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REPORT OF PROCEEDINGS BEFORE

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

SCRUTINY OF NSW POLICE COUNTER-TERRORISM AND OTHER POWERS

AND

**TEN-YEAR REVIEW OF THE POLICE OVERSIGHT SYSTEM
IN NEW SOUTH WALES**

At Sydney on Thursday 24 August 2006

The Committee met at 10.00 a.m.

PRESENT

Mr P. G. Lynch (Chair)

Legislative Council

The Hon. J. C. Burnswoods
The Hon. D. Clarke
The Hon. L. Rhiannon

Legislative Assembly

Mr S. J. Chaytor
Mr G. Corrigan
Mr M. J. Kerr

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CHAIR: I formally commence this meeting of the Committee. I thank you, gentlemen, for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission. Today you are here to provide evidence on the Committee's two inquiries: the ten-year review of the police oversight system in New South Wales, and the scrutiny of NSW Police counter-terrorism and other powers. We are of course delighted to hear your evidence.

KENNETH EDWARD MORONEY, Commissioner, NSW Police, level 15, 201 Elizabeth Street, Sydney,

TERRENCE WALTER COLLINS, Deputy Commissioner of Police, Specialist Operations, level 15, 201 Elizabeth Street, Sydney,

JOHN THOMAS CARROLL, Assistant Commissioner, Professional Standards, NSW Police, level 3, 45 Clarence Street, Sydney, and

NAGUIB KALDAS, Assistant Commissioner, NSW Police, c/- Police Executive Officers, level 15, 201 Elizabeth Street, Sydney, sworn and examined:

CHAIR: Assistant Commissioner Carroll, could you please state your occupation and the capacity in which you are appearing before the Committee?

Mr CARROLL: My occupation is Commander, Professional Standards, and I am appearing before the Committee to discuss the submission that was called for.

CHAIR: Commissioner, could you state for the record your occupation and the capacity in which you appear before the Committee?

Mr MORONEY: I am the Commissioner of NSW Police, and I appear before this Committee in my professional capacity.

CHAIR: Deputy Commissioner Collins, could you state your occupation and the capacity in which you appear before the Committee?

Mr COLLINS: I am Deputy Commissioner of Police, in charge of Specialist Operations.

CHAIR: Assistant Commissioner Kaldas, could you state your occupation and the capacity in which you appear before the Committee?

Mr KALDAS: I am the Assistant Commissioner, NSW Police, for Counter-Terrorism and Public Order Management, and I am appearing before the Committee in that capacity to discuss the issue of the scrutiny of NSW Police counter-terrorism and other powers.

CHAIR: The Committee has received a separate submission for each of its two inquiries: one for counter-terrorism from Assistant Commissioner Kaldas dated 3 July 2006, and a second one for the ten-year review, both received under a cover letter from Commissioner Moroney dated 17 July 2006. Is it your desire that the submissions be made public and form part of the sworn evidence?

Mr MORONEY: Yes. There is nothing in those submissions that precludes them from being declared otherwise.

CHAIR: Would you like to make an opening statement?

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Mr MORONEY: Yes, thank you. My opening statement will be short. For the purpose of the Committee, I would seek to explain the organisational structure that, in part, brings us here today. The two commands of Professional Standards and Counter Terrorism are portfolios within the Specialist Operations Command. The Specialist Operations Command is headed up by Deputy Commissioner Collins, and my two colleagues the two Assistant Commissioners have portfolio responsibilities respectively for the two areas that are the subject of the references today.

CHAIR: Does anyone else wish to make an opening statement?

Mr CARROLL: Yes, Chair, I would like to.

CHAIR: Certainly.

Mr CARROLL: Chair and ladies and gentlemen, thank you for the opportunity to appear before you today. In making my submission I assumed that the NSW Police written submission has been circulated and read. As stated, I am currently the Assistant Commissioner, Professional Standards, NSW Police. I have held that position since January 2003. I have some 16 years experience in complaint investigation, dating back to 1990, when I was first appointed to the rank of Inspector within the then Internal Affairs Command. I have also considerable experience as a local area commander managing front-line police at various locations. It is my experiences in those various roles that I draw on today.

There are a few issues I would like to highlight in support of the NSW Police submission, which supports a one-agency oversight model for NSW Police. Since the royal commission there has been much improvement in the way that NSW Police deals with professional standards issues. With in excess of 14,000 sworn officers, spread over 80 local area commands and 40 specialist commands, I am not in a position to say we are perfect. Managers will differ in their decision-making in NSW Police, just as in any organisation, government and private. However, NSW Police managers, unlike other managers, have their every second decision guessed, questioned, reported on, reviewed, and reported on again and again ad infinitum. In fact, with so many parties having a role in the complaint process, it is difficult, if not impossible, to ascertain what part of the investigation the manager actually has responsibility for.

Under the current oversight regime, the need of the Ombudsman to find any minor flaw in the process followed can override the needs of the complainant and the subject officers to have their issues quickly resolved. The parties to the complaint can actually be secondary considerations to the needs of the Ombudsman. I will provide some examples later in my submission.

NSW Police has grown beyond an oversight model that focuses on waiting and catching people out. It has grown beyond the current hybrid disciplinary model that is not fit for an organisation that is required to work within a contemporary human resources and industrial framework. It is for this reason that the NSW Police submission supports a one-agency oversight model.

Although NSW Police does not seek to choose which agency it should be, it is a business necessity for NSW Police that the agency conduct e-business by the full use of the c@tsi system; has all intelligence and other holdings in relation to NSW Police officers to be able to investigate serious misconduct but also can thematically look at emerging trends and work with NSW Police to put in place effective corruption prevention measures; follows a consistent and high level approach to auditing systems; and is overseen by an Inspector to reduce the current expenditure by NSW Police on legal advice from the Crown Solicitor.

Over the past ten years there has been what I see as a significant shift in police culture. Despite constant media articles using the term "cover up" and other sensational words, it is significant that over half of the complaints received by NSW Police and notified to

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oversight agencies are from internal police complainants. It is also significant that one of the greatest sources of information for media exposés would appear to be police officers themselves. But it is consistently disappointing that, despite the overly rigorous and intrusive oversight of NSW Police, when a matter becomes the subject of media scrutiny—due to, for example, the salacious nature of the subject matter—the public or the government of the day is not provided with any assurances from oversight agencies that, due to their oversight role, the investigations have been conducted appropriately. This therefore begs the question: What is the point of all this oversight?

I bring to your attention that the oversight of NSW Police far exceeds that of police services in any other Australian States or Territories. No other jurisdiction has two oversight agencies overseeing its complaint management. In New South Wales I cannot see why we should differ. The current model is simply a duplication of resources and efforts in relation to the same subject matter—part 8A complaints.

So what are the similarities, and how do they merge? The PIC is a standing royal commission with royal commission powers. The Ombudsman also exercises royal commission powers under section 19 of the Ombudsman Act. They both exercise their investigative powers over the same subject matter, part 8A complaints. Both agencies can report to Parliament. The only discernible difference is that the Ombudsman's hearings are conducted in private. Both agencies review complaints. The PIC scans c@tsi, our complaints recording system, and raises anomalies with NSW Police. The Ombudsman has declined to use c@tsi and has to be provided with manual copies of all investigations, then enters into lengthy argument about issues that are not going to take the issues further for either the complainant or the organisation. Both agencies conduct reviews of systems through their investigations.

I have to ask: With this duplication of resources, where is the dollar value for the New South Wales government and the community? NSW Police has previously made submissions to the Costa red tape review about this very issue. NSW Police believes that the public is entitled to expect that NSW Police will deal with all non-vexatious complaints fairly and in a timely manner, and that their concerns will be addressed. NSW Police also believes that oversight should give the community confidence in the complaints system.

A change to a one-agency model will serve to free up considerable police resources from unnecessary and burdensome processes and still provide a level of oversight. I understand that it is difficult for a committee such as this to recommend a way forward without fully understanding the types of matters that frustrate NSW Police. I would therefore like to give some examples of the types of criticisms that we experience on an unrelenting basis that are unlikely to lead to anything significant. The following are not the worst examples that I have come across. However, they are a small sample of the matters currently being considered by the Professional Standards Command for one region alone.

