



SUBMISSION

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

Inquiry into

Early Intervention Systems to Identify Officers at Risk of Corruption

June 2008

Introduction

This is the Ombudsman's submission to the inquiry into early intervention systems to identify officers at risk of corruption.

As well as addressing the specific issues included in the Inquiry's terms of reference, the submission outlines the Ombudsman's involvement in the consideration of an early intervention system for the NSW Police Force and the ongoing work of this office in relation to at risk officers.

Background

In March 2002 the Ombudsman submitted a Report to Parliament entitled, *Improving the management of complaints: Identifying and managing officers with complaint histories of significance*. The Report commented:

The balanced use of complaint histories can, in conjunction with other information available to managers, be used to identify and manage emerging conduct and performance issues before an officer does something that causes serious injury or warrants dismissal. (NSW Ombudsman 2002:9)

In December 2002, the Committee released its *Research Report on Trends in Police Corruption* recommending that the NSW Ombudsman and the Police Integrity Commission (PIC) “consider assisting NSW Police in establishing the indicators for an Early Warning System to identify and assist vulnerable police officers.” In so recommending the Committee expressly noted the work that this office had done in our March 2002 report.

In 2003, working with Professional Standards Command (PSC) and the PIC, we formed a Joint Research Committee to assist NSW Police in a project to develop an Early Warning System.

Both this office and the PIC contributed substantially to the planning and oversight of this project.

This office emphasized throughout that the project needed to deliver a system that would be a practical tool for commanders and would be fair to officers.

The project faced a number of challenges, in particular, a dearth of published material concerning early warning systems, particularly regarding key issues such as the selection and validation of indicators and the evaluation of the effectiveness of interventions. Then and now much of the published material is authored by a relatively small group. This material is largely descriptive in approach, outlining the range of practices and, in general, the only indicator of success cited is a drop, often very significant, in the overall number of complaints following the introduction of an EIS.

In April 2005, the EWS project resulted in PSC finalising its report, *The Early Warning System: A Behavioural Risk Management Strategy*. The report recommended that the NSW Police Force (NSWPF) develop an early intervention system in the longer term, but, since the time and cost involved was likely to be very significant, as an interim measure, a NSWPF wide officer risk management tool should be developed and implemented.

The then Commander of Professional Standards Command, Assistant Commissioner John Carroll, citing the experience of Los Angeles Police Department, argued that the time and cost involved in the development of the information technology required to support an EWS made it unfeasible in the short term. It was argued that the development of a Police Force wide risk

assessment tool would act as a stepping stone to an EWS, since it would incorporate many of the likely EWS indicators.

This coincided with a commitment the PSC had made at that time to then Commissioner Moroney to deliver just such a risk assessment tool.

Arising from the report NSWPF launched *Officer Risk Assessment* (ORA) as a corporate risk assessment tool. This office was not involved in the project. Following an initial trial in August 2005, the Commander, Employee Management Branch, invited this office and the PIC to a meeting to discuss the progress of ORA. We were advised that the Commissioner's Executive Team had approved the ORA for a wider trial involving seven Commands. This office and the PIC indicated that we believed that the trial needed to be properly evaluated. We were advised that an evaluation was to commence in December 2005.

In March 2006 the then Commander, Employee Management Branch again met with this office and the PIC. He indicated that some limited evaluation of the ORA trial had been conducted and that had been positive. We noted this was far short of the sort of evaluation we had discussed. We were also advised that the Commissioner's Executive Team had endorsed the rollout of ORA. Both PIC and this office indicated that we believed a more formal evaluation was required. This office also questioned the value of risk assessing every officer, rather than relying on some form of trigger, such as a transfer or the emergence of a conduct or performance issue. We were advised that a more detailed evaluation would be conducted post rollout. Both this office and the PIC indicated that in the circumstances we could not endorse the rollout of ORA at that time.

In September 2006, the ORA rollout was suspended, following its implementation in 14 commands. NSWPF indicated that this was due to concerns raised by several stakeholders. I understand, in particular, that the Police Association of NSW (PANSW) had expressed concerns at the expansive nature of the risks ORA sought to identify and treat, which extended well beyond misconduct risks, and included, for example, human resource issues such as excessive accumulation of annual leave.

