



POLICE INTEGRITY COMMISSION

Committee on the Ombudsman and the Police Integrity Commission Inquiry: 'Ten year review of the police oversight system in NSW'

Submission by the Police Integrity Commission

1. Following are the submissions of the Police Integrity Commission to the Committee on the Ombudsman and the Police Integrity Commission Inquiry: Ten year review of the police oversight system in New South Wales.
2. NSW Police is oversighted by, to some extent, or accountable to, a range of organisations and parliamentary or community entities. For the purpose of this submission the Commission has taken the police oversight system to mean the arrangements put in place to deal with police corruption and other forms of misconduct in an accountable and transparent manner. Therefore, these submissions deal only with oversight provided by the Office of the NSW Ombudsman and the Police Integrity Commission.
3. Comments on the extent of powers, management structure and funding etc. are limited to the Commission.

BACKGROUND

4. The existing police oversight framework arose from a series of recommendations made by the Royal Commission into the New South Wales Police Service (the Royal Commission) in its Interim Report of February 1996. Prior to the Royal Commission complaint investigations were generally reviewed by the Office of the Ombudsman while the Independent Commission Against Corruption (the 'ICAC') was responsible for corruption investigation, prevention and education, not only for Police, but also across the broader public sector.
5. The efforts of the ICAC until that time had been noted by the Royal Commission as predominantly concerning education and prevention – investigations of corruption in NSW Police had been intermittent. Based on the evidence before it, the Royal Commission reported that the corruption prevention work of the ICAC appeared to have had little impact on Police. The Commission was also concerned with: the dilution of ICAC's investigative focus across the public sector resulting in insufficient attention to the serious corruption potential of NSW Police; a perception of a lack of impartiality through inclusion of the Commissioner of Police on the ICAC's Operations Review Committee; employment by the ICAC of NSW Police officers; and limited use of the necessarily aggressive techniques (such as electronic surveillance and public hearings) required to investigate corrupt police.¹

¹ Royal Commission into the NSW Police Service – Interim Report February 1996, pp. 66-68.

6. Following extensive consultation with stakeholder agencies, a formal submissions process and detailed national and international research, the Royal Commission identified four potential models for dealing with police complaints and corruption:

- self-regulation model
- completely external model
- internal investigation of misconduct with external review, and,
- police investigation with external review, and, external investigation of a specified class of matters²

7. While the self-regulation model, with police solely responsible for misconduct investigations, was recognised as encouraging accountability it was dismissed on the basis of its consistent failure to deal with corruption and the resulting trend in western democracies towards independent oversight.

8. The completely external model involves the administration of complaints and investigation of misconduct by a body completely separate from police. This model provides the greatest degree of independence for investigations. However, it was dismissed on the basis that it removes responsibility for the management of police complaints and reducing misconduct from police potentially leading to poor internal practices and abnegation of responsibility for maintaining integrity and discipline.

9. The third model gives primary responsibility for the conduct of investigations and determining and imposing discipline to police. There is external review but no capacity for independent investigation. This model preserves self-regulation and accountability for misconduct and corruption. Under this model, independent review increases public confidence in accountability. However, the Royal Commission dismissed this model as it primarily relied on police investigating police. In addition, where this model was in place, and where oversight agencies had investigative powers, the Royal Commission noted that their use was often constrained through a lack of resources, or, they become bogged down in complaint handling processes with little opportunity to undertake investigations into serious matters.

10. The final model involves a combination of police investigation with external review for most investigations and external investigation of specified classes of matters. This model was supported by the Royal Commission on the basis that:

- police retained a degree of responsibility for self-regulation;
- public confidence would be underpinned by external review of police investigations of complaints and corruption; and,
- the most serious matters would be investigated externally.

11. It was intended that constraints on the external investigation body would be minimised through adequate resourcing and equipping it with appropriate powers. It

² The police oversight models noted here, and the subsequent discussion, are dealt with in further detail in the following report: *Royal Commission into the NSW Police Service – Interim Report February 1996*, pp. 74-85.

would also not become bogged down in complaints processing as that function would remain with the Ombudsman.

