

REPORT OF PROCEEDINGS BEFORE

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

**TENTH GENERAL MEETING WITH THE POLICE INTEGRITY
COMMISSION**

At Sydney on Tuesday 18 March 2008

The Committee met at 2.00 p.m.

PRESENT

Ms A. D'Amore (Chair)

Legislative Council

Ms S. P. Hale
The Hon. C. J. S. Lynn
The Hon. L. J. Voltz

Legislative Assembly

Mr P. R. Draper
Mr M. J. Kerr
Mr P. R. Pearce

JOHN WILLIAM PRITCHARD, Commissioner, Police Integrity Commission,

ANDREW STUART NATTRESS, Director, Operations, Police Integrity Commission, and

ALLAN GEOFFREY KEARNEY, Director, Intelligence and Executive Services, Police Integrity Commission, affirmed and examined:

MICHELLE MARGARET O'BRIEN, Commission Solicitor and Manager, Legal Services Unit, Police Integrity Commission, sworn and examined:

CHAIR: I now formally open the proceedings for the Committee's Tenth General Meeting with the Police Integrity Commissioner and his staff. Commissioner, thank you and your team for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Your appearance before the Committee is to provide information for the general meeting in relation to a wide range of matters concerning your office, in accordance with the Committee's statutory functions.

Mr Pritchard, the Committee has received a submission from you dated 11 January 2008. The submission consists of responses you have provided in answer to questions on notice in relation to your 2005-06 and 2006-07 annual reports. Do you want those submissions to form part of your formal evidence?

Mr PRITCHARD: Yes, I do.

CHAIR: Would you like to make an opening statement?

Mr PRITCHARD: Yes, briefly. This is my first appearance as commissioner before this Committee, and of course it is the first meeting of this Committee as presently constituted. I did not have a previous appearance before the Committee as previously constituted, so to that extent we meet on an equal footing. I welcome the opportunity to meet with the Committee. It has been almost 18 months since I started my term as commissioner, and this is an opportunity, obviously, to discuss some issues which I am sure Committee members will wish to raise with me and members of the executive team.

Madam Chair, I do not want to go into any detailed opening. I am here to listen to matters that are of interest to the Committee. Other than welcoming the opportunity to do so, I am happy to pass the matter over to Committee members and proceed to formal questioning.

CHAIR: Thank you for your opening statement. I have some questions for you relating to the two recent reports by the Inspector of the Police Integrity Commission received by the Committee on 11 December 2007 and 12 March 2008. I propose that we deal with these questions in an in-camera session at the end of the public hearing. Could that be moved?

Motion moved by Mr Paul Pearce.

CHAIR: In relation to the New South Wales Police Force secondary employment policy, has the commission received a formal response to its proposed strategies for the New South Wales Police Force to clarify and strengthen its secondary employment policy?

Mr PRITCHARD: Mr Kearney may elaborate on this. I think the short answer at the moment is no. I think the last correspondence we had from New South Wales Police was that they were finalising the final terms of the policy after some to-ing and fro-ing of correspondence and contribution from the commission. As I understand it, the position as set out in the annual report, or at least the questions on notice, remains the current situation.

CHAIR: Mr Kearney, do you wish to add to that?

Mr KEARNEY: There has been some ongoing consultation between the police and ourselves on this issue. We have reached the point now where the police have essentially accepted the recommendations we have made, or have proposed some satisfactory alternative, and we are comfortable that we are at one on these issues. Whether that translates into changes in the policy that we have sought is yet to be seen. Some detailed consultation will still need to be undertaken within New South Wales Police. We are anticipating getting a final version of the document at some time in the near future.

CHAIR: There is no specific time frame as yet?

Mr KEARNEY: I do not have a time frame on it. If you like, we could take that on notice and make some further inquiries.

CHAIR: That would be appreciated. Has the commission been consulted about the New South Wales Police Force project plan for the early intervention system?

Mr PRITCHARD: The short answer is yes. There was a project plan which involved interested parties, including the commission, the Police Association and the Ombudsman. I do not think it has progressed any further. We have had a couple of meetings in relation to the project plan. Again, Mr Kearney might be in a better position to fill in the detail on it. Again, I think the position as previously referred to in either the report or the questions on notice is still the current position. I think it was a recent meeting of the project group to advance it further. Mr Kearney might be in a better position to advance on that.

Mr KEARNEY: Yes, indeed. There have been two, possibly three, meetings this year. There have been meetings on around a three-weekly basis. At the moment there is some very detailed discussion around the content of the project plan; some discussion around an early intervention system, the terminology and definitions, to ensure that there is a common understanding. There is often confusion around early intervention systems

and just what they are. There is a view in some quarters that they are a database or a system which essentially gives you a list of names. In fact, an early intervention system is much more than that; it is a system of processes and responses, and management policies to deal with what occurs once that list of names is produced. It is a much more detailed thing. There are some issues that we are dealing with police, concerning the definitions and developing a common understanding, but also around project management as we go forward. We think they are critical elements to secure agreement on, in order to secure a project's success.

Mr PRITCHARD: If I could add, it has probably been delayed a little bit on the part of police because of the change in commanders at the Professional Standards Command. I am now up to my fourth commander in that command, and the recent incumbent has just started in the position, so that may mean he will need to get on top of issues again. So that has led to some delay in the matter. I think also, the police were beginning first of all with their officer risk assessment model, which took them some time in correspondence between the commission and the police to suggest that there might be a better way ahead. That was eventually resolved last year. That was, in itself, a bit of a hurdle, which was got over, that has allowed matters to progress at least to a common understanding. Hopefully, with the new commander on board and those appointments being a bit more final, matters can progress a bit quicker.

CHAIR: What kind of participation does the commission envisage you will have in the project, or would like to have in the project?

Mr PRITCHARD: I think we have indicated to the police before our views about what it should involve. It is quite a nebulous concept, I suppose, to put it that way. At the anti-corruption conference that was held late last year, the commanders of the Professional Standards Command from Western Australia and Queensland gave presentations about their respective adventures into this area. I think development even in those States, even though they are a bit more advanced than we are, is probably at a relatively early stage. To what extent we would like to have a say or a final involvement, at this stage it might not be something that we have reached any firm view about. I do not know whether Mr Kearney has a different view.

Mr KEARNEY: I do not have a different view. It is an area in which we have been trying to develop, and continue to develop, some expertise. It is an area where we would like to be in a position to provide expert advice to New South Wales Police. However, we do not want to be in the driver's seat on this; it is inappropriate. If police are committed to this project, they must be the drivers of it. We cannot make changes to police externally. So, yes, an advisory role, perhaps a prompting role, but certainly not any more than that.

