

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE OFFICE OF THE OMBUDSMAN,
THE POLICE INTEGRITY COMMISSION AND THE CRIME
COMMISSION**

**INQUIRY INTO PERFORMANCE MEASURES AND
ACCOUNTABILITY OF OVERSIGHT AGENCIES**

THE POLICE INTEGRITY COMMISSION

At Sydney on 11 April 2013

The Committee met at 2.30 p.m.

PRESENT

The Hon. C. Cusack (Chair)

Legislative Council
The Hon. A. Searle

Legislative Assembly
Mr K. J. Anderson
Mr L. J. Evans (Deputy Chair)
The Hon. P. G. Lynch
Mr R. J. Park

BRUCE JAMES, Commissioner, Police Integrity Commission, sworn and examined:

MICHELLE O'BRIEN, Commission Solicitor, Police Integrity Commission, and

ALLAN KEARNEY, Director, Prevention and Information, affirmed and examined:

CHAIR: Welcome. As you are aware, the Committee is conducting an inquiry into the ways in which performance is measured and reported on by each agency it oversees. Thank you for appearing today to give evidence. Please confirm that you have been issued with the Committee's terms of reference and information about the standing orders that relate to the examination of witnesses.

Mr JAMES: Yes, we have.

CHAIR: Do you have any questions about those procedures?

Mr JAMES: No.

CHAIR: Have you provided the Committee with a submission and do you want it to form part of your formal evidence?

Mr JAMES: Yes, and I ask that it be part of the formal evidence.

CHAIR: Would you like to make an opening statement?

Mr JAMES: I do not wish to make an opening statement. However, I table a document we have prepared relating to performance¹. I have a number of copies.

Document tabled.

CHAIR: Thank you for providing sufficient copies for the Committee. That is very helpful.

Mr JAMES: The document deals with the seven issues in the issues paper that we received from the Committee.

CHAIR: Thank you. My colleagues are now studying the paper. We appreciate it very much. Hopefully you will indulge us if we ask questions that overlap the responses you have provided in that document. I will make a couple of background comments. First, the Committee is trying hard to distinguish between activity information and performance information. We understand that performance information in this area is challenging. Sometimes people tend to fall back onto their activity information, but we are trying to keep a strong focus on performance information and performance management. It is new territory for us and it is apparent that it might be a new focus for some of the agencies we are talking to.

Secondly, it is not in our terms of reference but it is increasingly becoming apparent that it is not just a question of your performance information but also you as an agency being interested in the performance of other agencies and their performance reporting. I am interested in your views and whether you think that is useful and working well. I will start with the Police Integrity Commission. Is there a means of measuring integrity in the Police Force and can you tell whether it is exhibiting more or less integrity? Are we making progress or sliding backwards?

Mr JAMES: One possible measure is the number of complaints about police that are received. I would like to think, and I do think, that there is not as much police misconduct as there was a number of years ago, but it is very hard to be confident about that. I am not sure whether the complaints we receive are a good measure of the level of misconduct among police.

¹ The Police Integrity Commission tendered a document concerning its response to discussion points notified in correspondence to stakeholders before the public hearing. To access this information, please click on this link: <http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/EF4CEE1FCC1C7854CA257B5C00059BDD>

Mr KEARNEY: Probably the best we can do is report on what we see in our investigations. With the royal commission before us and in the early years of the Police Integrity Commission's existence we saw quite dramatic examples of police officers working corruptly together in an organised way. Over time in our investigations we have seen changes. We continue to see officers engaged in serious corruption, but it is more often one or perhaps two officers who might be behaving in this way. We see fewer examples of serious organised activity. Where we do see organisation, it usually involves less serious misconduct where officers group together to protect an officer or to cover for an officer. I suppose it is symptomatic of similar problems, but it is much less extreme than what we saw 10 to 15 years ago.

Mr JAMES: My information is anecdotal. However, drawing on my own experience as a lawyer, there were times before the royal commission when all of the detectives at a particular police station would be corrupt. I do not know whether I should mention any particular area, but some of that was exposed in the royal commission. I think it would be better if I did not mention a particular area in an open session.

