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24 August 2007

Ms Helen Minnigan
Committee Manager
Committee on the Office of the Ombudsman and
the Police Integrity Commission
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Helen,

Re: Committee Inquiries: Scrutiny of NSW Police counter terrorism and other powers, and Ten Year Review of the Police Oversight System in NSW

I refer to the above inquiries and enclose for your attention the responses of the Counter Terrorism and Special Tactics Command to the questions taken on notice during the Parliamentary Inquiry in 2006.

I trust the attached responses will address the issues raised by the Committee. However, should the Committee have any residual queries, I would be happy to provide further assistance.

Regards,

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Scrutiny of NSW police counter-terrorism and other powers.

1. One authorisation was applied for and signed under Terrorism (Police Powers) Act 2002, No: 115 relating to the implementation of the arrest phase for Operation PENDENNIS. The authority was NOT used.
2. All of these checks and balances are available to external checking by the Ombudsman and/or PIC if required.
3.
 - (a) Consistent reporting regimes are utilised between the Investigations, Intelligence & Dignitary Protections Units, however, each Unit has different Portfolios appropriate for that area that have been rated according to risk assessment and reported on accordingly.
 - (b) The CTCC CMF is consistent with the corporate templates on the Intranet, however, due the core business of each CTCC Unit there has been a tailoring of Portfolios, but no major changes from the generic framework.
4. A Corruption Prevention Plan for the CTCC is in place. This plan is in line with the provisions and recommendations found in the Code of Ethics & Conduct, ABEF, Future Directions, Future Directions and QSARP reports.

The Investigations Unit has implemented a Risk Assessment document that is completed prior to the establishment of any new Investigation. Specific Terms of Reference are struck for each strike force detailing corruption prevention measures and reporting directives, compliance and governance directives, reporting schedules. An Investigation Plan is required to be reviewed and supported by a Detective Inspector. All Joint Investigations have been formalised and are recorded in the form of an Investigation Agreement, where deemed appropriate. A Strike Force Review Panel has been established that convenes monthly to review current strike force investigations with an objective set for reviewing all strike force investigations bi-monthly. Invitations are extended to external representatives from involved Law Enforcement Agencies who are stakeholders in particular investigations. That panel will ensure that the investigations are remaining within the terms of reference, the quality and content of Investigation Logs & Investigators Notes, review Status & progress Reports and overdue tasks. A specifically created form will be signed by the Chair of the Review Panel that will be scanned onto the e@gle.i investigation management system under the Investigation Log category as a Managerial Review entry. This enhancement to the investigative management process will be more robust and transparent.

5. This is a matter that has to be formalised within the CTCC, whilst the Investigations Unit has progressed forward with implementing 'Risk Management' that has been formally communicated to members of staff, a similar initiative needs to be researched and implemented within the Intelligence & Dignitary Protection Units that has consistency across the CTCC.

Formal Investigation Plans.

6. No, this mechanism has direct and very effective relevance equally to misconduct risks as well as minimising operational risks. As detailed in response to Q. 4, a Corruption Prevention Plan has been submitted to the Assistant Commissioner, CT-POM.

7. No, Internal members only. However, members of the CTCC Intelligence Unit liaise with the A.F.P. & A.S.I.O. at regular meetings where relevant information is shared and disseminated.

8. The decisions are available for audit at any time particularly if the subject of a complaint to oversight bodies such as PIC or the Ombudsman. Decisions are randomly reviewed internally within the command. Finally the decision to target anyone is also scrutinised at any subsequent court proceedings.

9.

(a) All Unit Leaders & Coordinators.

(b) Monthly reviews conducted by Unit Leaders or as required in compliance with CMF reporting guidelines.

(c) Anomalies are detected by Unit Leaders and or Coordinators, all such matters are reported within the CMF process. The Commander CTCC formally addresses these issues when reviewing the CMF providing feedback to the respective Unit Leaders, In furtherance these matters are Agenda items at the CTCC Management Team Meetings. An expectation exists whereby the respective Unit Leader will address the issue/s and report on that fact in the preceding CMF reporting schedule.

(d) As in question 6 this process is critical for potential misconduct risks and in fact has a lesser impact on operational risks.

