



Police Association of NSW

# POLICE ASSOCIATION OF NEW SOUTH WALES

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## SUBMISSION OF THE POLICE ASSOCIATION OF NSW

### TEN YEAR REVIEW OF THE POLICE OVERSIGHT SYSTEM IN NSW

In the First Interim Report of the Wood Royal Commission (February, 1996) the Commissioner said, at 3.24:

- *The complaints system remains overburdened by the number of complaints which need to be processed;*
- *The opportunity to divert resources to the fight against corruption has been reduced;*
- *Highly labour intensive procedures have been required;*
- *Morale has been affected; and*
- *Productivity has been reduced.*

This was, according to the Commission, the result of a system that was inflexible, formal and too focused on single instances of misconduct, many of which are minor in nature (3.17).

In that same report, the Commission identified a number of oversight bodies that had some jurisdiction with respect to police, among them the Ombudsman, the Independent Commission Against Corruption (ICAC), the NSW Crime Commission, the Police Board, the Auditor-General, the Inspector-General, the State Coroner and the Ministry for Police. As a direct result of the Commission's recommendations, the Police Board was abolished and the jurisdiction of the ICAC over police removed.

In referring to the ICAC, the Commission noted, at 3.106, that "*the ICAC's responsibility for corruption investigation, prevention and education, throughout the whole of the public sector, may have affected the extent to which attention has been given to the identification and elimination of serious police corruption.*" At 6.41 of Volume 1 of the Final Report, the Commission noted that the ability of the Ombudsman and the ICAC to contribute significantly to any fight against

corruption in the period preceding the Royal Commission was limited by their charters which in each case extended to the supervision of many other public agencies, officials and services.

The Commission also noted that a combination of the many functions of the ICAC, its wide coverage and its lack of specific police expertise lead to its ineffectiveness in dealing with police corruption.

In Chapter 5 of the report, the Commission looked at a number of models of regulation to uncover and combat serious police misconduct and corruption. The Commission saw merit in a single external agency to manage complaints and investigate corruption similar to the Criminal Justice Commission in Queensland. At 5.7 the Commission said that such a model may:

- *Unify the presently fragmented system and integrate management;*
- *Ensure that individual cases do not fall within the cracks;*
- *Centralize record keeping and enhance intelligence collection;*
- *Provide a cost-effective structure, with a clear focus;*
- *Facilitate pre-emptive strikes against corruption by allowing early identification of and intervention in matters which may be symptomatic of more serious corruption problems;*
- *Prevent duplication of effort and operational conflict; and*
- *Introduce greater consistency in the disciplinary process.*

These are powerful arguments to support a single external agency. The Commission, however, saw some disadvantages that existed at the time of the report. It was concerned that (at 5.8):

- *The sheer volume of complaints risked swamping the single agency and diverting it from serious corruption;*
- *Internal tensions may arise from the need for openness in dealing with complaints versus the requirement of secrecy in investigating serious corruption;*
- *Placing too much responsibility on the external agency may remove incentive from the NSW Police Force to accept responsibility for its problems, and;*
- *The opportunity for police management to intervene early and enforce discipline, may be reduced.*

For these reasons, the Commission recommended the current dual system of oversight by both the Ombudsman and the new body created by the Commission, the Police Integrity Commission (in the first Interim Report, the Police Corruption Commission).

At the time of the first Interim Report it would not be an exaggeration to say that the system of complaint management and oversight in NSW was in chaos. The Wood Royal Commission exposed the extent of the chaos and the resultant

corruption that was hidden, protected by the very chaotic system that was supposed to be policing it.

It is clear that the Commission identified a need for a special expert body (the PIC) to address the serious corruption that was plaguing the NSW Police Force. It was also clear that such a body needed to focus on the serious matters and not have to deal with the overloaded system that was bogged down in minor matters that the NSW Police Force could not handle itself. It was also clear that such a body needed time to develop its expertise and build trust through a successful attack on corruption.

For these reasons, it made good sense to establish a dual system in 1996 – the PIC to address the serious corruption issues and the Ombudsman to manage the minor matters. The Police Association believes that the intervening years have produced some outstanding successes that have significantly changed the ethical climate of the NSW Police Force. We also believe that these very successes now require a rethink of the system of oversight and complaint management to allow the NSW Police Force to move further down the path of professionalism that was a key focus of the Wood Royal Commission. There is evidence to suggest that the current system, while important in the initial reform years after the Royal Commission, is now actually impeding further reform.

