

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

June 2006

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Introduction

This is the Ombudsman's submission to a review of the police oversight system in New South Wales being conducted by the Committee on the Office of the Ombudsman and the Police Integrity Commission.

The submission begins with an explanation of the current processes in place to deal with complaints about NSW police officers. It then addresses the specific questions posed by the Committee. The appendix to the submission provides a brief historical context of developments from the commencement of the Royal Commission into the NSW Police Service in 1994 until the passage of amendments to the Police Act in 1999.

Given the role of the Ombudsman as the primary police complaints oversight agency, the focus of this submission is about the management of police complaints.

Importance of effective complaint handling

Effective complaint handling is an essential element of public accountability. It provides an opportunity to redress wrongs, deal with misconduct and review organisational performance.

Our submission is that the present police complaints system is, to a significant extent, meeting the aims of any effective complaints process. It is, for the most part, an accessible, credible, flexible and responsive arrangement, with demonstrated success in identifying criminal and serious misconduct.

This success is due to the efforts of police commanders who increasingly see the value in dealing effectively with complaints. It is also due to a constructive engagement by the Ombudsman with police commanders and investigators.

These and other matters we trust are of assistance to the Committee are outlined in more detail below.

Amendments to the Police Act – 1999

In 1999, Part 8A of the Police Act 1990 – the part dealing with the handling of complaints about police – was amended in line with the recommendations of the Royal Commission into the NSW Police Service.

In essence, the scheme established by these amendments is as follows.

Making complaints

Complaints about unreasonable or improper conduct by police officers can be made by members of the public or other police officers to NSW Police, the Ombudsman or the PIC.

Classification of complaints

The scheme established by Part 8A permits the oversight agencies to agree upon those matters which should be subjected to individual oversight, and those which should be handled by NSW Police without the requirement to notify the Ombudsman or PIC.

The previous “class and kind” agreements, as they are commonly known, were fairly complex, resulting in up to nine different complaint classifications. Our 2004 review resulted in the present simpler agreement, with only three complaint categories – Category 1, Category 2, and “local management issues”. The category is determined by the seriousness of the alleged conduct.

Category 1 complaints

Category 1 complaints concern the most serious types of alleged misconduct. For this reason, they are complaints that NSW Police and the Ombudsman must refer to the PIC.

The Category 1 “class and kind” agreement currently defines the following types of matters as Category 1 complaints:

- any complaint that a police officer has perverted the course of justice, or may have sought or may seek to pervert the course of justice, by giving false evidence, destroying or interfering with evidence, withholding or refraining from giving evidence, fabricating evidence, or influencing another so to act
- any complaint that a police officer has committed:
 - an assault causing serious injury and which could lead to a charge of malicious wounding or inflicting grievous bodily harm
 - a property offence (where the value of the property exceeds \$5000)
 - an offence where the maximum sentence is imprisonment for five years or more
- any complaint that a police officer has solicited or accepted, or may solicit or accept, a benefit in return for failing to carry out their duties

- any complaint that a police officer has interfered, or has sought or may seek to interfere, in a police investigation of an alleged offence
- any complaint that a police officer investigating an alleged offence by a police officer has improperly failed to carry out their duties in that investigation
- any complaint that a police officer is involved in the manufacture of a prohibited drug or cultivation of a prohibited plant, or the supply of such a drug or plant (where the amount is an “indictable quantity”).

The PIC must decide whether it will take over the investigation of the Category 1 complaints that it receives or that are referred to it by NSW Police or the Ombudsman. The PIC may also oversight the NSW Police investigation of a Category 1 complaint.

Where the PIC decides not to take over the investigation of a Category 1 complaint, the complaint is dealt with by NSW Police under the oversight of the Ombudsman.

In practice, the PIC investigates or oversees only a small number of Category 1 complaints. This means that most Category 1 complaints are investigated by NSW Police with oversight by the Ombudsman.

For example, in 2003-2004, the PIC investigated 10 Category 1 complaints, oversaw 9, and referred 436 (or 96%) for police investigation with Ombudsman oversight. In 2004-2005, the PIC investigated 7 Category 1 complaints, oversaw 18, and referred 472 (or 95%) for investigation by NSW Police with Ombudsman oversight.

Category 2 complaints

Category 2 complaints raise less serious forms of misconduct than Category 1 complaints. However, they raise issues sufficiently serious (such as criminal conduct, serious misconduct, and lack of integrity) to warrant the Ombudsman being notified of them and directly overseeing their handling by NSW Police.

The current agreement between the PIC and the Ombudsman defines the following complaint allegations as Category 2 matters:

- criminal conduct
- corrupt conduct
- conduct that, if substantiated, might warrant the removal of the police officer or some form of “reviewable” action
- lack of integrity
- serious incompetence, including that which results in failed prosecutions or criminal investigations

- unauthorised secondary employment in high risk industries
- harassment, victimisation or unlawful discrimination against any person (except where the alleged victim is a member of NSW Police who consents to the complaint being dealt with as a local management matter, and the police officer alleged to have engaged in the conduct in question has not had similar complaints made about them)
- detrimental action or reprisals (including possible payback complaints) against a police officer or person making a protected disclosure, allegation or report
- any inappropriate conduct resulting in death or injury or significant financial loss, or involving the discharge of a firearm
- any inappropriate conduct resulting in and/or from the search, arrest or custody of a person
- complaints about the handling of non-notifiable local management issues, where the Ombudsman requires that the matter be dealt with as a Category 2 complaint
- any local management issue which the Ombudsman, following consultation with the Police Commissioner, requires to be notified.

Local management issues

Complaints that are not dealt with under Part 8A of the Police Act are commonly referred to as “local management issues”, and generally concern issues of customer service and work place difficulties. The handling of these complaints need not be directly oversights by the Ombudsman, and for this reason NSW Police is not obliged to notify to the Ombudsman of such complaints. Where the Ombudsman or the PIC receive complaints of this type, they refer them to NSW Police for handling as local management issues. The Ombudsman may audit the management of these matters.¹

A snapshot of the complaints system – 2004-2005

The following information is drawn from the Ombudsman, PIC and NSW Police 2004-2005 annual reports:

- 5716 complaints about police officers were received.
- More than 40% of those complaints, and almost 30% of the more serious matters requiring notification to the Ombudsman, were made by police officers.
- 2117 of these complaints – or 37% – were directly managed by police commanders without Ombudsman oversight. 768 of these local management issues were referred to commanders for direct management after receipt by the

Ombudsman. The Ombudsman audited about 350 of the 2117 matters which were managed directly by police.

- 2731 Category 1 or Category 2 complaints were investigated by NSW Police (including by way of direct resolution) under the oversight of the Ombudsman.
- 25 Category 1 matters were investigated or oversighted by the PIC.
- 868 Category 1 or Category 2 complaints were declined for investigation, for example because the issues of complaint could be addressed satisfactorily elsewhere, such as before a court.

Complaint handling by NSW Police

The role of NSW Police in the handling of Part 8A police complaints is as follows.

Assessing and investigating police complaints

NSW Police is required to determine whether the complaint constitutes a Category 1 complaint that should be referred to both the Ombudsman and the PIC.² (The manner in which Category 1 complaints are handled – as requiring investigation or oversight by the PIC, or as matters which should be dealt with by NSW Police under the oversight of the Ombudsman – has been canvassed above.)

NSW Police is also required to notify the Ombudsman of Category 2 complaints.

NSW Police has to decide whether or not the complaint should be investigated, and advise the Ombudsman of its decision in that respect.³

The legislation specifies that the police officer(s) dealing with the complaint “must carry out the investigation in a manner that, having regard to the circumstances of the case, is both effective and timely”.⁴

The officers responsible for investigating the complaint are entitled to attempt to resolve the complaint through alternative dispute management procedures – in other words, through informal resolution or conciliation techniques.⁵

NSW Police is required to consult with the complainant before making a final decision on the complaint, and advise the complainant of the outcome of the matter, including any action taken or proposed to be taken.⁶

Options for managing officers

NSW Police is given a variety of options with which to manage officers who are found to have engaged in unreasonable or improper conduct.

The most stringent action that can be taken is the removal of a police officer on the basis that the Commissioner no longer has confidence in the officer.⁷ Other stringent management action includes “reviewable” actions, such as a reduction of the police

officer's rank, grade or seniority, or a deferral of the officer's salary increment.⁸ The process for the possible removal of a police officer, or the possible taking of "reviewable" action, involves seeking submissions from the officer before any decision is made.⁹ In addition, the removal of an officer, or the taking of "reviewable" action, can be the subject of review by the Industrial Relations Commission.¹⁰

NSW Police can also take "non-reviewable" management action in relation to unreasonable or improper conduct. Non-reviewable action includes:

- coaching
- mentoring
- training and development
- increased supervision
- counselling
- reprimand
- warning
- personal development
- performance enhancement agreement
- non-disciplinary transfer
- change of shift (for a limited period and entailing no financial loss)
- restricted duties
- recording of adverse findings.¹¹

NSW Police may use a combination of reviewable and/or non-reviewable action in determining how best to manage the officer in question.

