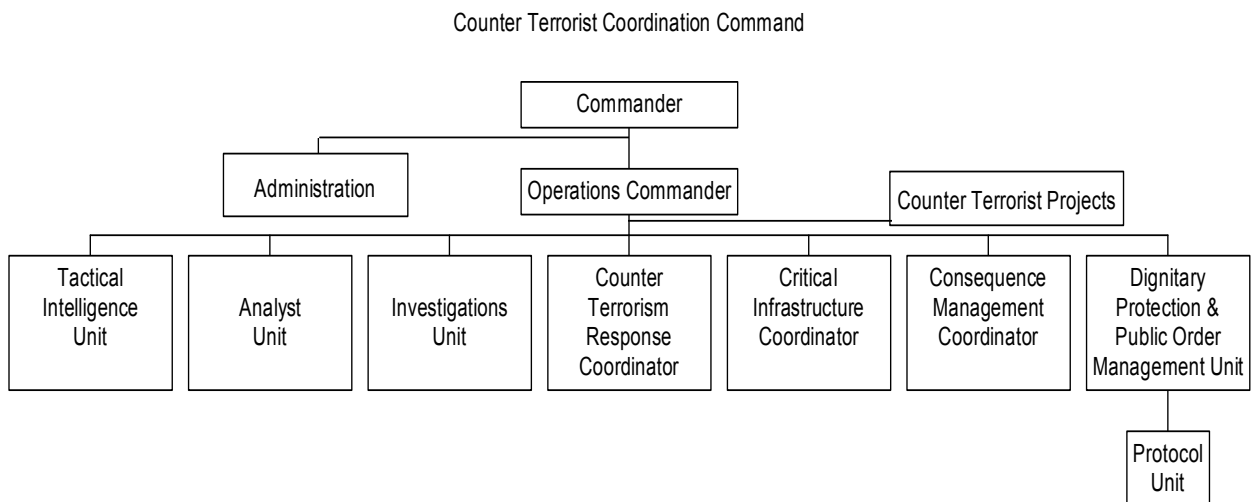
<sup>108</sup> Police Integrity Commission *Annual Report 2002 – 2003*, p 37; Police Weekly Supplement *Support Command* 7 April 2003, p 12

<sup>109</sup> 'New police posts for 'vital areas'', *The Daily Telegraph*, 9 July 2003

both the Counter Terrorism Coordination Command and the State Protection Group. Detective Chief Superintendent Mark Jenkins is currently the Commander of the CTCC.<sup>110</sup>

## STRUCTURE, ROLE AND FUNCTION OF THE COUNTER TERRORISM COORDINATION COMMAND

4.6 The mission of the CTCC is “to provide a comprehensive and coordinated response to acts of terrorism or politically motivated violence through intelligence analysis, investigation services and protection operations for dignitaries, national icons, business interests and critical infrastructure.”<sup>111</sup>



4.7 The principle roles of the CTCC are to:

- provide close personal protection for internationally protected persons, dignitaries and other persons as determined appropriate by the Commander of the CTCC;
- provide tactical intelligence gathering, analysis and investigation in relation to politically motivated violence, terrorist activity, public order, dignitary protection, critical infrastructure, consequence management, threats to high officer holders, threats to the diplomatic and consular corps and national icons;
- coordinate the NSW Police response to politically motivated violence and terrorism in accordance with the National Counter Terrorist Plan and the NSW Police Counter Terrorist Plan;
- liaise with and provide advice to clients on the protection of critical infrastructure and consequence management;
- provide strategic analysis, advice and direction to clients about the security environment of NSW.

4.8 The CTCC is made up of the following eight units and coordinators (see diagram for organisational structure).

### Dignitary Protection and Public Order Management Unit

4.9 The Dignitary Protection and Public Order Management Unit is responsible for:

<sup>110</sup> [http://www.police.nsw.gov.au/about\\_us/structure/support\\_command/counter\\_terrorism](http://www.police.nsw.gov.au/about_us/structure/support_command/counter_terrorism)

<sup>111</sup> [http://www.police.nsw.gov.au/about\\_us/structure/support\\_command/counter\\_terrorism](http://www.police.nsw.gov.au/about_us/structure/support_command/counter_terrorism)

- close personal protection (CPP), notifications for CPP, CPP training, coordination of security escorts, external agency liaison, National Counter Terrorism Committee development advice capability;
- coordinating the planning of all dignitary protection operations including security, movements of dignitaries, and public order management issues where there is a risk of politically motivated violence or terrorism;
- assist regions in the planning and coordination of a response to public order management issues involving terrorism or politically motivated violence; and
- provide advice and coordination to regions on commonwealth interests, liaise with commonwealth and state agencies on relevant public order management issues.<sup>112</sup>

#### **Critical Infrastructure Protection Coordinator**

4.10 The responsibilities of the Critical Infrastructure Protection Coordinator are:

- the development, coordination and management of protection of physical and cyber based systems that operate the economy and government of NSW; and
- targeting specific problems within industries, institutions and distribution networks that provide the goods and services essential to the nation's defence and economic security, the functioning of its government and the welfare of its citizens.<sup>113</sup>

#### **Consequence Management Coordinator**

4.11 The Consequence Management Coordinator has the following responsibilities:

- ensuring tactical and strategic responses to the challenges presented by terrorism or politically motivated violence by ensuring that management and support is knowledgeable, trained and equipped;
- ensuring rapid deployment to minimise death or injury, contamination or damage to property; and
- ensuring effective coordination and interaction of local, state and federal agencies to focus and integrate resources to maximise response and efficiency.<sup>114</sup>

#### **NSW Police Counter Terrorist Response Coordinator**

4.12 The NSW Police Counter Terrorist Response Coordinator is responsible for:

- the training and education needs and for assistance in ongoing development and implementation of the NSW Police counter terrorist response plans;
- liaising with the National Counter Terrorist Committee and the National Counter Terrorist Committee's sub committee on capability development;
- liaising with all relevant Commonwealth agencies such as the Australian Defence Force, Australian Security Intelligence Organisation, the Protective Security Coordination Centre and so on;
- liaising with all Commands within NSW Police, developing responses, on call arrangements and duty operations inspectors;
- providing advice regarding terrorism and politically motivated violence; and
- coordinating NSW Police participation in the exercises conducted by the National Counter Terrorist Committee.<sup>115</sup>

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<sup>112</sup> Police Weekly Supplement *Support Command* 7 April 2003, p 13

<sup>113</sup> *ibid*

<sup>114</sup> *ibid*

<sup>115</sup> *ibid*

### **Analyst Unit**

4.13 The Analyst Unit is responsible for processing National Security Threat Assessments, security review intelligence collection, public order intelligence, joint intelligence group management, ASAP notifications, management of information systems, library assistance, strategic intelligence, intelligence products and external agency liaison.<sup>116</sup>

### **Investigations Unit**

4.14 The Investigations Unit is responsible for counter terrorism and domestic investigations, proactive targeting, informant management, external agency liaison, joint operations with external agencies, surveillance, case management and legal advice.<sup>117</sup>

### **Protocol Unit**

4.15 The Protocol Unit is responsible for professional planning, coordination and general discipline at all ceremonial NSW Police functions and parades. Staff from within the Protocol Unit report directly to the unit leader in the Dignitary Protection and Public Order Management Unit.<sup>118</sup>

### **Tactical Intelligence Unit**

4.16 The Tactical Intelligence Unit is responsible for consular liaison, VIP protection intelligence, counter surveillance, field intelligence collection, Defence Department liaison, recruitment and management of community sources, major events projects, surveillance and external agency liaison.<sup>119</sup>

## **ACTIVITIES OF THE COUNTER TERRORISM COORDINATION COMMAND**

4.17 The activities of the CTCC are supported by a number of pieces of legislation that have been progressively introduced since its establishment. Foremost amongst these is the *Terrorism (Police Powers) Act 2002*. This Act provides police, on the authorisation of the Commissioner of Police or his Deputies and the Minister, with a range of powers including the power to search people, vehicles and premises without a warrant. The Act provides that people aged ten years and over may be searched, including strip searches. The Act also provides that the authorisation for these powers may not be challenged or reviewed in any way, including by an investigation into police or other conduct under any Act other than the *Police Integrity Commission Act 1996*.<sup>120</sup>

4.18 Section 36 of the *Terrorism (Police Powers) Act 2002* requires that the Attorney General review the Act to determine whether the policy objects remain valid and whether the terms of the Act remain appropriate for securing those objectives. Section 36(2) specifies that this review is to be undertaken as soon as possible after the period of 12 months from the date of assent on 5 December 2002, and every 12 months thereafter.<sup>121</sup> To date, no review of this Act has been tabled in Parliament by the Attorney General<sup>122</sup>.

