

PERFORMANCE MEASURES AND ACCOUNTABILITY OF OVERSIGHT AGENCIES

Organisation: Police Integrity Commission
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PARLIAMENTARY COMMITTEE ON THE OMBUDSMAN, THE POLICE INTEGRITY COMMISSION AND THE CRIME COMMISSION

Inquiry into the ways in which performance is measured and reported on in those agencies that the Committee has responsibility for monitoring and reviewing under the relevant legislation.

Police Integrity Commission Response to 'Possible Discussion Points at the Hearing' notified in correspondence of 15 March 2013 from the A/Committee Director

1. The quantum of oversight agencies are subjected to

o Does your agency have different ways of interacting with each layer of oversight?

The Commission is oversighted by an Inspector and a Parliamentary Committee. The Commission is also broadly accountable to the public of NSW through the NSW Parliament.

Almost all interaction with the Inspector occurs directly between the Inspector and the Commissioner. The Inspector and Commissioner meet regularly to informally discuss matters including Commission investigations in which the Inspector has an interest (usually those with a high public profile) and the administration of complaints. There are infrequent formal interactions which occur by way of correspondence generally canvassing Commission responses to complaint issues and requests for information. The Inspector and his staff have unfettered access to Commission systems and information. Interactions with other Commission staff occur in the course of the Inspector's audits of operations.

Interaction with the Committee is usually formal in nature, either by way of correspondence or through the giving of evidence in hearings.

Interaction with the NSW Parliament occurs by way of Annual or Investigation reports which are formally presented to Parliament.

o Do you find any of these interactions useful?

Clearly an organisation with the strong powers of the Commission must have in place an equally strong accountability regime. The principal value in these interactions is in their capacity to publicly demonstrate the accountability of the Commission.

More specifically, the Commission finds its interactions with the Inspector useful as input from an informed outsider to whom the Commission is accountable can provide a useful independent check against the conventional wisdom within the organisation – for example challenging particular approaches or methodologies in investigations or the basis for the use of powers, or noting matters that might be taken into consideration but which may appear, on the surface, to have escaped notice.

Interactions with the Committee can contribute a useful external perspective and provide a potential input to Commission investigation and, in particular, research project selection processes – of course, within the context of the Commission's legislation and available

resources. Project Harlequin is such an example. The Commission was considering undertaking research into the misconduct risks associated with Critical Incidents. The Committee's interest, consistent with a broader public interest, was a factor in that consideration.

o Do you find that any of these interactions overlap?

The respective roles of the Inspector and the Parliamentary Committee are clearly delineated in the *Police Integrity Commission Act 1996* with little room for overlap. The Inspector is principally concerned with the Commission's, and its staff's, compliance with the law while the Committee has a broader interest in the exercise by the Commission of its functions.

2. The relationship between staff performance and agency performance

o Do you have a staff performance management tool?

Yes. The Commission's Performance Review, Feedback and Management (PRFM) System provides a basis for accountability in performance. Individual performance plans, based on key responsibility areas identified within position descriptions, serve to link the daily activities of staff to Job Description Accountabilities, to Business Unit strategies and to the Commission's Corporate Objectives.

The system is favourably regarded by staff significantly surpassing Cluster and Sector averages in the *NSW Government Public Service Commission People Matter Employee Survey 2012* in regard to: understanding personal contributions to organisational objectives; the clarity of the criteria against which performance is assessed; and consistency in the level of useful feedback enabling delivery of required results. The relevant statistics from the Public Service Commission survey report are as follows:

Survey Question	PIC % +ve	Cluster % +ve	Sector % +ve
My performance is assessed against clear criteria	92	59	61
I receive regular feedback on my performance	77	57	52
In the last 12 months I have received a formal performance appraisal/review	87	50	49
In the last 12 months I have received informal feedback on my performance	83	74	66
I receive useful feedback on my performance to enable me to deliver required results	92	66	61
I feel I make a contribution to achieving the organisation's objectives	96	87	84
I understand how my work contributes to my organisation's objectives	100	93	92

- o *Does your agency use this tool to assist in the measurement of the performance of the agency as a whole?*

In the Commission there is a direct link between individual performance and organisational performance. Achievement of individual performance plan objectives contributes to the achievement of project and business unit objectives, which in turn contributes to the achievement of corporate objectives. The results of lower level performance reviews inform reviews of performance in successive project, business unit and corporate levels.