CHAIR: Yes, but it was in the media.

Mr JAMES: It was notorious.

Mr KEARNEY: Ideally for performance measurement purposes it would be perfect to have a series of numbers that would indicate how police are travelling in this area. However, everyone recognises that it is very problematic. The best you can get are things like proxy measures such as complaints, which is an indication from the public how they think police are travelling. However, it cannot be an accurate measure.

CHAIR: I refer to the comment that the volume and nature of complaints is an indicator. Your observation is that the nature of the complaints is less serious. I am not talking about misconduct but corruption.

Mr KEARNEY: I should qualify that. I cannot comment on complaints across the board; I can comment only on the complaints that we investigate. We tend to investigate a very narrow area of the whole complaints spectrum.

CHAIR: I understand. The Committee will talk to the Professional Standards Command because it occurs to members that the Police Integrity Commission, the Crime Commission and the Ombudsman comprise a holistic complaints system. Of course, the Committee does not oversight the police complaints system, but it is the main port of call for many complaints and all the agencies then interact with the police. The Committee will talk with them to gain a more holistic picture. Do you talk to the police about the nature of the complaints? Is some effort being made to examine complaints against police in a holistic way?

Mr JAMES: Mr Kearney has regular meetings with the Professional Standards Command.

Mr KEARNEY: We do talk about complaint matters. The Ombudsman, as the premier complaints administration body in the framework that you have just described, has a much broader view of the complaints process and the nature of complaints. The Ombudsman does research in this area, although I am not sure of the details of recent research. Certainly, the Professional Standards Command also does research on a command-by-command basis. It provides quite a lot of information to commands on the nature of complaints, the numbers, how they are travelling in terms of time frames and dealing with complaints and so on—trends if you were.

CHAIR: Do you draw upon that information to inform your priorities?

Mr KEARNEY: Not so much. Our system is designed to filter out the vast majority of complaints and to leave us with a small number of the most serious matters to which we should devote our attention. Those processes have been refined over time. We pay attention and we are developing those processes, informed by to what the Ombudsman, the police and other agencies are doing with similar kinds of responsibilities. That is gradually refined over time. We may also be influenced by what is going on in the community. High visibility of certain kinds of complaints may give rise to a public interest in the Police Integrity Commission being involved. That may drive the direction we take.

CHAIR: There was a recent media report in relation to allegations about Richard Torbay and a visit to a police cell that a police officer thought was inappropriate. It was stated that it was referred to the Police Integrity Commission but then no-one heard anything further.

Mr JAMES: That was before my time as commissioner. However, my information is that we looked at that complaint and we decided, applying our usual criteria, to refer it to the Police Force.

CHAIR: When you do that is there any follow-up or do you close the file?

Mr KEARNEY: That depends. In the vast majority of cases complaints are referred. They go to the Professional Standards Command. The Committee might consider asking the Professional Standards Command about that specific complaint.

The Hon. ADAM SEARLE: You were not informed?

Mr KEARNEY: I was about to say that we can have further involvement. It is essentially a tiered approach. Most matters go back and we have no further interest in them. We may choose to seek a final report on others if we have a certain level of interest. It may be that it relates to officers who are under investigation by the Police Integrity Commission or it may involve a particular kind of misconduct in which we have an interest at the time or a command in which we have an interest. We might seek a final report to find out what has happened to the matter. Another proportion will be oversighted by our organisation. That oversight can be quite low level and simply comprise a review of a final report, and if no issues arise that is the end of the matter. Alternatively, it can be a bit more intrusive and require regular reporting on progress. That kind of intrusive oversight might occur if, for example, we start to see problems in some of the decisions made around the handling of a complaint. There is a tiered approach to what might happen to those matters.

The Hon. ADAM SEARLE: To go back to the particular matter: is this one of the matters that was in the first category or was it in the second category?

Mr KEARNEY: Just going from memory, it is from the first: I think we referred it and left it to New South Wales Police to deal with.

The Hon. ADAM SEARLE: And you were not advised of what, if anything, happened?

