

10-year review of the police oversight system

1. To what extent does NSW Police review the complaint histories of police officers subject to complaint, for example, to ensure that there is consistency in the handling of misconduct issues and that patterns of misconduct that may be of concern are not missed?

General use

The NSW Police Complaints Management Manual provides guidelines for Complaint Management Teams (CMTs) on the desirability of examining an officer's history at the point of assessment. The PIC expects that NSW Police will use complaints histories at some stage in all complaints investigations. All complaint investigations therefore use the complaint history of an officer in the deliberative process.

An officer's complaint history is contained in a single document or profile, and can be examined to identify any previous complaints that may be relevant or related to the current matter and this information is provided to the investigator. The CMT and the investigator must always use their discretion and judgment in assessing the relevance of the officer's complaint history at every stage of the complaint management process.

A complaint history may be of significance to the contemporary complaint even where past allegations were not substantiated. In the interests of fairness however a complaints history must not be used in a manner that will cloud an investigator's impartiality or make it likely that he or she could prejudge a matter or a person, hence the timing of its release to the investigator is a matter for the CMT.

Limitations on use

A complaints history is only used for the purposes of informing an investigation, not for deciding whether a matter should be dealt with remedially at the outset. Since the definition of a complaint under Part 8A is extremely broad, performance and competence issues as well as misconduct issues are subject to investigation.

As a Part 8A matter can only either be ‘investigated’ or ‘declined’, a complaint that involves a performance issue such as a late service of a brief, is investigated, without taking into account whether it is the first time that it has occurred, or if there is a pattern of behaviour where remedial action has been implemented and been unsuccessful.

This distinction is made because the Ombudsman requires matters it defines as ‘serious incompetence’ to be registered as category 2 complaints (s121 Class and Kind Agreement – Category 5). The Ombudsman determines what constitutes ‘serious incompetence’ and therefore how a matter will be managed, not NSW Police.

This is in stark contrast to the way that conduct and performance is managed in the NSW Public Sector under the Public Sector Employment and Management Act 2002 (the Act) which permits different processes for matters that relate to performance and those that relate to misconduct. The Act only escalates those matters that involve performance or competence, where serious management action will be the likely outcome.

Use of complaints histories for internal review panels

A complaints history is also used where a police officer has been the subject of a significant sustained finding resulting in recommendations for reviewable action or s181D action. The matter must be referred to the Employee Management Internal Review Panel (IRP). The IRP provides guidance and advice to Commanders (i.e. the decision makers) on corporate benchmarks for broadly similar complaints matters. In 2006, NSW Police has introduced a second stage to the process, so that if a Commander decides not to follow the recommendations of the IRP he or she must advise the IRP, and provide full reasons for the deviation from the benchmark. A complaints history is a tool in the process.

Limitations on the use of complaint histories

As far as complaint histories are concerned, a Commander cannot search on c@tsi against an officer’s name and be confident of obtaining comprehensive profile by this means alone. A fuller analysis of the holdings is required, including assessing the contents of investigation reports to determine the background to each matter. Levels of seriousness cannot be determined by referring to the complaint’s category, as the Ombudsman expects c@ts.i input to be based on the literal wording of a written complaint, not NSW Police’s contextual assessment of a matter.

The registration of a complaint against an officer is expected by the Ombudsman to be entirely process driven as the following examples show:

P0405746 (Annexue 1)

A complainant wrote:

I note newspaper reports that over the last few days police searched 500 vehicles and traces of drugs were found in 20 with four people expected to be charged. If all four are from separate vehicles this gives a 20% rate against vehicles with traces found. It is this latter statistic and the reporting that traces were found that concerns me. My daughter was one of those searched on Friday night at [deleted] and the sniffer dog apparently detected drugs. None were found but my daughter was left with the clear impression that the officers firmly believed that drugs had been present and she was lucky. This I object to. Unless traces remain for a considerable period (it is second hand car we have had for two years) there were, and have never been, any drugs in the vehicle. Accordingly seek your advice on the reliability of sniffer dogs, what is recorded against my daughter and what happens to all evidence including the videotape collected. Whilst I do not object to the campaign, I do object to the inference that she was lucky and that there were clearly traces of drugs in the car

The Commander decided that this was not a complaint about the conduct of police officers, and could be resolved by making a full explanation to the complainant and did so.

The Ombudsman obtained these records during its legislative review of the drug dog legislation, and argued extensively that this matter was a complaint, to the extent of wanting to involve the Complaint Management Team in a video link forum with the Ombudsman's Office.

Against his own judgment the Commander was required to record this matter on the c@tsi system as a complaint of 'unreasonable conduct' of police.

O0201839 (Annexure 2)

A person attended a police station, slammed a brown paper bag containing food on the counter and alleged that he was on a railway station and that a police dog had took a bite of his pastry. He said he was going to get a solicitor and report the dog handler to Council for the offence of 'not keep proper control of dog'. He was aggressive and antagonistic. The handler was spoken to and stated that the dog brushed the bag with his nose but did not bite the food. The three officers at the scene were asked to submit a report. The officers provided reports documenting their accounts.

The person then complained in writing to the Ombudsman that a drug dog snatched food from his hand on a railway platform and sought to have charges made against the dog handler. He commented that he would have no alternative in the future other than to strike out at the animal, as he is entitled to defend himself under

common law. The complainant provided the Ombudsman with video footage of the incident which he obtained under FOI. The Ombudsman required this matter to be investigated.

The complainant refused to speak to police. The investigators attended the office of the Ombudsman to view the footage. The footage showed the dog sniff near the complainants hand and leg and continue on. The footage then shows the complainant eat something from that hand in its entirety. He does not look at the dog and handler after they have passed him and he is not agitated in any way. The complainant then gets up from the seat and walks away.

Although the Ombudsman had sufficient information to negate the complaint, the Ombudsman entered this matter on the system as a complaint against the officer.

2. The Ombudsman has submitted that for the 2004-05 annual reporting period, more than 40% of the 5716 complaints received about police officers were made by police officers (including about 30% of the more serious matters). (p.7)

a) Do you think this statistic is significant and, if so, why?

NSW Police provides the following statistics obtained from the c@tsi system. In the 2004-2005 annual reporting period NSW Police received 5865 complaints of which 2578 or 44% were made by police officers. Of the 5865 complaints 3169 were categorised as Category 1 or Category 2 complaints. Of those matters 1176 (37%) were made by police officers.

It is extremely significant culturally for NSW Police that police officers are willing to complain. However NSW Police does not rely wholly on IPC statistics for the purposes of measuring the ethical health of the organisation, but rather as an indirect measure of the reduction in complaints received from members of the public about their bad experiences with police.

The Ombudsman has not provided the Committee with information as to how the statistics it provided should be interpreted. It is NSW Police's view that any interpretation of the statistics in relation to IPCs should take account of the following fact.

An IPC is distinctly different from a person making Protected Disclosure, as that right applies to the rest of Government employment. The definition of a Protected Disclosure allows other government agencies to measure the willingness of its employees to come forward with serious allegations of corruption, maladministration or a serious and substantial waste of public resources. A Protected Disclosure must be made voluntarily, not be frivolous or vexatious or

made solely or substantially with the motive of avoiding dismissal or disciplinary action. The recording of a matter as generated from an IPC in the NSW Police complaint system has no such restrictions.

P0401089

A police officer was investigated for serious misconduct arising out of hearings before an external body. When the officer was advised of the findings against him and the recommended management action, he threatened the investigator that he would complain about other police officers if the findings were not reconsidered against him. He proceeded to do this and therefore became an IPC. The finalisation of the investigation into his own conduct took some time to resolve, as there were parallel proceedings that may have led to other matters being found against him. The officer complained that the delay was a conspiracy against him by senior officers. This second complaint then became an IPC complaint. The Ombudsman attended the interview with the IPC and an alleged witness. Neither officer had any evidence of what was alleged and there was no finding in the matter.

This would not meet the standard of a Protected Disclosure as the allegations were made to avoid disciplinary action.

Additionally, where an officer is served with any notice, including a notice that they are to be dismissed under s181D, the officer is given an opportunity to respond. In that response, the officer can and often does complain about unfairness, abuse of process and in some cases the conduct of other officers. Because they are in writing, these submissions are always assessed as complaints and the officer, who is the subject of serious management action, becomes an IPC.