Mr PRITCHARD: Yes, picking up on the prevention limb of the commission's functions. I think that is consistent with the role of agencies such as the Police Integrity Commission and similar to the ICAC, and the public sector generally. It is more of a cajoling or prompting, as Mr Kearney

said, as opposed to dominating it. At the end of the day, it is supposed to apply to that agency. We are in a position to provide advice, assistance, research and expertise, but ultimately ownership of it must be taken up by the police themselves.

CHAIR: On 1 June 2007 amendments to the Police Integrity Commission Act broadened the Commission's jurisdiction to include complaints against unsworn administrative officers employed by the New South Wales Police Force. Does the Commission have any comment on the organisational impact of this extension of its functions?

Mr PRITCHARD: You mean in terms of the Commission or the police?

CHAIR: In terms of the Commission.

Mr PRITCHARD: I do not think it has had any impact at all really. I speak from a different perspective because in my former employment that was a major impetus for the change coming from the Independent Commission Against Corruption [ICAC]. It was always suggested that that was a jurisdiction that should be taken over by the Police Integrity Commission [PIC]. I certainly know from my time there that the number of complaints that were received, in relation to what are now termed administrative officers, was very low. Those that were actually the subject of any investigation were even lower. It has not resulted in any increased workload or any stretching of resources from our point of view.

Mr PETER DRAPER: Could you describe your relationship with the Ombudsman and whether there are any areas that perhaps could be improved?

Mr PRITCHARD: I have found at my level, and certainly at senior officer level, the relationship with the Ombudsman's office is a very good and productive one. I meet with Mr Barbour, Mr Kearney and his equivalent, I think once every three months to discuss issues and projects that we may be doing in respective areas. Generally, I would have to describe the relationship as a good one and it has to be because there is scope for overlap or duplication in the area of police complaints. The communication at officer level is also probably a lot more frequent than certainly at my level with Mr Barbour. I can only describe the relationship to be as it should be: a productive and cooperative one. We are sensitive to issues that may cause overlap and we talk to one another to ensure that is addressed. The negotiation last year of a class and kind agreement in relation to those matters that should be notified to the Ombudsman's office was very productive and harmonious. I think I can only describe the relationship as a very sound one.

Mr KEARNEY: If I could add to that? I meet quite regularly with the Assistant Ombudsman responsible for policing, that is a monthly, a bi-monthly meeting, and quite informal. We used to, and still have the capacity to, have more formal meetings—in fact they used to be quite regular in the

formative years of the Commission—dealing with areas where we might overlap and to reduce areas where there might be some duplication of effort. Over time the need for those meetings has waned considerably and we find there is a fairly well developed understanding about what we are doing, what the Ombudsman's office is doing and what the rules are. When in doubt, make a phone call. The relationship is very positive.

Mr PETER DRAPER: I was interested to read about the increase in the number of random drug tests that were carried out on officers. It appears that has been a reasonably effective deterrent to people experimenting with drugs. Do you believe that is the case or should that level be reviewed? Is it at the appropriate level now?

Mr KEARNEY: It is a difficult area as to what rate is the right rate. As you know, it is more of a deterrent technique than a detection technique. You have got to satisfy yourself when determining what the right number is, that people will feel that there is a genuine risk of being caught. So it has got to be sufficiently high to ensure visibility so that people see it happening. I think it is probably safe to say that police are more aware that these tests are being conducted. I think from that you can conclude that there is a deterrent effect of sort. You may recall as part of Operation Abelia where the original recommendation came from to increase random drug testing, that there was also a recommendation that the program be evaluated, or the rate of testing be evaluated, over time. I am not quite sure where that evaluation is right now but I understand it is something that is on the agenda, for police to form a view as to whether it has been successful or not.

The Hon. LYNDIA VOLTZ: Following on from that question, is there an explanation as to why the non-prescribed steroid testing is taking longer to implement?

Mr KEARNEY: If I could take that question on notice? As I understood it the legislation certainly has been passed and steroid testing is available to police. I had thought—

CHAIR: Is there a particular section you are talking about?

The Hon. LYNDIA VOLTZ: Yes, there is a section in here with regards to the testing: "The New South Wales Police Force has increased its random drug testing. Recorded duty-targeted drug testing and targeted non-prescribed steroid testing have yet to commence."

Mr PRITCHARD: When you say "here", you are reading that from?

CHAIR: Would you give the reference please?

The Hon. LYNDIA VOLTZ: Page 2 of the response to questions on notice.

Mr KEARNEY: I will take that on notice, if I could?

The Hon. LYNDIA VOLTZ: Yes. One more question on drug testing, if I may. The one officer that was found and you say there has been no response; do you know if he was after the zero tolerance policy? Was he identified after the zero tolerance policy came into effect in late 2007—September 2007 I think the date was?

Mr KEARNEY: The officer tested positive on 15 January 2007 and was removed under section 181D on 12 September 2007.

The Hon. LYNDIA VOLTZ: It was within the amnesty period? Before the zero tolerance policy came into effect?

Mr KEARNEY: The amnesty would not have applied in any case. The officer would have needed to have come forward voluntarily before testing positive.

Mr MALCOLM KERR: Commissioner, I am wondering whether you have read the *Hansard* of the Inspector General's evidence given at his last appearance before this Committee?

Mr PRITCHARD: The PIC inspector?

Mr MALCOLM KERR: Yes.

Mr PRITCHARD: Yes, I have.

Mr MALCOLM KERR: Were there any areas you disagreed with?

Mr PRITCHARD: I would not say disagreed. I think there were a couple of issues that might need clarification. The first one related to the discussion of a complaint that the inspector referred to which led to a discussion about the oversight powers of the Commission. I think it needs to be clarified that the particular issue between the Commission and the inspector that gave rise to that debate related to what I would briefly call, or shorthand call, a customer service issue between the police and the complainant in that matter. It related to a view by the inspector that the complainant was entitled to a fuller explanation as to the reasons, or the outcome, or findings of the report or investigation that the police conducted. The inspector was of the view that the police should have provided that and he requested that we suggest to the police they do so. As I said, I think that goes to a customer service issue between the police and its customers, for want of a better term.

We recommended to the police that it would be practically in their best interest to do that. The particular complainant could not unfairly be described, perhaps, as a querulous complainant and experience suggests if you give these people a few more reasons, a bit more of an explanation, you might avoid some trouble; the more information you give them can help them to see why a decision has been made. We suggested as a matter of good practise

they might want to do that. The police, for reasons which they explained—which essentially rested on the fact that it related to legal advice that they had obtained internally as to why matters should not be investigated—took the view that that advice was privileged and did not think it was a matter that should be canvassed in a letter back to the complainant. That was essentially the issue that led to the inspector suggesting that perhaps our oversight powers were not as rigorous as they could be.