10. Yes. The 'Observation Program Agreement' between the NSW Commissioner of Police, the Corrective Services Commissioner, and the NSW Ombudsman has been signed.

Preventative Detention Working Group is a current project undertaken by the ATSG with the intent to formalise MOU's between the NSW Commissioner of Police, the NSW Ombudsman and the Corrective Services Commissioner. The MOU as it currently exists stipulates that the NSW Ombudsman will be informed as soon as practical.

The Commonwealth Ombudsman has an oversighting function with the ATSG Investigations Unit relating to the Surveillance Devices Act 2004. An inspection of

Terrorism Investigation Squad records by representatives from that office is scheduled for Friday 13 October 2007.

(a) The Terrorism (Police Powers) Act 2002 enables us to apply for and conduct covert search warrants. There is a current agreement with the NSW Ombudsman to report these instances within 21 days of the execution of such a warrant.

(b) The MOU's govern all aspects of the reporting arrangements. These MOU's can be made available once finalised to this Inquiry if required.

11. The Counter Terrorist Co-Ordination Command (CTCC) now known as the Anti terrorism and Security Group (ATSG) is a unique command within the New South Wales Police Force. The CTCC was established on 17 March 2003 as part of the NSW Police response to the growing threat of terrorism. The Command was created through the amalgamation of a number of existing functional areas including the Protective Security Group (PSG).

The core business functions of the CTCC are documented in its Mission Statement, which is as follows:

"To provide a comprehensive and co-ordinated response to acts of terrorism or politically motivated violence through intelligence collection, analysis, investigation services and protection operations for dignitaries, national icons, business interests and critical infrastructure as well as a tactical response through the services of the State Protection Group."

Fundamental to all facets of the command's responsibilities and activities is personal accountability and ethical professional self-regulation. The command operates with a philosophy of high trust in which excellence and diligence are promoted. The command fosters a workplace culture where there is zero tolerance of corruption and which strives for excellence.

The Principle roles of the CTCC are :-

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

The management team within the Command appreciates that how we achieve is as important as what we achieve, to this end the ethical collection, evaluation and dissemination of information within this Command is ensured by a series of Command specific risk management practices.

11.1 CTCC (ATSG) UNITS:

Dignitary Protection and Public Order Management Unit:

The Dignitary Protection and Public Order Management Unit of the CTCC provides dignitary protection for the NSW Police Service. The Unit is staffed by officers who are trained and tasked to provide close personal protection duties. The Command maintains a permanent CPP team on the Premier of New South Wales and is tasked on a regular basis to provide CPP security for the Prime Minister, Governor General, Australian High Office holders and visiting VIP's whilst they are in NSW.

They are also assigned to maintaining a liaison role with all Embassy and Consular Corp. representatives. DIGPRO provides specialist advise to Regions/LAC's in the planning and co-ordination of a response to dignitary protection, major event, public order management issues involving terrorism or politically motivated violence, along with conducting Physical Security Reviews and Assessments.

Intelligence Unit:

The Counter Terrorist Co-ordination Command (CTCC) Intelligence Unit provides the NSW Police with a specialised strategic, operational and tactical intelligence service in relation to politically motivated violence, extremist activity and acts of terrorism. Principal roles and responsibilities include:

- Production of strategic intelligence;
- Intelligence assessment of all incoming information (inc. National Security Hotline);
- Manage COPS intelligence components for the Command;
- Protective security intelligence (inc. national security threat assessments, dignitary protection intelligence and public order intelligence);
- Field intelligence support (inc. surveillance and counter-surveillance);
- Sydney Airport liaison (two Intelligence Officers deployed to Sydney Airport Office);
- Investigation support;
- Manage and operate the NSWPOL Joint Intelligence Group;
- Counter-intelligence;
- Preparation of risk and threat assessments;
- Internal and external agency liaison (inc. AFP, ASIO, ADF, DIMIA, etc.);
- Manage and facilitate NSWPOL national security clearances;
- Maintain ASNET, Speakeasy and internet connections;
- Major event intelligence support;

- Command notifications (inc. dignitary movements, public order incidents, ADF road movements, etc.); and

Investigations Unit:

The National Counter Terrorist Plan outlines that (State) Police 'have operational responsibility for preventing and responding to terrorism, and the investigation of terrorist activity, threats and incidents'.