The first one is that a local area command conducted a general audit of the COPS access as part of its risk management strategies. Some officers on long-term sick leave had been found to access COPS during their sick leave. The commander decided to find out why. The officers involved were not prepared to be interviewed as they were on sick leave but were quite prepared to discuss the matter informally. The officers accounted for their accesses, and there was no misconduct involved. The local area commander made recommendations to NSW Police systems to remove access for all officers on long-term sick leave as a risk management strategy.

The Ombudsman has criticised the investigator for not making records of his informal discussion with the officers even though the officers only agreed to discuss the matters informally. The Ombudsman also refuses to accept that the matter should be downgraded to a local management issue and calls our decision inappropriate. This is despite there being no complainant, no misconduct and the officers have been helpful in explaining their accesses.

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Another case is where a police officer's mother owned a corner shop. A public authority conducted a compliance audit under the Public Health Act. Two 15-year-old schoolchildren were used to purchase cigarettes. Compliance officers entered immediately to question the shop owner. The owner's son, a police officer, entered the store during the interrogation. After a complaint to another government agency about the conduct of the compliance officers by the police officer's mother, a complaint was received by NSW Police from the government solicitor representing the agency, complaining about the police officer, that he was aggressive and intimidating towards the compliance officers, and made the fact that he was a police officer loudly known and clearly expected some advantage to flow to his mother from his position. It was also alleged that he approached the minors in the car outside and spoke to them without an adult present.

NSW Police contacted the compliance officers to interview them about the event. Neither officer supported the allegations in the complaint and did not agree that the police officer tried to change the conduct of their investigation in any way. They did not wish any formal action to be taken against any officer and they would not provide a written version of events, but were prepared to send a letter through the government solicitor. The police officer was spoken to and denied that he was aggressive or intimidating in any way.

The Ombudsman criticised NSW Police in the following terms: no written statements were obtained from the compliance officers, this is despite the officers not agreeing with the allegations and not wishing to proceed formally with the matter; versions of events not received from minors, this is despite the identity of the minors not being known; that it would not take the matter further as the officer was not in uniform, was off duty and was not acting in anything other than a private capacity at the time; the police officer's mother not being questioned, this is despite it being unlikely to offer evidence against her own son; the allegations were not put formally to the police officer, this is despite the compliance officers disagreeing with the allegations and there being no other evidence against him. The Ombudsman continued to pursue this matter as a deficient investigation without a complainant for some 10 months after it was finalised.

Another case: in response to a call for assistance from the ambulance service, police attended premises where a person had threatened self-harm. The person would not answer the door and the ambulance officers were told to leave or she would stab herself. Police and ambulance officers had genuine fears about the physical and mental wellbeing of the person. The resident stopped responding to requests to open the door; the back door was then forced. A steak knife was found in the front hall near the door. The person was handcuffed to ensure she did not harm herself or anyone else on the way to the hospital. The person was scheduled under the Mental Health Act. The person complained that she was roughly treated by police and dragged out of her home and put into a paddy wagon.

The police investigator contacted the ambulance officers to obtain their independent version. The ambulance officers rebutted the allegations. The complainant had a list of mental health incidents recorded on COPS. It was clear from what was known of the complainant that any personal contact by police may trigger another incident. The complainant was therefore sent a letter advising her that there was no adverse finding against police and of the evidence of the ambulance officers, rather than a personal call to gauge her satisfaction. The Ombudsman found that investigation deficient as the only inquiries that were conducted were informal interviews with the ambulance officers. This is despite the fact that in the absence of any evidence by the ambulance officers there were no other reasonable lines of inquiry available that would lead to a different outcome. It was also found deficient that the complainant's satisfaction with the handling of her complaint was not known.

The final case was a solicitor wrote to NSW Police complaining that his clients were being harassed by unauthorised attendances at their home, stopping and searching of vehicles and their person, et cetera. The solicitor asked for an explanation to justify the behaviour. The matter was investigated and it was found that the solicitor's client was what NSW Police described as a High Risk Offender in accordance with our Suspect Target

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Management Plan. The client had 117 intelligence reports for drug matters, indicating she was a major drug supplier. An audit did not identify one police officer targeted her. All vehicle stops and searches were in accordance with the Drug Misuse and Trafficking Act. The complainant was interviewed and despite a number of police being well known to her could not assist to identify the officers she felt were targeting her.

The Ombudsman was not satisfied with this investigation and requested an explanation for all grounds for searches of the client and her partner over two years, all COPS events specific to individual searches and the narratives and the intelligence relied upon. NSW Police provided the COPS profiles, but as there were 117 intelligence reports and 84 events for the client and 62 intelligence reports and 35 events for her partner, NSW Police did not agree to review every intelligence report and event as requested. NSW Police was also able to advise that during the complaint investigation a successful controlled operation had been conducted and the client was in custody, bail refused, charged with 12 counts of supply prohibited drug, and the partner had been charged with five counts of supply, to which he pleaded guilty. The complaint was obviously a stunt to hamper police in their operational capacity by tying them up in a complaint investigation.

There are many other examples that I could give. One significant example is recently from the Office of the Ombudsman we received a notice to contact in excess of 500 individual complainants for minor matters to establish their level of satisfaction, despite these matters being agreed upon in the 122 (2) agreement that they were not to be treated as complaints. That is very intense resource allocation for NSW. I hope these limited examples highlight the level of micromanagement of individual complaints that the Ombudsman has engaged in over many years. I see no value to the community in tying up senior police resources in following lines of inquiry that are not likely to lead to a meaningful outcome and are quite simply not justified or warranted.

The system is significantly out of balance. NSW Police is seeking to restore balance and some proportionality to its internal management process and human resource systems. We need real reform in the complaints system, reform that ensures supervisors and managers do not evade professional standards but, indeed, enforce them. The present micromanagement of the NSW Police complaints system does not support supervisors and managers to do their job efficiently and, in my view, it is the precise reason why early intervention in a lot of these matters is not taken by supervisors and managers because of the process wrapped around it, that they cannot supervise efficiently without putting it into the process and making the complaint.

In conclusion I would like to say that the Commissioner put out a Commissioner's Statement of Professional Conduct. In the Commissioner's Statement of Professional Conduct it clearly articulates that honest mistakes will be forgiven and errors of judgment will be supported, providing people accept their accountability and responsibility and agree to enter into any form of retraining or whatever management action is required to get the people to the appropriate level. Unfortunately, the legislation does not allow for that to occur. The definition of part 8A ensures that these matters cannot be dealt with; honest mistakes cannot be forgiven and genuine errors of judgment also cannot be forgiven without being recorded on a complaints system because the legislation ensures that it is required to be on the system and the legislation then requires in a lot of cases the Ombudsman to take some of the actions that I have spoken about today.

I would like to thank you for giving me the opportunity today to present this to you at this important location.

CHAIR: Any other opening statements?

Mr KALDAS: I am aware of the demands on your time so I shall try and be brief, bearing in mind we have already made written submissions, as Mr Carroll has already mentioned, which outline our views in more detail for your consideration. The Committee is

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obviously looking at the need for specific oversight of NSW Police in the field of counterterrorism with an eye on problems experienced in the past in Special Branch. This review is obviously very appropriate and very timely. I just want to start by making a couple of comments in relation to the history of this field of operation in New South Wales.

Special Branch operated until its disbandment in 1997 when numerous problems were identified by the Wood royal commission and recommendations made to fix up those problems. These included improper activities, improper recordkeeping and ambiguous operating environments. Each of these problems has been addressed very effectively, firstly with the establishment of the Protective Security Group, which replaced Special Branch, and which had a much clearer charter and parameters; then with further enhancement with the introduction of the Counter Terrorism Command. There are three broad points I would like to make today for your consideration as to where we are at today. Firstly, the culture which existed in the organisation and which allowed the problems to exist in Special Branch has significantly changed; it bears no resemblance to Special Branch. Secondly, there are now far more robust, effective systems and frameworks with built-in checks and balances, which also apply across the organisation and are more than sufficient to address misconduct, risk management and enforce accountability in this field. Thirdly, the current external operating environment post September 11 has also fundamentally and irreversibly changed and would no longer allow such problems to occur.