We also received informal feedback from Commanders indicating that they found the resource impost involved in completing the risk assessment for every officer to be excessive.

At a meeting involving PSC, PIC, PANSW and this office on 14 September 2006 there was a consensus that ORA required a proper evaluation before it was further rolled out. Implicit in this was the view that substantial reengineering would probably be required. At the invitation of PSC, we provided detailed comment regarding an evaluation. No further response was received from PSC until we were advised formally in April 2007, that ORA had been permanently “retired”.

The role of the Police Integrity Commission should be acknowledged in encouraging NSWPF to look again at the (by then renamed) Early Intervention System (EIS) concept. As a result, in July 2007, PSC convened an EIS discussion forum involving representatives from the NSWPF, PIC, PANSW and this office. Each agency presented an issues paper on an EIS for NSWPF. There was a consensus that NSWPF should move to develop an EIS and all the parties agreed to assist in this process. The participation and support of the PANSW was one of a number of positives associated with this event.

Subsequent to the forum, PSC, in August 2007, developed a position paper on the establishment of an EIS within a broader officer risk assessment strategy. The paper included a recommendation for the establishment of an EIS project. It also recommended that PIC, this office and PANSW be invited to participate.

In November 2007, the position paper was approved by the Commissioner's Executive Team. Commissioner Scipione formally invited PIC, PANSW and this office to join a project to design and implement an EIS for NSWPF. In a letter dated 13 December 2007 we accepted this invitation.

In January 2008 this office, along with PSC, PIC, and PANSW participated in a visit to Perth to inspect Western Australia Police's (WAPOL) early intervention system, which is based around the application, IAPro. This is a North American software product which provides some valuable features. Key indicators in WAPOL's system include complaints and use of force.

The parties met for the first time to commence the EIS project on 8 February 2008. The meeting principally discussed project governance issues. A further meeting was held on 29 February to begin considering a draft project plan.

Sine that time a steering committee has been established with representatives of NSWPF, PSC, PIC, PANSW and this office. A project plan has been endorsed and a project manager appointed for twelve months. She will be supported by two project officers from PSC as well as referencing specialist services from within NSWPF. The EIS project officially commenced on 23 June 2008.

The continuing work of the Ombudsman in addressing the issue of at risk officers

For some years now the Ombudsman has had a commitment to regularly engaging with local commanders about the management of problems in their command.

We regularly review officer's complaints histories in order to identify officers of concern. We then prepare comprehensive complaint profiles on these officers. In preparing the profile we analyse information about the officer including the individual matters that make up the officer's complaint history, the officer's current duties, and any action already taken by their commander to manage the risks involved.

As well as using this information to inform our oversight of individual complaints, we make use of the profiles when meeting with commanders. The profiles enable us to raise particular issues, so that we can focus on strategies that will help commanders to proactively manage the risks associated with individual officers.

The role of early intervention systems in managing vulnerable law enforcement officers and assisting in corruption reduction

Leading authority Samuel Walker provides the following definition for an EIS:

An Early Intervention (EI) system is a data-based management tool designed to identify officers whose performance exhibits problems, and then to provide interventions, usually counseling or training, to correct those performance problems. (Walker 2003:1)

Walker identified the following elements of an EIS:

- Establishment of indicators;
- Identification and selection;

- Intervention;
- Post intervention monitoring.

When discussing early warning systems, in its 2002 Report the Committee said:

The basic idea of an early warning system is that law enforcement agencies should use data on problematic officer performance, such as complaints, to identify those officers who appear to be experiencing recurring problems or apparent problems interacting with the community or other officers. An early warning system is preventative in the sense that it can be used to alert police managers to problems before they get any worse, rather than predict officer performance based on particular personality characteristics. It is a system designed to prevent misconduct and assist officers rather than to punish or discipline them. (Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission 2002: 69)

Purpose of an EIS

The purpose of an EIS is to identify, address and monitor the behaviour of officers who are at risk in relation to misconduct. The sorts of risk that an EIS can address include:

- The risk of escalating seriousness;

The risk of escalating seriousness was outlined by the Committee, in its 2002 Report when it said:

What emerges clearly from the theoretical framework, the testimony of corrupt officers at Royal Commissions and before the Police Integrity Commission, and research from NSW and other jurisdictions is that police corruption starts with a series of small acts and in most cases escalates from there. These acts form a series of recognised, critical indicators that identify officers at risk of corruption. These indicators can include the officer's personal history such as their complaints records, and environmental issues such as working in areas with high levels of poverty and entrenched drug markets. (Parliamentary Committee on the office of the Ombudsman and the Police Integrity Commission 2002: iv)

- The risk of increasing frequency (i.e. becoming a ‘problem officer’)

This risk has been described in the following terms:

“It has become a truism among police chiefs that 10 percent of their officers cause 90 percent of the problems” (Walker 2001:1)

One study demonstrating this disproportionate relationship, albeit in less dramatic terms, found:

“...officers who had received five or more complaints over a two-year period represented only 12 percent of all officers receiving complaints but accounted for 41 percent of all complaints.” (Walker 2003:46)

This office sought to replicate this study at the time of the Forum. Using our data for police complaints from 2005 and 2006 we found that 12.59% of officers received 30.46% of complaints.

- The risk that problem behaviour becomes entrenched (eg the officer with a pattern of complaints in one [or more] particular areas).

In this regard supporters of EIS have pointed out that EIS goes beyond dealing with a small group of problem officers and constitutes *“a proactive management tool useful for identifying a wide range of problems.”* (quoted in Walker 2003:3)

Key features of an EIS

In our view the important features of an EIS include :

- An EIS should be based principally on objective rather than subjective indicators.

As Walker states:

EI systems are data-driven mechanisms of accountability, providing systematic data as a basis for performance evaluations of officers. They differ from traditional performance review systems that rely heavily on subjective assessments such as "works well with people" or "demonstrates initiative." (Walker 2003: 4)

In this regard, it should be noted that the ultimate feasibility of an EIS for NSWPF may depend on how readily systems can be developed to collect the relevant data to support selected indicators.

- EIS processes need to be fair to officers.

The system needs to be consistent and transparent. It also needs to involve officers that are the subject of an EIS selection at every step.

Another challenge in this area is how an EIS deals with high performing officers. At least one study has raised the need to build sufficient sophistication into an EIS so that officers that make high numbers of arrests are not unfairly treated (Lersch, Bazley and Mieczkowski 2006)

- A key test of the effectiveness of an EIS will be the extent to which it provides commanders and supervisors with a workable tool which includes clear criteria for identifying officers and effective intervention and monitoring strategies.

The utility and further development of an early intervention system for NSW Police Force

The Ombudsman supports the further development of an EIS by NSWPF.

The development of an EIS by NSWPF can be seen as building on the work of the Wood Royal Commission, which called for the adoption of “*a managerial approach which looks to more than a reactive and narrow response to individual incidents.*” (Wood 1997: para 1.48)

The Royal Commission also said:

Individual managers... need to be aware of the conditions which allow or lead to corruption, and of the staff who are vulnerable. In this regard, they need to look for a pattern of disciplinary charges or complaints involving matters such as excessive force and identify any danger signs. (para 9.36)

The Royal Commission’s comments in relation to the recording of information concerning complaints also echo some of the concerns underlying an EIS:

The recording of information concerning the management of complaints and the retention of those records is of importance because:...

- *an overall recording system is needed so that trends and potential problem areas can be recognised, statistics compiled, and the system monitored;* (para 4.56)

Whilst EIS began as a North American phenomenon, interest in Australia has continued to grow. In addition to the work of the Committee, I note that the Western Australian Kennedy Royal Commission Final Report (2004) stated that:

It is no longer acceptable “for a police service to deal with corruption by awaiting the receipt of allegations before embarking upon reactive investigations. It is necessary to adopt a proactive approach of identifying high-risk officers and activities through a process of target identification and profiling”... A mechanism to achieve this is through the implementation of an early warning system.

As a result WAPOL's EIS commenced in January 2007. I also note that work has been done in Queensland and Victoria. The Victorian Office of Police Integrity, has also recently published a Research Paper, *Early Intervention Systems for Police Agencies*.(OPI 2008)

There are multiple benefits associated with the development of an effective EIS. These include:

- For officers – more effective support in the workplace.
- For Commanders and supervisors-
 - improved management of officers arising from a practical and effective tool to identify and address misconduct risks;
 - more comprehensive data concerning policing activity.
- For NSWPF – A means of demonstrating to the public that it is committed to managing the risk to the public posed by officers engaging in misconduct. [*“EI systems have emerged as an important mechanism for ensuring police accountability” (Walker 2003:1)*]
- For the Community – a well managed and responsive Police Force that deals with problems at an early stage.