Where an officer is the subject of disciplinary proceedings and is simultaneously an IPC, such rigid bureaucracy makes it very difficult for investigators and Commanders to manage the situation to conclusion. Unfortunately the Ombudsman makes no distinction between IPCs who are the subject of disciplinary proceedings themselves, and other perhaps more genuinely motivated IPCs.

By way of contrast, an Executive Officer received a complaint from a police officer. He had sent his complaint by email and provided no street address. The Executive Officer wrote an email to the police officer advising that his complaint had been received and had been forwarded to the CMT for assessment as there is a positive obligation on complaint handlers to provide this information to the complainant.

The police officer then complained that he was an IPC and that his confidentiality had been breached. (Apparently his daughter had opened the email, other members of his family having access to the computer.)

The email provided no details of what was in the complaint. The Executive Officer was a public servant and the matter was resolved by obtaining the police officer's address and sending all future correspondence by mail. As there was no misconduct or incompetence by the officer the matter was resolved in a few minutes.

Had a police officer acted in the same manner, the complainant would have been recorded as an IPC and a category 2 complaint registered against the police officer for a breach of confidentiality in relation to an IPC. Just seeking an explanation from the police officer would, by the Ombudsman's definition, be an 'investigation'. All this places an administrative burden on complaint handlers of having to comply with Part 8A for technical reasons and results in a serious complaint being registered against the police officer that remains indelibly on the officer's complaints history whatever the outcome.

Like most external oversight bodies the NSW Ombudsman reviews historical records to report on police decision making. As part of its statutory audit function the Ombudsman attends Local Area Commands and regards itself as entitled to examine **all** documents held in Commands, in order to 'find' complaints, presumably those that police are trying to hide or ignore.

No document is exempt irrespective of the purpose of its creation. Accordingly the Ombudsman routinely audits ministerials, internal audit reports, minutes of meetings with community consultative committees, requests for reviews of traffic and parking infringement notices, officer local employee profiles and a raft of other miscellaneous documents. Commanders are often required to register matters on the c@tsi system as complaints that are not, nor were ever intended to be complaints, as the term 'complaint' would be understood by any reasonable member of the community. In these instances the Commander becomes an IPC often with very negative results for local management, employee relations and overall morale.

In some cases these matters are getting out of hand. For example, NSW Police reviews all failed prosecutions as a corruption prevention measure. This allows for performance enhancement or training needs to be identified. The Ombudsman also audits these matters and the following examples show how the Ombudsman assesses documents as IPC complaints.

P0404781 (Annexure 3)

A police prosecutor wrote to a Commander advising he had been handed a brief of evidence on the day of mention of a matter. The informant had provided a covering note requesting that the prosecutor serve the brief at court. The brief had not been checked by the brief handling manager. The Court had expected the brief to be served prior to the court date and unfortunately had to adjourn the matter. The prosecutor requested that

the informant be provided with advice by the Commander, with regards to service of briefs of evidence, the requirement to have it checked by the brief handling manager and to ensure witness details are deleted (which the prosecutor did before handing the brief up). The prosecutor confirmed that the brief was thoroughly investigated and there were no concerns in that regard.

The officer was spoken to, was contrite and admitted that he ran out of time and would endeavour to manage his time better in the future.

The Ombudsman required this matter to be registered as a Category 2 complaint as ‘serious incompetence’. The Commander became an IPC although he was adamant that the matter was a performance issue rather than a conduct issue.

P0404867 (Annexure 4)

The Ombudsman audited the employee profile of a Probationary Constable who had been terminated. A range of documents were found by the Ombudsman that recorded performance issues that lead to the termination, including the show cause notice and performance management plan. The issues were all managerial issues relating to poor work performance and steps taken to train and improve performance and work attendance. There were no misconduct or integrity issues. It was a human resources record of the Commander’s efforts to bring the officer in line with the development of other Probationary Constables.

The Ombudsman required this to be notified as a Category 2 complaint. A Commander therefore can become an IPC each time he or she takes local management action.

P0404025 (Annexure 5)

A leading Senior Constable noticed that a more junior officer had allowed a defendant in custody to be visited by a co-offender. While the officer had searched the co-offenders bag, there was no search of the visitor’s person for drugs or weapons. The Leading Senior Constable completed a report recommending that the officer receive urgent training in custody procedures and in prisoner handling procedures. The senior officer in the team was requested to spend time with the officer in the areas of Crimes Amendment (Detention After Arrest) Act 1997 and custody management to improve her skills and knowledge base. The officer was also required to attend a Safe Custody Course.

The Ombudsman located this paper work and required it to be registered as a Category 2 complaint as it raised issues of ‘serious incompetence’. Therefore the supervisor who identified the training need became an IPC.

P0402779 (Annexure 6)

An audit of arms and appointments was conducted as part of the Command Management Framework requirements. A police officer had failed to secure his locker which had his arms and appointments inside. The matter was brought to the officer's attention and he was warned of the risks. He was advised no further action would be taken, but to ensure that his locker was locked in future as random checks would be conducted.

The Ombudsman required this matter to be registered as a complaint involving criminal conduct as it was a breach of the Firearms Act. Despite there being no breach of the Firearms Act, the Duty Officer is recorded as an internal police complainant and the officer has another complaint on his history.

Who is the complainant?

If police officers are conducting an operation or arrest a person who makes allegations about police, under cl.20 of the Police Regulation the officer is required to report the matter to a more senior officer. The police officer will generally do this by way of 'Godfrey Report'. Because it is in writing that report becomes the 'complaint' under Part 8A and the officer who has submitted the report becomes an IPC for the record. While those officers are to be commended for reporting the matters, the true complainant is the person under investigation. It is noteworthy that the Ombudsman does not share this view.

Internal Witnesses

Police practice is that the Professional Standards Command's Internal Witness Support Unit (IWSU) directly receives and reviews complaints by all IPCs registered on the c@tsi system. The IWSU conducts an assessment as to whether the IPC meets the criteria to be classified as a complainant who should be offered a place in the internal witness program. A requirement of the program is that the allegation involves serious misconduct or corruption. Between 1 January 2004 and 31 December 2005 (a two year period) 183 complainants were offered the program. 97 declined the offer because they felt that they were appropriately supported in their Command and did not have any concerns.

b) What support measures are in place for police officers wishing to report misconduct by other police officers?

NSW Police has well established support systems in place for police and administrative officers who seek to report misconduct by others. These systems are well entrenched in policy and practice.

As previously discussed, all complaints are registered on the c@tsi system and electronically delivered by the system to the Manager, Internal Witness Support Unit. That officer assesses every complaint to determine whether the IPC meets the definition of an internal witness. The officer is then offered the services of the Internal Witness Support Unit.

Additionally, NSW Police policy states that Commanders and Managers have the following responsibilities in relation to all internal police complainants:

- To provide the employee with acknowledgment, support and positive reinforcement
- Provide the employee with support and protection from victimisation and harassment
- Take positive action when it has been identified that the employee has been the subject of victimisation and harassment and ensure appropriate management action is implemented in the circumstances
- Prevent or eliminate any actions against the employee by other persons which might be detrimental or contrary to the Police act 1990, Protected Disclosures Act 1994, Witness Protection Act 1995 or NSW Police Handbook
- Maintain an environment where members of the organisation are confident in coming forward as an Internal police Complainant reporting corrupt conduct, maladministration, serious and substantial waste, that they will receive support and protection from their superiors and other members of NSW Police
- Respond promptly, genuinely and with sensitivity to the needs of that employee

The Professional Standards Command Internal Witness Support Unit provides internal witnesses with an Information and Support Kit which includes:

- A copy of the Internal witness Support Policy and frequently asked questions
- Details of support services available
- A letter of support from the Police Association
- Information from Health Services in relation to likely physiological and psychological response as an internal witness
- Contact details of further information and support

A Support Officer may be appointed under the Internal Witness Support Program, according to the preference of the internal witness.

A mentor in terms of the Internal Witness Support Program is a senior officer of the organisation who is responsible for providing support and positive reinforcement and pursuing issues on behalf of the internal witness.

The IWSU applies regular vetting and monitoring procedures to check the status of internal witnesses, support officers and mentors to verify that all necessary support is being employed and received. The internal witness and support personnel are encouraged to contact the IWSU to discuss, clarify and address concerns in the intervening periods between contact with the IWSU. This process also provides feedback from the internal witness regarding satisfaction with the program.