The responsibility within this definition of prevention, investigation of terrorist activity and threats within NSW rests with the Investigations Unit, CTCC. The responsibility for a significant investigative response to a terrorist incident rests with the State Crime Command, due the necessity for substantial investigative resources.

The role of Investigations Unit is to:

- a) Investigate offences relating to the threat of terrorism, politically motivated violence or threats against high office holders. In the case of a major terrorist incident, this may be in a joint investigative arrangement with;
 - a. NSW Police Groups (particularly State Crime Command, Forensic Services Group, Special Services Group and relevant Local Area Command).
 - b. Relevant external Organisations (particularly the Australian Federal Police and Australia Security Intelligence Organisation).
- b) Investigate credible threats of terrorism (for example, alleged terrorist training camps, suspect financial activity or in response to information provided by other agencies).

Central to this role are the following activities:

- a) Conducting proactive investigations regarding suspected targets;
- b) Liaison with other agencies and sharing of information on investigations;
- c) Use of covert evidence gathering techniques.

The decision to undertake preventative action will be determined by the Commander CTCC (in consultation with the Assistant Commissioner, Counter Terrorism), the Investigations Unit Leader and relevant Investigation Supervisors, based upon prevailing circumstances and balancing of the risk of terrorist action against the probability of gaining evidence. Such a decision will also be made in consultation with relevant investigation stakeholders/partners.

The Investigation Unit, CTCC have specialist investigators at:

- a) CTCC North Sydney (Response Team)
- b) NSW Crime Commission (Targeting Team)
- c) AFP Joint Counter Terrorist Team (JCCT)
- d) AFP Identity Crime Team

Critical Infrastructure Protection Co-Ordination:

Is responsible for participation in the Critical Infrastructure Review Group (CIRG) in the development of systems for:

- Co-ordination and management functions covering the protection of the physical infrastructure, which, if destroyed, degraded or rendered unavailable for an extended period, will significantly, impact on social or economic well-being of NSW or affect national security or defence.
- In co-operation with the private and public sectors, the Commonwealth, States and Territories, contribute to the ongoing development of mechanisms, such as the Nation Counter Terrorism Committee (NCTC) and other arrangements for emergency management, to ensure a nationally consistent approach to the protection of critical infrastructure.

As can be seen from these outlines, in order to assist with the discharge of its core business functions, the Command continually liaises with the Australian Federal Police, Australian Security Intelligence Organisation, Protective Security Co-ordination Centre, Department of Foreign Affairs and Trade and the New South Wales Consular Corps. The Command has responsibilities under the National Anti Terrorist Plan in relation to terrorist incidents. The Command participates in training operations and operational matters that are oversights by the NCTC.

The Command regularly interacts with the many communities making up our society, recognising that all people have an intrinsic value and have potential to assist the Command in a collaborative sense. All members of the Command must adhere to the NSW Government's Principles of a Culturally Diverse Society, Police Service EEO initiatives and the Charter of Victims rights.

The CTCC conducts physical security risk reviews of the private and professional premises of Ministers of the Crown, Members of State Parliament, Members of the Judiciary and other persons whose physical safety is assessed to be at risk. The command also provides advice on personal security to these persons.

12. Corruption prevention measures, compliance and governance procedures including the reporting of suspected or identified corruption has been articulated in the response to question 4, paragraph 2, affecting the CTCC Investigations Unit.

In so far as CTCC Joint Investigations with external Law Enforcement Agencies where suspected or identified corruption has been identified the same reporting protocols are to apply.

The New South Wales Crime Commission can never be the lead agency in these matters and any allegation arising as a complaint against the NSWCC would need to be addressed, because as it exists the NSWCC does not fall within the Ombudsman's purview. Whilst police would refer such allegations to the appropriate authority, it is not a matter for the police to pursue.