Mr KEARNEY: No. But it may well have been a matter that the Ombudsman chose to oversight. Typically, what happens is that the vast majority of complaints are investigated by Police and oversighted by the Ombudsman.

CHAIR: I thought it was a stunning allegation, and I am really amazed that the Police Integrity Commission had no interest in it. But that relates to a decision of a previous commissioner. It makes me wonder what you are interested in if you are not interested even in finding out what happened to that.

Mr JAMES: It has been suggested to me that I should invite members of the Committee, if they would like to, to actually come to our premises and see us demonstrate how we apply the criteria that we have in determining whether a matter will be investigated. It is not a random procedure. We have already supplied information to the Committee that there are a large number of criteria, and we would hope to be able to demonstrate to members of the Committee just how the criteria are applied in practice.

CHAIR: I appreciate that.

The Hon. ADAM SEARLE: I think we would all be interested.

CHAIR: We would all be very interested. I apologise if you have given me this information before, but how many complaints are you getting, how many are you investigating, how many are being closed, and how many are being diverted away?

Mr JAMES: The figures vary a bit, but there are approximately 4,000 to 5,000 complaints received. All of the complaints are scanned, in the sense that there is a look at all of the complaints. But out of that total number, I think the first sifting process produces about a thousand complaints. But then there is a further sifting process that would reduce the total number of complaints that we look at to about a couple of hundred.

Mr LEE EVANS: Over what time period is that—over 12 months?

Mr JAMES: Annually.

Mr KEARNEY: Those 200 complaints are referred to what we call our tasking and coordination group, which applies further criteria to them. Many of those will then go on to become preliminary investigations; and I think of the order of 50-odd will become full investigations.

CHAIR: I am interested in the 3,8000 that do not make it to that process. I expect some of those are ridiculous and go in the bin I suppose, and others get—

Mr KEARNEY: We would never put a complaint in the bin.

CHAIR: Do you have statistics on the outcomes for those complaints, or what actions you have taken in relation to those complaints? People have put a lot of work into putting in those complaints to you; in the case of police officers who have made those complaints, it is often a very big step that they have taken. So it is of interest to know what the outcomes are, even though they did not make it through your sifting process.

Mr KEARNEY: Internal police complaints tend to get treated a little differently in that they are given a little more weight within the criteria. They are more likely to be referred on to the next level than is an identical complaint that has come from somebody who might not otherwise be involved. I accept it is a big thing for a police officer to come forward and make a complaint and to identify themselves.

Mr PAUL LYNCH: They would want to know the truth of what has happened.

Mr KEARNEY: Indeed.

Mr PAUL LYNCH: The logic is that it is likely to be a more substantive complaint anyway.

CHAIR: And they have also decided not to go through their own internal process.

Mr KEARNEY: Indeed.

CHAIR: And they are in a fairly special situation in that regard.

Mr KEARNEY: Yes.

The Hon. ADAM SEARLE: How many of the 4,000 or 5,000 a year would be from police? If you do not have the answer, I am happy for you to take the question on notice.

Mr KEARNEY: I would prefer to take it on notice.

The Hon. ADAM SEARLE: I would be interested in that figure; but also how many of the 200 are police complaints internally.

Mr PAUL LYNCH: My recollection is that the proportion of them that are police complaints has been steadily rising over the years.

Mr KEARNEY: Indeed.

Mr JAMES: Yes.

Mr KEARNEY: The figure is now quite substantial; it could be of the order of 30 to 40 per cent. The Ombudsman's annual report I think has those figures in it.

CHAIR: The Armidale officer claimed that he heard nothing further. I do not know what you have done with his complaint; and I assume that you do not know at the moment either. But, if you have referred it back to the professional standards branch, why was he not told?

Mr KEARNEY: Our standard practice is that the complainant is informed what we do with the matter. I do not have the detail of this specific matter to hand. The normal practice is that the complainant makes a complaint to us; we then advise them that we are going to refer it to the NSW Police; they are then given an

opportunity to discuss that referral with us, and usually they have a couple of weeks to indicate whether they are happy with that to occur or not, and assuming they are it is referred, as a general rule.