3. The relationship between internal audit and external audit

- o *Is there an overlap between the matters that are subject to internal audit and external audit?*

The Commission undertakes a range of internal audits to provide management with assurance around compliance with specific legislative obligations and/or to manage risk. For example the Commission routinely audits and accounts for its personal protection equipment, exhibits, intercepted telecommunications information holdings, its use of Assumed Identities and accesses by staff to external databases. However, for the purpose of responding to this discussion point it is assumed that the Committee is referring to the Commission's internal audit framework as implemented in accordance with tpp 09-05.

The Commission has had formal risk management processes in place for a number of years canvassing operational risks (in investigations), risks to projects and corporate risks. The Commission's processes were further developed in order to implement tpp 09-05. The Commission's Enterprise Risk Management Framework (which is now the subject of an assurance review by SunCorp) has evolved and specialist approved contractors¹ undertake routine audits of higher risk activities oversighted by an Internal Audit and Risk Committee which operates in accordance with the independence and governance arrangements outlined in the Treasury policy.

There are three external agencies which audit the Commission's practices:

1. The Inspector of the Police Integrity Commission can audit any aspect of the Commission's operations for the purpose of monitoring legal compliance. The Inspector recently commenced auditing Commission investigations that result in a public hearing. The audit comprises a review of selected material from the case file, may include interviewing relevant staff and other activities as the Inspector sees fit. To date the Inspector has audited Operation Binda and is presently auditing Operation Calyx.
2. The Ombudsman audits the Commission's compliance with its obligations in the *Telecommunications (Interception and Access) (NSW) Act 1987*; the *Surveillance Devices Act 2007*; and the *Law Enforcement (Controlled Operations) Act 1997*.

¹ As part of the implementation of tpp 09-05, in mid 2008 the Commission decided that it would engage external specialist contractors to conduct assurance and compliance audits as this would provide the Commission with independent advice on a broad range of areas relating to its business systems as well as being more cost effective than employing a full time internal audit team. A number of different companies have been used including Deloitte, O'Connor Marsden and Sun Corp.

3. The Audit Office of NSW audits the Commission's financial controls and financial statements. The Commission can also be subjected to a compliance or performance audit by the Audit Office.

While there is some potential for overlap this is offset by the differing purposes for internal and external audits. External audits are principally concerned with assessing the Commission's compliance with the law and financial management standards. While internal audit is concerned with these matters, it is also concerned with providing assurance independent from operational management on the Commission's management of risk more broadly. For example, the current internal audit program canvasses the Commission's controls associated with disaster recovery planning; workplace health and safety; business planning processes; and investigation information and records management.

External audits and their results are assessed by the Internal Audit & Risk Committee and inform decisions about future audits. The potential for inefficiencies through overlap is readily managed by the Commissioner, with advice from the Internal Audit & Risk Committee and the Commission Executive.

o If so, how does your agency manage discrepancies between the internal and external audit?

Overlaps are likely to be rare as the respective processes can be (and are) managed to avoid duplication of effort. In the unlikely event that an overlap occurs and there are discrepancies, these will be considered by the Commissioner with advice from internal and external auditors, the Internal Audit & Risk Committee and the Commission Executive, and a determination made. That said, there may be circumstances where some overlap or perhaps follow-up is desirable. Where an external audit expresses doubt about the strength of a particular control, the Commissioner or the Committee may require a more detailed audit be undertaken internally in order to determine whether change is necessary or to provide assurance that the control is adequate for the risk it addresses.

4. Role of external-agency peer review

o Are there agencies similar to your agency in other jurisdictions?

The principal functions of the Commission are to prevent, detect and investigate misconduct by sworn and unsworn members of the NSWPF and members of the staff of the NSWCC. The Commission is required by its legislation to turn its attention to serious misconduct. The Commission's role is therefore quite narrow in terms of the organisations it oversees and the scope of its operations. For example, the Commission does not oversee a range of other public sector organisations as do the Queensland CMC, the Victorian IBAC and the Western Australia CCC. Unlike Ombudsmen the Commission is not a complaints administration organisation – complaints are but one source of potential investigations for the Commission. It is this narrow focus on the most serious misconduct by staff of two agencies, the NSWPF and the NSWCC, which substantially distinguishes the Commission from other agencies.

That said, while there are significant differences at agency level, there are common elements to much of the work. For example, a number of the anti-corruption agencies have similar powers and use similar strategies to undertake investigations. There are also common approaches to research and prevention.

- *Have you considered utilising senior staff at a similar agency to undertake an audit of a specific program of yours?*

Yes, this has been considered on a number of occasions. The Commission is not averse to audits by senior staff from other agencies, however, there are difficulties, particularly in respect of investigations, difficulties which arise from the secrecy provisions of the Commission's legislation. Audits would be limited to the processes used in investigations, a role already performed by internal auditors in the context of tpp 09-05.