In the circumstances of that matter—and I think the inspector himself said here—the actual quality of the investigation that was conducted by the police was not in issue. As a result of our oversight, assessment and discharge of that function we were more than satisfied that the investigation had been completed thoroughly. There were some time delays, there is no doubt about that, that related to some issues that the Commission had raised with the police about the same command, that the officers who were the subject of the complaint were from, conducting the investigation. Initially the police took the view that there was not a problem associated with that. We agitated that there was. By the time the police agreed, the investigation had actually been done and it then had to be referred to another command to review that investigation. So that tended to drag things out from the point of view of getting the investigation done.

I hope that might at least give a bit more background to that matter and alleviate some concern that the Commission's powers are lacking in the oversight area. I think we indicated in the answer to one of the questions on notice that the Commission is more than satisfied that its powers in the area of oversight are sufficient. We oversight a very small number of complaints in any event and the Ombudsman has a more onerous or, I suppose, a greater breadth of powers in that area. That is reflective of the Ombudsman's role, in that he oversees most of the complaints that are actually investigated by the police and, unlike the Commission, does not really have a capacity to take on the investigation itself.

If the Commission is not satisfied with the progress of an oversight of a matter by the police, it has the ultimate power to step in and take it over. So to the extent that it might be thought that those oversight powers are deficient, there is still another means by which any issues that the commission has can be addressed.

There was also an issue, I accept—the complainant came to the Commission originally himself. The Commission looked at the matter, assessed and after some inquiries thought it really was not a matter for the Commission to pursue and came to the view I think as well that it really did not have a basis to it. But nonetheless, as it is required to do, to refer the matter then to the police but with the benefit of its insights into the outcome of its investigations, which hopefully might mean that there would not be as many steps to undertake as part of the police investigation. I hope that might give a bit more context to the matter. If you want to pick a matter to justify some criticism or defect in the oversight powers of the Commission, I would not be picking that one.

Mr MALCOLM KERR: Has the Police Association ever expressed any views about the Police Integrity Commission's activities?

Mr PRITCHARD: I suppose it has but I do not know if it has done it to me.

Mr MALCOLM KERR: It has not come to your notice if it has.

Mr PRITCHARD: I am sure it has a lot of views about the PIC but whether it expressed them to me or others is a different matter. Certainly during my time as commissioner I am aware that it made a contribution and submission during the review by this Committee of the 10-year oversight of the police complaints system. I think generally, from my reading of the reports and the submissions and the evidence, that its submission in relation to the commission was quite positive. I attended a meeting of the Police Association's biannual conference in August last year. I was invited by my namesake—I hasten to add that as far as I am aware I am no relation. Mr Kearney and I attended the biannual council, twice yearly or every two year get together of the executive of the Police Association. We were invited to attend. I did so; I took that opportunity. Some issues were raised by some members during questioning about some aspects of PIC operations but they were not what I would call unusual—I suppose what I would say anticipated. Generally our relationship, certainly at officer level, with the Police Association is a very positive one. I am happy to take on any suggestions that it is to the contrary.

Mr PAUL PEARCE: I refer to the response to questions on notice, a letter attached 11 January. It relates to serious police misconduct, section 181D. I note your comments: "Similarly, without further research it is not possible to differentiate between officers subject to a section 181D recommendation of dismissal, resigned or medically discharged from the New South Wales Police Force during the 181D process". Presumably the police would have that information. Would it be of use to you and would it be of use in terms of public confidence for that information to be available?

Mr PRITCHARD: You might have to expand on that. With a view to what?

Mr PAUL PEARCE: From time to time there is public disquiet about officers who have had allegations made against them of misconduct who are subsequently medically discharged.

Mr PRITCHARD: Yes.

Mr PAUL PEARCE: And it is perceived in the public mind at least that that is a way of circumventing any further action.

Mr PRITCHARD: I think when we are saying "without additional research" that may be a shorthand way of saying that we could if we had to

or wanted to. I therefore assume that if not by ourselves and certainly the police on their own but a combination of the two of us would have information that would allow it to be tracked. Given the answer we provided there, we said that there is no hard or fast information available that allows you to draw any particular conclusions about people who may be the subject of investigation and then are subsequently medically discharged for whatever reason. I can say—this is an observation I have made from my position relative to my previous position at the ICAC—that it is much more, from my own point of view, and I am speaking only anecdotally to that extent, I have noticed it being a bit more prevalent in this position than previously from when I was at the ICAC in relation to public officials. It appears to crop up a little more in relation to investigation of police than what I notice certainly dealing with investigations of public officials. But what you draw from that, I do not know, and probably not much at all. It is simply an observation I made on my own behalf.

Mr PAUL PEARCE: I refer to page nine of the same document on Operation Florida. You made a recommendation concerning the use of cameras during the execution of search warrants. You state, "Despite requests, New South Wales Police Force has not proposed an alternative strategy as to how the outcomes and the Commission's recommendations might be achieved. The Commission proposes no further action in relation to either recommendation." Why?

Mr PRITCHARD: In relation to that particular issue, I think it comes down to a technology question. The police take the view that—sorry, this is about supervising officers. I think generally there is an issue as to the availability of inspectors or senior officers in relation to search warrants. Is that the question you are asking about?

Mr PAUL PEARCE: Yes, it is, and if that problem was apparent.

Mr PRITCHARD: There are two aspects: the cameras and a senior officer being present. In relation to the senior officer, I think it is a resource issue. Search warrants can be issued for many and varied reasons—some low risk, some high risk, some procedural, I suppose, for want of a better term. To suggest that a senior officer should be present for all of them, the police response is that it is a resourcing and logistic problem that takes a senior officer away from a station or something like that when they might have to be supervising other officers. The camera side of things, we raised that with them but the general response was, "We keep abreast of technological changes as best we can". Some of that might mean that cameras can be used on warrants, depending on the circumstances of a particular warrant. Some may not.

Mr KEARNEY: We have had some discussion internally around the police response to this area. It is our view that searches remain a risk area for misconduct by police, and it is probably an area where if we have an opportunity, we would probably look at it a little further in the future, probably

some project work examining compliance by police with their own policies and procedures around searches.

Mr PAUL PEARCE: That leads into the following question. If an issue was identified that provoked the recommendation and the police have not come up with an alternative, surely at the time you made the recommendation there was a good reason to make that recommendation.

Mr KEARNEY: We saw some examples of some significant problems in some searches. I suppose to take it that next step to say there is an endemic problem across New South Wales Police is too big a step for us to take and therefore to push it very hard with New South Wales police. I think we would like to be satisfied through some research that the problem is more widespread than perhaps we detected in Florida, as significant as those problems were, but more significant in order to ramp things up.

Ms SYLVIA HALE: On a more general question about public faith and the integrity of the Police force, you will be aware that during the APEC period the police were granted considerable powers and yet during that time there were many suggestions that they abused those powers by the removal of identification tags and possible detention of people in zones where they were perfectly entitled to be. There has been a suggestion now that those laws may become a permanent feature of our legislation. How would you as the Commission deal with the issue of the potential for police to abuse those powers which will be very extensive?