12. The current NSW Police oversight system came into being when the *Police Integrity Commission Act 1996* (the 'Act'), and consequential amendments in the *Police Act 1990*, came into effect from 1 January 1997.. As envisaged by the Royal Commission, the system provides for the majority of complaints to be investigated by NSW Police under the oversight of the Ombudsman and for the Police Integrity Commission, an agency with special powers, to focus on the detection, investigation and prevention of serious corruption.

SUBMISSIONS

(a) The appropriateness of the respective roles and functions of the PIC and the Office of the Ombudsman

13. Consistent with the recommendations of the Royal Commission – and subsequent government policy – the roles for the Commission and the Ombudsman in the existing police oversight system are different, yet complementary. The Ombudsman is primarily concerned with issues of administrative efficiency, complaint handling and decision making within NSW public sector agencies, including NSW Police. It is a complaints administration body where complainants have certain legal rights to be informed of action taken, there is regular communication with complainants and relative openness. Investigation of complaints is not a substantive role of the Ombudsman and tends to concern complaints arising from day to day policing as distinct from corruption.

14. The Commission, however, is a specialist investigative agency with special powers and resources to assist in its role to detect, investigate and prevent police corruption. The Commission's investigations are usually covert and continuing contact with complainants is unlikely. Complaints administration is not a substantive role for the Commission, but rather a means for facilitating the Commission's role in investigations and its focus on serious police corruption.

15. Commission investigations can originate from complaints³ of serious police misconduct made to NSW Police, the Ombudsman or directly to the Commission. The oversight system facilitates the Commission's focus on serious police corruption by requiring NSW Police and the Ombudsman to refer all serious complaints (Category 1 Complaints) to the Commission. The Commission makes a decision whether to investigate, review any subsequent investigation or refer complaints to the NSW Police and the Ombudsman. The Commission investigates the most serious complaints and reviews the investigation by NSW Police of a small proportion of the remainder. However, the majority of complaints of police misconduct are investigated by NSW Police and reviewed by the Office of the Ombudsman.

16. The oversight system has now been in place for nearly 10 years and the question arises as to whether the present two agency system remains appropriate. In a period of consolidation amongst public sector agencies, there may be some appeal in a single agency overseeing NSW Police, appeal in the Commission as a

³ Commission investigations also arise from information derived from a number of sources including existing Commission investigations, other agencies, or, are developed from an analysis of available data – ie. assessments of unusual cash transactions, inappropriate relationships – but not otherwise connected with a complaint.

'one stop shop' for police oversight, or in the Ombudsman conducting all oversight and investigations – there being an embedded public perception that the Office of the Ombudsman is the agency to go to if you have complaint.

17. However, complaints of police misconduct remain high. While they dropped from 4,998 in 2000-01 to 3099 in 2002-03⁴ this drop was largely attributable to a change in the definition of a complaint – local management issues⁵ no longer being included. Since 2002-03 there has been an increase in complaints to 4179 in 2004-05⁶. The number of complaints of police misconduct made is also quite variable. A variation of 30%, or more, over a 1-3 year period is not uncommon.

18. In addition, Operation Florida disclosed that even during the Royal Commission very serious forms of misconduct were being carried out by members of the NSW Police. Commission Operations clearly demonstrate that serious police corruption remains an issue today.

19. Aggregation of the corruption investigation and complaint administration functions in a single agency runs the risk that one function will be emphasised over the other. Individual members of the public are largely untouched by serious corruption, however, many come into contact with day to day policing operations. A proportion of those contacts give rise to a complaint. The public has high expectations of the treatment of complaints, and, for the taking of action to reduce corruption, at least at a conceptual level. Resource limitations, however, could make it difficult to meet expectations for both and it will be the capacity to conduct critical, yet discretionary, investigations that will be put at risk in order to manage a significant, growing and highly variable complaints administration process.

20. It is the view of the Commission that the present roles of the Commission and the Ombudsman complement each other and remains an effective means for addressing these two very different functions: high volume complaints administration and investigation of serious police corruption. The Commission's reasons for this view are as follows:

- a. There are significant differences in the techniques and resources applied in complaint handling and corruption investigations. A merged organisation would necessarily be comprised of two discrete parts each with a different focus, approach and culture – two organisations in all but name only. The benefits over the current arrangements are not immediately apparent.
- b. The current arrangements allow the Commission complete discretion to focus its efforts and specialist powers and resources on the most serious forms of corruption – the very reason for its establishment – its role is not diluted by legislated obligations to manage a complaint handling process.
- c. The arrangements are flexible, allowing the Commission, in consultation with the Ombudsman, to review those police misconduct investigations which are particularly relevant to its work or where it has an advantage over the Ombudsman in doing so, thereby eliminating duplication of effort.
- d. The separation of the functions in two agencies means that the functions are not competing for resources.