13. No, it is our view that the execution of Covert Search Warrants (CSW) is not overly problematic, for the following reasons;

- The CTCC Investigations Unit has established extensive SOPs regarding their use which are regularly reviewed and revised, where deemed appropriate.
 - The CTCC Investigations Unit has gained experience in the execution of a number of CSW's that has identified a need to amend procedures, hence the SOPs have been amended accordingly.
 - Obtaining a CSW requires two layers of authorisation. Firstly, is authorisation by a Senior Police Officer (Commander CT-POM at the rank of Assistant Commissioner, or Commander CTCC). Secondly, the application MUST be at a standard to satisfy a Justice of the NSW Supreme Court.
 - A written agreement (MOU) is in existence with the Office of the NSW Ombudsman whereby relevant and timely information is forwarded from the CTCC Investigations Unit to the NSW Ombudsman advising of all statutory requirements being adhered to for their oversighting responsibilities to be initiated.
 - Any issues identified by the Office of the NSW Ombudsman will be addressed as soon as is practicable.
14. Not at this time. It would be both difficult and unnecessary to implement CT powers at a local level. This command is not aware of any suggestion to broaden these powers to routine policing operations and would question the need for such a measure. The problems would be myriad.

SCRUTINY OF NSW POLICE COUNTER-TERRORISM AND OTHER POWERS QUESTIONS TAKEN ON NOTICE

1. Can the NSW Police indicate how many times it has used any of the new powers given under NSW anti-terror laws and whether they were used in relation to the same or different matters?
2. The submission states on page 3 that enactment of additional powers in relation to counter-terrorism “have brought further oversighting capabilities to the mix” so that the Police “cannot accept the view that the enactment of these additional powers...has increased the risk of misconduct”. Have the findings resulting from the current risk assessment analysis of the CTCC endorsed this view?

Questions specific to the submission of Assistant Commissioner Kaldas, dated 3 July 2006

3. The submission sets out on page 4 the “checks and balances” imposed on the exercise of counter-terror powers by Police, including corporate systems that apply across all Commands, such as using various internal electronic databases (eg. COPS), as well as systems specific to the CTCC (eg, approval of all targets by the Operations Review Committee).

- Which of the NSW Police wide checks and balances, if any, are subject to any external checking by the Ombudsman and/or PIC (eg, electronic auditing and record keeping)? Others?

- **the NSW Police Command Management Framework**

The Command Management Framework operates within the CTCC and each Unit monitors its results, oversighted by the Commander. Is there any variation between Units within the CTCC as to how the Framework is used and the results monitored? Would this vary significantly from how the Framework might be applied and utilised in other Commands within NSW Police?

- **Risk Management**

In respect of managing misconduct and risk in terrorism investigations within the CTCC, what potential misconduct risk issues have been identified within each Unit in the CTCC, and what risk methodology is employed in assessing and rating the misconduct risks? Has this risk analysis been fully documented and communicated effectively throughout the CTCC (ie understood and training about it – not just circulating a memo)?

(business risk analysis involves a systematic way of identifying relevant risks and evaluating the magnitude of their consequences; scores are given to identify the level of risk - termed a residual risk score - and to help identify the response or control measures that are appropriate for the level of risk identified; for instance, you also might decide that instead of trying to mitigate against the risk you are prepared to accept it, particularly if it has minimal consequences; the score for each risk is derived from the product of the likelihood of its occurrence and the degree of its consequence or impact, which are given a numerical value; example attached)

How does the Command Management Framework, for instance, relate to the findings resulting from PIC's misconduct risk assessment?

- **Types of risk**

The submission states on page 5 that "the environment in which counter terrorism investigations are conducted, for example, the investigation of ideologues with no profit motive, is less conducive to the risk of misconduct than the wider criminal investigation environment". Can you please explain this further?

Given that the very nature of terrorism is an attack on our society, is there any risk that noble cause corruption may be a problem amongst CTCC officers?

- **formal investigation plans**

Is this mechanism more relevant to minimising operational risks as distinct from misconduct risks? (e.g. does it deal with an officer not sticking to the plan for the investigation rather than, for arguments sake, his disclosure of the investigation plan or related information for an inappropriate reason)

- **an Operational Review Committee for the CTCC**

Are there any external members of the CTCC's Operational Review Committee? If so, who are they?