Mr PRITCHARD: There is no doubt that in any circumstances where police or public officials, or anybody for that matter, are given greater powers, there is a risk that there will be abuse of those powers. Any abuse of power is still something, even in relation to APEC or even the counterterrorism powers, which are of a similar kind, any allegations or suggestions of abuse of powers is something that as a complaint the Commission can always investigate. So there is nothing that affects the Commission's ability to discharge its functions in relation to any suggestions or allegations about abuse of powers, subject to any assessment or criteria the Commission uses to consider or assess any complaints.

The CTCC situation is a good example of a studied case, I suppose, on behalf of the Commission. There is also another project the Commission is undertaking in relation to identifying certain misconduct risks in particular commands, and that includes specialist commands such as those that exercise particular powers similar to the CTCC. So you can have a specific tailored approach to looking at particular misconduct risks, as we can do such in a prevention area, but the ability to still investigate allegations or complaints relating to abuse of power that constitute complaints is still there. Certainly, in relation to the recent APEC matter, I do not think we received any complaints from members of the public in relation to any allegations of misconduct on behalf of the police.

Ms SYLVIA HALE: They would go first to the Ombudsman, would they?

Mr PRITCHARD: Complainants generally have what we call a scatter gun approach, if I can put it that way, that you will be CCed in as part of a group or a list of particular agencies that the complaint is made to. Sometimes it is a complaint made specifically to us; sometimes it is part of a complaint made to the Ombudsman as well as others. Certainly, as I said, we did not receive any complaints about conduct of officers during the APEC matter. I am aware of the matter referred to in relation to the name badge. Again, even if that is a matter we would not take on ourselves to investigate, there are powers of oversight that we have as well as the Ombudsman to undertake. But there is no doubt that there are particular risks there. The idea, as I said, similar to the CTCC situation is perhaps to identify them, bring them to the attention of the police and if necessary have them take or put in place measures to ensure that those risks are reduced as much as possible. Again, you can only be informed by what you see and what you are made aware of. If there was a sudden increase in—I mean, they are not powers that are called on a great deal of times in any event, the extension of the APEC powers, it will be interesting to see in what situations they will be used. There is nothing about them that would in any way inhibit or prevent the Commission from investigating a complaint or allegation that may involve abuse of those powers.

Ms SYLVIA HALE: Except that, for example, I believe the Commissioner has the power to compile a list of declared persons and to declare zones to be either in or out of bounds, yet there is no mechanism for appeal against the Commissioner's decision. So presumably there could be no complaint mechanism if you cannot appeal. How would you deal with such a situation where the complaint is cut off at the knees?

Mr PRITCHARD: Even if there was an appeal provision it is probably not an area that the Commission itself would get into unless again it raised an issue of serious police misconduct, which any abuse of power could do. It is not—and this is probably a distinction between the role that the Commission has in that area, say, compared to the Ombudsman, which has a legislative review role and reviews the use of the powers and the circumstances in which they are used. That is probably a role more fitted or suited for the Ombudsman in terms of the general policy approach. The Commission, I think as we indicated in response to the specific issues that were raised with the inspector about the CTCC, while there may be a view about the appropriateness of giving powers to police, that is one issue that it is not really an issue for the Commission. Our role is that if that power is abused or there is illegality or misconduct associated with it, then that is the Commission's function. I would have to be careful to clearly delineate that responsibility between us and say the Ombudsman, who might have a greater policy role in that area.

Mr PETER DRAPER: As a new member of the Committee, I am curious as to how you determine which complaint you investigate. Further, in

recent times are there any trends or patterns emerging? Is there any commonality in the style of complaint or allegation coming through?

Mr PRITCHARD: We have criteria. We have an assessment kit or tool that has a number of factors or criteria that are taken into account which we use to measure complaints against. The idea is to try to introduce a level of consistency and, certainly, document on each occasion how a complaint is dealt with. Given that the Commission has the discretion as to those matters it chooses to investigate and those it does not, we try to be consistent in those matters that we take on. So we have a set of criteria against which we measure complaints. What will it tell us, if anything, about suggestions of a systemic nature within the Police? Is it a one-off incident? Does it involve more than one officer? Does it suggest networks? It is things of that nature we address and assess all complaints against. Mr Kearney is in charge of the assessments area and can dig down deeper, if that is the sort of information you may be looking for.

Mr KEARNEY: We get complaints and other information that may lead to investigations from a variety of sources—complaints straight from a member of the public who may have witnessed misconduct or heard of misconduct, complaints made to the Police or the Ombudsman which are subsequently visible to us through a shared complaints system, complaints referred from members of Parliament, information derived from our investigations, information perhaps unrelated to any investigation we have on foot but concerns some other misconduct, on the basis of information we might receive from Austrac, an offshoot of a current investigation, an analysis of data from a variety of sources that leads us to believe there may be a problem in some particular area. While there are some variations, and those variations usually occur where there is an urgency or a need to gather evidence immediately, we go through the process which we have described in some detail in the correspondence that we have provided as part of our response to questions on notice. I am happy to elaborate if there is a need. It is essentially that we conduct research, consider the outcomes of that research in regard to the complaint or information, and provide advice to the decision-maker, which may be either myself as the delegate, the Commissioner or the Operations Advisory Group. At a point where we are sufficiently satisfied that an investigation is warranted, the Operations Advisory Group, the Commissioner or the Director of Operations will commence an investigation.

Mr PRITCHARD: Most of the information that we get, the basis of complaints, is from the Police themselves. We have access to the police complaints system, so we can see everything that the Police are getting and registering in terms of complaints and registering. That is, in large part, where most of the matters that are picked for further investigation come from.

Mr PETER DRAPER: Are you satisfied with the timeliness of getting matters to the point where they are investigated? For example, an officer has come to me because he has been the subject of an inquiry that has now been ongoing for four months. He is saying if there is something there make

it official and charge him or let him go back to work? Is that a usual amount of time?

Mr PRITCHARD: Is this an investigation by the Commission or the Police themselves?

Mr PETER DRAPER: He said the Commission. I would have to seek clarification on that.

Mr PRITCHARD: Timeliness is always an issue. There is no doubt that we all strive to turn around investigations as quick as we can. The nature of this process or business is such that there are some parts of the process that we do not control and some parts we do. We are obliged to ensure that we can turn around those as quick as we can. Sometimes some matters are beyond our control in terms of time. You do obviously take that into account. No one likes that, particularly when someone is aware they are under investigation. That is a common complaint in these agencies that they just want to have the matter resolved as quickly as they can. We try to do that as best we can. Without knowing the particular nature of the matter, four months, I would not suggest that is an extraordinary amount of time, again without knowing the details. In terms of Police complaints themselves, that is a role of the oversight, an aspect of the Ombudsman's functions, in terms of timeliness and so on. The Police themselves have their own business rules about turnaround times for investigations, which can be 90 days or things of that nature. If they prepare an investigation plan from the outset, then the idea is to try to anticipate matters that may come up and try to estimate some time. But, as I said, things can happen that are beyond your control that change the nature of the investigation and require further inquiries to be done.