If I can just elaborate briefly on those three main points. The current terrorism environment involves NSW Police working hand in glove with the Australian Federal Police, ASIO and other Commonwealth intelligence agencies. I cannot envisage that NSW Police would ever conduct a major terrorism investigation without the involvement and partnership of those Commonwealth agencies. The involvement of those agencies brings with it another layer of accountability and further diminishes the need for special oversight. If further levels of oversight of data held by NSW Police in this field by those who may not possess the necessary clearances is introduced, it will almost inevitably lead to problems with those agencies' willingness to share information with New South Wales. It is this risk to information flows that is my responsibility to manage.

Finally, with all these developments in mind, it is the firm view of my office and myself that we have the right systems, processes, equal and working relationships in place to protect the people of New South Wales and there is no need nor rationale for a dedicated audit to be carried out repeatedly on the Command by any other body. Thank you for your time and I am available if I can be of any further assistance.

CHAIR: Thank you for your brevity. Are there any further opening statements?

Mr COLLINS: By background, I have over 16 years as a senior executive member of this organisation, having been in charge of every area of the State of New South Wales at some point in those 16 years. I was also part of the round table conferences at the royal commission and had a clear insight and understanding into the cultural reform recommendations coming out of the royal commission. I believe that Justice James Wood was one of the most insightful judges ever appointed to an inquiry in this State. I say this due to the fact that every other inquiry has resorted to a quick-fix notion by introducing more draconian quick fixes with more rules, more regulations to govern police.

James Wood had the vision and understanding that in order to bring about fundamental change in any organisation the change had to come from within. Some of his findings highlight the complaints system as it was, and I want to draw a parallel: cumbersome, slow, inflexible; unproductive in terms of the resources and managerial time involved; lacking credibility; counterproductive in terms of overall operational effectiveness; absence of flexibility, minor complaints being dealt with in the same way as major ones; utilising the same investigative techniques, resources and paperwork with the opportunities for early remedial action lost; police locked into a disciplinary system and their families have to suffer the psychological, debilitating and loss of productivity for relatively insignificant

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matters; the wide definition of complaints has meant that many of the matters that are best described as internal management issues have to be managed formally; intelligence information must be dealt with as a complaint.

So I ask: what has changed? If we look at the organisation as it was then and we appreciate the fact that less than 5 per cent of complaints in New South Wales came from inside this organisation, to move into today where around 50 per cent of all complaints come from within this organisation, if that does not demonstrate a significant fundamental shift in the culture of this organisation I do not know what does. Coming out of the royal commission, the royal commission made a recommendation that I be appointed as the project leader to implement the cultural reform needed in the employee management system.

Fundamentally, it tried to address the notion that we still had to address the serious criminal conduct at that level. No argument about that. However, it recognised that for the day-to-day management of people, New South Wales actually had to be enlightened and move into modern management practices in how it managed its human resources. It recognised very clearly that some of the matters that come under the less-than-serious categories that are dealt with in the same way as the more serious ones is a ridiculous notion. If we are really serious about bringing about fundamental change in NSW Police we have to allow managers to manage. We also have to acknowledge that we are managers and we certainly still need the oversight with serious matters that have to be dealt with the way they should be dealt with.

Finally, in terms of the shift that has taken place with Special Branch itself and we talk about the management systems that are in place now, the September 11 inquiries in America clearly identified that there was a critical need for all agencies to work together, to share intelligence and work in a more collegiate approach and, in fact, in joint investigations teams. The management systems and processes that are in place now in counter-terrorism command are significantly different and do not recognise anything like the previous system. There are national arrangements in place. Even under the national security hotline; every bit of information that comes through that hotline has to be risk assessed by Counter-Terrorism Command and be passed on to the various agencies throughout Australia.

The target selection has to go before a rigorous investigation team, not just one person making a decision about the targeting of a particular person. It is a joint decision in regard to that. There is a joint senior management team over the top of the investigation team and above that there is an executive committee that represents people like myself at Deputy Commissioner level, and that also oversees investigations, similar to the ones that took place in regard to Pendennis. You have the issue where we have locked into the Crime Commission, in terms of our reference. There are guidelines on investigations relative to those investigations that we undertake.

Information is now stored on COPS [computer-operated police system], a computer-based system as opposed to an old card index system. All investigations are conducted under an eagle-eye investigation that is very rigorous and has accountability built into it, it cannot be tampered with, and it has very structured processes to go through. The complaint management teams are now in place. It is not one person making a decision, but the collective wisdom of a group that sits down and looks at the complaints and the best ways to risk-manage that, risk-assess it, and then put in the appropriate resources to investigate it.

Regarding the terrorism legislation itself, we need to clearly appreciate that we have been given extraordinary powers in recent years. There is no doubt about that. But there is extraordinary oversight in regard to each and every time we use those powers. We certainly have it right up from the Minister to the Attorney General; there is a reporting requirement, a review requirement by the Ombudsman relative to that. The other oversight bodies still have a role to play in that. There are also the added dimensions that were not necessarily there in the Special Branch days: they have gone to proactive counter-terrorism investigations. We actually lock up people, that is a big difference. When you consider that they go through a rigorous scrutiny at Local, District, Supreme and Appeal courts to look at any of those arrests and the

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efficacy of each arrest that takes place. I suggest that there is a significant shift in regard to how we do business.

CHAIR: I will deal first with the 10-year review aspect of the inquiry and then counter-terrorism. I will start with Assistant Commissioner Carroll, who asked rhetorically why should New South Wales be treated differently from any other State in terms of oversight. I guess one might be inclined to answer because of the history of New South Wales, which is different from other States, and also because of the recommendations of the Wood royal commission. What you are putting up now is a one-body oversight model, which is quite different from Wood. Are you absolutely comfortable with trying to reject what Wood recommended?

Mr CARROLL: We have a system in place that is about managing process; it is not about managing people. We have a system in place that does not allow supervisors to supervise their people as they could do in any other organisation, nor does it allow for management. We want our police officers to be out there doing their job without fear or favour, in accordance with their oath of office and without having to look over their shoulders. This complaints system is a very unforgiving system; it does not provide for police officers to make mistakes. Unlike other professions, such as lawyers and doctors, we have a probationary constable with one-hour service who goes out on the truck and may go to a domestic violence where firearms are involved and it turns into a siege situation. That officer may well make mistakes. We want to be in a position to assist that officer in relation to mistakes instead of recording all of that information as the legislation in its present form requires, which provides for the oversight agencies, particularly the Ombudsman with these matters, to micromanage individual matters.

Subjective opinions are the order of the day. Then we enter into correspondence that to me is not warranted. A tree has to be cut down every single time that we have a probationary constable who has made an honest mistake. We need to be able to ensure that those police get the support and encouragement they need. At the moment everybody in meal-room talk in most police stations when one young person says, "I've got a complaint", responds with "Welcome to the club. Good on you." We want to change that culture to, "What? You've got a complaint. That is a very serious matter."

Where do we need to go with this? Regarding the duplication in roles, on my reading of the Wood royal commission, it made a clear statement that the process had to be completely streamlined. We are 10 years down and it has not been streamlined. We are still dealing with minor management issues in exactly the same manner, process wise, as we are dealing with the serious end of the complaint situation. We are not able to get on to the serious end to be able to deal with it because a lot of our resources are tied up dealing with the minor end of the complaint system. As I said in my submission, I am not here to recommend any one oversight agency. I hope I have said what we would like to see in any one oversight agency. The duplication of roles, on occasions, have overlapped.

CHAIR: Commissioner, do you want to add to that?

Mr MORONEY: Nothing that we have said, either by written submissions or in oral submissions today, ought to take away from the fundamental importance of what underpins an effective system of probity with NSW Police—a requirement for openness, transparency and honesty. Nothing that has been said or written ought take away from that basic premise. It is important then that any system that exists, or will exist in future, has as its underpinning theme openness and transparency, but not a one-side openness or transparency totally in favour of one party or the other. Both the complaint and the officer or officers complained of need to be satisfied with the system and the process and the openness and the transparency that brings about the resolution of the matters.