Investigation reports

At the conclusion of the investigation, NSW Police must provide the Ombudsman with a report on the investigation, including advice as to any action taken or proposed in relation to the matter, and advice as to whether the complainant is satisfied with that action.¹²

The practical operation of the NSW Police complaint-handling system

It is convenient to note at this point how the system operates in practice.

NSW Police operates through 80 local area commands, which are grouped into six regions. There are also a variety of specialist commands such as the State Crime Command and the Forensic Services Group.

Most complaints are handled directly by local area commanders. They are supported in this role by a civilian executive officer, who provides an administrative function, and a complaints management team (CMT) which usually includes a number of senior officers. Complaints are investigated by local command officers under the direction of the CMT, which ratifies the investigation and outcomes. Where, for reasons such as a potential conflict of interest, a local commander cannot deal with a complaint, it is referred to the region commander for reallocation. Generally local commanders will make the final decisions about the outcome of a complaint, including any management action for the officers involved.

Of particular importance in the complaint-handling system is the Professional Standards Command. This command includes:

- a complaints management support unit – this unit provides guidance to local and specialist commands in the management and investigation of complaints, and monitors overall police complaints management
- the Employee Management Branch (EMB) – this branch is responsible for providing advice to commanders on appropriate management action, particularly in relation to cases of serious police misconduct
- an investigations unit – this unit is responsible for investigating allegations of serious misconduct by police, sometimes in conjunction with or under the oversight of the PIC.

The Ombudsman's role in the police complaints system

The fundamental role of the Ombudsman, as the primary oversight agency for police complaints, is to ensure the integrity of the handling of complaints by NSW Police.

The functions of the Ombudsman

The powers conferred on the Ombudsman by the 1999 amendments reinforce this role:

- The Ombudsman must assess whether NSW Police has correctly categorised the complaint, in particular, whether the complaint is a Category 1 complaint that has been – or should be – referred to the PIC.
- The Ombudsman assesses whether the NSW Police decision to decline the investigation of a complaint is appropriate. If the Ombudsman disagrees with the NSW Police decision, the Ombudsman may require the complaint to be investigated.¹³

- The Ombudsman may specify matters that need to be examined or taken into consideration during the NSW Police investigation.¹⁴
- The Ombudsman may monitor the NSW Police investigation. This means that Ombudsman officers may observe interviews conducted for the purposes of an investigation, and may confer with the investigating police about the conduct and progress of the investigation.¹⁵
- If the Ombudsman is not satisfied that a complaint is being investigated in a timely manner, the Ombudsman may require NSW Police to provide information about the matter.¹⁶
- NSW Police must provide the Ombudsman with a report on the investigation. The role of the Ombudsman is to decide whether it is satisfied with the investigation report. Where the Ombudsman is not satisfied, there are a variety of powers available:
 - The Ombudsman may request information from NSW Police to determine whether the complaint has been properly investigated.¹⁷
 - The Ombudsman may request further investigation of the matter.¹⁸
 - The Ombudsman may request NSW Police to review the action taken as a result of the investigation.¹⁹
- The Ombudsman may prepare reports concerning police complaints and/or the NSW Police investigation of complaints for the complainant, Commissioner of Police and the Minister for Police.²⁰ These usually contain recommendations designed to overcome deficient investigations, remedy inadequate or inappropriate management action and/or improve NSW Police policies and procedures.
- The Ombudsman is also entitled to conduct direct investigations into complaints and police investigations. These investigations also result in reports to the complainant, Commissioner and Minister for Police.²¹

The Ombudsman's Police Team

The section of the Ombudsman's office that deals with the handling of complaints about police is known as the "Police Team". This team is headed by the Assistant Ombudsman (Police). It has a team manager and the support of two senior legal officers. The team is divided into various areas:

- ***The Serious Misconduct section.*** This section is headed by the principal investigation manager. It has four teams of investigators, each team headed by a senior investigation officer. Each team focuses on specific regions or specialist commands. There is also a senior investigation officer who specialises in overseeing major investigations by NSW Police.
- ***The Customer Service section.*** This section deals with less serious complaints where alternative dispute resolution may be an option. Together with our assessment officers, it provides the primary administrative and data entry support for Serious Misconduct officers.

- ***Intelligence, Information and Auditing.*** This area is run by a senior intelligence and information manager. It has responsibility for the development of intelligence on officers, police commands, and emerging issues of concern. It also is responsible for conducting audits and the ongoing review of police team information and business systems.
- ***The Aboriginal Complaints Unit.*** This unit is led by a senior investigation officer. It deals with complaints about police by Aboriginal people, and is also involved in the auditing of the performance of police commands in accordance with the NSW Police Aboriginal Strategic Direction.
- ***Research and Projects.*** This section is run by the team manager, and involves both research into police practice and reviews of legislation conferring new powers on police.

The following sections discuss in more detail the functions of the Ombudsman in the police complaint oversight system and how these functions are exercised in practice.

Assessment of complaints about police

All Category 1 and Category 2 complaints are assessed by the Ombudsman. Our assessment includes:

- deciding whether the complaint requires investigation or may be declined (for example, because the complainant has an alternative and satisfactory means of redress, or because the complaint has previously been dealt with)
- reviewing the complaint histories of subject officers, both to identify matters where a more comprehensive or “evidence-based” investigation may be appropriate, and to ensure that complaints about the same officer are being dealt with in a consistent manner
- determining whether any instructions or advice should be provided to NSW Police during its conduct of the investigation
- determining whether an increased Ombudsman role should occur in the particular matter, such as monitoring the investigation or attempting to directly conciliate the matter as an “honest broker”.

Increasingly, and in particular where complaints are notified to the Ombudsman by NSW Police, additional matters such as the previous competence of the complaint investigator, delays in the provision of advice by NSW Police, and systems issues that may arise from the complaint are being directly considered at the assessment stage.

The Police Team also uses assessment as an opportunity to collect information for legislative reviews and other projects, and for the consideration of child protection issues, which may be relevant to other areas of our office.

Monitoring NSW Police investigations

In most cases, the Ombudsman's office awaits the NSW Police report on the investigation of the complaint without any further involvement in the investigation process. However, in some cases, the Ombudsman "monitors" the NSW Police investigation. The monitoring process generally involves attending all or some of the interviews conducted for the purpose of the investigation and conferring with the police investigator about the conduct and progress of the investigation. In 2004-2005, we monitored 26 investigations.

The Police Act provides that the Ombudsman may monitor the progress of an investigation "if of the opinion that it is in the public interest to do so."²² The sorts of investigation that the Ombudsman monitors generally involve one or more of the following elements:

- The complainant is particularly vulnerable and may be reluctant to provide police with information relevant to their complaint – for example, a young person, an Aboriginal person, or a person from a non-English speaking background. The presence of an Ombudsman officer provides assurance to the complainant that their concerns are being taken seriously.
- The complaint involves serious allegations of misconduct, and a deficient investigation of the complaint will be unable to be effectively remedied. In cases of this sort, the involvement of Ombudsman officers in the investigation is designed to ensure that interviews with the complainant, relevant witnesses, and the police the subject of investigation are thorough and cover all reasonable lines of inquiry.

Reviewing NSW Police investigations

NSW Police must provide the Ombudsman's office with reports on complaint investigations. The reports should include all documents considered in the investigation, tapes or transcripts of any interviews conducted, and complaint management records.

The investigation reports are generally assessed by investigation officers of the Serious Misconduct Unit. The crucial function is to assess the quality and timeliness of the investigation. In 2004-2005, we received 2440 police investigations.

If the investigation officer is satisfied with the investigation, NSW Police are advised accordingly. If the investigation officer is not satisfied with the investigation, then there are a variety of options that can be pursued:

- Further information can be requested from NSW Police to determine whether the matter has been properly investigated.
- Further investigation of the matter can be requested.

- Where there are concerns about the adequacy or appropriateness of the management action taken by NSW Police, the Ombudsman’s office can request a review of the matter.

In most cases, our requests for further information, further investigation, or the review of management action result in clarification or further action by NSW Police, such that the Ombudsman’s office is then satisfied with the outcome of the investigation. (Further details of our oversight of investigations are set out in Part E below.)

However, in some cases, we prepare reports for the complainant, Commissioner and Minister for Police expressing concerns about the adequacy of the police investigation and including recommendations for further action by NSW Police and/or improvements to NSW Police policies and procedures.

In a small number of cases, we initiate direct investigations into the NSW Police handling of a complaint prior to preparing a report. In 2004-2005, we handled 23 matters in this manner.

Conciliations

NSW Police conduct the majority of conciliations through discussions with complainants about an appropriate resolution of their concerns.