There are other issues including the difficulty in a senior officer being made available by their agency for such a time consuming task and possible biases in favour of the way things are done in the other agency. Audits by senior staff of other agencies have therefore not been pursued.

However, it is not uncommon for the Commission's investigation practices to be compared or checked externally and for prevention research methodologies to be tested against best practice. For example, each year from 2003-2006 a Commission investigation report was subjected to external review by a panel of very senior officers from the ICAC, the Administrative Appeals Tribunal, the NSW Community Relations Commission, the Audit Office of NSW and the Queensland CMC. This was done to assist determine the extent to which the reports clarified the circumstances surrounding matters where serious police misconduct had been alleged. These reviews provided useful feedback to the Commission.

In addition, the Commission and the ICAC, which frequently share resources and information on investigative strategies, have had preliminary discussions comparing and contrasting:

- a. How each agency measures the timeliness of its investigations.
- b. How each agency reports on individual investigations.
- c. How the Executive review each investigation.
- d. The content of Executive investigation updates.

The intention is to develop time based and other metrics for implementation in our Case Management system which employs similar technology to that used by the ICAC. Traditional manual options for capturing, collating and analysing the necessary data are resource intensive and external comparisons problematic. The implementation of the new Case Management Systems, with similar technology also presents opportunities for the development of common metrics and a basis for objective benchmarking, subject to the development of a common set of investigation phase 'markers' and core definitions such as "*When is an investigation finalised?*" This work is in the very early stages and there is no timeframe for completion at this stage.

In terms of its prevention function, when the Commission undertakes a new form of analysis the methodology is usually benchmarked against best practice up to and including external review of draft assessments. The Commission also routinely tests its approach to a new research subject externally with subject matter experts from academia and other agencies.

- *What benefit do you think this would have?*

Given limitations on access to operational information and the necessary focus on process, it is unlikely that audits by senior staff from a similar agency would bring anything of value that

could not otherwise be obtained through the Commission's internal audit program or through existing liaison arrangements with agencies.

Notably, the Inspector's audits have a much greater potential for benefits as they are not limited to processes, the Inspector having unfettered access to Commission records. Benefits include an informed external perspective which may lead to improvements in process rigor and the strength of controls.

o What could be the possible pitfalls?

These audits are constrained to focus on process and therefore potentially duplicate mandatory internal audit efforts. There is a difficulty in identifying a suitable auditor who can be spared for the task and there is a potential for bias in favour of an officer's own preferred strategies.

5. Servicing stakeholders

o Who are your key stakeholders?

NSWPF
NSWCC
Inspector of the PIC
Parliamentary Committee on the Ombudsman, the PIC and the NSWCC
Parliament
Ombudsman
NSW Public

o Have you surveyed your stakeholders to ascertain their thoughts on your performance?

The possibility of conducting stakeholder surveys has been considered but not pursued.

The Commission is an investigative agency with coercive powers which imposes some obligations on the agencies that it oversees, it does not provide a 'service' and the NSWPF and the NSWCC are not customers.

In terms of a survey of rank and file officers in the agencies the Commission oversees, there is no benefit to officers in responding, the response rate is therefore likely to be low and unrepresentative of all officers. Responses may also be influenced by particular groups to reflect a common view. Responses are likely to be skewed or otherwise imprecise.

An alternative might be to survey for a NSWPF or NSWCC corporate response on the Commission's performance. However, this is unnecessary as there are already measures in place which directly go to the NSWPF and NSWCC position on the performance of the Commission. The Commission measures the rate of acceptance by the NSWPF and the NSWCC of its recommendations for disciplinary action and for changes to systems and practices. While these are 'proxy' measures in terms of agencies' perceptions of the Commission's performance, the linkage between: 1.) the quality of the outputs (the recommendations) and the strength of the underpinning evidence and research; and, 2.) the assessment of the recommendations independent of the Commission and subsequent acceptance; is clear. They are a more direct and potentially less subjective measure of a corporate perception of the Commission's performance.

Survey of an agency's rank and file officers as an input to assessing the Commission's performance is not appropriate for an oversight agency and the results, irrespective of the validity of the survey questions, is likely to be unhelpful. A survey for a corporate response would seem unnecessary. However, there may be scope for surveying the Inspector and possibly the Ombudsman, but timing will be an issue. Neither is likely to be prepared to provide a view on the Commission's performance at the beginning of or during their tenure at the risk of offering a view which might later be inconsistent with findings in an investigation. They may also be concerned about an apprehension of bias by prospective complainants in the event of a positive performance review. A survey just prior to separation might be something to consider.