If we look at complaints—and I am happy to provide statistical data on this if required—and at what I believe to be the overwhelming majority of complaints now made

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about members of NSW Police, they relate to rudeness, incivility, failure to respond and those lower-level managerial issues. Those matters can be resolved by way of explanation, and/or an apology. The current system does not encourage that. It does not encourage it by the simple fact that the existing processes require a detailed investigation in the majority of cases. What inevitably occurs in the majority of those cases that go down the investigation path of those lower-level managerial issues is, of course, the production to which my colleague referred to as "cutting down a tree", a voluminous amount of paper over a considerable period of time and which brings about the same result: an explanation or an apology which is open to the complainant or complainants to accept or otherwise.

It does not remove the ability of the complainant to take redress in another place by way of civil litigation. We are talking about the underpinning and fundamental importance of the Commissioner's statement of professional conduct: that is, if you make an honest mistake, let us identify that mistake now and resolve it now, not six, nine or 12 months down the track. Let us resolve the matter now, but resolve it in an atmosphere that is open and honest. If I am to encourage my officers to be open and honest in all of their dealings, both internally and externally, they need to have faith in the current complaints system. I assure you that faith does not exist at this point in time, because of a perceived absence of fairness and balance.

CHAIR: Assistant Commissioner Carroll, in relation to the one-body oversight model, would it give you any cause for concern in your argument if Wood said that the current system, as it exists now, works reasonably well?

Mr CARROLL: I suppose, Chair, I must comment on something that I do not know whether Justice Wood would say. I personally do not think Justice Wood would say that. I think he would say similar to what has been said here today: that his recommendations that Deputy Commissioner Collins put onto the record about the process for a complaint, is still the process for what is occurring today. I think Justice Wood would be disappointed that we have not been able to get to where we need to get to to ensure that these minor complaint matters are addressed, as the Commissioner said, on the spot.

The anomaly in the system is that you, Mr Chair, could come into my police station and tell me that one of my constables was rude to you. I could say, "Mr Chair, I will speak to that constable and remind the constable of customer service policy. I regret any inconvenience that that has caused you. Is there anything else I can do for you?" and you could say, "No, I am very happy with that." I do that, I make sure that occurs. If you bring in a piece of paper, regardless of what it is written on, if it is in writing I cannot do that. I have to go into a chain of process that is enormous to have that matter dealt with.

These are the anomalies in the system. I think Justice Wood would be disappointed that we have not been able to achieve, as an organisation, the spirit and his recommendations in relation to the complaints systems for NSW Police. It is still about managing a process. It is not about managing people.

CHAIR: Assistant Commissioner Carroll, in your opening statement, one argument you used in support of moving towards the one-body model was that the Ombudsman and the Police Integrity Commission [PIC] were doing the same sort of thing, were the same sort of body. I have to challenge you on that. To me that seems to be quite wrong. The bodies are certainly very different, are they not? Is it not the case that your written submission makes the point that they are very different and have very different charters: one oversees complaints and the other does investigative work with dedicated investigative staff and investigative powers and investigative budgets. Are they not very different bodies?

Mr CARROLL: There are some similarities, but they are different in the functional roles, but there are also some similarities. The Ombudsman does conduct, as I indicated in my submission, royal commission type inquiries under its Act, the same as PIC. They both report to Parliament. On occasions both the Ombudsman and the PIC agencies have

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investigated the serious end. What you said it is correct: PIC does adopt a much more proactive approach in relation to the conducting of high-level investigations. That is what my command does, the Professional Standards Command. That is where we would like to go. We would like to be able to work with agencies to come up with appropriate strategies to be able to identify endemic or systemic issues that are causing NSW Police problems, and work together to come up with the appropriate strategies to be able to reduce, if not eradicate, the type of conduct or behaviour issues that have been raised.

It is unfortunate that we have not been able to get that. I must add that in my personal professional relationship, nothing is to be taken that I am making any personal criticism of the Ombudsman. I have had a very good professional working relationship with the Ombudsman for a very long time, and a lot of its very good people. I sincerely hope that continues after today.

Let me say this: it is about the process and it is about the legislation that is in place that in fact requires the Ombudsman to do some of these things that I have outlined in my submission today.

CHAIR: I turn to one of the key issues that was raised in your submission and in the oral statements today and that is the mantra almost that the most minor grievances are captured as a complaint under part 8A and that part 8A prevents you adopting a managerial model for the way that complaints are managed. That seems to fly directly in the face of the advice that the Committee has received from both the Ombudsman and the PIC. They tell us that several years ago, as a result of a class and kind agreement, local management issues [LMIs] were no longer dealt with as complaints under part 8A. The PIC says that that change was responsible for a drop in the number of complaints from about 5,000 in 2000-2001 to 3,099 in 2002-2003; that is, 40 per cent of complaints were removed because things were no longer being captured by part 8A. If that is true it seems to me you have already won the battle and I am wondering why you are still fighting it.

Mr CARROLL: If that were the case, you certainly would not have received my submission today to you. What you have said is, on the face of it, quite true, but in reality what is occurring is that the Ombudsman has got the administrative legislation to audit all of those complaints, and I gave the example of a recent notice served on NSW Police to contact 500 individual complainants to see if they are satisfied. I do not personally blame the Ombudsman for that. The legislation is there for them to do that. What I am saying, though, is that is a significant waste of our resources to have to comply with that type of legislation.

The class and kind agreement is open to debate. The class and kind agreement is an agreement between the PIC Commissioner and the Ombudsman. The Police Commissioner has got no say. He is consulted but he is not a signatory to his own complaints. In fairness to the Ombudsman and the PIC, both consult with us widely in relation to class and kind agreements but the Commissioner is no signatory to that agreement. The legislation only provides for consultation. What we have is that the CEO of the agency, who is responsible under the Act for the management of the complaints, cannot even set what his own complaints are.

CHAIR: You have just agreed with me that 40 per cent of complaints have been reduced because they are no longer caught under part 8A; they are local management issues, so they are not complaints anymore. It is just wrong to say there has been no change in the last 10 years.

Mr CARROLL: There has been some change, Mr Chair, but they can easily become complaints because, on the audits that are picked up, the Ombudsman may have a view that this is not a local management issue; it should be a Category Two notifiable matter. We then go into this paper trail of uselessness, I think, is probably the right word. Sometimes the Ombudsman is right; we have made a mistake and it should have gone in as a Category Two

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notifiable matter. Sometimes we go into significant conversations in relation to whether these matters are not.

In a recent case a large number of matters were referred to the Ombudsman by the ICAC and the Assistant Ombudsman for Police, Mr Cohen, rang me and said, "Our officers are spending a lot of time, John, toing and froing and arguing as to whether this matter is a complaint or whether it is not a complaint."

Ms LEE RHIANNON: What is "a large number"?

Mr CARROLL: I think from memory it was in excess of 100, and I think a lot more.

CHAIR: That came about because the ICAC did not refer a whole lot of matters when they should have?

Mr CARROLL: Yes.

CHAIR: And they basically stuffed up.

Mr CARROLL: Yes.

CHAIR: That would seem to be a one-off, one hopes?

Mr CARROLL: The magnitude of that problem is a one-off but the logic of where we are coming out of this is that I have to put the resources in to get this stuff done and while I am putting those resources in, the sharp end of the business, the pro-active end of the business, the corruption prevention is also suffering. If we can put into play our resources into corruption prevention and corruption resistance strategies instead of allocating the resources for these minor matters, to have to go in and contact 500 individual complainants to see if they are satisfied—the satisfaction rate for NSW Police in relation to complaint investigations averages about 80 per cent. Personally, I think that is excellent.

CHAIR: If I can go back to the scale of the issue, as I understand it the number of local management issue matters that are not caught by part 8A that are audited are only a proportion of that total number we are talking about. Only about 20 to 30 per cent of matters are actually audited?

Mr CARROLL: No, I think the auditing is a lot higher.

CHAIR: Do you have any idea what the figure might be?

Mr CARROLL: I would say closer to 99 per cent.

CHAIR: I suspect that is wrong but we will find out. The matters that are audited, what percentage in fact require further action by the police on behalf of the Ombudsman?

Mr CARROLL: I would not have that, but there are matters that do require it. That is what ties up the resources. That is what ties up the toing and froing from both our agencies in relation to the officers as to whether or not this is a complaint or it is not a complaint. Under the definition of "conduct", unfortunately as it presently stands I think just about anything would fit the definition of complaint, to such an extent that even if the police officers are out there executing their duty in accordance with their statement of values and their oaths of office and it is legislation that they are using and it is perceived by somebody that that legislation is unreasonable, that is a complaint against the police. It is not a complaint against the legislators or the Government; it is a complaint against the police officers and it is recorded on their complaints history.