If the internal witness leaves the organisation, the IWSU Manager assesses the case to determine whether there is a need to maintain ongoing assistance for the internal witness.

3) The Ombudsman has submitted that most deficiencies are raised about the investigation of Category 1 complaints and some of the reasons for this are identified as lack of expertise on the part of local commands, competing policing priorities, and resources. The Ombudsman has proposed a central professional conduct unit, or increasing the resources available to Professional Standards Command to overcome this problem in relation to the investigation of serious misconduct matters (p.32). What is your view on these comments and the Ombudsman's proposal?

At our request the Ombudsman has provided NSW Police with a list of Category 1 complaints that were registered by that office as deficient and used in the preparation of statistics for the Ombudsman's submission to the Committee. For the twelve month period 1 January 2005 to 31 December 2005 a significant number of complaints (58%) relied on by the Ombudsman were in fact Category 2 complaints, not Category 1.

For that twelve month period, 6031 complaints were received. Of those matters 598 (9%) were assessed as Category 1. Of that sub-category 212 (35%) of Category 1 matters were declined at the outset. An example of a declined Category 1 is as follows:

P0601186 (Annexure 7)

The State Police and the military conspired to murder [name deleted] presently in a hospital.

Of the total matters investigated during 2005 (2156), 207 (9%) were assessed by the Ombudsman as 'deficient', consisting of 26 (1%) Category 1 and 181 (8%) Category 2. This does not equate to 'most' deficiencies being raised about Category 1 complaints as was asserted by the Ombudsman.

Of course statistics can be used to prove anything and need to be well understood order for them to be useful to decision makers. Part of this understanding in the police complaints environment comes from having knowledge of the process by which particular events are recorded and reported on.

Unfortunately the Ombudsman has not provided NSW Police with its internal business rules for determining whether an investigation is 'deficient'. Also the Ombudsman's submission to the Committee similarly does not provide guidance as to how these statistics should be interpreted.

It is the NSW Police position that a 'deficient investigation' should be given a clear specification against which NSW Police performance can be measured and to which NSW Police can respond. For example, measures of deficiency could be that:

- NSW Police did not identify a line of inquiry that had probative value and which, after identification by the Ombudsman, led to an adverse finding in the matter; or
- NSW Police did not follow a procedural step in the investigation which, had it been followed, would have changed the outcome of the matter; or
- NSW Police did not appropriately weigh up the evidence in a matter and made no adverse finding where the evidence established that the incident had occurred; or
- NSW Police failed to properly investigate an allegation against a police officer and the Ombudsman identified that failure to the PIC. The PIC agreed with the findings of the Ombudsman

The following example is a Category 1 matter that the Ombudsman registered as deficient.

P0304724 (Annexure 8)

A police officer had a community source that rang regularly with information, but the source could not be contacted by police. The source provided limited information to a police officer about a known criminal paying money to an unidentified police officer. The officer forwarded an email to a senior officer, stating that he was endeavouring to find out more information, had conducted some intelligence checks and would provide further reports when he knew more. This was registered on c@tsi with the police officer registered as an IPC.

The Ombudsman was notified of this matter and required the community source to be identified, located and interviewed. The IPC was asked to provide the sources details and refused to do so as it would put the source at great risk and he was concerned of the legal ramifications should something should happen to her. The community source was not prepared to assist police in any form of investigation and her location was unknown.

This matter resulted in lengthy legal argument by the Assistant Ombudsman (Police) about his power to obtain the identity of the source and unnecessary pressure was placed on the Commander to have the IPC reveal the source. The IPC refused to do so each time he was asked.

The Ombudsman eventually accepted that the community source would be at some risk if identified and approached by police. The Commander sent a memo to the Region Commander stating ... *this matter continues to be a drain on police resources that could be better utilised.*

Of course any interference by the Ombudsman in such a way could have an adverse effect on the ability of police to effectively use sources. Police officers rely on intelligence from sources to perform operational duties. The relationship can be inconsistent and is often fragile. It is the community source that controls the flow of information, not NSW Police. The value of the information provided by community sources varies, but it is critical police information. To have lost a community source following the Ombudsman's unreasonable directions, could have resulted in the loss of a valuable link to the criminal community.

Transfer of more serious matters to the Professional Standards Command

The Ombudsman's submission in relation to central investigation of serious misconduct issues is noted, but with respect to the Ombudsman, this is a current initiative of the Professional Standards Command and part of change programs conducted within NSW Police to adapt to changes in the complaints environment.

As background to this issue, when complaints management was decentralised following the Wood Royal Commission, all matters became the prima facie responsibility of Commanders, under the dual oversight of the Police Integrity Commission and the Office of the Ombudsman.

At that time, there was a centralised manually driven complaints assessment process in the former Special Crime and Internal Affairs (SCIA). Registering all complaints manually allowed SCIA to read all complaints at the outset, and determine whether a matter would be handled by that Command in accordance with some set criteria. The SCIA Command had no further role overseeing the vast majority of these complaints and the Ombudsman and PIC assessed the quality of the investigations after they were finalised and the hard copy reports received by them. Any deficiencies would be brought to the attention of the Senior Executive and SCIA by letter.

With the introduction of c@tsi in 2003 Commands no longer had to send matters to SCIA to be centrally assessed and Local Area Commands took responsibility for managing all but the most serious complaints that fitted the criteria for investigation by SCIA. The Ombudsman and the PIC gained full 'live' access to the complaints system and could monitor all complaints from the date of receipt to their conclusion. With live access, the Ombudsman and the PIC could raise concerns at an early stage in the investigation or where there were concerns that a line of inquiry was not being followed that may impact on the overall quality of the investigation. This seemed a practical and highly workable model.

The Ombudsman has since withdrawn from reliance on the c@tsi system as its primary business system (a system it had direct involvement in developing) and therefore does not provide 'real time' oversight. The Police Integrity Commission by contrast, is a full user of c@tsi and routinely works with the Professional Standards Command to seek information about complaints that they have an interest in.

Given the ever increasing resource implications for complaint handlers under the present broad complaint definition, and the withdrawal of the Ombudsman from live oversight, in early 2006 the Professional Standards Command proposed to take over the investigation of all serious criminal matters.

The PSC proposal does not rely on the Category 1 definition to capture matters of interest, as this definition is administrative. The PSC proposal relies on categories of criminal offences.

By way of example, a complaint that a police officer snapped off the aerial on a car is malicious damage an offence which carries a penalty of five years or more imprisonment and would be notifiable to the PIC as a Category 1. This is a matter that can be dealt with locally quite effectively. However the theft of money at the scene of a search warrant to the value of less than \$5000, a much more serious corruption matter, could be a Category 2 complaint and notifiable only to the Ombudsman. Furthermore an allegation that a police officer is a member of an Outlaw Motorcycle Gang, a serious risk for NSW Police is not notifiable as a Category 1 complaint.

The PIC has for some time realised the limitations of the complaints categorisation criteria. Because it reads all complaints on c@tsi, including Category 2 and all local management issues, it no longer expects any formal notification to it under Part 8A.

Contrary to the Ombudsman's submission, the police submission is not based on any lack of expertise of Local Area Commanders. No less an observer than Mr Justice Wood spoke highly of their general competence at the recent Committee hearings. After all, serious allegations usually involve criminal conduct which is 'bread and butter' for Local Area Commands. The problem for Commanders is that they do not have the resources to act as individual corruption investigation agencies.

Unlike PSC and the PIC, corruption investigations are not their primary focus. Due to timeliness constraints commanders do not have the luxury of 'holding' complaints or conducting intelligence gathering and/or extensive analysis over a lengthy period of time, which is often necessary to uncover corrupt conduct. Such conduct is often well hidden and quite subtle. Experience shows that on the surface the best lies of clever corrupt officers can often appear to be the truth. It requires time, focus and dedicated investigative and forensic resources to uncover the truth behind these matters.

The current model which allows Commands to investigate their own matters with the oversight of the PIC and the Ombudsman is not a truly successful model for NSW Police in relation to corruption matters.

The approach adopted by the PIC is conducive to investigating and exposing corruption. Through their respective roles, the PSC and the PIC work together very effectively in this pursuit.