Mr PETER DRAPER: Going back to my original question, are there any patterns or trends emerging in the type of complaints you are getting?

Mr KEARNEY: It is a tricky area because we do not look at and categorise all complaints. The Ombudsman certainly does and probably could provide some better advice in regard to that particular question. We look at, and legislation requires us to consider, the more serious kinds of misconduct. Up until recently we caught all of those complaints in what was called the category one agreement, a class-in-kind agreement under the Police Act, which allowed for the Ombudsman and ourselves to agree on those complaints that we would be notified about and then be in a position to make a decision as to whether we would take over or not. It is on the basis of that agreement that we have been reporting in our annual report the kinds of complaints that come across our radar. You might see from those statistics that a large proportion of matters fall into the area of perverting the course of justice and another large bunch falls into the category of an indictable offence with greater than a five-year penalty. That is probably not helpful in terms of trend. That is all I can say now on the basis of the work we have done in this area.

Mr PRITCHARD: I certainly confess from my observations in this position that one of the features I have noticed is it is not so much the actual misconduct that may be engaged in the first place, it is the covering up that takes place afterwards that starts to snowball the matter from what may have been a minor transgression or a not serious matter. Steps are taken to cover it up and, in so doing, the net starts to widen and drags in others to be part of the covering up. That is a phenomenon I have noticed from my position relative to say previous matters from my position with the Independent Commission Against Corruption that there is a bit more of a tendency to see matters balloon. Had they just been dealt with or confronted at the outset, they did not need to blow out into what they become.

The Hon. LYNDIA VOLTZ: I assume that the wearing of badges on uniforms is part of standard operating procedures?

Mr PRITCHARD: I would not know off the top of my head. It must be some requirement, I would imagine, somewhere.

The Hon. LYNDIA VOLTZ: I assume standard operating procedures would be part of the lawful commands that officers act under. If a number of officers remove their badges, would that be a decision that is taken at a certain level that is against standard operating procedures? Have you had any complaints about that? Is that a matter you would investigate?

Mr PRITCHARD: This is in relation to APEC?

The Hon. LYNDIA VOLTZ: Yes.

Mr PRITCHARD: Mr Kearney may correct me but, no, I am not aware of any complaints that the Commission received in relation to conduct associated with that. People who want to complain about that conduct might even understand that the complaint might be better directed to the Ombudsman, given that it does not raise a serious allegation or an allegation of serious police misconduct in the sense of perverting the course of justice or things of that nature. But no complaints were received by the Commission in relation to conduct of that kind or even a suggestion that it was a decision made at a higher level as opposed to individual officers deciding to do so.

The Hon. LYNDIA VOLTZ: It seems to me from a number of reports I have read from the Police Integrity Commission that while a person has not committed a particular offence, quite often a person has not followed usual operating procedures and therefore has started to step outside the requirements. Where do you draw the line on those kinds of activity? Given the very public nature of APEC, the complaint is not necessarily in terms of the offence itself in that it is a minor matter to remove a badge from the uniform and disobey standard operating procedures but in terms of public perception. What is your role in that regard?

Mr PRITCHARD: Again, I think that probably raises an organisational issue that perhaps may not be reflective of any deliberate intent to wilfully

break the law or breach a procedure. To that extent, if the Ombudsman has received any complaints in relation to the matter I do not know. But it is probably something that the Commission would be interested in from a possible risk point of view in that it may lead to something else. The first question you ask if something has gone wrong—and let us put aside any issue of someone acting with the intent to do something wrong—What is the appropriate policy or procedure in place and was it adhered to on this occasion? Again, that is probably not something that, without more, the Commission would involve itself in without some suggestion of it being a deliberate decision knowing that it was in breach of a procedure, policy, law, what have you.

Mr KEARNEY: Can I elaborate a little on that? Some of those issues that we comment on in our reports tend to be consequential or peripheral to the activity that was originally under investigation. In order to get through our filtering system it needs to be fairly significant misconduct, significant crime before it will become an investigation. However, while you are conducting an investigation other matters will become apparent, issues associated with compliance with policy. We have an obligation to comment on those and that is how they tend to get into our reports.

Mr PAUL PEARCE: You have the power to initiate inquiries on your own behalf. In the case of the badges and the circumstances of APEC, there were arguably issues of possible assaults by the police on persons who were not in any sense committing an offence. That was an allegation that was certainly aired in the press and by individuals. The removal of badges effectively frustrated the identification of the officers who may have been involved. Would you not see that as something that would be worthy of inquiry?

Mr PRITCHARD: I do not want to give advisory opinions about matters that we may or may not—

Mr PAUL PEARCE: I am not asking you to give an advisory opinion. Where do you draw the line as to when you initiate an inquiry?

Mr PRITCHARD: It is difficult to answer in the abstract, I suppose. I would not say that any situation where there was a concerted, deliberate policy to frustrate or avoid or evade some sort of obligation that otherwise applied, that the Commission would not in any circumstances see that as anything other than a policy organisational matter that did not raise issues of serious misconduct.

To the extent that the Commission, as I said, is doing a project to look at misconduct risks in particular commands, the abuse of powers where increased powers are given is obviously a misconduct risk. From that point of view the Commission has an interest, but to suggest that something like that conduct without more—I appreciate that you say there could be assaults and things of that nature—would require the attention of a body like the Commission with its powers—and bearing in mind the Act and what it is set

up to do and given the availability of other options for that sort of conduct to be assessed and looked at—it is an area that I think the Commission would have to consider very seriously before it decided to make that the subject of some sort of investigation as opposed to identifying that it may be symptomatic of a risk within commands generally that we might want to look at from a prevention point of view or even an early intervention system point of view. I do not know. I tend to think that given what the Commission is designed and set up to do and its purpose and objectives, those sorts of issues are probably matters that can be addressed through other avenues.

The Hon. CHARLIE LYNN: The APEC issue that has been raised is an interesting one because the police have a very strong role to play in the protection of world leaders and preventing something from happening in relation to the threat of terrorism. If nothing happens, the police are really in a no-win situation. If nothing happens, people say, "Why did you have to go to that extent when nothing happened?" If something had happened, the police would have got the blame and the question would have been asked: "Why didn't you do this?" It is a bit of a no-win situation for the police either way in a situation like this, I would think.

The Hon. LYNDIA VOLTZ: Is that a question?