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CHAIR: The 40 per cent of complaints that are in no longer regarded under part 8A and are local management issues, is the only concern you have about those the fact that the Ombudsman, on his audit, however many that is, might require you to do further things?

Mr CARROLL: That is of significant concern, together with the amount of resources that are put in to deal with those sorts of matters. That is the micro management that I have referred to. If they are not complaints, why do we not legislate and say that the matters agreed upon in the 122 (2) are not complaints. That does not mean that local area commanders and managers do not have to manage them. It means that they do have to manage them and they have to satisfy the community that they are dealing with those matters appropriately but if they are under a 122 (2) agreement, which clearly says at the beginning of it, "These matters are not to be treated as complaints", why are we doing all of this work and putting all of these resources into doing this.

CHAIR: In relation to local management issues, when a matter comes in, my understanding is that it is the police that will then determine whether it is a local management issue or whether it can be dealt with under part 8A, is that a correct assessment?

Mr CARROLL: Not necessarily. Police officers do assess their own commands but so does the Ombudsman. The Ombudsman may disagree with that assessment right at the beginning of the process.

CHAIR: If the issue comes into the police station how does the Ombudsman get involved in overruling the police officer's decision about whether it is a LMI or not?

Mr CARROLL: The ombudsmen are notified of the complaint.

CHAIR: But even if it is an LM I?

Mr CARROLL: Yes. No, they pick it up on audit, I apologise.

CHAIR: So it comes in, the police make a determination that it is an LMI and there is no Ombudsman involvement at all. The steps that the local police commander takes in relation to the LMI, what he does, how he deals with it, where does that come from? Is it simply left up to him? Is there a set of directions about how he is to deal with it? Can he deal with it simply as a managerial issue without trying to treat it as though it is a formal three-ring circus complaint?

Mr CARROLL: Theoretically they should be able to, but what can occur and what we have noticed is that complainants sometimes write to multiple areas when they complain. A situation which is not uncommon to arise is that they have written to PIC, the Ombudsman, the Minister and other areas as well, so that whilst NSW Police have made a determination that it is a local management issue, a week later they may get a phone call when the matter is three-quarters dealt with, or perhaps dealt with hopefully, that the Ombudsman disagrees, and the PIC may disagree and say that is not a local management issue.

That raises the point, as I said, about commanders taking ownership and responsibility for dealing with the matters then to be second-guessed all the time and then they have to go back to the officer. As far as the process goes for recording local management issues, to enable NSW Police to comply with the administrative and legislative requirements on audit for local management issues, they have all been recorded on the complaints system. We are now working with our technology area to take all of those local management issues out and put them on another system electronically, which is outside of the complaints system but, as you would appreciate, that is costly because we still have to have a system to be able to answer the legislative requirements when the Ombudsman calls upon us to do so to let them know how many of these are local management issues.

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CHAIR: Just on a slightly different topic, in your submission you deal with c@tsi and you ascribe to the Ombudsman a view about why they are not primary users of c@tsi. Who, in particular, was it in the Ombudsman's office who put that view to the police, do you know?

Mr CARROLL: It was the Ombudsman and the Assistant Ombudsman.

CHAIR: c@tsi is something that has intrigued and troubled me for some time and I would like to try to get to the bottom of it today, so I would have some pleasure putting that to the Ombudsman later on. We are running short of time. I have some more questions but I will defer them and allow other Committee members to ask questions.

Mr MALCOLM KERR: Assistant Commissioner Carroll, you gave some examples but you said they were not the worst. Can you tell us the worst?

Mr CARROLL: Hypothetically I can say this: if we had a probationary constable who started today and sent someone an email on our email system that perhaps had a colourful joke contained in it, that probationary constable with one day's service will be dealt with in the same fashion under the process as a constable with 10 years service.

Mr MALCOLM KERR: You gave actual examples. I am asking an example of the worst instance?

Mr CARROLL: There are many other examples, these are not the worst. At the top of my head right now, no, but if that is required, I would be quite happy to.

Mr MALCOLM KERR: If you could. I think it is important because we have to work on a practical basis.

Mr CARROLL: I think one of the worst examples I have ever seen is in the NSW Police submission on page 12, and if I could refer you to it.

CHAIR: You don't need to read it.

Mr MALCOLM KERR: We can save time because it is on the record, but thank you for doing that.

The Hon. JAN BURNSWOODS: Leaving out for a moment the disagreement between you and the Chair about the level of minor complaints, can I get straight from you why you go from that to arguing for a single agency; why you are using those arguments to suggest there should be an end to having both the PIC and the Ombudsman?

Mr CARROLL: I see from the Police Integrity Commission's inquiries that they do not unnecessarily bog NSW Police down in overwhelming correspondence in relation to matters.

The Hon. JAN BURNSWOODS: Is that not because their job is different; that they are not a complaints handling body in the way that the Ombudsman is?

Mr CARROLL: They are a complaints handling authority. We have requirements to report all of our serious matters, Category One matters to the Police Integrity Commission. To answer your question, the manner in which the Police Integrity Commission uses their oversight powers and functions seems to be a lot less intrusive and to the point in relation to what the issues are as opposed to subjective views of individuals as to what is not or what should be.

The Hon. JAN BURNSWOODS: You mean subjective views in the Ombudsman's Office.

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Mr CARROLL: Subjective views, yes, from the Ombudsman's Office. The Ombudsman could say exactly the same about NSW Police. I make that point. We have got 80 local area commanders out there who make subjective views in relation to matters as well. But in the Ombudsman's Office there are a number of people who attend to all of these complaints. So what you do is open up the different range of views in relation to a matter. My point is that I could sit down and probably do a very good brief of evidence in relation to a criminal matter. I could then hand it to the Commissioner—and if he could not improve it within five or 10 minutes I would be very, very surprised—and then hand it to somebody else. This is what I mean about the subjective views and the micro management of individual matters that will not take us to an outcome that is meaningful.

The Hon. JAN BURNSWOODS: But if the Ombudsman were withdrawn from the field would not a whole range of matters and a whole range of staff need to be added to the PIC to deal with the kinds of things that you are not denying the Ombudsman should deal with?

Mr CARROLL: Yes. If there was one agency there would have to be a review of what will be the arrangements—the business arrangements—of reporting serious misconduct, corrupt conduct and criminal conduct to that agency.

The Hon. JAN BURNSWOODS: Which are the things that you really have not complained about today in relation to the Ombudsman. In your submission you do not really argue about serious complaints in relation to the criticisms you have made of the current process. You have concentrated on arguing about relatively minor matters and managerial matters.

Mr CARROLL: Yes, relatively minor matters and managerial matters. But that is overwhelmingly the role of the Ombudsman on those matters. The Ombudsman really does not deal with the serious end of the complaints. The serious end of the complaints is dealt with by the Police Integrity Commission.

The Hon. DAVID CLARKE: Assistant Commissioner Carroll, you gave an example of the police service having to do a survey of satisfaction levels among 500 complainants. Can you give us an idea of the resources that had to go into carrying out that required survey?

Mr CARROLL: Yes. In my command, our complaints management consultant area, all of the consultants—the whole team in there is about 30 staff—were involved in some way or other in facilitating that section 16 notice. You would have had 80 local area commanders at some stage individually involved in the process and 40 specialist commands. When I say that I do not want it to be taken that there were 120 commands involved in this because I do not know that. It may have only been across 40 or 50 commands. So I cannot give you the exact answer to what you have asked. But what I can say is that each of these matters requires significant resources. Over 30 from my area are dedicated to it. You have got all the executive officers out in the field. They then have to go to the investigators and say, "We want you to contact the complainant" and get a customer survey satisfaction rate done and then it has all got to come back in. So the resources would be very, very significant.

The Hon. DAVID CLARKE: Several hundred working hours, in fact?

Mr CARROLL: Yes.

The Hon. DAVID CLARKE: So I guess the thrust of your submission is that the present investigative system means that resources are being used to investigate minor matters thus diverting important resources away from investigating more serious matters. That is the thrust of it.