However, there are some cases where we consider that we have a role to play in resolving complaints. This usually involves acting as conciliator or mediator to bring the complainant and senior officers from NSW Police together to discuss the issues involved, and to facilitate a resolution of the complainant’s concerns. This technique has been particularly useful in the context of complaints by police of unfair treatment by NSW Police. Our annual reports contain many examples of successful conciliations that we have conducted.

Auditing police complaint systems

We do not directly oversight the handling of several thousand local management issues, because these less serious complaints should be able to be managed directly by local commanders. Instead, we conduct audits of how local area commands have handled these matters, with particular reference to the question of compliance with the requirements of the complaint handling system – for example, whether matters classified as local management issues should have been dealt with as Category 1 or Category 2 complaints, and whether adequate records have been kept of the inquiries made and action taken on local management issues.

In 2004-2005, we audited 350 police complaints which had been dealt with as local management issues to determine compliance with the new class and kind agreement. There was some evidence from this audit of improved classification. We also reviewed the quality of 96 local management matters as part of our audit – 93 matters were handled satisfactorily by commanders. We are currently auditing the complaint records of six local commands.

Monitoring officers with significant complaint histories

An important tool for our work is the development of profiles on officers with complaint histories of concern. This work is carried out by our Intelligence section. Information about officers of concern is used in both the assessment of new complaints and the scrutiny of the management action taken as a consequence of particular complaint investigations. Currently we closely monitor complaints relating to over 100 “high risk” officers, and directly raise the management of these and other officers with significant complaints histories when we meet with local commanders.

Monitoring complaint management trends

The Ombudsman actively monitors the performance of police commands in handling complaints against the following criteria:

- the rate of deficiencies in complaint investigations, including whether those deficiencies are remedied following a request from the Ombudsman
- the timeliness of complaint investigations, including the percentage of matters finalised within 90 days and those complaint matters not finalised within 12 months
- complainant satisfaction with complaint investigations conducted by local commanders (as recorded by NSW Police)
- the use of alternative dispute resolution by local commanders.

In addition, we actively monitor the number of complaints received in each local command, the proportion of matters investigated and declined, and whether the complaints are from internal witnesses or members of the public.

We use this information to raise issues at a corporate level with NSW Police – particularly in relation to the timeliness of complaint investigations. In addition, we are able to identify commands which appear to have good or poor complaint handling practice, so that discussions can be held with commanders or complaints management processes directly observed. Finally, we use this information to assist in our decisions as to those commands that will be subject to complaint audits or other interventions.

Project work

In addition to our direct oversight of particular complaint matters, we undertake significant project work, examining various aspects of policing in light of broader systemic issues raised by our complaint-handling.

Examples of our project work over the years include:

- conflicts of interest²³
- the management of police officers adversely mentioned at the Royal Commission²⁴

- the impact of stressful or traumatic incidents on police²⁵
- police relations with young people²⁶
- the policing of domestic violence²⁷
- improper accessing of computer information²⁸
- improper use of police email²⁹
- risk assessment of police officers³⁰
- the preparation of police statements³¹
- seeking advice from the Director of Public Prosecutions³²
- the section 181D process for removal of police officers³³
- the use of capsicum spray³⁴
- identifying and managing officers with complaint histories of significance³⁵
- assessing the police management of complaints³⁶
- analysing who makes complaints about police³⁷
- use of closed circuit television (CCTV) facilities at police stations³⁸
- the police use of the Young Offenders Act³⁹
- police relations with local communities⁴⁰
- speeding fines⁴¹
- police vehicle pursuits.⁴²

The Aboriginal Complaints Unit

The Royal Commission recommended that the Ombudsman should be given the resources to establish an Aboriginal Complaints Unit, which could:

- focus upon the significant volume of complaints by Aboriginal people concerning police misconduct
- research and monitor issues concerning the complex and often troubled relationship between police and Aboriginal communities
- assist in establishing better liaison, particularly in remote areas

- assist in the implementation of the Aboriginal Strategic Plan and the recommendations of the Royal Commission into Aboriginal Deaths in Custody.⁴³

In accordance with this recommendation, the Ombudsman’s Aboriginal Complaints Unit was established in 1996. Currently, the unit has four identified Aboriginal positions.

In the first years of its operation, the unit focused on access and awareness programs to offer support to Aboriginal complainants, and to establish better liaison between Aboriginal communities and police.⁴⁴

More recently, we have begun new strategies to improve relationships between Aboriginal people and police.⁴⁵ The most important initiative in this respect has been a series of “audits” since 2002, of 20 local area commands in areas with significant Aboriginal communities. The process has involved:

- reviewing projects and initiatives aimed at assisting police to work more effectively with local Aboriginal communities
- meeting with local area commanders, other police officers, local service providers, and key community people to discuss practical issues affecting the relationship between police and Aboriginal people
- giving each command a “report card” and “rating” against the six key objectives contained in the NSW Police Aboriginal Strategic Direction, with recommendations on how the command could perform better
- monitoring each command’s compliance with our recommendations and the implementation of the objectives of the Aboriginal Strategic Direction.

Commanders now report directly to the Commissioner, through the Police Aboriginal Strategic Advisory Council, on their dealings with local Aboriginal communities, including their responses to matters raised in our audits. In addition, we publicised our work in this area through a special report to Parliament in April 2005.⁴⁶

Building relationships

Relationships with police commanders

Of critical importance to our oversight of the NSW Police complaints system is developing a constructive relationship with commanders and other officers while maintaining our independence and an appropriate distance.

The Commissioner and Ombudsman meet on a regular basis to discuss complaint handling and other issues. The Police Team executive meet with senior officers from the Professional Standards Command and Commissioner’s Inspectorate to discuss complaint handling, projects and other issues. In addition, we regularly report to local

commanders and professional standards managers about our oversight work and emerging issues.

Where appropriate, we share information arising from our oversight with police commanders and other senior police. For example, when we meet with commanders, we share information about officers that we have identified through our intelligence systems as presenting a possible risk, to discuss the various strategies in place to manage the performance and conduct of these officers. We also exchange our complaint trend data with NSW Police, especially in relation to timeliness and deficient investigations.

Our senior staff address police officers as part of NSW Police internal investigation courses, and complaint management team and executive officer training. We also present to all student police at the Academy and at other training forums to which we are invited.

Relationships with communities

Equally important is the maintenance of our relationship with those persons or organisations who require access to our office to raise issues concerning police conduct.

In addition to the work of our Aboriginal Complaints Unit, our youth liaison officer, who is based in the Police Team, actively engages youth workers and others to facilitate the access of young people to the Ombudsman.

We also regularly meet with representatives of legal centres, peak advocacy groups and others to inform them of our role in relation to police oversight and to explain how issues can be raised both with us and with police commanders.

Relationship with the PIC

The Ombudsman and Police Integrity Commissioner meet on a regular basis to discuss significant oversight and corruption matters. In addition, we have established officer-level liaison roles which deal effectively with individual matters. PIC and Ombudsman officers also meet to exchange intelligence information. Officers of both agencies provide co-ordinated feedback on new police policies where appropriate.

In addition, both agencies have recently worked with NSW Police on research into early warning systems for officers. In December 2005, both agencies hosted a meeting of all heads of Australian police oversight authorities.

Other functions of the Ombudsman affecting police officers

The Ombudsman has a variety of functions additional to that of its role in the police complaints area. These are described in the following sections.

Legislative reviews

Since 1998, the NSW Parliament has asked the Ombudsman to review the operation of 17 new laws giving police additional powers. The purpose of these reviews is to assess whether the new police powers are being implemented efficiently, effectively and fairly for both police and the community. Our 2005 annual report (at page 60) sets out the various legislation that we have reviewed or are reviewing, the nature of the police powers in question, and the progress of our reviews. It should be noted that, since the time at which the table was prepared, we have commenced our reviews under the Law Enforcement (Powers and Responsibilities) Act 2002, the Law Enforcement (Public Safety) Act 2005, the Terrorism Legislation Amendment (Warrants) Act 2005, and the Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005.

Monitoring functions

The Ombudsman has a number of responsibilities designed to keep law enforcement agencies accountable when they conduct covert operations.

One is to monitor the compliance of NSW Police – and other investigative agencies such as the PIC, the ICAC, and the State Crime Commission – with the record-keeping requirements of the telecommunications interception legislation.⁴⁷

Another is to monitor the compliance of NSW Police and other investigative agencies with the requirements of the Law Enforcement (Controlled Operations) Act 1997.⁴⁸

The third is to hear appeals from decisions of the Commissioner about whether persons should be accepted into, or excluded from, the Witness Protection Program.

Freedom of information

The Ombudsman has the power to deal with complaints about decisions by public authorities in response to applications for access to documents under the Freedom of Information Act.

NSW Police easily receives the largest number of freedom of information applications of all public authorities – some 8500 in 2003-2004. In addition, we receive more complaints about the handling of freedom of information matters by NSW Police than by any other agency – some 44 complaints, almost a quarter of the total freedom of information complaints we received in 2004-2005. We have been concerned for some time about the failure of NSW Police to meet statutory requirements in processing applications, and have recently reported to the Commissioner and Minister, resulting in an undertaking that additional officers will be made available to the NSW Police Freedom of Information Unit.