When assessing the likely benefits of the introduction of an EIS, some caution is required when examining the experience of other jurisdictions. Walker, for example suggests that one of its advantages is that it is an alternative to the *“formal disciplinary system.”* However for the NSW Police Force, the formal disciplinary system was long ago replaced with a managerial approach to dealing with officer misconduct, as part of the Royal Commission reforms. Accordingly, many of the benefits attributed to the EIS approach, in terms of flexible

managerial, rather than formal disciplinary, processes and an emphasis on non-disciplinary, remedial strategies are already in place in NSW.

This caution is also warranted in assessing the experience of other Australian jurisdictions. For example a Victorian based study includes a discussion of the cost of formal complaint investigations. It refers to substantiation rates in these matters of below ten percent. It also states that most police complaints are about “*perceived lack of response, rudeness or rough handling.*” (Macintyre, Prenzler and Chapman 2008) In NSW most if not all of these matters would fall under the terms of the section 122 agreement and would not be treated as formal complaints. Further, far from being rigid and ineffective, the managerial approach to complaints in NSW has resulted in a flexible, remedially focused system that resulted in management action being taken in 56 percent (1221 of 2157) of complaints investigated in the 2006-2007 financial year.

It should also be borne in mind that in NSW complaints includes “police internal complaints” as well as public or “citizen” complaints.

Whilst the support of the oversight agencies and the PANSW, are important, it is NSWPF who must take ownership of the development and operation of the system. The implementation of the current EIS project needs to be embarked upon with the full commitment of the NSWPF. This includes a commitment to training, systems for the monitoring of outcomes, and a proper evaluation. It is pleasing to note that each of these is provided for in the current project plan. We see part of our role on the project steering committee as ensuring the plan is fully implemented.

The current project plan includes the development of a business case for the software system that will be the centre of the EIS system. However it is likely that there will also be a need for associated development or enhancement of other information systems in order to collect the data required to support EIS indicators. For example, and without wishing to prejudge the outcome of the current project, were complaints selected as an indicator, data on officer complaints and local management issues is currently collected and available. But if officer use of force was identified as a key indicator, data on use of force by individual officers is currently not available (though we understand that a separate NSWPF project may be addressing this issue).

Walker's outline of the steps for the introduction of an EIS make it clear that any such undertaking should be seen in the context of organisational change, including appropriate stakeholder involvement. In particular there is a need for significant consultation with police officers.

In our view, the experience with the EWS project, and the ORA project which arose from it, despite its shortcomings, at least demonstrates that NSWPF has a corporate commitment to risk identification and risk management. This is a significant step forward and realises some of the key improvements called for by the Royal Commission. The renewed commitment to developing an EIS along with ongoing improvements to the complaint system such as the recent reforms aimed at providing even more flexibility in dealing with minor misconduct and performance issues, point the way ahead for better outcomes for police officers, the Police Force and the community.

Bibliography

Cole C and Damaso G, *The Early Warning System: A Behavioural Risk Management Strategy*, NSW Police, 2005.

Lersch KM, Bazley T and Mieczkowski T, *Early intervention programs: an effective police accountability tool, or punishment of the productive*, Policing: An International Journal of Police Strategies and Management, Vol 29 No 1, 2006

Macintyre S, Prenzler T and Chapman J, *Early intervention to reduce complaints: an Australian Victoria Police initiative*, International Journal of Police Science and Management, Vol 10 No2 2008

Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission, *“Research Report on Trends in Police Corruption”*, December 2002.

Walker Samuel, *Early Warning Systems: Responding to the Problem Police Officer*, National Institute of Justice, July 2001

Walker Samuel, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, Office of Community Oriented Policing Services, Washington, 2003

Wood Justice JRT, *Royal Commission into the NSW Police Service: Final Report*, Vol II, 1997.

Office of Police Integrity, Victoria, *Research Paper No 1: Early Intervention Systems for Police Agencies*, OPI, 2008