The Hon. CHARLIE LYNN: I am actually seeking a comment. You were talking about the complaints you got before. Do you get serial complainants against the police? I ask this because going back a couple of years, the previous Commissioner used to often voice his concerns that there was so much oversight of the police with Ombudsman's committees, the Police Integrity Commission and crime commissions and so forth that it was almost cutting off their oxygen. If radical fringe political groups know the processes they can tie down the police with investigations. Do you get serial complainants that you have to deal with and sort out?

Mr PRITCHARD: Certainly not as many as I remember from the ICAC, that is for sure! There are some, there is no doubt about that and, as I said, sometimes you can be copied into a complaint where you are merely one in a list of many. I think from my experience so far I could count on one hand those that might fall into that category. As I said, relative to the ICAC, it is not in the same category in terms of numbers. There are some people who will not take no for an answer, no matter how you try to explain things to them. There are provisions in the Act in relation to false or misleading information about complaints. Similar to the ICAC legislation, there is not anything in particular about vexatious or frivolous complaints, but we have our own internal policies where we give a lot of latitude to people who constantly complain. There comes a point where we say, "Look, we have to put measures in place to deal with this. You're wasting a certain amount of time." The Ombudsman's office in particular probably gets more than anybody. I take your point about the one hand tied behind our back fighting crime argument, which is raised regularly in this area. As somebody in an oversight agency, you cannot ignore it; it carries some weight. The sole purpose of the existence of the New South Wales Police Force is not to be investigated.

Having said that, as was mentioned earlier, there is scope for duplication. We do not want to be a handbrake on what the police have to do. They have a difficult job as it is, but experience has shown us that there has to be some sort of oversight or someone watching how they go about it. We try to be measured in the way we go about that without restricting them unnecessarily from doing their job. The tension between corruption control and organisational efficiency is one that we could have dissertations on for quite some time. I do not want to get into that here, but we are alert and alive to it. The last thing we want to do is unnecessarily obstruct police in doing their job.

Ms O'BRIEN: Perhaps I could elaborate on that, to go back to the example of the badges being removed during APEC. On one view that kind of conduct, being perhaps the disobeying of an order or something like that, is what we would normally classify as a managerial matter, which is the sort of thing that traditionally would be left to the police to investigate under the oversight of the Ombudsman. Because of particular circumstances such as the high profile of the APEC situation, it possibly escalates what in other circumstances might be a fairly minor managerial matter to something with the potential to be a little more serious. When extra factors are added in, such as the circumstance in the APEC situation, and then someone becomes the victim of an assault and is not able to identify the person who assaulted them, that tends to elevate the thing and perhaps bring it more into the realm where the PIC might be more interested. However, the system that is in place prevents things falling between the cracks because we know when the police have received a complaint or self-initiate a complaint. It goes onto a database that the PIC has access to. The PIC has the power to take over from the police any complaint where it is not satisfied with the manner in which the police are handling that complaint.

In the case of APEC and the badges, we were aware the complaint had been made; it received a lot of publicity. We had access to some of the internal police information in relation to how that complaint was being handled by the police service. It was not a matter where the Commission saw fit to step in and interfere with the way the police were dealing with that complaint. So although it might have been a matter that the Commission in its discretion elected not to get involved in, even though it had the potential to become something much more serious than a managerial matter, it was not a matter that the Commission necessarily washed its hands of either because of the ability we have. Because of the high profile of that matter we did in fact take an interest in it. The Commission was able at any time along that train to intervene and take over the matter if we had chosen to. The result of that investigation received a lot of publicity as well because I think ultimately no action was taken against those police officers, but the Commission, acting in accordance with its functions and its role, was quite able to sit and watch and do no more. On that occasion that was the decision that was made and it was totally open to the Commission in the exercise of its discretion.

Mr PRITCHARD: I do not want to suggest that we do not have any interest in the area at all. In fact, I know there were a couple of specific

complaints that the police were investigating themselves in relation to the list that was issued by the police and the treatment of somebody during the days in question—a photographer, I think it was. We were aware, we monitored those complaints and the police investigation of them through a reporting process with the professional standards command, so we are familiar with, up to date and aware of the progress of their investigations into particular matters like that. As Ms O'Brien said, I do not want to suggest it is something we do not have an interest in at all. We are obviously aware of it and alert to it but, as was indicated, there was not anything in particular that we saw that required us to come in with the full panoply of powers and connotations that come with the PIC getting involved in something, particularly where there were other avenues available for the issues to be addressed.

Ms SYLVIA HALE: You can understand the public disquiet when, as you have suggested, there are accusations of the police investigating themselves and exonerating themselves, particularly in the context where the Commissioner of Police gave an explanation that many people considered to be ludicrous—that the police removed their identification tags because there had been instances when these had been used as weapons to attack the police. There was not any suggestion that the police remove their guns, which might have done far more damage. When the Police Commissioner offers an explanation that to many people is ludicrous and it is then followed up by an internal investigation in which the Police Commissioner exonerates the activities of his officers, particularly an activity that seems to have been undertaken by many members of the force and to have been condoned by various levels of command, you can understand, presumably, the disquiet and why people rather than regarding this as an insignificant offence—which it undoubtedly may be on an individual basis—see it as one that is symptomatic of a force that is reluctant to be accountable either for its actions or its potential actions.

Mr PRITCHARD: You had me agreeing with you, Ms Hale, probably right up until the last statement you made! You may have already raised this with Mr Barbour, because his office may have provided oversight of the actual investigation by the police themselves in relation to the complaints about the badges. I am not sure whether he may have been able to assist you further on that. On the last issue you raised, I agree that experience shows us—the previous investigation the PIC did some years ago in relation to Special Branch speaks for itself in relation to some of the litany of misconduct behaviour that was disclosed during that inquiry—that when you give added powers to any organisation, particularly in the police, there is a greater risk of their being abused. Having said that, we can only be alert to that, be aware if there is a suggestion that it is being abused and take into account that if there are other measures to deal with managerial matters, as Ms O'Brien referred to, there are ways of addressing that.

I would have to say in relation to your final comment that I think there has been a significant change in relation to the police being prepared to be more accountable, if only because the current Commissioner in particular has emphasised that as a credo throughout the Police Force as a whole. The

current Commissioner has made it more than plain that integrity is a vital part of the Police Force now and I think accountability goes with that. It is I dare say practically in their own interests. The Police Commissioner is the last person who wants his force on the front page every day as a result of things that we or the Ombudsman may be doing.

I think there has been a marked change in the preparedness of police to be accountable. You can even see that in some of the statistics relating to police themselves in that there has been a bit of an increase over the years in the willingness of police to complain about themselves and report misconduct by their colleagues. What you draw from that, I think, is some solace that there is more of a willingness for police officers not only to be accountable themselves but also an expectation that their colleagues should be accountable. That is a wider issue. I can only say that we are alert to things like the CTCC, which is the basis for why we had a look in that particular area, and we are alert to the fact that there are particular misconduct risks associated with those commands that have greater powers than others. It certainly raises misconduct risks.