However, where the PIC does not have an interest in a matter, and the Ombudsman becomes the primary oversight agency for a complaint, its essentially administrative role means that it automatically focuses on the process followed by an investigator rather than on building a criminal investigation whereby the most gains will be made. As the example in relation to the source provided above, shows the Ombudsman does not make any real distinction between intelligence and evidence. The Ombudsman wanted to 'tackle' the source, rather than manage the source information. From the perspective of NSW Police, this is wholly unsatisfactory, but is not a fault attributable to the Ombudsman, only an example of the true limitations in having a general administrative body overseeing a police investigative role.

The PSC currently investigates the following types of matters:

- The need for a corporate response to specific issues arising out of a investigation
- Dissatisfaction with a local investigation due to the inherent complexity, seriousness or protracted nature of the complaint investigation
- Direct referral due to the seriousness and sensitive nature of the material
- Requests for assistance from the field as the matter is beyond the resources of the LACs
- Links between the new complaint and existing PSC investigation
- Referrals from the PIC and the NSWCC due to the sensitive nature of the matter

In the 2004/2005 reporting period, the PSC conducted 84 investigations into these types of serious matters. The PSC proposes to take over a large number of serious indictable offences, which will result in a further 250 investigations being conducted by PSC annually. This is in line with the NSW Police objective of freeing up frontline police to focus more heavily on internal matters that require management skills, liaison and negotiation and local resolution, rather than resource intensive criminal investigation.

4) Do you think there are any areas on which NSW Police could improve in respect of investigating and managing police misconduct, particularly serious police misconduct?

There are always improvements that can be made in conducting any type of investigation and managing a complaint process. NSW Police has invested significantly over the past decade in continually improving its complaints handling practices and maintaining a balance between efficiency and effectiveness. This has been a difficult task because of the complex relationships between NSW police and its oversight agencies and the Ombudsman's strict application of the Part 8A legislation.

The current complaints handling model is not particularly conducive to a focus on serious police misconduct, which should be the case. Section 122 of the Police Act fails to distinguish between matters that are:

- Performance/competence issues warranting remedial action/management action; and
- Misconduct issues that warrant sanctions/management action or consideration of suitability for employment

Such a distinction is needed to empower managers and supervisors to address many complaints as soon as possible after they are lodged, and enable police to provide the subject officer with an early indicator of the likely outcome of the matter. Having a process that by its design is so protracted, that even if police handle the complaint in a timely manner, can be manifestly unfair to the officer and result in unnecessary stress and loss of productivity while the matter is outstanding, is really a process in need of reform.

The current class and kind agreements designed to classify what complaints need to be notified to oversight agencies, are no longer relevant as the oversight agencies have direct access to the electronic complaints files from the moment of registration. Removal of the class and kind agreements will provide greater certainty for complaints handlers and remove key areas of inconsistency and dispute.

The following example shows how inconsistent the Ombudsman can be in the application of the current s121 Class and Kind Agreement with the PIC which requires category 2 matters to be notified to the Ombudsman.

P0501738 (Annexure 9)

Police officers were called to the scene of a house fire. On arrival two occupants were seen through the window asleep on a mattress. The premises were well alight. Officers smashed the window, woke the occupants and told them to leave. The occupants could not escape through the bedroom window as it was secured with iron bars. They had also placed a lounge suite against the door which hampered efforts to rescue them. Police made a number of attempts to enter the premises but were forced back by black smoke. The occupants were eventually dragged out of the bedroom by police minutes before the roof collapsed. The neighbouring block of units was evacuated due to heavy toxic smoke and flying embers. One elderly resident was taken to the hospital after tripping and falling.

NSW Police received a complaint from that elderly resident. She stated:

'You may not know wath [sic] happened to me on Friday the 25th of July between 10-10.30pm, when the house next door burnt down. Had to leave the Units because of smoke. The officer who walked behind me should have warned me wath [sic] was under the water on the road, took the first step and my shoe was full of water and the next step I kicked the fire hose which was under water and I could not see. I fell very heavy on my left upper arm...

The Commander wrote to the person as follows:

I am truly very sorry for what has happened. It must have been very traumatic and painful for you... The events of 25 July 2003 were hectic and in the early part very much based around protecting life and property in quick time. Sometimes our people forget the special needs of people such as yourself in theses desperate moments.

I have spoken with Senior Constable [name deleted] who has told me that he has been to see you. I hope this has assisted you.

The Ombudsman audited this matter and required it to be registered as a Category 2 complaint as conduct by police officers that was 'unreasonable'. The Commander was required to register this matter despite his own view being that at the time the incident took place police were faced with a life threatening emergency situation. It was dark, the building was on fire, there was

excessive smoke and water and officers from NSW Police, the Fire Brigade and the Ambulance Service were all involved. The complainant had been evacuated in accordance with emergency procedures. The complainant had fallen as a result of tripping on a fire hose which she herself 'could not see'.

5) One of the submissions to the Committee suggests that there is a conflict of interest on the part of Local Area Commanders to accurately represent and deal with police complaints concerning their command, because complaint handling is used as a performance indicator in the performance based contracts for Local Area Commanders. Do you have any comment on this view?

There does not appear to be a conflict of interest created by having a performance measure in a performance agreement, as there is no conflict between a Commander's public duty and private interests in handling complaints in a timely manner. NSW Police is committed to ensuring that complaint handling performance is a key indicator of the ethical health of Commands and will continue to measure the effectiveness with which Commanders manage their complaints.

Indicators provide a trigger mechanism for discussions about timeliness issues as a key performance indicator as well as a means of holding Commanders accountable. The Professional Standards Command now provides comprehensive high quality statistics for Commanders at all levels, as well as overviews for the Senior Executive in keeping with the high importance placed on improving the timeliness of complaints management.

The Ombudsman has historically conducted lengthy and time consuming investigations into complaint timeliness. Such reports are not particularly effective as a performance measure for NSW Police, being significantly out of date by the time that the reports were produced. The introduction of c@tsi has allowed NSW Police to produce management reports against which Commanders can measure their own performance and by which the Senior Executive can compare performance and identify weaknesses and areas for improvement in key performance areas.

Other Issues Arising from Committee hearing on 24 August 2006

Class and Kind Agreement – s122(2) Local Management Issues

By way of background, the purpose of the current s122(2) class and kind agreement was implemented to free up NSW Police from the ‘red tape’ associated with complying with the administrative requirements of Part 8A. This never meant that NSW Police would not have to resolve a complaint, but rather would be able to do so in a flexible way.

Through its legal interpretation of 122(2), the Ombudsman has been able to impose administrative requirements on NSW Police and in particular impose data collection requirements designed to measure complainant satisfaction levels. That the Ombudsman imposes resource intensive administrative conditions on NSW Police to meet the Ombudsman’s own reporting needs, rather than to meet NSW Police business needs, is a source of frustration. The ultimate purpose of this important work, to measure complainant satisfaction, is too readily subsumed in the work involved in meeting the Ombudsman’s needs. Again it is part of the tradition of the Ombudsman to deal with process or decision making failures for individual clients, rather than to work with agencies to achieve practical improvements for the future.

The Ombudsman required NSW Police through the s122(2) Class and Kind Agreement to complete a complainant satisfaction checklist, designed to the Ombudsman’s specifications, for every s122(2) matter (approximately 500 per quarter) and scan it onto the c@tsi system. The Ombudsman refuses to access the c@tsi system, so NSW Police had to centrally collate the information and prepare and provide quarterly reports.

For the first quarter compliance rates were low and the Ombudsman expected 100% compliance. So immediately, at the end of the first quarter, a resource intensive s16 investigation, instigated by the Ombudsman under their legislation, commenced into the low compliance rates. Satisfaction rates were found to be high.

Despite the fact that the checklist was drafted in accordance with the Ombudsman’s requirements, the Ombudsman expressed concerns that the accuracy of the data entered could not be verified, ie it could not be said with absolute certainty that the investigator had asked the right questions of the complainant.

It is obvious that as the investigator had to complete the checklists, the only way to independently verify the accuracy of that information was by having a further checking

mechanism, to confirm that the investigator had recorded the information correctly, resulting in unnecessary duplication of resources for dealing with 500 LMIs per quarter.

