

**SECOND OMBUDSMAN SUBMISSION**

for the

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

concerning

Ten Year Review of the Police  
Oversight System in NSW

September 2006

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## **Introduction**

The Ombudsman thanks the Committee for an opportunity to provide further submissions in response to various of the matters raised in evidence and written submissions during the Ten Year Review of the Police Oversight System in New South Wales.

This submission will deal with the various examples provided, particularly in the submission of NSW Police, by providing further information about them, including how matters were managed by the Ombudsman's office.

Many of the issues raised in the submissions and evidence are already addressed in the Ombudsman's written submission, and in answers to questions of the Committee. Therefore, it is not proposed to address these matters again. This includes issues such as the distinction between the roles of the Ombudsman and the Police Integrity Commission (the PIC), and the reasons for the Ombudsman reducing its reliance on the c@tsi computer system.

## **General comments about evidence before the Committee**

Before providing specific comments on matters contained in the submissions, either where specifically requested by the Committee, or for the further information of the Committee, it may be helpful to make some general comments about the evidence now before the Committee.

### ***No case for change***

There is general agreement in submissions and evidence that there have been positive changes in the ten years since the Royal Commission into the NSW Police Service (the Wood Royal Commission) made recommendations to reform corruption prevention and complaints handling within NSW Police. Evidence for this included a marked increase in the number of police officers who are willing to come forward and report misconduct, and substantial improvements in complaint handling by police commanders.

Despite these improvements, there were sharp distinctions in the views of various agencies about what should arise out of this review.

On the one hand, organisations such as the Public Interest Advocacy Centre (PIAC) and NSW Council for Civil Liberties submitted that police commanders should not undertake investigations in respect of complaints. Their evidence reflects the views of much of the community. For example, a survey conducted by the Queensland Crime and Misconduct Commission found that more than 80% of persons agreed with the statement "*Complaints against police should be investigated by an independent*

*body rather than police themselves*”. These results have been consistent for a number of years.<sup>1</sup>

Directly opposed to these submissions were the submissions put forward by NSW Police and the Police Association of NSW (the Police Association) seeking greater independence and less oversight of police commanders and others within NSW Police who deal with complaints. On the part of NSW Police, this submission was premised on matters such as the resources required to assess complaints and provide information to external oversight agencies.

The evidence of oversight agencies (the PIC, Office of the Inspector of the PIC and Ombudsman) was somewhere in the middle, supporting the present system, which is generally consistent with the recommendations made by Justice Wood.

In our submission, given the consensus that there have been significant and positive changes within NSW Police since the current corruption and complaints oversight arrangements were established, strong evidence should be required before substantial reforms are made to these arrangements. Rigorous oversight of NSW Police by the Ombudsman and the Police Integrity Commission has been integral to the improvements made. Without this oversight, it is unlikely that positive changes would have occurred to anything like the extent they have, if at all. History has not reflected well on the capacity of NSW Police, without close oversight, to either resist corruption or deal effectively with complaints.

Various aspects of the NSW Police submission are dealt with in detail below. As a general comment, however, that submission puts forward a number of examples to demonstrate a need for change. A close examination of those examples shows that, in a number of instances, incomplete or wrong information has been provided to the Committee. If NSW Police cannot provide full and correct information to the Committee for so important an inquiry, this weighs heavily against making recommendations to reduce current oversight arrangements.

Other than these examples, there is little hard evidence in either the submission of NSW Police or the Police Association to demonstrate the need for an overhaul of the current oversight of complaints. In this respect, it is not entirely clear the nature of changes NSW Police is seeking – a reduced role for the Ombudsman, or that there be only one oversight agency for NSW Police. Which ever of these it is, there is a lack of evidence to support the changes sought.

Added to this is the evidence of senior police which suggests a lack of a basic understanding of complaints handling in NSW Police. For example, evidence that serious complaints are handled in the same manner as less serious matters<sup>2</sup> is clearly not correct. Another example is the evidence of the commander of the Professional Standards Command, who did not know that the Ombudsman oversighted almost all serious complaints.<sup>3</sup>

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<sup>1</sup> Crime and Misconduct Commission, Public Perceptions of the Queensland Police Service (page 27), June 2006

<sup>2</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, page 8

<sup>3</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, page 14

If senior police do not fully understand the complaints process, it is difficult to rely upon that evidence to support a reduced role for oversight agencies in ensuring effective handling of complaints.

***Where change is required – less serious complaints***

What is clearly evident from the NSW Police submission, and reflected in the submission of the Ombudsman, is that there is a need for change to the processes within NSW Police for dealing with less serious matters. There is a need, becoming increasingly urgent as commands are having to reduce their administrative staff, to free up commanders to take charge of how they manage less serious complaints. We have recommended changes to allow commanders to deal with less serious complaints without the involvement of complaints management teams.

Another matter is that new commanders receive no training for complaints management, despite the expectations of them to manage complaints effectively.<sup>4</sup> NSW Police advice states that a significant failing of the current complaints system is that officers can move into supervisory positions without experience in dealing with less serious management issues and progressively, more complex matters. This is something, however, we believe can be achieved within the current complaints environment, particularly if less serious matters are handled more directly.

While experience in dealing with complaints is valuable, it is not a replacement for proper instruction for new commanders about managing complaints.

Increasing the training provided to local commanders and reducing the administrative burdens upon them when dealing with less serious complaints are part of the solution to foster more efficient and effective management of less serious complaints. These may be matters upon which the Committee may consider making recommendations.

***Narrowing the definition of complaints***

NSW Police and the Police Association have recommended a narrowing of the definition of “*complaint*” in the Police Act. Their submissions and evidence suggest this is a panacea for many of the present problems of commanders in dealing with less serious complaints.

There are a number of difficulties with this approach. First, the Class and Kind Agreements provided for in the Police Act have already removed thousands of management and customer service matters from external oversight.

More significantly, adopting a restricted definition of complaint as proposed could remove many matters from any possibility of external oversight including:

- conflict of interest issues

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<sup>4</sup> Letter from Professional Standards Command to Ombudsman, 15 August 2006

- improper associations
- issues of race, sex, and other discrimination falling short of criminal conduct or serious misconduct
- issues of poor police service which result in death or serious injury, where it is clear at the outset that the matter involves a question of judgement as opposed to misconduct
- complaints concerning matters such as DNA testing and mistaken or wrong records being kept by police of such matters, despite the potential for a miscarriage of justice
- complaints about search and arrest by police where complainants allege inappropriate or unreasonable conduct as opposed to criminal conduct or serious misconduct
- police actions which result in significant financial impact on complainants, where the conduct is unreasonable but is not alleged to be criminal conduct or serious misconduct – such as police damage to property while executing searches, or wrongful police seizure of property
- a failure to properly observe custody procedures including ensuring attendance by ambulance officers upon injured persons in custody, or otherwise complying with lawful requirements of custody – matters that may not be criminal conduct or serious misconduct
- gross incompetence in investigations or prosecutions leading to the failure of criminal charges and significant costs orders being made against police
- poor treatment of internal police complainants (whistleblowers) that falls short of criminal conduct or serious misconduct
- inappropriate access and use of information falling short of criminal conduct or serious misconduct.