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<sup>116</sup> *ibid*

<sup>117</sup> *ibid*, p 14

<sup>118</sup> *ibid*

<sup>119</sup> *ibid*

<sup>120</sup> Section 13 *Terrorism (Police Powers) Act 2002*

<sup>121</sup> Section 36(2) *Terrorism (Police Powers) Act 2002*

<sup>122</sup> Section 36(3) provides that a report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of each review period.



- 4.19 Recently the Premier foreshadowed legislation to allow police to obtain covert search warrants to conduct searches of premises without notice to the occupier. Such covert warrants would allow entry, search, seizure of property, copying documents, operating electronic equipment including computers, and forensic tests. This search warrant power would apply to almost all terrorist offences under Commonwealth laws.<sup>123</sup>
- 4.20 The Premier also indicated that amendments would be made to the *Listening Devices Act 1984* to allow police to gain warrants for listening devices for up to 90 days for terrorist offences. This would replace the current 21 day period. The Premier stated that police had advised that 21 days is too a short a period because overseas experience shows that terrorists spend long periods planning and preparing attacks.<sup>124</sup>
- 4.21 The activities of the Counter Terrorism Coordination Command are largely unreported in the public domain. The NSW Police Annual Report for 2002 – 2003 notes the CTCC only in relation to structural changes within NSW Police.<sup>125</sup> Some of the CTCC activities and officers have however been mentioned in the press. Coverage includes the following:
- 'Terrorists on the loose and a gun battle in Sydney' *The Daily Telegraph* 20 December 2002 – simulation of a terrorist attack in Sydney;
  - 'Carr's secret terror case' *The Daily Telegraph* 16 March 2003 – protection measures for politicians and key NSW installations in the event of a war against Iraq;
  - 'Bugs to counter terrorists' *The Daily Telegraph* 5 April 2003 – CTCC has phone tapped suspected terrorists operating in Sydney;
  - 'Geek Squad' *The Daily Telegraph* 9 May 2003 - \$1.7 million grant for civilians to design and develop devices suitable for covert policing environments;
  - 'New weapon to tackle terrorism' *The Daily Telegraph* 8 December 2003 - \$4.4 million counter terrorism helicopter;
  - 'Anti-terrorist squad moves to airport' *The Daily Telegraph* 19 December 2003 – CTCC opens bureau at Mascot;
  - 'Anti-terror police called in as big bang shakes the west' *The Sun Herald* 11 January 2004 – car bomb explodes in a paddock in Doonside;
  - 'Caught in the frame: corrupt police on camera' *The Sunday Telegraph* 22 February 2004 – Senior Constable Baljeet Dhadlie of the CTCC is caught by the PIC along with Sam Foster stealing drugs and money from a drug dealer;
  - 'Naval base ripe target for terrorists' *The Australian* 8 September 2004 – NSW Police advise the Commonwealth that Garden Island is a vulnerable target; and
  - 'State's election terror standby' *The Daily Telegraph* 9 September 2004 – NSW Police anti-terror squad deployed to various strategic locations around Sydney and the State in the lead-up to the federal election.

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<sup>123</sup> Mr Bob Carr, Question Without Notice, Counter Terrorism Measures, Legislative Assembly Hansard, 21 October 2004

<sup>124</sup> *ibid*

<sup>125</sup> NSW Police, *Annual Report 2002-2003*, p 18



## Chapter Five - Current oversight arrangements for the Counter Terrorism Coordination Command

- 5.1 The amalgamation of the Protective Security Group into the Counter Terrorism Coordination Command has had two outcomes. The powers once possessed by the PSG have been greatly enhanced under the CTCC, with further legislation to be brought forward by the Government to increase the CTCC's covert investigation powers. Personnel, resourcing and powers have increased as Special Branch evolved into the PSG and then into the CTCC. A cursory comparison between Special Branch, the Protective Security Group and the Counter Terrorism Coordination Command reveals the increase in personnel, resourcing and powers over time. For example, Special Branch had 32 staff; the CTCC has 70 (see table at the end of this chapter). The second, and possibly unintended result has been that the Government's position that "any unit with these unusual functions should be subject to high standards, and an even higher level of scrutiny than most"<sup>126</sup> has been severely eroded.
- 5.2 While the PSG no longer exists as a discrete functional unit within NSW Police, there can be no doubt that the 'special functions'<sup>127</sup> needing 'even higher level(s) of scrutiny than most'<sup>128</sup> are now held by the CTCC. The CTCC has the power to proactively target suspects, manage informants, and engage in counter terrorism investigations and surveillance operations. Although the PSG had the authority to perform many of these activities the CTCC's authority is more sweeping. For example, the PSG was authorised to conduct minor investigations and was required to refer major investigations to Crime Agencies. The CTCC charter places no restrictions on the scale of investigation it conducts, thus effectively authorising it to conduct major investigations. Based on the CTCC charter and information it provided to the PIC, the CTCC has the capacity to play a much more active role than the PSG in the collection of intelligence and the investigation of possible offences.<sup>129</sup>
- 5.3 The problem of overlooking the functions of the PSG now held by the CTCC was foreshadowed in the PIC submission to the review of the *Police Act 1990*. The PIC submission notes the inclusion of delegates from federal agencies in the management committee directing the CTCC, and the authority of the Commissioner of Police to audit operational activities in which other State and Federal agencies participate. The PIC anticipated that these issues would be dealt with either as part of the review of the Police Act, or as a separate legislative issue.<sup>130</sup>
- 5.4 During the Seventh General Meeting with the PIC, the Commissioner of the PIC stated that until the relationship between the activities of the CTCC and the PSG's charter are formalised, the audits should continue.<sup>131</sup> Given the expanded powers now held by the CTCC, the PIC's review of the NSW Police audit reports takes on added significance as an accountability measure.

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<sup>126</sup> Legislative Assembly, Hansard, Second Reading Speech, *Police Legislation Amendment (Protective Security Group) Bill 1998*, 23 August 1998

<sup>127</sup> *ibid*

<sup>128</sup> *ibid*

<sup>129</sup> Answers to Questions on Notice, Inquiry into the Police Integrity Commission's Jurisdiction to Oversight the Protective Security Group, Question 2

<sup>130</sup> Police Integrity Commission submission to the review of the *Police Act 1990*, 18 February 2003

<sup>131</sup> Seventh General Meeting with the Police Integrity Commission, 25 November 2003, p 76

As matters stand, the CTCC appears subject to the same level of oversight as any other Command within NSW Police. The Second Reading speech for the establishing legislation, *Terrorism (Police Powers) Act 2002*, specifically mentions oversight for the CTCC by the Ombudsman and the PIC. However, s.13(1) of the Act provides that an authorisation of the powers contained in the Act “may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus”.<sup>132</sup> Subsection 13(2) defines legal proceedings as including an investigation into police or other conduct under any Act other than the *Police Integrity Commission Act 1996*.