The business arrangements that the Ombudsman imposed on NSW Police were cumbersome and inefficient and unlikely to lead to any meaningful results. The mandatory complainant checklist is an inefficient and poorly designed system. NSW Police has requested that the Ombudsman release NSW Police from this requirement under the class and kind agreement, so that NSW Police may implement its own complainant satisfaction measurement strategies. The PSC proposes to conduct a central and independent survey by way of random sample. NSW Police cannot undertake to do this at the present time as the human resources utilised to collect data on behalf of the Ombudsman cannot be reallocated without agreement by the Ombudsman and PIC to release NSW Police from the class and kind agreement.

NSW Police would prefer to report on complainant satisfaction in its own Annual Report to Parliament. The Ombudsman may at any time conduct its own independent survey, view NSW Police survey results, or measure the number of second complaints received, for the purposes of its own reporting requirements. This should significantly reduce the impact on the few available resources in Commands and the Professional Standards Command.

ICAC Matters

The Committee referred to the 547 ICAC complaints that were not referred to NSW Police. In the interests of helping the Committee to have a clearer understanding of the types of matters that the ICAC did not refer some examples are provided. Where the ICAC complaints involve the names of police officers, members of other government agencies, members of Parliament, employees of private companies etc, identifying details have been removed. It is perhaps noteworthy that at the time of receipt the ICAC informed complainants about the role of the ICAC, the PIC and the Ombudsman allowing the complainant to elect to approach the correct complaint handling agency.

Example 1 (Annexure 10)

An anonymous complainant wrote

[LAC deleted] and all [LAC deleted] police should be investi, [sic] for corrupshun [sic] urgently.

Assessed by the Ombudsman as a category 2 complaint about the conduct of police officers

Example 2 (Annexure 11)

Over that [sic] last 3-4 weeks approximately I had at least two conversations with [name deleted] NSW Anti-Terrorist Police Unit [name deleted] regarding findings in my research on possible future terrorist targets which was stimulated from recent news of the blast in Indonesia, and also observation regarding the blast itself in Indonesia.

I do not consider myself a nuisance caller as I was asked, when I offered, by the Bankstown Police for a psycho-social analysis of the Bankstown community and how elements of the society could be protected and developed socially, following the gun attack on the police station there.

After my phone conversations with Mr [deleted] I could not access www.IBoogie.com yet had been able to do previously that same day and days and weeks before. For a number of days my work computer continued with this problem yet other computers on the floor [deleted] were able to access those [sic]website without difficulty. The home computer had no problem. Since sending a message through your search engine box on www.ICAC.nsw.gov.au and having arrived safely from Armidale my work computer is able to access www.IBoogie.com

I believe Mr [deleted] inappropriately initiated my computer's I.P.#ToBlock and to gain access to www.IBoogie.com website

The Ombudsman categorised this matter as a category 2 complaint about the conduct of police officers

Example 3 (Annexure 12)

[Name deleted] attended the Commission to complain about medical treatment he received from doctors at unspecified NSW hospitals. He claims that he received inappropriate, medical

treatment in Queensland which led him to initiate court proceedings. He claims that the unnamed doctor advised him he was not 'listed' and was forced to resign. As a result of this [name deleted] claims that he has been 'blacklisted' in NSW hospitals. He refers to treatment he received for a broken ankle in 2001 and being forced to take anti-psychotic medication. He also claims that NSW police officers are trying to 'doing [sic] a job' on him and claimed that he tried to do a bomb scare.

Complainant would not provide contact details to ICAC

The Ombudsman assessed this matter as a category 2 complaint about the conduct of police officers

Example 4 (Annexure 13)

[name deleted] makes allegations against the NSW Police Service, the [senior Government Minister – position deleted] and the Islamic Community in Lakemba. [name deleted] alleges that the NSW Police are corrupt because they told the 'girls' what to say in court so [name deleted] would lose the case. She states that after [Bilal and Mohammad Skaf] were sentenced, she was informed by [name deleted] that [Government Minister] had paid a total of \$750,000 to the Islamic Community in Lakemba in order to silence the Muslim community. This was allegedly paid in two amounts - \$300,000 and \$450,000. She also alleges that [deleted] have been denied a fair hearing.

Assessed by the Ombudsman as a Category 1 complaint about the conduct of police officers

Example 5 (Annexure 14)

This is a copy of a letter I sent to the Police Commission of the 25/8/04 although this letter is addressed to you. After reading the attached letter, I certainly wish to point out to the Commission that I first start [sic] writing to the Police Commission [sic] of NSW in 1997, 98 well before the Olympics. I am happy to forward a copy of this correspondence as I believe this criminality does involve policeman, postman, corruption of many types, read on...

I wrote to your office in 1997, 98, 99 although I have no exact copies, I have notes. Your office, I understand was under a different Command at this time. My letters outlined that I had been robbed, attacked, believed my mail had been stolen until I was sure that I was suffering or would suffer from identity fraud. Mr Commission [sic] I need to inform you that I was the person that was chosen or my label, bi-line [sic] was chosen to be one of the Olympic mascots in 1992 and no one told me. Not Ms [deleted] Human Resources Office, not the boss Mr [deleted], not his secretary, not [name deleted], not [name deleted] Engineer, not [name deleted] ETC delegate, not [name deleted] electrical serviceman...all former employees of [company name deleted]. I believe you will have to cross-checked [sic] or find out if any of the people mentioned above are police men or is it known to you that any of these people work in an official capacity where they might come into contact with confidential information about any member of the public. I wish to point out the [sic] all of these people if not conspired; benefited from those [sic] conspiracy..

In the last shift rotation before 1/7/93 [name deleted] approached me with a three or four page letter with my name on the last page, there appeared to be a signature on the bottom of this page. [name deleted] showed me said something like is this your signature, I said it looked like it although now I recollect the the [sic] signature looked small like from our payroll forms. If [name deleted] used this form or any other form to say she informed me, to say that this gave her an authority over any or all correspondence directed to [name deleted]. [name deleted] mention to me just before 1/7/93 that her middle name was [name deleted], I say [name deleted] opened mail addressed to me, that [name deleted] misappropriated in the first instant [sic] mail and eventually a motor vehicle. If any police man benefited from [name deleted] misappropriation from [name deleted] fraud and it involves a group of people that is a conspiracy, anybody who participates in that conspiracy is responsible or may be held responsible for the actions carried out by any other member of that conspiracy. Which means speaking hypothetically if Mr [deleted] is a policeman, Mr [deleted] also works for [company name deleted]. Mr [deleted] only involvement is that once or twice as my shift supervisor, he only arranges for me to be elsewhere when a letter arrived or people arrived to say photograph, [name deleted]. However, later, before the benefit can be obtained criminal elements become involved (like in my case) someone arranged to steal something by criminal means even obtains my signature by fraud, then that policeman hypothetically speaking is involved even in the (robbery) fraud to obtain my signature, on investigation should you beside [sic] to proceed I believe Ms [deleted] and Mr [deleted] knew in the first instance. I would like consideration given to the thought of charging both these people and others; I believe quite easily will be

shown to have broken the law to be charged with using deception and or fraud to obtain a financial benefit. Particularly given the fact that although this deception fraud or misappropriation occurred perhaps 11 years ago, the benefit is quite rightly proved to have been obtained in the year 2000

PS All other people who worked at [company name deleted] who may be involved who may have benefited from this conspiracy...[names deleted]

This matter was assessed by the Ombudsman as a Category 2 complaint about the conduct of police officers

Example 6 (Annexure 15)

[Name deleted] alleges that NSW Fire Brigades at Lithgow lit a fire in his house. He was rung by an anonymous member of the Fire Brigade and told that it was done because he had been rude to them when they came to attend a fire behind his house and as payback for the . . .fires. He said that 30-40 years ago he got \$1.5 million for his SES Unit instead of the Fire Brigade. There were not [sic] witnesses to the lighting of the fire but if it was not the brigade then it was the police who did.

This matter was assessed by the Ombudsman as a Category 2 complaint about the conduct of police officers

Example 7 (Annexure 16)

The Department of Community Services failed in its duty of care by returning the complainants step-daughter to her drug addicted mother. [Name deleted] MP influenced public officials in DOCS, NSW Police, Community Services Commission & Ombudsman not to investigate his complaints because [name deleted] MP is involved with drug trafficking; state transit officers had intimidated him and information he has provided anonymously about the Kerrie Whelan disappearance has not been acted on by the NSW Police

The complaint was advised by ICAC in a letter dated 9/12/99 that the matter would not be investigated.