In our submission, and given the sceptical view of the community about police investigating police, as demonstrated in surveys and evidence before the Committee, such matters should be the subject of rigorous external oversight.

### ***A recent change of position***

Between 2002 and 2005 the Ministry for Police conducted a number of consultations on amendments as part of a review of the Police Act 1990, including consultations about Part 8A. The recommendations arising out of those discussions, reached largely by consensus, emphasised the role of each agency in the handling of complaints about police officers. Never in those discussions did any agency or interested party,

including NSW Police or the Police Association, suggest the need for a radical change to the oversight arrangements of the type put in evidence before the Committee.

Nor was this view expressed in meetings between the Ombudsman and Police Commissioner, and between senior officers of both organisations.

Given the long history of cooperation and the open relationship between the Ombudsman and NSW Police, it is particularly disappointing that the first time these and other issues have been brought to the table is in the evidence from senior police officers before the Committee.

By way of contrast, there is nothing in the Ombudsman's submission or our views about how police complaints might be better handled that has not previously been communicated to NSW Police or the subject of formal or informal discussions.

This lack of openness by NSW Police is further evidence as to why there would be little confidence in entrusting that agency to deal properly with complaints in the proposed circumstance of reduced oversight by external agencies.

### ***What the Ombudsman brings to oversight***

A final issue to be addressed is the benefits or otherwise of having two agencies involved in overseeing NSW Police.

The various submissions deal with the cogent and compelling reasons for and advantages in separating the functions of corruption fighting and complaints handling for NSW Police, as they are for the remainder of the NSW public sector.

However, a particular matter about which no specific evidence was provided to the Committee is of the unique qualities that the Ombudsman can contribute to the oversight of police complaints.

First, the Ombudsman brings a non-police perspective in dealing with complaints. This is an underlying principle of civilian oversight of police and provides some assurance that police are acting not only consistent with the expectations of their commanders or peers, but also in a manner consistent with the expectations of the community at large. That is not to say that the Ombudsman does not have available to it the expertise of persons who have worked in policing organisations and other criminal justice agencies, and the expertise build up over 30 years of experience in dealing with NSW Police and complaints about police officers. This is balanced by a broad cross-section of the community who contribute to the Ombudsman's policing function, including those with wide public and community sector experience.

Another particular benefit of Ombudsman oversight is the contribution of a broader public service perspective to NSW Police. We bring best practice initiatives in complaints handling and managing internal witnesses to our considerations in dealing with NSW Police. We build on our relationships across the Ombudsman's office, and in the broader public sector, to inform and improve the practice of police officers.

Moving to a model where only the stand alone and specialist Police Integrity Commission oversights an organisation which, unlike much of the remainder of the public sector, very rarely recruits outside its ranks for senior positions (or indeed for any management positions), increases even further the risks that NSW Police will be isolated in many of its practices.

## **NSW Police Submission and Evidence**

### ***Response to Specific Examples in Police Evidence***

The Committee has specifically requested a response by the Ombudsman to examples raised in the NSW Police submission and in the evidence of Mr Carroll, which are said to demonstrate criticisms made of police by the Ombudsman on an unrelenting basis that are unlikely to lead to anything significant<sup>5</sup>.

We approached Mr Carroll and requested the complaint reference for each of the examples. A response to each of the examples provided by Mr Carroll is attached at appendices A-D of this submission. The case studies provided in the NSW Police written submission are at appendices E-G. We make the following comments in respect of each:

#### *Example 1 – Police accessing COPS while on sick report – Appendix A:*

This complaint raised a systemic issue – officers accessing confidential information while on long-term sick report. This issue was identified by Ombudsman officers and raised with the Commissioner who referred the matter to Mr Carroll, who in turn referred it to the Executive Director – Human Resources for consideration of a clear policy for all local commands. In addition, our recommendation that advice be provided to the investigator and Probationary Constable involved in the matter was accepted and acted upon by the local commander. Further, it was the local commander who first assessed the matter as a Category 2 complaint and not as a local management issue (LMI). We agreed with this. When the commander advised he wished to downgrade the matter, we recommended otherwise and this view was accepted by the commander, who raised no concern about our position.

#### *Example 2 – Intervention by off-duty police officer – Appendix B:*

The account given of this matter in evidence is incorrect in that Mr Carroll states neither compliance officer interviewed by police supported the allegations in the complaint. While the compliance officers agreed the police officer did not try to change the conduct of their investigation, they agreed to informal management of the matter provided the officer was spoken to about his aggressive behaviour. And despite the views of Mr Carroll in criticising our review, it is interesting that two senior officers from NSW Police, a local commander and professional standards manager, have criticised the police investigation. Further, the matter raised a systemic issue in that it was considered as part of an audit by the Ombudsman of the Complaint Allocation Risk Appraisal trial, where deficiencies in the management of

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<sup>5</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, page 3



risk in this matter were identified. The Ombudsman has made a number of recommendations as a result of our audit, all of which have been accepted by NSW Police.

*Example 3 – Police management of person attempting self-harm – Appendix C:*

In this matter, the evidence provided by police before the Committee is incorrect in that the Ombudsman did not require further investigation of the complaint, so much as request further information to explain what occurred during the incident. We suggested existing records may suffice. In this respect it should be noted that the police evidence to the Committee was in some ways more detailed than the report provided to the Ombudsman for our statutory functions of review under Part 8A. When the local commander provided the additional information, he apologised that it was not provided with the original report. On receipt and review of this material, we were satisfied with the police handling of the matter.

*Example 4 – Alleged police harassment of husband and wife – Appendix D:*

This example raises a similar issue to that in Example 3, in that after police provided some additional information and following a review of the matter by a senior Ombudsman officer, it was agreed that no further investigation was required by NSW Police.

*Case study 1 from NSW Police submission – Police officer attending school without permission – Appendix E:*

A review of the facts in the complaint file of this matter suggests there is little resemblance between the real facts and those outlined in the NSW Police submission. For example, it was a female student who was involved in an altercation with the officer's sister, not schoolboys. The police officer did not attend class and give an informative talk on the perils of bullying including the prospect of jail, as stated in the police submission; he spoke to the female student only, outside the classroom, and as a result she was visibly shaken and upset. And the management outcomes included not only counselling, but also attendance by the Probationary Constable at a CMT so that concerns could be clearly and concisely articulated. In addition, the officer was required to write an apology to the Principal.

*Case study 2 from NSW Police submission – Officer with “bikie” family member – Appendix F:*

Police advice in respect of this example is that it is in fact “made-up”. We have identified an actual complaint matter that bears a fairly close resemblance to the matter in the police submission. It demonstrates the clear risks such issues present, and some options for commanders in managing these matters.

*Case study 3 from NSW Police submission – Complaint with no substance – Appendix G:*

The police submission in respect of this matter is open to an interpretation that an investigation was required of this complaint. This is not the case. The matter was

received and assessed by the PIC as a Category 2 complaint. Only after police failed to act on the matter at all did the Ombudsman assess it, and while we agreed that legally it was a complaint, we advised police to decline any investigation of the matter.