### **Change indicators**

In the annual report of the NSW Ombudsman for 2004-2005, there is a revealing statistic. In the reporting period, 81 police officers were charged with a total of 155 criminal charges. 78 percent of those officers charged followed complaints made by other police. This is an astounding figure when one considers that less than fifteen years ago the idea of an officer complaining about another officer was not only anathema, but would have most likely resulted in the complainant being ostracized and having his or her career ended. Not only are police now willing to make such complaints, but they obviously are confident that their career will not suffer as a result.

In the same reporting period, out of 4,179 complaints received by the Ombudsman, just 78 resulted in criminal charges being laid. Of the remaining complaints, 9,058 allegations were made against police (some officers had more than one allegation within the complaint). The following describes the outcomes:

- 2,368** Declined (ie, deemed to be not worthy of investigating, either because no substance or the officer acting lawfully)
- 1,715** Management Action following investigation

**4,299** No Management Action (includes no adverse finding)

**525** Conciliated

The management action included the following:

- Management counselling (42%)
- Training (6%)
- Change of policy or procedure (4%)
- Increased supervision (7%)
- Performance agreement (10%)

The vast majority of complaints received dealt with either minor management matters that could have been dealt with efficiently and quickly at the local level, or matters that had little substance, or were as a result of the complainant either not understanding the law or not being satisfied with their interaction with police. When a member of the public is at the receiving end of an infringement notice or subjected to legal intrusive police action, it would be rare that it could be said that the person is “happy” with the interaction.

### **Reform since 1997**

A great number of changes have occurred since the final report of the Royal Commission in 1997. All of these changes have resulted in a more professional and ethical Police Force that has built in systems and procedures to identify corrupt practices and raise the standards that police demand of themselves and their colleagues. Among the changes are:

- A move into the tertiary sector for education, with increased emphasis on ethical and professional education
- Reforms to the structure of the organization to ensure clearer accountability lines and better supervision
- Reforms to criminal investigation procedures (eg: informant management, brief management, service of process, search warrants, etc)
- Drug and alcohol testing and education
- Changes to legislative powers and accountabilities
- Reforms to reporting procedures
- A better resourced Professional Standards Command, with a well-resourced investigation arm
- Reforms to the complaint management procedures, including the introduction of the Employee Management programme

These changes (among many others) have given the organisation the capability to respond more effectively to issues that may impact on the integrity of the Force or its members.

During the Royal Commission, Counsel Assisting, Mr Gary Crooke QC, often referred to the need to look to a small business model of management – leaner, more focused, able to cut out inefficient processes, customer oriented and principled. The analogy is appropriate to a certain degree, however it fails to address the very real need to ensure that professional members need to be as much a part of the equation as do its ‘customers’. It also fails to address the move towards developing the profession of policing.

The Police Association is committed to the professional model of policing – a development that takes into account the growing body of knowledge that has expanded around policing in recent years, the complexities of contemporary policing in the global community, the impact of the post 9/11 era, the expansion of the technical advances in forensic procedures and investigation and the increased demands placed on police in terms of both education and accountability. The debate about whether policing is a profession or a blue collar occupation should now be laid to rest. Very few professions are under the spotlight as much as policing, nor have as much accountability. This is only reasonable, given the powers that practitioners exercise and the expectations that are placed upon them.

In the final Report of the Royal Commission, Justice Wood laid great emphasis on the concept of policing as a profession and saw the development of the profession as fundamental to making the Force corruption-resistant. At the time of the report, the professional model was in its infancy and for that reason, Justice Wood was unwilling to allow for any lessening of the oversight of the NSW Police Force. He did not, however, accede to the calls for all complaints to be investigated by an external body as he realized that *“the Police Service is a disciplined Service which must accept ownership of and responsibility for its problems”*(5.1, First Interim Report).

The final Report of the Royal Commission laid great emphasis on the significance of having an appropriate complaint management system as a tool for corruption prevention. He said (at Vol II, 4.1) that the then system was

- complex, inconsistent and inflexible;
- counter-productive because of its adversarial nature and its concentration on punitive, rather than remedial action;
- directed towards command and control, rather than management of its members;
- characterised by substantial delay;
- prone to leaks, collaboration and ineffective investigations;
- affected by bias;
- typified by an almost instinctive reaction to defend any charge, no matter how indefensible,

- and to appeal against any decision made;
- conducive to fear and want of openness in dealings between members and the organisation; and
- productive of anxiety and uncertainty during the long waiting period, sometimes leading to genuine stress-related illness