The Ombudsman assessed this matter as a section 122(2) complaint about the conduct of police officers

Example 8 (Annexure 17)

Complainant forwards several pages of incoherent information concerning the FBI, CIA, NSW Police and the [name deleted] Club. The complainant comments about the price of a coffee cabinet inside the club and advises that drug dealers frequent the club.

Assessed by the Ombudsman as a s122(2) complaint about the conduct of police officers

Example 9 (Annexure 18)

On Tuesday 9 April 2002 I attended your premises [ICAC] around 1600 to speak to someone about my complaint, ongoing harassment and the organised corruption within the NSW state government. I initially spoke to someone named [name deleted] than the supervisor for matters re the NSW Attorney Generals Department. To say that it was a farce is an understatement.

They could be clearly heard laughing via the telephone. They would not give their last names nor would they come out and talk to me. Some of the staff in your organization [sic] are an outright joke. Given the above I am therefore placing my complaint in writing and expect and independent organisation to contact me, investigate this matter and treat me with some respect.

My complaint is that the Attorney General's Department are coordinating ongoing harassment given my complaints going back to 1985. It is a campaign of judicial activism involving the Independent Commission of Jurists, NSW Attorney General, Chief Justice, Chief magistrate, Judicial Commission, Anti-Discrimination Board, ICAC, Police Integrity Commission ad other allied to the NSW AGsD.

Specifically I am complaining about [Member of Parliament – name deleted]. The . . . staff treat me as a fool. They do not usually reply to my correspondence. Nor do they usually return my telephone calls. When physically attend the so called Community Relations Unit they leave me waiting, treat me disrespectfully and offer pathetic excuses about inaction. They do not care for my welfare and react to my complaints by further harassment and attempted frame-ups. Redress has not been available given their association with the Law Society in preventing me from obtaining legal representation.

The Chief Justice [name deleted] and her staff are also an absolute joke. They should be in gaol for the way they have treated me in and around the [Court complexes deleted]. The Judicial Commission has not returned correspondence going back years. The last time I saw Mr [name deleted] he was poking his tongue out at me on George Street, his secretary tried to sabotage the last letter that tried to deliver to the Judicial Commission in electronic format re the above.

The Anti-Discrimination Board has replied to my complaints by saying that they will not investigate them. The ADB like the ICAC, JC and PIC is allied to the AGsD. There is no separation of powers just a collection of low life lawyers acting like an organised crime syndicate persecuting people like me whilst protecting a range of criminals involved in criminal activity with what looks to be immunity.

A few months ago I rang the ICAC and spoke to a male officer [name deleted]. He returned my telephone call a few days later and suggested that I contact the Ombudsman. I suggested this was another attempt to wind me up, piss me off and stuff me around. If I do contact the Ombudsman it will be to complain about the ICAC.

The Police Integrity Commission is another overpaid joke of the NSW AGsD. They neither want to talk to me nor correspond in any other way. It is quite obvious that they are colluding with the Australian Broadcasting Commission. The PIC and NSW Police Electronic Surveillance Branch appear to be licensed dickheads harassing me wherever I go. When I confront them they tell me to go to the local police where they know nothing will be done.

Around 1730 last night I was cycling along [deleted]. A utility vehicle had been deliberately placed in my path. I could have been run over and suspect that this was their motive. These people are AFP, ESB, ICAC or PIC criminals.

The NSW Police will not investigate any matters that I raise. The staff of the NSW Police Minister will not reply to my correspondence or return my telephone calls.

I have asked the NSW Attorney General in writing to pay me compensation for seventeen plus years of harassment, to return my pistol licences and waive the matters that I have been framed for. I currently have an appeal in the Downing Centre re \$2000 plus in fines stage managed by the judiciary. No reply has been received to date. I am not expecting a reply from that corrupt joke the NSW AGsD in the near future.

Awaiting somebody to contact me via any of the means listed below re some form of action and having a life. Further attempts to control my life will get a confrontational reaction and the return of some of your garbage.

The Deputy Commissioner of the ICAC advised the complainant in writing that the ICAC would no longer accept telephone calls or visits to the ICAC premises unless the complainants raised allegations substantially different to previous complaints

The Ombudsman assessed this matter as a section 122(2) complaint about the conduct of police officers

Example 10 (Annexure 19)

[Name deleted] by telephone stated that there is a Royal Commission into Liquor Licensing at Kings Cross. She claims that police officers at the [name deleted] Police Station were/are corrupt. [name deleted] stated she wants a restraining order against the son of a person who is in the mafia. She claims the mafia have a Code of Ethics, which has been breached; therefore it's corrupt conduct.

The Ombudsman assessed this matter as a category 2 complaint about the conduct of police officers

Of the 547 ICAC matters, only 148 were not duplicates. The Ombudsman only identified three of the 148 that the Ombudsman required to be investigated. The first related to a letter requesting the return of money seized as evidence in a drug matter. A cheque had been sent but not received by the defendant as he had moved address. A second cheque had been sent a considerable time prior to the receipt of the ICAC complaint. The second was a telephone call from a person who gave a false identity, and alleged that a criminal had paid bribes to police to have drug charges against him dismissed. The DPP provided records that established that police played no role in the decision of the DPP to drop drug supply charges and proceed on three pleas of guilty to possession. The third matter was a duplicate.

The administrative burden on NSW Police of having to read each matter to determine issue categories, register and scan these matters onto c@tsi is significant. A police officer has been

conducting this administrative function in addition to his normal duties. Additionally, the Ombudsman requires that a manual schedule be produced and forwarded listing the c@tsi numbers and confirming that they have been registered.

Discussion Paper: NSW Ombudsman's Observations of complaint Management Team Meetings

The Ombudsman has provided to the Committee the *Discussion paper: NSW Ombudsman's Observations of Complaint Management Team Meetings*. At page 4 the Ombudsman discusses the process of CMTs 'reviewing mandatory notification and/or conduct identified as part of regular systems audits, such as failed prosecutions and unexplained COPS accesses.' The Ombudsman's report further states that a CMT is able to undertake inquiries in order to determine whether the matter should be treated as a complaint. It contends that these inquiries do not constitute an 'investigation' of a complaint in the usual sense, and if a satisfactory explanation is provided the matter does not need to be recorded on the c@tsi system and that '*if certain inquiries are made, then a matter should be treated as a complaint investigation and therefore cannot be declined. This led to some allegations being recorded unnecessarily against an officer's name.*' [check]

It is the view of NSW Police that the Ombudsman writes many reports that are contradictory and confusing to complaint handlers throughout NSW Police. Despite what the Ombudsman might write in a report, it is not the experience of Commanders in practice. It is exceedingly difficult for NSW Police Commanders to meet the service needs of the Ombudsman when the Ombudsman is regularly inconsistent as to what those service needs are.

The following example of a Category 1 complaints illustrates how, in practice, the Ombudsman interprets the meaning of 'investigation' and also determines that a matter is 'deficient'.

P0506188 (Annexure 20)

A person wrote:

In reply to your letter on 15 September I did not have any need for the police to get into trouble. All that I was asking was for them to do there [sic] job. And thanks to you for getting the biggest drug dealer caught. Even the judge said the shop was a walk into drugs and dirty things, so am grateful to you for your help. There are a lot of big heavy drug dealers here and 2 have just went into jail come out and one week selling as good as ever. There is [names of

three persons deleted – not police officers] They are the worst ones now. They sell all over [deleted] but mostly in [deleted] and the park behind [deleted]. On any day you can see it in the car and see deals going on. There is a man in [deleted] street who has never worked and has a wife and 2 or 3 children. He lives in a beautiful home has a new 4 wheel drive and a new deep water boat every 2nd years. He sells to every one school kids and all. But his neighbours say they have tried to get him caught but the police go there and do nothing. Why do they not ask themselves where all the money came from. His name is [deleted]. There is another man who lives at [delete] car No [deleted]. He has lived there for years does not work drives around in an old bomb of a car and is hiding his money. He grows marawana [sic] and sells from the [deleted] fish and chips shop. [deleted] motorcycle shop in [deleted]. He also sells behind [deleted] shop in [deleted]. He sells there to the kids coming there from high school. I hope you can help in these cases. There is also the [deleted] Hotel who sells lg amounts of drugs. But they won't get caught because the local police drink there and they are friends. The people who own the pub have just bought a house behind my home and are letting it out. There is no short supply of money with them. As you can see [deleted] has a lg amount of drugs and a big drug problem. Therefore a lg [sic] amount of break and enters and stolen items. The Chamber of Commerce have even had meetings to try and sort things out with the police and general public. Every one is asking why. But in my letter you know why. Hope you can help us all.