As part of the current review by the Ministry for Police in relation to the police complaints system, the Ombudsman has suggested an amendment to the Police Act that would relax the current strict requirement that any complaint against a police officer must be registered on the complaints information system, but would at the same time maintain the integrity of the system as a record for police complaints. In brief, our suggested amendment would allow matters not to be registered if both the Ombudsman and NSW Police agree to this course. Such an amendment would provide additional flexibility when dealing with complaints which clearly have no substance, so as not to require them to be entered on the complaints information system. This may be a matter about which the Committee may wish to consider a specific recommendation.

### *Summary*

The Committee is invited to examine closely the full facts of each of the examples provided by police as set out in Appendices A-G of this submission. In our view, close examination demonstrates a mature complaints system which includes the following features:

- The Ombudsman ensuring that relevant information is provided to oversight serious complaints, while declining any investigation in respect of matters with no substance.
- Commanders doing their job investigating complaints raising serious issues.
- The Ombudsman holding commanders to account for the management of those matters, including identifying investigative deficiencies and opportunities to improve the conduct of police officers.
- Police officers and Ombudsman staff resolving issues by discussion with, or review by, senior officers of both organisations.
- The Ombudsman identifying system issues as a result of our oversight, for consideration and action by NSW Police.

The examples are, if anything, compelling evidence to retain the existing arrangements for oversight of police complaints.

### *Evidence concerning ‘the 500 matters’*

At an early stage of his evidence, Mr Carroll outlined an example of the Ombudsman serving a notice on NSW Police to “*contact in excess of 500 individual complainants*

*for minor matters to establish their level of satisfaction, despite these matters being agreed upon in the 122(2) agreement that they were not to be treated as complaints.”<sup>6</sup>*

Later in his evidence, Mr Carroll returned to the “*example of a recent notice served on NSW Police to contact 500 individual complainants to see if they are satisfied*”.<sup>7</sup> Mr Carroll stated that 30 officers from his area dealt with the matter and many field executive officers.<sup>8</sup> This matter was also the subject of evidence of Mr Wood<sup>9</sup> and Mr Cohen<sup>10</sup>.

A review of our records indicates that there was no investigation or requirement placed upon NSW Police to contact individual complainants in 500 minor matters.

It may be that Mr Carroll is referring to an investigation commenced in December 2004. This was the subject of a provisional report in December 2005, and a final report in April 2006. The investigation concerned the satisfaction of complainants with police management of section 122(2) or LMI matters. The relevant facts about that investigation are as follows:

- Local commanders are required to obtain information from complainants when dealing with customer service and other less serious complaints, and to record that information so that an assessment of the overall satisfaction of complainants with police management of these matters can be undertaken.

Reasons for collecting this information include the identification of commands that are not dealing effectively with customer service or other less serious issues, so that action can be taken to remediate the situation.

- NSW Police has developed a LMI data capture standard operating procedure requiring the collection of this information, and a standard checklist. The question as recorded on the checklist is: “*Are you satisfied with the action taken, or to be taken, to address the issues raised in your complaint?*”. Options for the response are “*satisfied*”, “*not satisfied*”, “*unable to be contacted or refused to provide information*”, “*complainant’s advice not obtained*” or “*anonymous*”.
- Despite the issue of collecting this information being raised by the Ombudsman in February 2003, and the requirement and standard operating procedure being in place since July 2004, reports provided to the Ombudsman by NSW Police indicated that local commands were completing checklists in less than one-quarter of matters. This widespread failure to properly record information meant the Ombudsman and NSW Police were unable to effectively assess whether commanders were effective in handling less serious issues.
- Because there was no clear path forward to resolve this matter, and in order to encourage compliance, in December 2004 the Ombudsman commenced a direct investigation requiring the completion of the checklist for local management and

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<sup>6</sup> Transcript of evidence, 24 August 2006, page 5

<sup>7</sup> Transcript of evidence, 24 August 2006, page 10

<sup>8</sup> Transcript of evidence, 24 August 2006, page 14

<sup>9</sup> Transcript of evidence, 24 August 2006, page 28

<sup>10</sup> Transcript of evidence, 24 August 2006, pages 63 and 64

customer service issues for matters completed in the first half of 2005. The expectation was that local commands would collect this information at the time of completing new matters, as required by standard operating procedures. Reports and checklists were required for the first two quarters of 2005 and resulted in 97% compliance with standing operating procedures. The reports demonstrated a high level of satisfaction with the handling of these matters, almost 90%.

- The Ombudsman’s report on this investigation recommended that information about complainant satisfaction for local management issues be provided for the first two quarters of 2006, and NSW Police develop and implement strategies to ensure continuing compliance with standard operating procedures.
- The first of those reports was received by the Ombudsman in May 2006, and demonstrated a significant decrease in compliance with standard operating procedures.
- Following a full assessment of these matters, the Ombudsman wrote to NSW Police in July 2006 asking for advice about a number of matters, including the steps proposed to be taken to ensure compliance in matters completed, and to maintain compliance into the future. The most recent police response indicates a significantly improved compliance by commanders.

Collection of complainant satisfaction information, if done at the time the complainant is contacted to discuss their complaint, ought not be a time consuming task.

The Ombudsman, for reasons outlined in the final report, remains of the strong view that information about the satisfaction of members of the public with police handling of minor complaints should continue to be collected and closely analysed. This view is also reflected in the advice of Assistant Commissioner Carroll of 16 January 2006, in response to the preliminary report, to the following effect:

*I agree that monitoring complainant satisfaction is important for good complaint management practice and NSW Police will continue to do this. However, in the interests of continuous improvement I have asked my staff to consider if there are options other than closure checklists that might be a more efficient way for NSW Police to achieve this.*

I note that, as at this time, we have not received formal advice as to any other options proposed by NSW Police for collecting this information.

### ***Dealing with minor matters***

Mr Carroll provided evidence in the following terms: “*we are still dealing with minor management issues in exactly the same manner, process-wise, as we are dealing with the serious end of the complaints situation.*”<sup>11</sup> A similar statement was made by Mr

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<sup>11</sup> Transcript of evidence, 24 August 2006, page 8

Moroney concerning the investigation of less serious matters<sup>12</sup>. However, the procedures for handling serious complaints and LMIs are different.

- Serious matters, including criminal allegations or complaints alleging serious misconduct, must be notified to the Ombudsman, and in some circumstances the Police Integrity Commission. These matters are to be dealt with in accordance with the requirements of Part 8A of the Police Act.
- Management issues and customer service issues are not required to be notified to the Ombudsman or Police Integrity Commission. Commanders are free to deal with those matters in the manner they see fit provided an appropriate record is made.

Our experience, informed by the audit of a number of these matters and our observation of their management across dozens of local commands, suggests some commanders deal with LMIs very effectively. They require little paperwork and decisions can be made very quickly. Some commanders do not take this approach, to the detriment of both their time and the proper management of the complaint. However, the management of these are matters entirely within commanders' purview, and how they are handled is not the consequence of the current complaints system mandated under Part 8A of the Police Act.

### ***The Class and Kind Agreements and the Commissioner of Police***

As to the role of the Commissioner of Police in the Class and Kind Agreement process, Mr Moroney has previously sought support for his inclusion as a party to that Agreement. Both the Ombudsman and Police Integrity Commission have advised the Commissioner that they do not support this approach, for reasons including the public interest being traded off for the sake of agreement, and the potential impact on the independence of the oversight agencies.