- 5.5 The effect of such provisions, which attempt to prevent the exercise of anti-terrorist powers being overturned on ‘technical’ grounds while providing some degree of oversight of police, is unclear. While not precluding the PIC from investigating the conduct of officers (excluding the granting of an authorisation), potential problems lie at the conclusion of the PIC investigation. The Solicitor to the PIC, at the Seventh General Meeting with the Committee, gave the following evidence in relation to this matter:

...given the very broad terms of section 13 of the *Terrorism (Police Powers) Act* which prohibits any questioning or challenge of the validity of an authority in a court of law or any other legal proceeding, that is all well and good to protect a decision maker under the legislation. It does not preclude the Commission from investigating misconduct short of the grant of authority, but the question then is what happens at the conclusion of a Commission investigation? It is not necessarily an end in itself, there might be prosecutions that need to be considered in the light of the Commission’s assessments. Questions might arise in any criminal prosecution or disciplinary proceeding, which is a legal proceeding after all, if the question of the validity of the notice [authorisation of the powers in Act] is a central issue, whether the proceeding can in fact be taken.

Questions might also arise in criminal trials similar to those which presently arise in relation to illegally or improperly obtained evidence in relation to warrants. Courts can generally collaterally review the validity of a warrant and determine whether or not the warrant is valid in certain respects and then that would enliven the exercise of a discretion to exclude evidence obtained under the warrant. The situation in relation to legislation would seem to be, given the very, very clear and broad terms of section 13, that the court may well not have a discretion to exclude evidence obtained under the authority or an authorization, because an authorization can not be challenged, questioned in any way, so there are questions about what can flow from a commission investigation or indeed, the right of any person in a criminal proceeding to seek the exercise of the usual kinds of discretions that the court has in relation to evidence.<sup>133</sup>

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<sup>132</sup> *Terrorism (Police Powers) Act 2002*, s13(1)

<sup>133</sup> *Report on the Seventh General Meeting with the Police Integrity Commission*, December 2003, pp 76–77

ORGANISATION	MANDATE/ACTIVITIES	OVERSIGHT
<p>Special Branch 1948 - 1997</p>	<p>Initial focus was communists and others with left wing sympathies, as well as VIP protection.<sup>134</sup> During the 1970s this shifted to monitoring demonstrations and protests as well as information gathering in ethnic communities.<sup>135</sup></p> <p>The induction manual used by Special Branch at the time it was disbanded described their principal responsibilities as:</p> <ol style="list-style-type: none"> <li>1. To be aware of politically motivated violence or extremist activity within the boundaries of NSW;</li> <li>2. To advise the State Commander of any incidents likely to occur which would result in violence or civil disorder so that preventative policing measures can be taken to avoid danger or injury to person and/or damage to property;</li> <li>3. To gather information in relation to the activities of rival factions within the Ethnic Communities so that preventative measures can be taken to avoid conflict between opposing groups or violence against Consular representatives. Where such outbreaks have occurred and injury or damage has resulted, to investigate or assist investigating Police to detect the person or persons responsible.</li> <li>4. To provide security escorts for visiting Royalty, Heads of State, Internationally Protected Persons, the Australian Governor General, State Premier and members of Federal and State Parliaments and other controversial figure, visiting NSW.</li> <li>5. To conduct security reviews and advice where necessary.</li> <li>6. Then during the course of these functions information which would appear to be of interest from a national security point of view is obtained, such information is passed to the Regional Director of the Australian Security Intelligence Organisation (ASIO) through the Commissioner of Police. Similarly, if information is considered to be of security interest to the State Government, it should again be passed to the Commissioner who will in turn advise the Premier.<sup>136</sup></li> </ol> <p>The Police Integrity Commission noted that at the time of Special Branch's closure, about 75% of its work comprised the protection of VIPs.<sup>137</sup> It had 32 staff.<sup>138</sup></p>	<p>No specific regime.</p> <p>The PIC report on Special Branch noted that Special Branch was "virtually unaccountable... no effective scrutiny of the Special Branch's activities was undertaken and no attempt was made to bring those activities into line with the changing charter (of the group)".<sup>139</sup></p>

<sup>134</sup> Privacy Commission Report, *The Special Branch*, May 1978, p 2

<sup>135</sup> *ibid*, pp 8-9

<sup>136</sup> *Report to Parliament Regarding the Former Special Branch of the New South Wales Police Service*, Police Integrity Commission, June 1998, pp 9-10

<sup>137</sup> *ibid*, p ii

<sup>138</sup> *ibid*, p 12

<sup>139</sup> *ibid*, p 29

ORGANISATION	MANDATE/ACTIVITIES	OVERSIGHT
Protective Security Group 1998 - 2002	Close personal protection for dignitaries, operational and tactical analysis including threat assessments, intelligence gathering and liaison with relevant agencies in relation to people who presented a risk of politically-motivated violence or terrorist activity. <sup>140</sup>	<p>Annual audits by the Commissioner of Police to ensure the agency is acting within the PSG charter. This audit is then reviewed by the Police Integrity Commission. "The Government remains of the view that any unit with unusual functions should be subject to high standards, and an even higher level of scrutiny than most."<sup>141</sup></p> <p>The PIC has received and reviewed three PSG audits (1998, 1999 and 2000). The 2000 audit was delivered in April 2001. The audit for 2002 is still outstanding.<sup>142</sup></p>
Counter Terrorism Coordination Command 2002 onwards.	<p>Same activities as the PSG, but has new powers including:</p> <ul style="list-style-type: none"> <li>• counter terrorism and domestic investigations;</li> <li>• proactive targeting of suspects;</li> <li>• informant management;</li> <li>• joint operations with external agencies;</li> <li>• surveillance; and</li> <li>• case management and legal advice.<sup>143</sup></li> </ul> <p>CTCC has a staff of 70.<sup>144</sup></p>	<p>No specific regime.</p> <p>PIC gave evidence at the 7<sup>th</sup> General Meeting that auditing of the PSG powers needs to continue.</p> <p>NSW Police proposes that no oversight regime such as that of the PSG is required.</p>

5.6 The role of the Ombudsman in relation to the CTCC remains ambiguous. The Second Reading Speech specifically mentions the Ombudsman, but there is no reference to the Ombudsman in the Act. The Commissioner of the PIC gave evidence during the Seventh General Meeting with the Committee that Deputy Commissioner Andrew Scipione, who is responsible for a number of Commands including the CTCC, would treat any complaints he receives about the CTCC as Category 1 complaints and refer them to the PIC.<sup>145</sup> Presumably the PIC would assess such complaints and refer those deemed to be Category 2 complaints to the Ombudsman. The difficulties outlined by

<sup>140</sup> *Police Legislation Amendment (Protective Security Group) Bill 1998*, Second Reading Speech, 23/6/98

<sup>141</sup> *ibid*

<sup>142</sup> *Annual Report 2002 – 2003 of the Police Integrity Commission*, p 37

<sup>143</sup> *Police Weekly Supplement*, 7 April 2003, p 14

<sup>144</sup> News Release, Premier of NSW, *Counter Terrorism Coordination Command*, 30 October 2002

<sup>145</sup> *Report of the Seventh General Meeting with the Police Integrity Commission*, December 2003, p 76

the Solicitor to the Commission (see above), would also apply to Ombudsman. The Committee considers referrals of complaints to the relevant body should occur as standard procedure regardless of which Command they come from.