The allegations did not name any police officer. The persons identified in the letter were checked against COPS data and intelligence. Each person had a significant amount of COPS entries and arrest histories. The information in the COPS system indicated that the allegations that police were not taking action against the named persons were based on hearsay and local gossip, rather than eye witness testimony.

The CMT determined that the matter should be declined and that the allegations against police did not warrant investigation.

The Ombudsman wrote to the Commander and stated as follows:

Given that inquiries were conducted into the probity of the allegation (interrogation of police records) this office views these inquiries as constituting an investigation into this complaint. Therefore this complaint should be recorded as an investigation and not as a decline. Please amend your records accordingly. No further investigation is sought into this complaint at this time.

The Commander write to the Ombudsman and disagreed with the Ombudsman's view and argued that reviewing existing holdings does not make a matter an investigation and that the matter met all the criteria of s141 of the Police Act for decline.

The Assistant Ombudsman (Police) personally contacted the Commander. He required the matter to be altered on c@tsi to show that an 'investigation' was conducted.

Removing matters from the CMT Process

The Ombudsman submitted that many less serious matters continue to be dealt with through the CMT process rather than being handled at the time they arise by supervisors. It was suggested that there may be opportunity to remove that body of matters from the complaint management process. The Ombudsman submits that this would reduce much of the 'red tape' involved in the management type matters that police deal with.

These matters are dealt with through the CMT because of the cumbersome assessment process contained in the Class and Kind agreements. For example, a determination that a matter is a local management issue, occurs at the end of the assessment process, rather than at the beginning, which is the case with the Public Sector Employment and Management Act.

This is compounded by the Ombudsman's view that the literal wording of the complaint dictates the management option, not the context of the complaint and an objective assessment of the likely management outcome. Clearly it is the assessment process that ties up resources. The Ombudsman opposes any changes that would lead to one clear and manageable assessment criteria, in line with the Public Sector Employment and Management Act.

This is indirectly supported in the Ombudsman's Discussion Paper which states:

Another practice was a tendency for some CMTs to be guided by the likely outcome of a complaint or personal knowledge of the subject officer when determining the legislative category. For example, if a matter was likely to result in non-reviewable action or there might be a straightforward solution to resolving the complaint, some CMTs would assess the complaint as a category 2, when in fact it raised category 1 issues; in other cases it was a category 2 complaint but the CMT decided to treat the matter as a local management issue

...

The sort of guidance we gave CMTs was to look at the allegation and the relevant legislation and agreements in order to determine the legislative category. Once this threshold decision is made, the focus can shift to the investigation strategy or informal method of resolution.'

In practice this means that assessing a minor matter is significantly more time consuming than a serious matter. The following decision-making process, as set out under Part 8A and the class and kind agreements must be followed by the CMT:

Step 1 - Does the matter meet the criteria under Part 8A?

- a) conduct of a police officer that constitutes an offence,*
- b) conduct of a police officer that constitutes corrupt conduct (including, but not limited to, corrupt conduct within the meaning of the [Independent Commission Against Corruption Act 1988](#)),*
- c) conduct of a police officer that constitutes unlawful conduct (not being an offence or corrupt conduct),*
- d) conduct of a police officer that, although not unlawful:*
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or*
 - (ii) arises, wholly or in part, from improper motives, or*
 - (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or*
 - (iv) arises, wholly or in part, from a mistake of law or fact, or*
 - (v) is conduct of a kind for which reasons should have (but have not) been given,*
- (e) conduct of a police officer that is engaged in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect*

Step 2 - Does it meet the criteria of a Category 1 matter?

- *A complaint that a police officer has or may have sought or may seek to pervert the course of justice by giving false evidence, by destroying or interfering with evidence, by withholding or refraining from giving evidence, by fabricating evidence or by influencing another so to act*
- *A complaint that a police officer has or may have committed or may commit an assault which has caused or may cause a serious injury and which could lead to a charge of maliciously wounding or inflicting grievous bodily harm upon a person pursuant to section 35 of the Crimes Act 1990*
- *An offence (including larceny) relating to property where the value exceeds \$5000*
- *Any offence (other than assault occasioning actual bodily harm) punishable on conviction on indictment by a maximum sentence of imprisonment or penal servitude for five years or more*
- *A complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit for himself/herself or for another in return for failing to carry out his/her duty*
- *A complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence*
- *A complaint that a police officer investigating an offence alleged to have been committed by another police officer has or may have improperly failed to carry out, or may have improperly failed to carry out, or may improperly fail to carry out, his/her duties in the course of that investigation*
- *A complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivated or may cultivate a prohibited plant, or supplied or may supply a prohibited plant, unless the amount of or number of such drug or plant is less than the indictable quantity thereof as specified in the Drug Misuse and Trafficking Act 1985.*
- *That a police officer has or might have committed or might commit the crime of assault occasioning actual bodily harm*

- *That a police officer has or might have committed or might commit a crime other than a crime relating to property) punishable on conviction on indictment by a maximum sentence of not less than three years imprisonment or three years penal servitude*
- *Made against a police officer of or above the rank of Superintendent*
- *Any complaint arising from an operation related to terrorist activity*

Step 3 - Is the complaint a category 2 complaint?

- *Criminal Conduct*
- *Corrupt Conduct*
- *Conduct which is of a nature that, if substantiated, might warrant the taking of action under sections 73(3) or 181D of the Police 1990 or reviewable action as defined by s173 of the Police Act*
- *Lack of integrity*
- *Serious incompetence (including serious incompetence which results in failed prosecutions and criminal investigation). In assessing whether a complaint alleges serious incompetence, factors to be considered include the seniority of the involved officer, the nature of the competency issues, the outcome of the alleged conduct and, for prosecutions, any costs awarded against police and/or comments of the court*
- *Unauthorised secondary employment in high risk industries as identified in the NSW Police Secondary Employment policy and Guidelines including Security, Liquor, Commercial and Private Inquiry Agents, Gaming and Racing and Transport Industries*
- *Harassment, victimisation or unlawful discrimination of any person except complaints that involve:*
 - *harassment, victimisation or unlawful discrimination on the basis of sex, race, marital status, age, disability, homosexuality, transgender and carer responsibilities*

- *where the alleged conduct has been committed against a member of NSW Police*
- *that person consents to the complaint being dealt with as a local management issue and the police officer who is alleged to have committed that conduct has not had similar complaints made about them*
- *Detrimental action or reprisals (including possible payback complaints) against a police officer or other person making a protected disclosure, protected allegations or protected reports*
- *Any inappropriate conduct (including a failure to provide customer service)*
- *resulting in death or injury*
- *Resulting in significant financial loss. In assessing whether a loss is significant, factors to be considered include the value of the goods, property or money involved and the financial position or means of the person who has sustained the loss. For example, a loss of goods of a small monetary value may be insignificant to a person who is without an income or is on a pension*
- *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 way that matters dealt with in accordance with s122(2) of the Police Act have been handled, but only where the Ombudsman requires that they be dealt with as Category 2 complaints. These may include but are not restricted to, complaints about the assessment of the matter; the treatment of the complainant and or subject officer; the outcome of the matter; or delays in dealing with the matter. Condition 2 under the s122(2) agreement sets out the obligations upon NSW Police at the conclusion of a section 122(2) matter to advise the complainants, who state that they are dissatisfied, of their right to make a further written complaint about the handling of the matter. The Ombudsman will only require these matters to be dealt with as Category 2 complaints where substantial concerns arise about the police handling of the matter*

- *Any complaint dealt with in accordance with s122(2) of the Police Act 1990 which the Ombudsman following consultation with the Police Commissioner requires to be notified. This provision is designed to address the legislative difficulty created for matters that fall within the s122(2) agreement. It ensures that where appropriate, individually identified matters can still be oversights or investigated by the Ombudsman under Part 8A of the Police Act*

It is only when a matter has been assessed as not meeting this threshold that a matter can be classified as a local management issue. The assessment is conducted against the complaint as it is worded. No inquiries are permitted under the legislation, or by the Office of the Ombudsman, to speak to the complainant first to clarify the issues being raised. This is a time consuming and often confusing process and is undertaken before a CMT can even begin to decide about treatment options.