### ***ICAC matters***

Mr Carroll answered a number of questions by the Committee about complaints that were not notified to any relevant agency by the Independent Commission Against Corruption (ICAC), resulting in a significant number of matters requiring assessment and action.<sup>13</sup> His evidence suggested a significant diversion of resources was required of NSW Police in dealing with these matters.

The following relevant chronology of those matters is provided for the Committee's information:

- In early 2005 ICAC notified the Ombudsman that a significant number of police complaints received between 1 January 1977 and February 2005 had not been referred for action, despite the requirements of section 128 of the Police Integrity Commission Act. On 23 February 2005 staff from Ombudsman, ICAC and PIC met to discuss this failure.

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<sup>12</sup> Transcript of evidence, 24 August 2006, page 8

<sup>13</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, pages 10 and 11

- In April 2005 ICAC provided the Ombudsman with a schedule of 548 complaints, representing all those matters not previously notified.
- In May 2005 Ombudsman officers met with PIC and PSC officers to discuss the most efficient way of managing these matters, including an Ombudsman proposal for a specific Class and Kind Agreement to streamline the handling of them. This included the Ombudsman undertaking the initial assessment of all matters on behalf of agencies, thereby incurring the greatest resource impost. This was done to ensure the integrity and independence of the assessment process.
- Following agreement at officer level in June 2005, formal consultation occurred with the Commissioner of Police, and an agreement was then made between the PIC and the Ombudsman.
- On 20 October 2005, the ICAC provided copies of the complaints to the Ombudsman.
- In November 2005, the Ombudsman notified PSC of the completion of its assessment of 548 complaints, including the following:
  - 75 matters, were assessed not to be complaints.
  - 325 duplicate complaints were identified and removed.
  - 148 complaints not previously received were formally notified to NSW Police for registration in accordance with the Police Act.
  - Only 3 of the 148 complaints required further investigation by NSW Police. This was because most of the matters were very old, there were no reasonable lines of inquiry available, or on their face the matters were vexatious or frivolous.
- It has taken NSW Police until July 2006 to register 75% of the matters.
- There remain some matters NSW Police say should not be treated as complaints. The Ombudsman is still awaiting written advice about these.

### *Audits of local management and customer service issues – 2005 and 2006*

#### *“Desktop” audit*

The new Class and Kind Agreement commenced on 1 October 2004. In May 2005 we conducted an audit of 350 complaints registered on c@tsi between 1 October 2004 and 31 March 2005. This represented 25% of the 1339 matters that had been receipted on c@tsi in the period but not notified to the Ombudsman. The audit was done by Ombudsman officers and required no resources from NSW Police. 240 of the 350 matters were registered by 5 local area commands and one specialist command. The remaining 110 matters were registered by an additional 24 local area commands. The outcomes of the audit were as follows:

- 24 complaints that were wrongly classified by NSW Police as Category 2 were reclassified as LMIs.
- 18 complaints incorrectly classified as LMIs were reclassified as Category 2. After considering available material on c@tsi, the Ombudsman required NSW Police to provide an investigation report in relation to 4 of the 18 complaints, but did not require further investigation of any of these matters.
- NSW Police complied with all recommendations by 8 November 2005.

### *Physical audits*

In 2006 we are conducting audits of six local area commands. As at this time one of these audits has been finalised. From the many records examined, one Category 1 and five Category 2 complaints were identified that should have been, but were not, notified to the Ombudsman. Of these six matters, we are otherwise satisfied with the actions taken by NSW Police in relation to two of them. However, four matters require further investigation or advice. A further two matters were identified where advice was required from other local area commands.

Our preliminary view as to the other commands the subject of audit is that generally matters are being notified as required, although there are a range of issues, including compliance with computer access audits and local record keeping procedures, which we will discuss with certain of the local area commands audited and, if required, make recommendations to those commands or NSW Police. We have identified some very good practice during our audits.

Six audits of local area commands, or some 7.5% of all 80 local commands, is far lower than the 99% of local management issues which Mr Carroll suggested the Ombudsman audits.<sup>14</sup> This figure is clearly wrong.

In addition, the above evidence demonstrates that there are few matters that the Ombudsman requires further action upon following our local audits. Those matters that do require further action, however, raise issues appropriate for external oversight. Therefore, the statement of Mr Carroll that he is significantly concerned with Ombudsman requirements following audits and the amount of resources required to deal with those requirements is difficult to understand.<sup>15</sup> That said, if there is a legal requirement to appropriately register and report on matters, and deficiencies in this regard are identified in our audits, we will require NSW Police to meet their legal requirements. Characterising this as “*micro-management*” is, at the very least, problematic.

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<sup>14</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, page 11

<sup>15</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, page 11

### ***Ombudsman assessment of new complaints***

A further matter is how often the Ombudsman disagrees with police assessments.

In 2005/2006 the Ombudsman received 2084 complaints from NSW Police classified as Category 2. Of these, we agreed with 1955 or 94%, and disagreed with 6%. This included 41 complaints we classified as Category 1, and 88 we classified as LMIs.

We also received 410 complaints from NSW Police classified as Category 1. Of these, we agreed with the assessment of 347 or 85%. We disagreed with 15%, with 62 assessed as Category 2, and 1 complaint assessed as an LMI.

NSW Police also notified 130 matters they had assessed as LMIs. We agreed with the classification of 90 of these or 69%, and reminded commanders these matters did not require notification. We did not agree with the police assessment of the remaining 40 of the 130 matters.

In all, 179 LMIs notified by police were sent back to commanders to deal with directly without Ombudsman oversight. This is in addition to the 342 LMIs we received directly from complainants, which were provided to local commands to resolve without oversight.

Importantly, in the vast majority of matters – more than 90% – we agree with police assessments. And there is little evidence of commanders receiving calls requesting more formal management of matters they assessed as an LMI.<sup>16</sup> If commanders receive any advice about their assessment of a complaint, it is far more likely to be a letter advising them to manage the matter without oversight from the Ombudsman.

### ***Role of Ombudsman in serious complaints***

Mr Carroll stated in evidence that “*yes, relatively minor matters and managerial matters. That is overwhelmingly the role of the Ombudsman on those matters. The Ombudsman really does not deal with the serious end of complaints. The serious end of complaints is dealt with by the Police Integrity Commission*”<sup>17</sup>. This statement is clearly incorrect.

In 2004-2005, the Police Integrity Commission investigated or oversighted only 25 of the most serious complaints – Category 1 complaints. 472 Category 1 complaints were referred to NSW Police for investigation with oversight by the Ombudsman. These statistics have been reasonably consistent for many years.

Overwhelmingly, the Ombudsman is the oversight agency for complaints and investigations concerning matters such as conspiracies or cover-up, drug offences, bribery or extortion allegations, perjury allegations and allegations concerning fabrication or suppression of evidence. These are matters that should be known by the commander of the Professional Standards Command. A primary reason for this is

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<sup>16</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, page 12

<sup>17</sup> Transcript of evidence, 24 August 2006, evidence of Mr Carroll, page 14



that many of the Professional Standards Command’s investigations are the subject of Ombudsman oversight.