The Hon. LYNDIA VOLTZ: I want to go back to the original question about search warrants. I can see why the police would have a huge problem with local area commanders going out on search warrants. Frankly there is no way they would have the time and I am surprised that that is a recommendation. However, the idea that a more senior officer than those undertaking the search warrant and who have videoed it could review—I think that was one of your recommendations—and/or watch afterwards the film of the search warrant—did they ever respond to you on that level as an alternative? Part of your recommendations was "and/or watch". I agree with the police. Quite frankly I think it is crazy that local area commanders should go out on a search warrant.

Mr KEARNEY: The recommendation did not seek to have local area commanders go out on each and every search that was conducted by officers in their command. As I recall, the recommendation was more to do—we suggested that they turn up on random occasions to searches—

The Hon. LYNDIA VOLTZ: Occasionally accompany officers.

Mr KEARNEY: Yes. It was never meant to be anything more than that. On the technology issue, the police took a very narrow view. It concerned cameras only. The recommendation concerned the use of technology to reduce risks of misconduct.

Cameras were used as an example—no more than that. What followed really was a failure to engage more broadly on some of these issues. The recommendations got caught up in internal reviews, lengthy reviews and examinations of the duty inspector's obligations in local area commands in regard to searches and whatnot. It became quite a lengthy and involved process, and we did not make the progress that we thought we could in this area. Hence internally we have looked at this and decided to let

those ones go, and potentially come back to search warrants in a more comprehensive way in the future.

Ms O'BRIEN: If I could just add to that to help you understand the background to that: It is a bit unfortunate when an issue gets as long in the tooth as that one has after the actual investigation which produced the recommendation, but the recommendations made in relation to the search warrant issues that were identified in Operation Florida arose directly from evidence that police officers gave to the Commission. One officer from a command where there was found to be a very low level of corruption compared to the adjoining command said to us, "We didn't play up on search warrants because we never knew when the boss was going to turn up." The boss used to turn up and it kept everybody on their toes.

I think if you read the wording of the actual recommendation in the Florida report, it went no higher than, "Why don't the police consider having a senior officer turn up occasionally at the execution of a search warrant?"—because this was straight out of the mouth of one of the officers who had given useful evidence to the Commission. So it did not bind the Police Service in any way and they would not have actually caused themselves any pain to just accept that recommendation because it did not force them to do anything. The approach they took was, "This is completely unworkable for us to be expected to do that on every occasion a search warrant is executed, so we won't agree to it."

It was pointed out to them that that was not the language that had been used and that was not the intention, but it seemed as though it was never going to find any favour. At the end of the day the Commission can only make recommendations and it is for others to force the police on what to do. But it is certainly not something that the Commission has power to do. It was a completely reasonable recommendation in the context of the investigation in which it arose.

The Hon. LYNDIA VOLTZ: But you did raise the issue of filming and/or videoing. That was part of your recommendations?

Ms O'BRIEN: That was because, again, evidence we had been given by people was that often in the execution of search warrants, filming had not taken place in accordance with the normal procedures. That was because police officers told us that batteries would go flat or "We'd turn up with the camera and for some reason it would malfunction." And the evidence was that the equipment was not as optimal as it could be. So it is fairly obvious that you are going to make a recommendation that in a perfect world situation people are going to go out into the field with the best available technology. Again, the Commission cannot do any more than make recommendations to try to address the sort of evidence it is hearing. But at the end of the day, organisations have to resource commands, et cetera, et cetera.

The Hon. LYNDIA VOLTZ: But surely when you make your recommendations, you take into consideration police operational abilities?

Mr PRITCHARD: Yes, but I suppose it comes back to that issue—look, at the end of the day, they are recommendations. I mean, if it is suggested that we have the power to direct, I suppose that might follow with more force, but we recommend, we cajole, we point out. But at the end of the day it is an operational matter where the police can decide, for whatever reasons. We get to a certain point where, well, we have taken all the steps we can in the sense of its being a recommendation.

Ms O'BRIEN: You see, if the answer is, "Well, we can't take the world's best video cameras out to searches with us because we don't have the money to buy them", well there is nothing more the Commission can do about that. The Commission recommended in the Abelia project that more random drug tests take place. The police needed more money to do that, so it was given to them.

The Hon. LYNDIA VOLTZ: But police have been using the videoing of search warrants and crime scenes. I mean, they video crime scenes. They certainly have that ability and they do have that technology.

Mr KEARNEY: The application is not consistent though. It depends on the amount of resources.

Ms O'BRIEN: That is not to say that people who want to act corruptly at a search warrant execution will not come up with an excuse like, "Oh well, the batteries were flat", or "The camera didn't work."

Ms SYLVIA HALE: Are there any statistics kept on the number of search warrants issued and acted upon?

Mr PRITCHARD: By police, you mean?

Ms SYLVIA HALE: Yes, by the police.

Mr PRITCHARD: I think if it is not in the police annual report, I imagine it would be, given that they have to go before a justice and they are issued by a justice, I imagine there might be some statistics kept by the Attorney General's Department. I am not sure whether it is in the actual Police Force's own annual report.

Ms SYLVIA HALE: If there are such statistics either kept, or could be kept, would it be reasonable to ask, when those warrants or those searches are completed, that the police just tick the box as to whether good practice was followed—in terms of whether the filming or the search was undertaken and if not, why not. Presumably it would be quite interesting to know on how many occasions good practice was not followed and blamed on some other reason.

Ms O'BRIEN: There is no reason why a commander could not implement a scheme in his or her own command to get that sort of feedback.

Ms SYLVIA HALE: Rather than you not pursuing a recommendation any further, you could now presumably pursue another recommendation which tried to target that behaviour in some way that the police might find easier to comply with.

Mr PRITCHARD: You could do that if you got to the point where you were not, I suppose, accepting of the final position taken by the police, or you thought later on you could do some sort of research. All right, you chose not to act on a recommendation. Let us have a look and see what the outcome has been in situations where you have not taken a video, or you have taken a video and something has happened or things have been challenged, or things of that nature. It is probably something that you could follow up by some sort of research work or something of that nature.

We would have to give some thought to that. Again, you might be informed by the information you are getting from your complaints, and that always informs you as to prevention work or areas where you think some particular area requires attention—whether there was some sort of analysis of complaints in relation to people alleging that misconduct took place during the execution of search warrants. You could begin there with some sort of suggestion such as, "Oh well, let's see whether it was video-ed and see whether there is any evidence that the police can use to rebut that." There is follow-up work you can do, definitely.

Mr MALCOLM KERR: In relation to the Commission, say, recommending criminal proceedings against a police officer, I take it that is forwarded to the Director of Public Prosecutions, is it?