Further, the system was “*unduly rigid, concentrated on minor disciplinary infractions and honest mistakes, punished internal informants, treated those who voiced concerns as ‘troublemakers’, and otherwise discouraged openness and honesty in admitting error.*”(Vol I, at 6.38)

In Volume I of the Final Report, Wood J said:

*6.39 In summary, the factors contributing to the limited success of internal investigations by the Service there identified, and as confirmed by the further hearing of the Commission, included:*

- .....
- *the reactive focus of the complaints system on single instances of misconduct, and their fragmentation within a rigid formula, a system which has not allowed for a classification of complaints in a way reflecting their different levels of seriousness, tended to conceal the discovery of links and patterns indicative of organised corruption, and overlooked the broader management and intelligence considerations and opportunities for early remedial intervention;*
  - *the highly labour intensive, technical, and dilatory nature of the complaint procedures which have effectively diverted resources away from the more difficult areas of corruption investigation, and led many officers to resign from the Service with stress-related conditions referable to the time taken for resolution of relatively simple matters which might have been better dealt with as management issues;*
  - *the concentration on an adversarial complaint and investigative system in which punitive rather than remedial action has inhibited police from admitting to mistakes, has encouraged a culture of group cover-up and denial, and has led to a philosophy that most complainants were whingeing individuals out to settle a score - a philosophy which only reinforced the ‘them and us’ approach;*
- .....
- *the imposition of penalties which were not always commensurate with the misconduct found, including ‘penalty transfers’ without sufficient significance being given to questions of personal dishonesty or to the danger of moving a problem officer elsewhere within the Service.*

This list is not complete – many passages have been left out, as they have been substantially addressed by the subsequent reforms. The above remain, we believe, as stumbling blocks to further progress.

When proposing a solution to this dilemma, Wood J stated a principle that is, in our opinion, the most important paragraph in the report:

*4.14 The answer lies at the heart of the reform process. The best platform for change does not involve the preparation of a new set of rules and regulations and the imposition of a more vigorous regime for their enforcement. Rather it involves the Service setting proper professional standards and then doing whatever it can to encourage its members, in a managerial way, to lift their performance. Unless this is achieved, no system of discipline or complaint management will ever bring about reform. At best it will be a safety net.*

Fundamental to this principle is the concept of giving police the power to manage their people, in the same way that a small business owner is able to manage, ideally fairly and immediately, with a sense of justice and fair-play. This principle is further emphasized in the final recommendations of the Commission:

*The Commission recommends that:*

◆ *The current complaints handling and discipline system be replaced by a new system, .....that has as its **primary objective the enabling of patrol and other Local Commanders to deal with complaints and take remedial action or impose sanctions on a managerial basis, without recourse to formalities***

◆ *..... on becoming aware of possible misbehaviour, the Local Commander be empowered to initiate an inquiry and **to take such action as is considered appropriate in all the circumstances focused, if possible, upon managerial or remedial measures** .....*

### **Current blocks to progress**

#### **Complaint Categorisation.**

The vast majority of matters that are categorised as complaints fall broadly under two classes – customer service issues (that arise directly from police-public interaction) and performance matters (where there is a suggestion or allegation that an officer hasn't come up to scratch in his performance). There is no suggestion of either criminality or corruption in respect to these allegations. They fall into the category of matters that a small business owner would need to deal with quickly and efficiently in order to maintain a level of service consistent with the objectives of his business, while at the same time ensuring that his

employees understand their responsibilities and feel that they are being treated fairly. It becomes ludicrous to suggest that these matters should be the subject of formal, lengthy investigations that are oversighted by an external agency that has the ability to intervene into the investigation and make suggestions as to both the progress of the investigation and the outcomes. A business owner would simply not succeed in his endeavours to run a business if he were bogged down in such a system. His resources would be overtaxed so that it would ultimately impact on his ability to provide a service through his business. His customers would certainly be understandably dissatisfied if a complaint regarding a relatively minor matter took months for a result to be determined.

The customer would be equally miffed if these minor matters were treated the same as serious complaints within the very same system.

Yet that is precisely what is happening in the current police complaints system. Complaints of a performance or customer service nature which are the very issues that local managers should deal with as part of their management function, are captured into the formal processes that are subject to oversight and audit by the Ombudsman. The effect of this is to overload a system with minor matters and risk missing the very serious matters that should be addressed. It is precisely the issue that was identified by Wood J in his report.