***NSW Police written submission***

As to particular matters in the NSW Police submission not already addressed above or in the Ombudsman submission, the following matters are noted:

- At page 7 the submission states “*the Ombudsman does not need to formally oversight every notifiable complaint under Part 8A. As the government intends to legislate to remove from Part 8A complaints that are not criminal allegations or violations of the Police Code of Conduct and Ethics, it appears likely that some change to the Ombudsman role will need to follow.*” While the Ombudsman understands that NSW Police is of the view that the definition of complaint in Part 8A should be changed, it is also our understanding that the government has reached no view in respect of this matter, and is awaiting the outcome of the Committee’s own review and a review that has been commenced by the Ministry for Police.
- At page 8 of the submission there is a reference to Part 8A of the Police Act being an “*industrial process*”. However, Part 8A of the Police Act is headed “*Complaints about the conduct of police officers*”, and outlines procedures for dealing with complaints. It is Part 9 of the Police Act headed “*Management of conduct within NSW Police*” that provides for industrial processes for police officers including the application of the Industrial Relations Act. This misunderstanding is further reflected in the almost total absence of any reference to the rights or expectations of complainants in the NSW Police (and Police Association) submission.
- At page 8 of the submission a series of statistics about complaint issues investigated and completed is provided. Care needs to be taken with these statistics, which refer not to individual complaints, but to issues arising from those complaints. For example, some complaints may have more than one issue, some of which may be substantiated and others which are not substantiated. In addition, the quality of data entered into c@tsi by NSW Police is variable, with more than 100 executive and other officers making entries.

Importantly, in order to determine whether a reviewable or non-reviewable action needs to be taken in respect of a complaint, enquiries must be conducted to establish whether there is any substance to the complaint issue. In many instances there will be no substance to the complaint issue or, alternatively, it will not be able to be proved to a sufficient standard. But that is not to say that those enquiries need not be conducted, nor for more serious issues that they ought not be the subject of external oversight by the Ombudsman. Indeed, experience has demonstrated that external oversight is the only safeguard to ensure that complaints are properly investigated by NSW Police.

- The Ombudsman has provided submissions and detailed material to the Committee concerning the c@tsi system, and our involvement in it. The submission at page 9 that “*the Ombudsman ceased to be a primary user of the*

*c@tsi system on the basis that it was a conflict of interest for it to rely on a police system to oversight police complaints” is frankly a misrepresentation of the Ombudsman’s decision concerning c@tsi.*

The primary reason the Ombudsman reduced the use of c@tsi was that it did not work properly, and could not meet the Ombudsman’s business needs. The sorry history of NSW Police in managing the c@tsi system, and the complete lack of confidence that any further requirements of the Ombudsman would be met in a timely manner, if at all, meant that any decision to rely on that system would have a significant risk to the independence and effectiveness of the Ombudsman’s office. The NSW Police submission in this respect is yet another example of incomplete or incorrect information being provided to the Committee.

- At page 10 of the submission it is suggested that a result of the Ombudsman not having an inspector is that NSW Police is required to have recourse to costly legal advice. The basis of this submission is not known to the Ombudsman, nor are any examples provided to the Committee in support of it. The Ombudsman submission comprehensively deals with the issue of an inspector, and why it is not necessary or appropriate for this office. However, even if an inspector was in place, that should have no impact on the requirement or otherwise of NSW Police to obtain legal advice in particular matters.
- At page 11 of the submission it is stated that the requirement for the Ombudsman to oversight complaints about police officers is an impediment to police taking full responsibility for managing those officers. It is also stated that even a minor complaint can effectively put an officer’s career on hold until it is resolved by Ombudsman oversight.

For reasons already stated, and included in the Ombudsman’s submission, minor complaints ought not be the subject of Ombudsman oversight, and if they are referred to the Ombudsman, would be returned to commanders for their own management. In addition, it is our understanding that only serious complaints will impact upon decision making concerning an officer’s promotion or transfer. Commanders routinely take action following completion of their investigations, and generally do not await advice of the Ombudsman. This is, in our view, appropriate.

- At page 12 of the submission the following statement is made *“The Ombudsman also has decided that if a matter is assessed as meeting the criteria of a complaint (i.e. could lead to any form of management action) then, unless the matter is declined at the outset under the legislation, any enquiries made, no matter how minimal will constitute an ‘investigation’... This includes the preparation of formal investigation reports”.*

This statement is inaccurate in a number of respects.

In the first place, only serious complaints (Category 1 and Category 2 complaints) are required to be notified to the Ombudsman. Many other matters, although they may lead to some management action – such as counselling, a warning or additional training – are not required to be notified to the Ombudsman.

In addition, while the Ombudsman does require a report of some form following the management of a notifiable complaint, we have consistently emphasised to commanders that we are happy to rely upon their own working documents and records for less serious complaints. Further, we have encouraged commanders and investigators, for matters that will not result in criminal or reviewable outcomes, to approach these matters in a less formal manner. NSW Police's own Complaint Practice Note, arrived at following consultation with the Ombudsman, emphasises flexibility in providing investigation reports to the Ombudsman, including principles such as having a minimum resource impost and being flexible and proportionate.

- At page 13 of the submission there is reference to a lack of consistency in how the Ombudsman approaches particular matters.

On occasion, Ombudsman officers may differ in how they view particular investigations. However, more than 90% of investigation are assessed as satisfactory, and in the 10% of matters where the Ombudsman may raise issues, overwhelmingly police act on the matters raised by the Ombudsman. Commanders are always free to disagree with our views, and where they do those matters are referred to the Assistant Ombudsman for further review. This assists in providing greater consistency to Ombudsman decision-making.

- At pages 14 and 15 of the submission it is suggested that the Police Integrity Commission oversees the management of complaints by NSW Police. With respect, this is entirely incorrect and contrary to the advice both of the Ombudsman and the Police Integrity Commission.

### **Other Matters**

The Committee asked a number of questions concerning the NSW Police Executive Complaint Management Team (ECMT). For the Committee's information the ECMT comprises certain senior officers of the Professional Standards Command, and reports directly to the Commissioner. The ECMT makes recommendations to the Commissioner for the management of complaints involving NSW Police SES officers. The ECMT business rules include separate procedures for dealing with complaints concerning the Assistant Commissioner, Professional Standards Command and the Commissioner. The ECMT rules were significantly revised following concerns raised by the Ombudsman that they failed to adequately deal with conflicts of interest which may present when dealing with complaints against senior officers. Those revisions were consistent with recommendations made by this office.

Both the submission and evidence of the PIAC discussed the question of what information ought be provided to complainants at the end of an investigation. The Ombudsman has worked in two ways to seek some resolution of this issue:

- Since 2004 the Ombudsman has been aware of a reluctance of some local commanders to release anything other than the minimum of information to complainants (and often subject officers) in respect of complaint matters. Since

that time we have been pushing NSW Police to provide clear guidance to commanders about what information might be provided to complainants at the end of an investigation, including what documents might be provided to them. This approach is intended to prevent commanders advising complainants who requested further information to make an application under the Freedom of Information (FOI) Act. Progress in relation to these matters has been somewhat slow, and recently the Ombudsman offered to prepare a first draft of procedures for consideration by NSW Police. We are hopeful to have some resolution of these matters, and better information provided to complainants, in the near future.