The submission on page 4 notes that the CTCC has a documented process for selecting targets and that the decision to select a target is a collegiate one and must be approved Operations Review Committee, thereby, reducing the capacity for a person to be targeted unjustifiably. Is there any way in which this decision can be reviewed externally if necessary? Are any audits of these records conducted?

- **collection of intelligence in accordance with formal collection plans, auditable databases recording CTCC activity down to investigation level; each database is subject to Command Management Framework audit and review**

Who monitors compliance with these plans? How often does audit and review take place? Who conducts it? If any anomalies or problems are found, how are these dealt with? Does this audit and review exercise focus on operational risks and, if so, does this exercise have any relevance to potential misconduct risks?

4. The submission provides that the controls also include high levels of external authorisation before, and reporting obligations after, the use of the extraordinary counter-terrorism powers. What access would the Ombudsman and/or the PIC have to the reports compiled after the powers have been used?
5. Has NSW Police entered into MOUs with oversight agencies to assist those agencies with their responsibilities and reporting arrangements and, if so, what agencies are covered by these MOUs and what matters do the MoUs specifically address? For example, do they detail the time in which the Police must notify the Ombudsman of the making of a preventative detention order? Does the MOU require NSW Police to inform the Ombudsman of the execution of covert search warrant to enable the Ombudsman to monitor the exercise of this power by Police? What other matters do the MOUs address? Could they be made available to this Inquiry?

6. The CTCC has its own charter. What form does the charter take and how does it compare with the charter of the PSG? What assessment is conducted to ensure that the CTCC is fulfilling its charter? Is such assessment or auditing conducted annually and is the process oversights internally or externally?
7. What implications does the classification and clearance restrictions on information have for the scrutiny of the use powers?
8. Page 5 of the submission deals briefly with multi-jurisdictional taskforces and notes that "recent negotiations with the AFP have resulted in an agreement to restructure CT investigation in this state". It also states that it is "most likely the combined team will utilise the AFP data system of PROMISE, and be subject to all the in-built checks and balances the AFP have in place, once again complicating the access to data by oversight agencies, and perhaps lessening the need for such specific oversight even further". Could you please explain the additional checks and balances to which NSWSP will be subject as part of the Joint Counter Terrorism Team? Do arrangements of this kind pose particular challenges for effective oversight? If not, why not?
9. Can you elaborate on the level of scrutiny that will apply to multi-NSW agency taskforces and can you advise as to how a complaint against NSW Crime Commission, one of NSW Police counter-terrorism taskforce partners, might be pursued?
10. The exercise of covert search warrants has been raised as a particular issue in some of submissions to the Inquiry received by the Committee. Do you see the execution of covert search warrants as a potential problematic area? If yes, what kind of problems would you anticipate could arise? How could any problems be avoided? Could the execution of covert search warrants be more effectively oversights?
11. Are the safeguards built into the preventative detention powers adequate? For example, in Queensland the Public Interest Monitor must be present at every hearing of an application for a preventative detention order. Should there be a similar system in NSW? If not, why not? What other safeguards might be helpful?
12. Legislation amending the *Controlled Operations Act* to allow for retrospective approval of controlled operations was passed at the beginning of the year, but has not yet commenced. Do you see this as potentially impacting on NSW Police counter terrorism activities? What kind of potential difficulties could there be for the exercise of powers authorised retrospectively? What additional oversight mechanisms, if any, should be implemented for retrospective approval of controlled operations?
13. Do you see the potential for the extraordinary powers in the anti-terrorism legislation to be used for more routine policing operations? What could be the dangers involved in this? How might misuse be prevented?
14. Are the current oversight mechanisms of agency reporting built into the *Terrorism (Police Powers) Act* eg annual reporting by the Attorney General to the Parliament on the operation of the Act appropriate and sufficiently clear? If not, how could they be improved or supplemented?
15. The counter-terror and general policing laws in NSW give the Police access to a large body of powers to deal with terrorist incidents. The exercise of many of these powers is subject to different authorisation regimes and once used, these powers may also be subject to different reporting requirements. Could this lack of uniformity lead to

confusion about the appropriate way for Police to exercise these powers? Could it lead to a greater likelihood of misuse or abuse of these powers by police?

16. Are there any other matters you would like to raise with the Committee?