The Hon. ADAM SEARLE: Could we ask very specifically, about this matter, what happened? In fact, I will be a bit more pointy: I am asking exactly in this case what did happen? You can take it on notice.

Mr JAMES: We will take it on notice.

CHAIR: It seems your usual procedures have not applied to this matter.

Mr PAUL LYNCH: That is if what is reported in the media from the police officer concerned is true.

CHAIR: Based on what is reported in the media, yes.

The Hon. ADAM SEARLE: So let us get the response from the agency.

Mr PAUL LYNCH: Yes. Let us have a trial before we hang people.

CHAIR: Well put. Are there other questions from Committee members?

Mr LEE EVANS: I just want to drill down a bit on the numbers in the internal investigation unit within the Police Force as far as the local area commands are concerned: are they brought forward to you after they have got to a certain level, or are they dealt with within the local area command if there is a complaint made against an officer?

Mr JAMES: Are these the LMIs?

Mr LEE EVANS: In the local command there is a system of reviewing police behaviour. Do you get every single one of those sent through to you, or are some of those dealt with internally?

Mr KEARNEY: We have access to all complaints. We have access to all of the subsequent records associated with a complaint that we are oversighting and are able to observe—

Mr LEE EVANS: So they would be part of the 4,000?

Mr KEARNEY: A subset. I can give you a very rough figure: of the pool of around 4,000 a year, we scan them all; we extract up to a thousand to 1,200 for further assessment; about 50-odd ultimately end up being investigated, and around 50-odd will be oversighted by the organisation.

CHAIR: To be clear: that is in addition to the complaints made to you, is it?

Mr JAMES: Some of the local complaints are dealt with within the local police area without reference to us at all.

Mr LEE EVANS: That is what I am saying: some of the 4,000 are dealt with locally?

Mr JAMES: No. There would be matters distinct from the 4,000. Fairly low-level local area complaints—for example, complaints of lack of service by the police—would usually be dealt with at the local level without any reference to us; and they would not form part of the four or five thousand cases.

Mr LEE EVANS: Are any serious matters then escalated into your organisation?

Mr JAMES: Generally, yes.

Mr KEARNEY: We have visibility of all complaints; so, whether they be complaints of misconduct or are in this other category that we have just been referring to, the local management issues, or LMIs, we have visibility of all of those. That is something we have insisted on right from day one when Police have been developing their complaints management system, because we had noticed that complaints or local management issues can be miscategorised. Something might be categorised as a conflict of interest when in fact it is an improper association with a criminal. One of course is a local management issue; the other is potentially much

more substantial. So we have visibility of all of them. We tend to only extract though from the complaints of misconduct.

CHAIR: To clarify: it sounds like you are drawing on two different pools: one is complaints being sent to your organisation, of which there are 4,000.

Mr KEARNEY: No. I am sorry, there are complaints that are sent to us, but not by the public.

CHAIR: How many are they?

Mr KEARNEY: The pool of complaints is—

CHAIR: There are two doors into your organisation: one is for people writing to you with a complaint.

Mr KEARNEY: Yes.

CHAIR: The second is for those that you are oversighting, if that is the correct word for it, the police complaints system, and pulling from that.

Mr KEARNEY: Indeed.

CHAIR: I want to get a picture of how many are coming in from the people referring them to you route. You have given us the figures for how many you have drawn from the police complaints system.

Mr KEARNEY: If you would give me a moment, I can pull those figures out for you. If I can refer you to page 17 of the annual report for 2011-12, and the paragraph at the bottom of that page—and this is for a typical year: 965 complaints were assessed by the commission in regard to sworn police officers; so the total number that we assessed. In fact, that is actually a bit low; usually they are a bit higher than that. Of those, 381 were made direct to the commission, so a bit over a third.

The Hon. ADAM SEARLE: The other two-thirds came through from police commands.

Mr JAMES: Yes. The four or five thousand includes complaints coming directly to us, and also complaints coming through the Police Force.

Mr KEARNEY: There may have been one or two complaints that came directly from the Ombudsman as well.