- The Ombudsman has also investigated the failure of NSW Police since at least November 2004 to meet its statutory requirement as regards timeliness for dealing with FOI applications. While there was some progress in reducing the backlog of matters during 2005, the situation had again deteriorated such that in 2006 the backlog of applications was approaching 1000. As a result of our investigation and the implementation of a workload analysis as recommended by us, another 9 positions are presently being recruited within the NSW Police FOI Unit.

**Appendix A – Example 1 from evidence of Assistant Commissioner Carroll<sup>18</sup>**

*Internal police complaint concerning access to confidential police information by officers on long-term sick report*

Complaint and police investigation

Constable A had been on long-term sick leave from December 2004 until medically discharged in April 2006. An audit of his use of the Computerised Operational Policing System (COPS) found that he had made three separate accesses to COPS during this period and had printed off records relating to each access. The records accessed concerned two persons previously arrested by Constable A in 2002 and 2004.

Such accesses are likely to raise concerns as, while on sick report, there are few reasons why an officer should access confidential information on COPS. Issues of improper access to information by police have been highlighted on many other occasions.

NSW Police conducted an investigation. Constable A was unwilling to participate in a formal interview. Informal discussions were held but no written record of them was included with the investigation papers. The investigator found no evidence that Constable A had made accesses for any criminal purpose. Constable A did however fail to obtain proper authorisation for the accesses, and failed to make a record of them in contravention of the relevant procedures and the NSW Police Handbook.

Another matter identified in the same audit involved a Probationary Constable who has accessed COPS while on sick report. Again, no proper record of the accesses was made.

Ombudsman assessment and the police response

On the information provided the Ombudsman was satisfied that the accesses for both officers could not be found to be for a wrong purpose.

We wrote to the local commander advising that we would accept the investigator's advice despite the absence of any written record of his interview with Constable A. However, we recommended that the commander remind the investigator of the need to document interviews when conducting an investigation, which is a very basic requirement.

We also asked that the Probationary Constable be reminded of the need to record his reasons for accessing COPS information – this was as much to protect the interests of the officer as to ensure proper use of confidential information.

Our letter commended the commander for identifying the systemic issue of officers on long-term sick leave accessing COPS, and noted with approval that an instruction had

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<sup>18</sup> Transcript of evidence, 24 August 2006, page 3

been issued to the Command's Injury Panel to ensure the removal of COPS access for officers on long-term sick leave.

In June 2006, the local commander replied, noting that a copy of our correspondence had been forwarded to the investigator to view our comment relating to witness records. The commander also advised that the Probationary Constable had been reminded of the policy requirements for recording of reasons for access, and instructed not to access COPS while on long-term sick leave.

Given this question of officers accessing COPS while on long-term sick report was likely to exist in other commands, as evidenced by a third complaint from another command with the same issue, we raised the matter in writing with Commissioner Moroney in May 2006. In June 2006, Assistant Commissioner Carroll wrote to us agreeing that the issue needed clarification, and advising that he had referred the matter to the Executive Director, Human Resources for consideration as to the drafting of a comprehensive policy document covering this and other related issues arising while officers are on long-term sick leave.

Prior to Mr Carroll giving his evidence before the Committee, neither he nor the local commander expressed disagreement or criticism with our views on the particular matter. Our actions should result in better systems across NSW Police to deal with the issues raised in the complaint, and should improve the corruption resistance of NSW Police.

A further issue raised by Mr Carroll in evidence was the proper assessment of the matter – whether it should have been treated as a notifiable complaint or a local management issue. The following points are relevant:

- It was the local commander who initially assessed the matters as notifiable complaints, with the issue identified being unauthorised use of the NSW Police computer system. We agreed with this assessment.
- The local commander 'downgraded' both matters on completion, it appears because serious misconduct was not identified. However, given that the categorisation of a complaint depends on the initial allegation, and not the ultimate outcome, we advised police of our view that this decision was inappropriate.
- The local commander accepted our view, and did not raise any concerns or issue with our advice.

## **Appendix B – Example 2 from evidence of Assistant Commissioner Carroll<sup>19</sup>**

### *Off-duty police officer confronting compliance officers*

#### Complaint and police investigation

Two compliance officers were conducting an interview with Constable B's mother and a shop assistant about the alleged sale of cigarettes to minors from a corner store. The complainant, the principal solicitor for the NSW public sector agency employing the officers, alleged that Constable B, who was off-duty and not in uniform, interrupted and attempted to stop the interview, and acted in an 'aggressive and intimidatory' manner towards the compliance officers. It was also alleged that the subject officer '... made the fact that he was a police officer loudly known, and clearly expected some advantage for his mother to flow from his position.'

NSW Police identified three issues for investigation:

- (i) Misuse of authority for personal benefit or for the benefit of an associate
- (ii) Threats/intimidation (not assault/excessive force), and
- (iii) Using authority in situation where conflict of interest exists.

The police investigator planned to interview the compliance officers; interview the police sergeant who created a COPS entry detailing the interaction between the off-duty subject officer and the compliance officers; speak to the juveniles who participated in the compliance program; interview the subject officer's mother and the shop assistant; and interview Constable B.

The investigator did not complete the activities planned after the compliance officers indicated that they were happy for the matter to be dealt with informally. According to the investigator, the compliance officers indicated that they did not believe the subject officer was attempting to use his office to alter the conduct of the compliance visit. The investigator undertook to speak to Constable B about his aggressive behaviour towards the compliance officers. No record of the conversation with the compliance officers was made.

The investigator spoke to the Constable B who denied all of the allegations. Constable B was not spoken to or counselled about his behaviour and no adverse findings were made.

The investigator's report did not indicate if the complainant was satisfied with action taken as required by the Police Act

#### Ombudsman assessment and the police response

In our view, the investigation of this Category 1 complaint appeared to be conducted with a level of informality inconsistent with the serious nature of the allegations and Constable B's extensive complaint history.

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<sup>19</sup> Transcript of evidence, 24 August 2006, pages 3-5

Primarily we were concerned about the absence of documentary evidence to support the findings made by the investigator. We were also concerned about the fact that the undertaking made by the investigator to the compliance officers, which led to the matter being resolved informally, did not take place and that this fact did not appear to have been adequately communicated to the complainant and compliance officers.

We asked the region commander to comment on whether he was satisfied that the serious allegations had been adequately and appropriately investigated. We also sought advice on the operational policing purpose for the creation of the COPS event that only contained a version of events from the subject officer's perspective and listed the subject officer's mother as a victim. We further asked what action, if any, was proposed in relation to informing the complainant and the compliance officers that the subject officer was not spoken to or counselled, despite the undertaking by the investigator.