Child protection

The Ombudsman is responsible for overseeing the handling of allegations of child abuse (referred to in the Ombudsman Act as “reportable conduct/allegations”) against employees of NSW Police and other public and private agencies. Our role in this area

followed recommendations by the Royal Commission that there should be an appropriate oversight regime.⁴⁹

For police officers, reportable conduct matters – including access to internet child pornography – are also complaints under Part 8A of the Police Act. The Police Team manages these complaints in consultation with our Child Protection Team.

The Child Protection Team examines reportable allegations against employees of other agencies that have been referred to Joint Investigative Response Teams or local police commands for assessment and investigation. This includes examining whether police have appropriately handled matters referred to them for assessment and possible criminal investigation, and whether employers have been notified of criminal charges or investigations concerning children and involving their employees.

The Community Services Division – reviewable deaths

In 2002, the Community Services Commission was amalgamated with the Ombudsman's office. The resulting Community Services Division has a variety of functions in the community services area.⁵⁰

One important function of the Community Services Division is to review the deaths of certain children and people with disabilities. The child death review function sometimes involves scrutinising the involvement of NSW Police with a child who has subsequently died, including whether NSW Police has appropriately responded to concerns about the safety, welfare and wellbeing of the child. Some of our reviews have entailed formal investigation of NSW Police, resulting in reports making recommendations for improved NSW Police procedures and practices in the area of child protection.

Part 3 of the Ombudsman Act

The Ombudsman has jurisdiction under Part 3 of the Ombudsman Act to deal with complaints about NSW Police, excluding the conduct of a police officer when exercising functions with respect to crime and the preservation of peace (Schedule 1, Clause 13 of the Ombudsman Act). This means the Ombudsman can deal with complaints concerning maladministration by police officers, and complaints about NSW Police public servants. Examples of matters dealt with under Part 3 include complaints of unreasonable administrative conduct and inappropriate policies, and complaints that we resolve by conciliation or mediation.

Comment

It is important to emphasise that our work in the area of overseeing the handling of complaints about police, and our expertise in this area, directly contributes value to the performance of our other functions described above. Conversely, the performance of these other functions contributes to our police complaint work. Over time, we have built on the expertise in each of these areas, sharing information across our teams to enhance our oversight capacity, and to contribute to better outcomes for NSW Police, individual members of the public, and the community generally.

Specific matters the subject of the Committee’s inquiry

We now turn to comments on the specific matters the subject of the Committee’s inquiry.

A: The appropriateness of the roles and functions of the Ombudsman and the PIC

The role of the Ombudsman in dealing with police complaints has existed now for almost 30 years. Recent reviews in NSW confirm the appropriateness of distinguishing between complaint-handling and corruption-fighting, and for separate agencies to oversee NSW Police performance in these areas.

In chapter 5 of its first Interim Report in February 1996, the Royal Commission examined the various possible models for dealing with police complaints and corruption investigations. That chapter outlines in detail the advantages and disadvantages of a single agency overseeing both corruption and complaint matters. There might be some advantage in respect of administrative practices and consistency to have a single agency oversee both functions. However, matters such as the sheer volume of complaints, the tension between corruption-fighting on the one hand and complaint-handling on the other, and the need for NSW Police to have primary responsibility for dealing with complaints, meant that the preferable approach was for these functions to be separated between the Ombudsman and the PIC. In particular, given the nature of complaint-handling, its reactivity, high-volume and demand-driven aspects, there is a significant danger that resource allocation could be distorted in favour of complaint-handling if a single agency were responsible for both this and corruption-fighting.

The recent review of the Police Act by the Minister for Police, undertaken during the period 2002-2004, considered in detail Part 8A of the Act. The review included representatives of NSW Police, the Police Association, the Ministry for Police, the PIC and the Ombudsman. The recommendations arising out of that review, arrived at by consensus, reinforce the respective roles of the Ombudsman and the PIC in dealing with complaints about police. If implemented, the recommendations will further clarify the role of the Ombudsman as the primary complaints oversight agency for NSW Police, and streamline complaint-handling by removal of the Category 1/ Category 2 distinction.

An examination of current arrangements in other Australian policing jurisdictions indicates a variety of approaches:

- In Victoria, the Ombudsman is responsible for both corruption-fighting and complaint-handling, by virtue of the Ombudsman’s role as head of the Office of Police Integrity.
- The Crime and Misconduct Commission in Queensland and the Crime and Corruption Commission in Western Australia both have responsibility for police complaints as well as corruption investigations.

- At the federal level, the Commonwealth Ombudsman presently has responsibility for dealing with all police complaints. A proposed new Australian Commission for Law Enforcement Integrity will not replace the role of the Commonwealth Ombudsman in dealing with most police complaints. In this respect, the federal system will largely mirror the present arrangements in NSW.
- In South Australia, a stand-alone Police Complaints Authority deals with police complaints with no separate corruption-fighting body.
- In Tasmania and the Northern Territory, the Ombudsman has the role of receiving and dealing with police complaints. There is no corruption commission in either of these jurisdictions.

No jurisdiction other than NSW has a stand-alone police integrity commission. Those jurisdictions that do have a corruption commission include both police and other public authorities within their jurisdiction.

In addition, the situation for other public agencies in New South Wales mirrors that for police. A separate agency – the ICAC – deals with corruption investigations, while the Ombudsman deals with complaint matters.

The above synopsis suggests that there is no preferred model to oversight both police complaints and conduct corruption investigations. Instead, each jurisdiction has established arrangements that presumably best suit the culture of the policing organisations they oversight, and particular issues arising from policing activities.

None of the reasons for providing distinct oversight arrangements for police complaints as compared to corruption investigations have changed. Further, as has been demonstrated in the ten years since the Royal Commission, the Ombudsman has continued to perform those functions for which it is responsible to a high standard. Our focus on complaint handling has resulted in substantial improvements in the timeliness and quality of police investigations.

Furthermore, complaint-handling processes should not have substantially impacted upon the PIC's capacity to investigate serious misconduct or corruption matters. The reason for this is that the PIC only deals with a small number of complaints. Only 25 complaints were directly investigated or oversighted by the PIC in 2004-2005, and only 490 Category 1 complaints required assessment.

B: The powers available to the Ombudsman and the PIC to perform their functions

We consider that the powers available to us to perform our functions are generally satisfactory.

However, there are a number of areas where we consider that there should be some clarification of and/or addition to our existing powers.

There have been a number of occasions in which police have challenged our entitlement to access all of the information relevant to the assessment of a police complaint and/or its investigation. For example, there appears to be a real question as to whether we are entitled as of right to legal advice obtained by NSW Police if an objection to the production of such advice is made on the basis of legal professional privilege. We believe that we should be entitled to access all relevant information, and that any obstacles or doubts in this respect should be overcome or resolved through appropriate legislative amendments.

In addition, issues have been recently raised about our entitlement to information and documents during the currency of an investigation. It is obvious that this may, on occasion, be required. The Police Act should be entirely clear in this respect.

In the area of our monitoring of police investigations, NSW Police has recently refused to agree to an arrangement whereby Ombudsman officers would be entitled to confer with police investigators during a break in an interview to discuss further questions or lines of inquiry that might be pursued. We believe that such conferences are an important means of ensuring that police complaint investigations are as effective as possible. Our experience has also been that police investigators welcome the opportunity to confer with Ombudsman officers about the appropriate questioning of witnesses. Accordingly, if NSW Police is not prepared to agree to such arrangements, we believe there should be an appropriate clarifying amendment to the monitoring provisions of the Police Act.

There are also concerns in relation to the taking of appropriate management action in relation to officers found to have engaged in serious misconduct. Where we are dissatisfied with the management action taken following an investigation, we are entitled to request NSW Police to review the matter. In a number of cases where we have requested a review, the response by the relevant commander and NSW Police has been that it would be unfair and a matter of “double jeopardy” to take any further management action in relation to the officer. While we consider that there are real questions as to the cogency of these arguments, we also believe that any difficulties in this respect should be resolved. This could be achieved by stipulating that, where a commander reconsiders the management action taken at the request of the Ombudsman, this would not constitute “double jeopardy” or, of itself, be a ground for the Industrial Relations Commission to overturn the action taken on the ground that it was “harsh, unreasonable or unfair”.

C: The management structures, funds and resources available to the Ombudsman and the PIC to perform their functions

The Ombudsman Police Team has undergone significant changes, particularly since 2001, to enhance our capacity to meet the various legislative functions conferred. These changes have occurred against a background of more than doubling in the size of the Ombudsman, with the additional responsibilities in relation to workplace child protection (Part 3A of the Ombudsman Act) and the amalgamation with the Community Services Commission in 2002.