Mr PRITCHARD: It is.

Mr MALCOLM KERR: Do you take any further interest in that matter? I know you are not involved, but does the Commission take any further interest in these things?

Mr PRITCHARD: Well, yes, Mr Kerr, because half the time we have to. There will be requisitions coming back from the Director of Public Prosecutions for further inquiries or further issues to be clarified. So, we do, and it is part of tracking recommendations to see what the final outcome is in relation to prosecutions—whether action is taken, whether it is not, and if it is, usually in most cases investigators and officers will have to be witnesses. But, yes, we just do not simply send it off and think that is the end of it from our point of view.

Mr MALCOLM KERR: And matters that do not involve criminal proceedings, or perhaps recommendations for the sacking of a police officer, they are similarly tracked, I take it?

Mr PRITCHARD: Yes—in the main, I think, recommendations for reviewable action and dismissal action, yes.

Mr MALCOLM KERR: Have you found that they are always acted upon in accordance with your recommendations?

Mr PRITCHARD: The short answer is no, but there are probably—

Ms O'BRIEN: Can I add something?

Mr KEARNEY: Perhaps if I can just jump in there.

Mr PRITCHARD: By all means.

Mr KEARNEY: A lot of our recommendations, for disciplinary or other managerial actions, as they are collectively called, tend to be doubled barrelled. They might have a recommendation that the officer be considered under 181D or some other form of managerial action, so there are some choices for the Commissioner to make there. It may be that they are given an either-or recommendation, or if not one, then the other, option.

Mr MALCOLM KERR: Would you have a record of how many recommendations? First of all, are you satisfied that all of these recommendations have been acted upon within a reasonable time?

Mr PRITCHARD: In relation to disciplinary action?

Mr MALCOLM KERR: Yes.

Mr PRITCHARD: Well, look, I think the police themselves have recognised that there are some issues associated with disciplinary action and the time it takes. I think they have recently instituted their own project in an attempt to reduce time delay between taking action and resolving action. It is complicated in the 181D process from the point of view of the involvement of the Industrial Relations Commission, which has its own processes that take time. Mr Kearney might know this. Have you thought any more about the detail of the project?

Mr KEARNEY: There has been a series of ongoing reviews by New South Wales Police in the employee management area to streamline processes surrounding 181D and other managerial action processes. Those reviews result in some changes along the way, some of which lead to some improvements. I understand from recent correspondence that they have set some targets which are a lot more optimistic than they used to be in the past. I cannot recall off the top of my head what those targets are. However, they are quite significantly better. Whether police are able to meet those targets remains to be seen. It is an area that we will be paying attention to in the future.

Mr MALCOLM KERR: Where the Commissioner of Police does not act upon the Commission's recommendation, are you provided with an explanation?

Mr KEARNEY: We are normally provided with an opportunity to comment further. There is an agreement in place with police that where we make a recommendation for 181D action, for example—that if the Commissioner is of a mind not to proceed with an action, there will be some engagement with the Police Integrity Commission.

Mr PRITCHARD: Ms O'Brien has just pointed out to me as well that with the c@tsi system, the complaint management team [CMT] minutes the process by which these are usually managed, and we have access. If that committee decides for whatever reason not to act on the recommendation, it would usually include reasons which will be minuted and to which we have access. If there is an issue that we want to raise, then we can; but otherwise, we may be accepting of the reasons that they give. Bear in mind too that it is not a lawyer's distinction to say that we do not recommend disciplinary action to be taken; it is that we recommend consideration be given to disciplinary action being taken. It sounds like a lawyer's distinction but it is quite an important one.

Mr MALCOLM KERR: It is a real distinction.

Mr PRITCHARD: It is. They have their own processes. They have their own factors that they need to take into account and it is like recommending for prosecution action. We do not recommend someone be prosecuted; we recommend that the Director of Public Prosecutions consider prosecuting action as the agency that has been entrusted with that decision under our justice system. It is not for us to say or declare that, and under the Act we cannot. We simply say, "Here's something that we think you should look at and we think you should consider. Ultimately, it is a matter for you."

Ms SYLVIA HALE: Mr Pritchard, in your reply to questions, on page 4 you gave the figures in relation to the number of public hearing days. We see that between 2005 and 2007 there have been fewer public hearings than on any other occasion. I can understand there is not necessarily any correlation between your performance and the number of public hearing days, however, there is a public perception of justice being seen to be done and concern that matters are dealt with behind closed doors when it is in the public interest that they be dealt with in as open and transparent a manner as possible. How do you balance those two needs, both to conduct an investigation appropriately and properly but not necessarily publicly and also to make it appear that there is substance to justice being done?

Mr PRITCHARD: How much time do we have? A public hearing power, associated with not only the Police Integrity Commission but also from my experience with the ICAC as well, is one of if not the most controversial aspect of these agencies' powers. There is a school of thought that says whenever you get a complaint the first thing you should do is have a public hearing, whereas the other extreme says there is damage to reputation, there are a whole host of problems associated with having a public hearing when at the end of the day it is just an investigation and you cannot make any

findings of guilt or anything of that nature. In the middle, the Commission has to strike a balance. That public hearing days have been reduced or in the past couple of years there have not been as many as opposed to previous years, there is very little you can draw from that. It simply means some matters lend themselves better to having a hearing.

Bear in mind the section says that as part of the investigation you can hold a hearing. The hearing is not the investigation; the hearing is part of it. Some investigations lend themselves, they can be assisted by having public hearings to pursue them further; many do not. The nature of the investigation determines whether you consider it is relevant in the public interest to have a public hearing. I think the days where it was suggested you had to have a public hearing for nearly every complaint you get in order to allay concerns that things are being dealt with behind closed doors, hopefully have passed. Other measures are available that require agencies such as these, the PIC, to ensure there is some scrutiny and accountability for the way it conducts its investigations without the need to have them have a public hearing for every matter you may get.

The factors these commissions take into account in conducting public hearings are well recognised. An element of exposure might be related to a matter that benefits from a public hearing, confidence in the institution, be it the PIC, the Police Force or the processes of the Police Integrity Commission itself. You only have to look at the statistics for something like the ICAC. The number of public hearing days it had in the late 1980s and early 1990s, when it first started, were 200 or 300, compared to figures that today are much less than that.

Again, we are entrusted with that discretion. We have factors that we take into account. Sometimes some investigations lend themselves to having a public hearing; others do not. The circumstances of each investigation will determine that. We have the internal settings in place to ensure that those issues are considered and monitored and reviewed. So, if we make a decision to have a public hearing we are satisfied it is one that calls for it. Short of canvassing the issues for and against, we can only, as I said, be alert to them and make that judgement as best we can. I expect that to the extent there are two schools of thought we probably will never please either one.

(Evidence continued in camera)