**The Police Association believes strongly that all complaints that allege serious misconduct that is criminal or corrupt in nature should be vigorously investigated with the full resources of the NSW Police and the Police Integrity Commission.**

However, any allegation that does not suggest criminality or corruption should be dealt with by those who are paid to manage people – the local managers. These matters should not be categorised as complaints that fall within the formal complaints system, but should be purely categorised as management issues and dealt with by managers. They should be recorded on local data bases that could be regularly audited internally or on occasion by the Auditor General. They should be benchmarked by regular surveying of the public to ascertain levels of service satisfaction within local areas. These procedures are consistent with practices employed by businesses to gauge the attitude of the public towards their enterprise. This is the way businesses that offer a service manage their customer service complaints and performance issues – they only call in the external help (the police) if there is a criminal matter to address.

The current system of intrusive oversight by the Ombudsman has resulted in confusion among managers and a feeling that they are unable to manage their people. Often the officers of the Ombudsman have little, if any, experience of the reality of policing or the environment in which police operate. They are not the ones who have to manage an officer on a daily basis, and yet they wield extraordinary influence over managers in this area. Managers often feel



disempowered in dealing with their people. They feel that they have to go to extraordinary lengths to justify their actions to the Ombudsman's office, with the result that matters that should be dealt with managerially and quickly, languish for months within the system while every t is crossed and i dotted. The result is typically that the wood is lost in the trees and there remains a real risk that serious corruption opportunities escape notice while time is absorbed with the small stuff.

In other words, many of the issues that were identified by Justice Wood remain a problem today.

There has been a concerted effort by the NSW Police Force to change this atmosphere, and the Professional Standards Command has done much to raise standards and encourage police to embrace a system that theoretically promises a fair process. However, the reality for many is that not much has changed over the last ten years.

### **Role Confusion**

There is also confusion between the roles of the PIC and the Ombudsman, with the Ombudsman's office also overseeing many criminal investigations that the PIC chooses not to intervene in. The system of oversight is cumbersome and complex. As a result, officers still feel distrustful of the system. They often feel fearful and uncertain while they await the outcome of the complaint process. They do not treat the process as a learning experience and remain unlikely to admit to even genuine error while the prospect of permanent records hover over the outcome of the investigations.

The initial establishment of the premium expert oversight body, the Police Integrity Commission, needed to be done in a phased way. To remove the jurisdiction of the Ombudsman at that time would have been injudicious, as the PIC needed time to establish itself, develop its expertise, trial its processes and systems, establish its credibility in the eyes of the public, the Parliament and the police and to get some "runs on the board". There was also a need for the Ombudsman to maintain some oversight over the general management procedures of the NSW Police Force. That time has now passed. The PIC has become the pre-eminent expert police oversight body. It has successfully shown itself to be an effective corruption fighter. It has worked to challenge and enhance the corruption prevention efforts of the NSW Police Force. It has runs on the board. During that time it has moved into the broader issues that go to the heart of assisting police to develop strategies for the management of officers in order to prevent the emergence of problems.

A good example of this is Operation Abelia. This operation, which dealt with the use of illegal drugs and the abuse of legal drugs among some police in NSW, looked beyond the mere instances of police engaging in inappropriate behaviour, to a range of strategies to both prevent the problem, identify and eradicate the problem, but also to support, train and manage police and their supervisors who may be exposed to high risk situations. This kind of “big picture” operation will have a much more effective impact on the future of the policing profession than simply exposing aberrant behaviour.

### **The Issue of Expertise**

A common complaint regarding the complaint process is that the officers of the Ombudsman’s office lack expertise in the investigative procedures and lack an understanding of the operational realities of contemporary policing. There will naturally be difficulties in this respect when officers of the Ombudsman have no experience in the area of the policing profession and when the Ombudsman’s jurisdiction covers all public sector agencies. The PIC has specifically drawn on a pool of interstate police officers who are both experienced in general policing and investigations. The PIC has also dealt exclusively with the policing profession since its establishment.

### **Economies of Operation.**

It appears to the Police Association that the current system for oversight is both cumbersome and duplicates resources and coverage. The result is confusing to police and the public. In the struggle to establish a jurisdictional foothold, it could appear that the Ombudsman’s office has intruded into the area of employee management which should be the prerogative and responsibility of the police and their managers. The result is that police managers are being prevented from carrying out their responsibilities as managers. Too many resources and too much time is being spent on investigating minor matters in order to satisfy officers of the Ombudsman’s office.