Since making our request, we have received comments which acknowledge the investigation was less than satisfactory. For example:

- The commander who managed the complaint expressed the view that the investigation lacked rigour, citing the failure by the investigator to conduct meetings and/or interviews as detailed in the investigation plan. The commander noted that '[t]here was little documentary evidence to support the claims made by the investigator' and suggested that the investigator could have obtained notebook entries, preferably signed, from the compliance officers. The commander also noted that 'the chronology of the investigator's actions is very scant in detail.' The commander also expressed the view that the subject officer should have been reminded not to involve himself in family-related matters or announce his office in such a way that it could appear that preferential treatment for family members was being sought. However, the commander accepted that it was the prerogative of the subject officer's commander to take no action.
- The professional standards manager (PSM) from the region office stated that 'NSW Police do not feel that the matter was appropriately investigated. The investigation methods used in this situation are not in line with corporate expectations for such matters.' The PSM also stated that in future similar matters '... will be monitored and/or managed by the [region] CMT and the influence of the region commander will be used if necessary to ensure the investigation is completed in an appropriate and timely manner.'

It should be noted that the commander in whose command Constable B in stationed has also provided a report. He does not comment on the investigation, but his advice suggests he is generally satisfied with the outcome of the matter. NSW Police advised that the complainant was updated on the outcome of the investigation and that the complainant was satisfied and required no further action.

It is also noted that this matter was examined by the Ombudsman as part of our audit of the Complaint Allocation Risk Appraisal (CARA) trial. CARA is a business process to replace the "Dresden" protocol which required all Category 1 investigations to be dealt with by a command other than the one where the allegation



arose. This protocol was the result of a PIC recommendation<sup>20</sup>. There were a number of practical difficulties in implementing the recommendation, which has resulted in the trialling of a risk-based approach to determining which command should manage a complaint.

The Ombudsman review raised issues about the manner in which the risk was managed in this complaint – which was by having an independent command manage the investigation with local police investigators. That this approach was not successful is reflected in the comments of the managing commander.

We have made a number of recommendations to improve CARA as a result of our audit, all of which have been accepted by NSW Police and the PIC.

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<sup>20</sup> Police Integrity Commission, Special Report to Parliament Project Dresden, April 2000

### **Appendix C – Example 3 from evidence of Assistant Commissioner Carroll<sup>21</sup>**

#### *Police treatment of person attempting self-harm*

##### Complaint and police investigation

In October 2005, the complainant wrote a four page hand written letter to police, which included the following allegation:

*“On Wednesday night I tried to take my own life. I did not want to go to the Lithgow hospital so your officers handcuffed me very roughly and practically dragged me out of my home and pushed and shoved into the back of a paddy wagon. This kind of treatment was not necessary.”*

Police assessed the complaint as a Category 2 notifiable matter for investigation. Investigation papers were provided to the Ombudsman in December 2005. These included 5 copies of the same single page report by the investigator documenting her interview with the ambulance officers. Both ambulance officers indicated that police had not used excessive force, and that the complainant was abusive and had threatened self harm. One officer indicated that the complainant entered the back of the police vehicle without any assistance.

The papers also included a memo from the local commander to the subject officers stating that having obtained an account from the ambulance officers, *“it was not necessary for the investigator to speak to you about the incident”*. This was based on *“my reading of the COPS entry and from what was said by the Ambulance officers”*. A copy of the COPS event was not provided.

The investigation papers also contained a “Commander’s Review of Investigation”. The commander noted that the CMT determined that no further investigation was required. The review noted that the complainant has not been advised of the outcome to date, and that she would be advised of the outcome by mail. A copy of that letter was also included in the investigation papers.

##### Ombudsman assessment and police response

Following a review of the investigation, the Ombudsman sent a letter to NSW Police noting the lack of supporting material; from the documents provided, it was not clear what the overall circumstances the subject of complaint concerned. For example, it was not clear if police detained the complainant. We therefore asked for additional material that would clarify the circumstances whereby the complainant was removed from her house. We suggested the COPS event may suffice in this regard.

Because police are required under the Police Act not only to advise complainants of the outcome of their matter but also seek advice as to their satisfaction with the action to be taken, we asked the commander to clarify with the complainant whether or not she was satisfied with the police handling of the complaint.

The commander’s response:

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<sup>21</sup> Transcript of evidence, 24 August 2006, page 4

- apologised for “not including the details of the reasons for police intervention with the complainant”, and enclosed copies of COPS warnings, COPS entries of mental health incidents, and two events specific to the incident that gave rise to the complaint.
- explained that given the history of dealings between the complainant and police officers, he did not wish to provoke another mental health incident by contacting the complainant.

After reviewing the additional material, we were satisfied with the commander’s response, and no further action was required.

It is noted, for the information of the Committee, that the investigation report provided a less detailed outline of the facts of the matter than that included in Assistant Commissioner Carroll’s evidence. The investigation papers originally provided lacked sufficient detail to form an adequate assessment of what had occurred. The additional material requested had a low resource impact on NSW Police. The commander’s apology for not including additional material appears to acknowledge that it should have been included.

Whilst ultimately we were satisfied that there were good reasons for not requiring police to comply with the requirement to contact the complainant, those reasons were not explained in the investigation report, which contained no covering letter, no investigator’s report and little supporting documentation. After the commander explained the reasons for not complying with the requirement we received the additional COPS information, and we accepted the police approach as reasonable.

## **Appendix D – Example 4 from evidence of Assistant Commissioner Carroll<sup>22</sup>**

### *Alleged police harassment of husband and wife*

#### Complaint and police investigation

A complaint by a solicitor in January 2005 alleged that over a period of 2 years, his clients, the complainants, were harassed by police in the following ways:

- Unauthorised attendances at the complainants' home
- Stopping and searching of their motor vehicles and in some cases dismantling parts of their vehicle
- Stopping and searching of the complainants
- Stopping their children and grandchildren
- Making comments to third parties that they were guilty of criminal conduct
- Damage to their home.

The initial investigation conducted by police encompassed 2 issues – ‘harassment’ and ‘search and damage to property’.

The investigator reviewed a search video and obtained written or verbal reports from 5 officers to deal with the second issue. In respect of the ‘harassment’ issue, the investigator found that one complainant was a High Risk Offender (“HRO”) and all contacts with her were in accordance with a Suspect Target Management Plan (“STMP”). The investigator noted that the complainant had 117 intelligence matters relating to drugs. The complainant had been spoken to and could not be specific about any officer engaging in harassing conduct. Police were satisfied that all vehicle stops and searches were made in accordance with requirements of the Drug Misuse and Trafficking Act, due to the intelligence available to police at the time.

#### Ombudsman assessment and the police response

We assessed and were satisfied with the police investigation into the ‘search’ issue. For the ‘harassment’ matter, the report to the Ombudsman included only a copy of the COPS action profile. This provided very brief details of the actions taken by police, namely the action title and/or the officer undertaking that action and the date that the action was taken.

After reviewing the COPS action profile, Ombudsman officers identified 7 searches of the complainant and/or her vehicle between May and October 2004. Given the very minimal, vague and general information provided in this profile and the report, we asked for further (already existing) information (COPS events and Intel reports) about the particular searches to enable us to assess the reasonableness of those searches. In

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<sup>22</sup> Transcript of evidence, 24 August 2006, pages 4-5

this regard, we noted that HRO status of itself does not provide police with an automatic right to search.