The Ombudsman comments in the Discussion Paper as follows:

While the CMT process has provided a forum and structure for dealing with complaints, at times there appears to be a reluctance by some CMTs including the better [performing CMTs] to make decisions about investigation strategies without first gaining some form of tacit approval from our office. CMTs need to gain confidence in their decision making.

As can be seen from the examples provided throughout this report, the Ombudsman does not assist Commanders in this regard and in fact largely contributes to this lack of confidence. Where the Ombudsman provides a Discussion Paper that appears to allow flexibility and a common sense approach and then an audit is conducted that results in a report to the Minister that the Commander has failed in relation to complaint management, the tendency of CMTs is to not expose themselves to what is seen as unwarranted criticism. It would appear that the Ombudsman has as much difficulty with the current complaints process and the class and kind agreements as NSW Police. It is therefore somewhat disingenuous to criticise Commanders for being overly cautious when the Ombudsman's interpretation of class and kind agreements is generally considered to be unpredictable and inconsistent.

Only managing serious allegations with some substance in a formal way

The Ombudsman has submitted that only the more serious allegations, if there appears to be some substance to them, need to be dealt with in a formal way, so that should they prove to be true, appropriate action can be taken. This is exactly the model proposed by NSW Police in its submission to amend Part 8A. It therefore appears somewhat contradictory that the Ombudsman takes that position, but so strongly opposes legislative change to achieve that purpose.

The Ombudsman will state that they are only interested in 'serious' matters. Applied by the Ombudsman, that is a term that varies significantly in its meaning. A recent matter illustrates this point.

P0602095 (Annexure 21)

A Commander had concerns about the poor work performance and excessive sick leave of a police officer. It had been brought to the Commanders attention from a number of sources, that the officer was engaged in unauthorised secondary employment (not in a high risk industry) and that there was a pattern of sick leave absences on Fridays.

After investigating the matter, the Commander decided to counsel the officer and refused her subsequent application to engage in secondary employment.

The Ombudsman has engaged in lengthy correspondence with the Local Area Commander about his decision making in relation to the refusal to grant the officer secondary employment. It is noteworthy that the Ombudsman was not criticising the investigation. The Ombudsman had decided to extend his role to future management of the officer, certainly a Commanders role, without taking into account the following factors:

- The unauthorised secondary employment was discovered during an examination of the poor work performance and excessive sick leave of the officer;
- There are internal review mechanisms that an officer can follow, which the officer elected not to do; this is an industrial matter in which the subject officer may involve the Police Association;
- The subject officer has no knowledge that the Ombudsman has intervened in this matter and has not asked that they do so.

It is not clear on what grounds the Ombudsman intervened in what was a clear internal police human resources and industrial matter.

The Ombudsman has told the Committee that the proposal for amendments to Part 8A, aims to reduce the range of complaints that would be the subject of oversight. The Ombudsman submits that limiting the complaints system to only the most serious complaint matters, has the potential to substantially disenfranchise complainants and reduce corruption resistance.

This position is clearly contradictory to the thrust of the rest of the Ombudsman's submission, ie that his office is only interested in 'serious' complaints. The aim of the NSW Police submission is to remove complaints that are, on the face of them, only likely to lead to non-reviewable action, which is remedial in nature, from the legislative requirement to 'investigate', which is often counter-productive and does not encourage officers to admit their mistakes and improve their performance. This is in line with what the Ombudsman apparently is suggesting and is the process under the Public Employment and Management Act. The current NSW Police complaint system reduces matters to a finding based on proof which is ineffective and does not encourage managers to manage difficult issues with limited resources.

The Ombudsman has not clearly explained to the Committee that the changes proposed by NSW Police do not remove matters from the oversight regime. Rather they remove matters that will not lead to reviewable action or dismissal or criminal charges from the requirement to 'investigate', which is time consuming and dampens any prospect of dealing with a matter remedially. The purpose of remedial action is to improve the performance of employees through a number of management options. A process that relies on 'proof' is unlikely to achieve that purpose.

The Ombudsman has also not explained to the Committee that the proposed amendments will not remove matters from oversight. All matters, including local management issues, will still be available to be viewed electronically at any time by any oversight agency. It is simply the assessment process, the definition of an 'investigation' and the method of recording that will differ.

The intent of the NSW Police submission is that oversight of NSW Police should be in line with the rest of the public service. The major difference between NSW Police and the remainder of the NSW Public Sector, the implications of which do not appear to be very clearly understood, is that external oversight powers are usually contained in the enabling legislation of the oversight agency itself, not in the legislation of the agency that it is overseeing (as is the case with NSW Police).

The NSW Police submission regarding a single oversight agency is separate and distinct from the NSW Police submission for legislative change to Part 8A and should be considered in that context.

Inspector for the Ombudsman

The Ombudsman provides in his submission a list of reasons why an Inspector is not required for the Ombudsman and provides a list of existing accountability mechanisms. NSW Police reaffirms its view that while the Ombudsman is directly involved in the management of police complaints, as its powers derive under the Police Act rather than under the Ombudsman Act, that there is a need for an Inspector for the Ombudsman that the Ombudsman has not presented to the Committee.

The Ombudsman is directly involved in the assessment of complaints, monitoring of complaints, has final ratification powers and is directly involved in the development of all systems, practices and policies. However, the Ombudsman reviews complaints about their own oversight of police matters. NSW Police has no independent administrative avenue through which to seek redress about the conduct of the Ombudsman in relation to jurisdictional issues, abuse of power, lack of procedural fairness, bias in reports, failing to take into account all relevant matters in s16 or s19 investigations, or maladministration.

Given the overlap between the PIC and the NSW Ombudsman and the submission by the Ombudsman regarding the role of that office in relation to Category 1 complaints and other serious misconduct, it would appear appropriate that the PIC Inspector should have a secondary role to receive complaints about the conduct of the Ombudsman in relation to police complaints.

A judgment was handed down by Judge Dodds in the District Court – *RJ18541/02* on 13 September 2004. At page 4 of the transcript the judge stated as follows:

..He was subjected to stress and anxiety as result of what he saw as unfair departmental charging over his investigation of a serious motor accident where he was responsible for the laying of charges against one party t the accident. He as cleared by the Police Tribunal. Despite this investigations by the Ombudsman continued or some six years after and at each

Christmas the Ombudsman delivered by post to him a set of preliminary findings and submissions in respect of this matter with apparently little variation, if any.

I must say I find the evidence in relation to that extraordinary. For it to occur for six years without the matter going anywhere would in itself, in my view, amount to sheer vindictive harassment and is something that the Ombudsman's Office ought to be ashamed of, but for the documents to be delivered at or shortly before each Christmas amounts to a particularly nasty and shameful action. Whoever was responsible for that in the Ombudsman's Office, if they are still there, needs to be dismissed, and if they are not there needs to have the matter exposed. Such a person is clearly unfit to hold any such position. That in itself, in my view, would have been sufficient to cause the plaintiff what he describes as a great deal of anxiety and distress and as a result he took particular periods of absence, subsequently being approved as hurt on duty...

This information is provided to the Committee as an independent assessment by an external body, of the conduct of the Ombudsman's Office. The comments are significant given the traditional role of that agency. It is considered appropriate to refer to this matter given the Assistant Ombudsman's comments that the Committee is an appropriate forum to receive complaints about the Ombudsman.

It is perhaps surprising that an agency that argues its case so strongly regarding the necessity for maintaining current levels of police oversight, should resist so strongly any suggestion that its own operations should be subject of any form of external review.

Annexure 1

Annexure 2

Annexure 3

Annexure 4

Annexure 5

Annexure 6

Annexure 7

Annexure 8

Annexure 9

Annexure 10

Annexure 11

Annexure 12

Annexure 13

Annexure 14

Annexure 15

Annexure 16

Annexure 17

Annexure 18

Annexure 19

Annexure 20

Annexure 21