Mr CARROLL: That is thrust, and putting the resources into corruption prevention and corruption-resistance strategies aimed at not stopping our police officers from getting

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involved in the complaints system. Every time one of our police officers gets charged or whatever we should all hang our heads down a bit—I do—because in some way or other there has been a failing somewhere. I feel that if we can do a lot more proactively and put the valuable resources that we have got—and I am not flush with resources.

The Hon. DAVID CLARKE: I guess you would say that the mistakes that occur, particularly among younger members of the Police Force, are bound to arise quite frequently simply because of the type of work they are doing, where they have got to make judgments on the spur of the moment and in difficult situations.

Mr CARROLL: Yes.

Mr GEOFF CORRIGAN: Commissioner Moroney, I have two questions. I would be interested to know about the Commissioner's statement on professional conduct. Could we get a copy of that?

Mr MORONEY: I will provide that today.

Mr GEOFF CORRIGAN: Thank you. Secondly, to you or Assistant Commissioner Carroll, Assistant Commissioner Carroll talked about forgiving honest mistakes and errors of judgment—which I heartily agree with. But they are not entered on c@tsi. How do you keep track of an officer who might make a serious error of judgment in one local area command then move somewhere else and move up the chain unless those errors of judgment or mistakes are recorded somewhere?

Mr CARROLL: Mr Corrigan, if I can answer that, we do capture them at the moment on the complaints system. What we want to do is take that all out of the complaints system and capture that on our SAP system, which is another electronic corporate recording system that we can pipe in—and will pipe in—to the Police Integrity Commission and any other agency that would like it. So those records are available there because that is very, very important to us. It is very important to us to establish whether or not we have a constable who requires a higher level of attention and perhaps should come into the realms of being dealt with as a complaint because of previous episodes that have been managed appropriately, provided with the training, provided with the mentoring and the coaching and still will not, or cannot, comply with professional standards, because they are the exact officers we do not want in the organisation. So it is very, very important for us to have those records and we will capture them on our SAP system. At present we capture them on c@tsi.

Ms LEE RHIANNON: Commissioner Moroney, in your submission to the PIC oversight committee you refer to the excesses of the former Special Branch. Do you agree that the Crime Commission now has a reputation for unsavoury practices that put it on par with the former Special Branch?

Mr MORONEY: No, I do not.

CHAIR: I am not altogether sure how that is relevant to our inquiry.

Ms LEE RHIANNON: I have another short question. During the 2007 election campaign will you insist that the Government and Opposition avoid depicting police officers in election material and avoid using your photograph in election material?

CHAIR: That is totally irrelevant to our inquiry but an interesting question nonetheless.

Ms LEE RHIANNON: I do not think it is irrelevant to our inquiry because independence is so important to the police and it can be compromised.

CHAIR: I have allowed the question.

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Mr MORONEY: There is already a standing direction from the Commissioner of Police, including this Commissioner of Police, that predates the last election in that regard. I expect fairness and impartiality across the board. I have no difficulty—

Ms LEE RHIANNON: It was flouted at the last election. Did you do anything about that?

Mr MORONEY: I certainly made my views known both internally within the NSW Police and externally to all members of government.

The Hon. JAN BURNSWOODS: This is quite outside the inquiry.

Ms LEE RHIANNON: It is not outside the inquiry.

CHAIR: It is outside the inquiry and we are running short of time as it is. I have a plethora of other questions about the 10-year review. I am inclined to submit those in writing and you might want to consider them rather than having to drag you back here. We have to turn to counter-terrorism.

Mr MALCOLM KERR: Before we do that, could we all put outstanding questions in writing?

CHAIR: Yes, certainly. I had hoped that that was implicit in what I said. Other Committee members can do that as well. Turning to Assistant Commissioner Kaldas, in your submission you make a number of points about risk. Essentially you say there is less risk of misconduct in the Counter-terrorism Command Centre [CTCC] than in most other sections of the police. That is perhaps putting a broad spin on what you say but it is certainly the sense that I got. I was wondering whether you would agree with this proposition: Officers working in the CTCC face a range of misconduct risks. Most of these misconduct risks are pertinent to officers working in other commands but some of the misconduct risks arising in the CTCC environment would be uncommon in other areas. Because of the nature of these uncommon risks, aspects of the CTCC's practices and procedures warrant careful monitoring.

Mr KALDAS: I do not disagree with that statement but that "careful monitoring" is the point at issue, I guess. There is monitoring and there is monitoring.

CHAIR: Okay. One of the points you make in the submission is that the targets of the work that you do are ideologically driven and not driven by profit. Does that not in fact pose an extra risk of misconduct in the sense of noble cause corruption—that is, officers in the CTCC might be so motivated to bring to book people who they think are terrorists opposed to everything that Australia stands for that they may be prepared to go too far?

Mr KALDAS: That could be a risk. But, if I may, I will outline very briefly the things we do that would negate that, probably starting with the selection of the right people. I think if you pick the right individual and put him in place, making sure that he does not have anything in his background that indicates that he may have that sort of view or that sort of problem, you are halfway there. It is a lot harder to come back and fix problems if you have taken on someone who simply should not be there.

The second thing is—very briefly because I am conscious of the time—we have the process in place now where there is no freelancing. Nobody can walk out and target Nick Kaldas or Terry Collins. There is a very systematic approach to it where it has to go through a selection process as a job and it is taken on or rejected. All those decisions are documented along the way. If it is considered to be a job that will fire up it has very clear terms of reference, which are issued to the senior person who knows who he is and who he has working for him. There is an investigation agreement struck, particularly where local area commands are involved, so that everyone is clear who is in charge, what the parameters are and what is

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expected of them. Once the job is up and running there is a very systematic and regular reporting regime, followed by a post-operational assessment at the end.

On top of all that is the other layer that I have mentioned, where the Commonwealth, in particular, is more than likely involved. They bring with them—certainly the Inspector-General of all the Commonwealth intelligence agencies, to use him as an example, would be oversighting in a fairly minute way what exchange we have with the Commonwealth, what information is supplied to us and why. All of that stuff is looked at.

CHAIR: One of the issues you touched on then, and that you also raised in your opening address, is the difficulty of increased oversight if you are working in co-operation with other agencies. I understand the points you make but is that not a problem already? There are clearly levels of oversight on the CTCC as it is. How do you get over that problem now because it must exist now?

Mr KALDAS: Nobody is asking us to have a look at our holdings that we jointly share with Commonwealth agencies at the moment. If there was—I will not speak for PIC but certainly I think the view they take, from a submission we have received recently, is that they may be heading down the same road as we are—the problem is negated by the fact that nobody who is not cleared and has gone through all the normal processes is entitled to see that information. The thing that concerns us and I think we have to watch out for is that if there is a perception by the Commonwealth or other agencies that the material we hold is to be examined by those outside the environment, if you like, they will definitely think twice about what material they can share with us. The added complication is that they are also recipients of information from other agencies and other countries about which they have agreements and that also may be breached if that is allowed to happen. But over all, I think, at the moment the way things stand there has not been any complaint from the Commonwealth level about New South Wales managing or dealing with information in the last decade. I think that comes as a direct result of our action—put simply, we looked at what Mr Woods said in the royal commission, we identified the problems clearly and we did something about each and every one of them.

CHAIR: You said you have had no complaints from the Commonwealth. And there have been no complaints from the FBI, who I understand have an officer based in Sydney.

Mr KALDAS: None.

CHAIR: I understood that Police Integrity Commission officers had appropriate security clearances to look at all sorts of material we are talking about.

Mr KALDAS: They may well do. I am not aware of that but they may do. But it is probably not the only issue. The other issue is information being handled by others outside the control, if you like, of the CT environment.

CHAIR: One of the things you argue in the submission—and you just argued it a moment ago—is the situation because the structures that are in place now are different from what they were in Special Branch days. One of the things you refer to in the submission that has got you to this stage is the auditing of the PSG that was done when it existed. If that auditing is one of the reasons we are in such a good position now, why should it not be able to continue now?

Mr KALDAS: The form of auditing discussed is the issue. The current environment simply makes it difficult for external bodies to audit what we do. If there was a regime in place where it could be audited and the results made available to others who need to examine what has been audited and what has happened without looking at the material itself, I can see that as a way forward.