- 5.7 As the *Terrorism (Police Powers) Act 2002* is to be reviewed annually by the Attorney General, the Committee wrote on 1 March 2004 to the Attorney requesting that the Ombudsman be specifically referred to in the Act. The Attorney responded on 31 March 2004 that the proposal would be considered as part of the review.<sup>146</sup> The Act was assented to on 5 December 2002, with the first review of the Act to be tabled as soon as possible after 12 months from the date of assent, and then 12 months thereafter. A report on the outcome of the review is to be tabled in each House of Parliament within 12 months of the end of period.<sup>147</sup> To date, no reviews of this Act have been tabled in Parliament. The Committee awaits the report of the review of this Act with some interest.
- 5.8 Since the matter of oversight of the CTCC came to the attention of the Committee there have been a number of opportunities to address the shortcomings of the current situation through legislative reviews, primarily the review the *Police Act 1990*, which commenced in August 2002. Section 222 of the Act required the review be tabled in Parliament on 31 December 2002. The Ministry for Police provided advice on a number of occasions that the tabling of the review of the Act was imminent, specifically:
- by 1 January 2003, (a public holiday)<sup>148</sup>;
  - by the end of June 2003<sup>149</sup>;
  - sometime after roundtables to be held in March 2004.<sup>150</sup>
- 5.9 The review of the *Police Act 1990* is now more than two years overdue.
- 5.10 On 19 November 2003, representatives from the Ministry for Police briefed the Committee concerning a number of legislative reviews, including the review of the *Police Act 1990*. Given that the legislative basis for oversight of the PSG falls within this Act, the Committee considered that the review of the Act would be a timely opportunity to clarify accountability and oversight arrangements following the subsumption of the PSG into the CTCC. However, the Ministry advised the Committee that this would not be considered during the review as it had not been raised in any submissions.<sup>151</sup> The PIC submission however had flagged a number of issues arising from the amalgamation of the PSG into the CTCC. The Committee considers that a substantial opportunity to clarify oversight arrangements for the CTCC has effectively been lost. Based on evidence given to it by the Ministry for Police the Committee has concluded that this matter will be addressed separately, and not until the report of the review of the *Police Act 1990* has been tabled.

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<sup>146</sup> Correspondence from the Attorney General to the Committee dated 31 March 2004

<sup>147</sup> *Terrorism (Police Powers) Act 2002* s36

<sup>148</sup> *Report of the Review of the Police Integrity Commission Act 1996 – Discussion Paper*, December 2002, p 90

<sup>149</sup> Advice from the Ministry for Police, 9 April 2003

<sup>150</sup> Briefing from the Ministry for Police for the Committee on the Office of the Ombudsman and the Police Integrity Commission, 19 November 2003

<sup>151</sup> *Report on the Seventh General Meeting with the Police Integrity Commission*, December 2003, p 12

## **PIC SUBMISSION TO THE INQUIRY**

5.11 The PIC submission to the Committee's Inquiry stated that "any position regarding future arrangements for the preventative audit/oversight of the CTCC should be based on a clear understanding of the risks for police misconduct associated with its activities and structure."<sup>152</sup> The PIC therefore proposed to undertake a risk assessment of the CTCC in this way to provide a reliable basis for recommendations regarding:

- the relative priority of treating risks associated with the CTCC, among other commands within NSW Police;
- the degree of priority to be attached to treating each of the identified risks;
- whether an audit, or other risk management action, would appropriately treat these;
- what the specific features of any such risk management action should be;
- whether an arrangement for the monitoring of such a risk management action would be appropriate and what its features should be;
- what the appropriate implementation model of any risk management/monitoring arrangement should be (regularity, consultation, reporting etc); and
- what system would be appropriate for reviewing any such risk management/monitoring arrangement, in light of the identified potential for risks to change over time or circumstance.<sup>153</sup>

The PIC advised that the projected outcomes of this project are:

- improved understanding of the special features of the risks of police misconduct associated with this type of unit;
- options for audit/monitoring arrangements substantiated with reference to the identified risks;
- the maximisation of the transparency, efficiency and effectiveness of any future audit or other risk management action; and
- a reference point for future determinations regarding audit/oversight arrangements to apply to NSW Police units with these functions.

5.12 In light of the PIC's submission, the Committee has decided to wait the outcomes of the risk assessment before tabling a final report.

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<sup>152</sup> PIC submission to the Inquiry into the Police Integrity Commission's jurisdiction to oversight the Protective Security Group, p 1

<sup>153</sup> *ibid*, p 2



## Chapter Six - Questions on Notice

1. Has the annual audit of the Protective Security Group for 2002 been audited by the PIC? If so, was the conduct and effectiveness of the NSW Police audit of the PSG appropriate? If the PIC has not yet received NSW Police audit of the PSG for 2002, when is it anticipated that it will be finalised?
2. Does the PIC feel there is any need to continue auditing the powers held by the PSG that are now held by the CTCC?
3. Have NSW Police made any proposals to the PIC as to how the audits of the PSG functions may continue, now that the PSG has been absorbed into the Counter Terrorism Coordination Command? If any proposals have been made, does the PIC consider them to be appropriate and adequate?
4. As the CTCC holds far greater powers than the PSG, would it be appropriate for the annual audits to be expanded and include such things as proactive targeting of suspects, informant management, counter terrorism and domestic investigation and surveillance? How could such an oversight regime be structured to prove effective but not onerous?
5. Has the PIC been consulted during the review of the *Police Act 1990* about accountability and oversight issues arising from the merger of the PSG into the CTCC?
6. Has the PIC been consulted during the review of the first year of operation of the *Terrorism (Police Powers) Act 2002* being conducted by the Attorney General?
7. The CTCC has the ability to work with inter-jurisdictional task forces. How can inter-jurisdictional matters arising be managed to ensure effective oversight? What arrangements can be made to effectively oversight joint taskforce operations?



## Chapter Seven - Answers to Questions on Notice

### **Inquiry into the Police Integrity Commission's jurisdiction to oversight the Protective Security Group**

#### **RESPONSES TO QUESTIONS ON NOTICE**

1. *Has the annual audit of the Protective Security Group for 2002 been audited by the PIC? If so, was the conduct and effectiveness of the NSW Police audit of the PSG appropriate? If the PIC has not yet received NSW Police audit of the PSG for 2002, when is it anticipated that it will be finalised?*

The annual audit of the Protective Security Group for 2002 was conducted by the NSW Police Audit group and received by the Commission in December 2003. The assessment of this audit by the Commission is complete, with the exception of the statutory reporting requirement of section 14 of the *Police Integrity Commission Act 1996*. The Commission plans to meet this requirement by reporting its assessment in its 2003-2004 Annual report, and does not consider that it is in a position to pre-empt this report or the fair notice of these findings to NSW Police. The Commission proposes to make a submission to the Parliamentary Joint Committee which is to include discussion of these assessments.

2. *Does the PIC feel there is any need to continue auditing the powers held by the PSG that are now held by the CTCC?*

Under section 14(e) of the *Police Integrity Commission Act 1996* one of the functions of the Commission is:

to monitor and report on the conduct and effectiveness of the annual audits of the Protective Security Group of NSW Police under Part 3 of the *Police Act 1990*,

The Commission's understanding of the purpose for the inclusion of this function in the Act is based on the June 1998 second reading speech in Parliament which preceded this legislative amendment and the corresponding amendment to Part 3 of the *Police Act 1990*. Amongst other things the Minister for Police noted the Government was of the view that 'any unit' performing the 'unusual functions' assigned to the PSG - and by extension the risks associated with the exercise of those functions - warranted high standards of scrutiny or an 'even higher level of scrutiny than most.' Elsewhere in that speech the Minister said that:

The government is not prepared to leave this to chance and is putting in place a mechanism to ensure that the [PSG] charter is adhered to.

...

The audit and monitoring structure outlined in the bill will provide for close ongoing scrutiny of the operations and policies of the new Protective Security Group.