A survey of a sample of the NSW public, including complainants, is unlikely to be informative as most of the Commission's work is not broadly canvassed in public.

o If so, when did this last occur?

Not applicable.

6. Role of an organisational review

o Has your organisation been the subject of an external organisational review?

The Parliamentary Committee on the Office of the Ombudsman and the PIC conducted an extensive "*Ten year review of the police oversight system in NSW*" in 2006. In respect of the Commission, this review considered:

- ☐ the appropriateness of its role and functions;
- ☐ the extent of powers available to perform its functions;
- ☐ its management structure, funds and resourcing; and,
- ☐ accountability mechanisms.

The Committee also considered more broadly the efficiency and effectiveness of the current oversight system and the scope for further efficiencies and effectiveness.

In addition, the validity of the policy objectives of the *Police Integrity Commission Act 1996* and whether the Act remains appropriate for securing those objectives have been reviewed by the Minister on three occasions – in 2002, 2007 and 2011. A further such review is expected in 2017.

o If so, how was this funded? What benefit did your agency derive?

These reviews were externally funded. Of course, considerable Commission resources were devoted to researching for and preparing submissions and responding to specific queries.

The principal benefit derived from each of these enquiries was unequivocal support for and a renewed confidence in the system of police oversight put in place following the Royal

Commission into NSWPF and the role of the Commission in that system as an independent specialist agency preventing, detecting and investigating serious misconduct. There has been consistent support for the framework as the right framework for NSW in each review. Other benefits included the streamlining of complaints processes and the mechanisms for establishing Joint Task Forces, and the introduction of mandatory reporting of officer misconduct to the Commission.

o If not, would you be interested in such a review if it was externally funded? ☐ Why, why not?

Independent review by those with the necessary skills and a capacity to fully understand the NSW police oversight framework and the Commission's role in it can be useful for a range of reasons: as an input to strategy development, to support external legitimacy, to drive improvement if found wanting, or, to provide assurance that an organisation is working efficiently and effectively.

The Commission has therefore considered the possibility of an external review of organisational structures and processes before. The Commission has also sought external assistance in the development of its early corporate planning processes and performance measures. The most recent occasion the Commission considered external review (re. efficiency of structure) was late in 2012. After considering a number of potential reviewers, it was decided that identifying a suitable, available person with the requisite skills and experience to undertake the review for the Commission was problematic. The Commission is quite unusual in its narrow charter and obligation to turn its attention to serious misconduct. It is simply quite difficult to identify a person with practical experience in small, specialist organisations operating in the anti-corruption environment who might add value beyond that which the Commission receives through the internal auditing program implemented in response to tpp 09-05 or in audits undertaken by the Inspector.

7. Key Performance Indicators and Measures

o Do you have a diagnostic tool for 'testing' the effectiveness of your KPI's? For example, do you use the 'SMART' tool? (Specific, Measurable, Achievable, Relevant and Timed)?

Not specifically, however, the principles are commonly applied. The Commission's most recent KPI's were determined as those most suitable for monitoring and assessing its performance in undertaking planned strategies or in achieving Corporate Objectives. They were developed by the Commission Executive during four planning sessions in 2012 in consultation with managers and staff in a process which compared and contrasted draft indicators with those used by other agencies with similar functions and those proposed in relevant research literature.

In terms of its broad approach to planning, the Commission takes its lead from the Audit Office, Treasury and other public sector agencies, particular those with a regulatory rather than a service oriented role. For example, planning in the Commission references the Audit Office's Better Planning Principles guidelines. The Commission's hierarchical planning approach is modelled on that used by Treasury and many other public sector agencies. High level, strategic Corporate Planning drives more detailed internal Business Planning, which in turn provides direction for Project Planning, Investigation Planning and Individual Performance Planning, in processes which are integrated with the Commission's Enterprise Risk Management Framework.

o *Do you track trends over time?*

Performance against each KPI is tracked for as long as the KPI remains valid.

o *Do you cost specific programs?*

Yes, however, the Commission only has one program: *Prevent, detect and investigate serious officer misconduct*. For internal budgeting purposes, costs are further broken down by business unit.

o *Do you periodically review program objectives?*

The Commission's Corporate Objectives are its program objectives. The Objectives are reviewed every three years or earlier in the event of some major change in function (ie. a change in jurisdiction). Performance in respect of achieving Corporate Objectives is reviewed and reported upon annually.