In addition, we noted that the allegations regarding the stopping of the complainants' children and grandchildren and the inappropriate comments by police to third parties had not been addressed at all during the course of the investigation.

Police provided more detailed COPS information about both complainants, and advised that they did not propose to review each record and any such review could be undertaken by our office. Additionally, police advised at this stage that the complainants were recently charged with drug offences.

Following a review by senior Ombudsman officers, given the additional information provided by police and the failure of the complainant to nominate specific events, it was determined that the police response, while not addressing all the matters raised in our correspondence, was reasonable. No further action was required.

**Appendix E – Case study 1 from the NSW Police submission<sup>23</sup>**

*Officer attending school without permission*

Complaint and police investigation

The complaint in this matter, made by the school principal, alleged the following:

- A Year 10 female student was distressed at apparent threats made against her by another female student, and she contacted her brother, Probationary Constable C.
- Probationary Constable C attended the school in police uniform. Instead of waiting to speak to the appropriate teacher in the school office, Probationary Constable C, who was a past student at the school, went to the staff room to talk to the teacher. While the teacher explained that the school would handle the matter, Probationary Constable C insisted on speaking to the student concerned.
- The student was called to the doorway of her classroom and interviewed by Probationary Constable C (with the teacher present) who said words to the effect that if his sister was hurt, his police colleagues would deal with it, not him.
- Probationary Constable C was advised to leave the school by the teacher, and on his way out called in to see the deputy principal to ask that the matter be sorted out.
- On his way out of the school, Probationary Constable C was stopped by the school principal, who took him to his office and admonished him for being on the premises without permission and for not following police protocols when wishing to interview students; Probationary Constable C apologised for his behaviour.
- The student who was interviewed by Probationary Constable C was visibly shaken and upset by being spoken to by Probationary Constable C outside the classroom.
- The following school day the student and her mother attended the school, and the mother expressed her deep concerns about a police officer attending the school and interviewing her daughter without permission.
- The deputy principal then followed normal dispute resolution procedures, and a resolution between the two students was obtained.

The police investigation obtained statements from the affected student, involved teachers and the police duty officer, and an interview was conducted with Probationary Constable C.

The investigation found that Probationary Constable C placed himself in a conflict of interest, failed to observe protocols in his attendance at the school, failed to observe protocols in interviewing juveniles at a school and contravened the NSW Police Code of Conduct and Statement of Values.

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<sup>23</sup> page 5

While the investigator recommended that Probationary Constable C be counselled, the commander determined that, in addition to this, Probationary Constable C should attend the CMT so that the concerns, including those relating to conflict of interest and customer service, would be clearly and concisely articulated to the officer. In addition, Probationary Constable C was required to submit a formal apology for his actions to the principal of the high school. The commander noted that the officer was relatively new to NSW Police, had good potential for the future and an early intervention in this matter would serve him well.

#### Ombudsman assessment

The Ombudsman was satisfied with the police management of the complaint.

Having regard to the whole of the matter, including the original allegations, findings of investigation and management action taken, it was clearly a matter that presented significant risk to NSW Police and the officer concerned. It was amenable to proper investigation and external oversight was appropriate.

With respect, it is hard to agree with the NSW Police submission that the matter is trivial, and the time, effort and cost of dealing with it a concern.

## **Appendix F – Case study 2 from the NSW Police submission<sup>24</sup>**

NSW Police was asked for advice as to what particular matter this case study referred to. The advice was that it “*was presented as ‘what if’ and was drafted that way. It was provided to illustrate the unacceptable consequences of a literal application of Part 8A and how it impacts on management*”.

The case study below is the closest to the “what if” police example that we could identify.

### *Officer with Outlaw Motor Cycle Gang (OMCG) sibling*

#### Complaint and police investigation

A complaint was initiated on the basis of an information report that a person riding with an OMCG had a brother in NSW Police.

The report was forwarded to the Professional Standards Command, who established that the person had a police officer sibling, Constable D.

Audits of Constable D’s COPS accesses found that the officer had accessed an event concerning the brother. Constable D was interviewed about the access, and advised that the COPS event had been reviewed when examining state-wide summaries for the command where the officer used to live, and was planning to return to live.

The following management action was taken:

- The officer was given advice and guidance about computer access policy
- An adverse finding was recorded
- Monthly access audits for Constable D were to be conducted for a period of 12 months.

#### Ombudsman assessment and the police response

We were satisfied with the police investigation and management action regarding the access and did not propose further action in relation to this.

Because there was no reference in the investigation report as to the issue of the possible OMCG membership of Constable D’s brother, and whether any risk management strategy was in place to deal with this, the Ombudsman contacted the local area commander.

Following a discussion with the commander, it was agreed that if the brother’s membership of an OMCG was confirmed, the commander would speak to Constable D about it and ask the officer to report any contact with the brother as it occurs. A note to that effect was made on the file and the matter finalised.

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<sup>24</sup> page 6



This matter was well managed by police and the commander's decision was reasonable.

The Ombudsman has identified the issue of officers accessing station summaries in areas outside of their work areas as a systemic issue exposing NSW Police to significant risk, and requiring a corporate response. After raising the matter with the Commissioner, steps are currently being examined by NSW Police to examine technical and procedural options to address this issue.

**Appendix G – Case study 3 from the NSW Police submission<sup>25</sup>**

*Complaint with no substance*

This complaint was originally made to the Police Integrity Commission in November 2005. The Commission’s letter of referral dated 2 December 2005 noted, relevantly, as follows:

*“Pursuant to s.131(b) of the Police Act 1990 (“the Act”), the Commission refers the following Category 2 complaints to the Commissioner of Police to be dealt with in accordance with Part 8A of the Act...*

<i><b>PIC Ref</b></i>	<i><b>Barcodes</b></i>	<i><b>Name of Complainant</b></i>	<i><b>Officers Concerned</b></i>	<i><b>Nature of Allegations</b></i>
[reference number]	[barcode number]	[name of complainant]	<i>Unidentified</i>	<i>Incivility / rudeness / verbal abuse; harassment; victimisation; discrimination; inadequate investigation / lack of impartiality</i>

The Ombudsman, by letter dated 8 February 2006, advised NSW Police of its agreement with the PIC categorisation of the complaint. That letter continued *“However, this office has decided to decline to require an investigation of the complaint”*, for the reason that there did not appear to be sufficient evidence of misconduct on the part of police to warrant an investigation.

NSW Police advised of their view that the matter was not a complaint. Following informal discussions between more senior officers of both organisations, including an agreement that further details were required from the complainant before any clear allegations of misconduct could be identified, it was agreed that no record of the complaint was required on c@tsi.

The salient points in this matter are that both oversight agencies assessed the matter as being a category 2 complaint, and that from a strict legal interpretation, having regard to the allegations in the letter, this is the better interpretation. However, no investigation in respect of the matter was ever requested, no officer was ever asked to be identified as a subject officer against the matter, and the complainant was advised by the Ombudsman of the reasons why no action would be taken in respect of his complaint. When concerns were raised by police about the requirement to register this complaint, they were the subject of informal discussion and the issue was resolved. This matter is evidence that the complaints system working effectively.

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<sup>25</sup> page 12