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CHAIR: That was the regime that the legislation set out for the Protective Security Group [PSG].

Mr KALDAS: Pretty much.

CHAIR: Yes.

Mr KALDAS: It might be worth noting that at no stage during those audits when the PSG existed was any major complaint or anomaly identified that caused someone to have a second look.

CHAIR: To make this clear, are you suggesting that from your point of view there are no great difficulties if there is an audit system similar to the one that existed with the PSG whereby internal people did the audit and the results were examined by appropriately cleared people in the PIC?

Mr KALDAS: "Internal" is the key word.

CHAIR: Once again, I have some other questions, but I will put them in writing and invite other Committee members to ask questions.

The Hon. JAN BURNSWOODS: I refer to what you said about the procedures in place to stop freelancing, I think you called it. If the input from, say, the federal agencies is of major significance in determining what operations and surveillance will be undertaken and so on, what kind of confidence do you have that the same rigour is applied at the federal end?

Mr KALDAS: Put simply, I do not think I could control what the Commonwealth does. However, I have faith in any investigation we might mount in co-operation with the Commonwealth. We have not had any problems in the past few years, and I do not anticipate that happening. Everything I have seen leads me to believe that there is no issue. We are singing to the same sheet of music. I think they have the same view that we do; that is, we cannot revert to bad old ways. They have their even systems that in many ways mirror what we have. There is no major difference between what we do and the way the Commonwealth does things. As I said, that is probably a significant issue, because I cannot see our effectively doing anything in New South Wales by way of a major terrorism investigation on our own; I simply cannot see our doing anything without the Commonwealth being involved.

The Hon. JAN BURNSWOODS: But we would be dependent on judgments, probity, checks and everything else coming to us from the federal level.

Mr COLLINS: There is another layer to that. That is where we come back to this joint investigation team and the joint committee overseeing that team. The members of team and ask for the evidence supporting why we would target you as an individual. There must be a great deal of rigour in that situation. It is not about accepting a bit of paper from the federal agency saying they think we should target someone. A group meets with the Australian Federal Police [AFP] and other intelligence agencies. They meet and require evidence—and I will not go into methodology—to justify NSW Police committing a raft of resources to do that fairly intensive investigation. As honourable members would appreciate, they are very labour-intensive exercises.

Mr KALDAS: There is a memorandum of understanding about how things work and who does what. Everything we do with the Commonwealth is documented and there are clear parameters so that we all know where we stand.

The Hon. DAVID CLARKE: And those relations are working very well with the Commonwealth at the moment?

Mr KALDAS: I think so.

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Mr MORONEY: We are provided with a range of information not only on a state and national basis by Commonwealth agencies but also on an international basis. Clearly, in the current counter-terrorism [CT] environment they would not share or disseminate that information to us if there were not a demonstrable level of trust and systems in place to ensure that the information flowing to us, particularly on an international basis, was going to be secure and appropriately acted on.

The Hon. DAVID CLARKE: We would certainly assume that to be the case, yes.

Ms LEE RHIANNON: Assistant Commissioner Kaldas, in your submission on page five you referred to informant management as an aspect that needed external oversight in some areas of policing. Can you indicate what protocols are adopted by the counter-terrorism co-ordination command when dealing with informants?

Mr KALDAS: It is service-wide policy for us to utilise one system, the source system. It provides a very reliable method for recording every interaction, whether it be a phone call, a physical contact with an informant, the registration of the informant, the framework for having a supervisor and a senior supervisor and so on. It is all laid out. It is recorded electronically from whatever station or terminal the officer can get to. No information placed on the system can be changed. It is there and, as far as audit trails go, it indicates who did what when and from where.

Ms LEE RHIANNON: Do you envisage that there could be occasions when indemnity would be granted to witnesses, as we have seen with the Crime Commission?

Mr KALDAS: It could well be. As honourable members well know, it is the subject of an application to the Attorney General through the Director of Public Prosecutions, and then that matter is examined.

Mr STEVEN CHAYTOR: I draw your attention to the statement in your submission regarding the investigation of ideologues with no profit motive raised by the Chair. Does this mean that the financing of proposed terrorist activities in New South Wales is insignificant to attract misconduct?

Mr KALDAS: I cannot say there is absolutely no risk of that attracting misconduct. That is certainly not the case. However, the systems and processes we have in place for search warrants and that type of thing would apply, as they do across the organisation, to CT operations. I am surprised that comment attracted attention. I meant that the opportunities or instances of our coming across large amounts the money or drugs are far less in terrorism than in major crime or organised crime investigations. That is what I was trying highlight.

Mr STEVEN CHAYTOR: It is clearer now.

CHAIR: But it would not be unusual in other situations for not-for-profit ideologues who are breaking the law to offer money by way of bribes to people. That has certainly happened.

Mr KALDAS: We have not seen any instances of that in the West in the past few years, certainly not since the emergence of Al Qaeda as a decentralised entity.

CHAIR: In the years before that there were plenty of examples.

Mr KALDAS: If you consider espionage to be in that category, yes.

CHAIR: There are many examples in Ireland I could point to. If there are no further questions, we will conclude this section now. I thank you all for attending. Your evidence has been most helpful. Further questions will be provided in writing.

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(The witnesses withdrew)

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JAMES ROLAND THOMPSON WOOD AO QC, Inspector of the Police Integrity Commission, Office of the Inspector for Police Integrity, sworn and examined:

CHAIR: Thank you for appearing before the Committee of the Office of the Ombudsman and the Police Integrity Commission's inquiries: into the Scrutiny of New South Wales Police Counter-terrorism and Other Powers and the Ten-Year Review of the Police Oversight System in New South Wales. You provided a written submission dated 11 May 2006. Would you be happy to have that taken as part of your sworn evidence and made public?

Mr WOOD: Yes, certainly.

CHAIR: Do you wish to make an opening statement?

Mr WOOD: I think the submission covers everything I wish to say. There is very little I can add, other than to express my concern about the amount of legislation and inconsistency of various provisions in relation to the counter-terrorism matters. I draw to the Committee's attention that in the United Kingdom a significant exercise has been undertaken to bring all police powers and relevant matters into a single piece of legislation. That has stripped away many regulations and unclear and inconsistent provisions. I am strongly of the view that something should happen along those lines in this State, otherwise the police sometimes have problems in knowing precisely what their powers are and what controls, permissions or authorities are needed to exercise them. It is timely having regard to the fact that a surveillance bill is up for consideration. I do not know how far it has progressed, but it is there as an exposure document.

The other aspect that may have been partly touched on in the previous session is that as far as the Police Integrity Commission [PIC] has any jurisdiction to examine joint investigations, its powers, and perhaps also those of the Inspector, are limited because it is by no means clear—in fact, it probably does not exist—that there is any power to look at the activities of police from other organisations brought into joint operations.

CHAIR: I turn first to the 10-year review of police complaints that we have already discussed this morning. You state in your submission that from your experience over the past eight months it appears that the existing systems for the oversight of the police complaints system works reasonably well given the large number of complaints made each year. Is that still your view?

Mr WOOD: Yes, it is still my view. There is, of course, a case to be made to put everything under one supervising or monitoring agency. However, that has a real problem in that it would perhaps tie up too many of the agency's resources, which should be focusing on corruption and serious misconduct. The one advantage of having the two together is the capacity for there to be intelligence emerging from a pattern of complaints and so on. However, that can be achieved as long as the PIC examines the c@tsi system and what is coming through the Office of the Ombudsman or from the police. I would prefer to see much the same structure as currently exists. There might be a lot of room for improvement to ensure it is working together, but I would be concerned about bringing the two under the one umbrella.

CHAIR: Drawing on your experience from the royal commission, would your view now be that the way police complaints are dealt with is considerably better than it was 10 years ago?

Mr WOOD: Very much better. The local area command system works well with complaint management teams. It depends very much on the commitment of the local area commander and those he entrusts with that task. My impression is that some local area commands deal with them very well and some are less interested. The one concern I have

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had, and it has led me to have a couple of matters re-examined, is the circumstance where a local area deals with what are potentially serious matters within the same area as the officer concerned. If it is something serious, such as suggested perjury or something of that kind, in relation to a minor matter in the local courts, that should be examined by a different area from the one to which the officer is connected. As far as they are service or conduct-type matters, it is very important that they be investigated locally on a management basis with a view to dealing with that matter perhaps informally without tying up the officer in lengthy investigations, which tend eventually to destroy the officer's career and do not produce the result of changing behaviour.