The Protective Security Group (PSG) no longer exists as a discrete functional unit within NSW Police having been disbanded in March 2003. There can be no doubt, however, that the 'unusual functions' previously performed by the PSG are now being performed by the

CTCC. It is relevant to note here that the CTCC is currently, or may at some point in the future be, proactively targeting suspects, managing informants, engaged in counter-terrorism investigations and surveillance operations. While many of these activities were able to be performed by the former PSG, it appears that the extent to which they can now be conducted by the CTCC is far greater than was the case while the PSG was in operation. For example, whereas the PSG was authorised to conduct minor investigations and was required to refer major investigations to Crime Agencies, the CTCC charter (effective as at September 2003) places no restriction on the scale of investigation conducted by that Command and effectively authorises it to conduct major investigations. It does not, therefore, appear that the 'unusual functions' have significantly changed. Indeed based on the CTCC charter and information provided by the Command, the CTCC has, or will have, the capacity to play a much more active role than the PSG in the collection of intelligence and the investigation of possible offences.

In the Commission's view the present provisions in the *Police Act 1990* concerning the conduct of annual audits of the PSG and in the *Police Integrity Commission Act 1996* concerning the monitoring of those audits do not apply to the CTCC. The Commission considers legislative amendments would be required for the same auditing and monitoring processes to occur in relation to the CTCC. As to whether or not these amendments are sought is a matter for Government. It would seem, however, that legislating the type of oversight and the frequency with which it is to occur in connection with one functional area of NSW Police is:

- restricting for both NSW Police and the Commission, providing little flexibility as to the roles played by each agency and the frequency of the audits; and
- problematic insofar as it is not supported by any ongoing assessment process examining the risk associated with the performance of the 'unusual functions' previously performed by the PSG, now by the CTCC.

The Commission considers that risks associated with functions performed by, or functional units within, police agencies may be subject to change over time. In the case of the 'unusual functions' referred to in the second reading speech there are a range of factors that may have impacted upon the level of risk since 1998, such as the disbandment of the PSG and the creation of the CTCC with enhanced resources and functions, the legislative powers available to NSW Police in dealing with possible terrorist threats and changes in the broader security environment.

The Commission believes there would be some merit in evaluating the current level of risk through a structured process and, on that basis, determining the most appropriate risk treatment strategies to occur over a specified period of time. Depending on the outcome of the risk assessment, those strategies may or may not entail a regime of auditing and monitoring. Given its involvement with the monitoring of the NSW Police audits of the former PSG under section 14(e) of the Act, the Commission would be prepared to play a role, possibly in conjunction with NSW Police and the Ombudsman's Office, if Government agreed with this approach.

It should be noted that the current absence of a legislative provision for auditing and monitoring the CTCC does not in anyway preclude the Commission from exercising its functions and powers in connection with that Command.

3. *Have NSW Police made any proposals to the PIC as to how the audits of the PSG functions may continue, now that the PSG has been absorbed into the Counter Terrorism Coordination Command? If any proposals have been made, does the PIC consider them to be appropriate and adequate?*

No proposal has been made by NSW Police to the Commission regarding audits since the establishment of the CTCC. In the statutory Special Review of the PSG conducted by the NSW Police Audit Group in 2002, it was recommended that government reconsider the statutory requirement for annual audits of the PSG. In the report of the 2002 annual audit of the PSG, the Audit Group recommended that, if a legislative requirement for audit was considered necessary following the establishment of the CTCC, it supported the inclusion of the CTCC in the existing system for the audit of other commands in NSW Police. The Commission has completed its assessment of the 2002 annual audit of the PSG and the Special Review, including an assessment of the proposal that statutory audits cease. In fulfilment of its statutory reporting obligations, the Commission plans to report these assessments in its 2003-2004 Annual Report, and does not consider that it is in a position to pre-empt that report or due process of fair notice of these assessments to NSW Police. As noted in the response to Question 1. above, the Commission proposes to make a submission to the Parliamentary Joint Committee which is to include discussion of these assessments.

In response to this question, it is relevant to make a distinction between the proposal made by NSW Police in the 2002 Special Review regarding continuation of statutory audits of the Protective Security Group, and the current issue of whether and how future audits of CTCC functions and activities are to take place. The former has been assessed by the Commission in light of the case made by NSW Police and with reference to the circumstances of that time. The Commission does not consider that this assessment represents a position on the latter question, the consideration of which is properly a matter for the Parliamentary Joint Committee inquiry in the first instance.

4. *As the CTCC holds far greater powers than the PSG, would it be appropriate for the annual audits to be expanded and include such things as proactive targeting of suspects, informant management, counter terrorism and domestic investigation and surveillance? How could such an oversight regime be structured to prove effective but not onerous?*

The Commission takes as relevant to this question all activities which are or may be undertaken by the CTCC, including but not limited to those which are defined by its charter as functions. A direct comparison of the functions of the CTCC with those of the PSG is not possible with sole reference to their respective charters, as the charter of the CTCC does not provide a comparable degree of detail with that of the former PSG charter. The Commission's understanding is that, compared with those of the former PSG, the actual or potential activities of the CTCC represent a significant expansion, represented by such additions as the ability to conduct major investigations (where the PSG was restricted to minor investigations only), some counter terrorism intelligence capability formerly held by the NSW Police Intelligence and Information Centre, and the provision of terrorism and security information

and advice to stakeholders of critical infrastructure. It is relevant to note that the former PSG had the potential ability to carry out activities similar in type to those listed above, such as the gathering of field intelligence, the recruitment of informants and the dissemination of information to any person judged necessary by the Commander<sup>154</sup>. However, while the Commission's understanding is that the most significant contrast between the former PSG and the CTCC is one of the scope and extent of the activities, there are some activities carried out by the CTCC which were not of a type carried out by the PSG – e.g. a responsibility of the State Protection Group, which now makes part of the CTCC.

The statutory audit of the former PSG was directed by section 16(2) of the *Police Act 1990* to examine the procedures for the use and payment of informants, the recording and use of intelligence, and general adherence to the PSG charter. An assessment of whether an expansion of this focus would be appropriate for any future audits of the CTCC would need to take into consideration the extended scope and scale of the CTCC activities noted above, what risks are associated with these, and whether indeed the focus of the former PSG audits is an appropriate basis for addressing such risks. These are appropriate matters for a comprehensive assessment of the source, level and type of risks associated with the CTCC, which, as discussed in the answer to Question 2. above, the Commission considers is necessary prior to a decision regarding the requirement for future audits of the CTCC.

One of the central products the Commission would expect from such an assessment is a set of recommendations regarding the functions and activities of the CTCC of most relevance, any audit and/or other oversight actions proposed to most effectively examine these, and consideration of the resources required and the constraints associated with the need to minimise interference with the necessary functions of the CTCC. The Commission considers that the question of what audit structures would be effective and not onerous is best answered by such an assessment, and with the degree of rigour such an assessment could provide.

5. *Has the PIC been consulted during the review of the Police Act 1990 about accountability and oversight issues arising from the merger of the PSG into the CTCC?*

No, the Commission has not been consulted.

6. *Has the PIC been consulted during the review of the first year of operation of the Terrorism (Police Powers) Act 2002 being conducted by the Attorney General?*

No, the Commission has not been consulted.

7. *The CTCC has the ability to work with inter-jurisdictional task forces. How can inter-jurisdictional matters arising be managed to ensure effective oversight? What arrangements can be made to effectively oversight joint taskforce operations?*

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<sup>154</sup> It is relevant to note a distinction between the potential for the former PSG to carry out activities and the actual activities carried out. For example, while the Commission understands that the former PSG had occasional contact with community sources, the audits report that the PSG never had a registered informant, as formerly defined by the NSW Police Informant Management Manual. This distinction has now been removed from the definition in use by NSW Police, and all contacts are now required to be registered as sources. The Commission understands that the CTCC currently uses registered sources.