The Hon. ADAM SEARLE: Sure.

CHAIR: So how many complaints are coming directly to you?

Mr KEARNEY: About 300 to 500.

CHAIR: That is from the police. I am talking about in total.

Mr JAMES: No. That is directly to us, not through the police.

CHAIR: So, of the 300 or so that have been made to you directly, how many of those are being investigated?

The Hon. ADAM SEARLE: I think, Madam Chair, you are at cross purposes. I think these numbers relate to complaints about police or from the police.

Mr KEARNEY: These are complaints about police.

The Hon. ADAM SEARLE: I think the Chair was asking a question about the total number of complaints you receive from the general public, in total.

CHAIR: Direct.

The Hon. ADAM SEARLE: Direct, not through police internal processes.

Mr KEARNEY: Yes; and those were the figures that I just gave. Of the 900 or thousand-odd that we scanned last year, about a third of those, 380, came direct to us from the public and/or other agencies.

The Hon. ADAM SEARLE: Going back to the other figure you cited, the four to five thousand, that is the total complaint pool, if you like.

Mr KEARNEY: Indeed, the total pool—the majority of which resides in the police complaints management system. So we scan all of those. We extracted—

The Hon. ADAM SEARLE: Of that four to five thousand, how many come from the public, or come to you direct as it were, as opposed to coming via internal police processes?

Mr JAMES: It would be the same sort of figure.

CHAIR: No, it is not the same sort of figure. It is a different question.

Mr KEARNEY: Actually, it may not be, because—

The Hon. ADAM SEARLE: I am asking you to take this on notice.

Mr KEARNEY: I do not know whether we can provide a response to that query. These are essentially complaints that are made by the public to police, which we then extract from these—

CHAIR: No, to you.

Mr JAMES: No. As I understand it, we are being asked about complaints from members of the public that come directly to us.

CHAIR: Correct.

The Hon. ADAM SEARLE: Yes.

Mr KEARNEY: The 380; it is that figure.

CHAIR: How many of those are police?

Mr KEARNEY: That I cannot tell you. I am not sure whether it is an easy thing to uncover, but we can have a look into that if you like.

CHAIR: Do you triage those annually? Surely you have some statistics about the 300 or so that came directly to you?

Mr KEARNEY: Yes. I am just trying to think the process through a little. It may be that when we identify them as potential public interest disclosures and, therefore, likely to have come from a police officer, that may be a tag we can use to identify whether a police officer has made a complaint to us. Many of them are anonymous.

The Hon. ADAM SEARLE: Would you please take the question on notice. We would rather an accurate answer than a quick answer.

Mr KEARNEY: Yes. So you want number of complaints direct to the Police Integrity Commission and the proportion of those complaints made by police officers?

CHAIR: Yes, and then what happened to those complaints. When you are scanning the police complaints system, are you monitoring it for effective investigation? Do you think, "Oh, these people are really stuffing it up so we'll just pull that one out and do it ourselves"? Is that how it works?

Mr JAMES: Perhaps I should defer to Mr Kearney, but we take over investigations from the Professional Standards Command if we think that the matter is one we should investigate. We apply our usual criteria: matters of public interest, general significance, is it likely to be recurring and so forth.

CHAIR: Does it refer cases to you directly?

Mr JAMES: It can, but it does not happen very often.

Mr KEARNEY: It does not happen very often. Sometimes it will refer matters that relate to very senior officers. In fact, all complaints about the executive are referred to us directly. There may be matters that it recognises as something we might be able to do better than the PSC. There are not too many of those—for example, something where a public hearing may assist in the investigation of a matter.

CHAIR: Do you take those on automatically or do you send some back?

Mr KEARNEY: Not at all. They are considered. They go through the process and if they meet the threshold.

Mr JAMES: We would nevertheless regard it as a factor to be taken into account.

CHAIR: Does the police executive refer a matter of policy to you because it feels that there would be more credibility for you to investigate the matter than it?

Mr JAMES: I think we were talking about a complaint about alleged misconduct by a member of the executive?

CHAIR: Yes.