In particular, the Ombudsman Police Team has moved from processes that largely oversights matters complaint by complaint, to processes and methods that seek to harness the systems issues arising from complaints, and focus on the most serious matters for rigorous and detailed oversight. These changes have included:

- In 2001, the creation of the Serious Misconduct Unit to oversight the most serious allegations of police misconduct. This has enhanced the rigorous scrutiny applied to these complaints, while ensuring that less serious matters are subject to streamlined yet appropriate oversight. Recent changes have resulted in smaller teams with greater supervision, and improved guidelines to increase the consistency of decision-making within the Ombudsman.
- The dedication of certain officers to undertake project work in relation to policing issues. In this respect, we note that this work relies on efficient complaints oversight, so that there is some possibility that the few discretionary resources available to the police team can be used in detailed research of significant and systemic policing issues. The twin pressures of complaint-handling and review work imposed by the Parliament mean that project work is the first to be compromised where our resources are not adequate to meet our other statutory functions.
- Since 2000, the development and implementation of an intelligence capacity has allowed us to identify those areas where our resources ought be most focused, and consequently streamline our handling of those areas where there is least risk to NSW Police and the community.

The most recent report of the Committee following the Thirteenth General Meeting with the NSW Ombudsman (report number 10/53 – May 2006) includes considerable detail about the resourcing constraints under which the Ombudsman operates, and the relevant efficiency of the Ombudsman as against other oversight agencies within NSW. We are pleased with recent additional funds being made available for our complaints oversight work. These provide some assurance that the existing quality of our oversight will be maintained. However, as is the nature with a demand-driven function, should further pressure be placed upon us, it will result in downgrading of our proactive activities to ensure that we meet our legislative obligations.

D: Accountability mechanisms

The accountability of NSW Police

The Police Act provides for the accountability of local commanders in dealing with complaints at various stages. For example:

- All complaints about police officers must be registered in the complaints information system, to which the Ombudsman and the PIC must be given access.
- All complaints specified by the Ombudsman and PIC through class and kind agreements must be notified by commanders to the appropriate oversight agency at the time they are received.

- The Ombudsman conducts regular audits, both on site and through the complaints information system, to ensure that commanders are notifying complaints as required.
- The Ombudsman may monitor complaints which are being investigated by NSW Police, or request information where a complaint investigation appears unduly delayed.
- At the conclusion of an investigation, NSW Police must forward to the Ombudsman a report, including all relevant investigation documents, for individual oversight.
- The Ombudsman can conduct direct investigations and report on matters, including by way of own motion.
- The Ombudsman can otherwise scrutinise systems in place within NSW Police to handle complaints.

In addition to the individual oversight of particular matters, the Ombudsman keeps under scrutiny the trends in complaints management, including deficient investigation rates and timeliness in dealing with complaints. The Ombudsman also directly observes local complaint handling processes and provides direct feedback to commanders and other officers.

The accountability of the Ombudsman's office

There are a number of ways in which the Ombudsman's office is held accountable for its work:

- Where a complainant is dissatisfied with a decision by an officer of the Ombudsman in relation to their complaint, the Ombudsman personally reviews the handling of the matter. A complainant can also complain to the PIC about the police handling of a matter.
- The Ombudsman deals with complaints about the conduct of Ombudsman officers and reports on these matters directly to complainants.
- Any allegation of corruption by Ombudsman officers must be referred to the Independent Commission Against Corruption (ICAC). The ICAC can also receive complaints about the Ombudsman directly.
- A complainant can complain to the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission about the Ombudsman's handling of their matter. While the Committee is precluded from examining the merits of the Ombudsman's decision, it is entitled to examine broader issues concerning the matter (for example, the Ombudsman's procedures in relation to complaint-handling).⁵¹

- In some circumstances, a complainant is entitled to institute legal proceedings against the Ombudsman. For example, a complainant or a public authority may challenge a decision of the Ombudsman in relation to the scope or limits of the Ombudsman's jurisdiction to conduct an investigation.⁵²
- The Ombudsman is obliged to table an annual report to Parliament about the work of the office.⁵³ This will include details of reviews conducted and complaints received against Ombudsman officers, and the outcomes of these matters.
- The Joint Parliamentary Committee has a range of broad functions designed to bring accountability to the Ombudsman's office. In particular, the Committee monitors and reviews the exercise of the Ombudsman's functions; reports to Parliament on matters concerning the Ombudsman; examines the Ombudsman's annual reports; and reports to Parliament on matters arising from those annual reports.⁵⁴
- The Ombudsman is subject to the same accountability as other public authorities for internal probity and accounting, privacy, discrimination, workplace safety, internal promotions, public sector management and other government-imposed regulations.

An Inspector for the Ombudsman?

An additional accountability mechanism for the PIC is the Inspector. The Inspector's functions include auditing the operations of the PIC for the purpose of monitoring compliance with the laws of the state; dealing with complaints about abuse of power, impropriety and other forms of misconduct; and assessing the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

The Royal Commission recommended establishing the Inspector to deal with the risk that an agency such as the PIC, being heavily committed to covert investigations, reliant on informants, and possessing powers that are both coercive and of the kind that might involve substantial infringements of rights of privacy, may overstep its powers. Similar reasons have resulted in the recent creation of an Inspector for the ICAC.

However, the Ombudsman does not have functions such as:

- the capacity to conduct public hearings where witnesses are compelled to provide evidence
- the power to issue warrants for the arrest of persons who are required to give evidence and do not attend on summons
- the power to tap telephones
- the power to conduct controlled operations, and engage in what would otherwise be unlawful conduct

- the power to use listening devices

In addition, the Ombudsman cannot make binding decisions affecting police officers. The Ombudsman can only make recommendations which are either accepted or rejected by the Police Commissioner or Local Area Commanders.

For these reasons, it is unnecessary for an Inspector to oversight the exercise of functions by the Ombudsman.

E: Effectiveness and efficiency of the current police oversight system

Effectiveness

Our own view, informed from the oversight of many thousands of police investigations in the past ten years, is that commanders are generally doing a satisfactory job in dealing with police complaints. Recent information supporting this view includes the following:

- In 2004-2005, 81 police officers were charged with 155 matters, including 63 officers charged following complaints by other police.
- Internal police complaints make up almost 30% of all serious complaints made against police officers – some 1215 complaints of a total 4179 received by the Ombudsman in 2004-2005.
- 60% of complaints investigated in 2004-2005 resulted in police officers the subject of complaint being vindicated. These complaints present an opportunity for commanders to back police officers who have performed duties in a lawful and appropriate manner. They also allow commanders to explain to complainants the reasons why investigations have supported police actions.
- 40% of complaints investigated result in some management action by police commanders – some 960 of the 2440 complaints investigated by police and oversight by us in 2004-2005.
- While management counselling continues to be a preferred management response, it is pleasing to note the increase in the use of performance agreements to actively manage officers whose actions have been found wanting.
- In 2005, 18 police officers were removed following consideration by the Commissioner of his confidence in them, and another 14 probationary constables were also removed. About one in three officers considered for removal by the Commissioner is ultimately served with a notice to this effect.

These statistics, which build on similar results in recent years, indicate that many police complaints are resulting in serious outcomes, or improvements to systems or individual performance. In addition, complaints are assisting NSW Police to manage and improve the conduct of police officers.

Ombudsman oversight of police investigations demonstrates a number of matters:

The quality of police investigations

- We expect the police investigation of Category 1 complaints to be the most rigorous. We closely examine every document considered in the police investigation to ensure all lines of inquiry are pursued and appropriate investigation methodologies are employed.

In the calendar year 2005 the Ombudsman found 16% of Category 1 investigations by police to be deficient.

- Our examination of Category 2 matters is tailored to the seriousness of the allegations. For criminal and serious misconduct investigations we expect investigations to be of the highest standard.

Where the matters raise less serious conduct issues, we expect police to focus on achieving an appropriate outcome, rather than chasing down every investigation lead. We tend only to raise issues in these matters where investigation deficiencies have affected outcomes, and there is some prospect this can be remedied by further action.

In the calendar year 2005 the Ombudsman found 7% of Category 2 investigations by police to be deficient.

- Police acceptance of the issues that we raise is demonstrated by the high number of matters remedied at our request.

For example, between 1 April and 31 December 2005, in more than 90% of Category 1 investigations where we identified deficiencies, actions were taken by NSW Police to acknowledge and remedy these deficiencies.

Overall, about 8% of all police investigations require some action following our review. Conversely, more than 90% of matters dealt with by local commanders are judged by our office to be satisfactory on first review. The generally satisfactory quality of police investigations strongly suggests that rigorous oversight of matters, complaint by complaint, directly impacts upon how commanders deal with those matters. This normative effect of oversight, which in our view is an extremely important aim for the Ombudsman in its complaint-handling work, is a particular example of the effectiveness of the current police oversight system.