⁴ NSW Ombudsman Annual Report 2004-05, p. 43

⁵ Less serious matters that the Ombudsman and the Police Integrity Commission have determined do not need to be dealt with as complaints within the meaning of Part 8A of the *Police Act 1990*.

⁶ NSW Ombudsman Annual Report 2004-05, p. 43

- e. The exclusion of former NSW Police officers from the staff of the Commission enhances the perception of independence – the Office of the Ombudsman has no such prohibition on employment of former NSW Police officers.
- f. The notion of a ‘one-stop shop’ is largely illusory given that a range of other agencies with an oversighting role, such as the Audit Office and Work Cover, would be excluded. In any case, the benefits of a ‘one-stop shop’ are readily accommodated through consultation and a free flow of information. The Commission has access to all relevant complaints information.
- g. Experience has shown that duplication of effort has not proven to be a problem through regular communication between the two agencies at all levels.

(b) The extent of the powers available to the Ombudsman and the PIC to perform their function

21. The powers available to the Commission are substantial and include intrusive and compulsive powers typically only bestowed on agencies dealing with serious and specialised crime such as organised crime and corruption. From a broader oversight perspective, the Commission also has powers to take over and refer complaints for investigation and manage and oversee other agencies in the detection or investigation of police misconduct.

22. The Commission investigates the most serious police corruption. The subjects of its investigations are often aware of the strategies that the Commission will bring to bear, many having used similar strategies in their own investigations. Commission investigations are therefore some of the more difficult to undertake. The powers available to the Commission, together with very little legislative prescription on selection and the conduct of investigations, form a powerful combination delivering the Commission the means and flexibility with which to undertake these difficult investigations.

23. Where the Commission identifies a deficiency in the Act, or other relevant legislation, there is a capacity for it to be addressed through the Ministry, the Attorney-General or other relevant body. The Commission is also routinely consulted about amendments to legislation proposed by other agencies which might impact on its work.

24. The Commission is satisfied that the powers available to it are appropriate for an agency engaged in the investigation of serious police misconduct. The Commission is also satisfied that there are appropriate arrangements in place to enable necessary amendments to be made and for consultation on proposed amendments which might affect the Commission.

(c) The management structures, funds and resources available to the Ombudsman and the PIC to perform their functions

25. The Commission is structured and resourced consistent with its role in the detection, investigation and prevention of police misconduct and its focus on serious police corruption. The significant majority of the Commission’s resources are directed towards maintaining effective investigations, investigations support (eg.

physical and electronic surveillance, telecommunications interception, hearings support etc), research and complaints handling capabilities.

26. While there is often a desire to be able to do more investigations, or more research, the Commission has not been in a position where it has been unable to undertake work where it is believed necessary that it should do so.

27. Like all organisations, the Commission must operate within an administratively lean budget, and must manage its priorities accordingly. The Commission continually reviews its priorities to ensure that it is getting the most from its budget.

28. The most significant resource issues for the Commission in recent times have concerned the need to replace obsolete telecommunications interception equipment and IT systems that had previously been obtained under master leasing arrangements. Funding to address both issues has been sought and since approved. Replacement action is now underway.

(d) The accountability mechanisms built into the system

29. The Commission is an independent agency and does not report to a Minister or to the government. The Commission is principally accountable to Parliament. For each investigation in which the Commission conducts a public hearing the Commission must furnish a report to Parliament⁷. The Commission is also accountable to Parliament more generally in respect of its operations with a summary of operations being required to be included in its Annual Report to Parliament.

30. The Commission is accountable to a Joint Parliamentary Committee in respect of the exercise of its functions and the content of its Annual Report, other reports and any matters arising.