Mr JAMES: We would not automatically take it over. The fact there was an allegation of misconduct about a member of the police executive, we would regard as a powerful factor in favour of doing something about it.

Mr LEE EVANS: This might be considered a little bit left field, but have you a cost factor on each investigation? Is there an average cost?

Mr JAMES: It is very difficult to arrive at a meaningful average cost. We completed Operation Winjana, which was the investigation into how the Crime Commission conducted criminal assets recovery actions. That investigation went on for almost four years. It took the services of one of our solicitors virtually full time for extended periods. Of course, it was a matter that took us to the Supreme Court twice when we were sued by the Crime Commission. The cost of Operation Winjana was very large. On the other hand, the cost of another investigation might be comparatively minor. The cost of an investigation varies enormously from one investigation to another.

The Hon. ADAM SEARLE: Returning to the issue at hand, which is the performance measures, are you able to inform the Committee how many hearings the commission has conducted over the past 12 months?

Mr JAMES: I think it is in our report. My figures may not be precisely accurate, but as far as public hearings are concerned, we had almost two weeks of public hearings in the Adam Salter matter. We had several days of public hearings in the matter of the Vietnamese police officer Pham. We had public hearings in what we called Operation Barmouth, which was the investigation into the alleged misconduct of police officers at Ballina. They have been the three public hearings we have had. I would think off hand there would be 15 to 20 public hearing days. We have had a number of private hearings.

The Hon. ADAM SEARLE: On those matters or different matters?

Mr JAMES: Both. We had some private hearings in the Vietnamese officer's case and in the Ballina case, but we have had a number of private hearings in other matters in which there was no public hearing.

The Hon. ADAM SEARLE: Did they all involve allegations against police officers?

Mr JAMES: Oh yes. We have had one private hearing in regard to a Crime Commission matter.

The Hon. ADAM SEARLE: I was going to ask about that in another session. Thank you for raising that. In respect to performance measures, I am interested in trying to understand in a given year—the figures may vary from year to year—how many investigations you conduct, how many of those result in hearings and how many of the complaints result in any findings of misconduct against the officers, how many complaints are upheld. If you do not have the precise figures, I am happy to receive that on notice.

Mr JAMES: I think we should take that on notice and provide you with precise answers.

Mr KEARNEY: It does get to that problem alluded to in the opening comments around activities versus outcomes.

The Hon. ADAM SEARLE: I appreciate that and, of course, the dividing line may be blurred. For example, where there is a complaint about an officer and whether there is a hearing, the complaint is in some way dismissed and that is one thing, but where a complaint is upheld, that is an outcome as well as an activity.

Mr KEARNEY: Yes. Where we can, we try to use outcome measures as much as possible, but sometimes you do fall back because you cannot see a clear way of measuring the outcome.

The Hon. ADAM SEARLE: Sure, and a given event may be both. It may be an activity and an outcome?

Mr KEARNEY: Indeed.

The Hon. ADAM SEARLE: I appreciate the difficulty.

Mr KEARNEY: What I am leading to is that we may not in fact collect the data you are looking for. We will have to explore.

The Hon. ADAM SEARLE: In which case that is your answer.

Mr KEARNEY: We will have to explore.

The Hon. ADAM SEARLE: Okay. That will be very interesting to learn.

CHAIR: Do you research whether police believe the force has more or less integrity, police attitudes towards the PIC and whether they have confidence in the PIC?

Mr KEARNEY: Things like surveys is an area that comes up in the discussion points that have been raised. We have considered the possibility of using surveys in the past. There are problems associated with it, apart from expense. If we were to survey rank and file police officers, for example, our statistical experts within the organisation advise us that there is nothing really in it for police to contribute. You are unlikely to get a representative sample of police responding.

The Hon. ADAM SEARLE: In fact, you address this in item 5 on page 6 of your response?

Mr KEARNEY: Yes I do.

Mr JAMES: We are likely to get a disproportionate response from officers who have a grievance against PIC.

Mr KEARNEY: Yes, indeed.

CHAIR: Different survey techniques can be used to overcome that.