As indicated in response to question 2, the present provisions in the Police Act 1990 concerning the conduct of annual audits of the PSG and in the Police Integrity Commission Act 1996 concerning the monitoring of those audits do not apply to the CTCC. Without knowing what – if any – specific oversight mechanisms will be put in place in connection with the CTCC it is difficult to provide a detailed answer to question 7. The type of arrangements that need to be set in place to ensure effective oversight of the CTCC in instances where that Command, or members of that Command, are involved in inter-jurisdictional activities will depend very much on the specific oversight regime that is implemented in connection with the CTCC (if indeed one is implemented at all).

As a general principle, however, the Commission considers its powers are sufficient for it to discharge its functions in connection with the CTCC or any unit of NSW Police, including investigating possible misconduct, auditing aspects of the Command's activities or oversighting an investigation into its members. All current and former NSW Police officers fall under the jurisdiction of the Commission regardless of whether or not they have been seconded to another agency or are working on a joint task force. It is noted that a recent Commission investigation, Operation Alpine, demonstrated that the Commission can and will discharge its functions in connection with NSW Police officers who are involved in cooperative arrangements with other law enforcement agencies. The officer the subject of Operation Alpine was seconded to the ACC at the time of the Commission's investigation.

This is not to say that there would not be difficulties if the Commission were to discharge its functions in connection with a member or members of the CTCC involved in an inter-jurisdictional task force. For example, there may well be complications associated with gaining access to such things as CTCC documents bearing some national security classifications. In view of its considerable powers, the Commission does not believe these complications would be of such a nature as to impede it performing its functions.





# Chapter Eight - Transcript of Proceedings

## **REPORT OF PROCEEDINGS BEFORE**

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

#### **INQUIRY INTO s.10(5) OF THE POLICE INTEGRITY COMMISSION ACT AND INQUIRY INTO THE POLICE INTEGRITY COMMISSION'S JURISDICTION TO OVERSIGHT THE PROTECTIVE SECURITY GROUP**

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At Sydney on 27 May 2004

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The Committee met at 2.04 p.m.

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#### **PRESENT**

Mr P. G. Lynch (Chair)

The Hon. P. J. Breen  
The Hon. J. C. Burnswoods  
The Hon. D. Clarke  
Ms N. Hay  
Mr M. J. Kerr

**TERRENCE PETER GRIFFIN**, Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

**ANDREW NATTRESS**, Director, Operations, Police Integrity Commission, 111 Elizabeth Street, Sydney,

**ROBSON, STEPHEN**, Commission Solicitor, Police Integrity Commission, 101 Elizabeth Street, Sydney, and

**PETER JAMES BARNETT**, Manager of Assessments and Reports, Police Integrity Commission, 111 Elizabeth Street, Sydney, sworn and examined:

**ALLAN GEOFFREY KEARNEY**, Director, Intelligence and Executive Services, Police Integrity Commission, 111 Elizabeth Street, Sydney, affirmed and examined.

**CHAIR:** By way of introduction, I will briefly outline the background to the Committee's two inquiries. The first inquiry relates to section 10(5) of the Police Integrity Commission Act 1996, which specifies that the Police Integrity Commission [PIC] cannot appoint, employ, engage or second serving or former NSW Police officers. The inquiry stems from the review of the PIC Act conducted in 2002. During the review, the PIC proposed the removal of the embargo contained in section 10(5) of the Act. The report on the review recommended that the embargo should remain in place and that any further proposals to amend the section should be considered by the Minister and the Committee. In accordance with its statutory functions, the Committee subsequently resolved to conduct an inquiry into section 10(5). The Committee expanded the terms of reference for the inquiry early in May 2004 to include an examination of the PIC's independence from NSW Police, with respect to its role as an investigative commission focused on the detection, investigation and prevention of police corruption and serious misconduct.

The second inquiry relates to section 14 of the PIC Act, which provides that the PIC must monitor and report on the annual NSW Police audits of the Protective Security Group [PSG], which replaced Special Branch and which was recently subsumed into the Counter Terrorism Coordination Command. Following evidence taken during the seventh General Meeting with the PIC, the Committee concluded that it should inquire into the PIC's jurisdiction with regard to oversight of the PSG. That decision was taken in light of the ongoing uncertainty about accountability arrangements for the PSG and the general consensus between the Committee and the PIC that the intended level of oversight remains valid. The Committee will inquire into:

- (a) the functions of the PIC under sections 14 (e) to (f) of the Police Integrity Commission Act 1996;
- (b) the provision of reports to the PIC under Part 3 of the Police Act 1990;
- (c) oversight of the conduct of NSW police officers involved in the Counter Terrorism Coordination Command [CTCC]; and
- (d) any other matter that the Committee considers relevant to the inquiry.

The Committee will report separately to both Houses of Parliament on each inquiry. Do you wish the PIC's letter and the attached answers to the Committee to be incorporated as part of your evidence?

**Mr GRIFFIN:** Yes.

**CHAIR:** Do you wish to make an opening statement?

**Mr GRIFFIN:** No.

**CHAIR:** That concludes the inquiry in public session on section 10(5) of the Police Integrity Commission Act. We will turn now to oversight of the Protective Security Group [PSG]. In the opinion of the PIC legislative amendments are required for the same level of auditing that occurred for the PSG to be applied to the Counter Terrorist Co-ordination Command [CTCC]. I understand that round tables are occurring now in relation to the review of the Police Act. Has there been any consultation about that issue in those round tables?

**Mr GRIFFIN:** Not to my knowledge. I am advised that there was one round table that we were aware of, which was in March. It was about Part 8A of the Police Act, which is a complaints section. There are no others that we are aware of—or at least party to.

**CHAIR:** The Commission's response to question 2 in the questions on notice suggested that there would be some merit in evaluating the current level of risk associated with the CTCC's functions. Depending upon the outcome of the assessment a potential regime of auditing or monitoring might occur. Is there an implication that the PIC might undertake such an assessment? If not, is there a suggestion that someone else might do the assessment? If the PIC is doing it when would it be likely to occur? What sorts of things is it likely to consider?

**Mr GRIFFIN:** I will hand that question to Mr Kearney to deal with in detail. The answer is yes, yes, yes. We think there is room for a risk assessment and certainly would be happy to be party to, or part of, it.

**Mr KEARNEY:** We were anticipating a two-stage process. We were anticipating making a submission to the Parliamentary Joint Committee for the purposes of its present inquiry. We were envisaging that the submission would be a fairly high-level document that would reconsider the previous assessments by the PIC of the NSW Police audits of the PSG. We would look at the rationale for conducting a risk assessment, look at the approach and methodology that might be used and describe some anticipated outcomes and time frames. We could probably do that by mid to late June. We would then have in mind what might follow, who might do it and what time frame might be involved.

**CHAIR:** One of the other answers that you provided to the questions on notice talked about proposals for auditing the CTCC and noted that the police supported the inclusion of the CTCC in the existing system of audits of other commands. Can you tell us briefly about those audits, what they are about and how they might be different from the sorts of things that would have been envisaged for the PSG?

**Mr GRIFFIN:** We have our resident expert present. If the Committee is interested in pursuing this issue Mr Barnett will assist you.

**(Short adjournment)**

**CHAIR:** One of the suggestions that arose in the answers the Committee received was that an audit of the CTCC might be included with the audits that are currently being carried out by the Police. I think the interest was: what do those sorts of audits involve? How would they be different to the audits that were previously carried out on the Protective Security Group, or PSG?