Complainant satisfaction

Where complainants are asked as to their satisfaction with the handling of their complaints, as is required by the Police Act, most expressed satisfaction with how their matters were dealt with. For example, in the calendar year 2005, 910 of those persons surveyed by police at the end of an investigation (or 75%) expressed satisfaction with police action taken in response to their complaint.

It is inevitable that some complainants will not be satisfied with the action taken on their matters. Factors such as timeliness and the outcomes of the matter will directly impact on complainant satisfaction. In 2005, 300 of the 1210 persons surveyed were not satisfied with how their matters were managed.

In addition to our review of the police handling of serious complaints, the oversight system allows further review at the request of complainants. In 2004-2005, 68 complainants sought review of the original decision of the Ombudsman in relation to the adequacy of a police investigation, with two matters being re-opened as a result of those reviews.

Timeliness

A particular issue raised during the Royal Commission was delay in the handling of police complaints. For example, at the time of the February 1996 Interim Report, 30% of complaints took over one year to finalise. In 2005, this figure had dropped to less than 9%. Ombudsman systems to identify delayed matters and raise those with police are the subject of ongoing review. At present we are trialling a new procedure – raising delayed matters directly with the Professional Standards Command, for that command to follow up with local area commanders to finalise investigations. We aim to increase NSW Police corporate responsibility for significant delays through this process.

Another aspect of timeliness is the number of matters which can be resolved quickly. This issue, which has been of concern to the Ombudsman for some time, resulted in a report this year exploring recommendations to improve the speedy handling of less serious matters. This includes removal of some of the administrative processes for less serious complaints, and ensuring that the training provided to investigators and commanders for alternate dispute resolution is sufficient. In addition, we have recommended a review of the role of the executive officer to ensure that all commands have appropriate administrative assistance in complaint management.

Systems issues

A key aspect of effective complaint handling is whether systems issues are being identified and remedied. Our current projects on police pursuits and domestic violence have been informed by complaints we have received and oversighted. Most of our previous project work, including in relation to police access of confidential computer information, improper use by police of email, proper risk assessment of police officers, and the use of capsicum spray by police officers, was also informed by our complaint oversight work. In this respect, we are working to ensure that the lessons learned through individual matters are shared with other police officers. Our recommendations, which are usually adopted by police, include providing information to police officers about common ethical issues.

Efficiency

We have previously outlined our submission to government about the resources required to effectively perform our role. That submission included substantial detail about the comparative cost effectiveness of the NSW Ombudsman as against other

watchdog agencies. With respect to police complaints, the following additional efficiency matters are worthy of further explanation.

Class and kind agreements

As outlined in our explanation of the current police complaints system, the Police Act permits the Ombudsman to agree with the PIC about those complaints which should, or conversely should not, be the subject of oversight matter by matter. An Ombudsman-initiated review, finalised in October 2004, reduced the complexity of the class and kind agreements, including a reduction in the number of types of complaints from nine to three. The new and simpler agreement has resulted in a reduced number of incorrect classifications by police commanders.

Our own view is that the present agreements, on the whole, reflect the type of matters that the community and Parliament would expect the Ombudsman to oversight, focusing on criminal and serious misconduct issues, and those where police exercise formal powers of search or arrest against individuals.

This emphasis on the most serious matters reflects our view that police commanders should generally be left to deal with management and other less serious matters without rigorous external oversight by the Ombudsman.

We have commenced a further review of the agreements, with a small project examining those police management matters that are presently being referred for Ombudsman oversight. Should we identify any additional classes of matters that should not be notified to the Ombudsman, we will seek amendment to the class and kind agreements with the agreement of the PIC and in consultation with NSW Police.

Streamlined processes

In 2004 and 2005, it was necessary to closely examine and further streamline our own internal processes to deal with the very significant increase in complaints over that time, caused in part by the previous failure of NSW Police and the ICAC to notify us of a substantial number of matters. Using our intelligence holdings and adopting sound risk management processes, we have sought to streamline our handling of certain less serious category 2 complaints where appropriate, while continuing to focus on those officers or issues that raise concerns.

Two oversight agencies

In having two separate agencies to deal with corruption matters and complaint-handling, there was always a potential for additional administrative overheads and potential duplication between the agencies.

On occasion, it does occur that both agencies deal with the same complaint. Where such matters come to our attention, we have in place a simple process to consult with the PIC and determine whether we should have any role in the matter, or whether it should be referred back to the PIC for its direct management.

In addition, the Ombudsman and PIC Commissioner meet regularly to discuss the projects of both agencies and particular issues about complaints oversight. These arrangements ensure that both agencies work together, rather than at cross purposes, in dealing with police complaints.

In reality, however, there is little room for confusion, because the Ombudsman overlooks more than 99% of police complaints and over 95% of all Category 1 complaints. Our role as the primary oversight agency is not the subject of any confusion for those dealing with complaints on a regular basis.

Catsi – a shared complaints system

One of the outcomes of the Royal Commission was a recommendation that the Ombudsman, PIC and NSW Police should share a single complaints information system.

Catsi, which was developed to answer this need, has failed to provide an appropriate business system for the Ombudsman. This has resulted in us reducing our use of the system in 2003 and again in 2005. An unfortunate aspect of that decision is the requirement for police commands to continue to provide information manually in addition to storing it electronically on Catsi. This is not a desirable outcome but necessary given the failure of NSW Police to provide a workable Catsi system.

We have taken a number of steps to reduce the impact of the reduced use of Catsi, including permitting local commands to provide us with their own internal working documents rather than creating separate correspondence; inviting commands to discuss with us information that we require to perform our role before copying material that may not be necessary; and using Catsi to undertake our monitor and intelligence functions rather than requesting separate information from NSW Police.

Concluding comments

It is inevitable that oversight of police complaints will impose an administrative burden on NSW Police regardless of who performs that role.

We have taken many steps to seek to increase both our own efficiency and to reduce the administrative burden of our oversight on local commanders and NSW Police generally. We will continue, either where we identify opportunities or where issues are raised with us, to take steps to further refine our oversight requirements, provided that this will not adversely impact upon our capacity to perform the legislative functions imposed upon us.

F: Other matters

Given the broad nature of the review being conducted by the Committee, there are a number of current issues which we believe are worthy of some further comment.

Investigation and management of serious misconduct matters

Police commanders generally deal well with most complaints. In particular, commanders are effective in dealing with management issues, and many less serious criminal matters, such as assaults and drink driving matters.

However, commanders do not deal as well with the most serious allegations, such as drug supply and corruption matters. We raise most deficiencies about the investigation of these Category 1 complaints.

A reason for this is the lack of expertise within some local commands to deal with Category 1 complaints. Often local commands will not have available to them the expert and technical resources to effectively plan for and execute complex corruption investigations. This includes access to electronic resources (such as listening devices or telecommunication interception devices), integrity testing, and investigators with expertise in dealing with serious misconduct allegations.

In addition, many Category 1 complaints are dealt with by local commands other than the command in which the alleged conduct occurred, which would ordinarily have responsibility for dealing with them. These matters can often compete with other serious crime issues for limited local command resources. In these circumstances, commanders have little incentive to devote significant time or resources to serious complaint matters.

Furthermore, there are some large investigations involving a number of officers from different commands which may most appropriately be investigated and determined by a central professional conduct unit.

One part of the solution may be to increase the resources available to the Professional Standards Command, so that it can deal with an increasing number of serious complaints, with the resulting expertise and equipment to improve the rigour of investigation into these matters.

A further concern is the amount of time taken by NSW Police to process many of the matters where officers are being considered for dismissal or a serious management sanction. Some matters take many months to be processed for consideration by the Commissioner or other senior officers, with significant consequences both for the nature of the management response possible and the welfare of the subject officer.

For our own part, we are presently examining our internal processes to bring greater consistency and rigour to our oversight, so that where delays are occurring, these can be pursued more systematically with NSW Police. However, this will only provide a mechanism to identify delays and will not provide a solution to the issue in its entirety.

Timeliness – less serious complaints

While there have been substantial improvements in the timeliness of the management of complaints, our own view is that there is still not enough done to deal with certain complaints quickly. In particular, we are of the view that the police handling of

essentially management matters and less serious complaints could be made more expeditious.

Part of the solution, and something that we believe is consistent with the approach taken by the Royal Commission, is to ensure that management issues and less serious complaints are dealt with on the spot by commanders and supervisors without the need for substantial administrative overheads.

At present, NSW Police prefer to deal with many of these matters through CMTs. While we are of the view that appropriate documentation of decision making, and providing information to senior command officers, remain essential, it may not be necessary for such minor issues to be dealt with through CMT processes. In addition to improving the timeliness of these matters, we are strongly of the view that this will result in more effective outcomes for officers and complainants.

Managing internal police witnesses

A further issue concerns the treatment of those officers who come forward with serious reports of misconduct. Recent press reports have indicated research undertaken for NSW Police shows a significant proportion of these persons were harassed as a result of making a complaint. These reports are consistent with earlier research concerning officers who participated in the NSW Police Internal Witness Support Program.