Mr KEARNEY: Yes, of course, up to a point. I do mention in the notes the possibility of a corporate response from the agencies we oversight. However, there are already measures in place that directly go to how those agencies regard our performance. We make recommendations for disciplinary action and for changes to

systems and procedures. The acceptance rate of those is an outcome measure, which goes directly to their perception of our performance in regard to those matters. If they agree with the recommendation, if they see the supporting evidence we have uncovered or supporting research, then their acceptance of it is an indication that they think we have done a good job.

CHAIR: In the way the Ombudsman compiles his recommendations and the agency response, do you publish that?

Mr KEARNEY: We publish the police response to our recommendations, yes.

CHAIR: But in an ongoing way as to whether the recommendation has been adopted?

Mr KEARNEY: Indeed. We follow them through until conclusion.

CHAIR: What is the acceptance rate?

Mr KEARNEY: I will just refer to the annual report.

CHAIR: These things are good performance indicators.

Mr KEARNEY: Yes.

Mr PAUL LYNCH: Although, the Ombudsman has a different role from the PIC. So it will be a different response.

CHAIR: I understand that.

Mr JAMES: Of course, sometimes there is a partial response.

CHAIR: Yes, and I understand that there is a different level of significance to the recommendation.

Mr KEARNEY: I refer perhaps to page 13 of the annual report. In 2009-2010 there were 13 recommendations made to the NSW Crime Commission. There was a 100 per cent acceptance rate of those recommendations. If I can refer to page 11 of the same report concerning police—2009-10, 91 per cent; 2010-11, 92 per cent; and 2011-12, 50 per cent.

CHAIR: How many recommendations were there?

Mr KEARNEY: It varies from year to year. One report contained 69 recommendations. One year we may have half a dozen recommendations. These things tend to be cyclical. We will have a flurry of reports one year and it then takes us another couple of years to get the research done to get another flurry of reports out.

CHAIR: I understand. Obviously, you have a lot of experience dealing with these matters and your advice to the Police Force imparting the benefit of your experience to improve police culture is good.

Mr KEARNEY: We like to think so.

CHAIR: The fact you are making recommendations and they are being taken up would be a good indicator of performance.

Mr KEARNEY: I accept that, totally.

CHAIR: Are there further questions?

The Hon. ADAM SEARLE: Not in this session.

CHAIR: In your oversight of the police complaints system do you think the police are doing a good job in managing their complaints?

Mr KEARNEY: Big question. They are doing a much better job than they were doing in the 1990s.

CHAIR: How do you know?

Mr KEARNEY: They have a system now.

The Hon. ADAM SEARLE: Is that the only improvement measure you can refer to?

Mr KEARNEY: No. I think they have a more substantial approach to complaints. There is a centrally coordinated system and there are centrally coordinated policies. There is central oversight from the PSC. Each command has a complaints management team, all of whom follow centrally coordinated policies on how they are supposed to conduct themselves. They are held accountable for their performance.

The Hon. ADAM SEARLE: There is the police code of conduct and ethics as well, which is more centrally promulgated and enforced?

Mr KEARNEY: Indeed, this sets the core values for all of these policies.

CHAIR: Sorry, will you complete what you were saying? They are held accountable for their performance?

Mr KEARNEY: The CMT's are held accountable by the PSC for their performance. I am sorry, the complaints management teams are held accountable by the Professional Standards Command.

The Hon. ADAM SEARLE: Each local area command has its own CMT, does it not?

Mr KEARNEY: Yes.

CHAIR: And that is an effective system?

Mr KEARNEY: It is as effective as any system of its kind could be given the size of NSW Police, the disparate nature of the commands and the command structure, and the spread throughout such a large State.

CHAIR: But it is a strong system. I ask this given that you are also handing an awful lot of complaints back to them. Hopefully you have confidence in the system that you are handing those complaints to?

Mr KEARNEY: We are also confident with the Ombudsman's oversighting of the vast majority of those complaints that go back as well. So there is that additional oversight regardless of what we do with it.