**Mr BARNETT:** The Police proposed as much in one of its audits, namely that the Counter Terrorism Co-ordination Command be subject to, I suppose, a standard audit that a command might be subject to. What we understand from that is that, if you like, the special provisions under which the PSG was audited are found in section 16 of the Police Act would cease to apply. Under that part of the Act the audit is to examine things like the charter of the command to make sure there is compliance and also to look at such things as informant management. So there is, if you like, a special part or a special component or aspect to that audit. We understand that that specialness would cease to exist if the Police proposals were to get up. That is what we understand by its proposal, which we have not commented on, by the way. We are yet to do so.

**CHAIR:** The answer from the Commission to question seven refers to Operation Alpine from the PIC. Is the Commission going to be reporting publicly on that?

**Mr GRIFFIN:** Operation Alpine has been subsumed, to some extent, in Abelia in as much as the public hearings that were recently held in Abelia involved matters that arose from the investigation we called Alpine as an operational name. It is unlikely, I think, at this stage although it is only my current view that we would report separately on Alpine, but it may well happen. I am sorry I cannot be clearer but it is a work in progress.

**CHAIR:** The response to question seven also refers to potential difficulties should the PIC be investigating an officer involved with a joint task force. Complications that are mentioned there include accessing documents that may have national security implications. How would the PIC deal with that?

**Mr GRIFFIN:** With great difficulty, I suspect, and this is a matter that needs to be clarified, and cannot be by us. But an example of the difficulty, I think, exemplified by the role of the New South Wales Crime Commission in some of this counter terrorism stuff, they have an involvement, they have references. It could be that they are investigating a matter which involves counter terrorism and is based on ASIO information or some other information from a Federal agency. We theoretically have a right to kick down the doors of the Crime Commission if there is a copper in there we want to look at. I cannot imagine that happening in practical terms. And if we were able to arrange with the Commissioner of the Crime Commission—as I am sure we could—to get to the police officer that we were investigating, a much greater problem would be what access we would have to information that was held to be secret by ASIO.

Those issues are unresolved, and may be unresolved unless you had a waiver from ASIO about its information. It is very difficult to imagine the PIC getting access to federally classified documents. Whether those documents are no longer federally classified because they are in the hands of the New South Wales Police and we can get them and things that develop along those arguments, I think it would be very difficult to resolve. Certainly I do not have any concluded view on how we would proceed.

**CHAIR:** Does anyone at the PIC have the level of security clearance required to access information that may have national security implications?

**Mr GRIFFIN:** Yes, there are officers cleared to the level that we would expect to find at the high level in those agencies but I am not sure that that will answer the question entirely. I have been told by Mr Nattress that they are not general clearances. I assume that means they are specific to particular information. I think there are five officers in the PIC cleared to secret.

**Mr NATTRESS:** Whilst you may be cleared to secret or top-secret level it does not relate to all top secret or secret information. The Commonwealth actually will determine what it relates to.

**Mr GRIFFIN:** And there is a gloss on that even. My understanding is that if the information is operationally classified by an agency like ASIO it does not matter how high your clearance is, if it is operationally not available to you, it is not available to you. It is not a matter of clearance, it is also a matter of being acceptable within the loop for the operation. So it is a very difficult thing to deal with. We say in relation to what used to be called the PSG and now the CTCC, our Act allows us to look if we have got serious police misconduct at anything they are doing. That is a big claim to make and if it came to test it, it would be very difficult.

There is a balance of public interest in this that would be also hard to arrange. I am not sure that the public interest would be heavily on our side if there were a terrorist incident and Police were doing counter terrorist activities if we were seen to be interfering too much, you might find the public had no interest in us looking. It may well be we would have interest in it but there is a change, so it is a very difficult thing.

**CHAIR:** In terms of the people who have got that security clearance, what level of the PIC organisation are those people?

**Mr GRIFFIN:** We might take that in camera.

**CHAIR:** It seems to me there are practical problems about it?

**Mr GRIFFIN:** Yes, that is true.

(Evidence continued in camera)



## Appendix One - Committee Minutes

### **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 25 February 2004 at 6.40pm  
Room 1043, Parliament House

#### **Members Present**

Mr Lynch (Chair), Ms Burnswoods (Vice-Chair), Mr Breen, Mr Clarke and Mr Corrigan

#### **Apologies**

Mr Kerr and Ms Hay

In attendance: Helen Minnican, Hilary Parker

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#### **4. Inquiry program**

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- (b) Inquiry into the Police Integrity Commission's jurisdiction to oversight the Protective Security Group

The Committee discussed its jurisdiction in relation to the inquiry and the conduct of the inquiry.

Resolved on the motion of Mr Corrigan, seconded Mr Breen, that the following terms of reference be adopted:

That, in accordance with its statutory functions under s.95 of the *Police Integrity Commission Act 1996*, the Committee on the Office of the Ombudsman and the Police Integrity Commission has resolved to conduct an inquiry into:

- (i) the functions of the Police Integrity Commission under ss.14(e)-(f) of the *Police Integrity Commission Act 1996*;
- (ii) the provision of reports to the Police Integrity Commission under Part 3 of the *Police Act 1990*;
- (iii) oversight of the conduct of NSW police officers involved in the Counter Terrorism Coordination Command (CTCC); and
- (iv) any other matter that the Committee considers relevant to the inquiry;

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

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Committee Minutes

**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 17 March 2004 at 6.35pm  
Room 1043, Parliament House

**Members Present**

Mr Lynch (Chair), Mr Breen, Mr Clarke, Mr Corrigan and Mr Kerr

**Apologies**

Ms Burnswoods

In attendance: Helen Minnican, Hilary Parker, Pru Sheaves

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**4. Inquiry program for s.10(5) and PSG oversight inquiries**

- (a) The date of Friday 28 May 2004 was flagged for public hearings.
- (b) Resolved on the motion of Mr Kerr, seconded by Mr Clarke, that the previously circulated Questions on Notice for both inquiries be sent to the Police Integrity Commission.

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**Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Thursday 27 May 2004 at 2.00pm  
Waratah Room, Parliament House

**Members Present**

Mr Lynch (Chair), Ms Burnswoods (Vice-Chair), Mr Breen, Mr Clarke, Ms Hay and Mr Kerr

**Apologies**

Mr Corrigan

In attendance: Helen Minnican, Hilary Parker, Kylie Rudd, Pru Sheaves

**INQUIRIES INTO S.10(5) OF THE POLICE INTEGRITY COMMISSION ACT  
AND THE JURISDICTION OF THE PIC IN RELATION TO THE PROTECTIVE SECURITY GROUP**

**PUBLIC HEARING WITH THE POLICE INTEGRITY COMMISSION**

The Chairman opened the public hearing at 2.00pm and made a brief statement introducing the inquiries.



Mr Terence Peter Griffin, Commissioner; Mr Andrew Nattress, Director, Operations; and Mr Stephen Allan Robson, Commission Solicitor took the oath. Mr Allan Geoffrey Kearney, Director, Intelligence and Executive Services, affirmed. The Commission's answers to questions on notice and the accompanying letter were tabled as part of the sworn evidence. The Chairman questioned the Commissioner and PIC executive officers, followed by other Members of the Committee.

The hearing adjourned at 3.25pm, resuming at 3.40pm in public session. Mr Peter James Barnett, Manager of Assessments and Reports, took the oath immediately following the adjournment.

### **IN CAMERA HEARING**

The hearing went in camera at 3.50pm.

Questioning concluded, the Chairman thanked the witnesses and the witnesses withdrew. The hearing concluded at 4.40pm and the Committee adjourned *sine die*.

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## **Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission**

Wednesday 23 June 2004 at 6.30pm  
Room 1043, Parliament House

### **Members Present**

Mr Lynch (Chair), Ms Burnswoods (Vice-Chair), Mr Breen, Mr Clarke, Mr Corrigan and Mr Kerr

In attendance: Helen Minnican, Pru Sheaves

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### **4. Correspondence Received**

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- (g) Letter from the Minister for Police, dated 4 June 2004, in reply to correspondence concerning the Committee's current inquiries.