This issue of the general treatment of internal witnesses by NSW Police is a matter that we have been pursuing through the Internal Witness Advisory Council for most of 2005 and during 2006. Our own view is that part of the solution is to track the experience of internal witnesses (both those who use the services of the Internal Witness Support Unit and those who refuse it) to identify commands that are not actively supporting these officers, so that remedial or other action can be taken. In addition, such an approach may result in the identification of best practice by commanders that can be shared throughout NSW Police.

Our work in this area includes our sponsorship of the “Whistle While They Work” research project being conducted across Australia during 2006. Further, we are closely looking at those police who may be making reprisal complaints against internal witnesses, including examining whether present criminal sanctions are effective to deal with these officers.

Conclusion

In the 10 years since the Royal Commission, the systems for handling and overseeing complaints have evolved substantially. The present processes demonstrate the essential features of an effective complaints system.

Complaint investigations are identifying serious misconduct and criminal conduct. Where appropriate, officers are being prosecuted or considered for removal.

Complainants are mostly satisfied with how their complaints are handled by police commanders. Police officers too are, on the whole, receiving a fair go. Officers are being exonerated in matters where the evidence supports their actions. They are also being provided with increasingly sophisticated management responses where their conduct has been found wanting.

Importantly, commanders are responsible for managing their own complaints, and on the whole are doing a satisfactory job. Good commanders are using complaints to improve the performance of their commands and individual police officers. They are involving senior command officers in dealing with matters. For minor management and customer service complaints, commanders are achieving good outcomes without the need for individual external oversight.

There is clarity about the respective roles of police commanders, the Ombudsman and the PIC. The Ombudsman, as the primary oversight agency, is having success in holding police commanders to account for how they deal with complaints. There is little opportunity for senior police to ignore serious conduct or systems issues raised by complaints. Over time, less serious complaints have been handed back by the Ombudsman to commanders for direct management without oversight, with resultant savings in time and costs. Audits have supported these decisions.

That is not to say that there is not room for substantial improvement, especially in the investigation and management of some of the most serious complaints. In addition, more can and should be done to support those officers who come forward to report serious misconduct. These are amongst the most difficult issues for any agency to address. We are presently working on new strategies that we believe will lead to some improvements for NSW Police in these areas.

There will always be an ongoing need for the handling of complaints to adapt and evolve as new circumstances, technologies and expectations impact on policing in New South Wales.

However, the policy settings reflected in Part 8A of the Police Act have to date provided an appropriate and flexible system for dealing with complaints about police officers. The evidence suggests this framework will continue to deliver good results for the community, NSW Police and police officers.

APPENDIX – The Wood Royal Commission

The Royal Commission into the NSW Police Service

The Royal Commission into the NSW Police Service (“the Royal Commission”) was established in 1994. Its terms of reference included:

- the nature and extent of corruption within the Police Service, particularly of any entrenched or systemic kind
- the capacity of the Police Service’s Professional Responsibility Command, and the civilian oversight agencies, to investigate and deal with corruption and with complaints of serious misconduct.⁵⁵

The Royal Commission’s First Interim Report – February 1996

In February 1996, the Royal Commission published its first *Interim Report*.

In that report, the Commission examined the existing system for investigating police misconduct, and the roles of the Police Service, the Ombudsman and the Independent Commission Against Corruption (ICAC).⁵⁶

The Commission observed that the system in place at the time was:

- cumbersome, slow, and inflexible
- insufficiently responsive to corruption
- unproductive in terms of the resources and managerial time involved
- lacking in credibility
- counter-productive in terms of overall operational effectiveness.⁵⁷

The Commission also criticised the disciplinary system which was supposed to “manage” instances of misconduct by police officers as:

- dilatory and costly
- hindered by overlap and uncertainty of powers
- potentially unfair and discriminatory in not being of uniform application to all police
- marked by technicality and undue legalism
- weakened by its adversarial approach
- affected by internal anomalies and inconsistency in decision-making and penalty

- vulnerable to the imposition of different standards because of the absence of a unified system, particularly a single line of appeal.⁵⁸

The Commission observed that an effective system for the management and investigation of complaints of police misconduct, and of corruption, should have the following features:

- public confidence
- credibility in the eyes of serving police, including a genuine belief that misconduct and corruption will be detected and appropriately dealt with
- reinforcement of high standards of ethical conduct and integrity, which are recognised as having strong leadership support
- constant alertness to the risks of corruption, and responsible management of those risks
- the will and capacity to engage in determined investigation of police misconduct and corruption utilising sophisticated methods and resources
- a swift, effective and fair disciplinary process, which is accessible to the public, and not burdened with minor, frivolous or vexatious complaints
- a clear division of responsibilities between all agencies involved.⁵⁹

After examining various models for investigating complaints of misconduct and corruption by police, the Royal Commission concluded that the model which needed to be adopted was one in which:

- the Police Service would retain a meaningful role in dealing with management matters, customer service complaints, and certain matters of misconduct
- there would be external oversight of the Police Service's handling of complaints
- there would also be an external responsibility to investigate serious corruption.⁶⁰

Significantly, the Royal Commission rejected a model in which a single agency would have both the external oversight and corruption investigation responsibilities. This was because of:

- the different approaches needed for supervision of the complaints system and for corruption investigation
- the need for a specific focus on corruption with an aggressive and sophisticated investigative capacity
- the resources needed for effective monitoring of the complaints system.⁶¹

Accordingly, the Royal Commission recommended that:

- a new corruption-fighting agency external to the NSW Police Service should be established, which would be responsible for the detection and investigation of serious police misconduct and corruption, including the oversight of police investigations into such matters⁶²
- the Ombudsman’s office should retain its existing role in reviewing police complaint investigations.⁶³

The Police Integrity Commission Act 1996

In 1996, the *Police Integrity Commission Act* was passed. This legislation established the Police Integrity Commission as the new corruption-fighting body recommended by the Royal Commission.

The principal functions of the PIC are:

- to prevent serious police misconduct and other police misconduct
- to detect or investigate serious police misconduct, and to manage other agencies in the detection and investigation of serious police misconduct
- to detect or investigate other police misconduct at it thinks fit, and to oversee other agencies in the detection or investigation of such misconduct.⁶⁴

The legislation also emphasises that the PIC “is, as far as practicable required to turn its attention principally to serious police misconduct”.⁶⁵

The PIC has the power to apply for and execute search warrants⁶⁶ and listening device warrants to assist it in its corruption-fighting activities.⁶⁷

The PIC can also arrange for the establishment of task forces within NSW, seek the establishment of joint task forces with the Commonwealth or other states or territories, and co-ordinate or co-operate with task forces.⁶⁸

In exercising its investigative functions, the PIC may work in co-operation with investigative agencies and other bodies. It may also consult with, and disseminate intelligence and information to, investigative agencies and other bodies.⁶⁹

The PIC is entitled to conduct investigations on its own initiative, on the basis of a police complaint, or on the basis of a report made to the PIC.⁷⁰ An investigation may be “preliminary” in nature, to assist the PIC in discovering or identifying conduct that might be made the subject of a more complete investigation.⁷¹ The PIC may hold hearings for the purposes of an investigation⁷² and may summon people to appear to give evidence and/or produce documents.⁷³

The PIC is entitled to make assessments and form opinions on the basis of its investigations, or investigations that it has managed or oversights, as to whether

police misconduct (or other misconduct) has or may have occurred, or is occurring or may be about to occur. It may make recommendations as to whether consideration should be given to the prosecution of a person or persons and/or the taking of disciplinary action against a person or persons. It may also make recommendations for other appropriate action.⁷⁴

The PIC has other functions “regarding police activities and education programs” which include:

- undertaking enquiries into or auditing police activities for the purpose of ascertaining whether there is police misconduct or circumstances conducive to police misconduct
- monitoring the quality of the management of NSW Police investigations
- making recommendations concerning police corruption education programs and police corruption prevention programs conducted by NSW Police, the Ombudsman and the ICAC
- advising police and other authorities on ways in which police misconduct may be eliminated.⁷⁵

The PIC began its operations on 1 January 1997.⁷⁶

The Royal Commission’s Second Interim Report of November 1996, and amendments to the Police Service Act in 1997

Shortly before the PIC commenced its operations, the Royal Commission published its second *Interim Report* in November 1996. This report recommended “immediate measures” for the reform of NSW Police.

As a result of the Commission’s second *Interim Report*, the *Police Service Act* was amended to:

- introduce a new provision, section 181D, conferring on the Commissioner of Police a power to dismiss an officer in whom he no longer had confidence
- introduce drug and alcohol testing of police
- require members of the Police Service to provide financial and integrity statements
- authorise integrity testing
- protect against reprisal those officers who made “protected allegations”.⁷⁷

The Royal Commission’s Final Report – May 1997

In May 1997, the Royal Commission published its *Final Report*.