31. The Office of the Ombudsman is similarly accountable to Parliament and to a Joint Parliamentary Committee.

32. The Commission is also accountable to the Inspector of the Police Integrity Commission in relation to: compliance with the law of the State; complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission; and the effectiveness and appropriateness of procedures relating to legality or the propriety of its activities.

33. The Commission is also accountable to a range of agencies, including the Office of the Ombudsman concerning aspects of its use of telecommunications interception and controlled operations, the Auditor-General in respect of its expenditure of public monies, and, directly to the public through the *Freedom of Information Act 1989* in relation to its 'administrative and educative' functions.

34. Within the Commission, staff involved in the processes associated with police oversight – ie. assessing complaints, reviewing complaint investigations, conducting investigations and research – are accountable to the Commissioner for compliance with policy and procedures, work performance, exercising good judgement, ethical decision making and for behaviour consistent with the Commission's Code of Conduct.

⁷ The Commission may also report on any matter the subject of investigation.

35. It is the view of the Commission that its accountability framework is comprehensive, and appropriately so, in light of the significant powers and discretion available to it in the exercise of its functions. The framework provides a check on the potential for abuse of powers by the Commission and accountability for the appropriateness of its practices and procedures and for the reasonableness of the decisions that it makes.

(e) The efficiency and effectiveness of the current police oversight system and the scope for further efficiencies and effectiveness

36. The key risk to efficiency and effectiveness in the existing police oversight system is the potential for overlap and duplication and, therefore, the potential for mixed messages about expectations of NSW Police and wasted resources. It is the Commission's view that while there are possibly two areas in which there is a potential for, or a perception of overlap, the risk is negligible. The two areas are:

- a. *Reviewing of the conduct of NSW Police misconduct investigations.* As noted above, the majority of all complaints of police misconduct are presently investigated by NSW Police. Most of these investigations are reviewed by the Office of the Ombudsman. Some, however, are reviewed by the Police Integrity Commission.
- b. *The management by NSW Police of recommendations for improvements to its policies and practices.* From time to time, both the Police Integrity Commission and the Ombudsman make recommendations to NSW Police to clarify or strengthen policies, to improve practices or to take action in respect of non-compliance.

37. The proportion of complaint investigations reviewed by the Commission is quite small. For example, of the 4,179 complaints of police misconduct made during 2004-05⁸, 18 (or 0.4%) were reviewed by the Commission.

38. Elimination of the risk of duplication of effort in such a small number of misconduct investigations is readily managed with minimal administrative impact on the agencies and the NSW Police through brief, ad hoc meetings between staff of the Commission and the Ombudsman. The agencies identify those NSW Police complaint investigations where the Commission has specific knowledge through its own investigations which might assist review. The Commission reviews these investigations eliminating the need for the Ombudsman to duplicate the research effort necessary to provide for a similar level of oversight.

39. Similarly, the extent of previous knowledge or involvement by the Ombudsman in reviewing a misconduct investigation is considered by the Commission when deciding whether to review an investigation or not. Special circumstances – such as links to a current Commission investigation – or requests for an involvement by the Commission aside, where the Ombudsman has had an involvement in reviewing an investigation the Commission will usually not intervene.

40. Consultation also provides for the elimination of the potential for mixed messages about the standards expected of NSW Police in regard to misconduct investigations. The issues considered by both the Ombudsman and the Commission

⁸ NSW Ombudsman Annual Report 2004-05, p. 42.

in reviewing misconduct investigations are well established, well understood and consistent between the two organisations.

41. With two external agencies making recommendations to NSW Police on changes to policy and practices there is potential for inconsistencies to develop in approach to the issues sought to be addressed through change. There is a risk of unnecessary administrative burden in NSW Police addressing inconsistencies.

42. Both the Commission and the Ombudsman are acutely aware of the risk of inconsistency in approach to an issue as it not only has the potential to introduce unnecessary administrative burden but there is also potential to undermine the efficacy of the change sought to be made. The Commission and the Ombudsman therefore routinely consult during the development of recommendations on issues of common interest to specifically ensure consistency in approach. More often than not, NSW Police is also involved in this consultation process.

43. Through these consultative processes, not only is duplication of effort and the likelihood of mixed messages minimised, there is also an opportunity to arrive at better quality, more efficient or effective solutions to identified problems.