The world of policing has changed in many significant ways over the past five years. The impact of the war on terrorism cannot be underestimated. The consequences of September 11 go further than merely increased security around vulnerable sites. There has been a consequent increase in tensions in the major cities that have culminated in events such as the recent public order incidents at Sydney beaches. We live in a more complex and tense world and this environment has placed even greater pressures on the NSW Police in terms of the appropriate allocation of its scarce resources.

NSW Police provides services across one of the geographically largest police districts in the world – a single agency of only 14,500 officers protecting more than 6 and a half million people over an area of some 800,000 square kilometres. They provide rescue and protection for more than 2,100 kilometres of coastline.

The current complaint management process, with its focus on management issues is consuming far too much time and too many resources to be justifiable. The small stuff needs to be addressed, but not in the way that it is. It needs to be addressed in the context of the broader corporate resource management strategies and should be the responsibility of police managers. The focus of oversight should be on the high risk areas of corruption and criminality.

## **The Profession of Policing**

There is a concern that the current oversight procedures are preventing the NSW Police from progressing their stated aim of developing the profession of policing. One of the hallmarks of a profession is having control and responsibility for dealing with problems. While the current system does not give autonomy to managers to deal with and improve their practices without intrusive supervision, the maturation of the profession is delayed.

The following is taken from the Ombudsman's website:

*The NSW Ombudsman helps agencies within our jurisdiction to address problems with their performance. These problems may be uncovered by complaints from members of the public or by people who work for those agencies. They may also come to our attention through our work in scrutinising agency systems, overseeing investigations or reviewing the delivery of services.*

*Our focus is on improving the conduct and decision-making of those agencies. We use our experience and knowledge to make sure they are aware of their responsibilities to the public and act reasonably as well as lawfully. Traditionally we have done this by responding to complaints made to us and recommending action for the agency to take to resolve each complaint.*

*Over the years we have become more proactive in our approach. We investigate the more serious matters ourselves, but in many cases we encourage agencies and complainants to deal with each other directly and find a mutually satisfactory outcome.*

*One of our key messages is that complaints are one of the best sources of feedback on how an agency is performing. We encourage and help agencies to set up and maintain effective complaint handling systems to better handle complaints about themselves and use the feedback to*

*improve the way they do things. We provide training and have developed resources on topics such as how to deal with difficult complainants and how to investigate complaints.*

*We will often refer complaints we receive back to the agency concerned and give them support to handle the complaint themselves. We will directly oversee the investigation of more serious matters. We also scrutinise the systems that agencies have to deal with complaints and recommend improvements.*

*The NSW Ombudsman has the power to investigate conduct that is:*

- illegal*
- unreasonable*
- unjust or oppressive*
- improperly discriminatory*
- based on improper or irrelevant grounds*
- based on a mistake of law or fact*
- otherwise wrong.*

*We receive complaints about police that involve a variety of issues such as:*

- abusive behaviour*
- use of threats or harassment*
- failure to take appropriate action in circumstances of domestic violence*
- excessive or unnecessary use of force*
- unlawful or unreasonable arrest*
- bias or mistreatment by police*
- use of unfair or improper interrogation*
- failure or delay in providing legal rights*
- inappropriate release of confidential information*
- criminal conduct.*

There appears very little left for the police to have responsibility for. It is also very unclear where the jurisdiction of the Ombudsman ends and that of the PIC begins. It would be extraordinary for another professional body to have such intrusive oversight at all levels of management imposed from a body external to the profession. We accept that ten years ago such oversight may have been appropriate, but we also submit that the NSW Police Force today is a different organisation than it was then. We also accept that the public interest demands

an independent oversight body that addresses serious matters while the organisation is held accountable for the general management of its people on a day to day basis.

## **Recommendations**

1. Complaints that are about performance or customer service issues be removed from the formal complaints process and become the sole responsibility of managers to resolve through management action.
  - Such complaints should be recorded on a separate database and subject to internal audit procedures that link into managers' performance agreements.
  - Surveys should be regularly conducted by either the NSW Police Force or the Auditor General to establish levels of service satisfaction among the public.
  - The Auditor General should also audit the management database to ensure best practice in human resource management
2. There should be one specialist police oversight body. That body should logically be the Police Integrity Commission. This body should continue to oversight allegations of serious misconduct, corruption and criminality. It should also continue to investigate ways on improving processes and strategies to prevent such activities
3. The Ombudsman should continue to have a role in reviewing legislation concerning police powers, but should cease to have a role in the oversight of police complaints.