Complaint handling by the NSW Police Service

In looking at the problems faced by the NSW Police Service, the Royal Commission made the following observations about the existing system for handling complaints about police:

The Commission is convinced that the existing complaints process is:

- *too legalistic, formal, and focused upon punishment*
- *insufficiently focused upon behaviour modification*
- *woefully dilatory.*⁷⁸

The Commission recommended that the process should be:

... progressively changed to a managerial approach which looks to more than a reactive and narrow response to individual incidents, and passes immediate responsibility to Commanders to deal with misconduct of those under their command.

External oversight of complaint-handling by the Ombudsman

The Royal Commission said that the Ombudsman should continue to play “a vital role” in the system, on the basis that the Ombudsman:

... represents the interests of the members of the public in seeing that the service deals properly and effectively with their grievances and in ensuring the maintenance of standards of integrity and fair dealing.

The Commission expected the Ombudsman’s office to:

- ensure that decisions by local commanders were appropriate
- conduct random checks on the progress of non-reportable matters
- react to any complaint by a member of the public that the management of any particular matter was ineffective or inappropriate, and carry out its own investigations as necessary
- maintain close liaison with the PIC.⁷⁹

Corruption-fighting by the NSW Police Service and the PIC

The Commission also recommended that:

*More serious misconduct should be reserved to an enhanced internal investigation system in which the PIC and the Office of Internal Affairs each have a significant role to play.*⁸⁰

The Royal Commission saw the PIC’s role as being one of focusing on the more serious matters which were likely to lead to the bringing of criminal charges or dismissal. The PIC should also:

- act in conjunction with the Office of Internal Affairs and monitor investigations into the more serious inquiries for which Internal Affairs assumed responsibility
- where appropriate, exercise its coercive powers to assist the Office of Internal Affairs
- monitor the progress of the new employee management system.⁸¹

ENDNOTES

- ¹ Pursuant to section 160(1) and (2) of the Police Act.
- ² Section 130(2)(b) of the Police Act.
- ³ Section 139 of the Police Act.
- ⁴ Section 145(1) of the Police Act.
- ⁵ Section 148A of the Police Act.
- ⁶ Section 150 of the Police Act.
- ⁷ Section 181D of the Police Act.
- ⁸ Section 173 of the Police Act.
- ⁹ Section 181D(4) and section 173(5) of the Police Act.
- ¹⁰ Section 181E and section 174 of the Police Act.
- ¹¹ Section 173(1) and Schedule 1 of the Police Act.
- ¹² Section 150 of the Police Act.
- ¹³ Section 139 of the Police Act.
- ¹⁴ Section 145 of the Police Act.
- ¹⁵ Section 146 of the Police Act.
- ¹⁶ Section 152 of the Police Act.
- ¹⁷ Section 151 of the Police Act.
- ¹⁸ Section 153 of the Police Act.
- ¹⁹ Section 154 of the Police Act.
- ²⁰ Section 155 of the Police Act.
- ²¹ Sections 156 and 157 of the Police Act.
- ²² Section 146 of the Police Act.
- ²³ Special Reports to Parliament “Conflict of Interest” May 1997 and “Conflict of Interest: A Service-wide Problem” June 1997; Ombudsman 1998 Annual Report, pages 51-52.
- ²⁴ Ombudsman 1998 Annual Report, pages 27-28; Special Report to Parliament “Officers Adversely Mentioned at the Royal Commission” May 1998.
- ²⁵ Ombudsman 1998 Annual Report, page 32; Special Report to Parliament “Officers Under Stress” June 1999; Ombudsman 1999 Annual Report pages 30-31; Ombudsman 2000 Annual Report page 29.
- ²⁶ Ombudsman 1998 Annual Report, pages 33-36.
- ²⁷ Ombudsman 1998 Annual Report, pages 39-40; Special Report to Parliament “Policing of Domestic Violence in NSW” December 1999; Ombudsman 1999 Annual Report pages 28-30; Ombudsman 2000 Annual Report pages 35-36.
- ²⁸ Ombudsman 1998 Annual Report, pages 47-48; Ombudsman 2000 Annual Report page 30; Ombudsman 2004 Annual Report page 123; Ombudsman 2005 Annual Report pages 54-55.
- ²⁹ Special Report to Parliament “Police and Improper Use of E-mail” December 2000.
- ³⁰ Special Report to Parliament “Risk Assessment of Police Officers” October 1998; Ombudsman 1998 Annual Report, pages 49-50; Ombudsman 1999 Annual Report pages 32-34.
- ³¹ Ombudsman 1999 Annual Report, pages 19-21.
- ³² Ombudsman 1999 Annual Report, pages 21-22; Ombudsman 2000 Annual Report page 28.
- ³³ Ombudsman 1999 Annual Report, pages 23-25; Special Report to Parliament “Loss of Commissioner’s Confidence” August 1999; Ombudsman 2002 Annual Report page 95.
- ³⁴ Ombudsman 1999 Annual Report, pages 31-32; Ombudsman 2000 Annual Report page 30.
- ³⁵ Special Report to Parliament “Improving the management of complaints: identifying and managing officers with complaint histories of significance” May 2002.
- ³⁶ Special Report to Parliament “Improving the management of complaints: assessing police performance in complaint management” August 2002.
- ³⁷ Special Report to Parliament “Improving the management of complaints: police complaints and repeat offenders” September 2002.
- ³⁸ Ombudsman 2004 Annual Report page 123.
- ³⁹ Annual Report 2005 pages 57-58.
- ⁴⁰ To be reported on in the next Ombudsman Annual Report.
- ⁴¹ Special Reports to Parliament “Speedometers and Speeding Fines: a review of police practice” June 2002 and April 2003.
- ⁴² Ombudsman 2005 Annual Report page 56.
- ⁴³ Royal Commission into the NSW Police Service, interim report, February 1996, page 109.
- ⁴⁴ Ombudsman 1998 Annual Report page 44.
- ⁴⁵ Ombudsman 1998 Annual Report page 44.

- ⁴⁶ Special Report to Parliament “Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)” April 2005.
- ⁴⁷ For further detail, see page 62 of the Ombudsman’s 2005 Annual Report.
- ⁴⁸ For further detail, see page 62 of the Ombudsman’s 2005 Annual Report.
- ⁴⁹ For further details, see chapter 12 of the Ombudsman’s 2005 Annual Report.
- ⁵⁰ For further details, see chapter 7 of the Ombudsman’s 2005 Annual Report.
- ⁵¹ Section 31B of the Ombudsman Act.
- ⁵² Sections 35A and 35B of the Ombudsman Act.
- ⁵³ Section 30 of the Ombudsman Act.
- ⁵⁴ Section 31B of the Ombudsman Act.
- ⁵⁵ Royal Commission into the NSW Police Service, interim report, February 1996, page 1.
- ⁵⁶ Royal Commission into the NSW Police Service, interim report, February 1996, Chapter 1.
- ⁵⁷ Royal Commission into the NSW Police Service, interim report, February 1996, page 49.
- ⁵⁸ Royal Commission into the NSW Police Service, interim report, February 1996, page 64.
- ⁵⁹ Royal Commission into the NSW Police Service, interim report, February 1996, page 48.
- ⁶⁰ Royal Commission into the NSW Police Service, interim report, February 1996, page 91.
- ⁶¹ Royal Commission into the NSW Police Service, interim report, February 1996, page 91.
- ⁶² Royal Commission into the NSW Police Service, interim report, February 1996, page 110.
- ⁶³ Royal Commission into the NSW Police Service, interim report, February 1996, page 109.
- ⁶⁴ Section 13(1) of the Police Integrity Commission Act.
- ⁶⁵ Section 13(2) of the Police Integrity Commission Act.
- ⁶⁶ Section 45 and 46 of the Police Integrity Commission Act.
- ⁶⁷ Section 50 of the Police Integrity Commission Act.
- ⁶⁸ Section 17 of the Police Integrity Commission Act.
- ⁶⁹ Section 18 of the Police Integrity Commission Act.
- ⁷⁰ Section 23 of the Police Integrity Commission Act.
- ⁷¹ Section 24 of the Police Integrity Commission Act.
- ⁷² Section 32 of the Police Integrity Commission Act.
- ⁷³ Section 38 of the Police Integrity Commission Act.
- ⁷⁴ Section 16 of the Police Integrity Commission Act.
- ⁷⁵ Section 14 of the Police Integrity Commission Act.
- ⁷⁶ Royal Commission into the NSW Police Service, interim report, February 1996, page 6.
- ⁷⁷ Royal Commission into the NSW Police Service, final report, May 1997, page 6.
- ⁷⁸ Royal Commission into the NSW Police Service, final report, May 1997, page 217; see also page 327.
- ⁷⁹ Royal Commission into the NSW Police Service, final report, May 1997, page 349.
- ⁸⁰ Royal Commission into the NSW Police Service, final report, May 1997, page 217.
- ⁸¹ Royal Commission into the NSW Police Service, final report, May 1997, page 349.