The Hon. ADAM SEARLE: Police conduct or misconduct covers a wide spectrum. There is the kind of conduct which at one end might be the kind of conduct that would be of interest to investigations like a royal commission and like corrupt activities. At the other end of the spectrum there would be unsatisfactory professional performance issues, which are more in the nature of conduct issues or misconduct issues of a disciplinary nature, which I guess would be more appropriately handled by the Police Standards Command?

Mr KEARNEY: Yes.

The Hon. ADAM SEARLE: What is the delineation line? Where does the internal police role end and your agency's role begin? Is there a clear dividing line or is it more subtle and impressionistic?

Mr JAMES: I doubt it. I think it is a continuous spectrum—there is black at one end, just off white at the other and a large grey area.

Mr KEARNEY: The idea behind the criteria and the use of the criteria by a group of people is to engender some rigour in the process so that we are consistently producing the same decisions at the end of the process.

CHAIR: You said earlier that you have detected a pattern where police have conspired—I think might be the term—to replicate a statement to protect an officer who may have been accused of something. That is a cultural issue. I do not have the statistics to back this up but I think it is a really common view that that is a problem in the police service. When police officers do feel able to make a complaint about another police

officer—let us face it, they are often best placed to observe misconduct—have we got a system that is sufficiently supportive of them doing that? I would like our police to feel comfortable and safe. I do not have a feeling for whether they are comfortable or safe but I do have a sense that this is terribly important if we are going to reform the culture in the police service.

Mr KEARNEY: The public interest disclosure legislation provides significant protections for officers. The Professional Standards Command has an internal witness support unit and a fairly comprehensive approach to protecting those officers. That said, you do see examples where things go off the rails and there is evidence of the identity of whistleblowers being compromised, whether through police action or even their own actions, and for them to be apparently suffering from coming forward. I think the systems, the legislation is strong; I think application will always be the issue.

CHAIR: Is there any way we could monitor the performance of that?

Mr JAMES: The number of complaints we receive from police officers would give some indication of whether there has been some breaking down of the culture that you don't do.

Mr KEARNEY: Police have often referred to the proportion of internal complaints coming forward as suggesting that the system is working.

CHAIR: You do not have any information on that?

Mr KEARNEY: I do not have any data at that level, no. I am sorry, one thing I have been picking up on is the suggestion that the Professional Standards Command seems to investigate most complaints in NSW Police. That in fact is not correct.

CHAIR: No, they would be done locally I would imagine.

Mr KEARNEY: The vast majority are done locally or in a nearby command—they are usually done in the field. The PSC's responsibility is predominantly advisory in nature, although they do have a quite significant investigation capacity. They tend to do more serious, more difficult matters.

CHAIR: I would have expected them to do the Ballina matter but that matter got picked up by—

Mr JAMES: I am sorry?

CHAIR: The Ballina police matter.

The Hon. ADAM SEARLE: Classically that would be one you would ordinarily regard as one for the PSC or the CMT but apparently not because they obviously did not deal with it.

Mr JAMES: One of the reasons why we took that over—

The Hon. ADAM SEARLE: I can well understand why you would.

Mr JAMES: —was that the magistrate having dismissed the charges against the alleged victim said that he was contemplating referring the matter to the Supreme Court for contempt proceedings but then subsequently said, with a fair amount of publicity, that he would refrain from taking that course because he was going to refer the matter to PIC. In those circumstances we actually felt obliged to take it over; we might well have taken it over in any event.

The Hon. ADAM SEARLE: It is remarkable, is it not, that this is not a matter that was taken up by the PSC prior to these extraordinary developments?

CHAIR: I do not think they had an opportunity to take it up because the comments Mr James is referring to were made in court so—

The Hon. ADAM SEARLE: I am aware of that. Anyway I do not think that we need to have that controversy here. Mr James, thank you for your informative answer.

CHAIR: Thank you very much for your evidence in relation to the performance issue. The Committee now wishes to hear further evidence from the witnesses in camera. This evidence is confidential and we would ask that the gallery be cleared. This will be the end of our open hearing today. Thank you for your attendance.

(Evidence continued in camera)