Resolved, on the motion of Mr Corrigan, seconded by Mr Clarke, that:

- (i) It is recommended that the Chairperson write to the NSW Crime Commission, ICAC, NSW Police, Ombudsman and the President of the Police Association, on behalf of the Committee, to inform them of the terms of reference for the inquiry into s.10(5) of the Police Integrity Act, provide a copy of the Commissioner's evidence from 27 May, and invite submissions on the inquiry.

Committee Minutes

- (ii) It is recommended that the Chairperson write to the Minister to advise him that term of reference (c) is in accordance with PIC and Ombudsman oversight of CTCC officers.

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## Appendix Two - PIC Submission to Inquiry



12 August 2004

ABN 22 870 745 340

Ref: 12402/48

Mr Paul Lynch MP  
Chairperson  
Committee on the Office of the Ombudsman and Police Integrity Commission  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Lynch

### **Submission to the PJC inquiry into the oversight of the CTCC**

As you are aware, the Commission has recently been called on by the Committee to contribute to its current inquiry into the oversight of the functions of the New South Wales Police Counter Terrorist Coordination Command (CTCC), formerly carried out by the Protective Security Group (PSG). I note that a central question in this inquiry has been the need to continue and/or expand the audit and monitoring arrangement which formerly applied to the PSG. During the discussion of this issue, the Commission has expressed the view that it would be appropriate to undertake an assessment of the special risks associated with the CTCC.

I submit the enclosed proposal regarding this risk assessment for the consideration of the Committee.

Yours sincerely



**T P Griffin**  
**Commissioner**

Enc: Submission regarding proposed risk assessment of the CTCC

### **Submission to the Parliamentary Joint Committee inquiry on the CTCC**

In December 2003, the Parliamentary Joint Committee on the Office of the Ombudsman and Police Integrity Commission (PJC) informed the Commission it proposed to inquire into oversight of the Protective Security Group (PSG)

Subsequent terms of reference directed the inquiry into *oversight of the conduct of NSW police officers involved in the Counter Terrorism Coordination Command (CTCC)*. The Commission has contributed to discussion about the need to audit the powers held by the Counter Terrorist Co-ordination Command (CTCC), and whether such audits should be expanded, given the expanded capabilities of the CTCC. The Commission believes that any position regarding future arrangements for the preventative audit/oversight of the CTCC, should be based on a clear understanding of the risks for police misconduct associated with its activities and structure. This submission outlines an approach to the assessment of the source, level & type of such risks, including an examination of what, if any, special measures would be appropriate to manage them.

### **Background to the proposed risk assessment for the CTCC**

The historical context of the proposed risk assessment extends to the former Special Branch of NSW Police, which was established in 1948 to monitor 'subversive activity' and to assist the maintenance of national security. Its central activities included the collection of intelligence on groups and individuals to prevent politically motivated violence or civil disorder, the protection of VIPs and liaison with intelligence agencies.

Following negative findings regarding some activities of NSW Police Special Branch by the Royal Commission in late 1996 and early 1997, the Commissioner of Police disbanded the Branch and secured its records in March 1997. The records were examined and assessed by the Police Integrity Commission, which reported its findings to Parliament in June 1998. The report included adverse comments regarding a number of Special Branch practices<sup>1</sup>.

In July 1998, the Protective Security Group (PSG) was established, taking over the central functions performed by the former Special Branch. Also in July 1998, amendments to the *Police Act 1990* and the *Police Integrity Act 1996* came into effect, which made specific reference to the PSG. These established, respectively, a requirement for NSW Police to conduct annual audits and a special review of the PSG, and a requirement for the Commission to monitor and report on the conduct and effectiveness and recommendations of these.

In March 2003, the functions carried out by the former PSG were absorbed into the activities and structure of the Counter Terrorist Co-ordination Command (CTCC). The Commission considers that the sections of the Acts referring to the PSG ceased to have practical application, and the requirement for NSW Police audits of the activities and structures formerly associated with the PSG therefore effectively lapsed, as did the requirement for the Commission to monitor and report on the conduct and effectiveness of the audits.

The Commission understands that the purpose of the audit and monitoring mechanism was to maintain vigilance, as a preventative measure, in the face of

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<sup>1</sup> These comments related to issues of recruitment, accountability, supervision, record management, informant management and payment, the appropriateness of some intelligence holdings, and the appropriateness of the relationship with VIPs.

special risks which were perceived to be associated with the 'unusual functions' of the former PSG.

### **Goals and purpose of the proposed risk assessment**

The primary goal of the proposed risk assessment is to determine what special risks for police misconduct, or circumstances conducive to police misconduct,<sup>2</sup> are associated with the actual and potential activities and structure of the CTCC or similar units. Identification of each risk should include an assessment of its level, type, source and potential to change with time or particular circumstances.

The purpose of assessing the risks in this way is to provide a reliable basis for recommendations regarding

- the relative priority of treating risks associated with the CTCC, among other commands within NSW Police
- the degree of priority to be attached to treating each of the identified risks
- whether an audit, or other risk management action, would appropriately treat these
- what the specific features of any such risk management action should be
- whether an arrangement for the monitoring of such a risk management action would be appropriate, and what its features should be
- what the appropriate implementation model of any such risk management / monitoring arrangement should be (regularity, consultation, reporting, etc.)
- what system would be appropriate for reviewing any such risk management / monitoring arrangement, in light of the identified potential for risks to change over time or circumstance.

### **Projected product and outcomes of the risk evaluation**

The proposed product of this evaluation is a report providing the findings regarding the risks associated with the activities and functions of the CTCC and similar units, and making detailed recommendations for the future management of such risks.

The projected outcomes are

- improved understanding of the special features of the risks of police misconduct associated with this type of unit
- options for audit / monitoring arrangements substantiated with reference to the identified risks
- the maximisation of the transparency, efficiency and effectiveness of any future audit or other risk management action
- a reference point for future determinations regarding audit / oversight arrangements to apply to NSW Police units with these functions.

### **Planning and implementation of the risk assessment**

The proposed risk assessment is expected to proceed through the phases of

1. detailed planning
2. identification and analysis of risks
3. identification of appropriate risk management strategies
4. development of an implementation model for selected strategy/ies

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<sup>2</sup> The Commission notes that the adverse observations regarding Special Branch included references to systems and processes which, while not themselves evidence of misconduct, increased the risk of misconduct occurring.

The Commission is in a special position with respect to the proposed risk evaluation of the activities of the CTCC, given its history of investigation into Special Branch and its role in the assessment of the audits of the former Protective Security Group. The Commission therefore suggests, it could usefully undertake responsibility for the planning phase and the co-ordination of the process.

It is not clear which agency would most appropriately implement the later stages of the risk evaluation process although the NSW Police will necessarily play a central role in the identification of risks. A central element of the planning process will be to establish the potential for other agencies to take on a primary, partnership or consultative role in one or more stages of the process. During the planning stage, it is expected that a survey of the appropriate options for the risk assessment methodology will be undertaken in consultation with stakeholders and expert sources.

### **Consultation**

Consultation with NSW Police will be necessary at several stages of the proposed process. Preliminary consultation has already taken place and it is envisaged that detailed consultation will take place in the planning stage with reference to the methodology and implementation of the risk identification, and in later stages with reference to the identification, development and implementation of indicated risk treatment strategies.

Similarly, The NSW Ombudsman's office has been consulted in the drafting of this submission and is likely to be involved in further consultation if the project proceeds with particular focus on the methodology of the risk assessment and the development and/or implementation of identified risk treatment strategies.

Consultation is also projected with agencies potentially able to provide expert assistance in individual elements of the risk assessment process, such as the NSW Audit Office and the Independent Commission Against Corruption.