I have a concern about local area commands looking at serious matters within their own command. I think it should go elsewhere. The Dresden recommendations raised that; they have not always been respected.

CHAIR: In terms of having a one body oversight model, which the police have argued for this morning, that presumably means amalgamation of the functions of the PIC and the Ombudsman. Do you see those different functions in those two different bodies being so different that it is quite hard to logically gel them and all you would get would be one organisation with two separate bodies?

Mr WOOD: I think it could be done but I think it needs two divisions. It needs a division that would take on the role the Ombudsman currently exercises, which really is to supervise or monitor the investigation of minor complaints and to ensure that the police are doing it properly, but a separate and second division to deal with major corruption and serious criminality issues. As I said previously, if it were to be under one body it would need a significant increase in resources. My concern would be that, because of the volume of complaints, many of which are fairly trivial and many of which are unjustified, the corruption fighting function would be lost.

CHAIR: But the real danger of having the one model is that the pointy end starts being ignored simply because of the bulk of the non-important stuff.

Mr WOOD: That is my point. Also, I think the Ombudsman has the capacity to deal with matters somewhat more informally and particularly to promote mediation, counselling and conferencing and that kind of thing, whereas corruption and serious criminality are best dealt with a body that is perceived as having real teeth. It seems to me that the real future of the PIC requires it to be led by someone who is very dedicated, who is innovative, who is robust, and who has the respect not only of the police but also of the legal profession. I really think that that person, whoever leads it, also needs to have a real experience in criminal law, through advocacy or otherwise, so that public hearings and so on are not overcome or overborne by more experienced counsel.

I believe that the PIC has to be perceived as a tough, robust, active body which can seriously and genuinely fight corruption and also stand up to the police service where it makes investigation difficult, as can happen from time to time, perhaps more with corrupt police rather than the organisation as a whole. I do not for a moment suggest that the Commissioner or the senior executives or Professional Standards Command are doing anything other than a proper job in this area. But once one gets into corrupt police, they are tough, they are experienced, they know how to lie, they are well experienced at it, and unless the person who runs the hearing has a considerable presence and respect those hearings will get nowhere.

CHAIR: And your assessment is that up until now that is the way the PIC has performed?

Mr WOOD: I think it has. I think there have been occasions when it might not have been quite as robust or effective as it could be, but I understand it is a very difficult job and

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it is not easy to get intelligence. But I think the PIC has been run pretty effectively up until now.

Mr MALCOLM KERR: Have you seen the police submissions in relation to complaints to Assistant Commissioner Carroll?

Mr WOOD: To this body?

Mr MALCOLM KERR: Yes.

Mr WOOD: No, I have not. I have not seen anybody's submissions. My understanding was that it was desired that no-one see anyone else's submissions and I have respected that. No-one has seen my submission; I have not seen anybody else's.

CHAIR: That is exactly right.

Mr MALCOLM KERR: But now it is all out in the open. Now it is all transparent. Would you like the chance to see perhaps Assistant Commissioner Carroll's submission in relation to complaints and perhaps respond?

Mr WOOD: Yes, certainly, I would be more than happy to do that.

Mr MALCOLM KERR: You have outlined the qualifications of a Commissioner for the Police Integrity Commission. Do you know Mr John Prichard?

Mr WOOD: I had never heard of him until his name was mentioned recently in the context of being put up for this position. I do not know him. I know nothing of him.

CHAIR: Committee members are pointing to another problem which relates to our functions in another environment and there are issues about how much of that we can discuss publicly because of the criminal sanctions against it. That did not breach it but just be very careful.

Mr MALCOLM KERR: The Inspector said he does not know him and I am happy to leave it there, although I might say that you have indicated that the next Police Integrity Commissioner should be known and respected by the legal profession.

Mr WOOD: Yes.

Mr MALCOLM KERR: I think you said there have been occasions when the PIC has not been as robust as it should have been. What were those occasions?

Mr WOOD: I think that that would probably intrude into operational matters.

Mr MALCOLM KERR: No. If they were not on the public record and they are in effect operational matters that need not be disclosed, I will not press it. I think the last time you were here I mentioned a biography of the former Police Commissioner, Peter Ryan, and you said you may read it. You did not give an undertaking to read it. I am simply wondering whether you have had an opportunity to read it.

Mr WOOD: I have flicked through it.

CHAIR: How is that relevant to this inquiry?

Mr MALCOLM KERR: I will link it up.

CHAIR: You are doing this for a bet, are you not, Mr Kerr?

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Mr MALCOLM KERR: No. In the past you have said that the PIC has operated effectively. Having flicked through it, I am wondering whether your attention was drawn to page 290 of that biography where Mr Ryan said, "Ever since the chook raffle comment I think there have been certain elements within the PIC—not Judge Urquhart; I never thought he was involved—but other people who have been out to get me. The Malta inquiry is a payback." If that was true that would not reflect well on the PIC.

CHAIR: I rule that out of order. How is that related to our Committee inquiry?

Mr MALCOLM KERR: It raises past performance. I do not wish to prejudice the past.

CHAIR: I rule that out of order. Move onto your next question.

Mr MALCOLM KERR: In terms of your view of the present New South Wales police force, do you think there has been an improvement since your royal commission took place?

Mr WOOD: I think there has been a vast improvement not only in performance but in attitude. I think there is an appreciation now that there is a degree of professionalism involved—in fact, a significant degree of professionalism involved. As you know, I retired as a judge last September, but in the years following the commission when I sat as a judge I saw, I believe, a very significant improvement in the quality of investigations, a resort to forensic evidence and objectively collected evidence in preference to the old and lazy ways of collecting evidence, by dubious means. I have been very impressed by some of the local area commanders who I have come into contact with who are not only intelligent and articulate but understand their role.

Just recently in another context I was up at Dubbo, and I have to say I was significantly impressed by the local area commander there who has adopted a real interest in crime prevention in addition to crime detection. I would hope that that is spread through other regions because I think crime prevention is now a very important role for police, and I think they are turning to that more than they ever did in the past. There will always obviously be some police who are corrupt or incompetent or who will resort to crude attempts to deal with problems. I guess I would like to see some more training in that area. I do not particularly want to go into the police college matter because I know nothing about it, except to say that I would be concerned that the college is used both for training new police and at the same time giving courses to more experienced police. Quite frankly, I do not think the two should mix. I would like to see training courses for serving, sworn police conducted either somewhere else or in some way to have the two groups significantly separated.

Mr MALCOLM KERR: Are there still areas of concern to you in relation to the New South Wales police force?

Mr WOOD: I do not think so. There will obviously always be some police who will chance their arm, but generally I think the police are working very well and are properly led.

Mr MALCOLM KERR: Of course, police training is central to the future of the police force.

Mr WOOD: It is; so is recruitment.

Mr MALCOLM KERR: Do you have any views in relation to recruitment?

Mr WOOD: I would be concerned at any resort to mass recruitment just for the sake of building up numbers. I think that recruits have to be carefully selected and should have some background of a life outside the police service, that is, in other occupations or areas, before they are considered for recruitment. They are points I made in my final report for the royal commission and I stand by them. I think you need experience of life and a capacity to stand up to anybody who seeks to involve you in the wrong thing.

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Mr MALCOLM KERR: Are there real dangers in relation to a mass recruitment drive?

Mr WOOD: Real dangers, not only in terms of getting the wrong people but in the difficulty of training them.

Mr MALCOLM KERR: Have you been to the police academy at Goulburn?

Mr WOOD: Not for some time. I went down there some years ago to give a speech at a graduation ceremony but that is my one and only time there.

Mr MALCOLM KERR: As the Inspector for the PIC would it perhaps be an idea to go to the police academy?

Mr WOOD: I would not mind going there but I am not quite sure of what advantage it would be.

Mr MALCOLM KERR: The advantage would be in terms of seeing what is taught there, of seeing the training given to the police.

Mr WOOD: My understanding is that the Police Integrity Commission keeps a close watch on that.

Mr MALCOLM KERR: And as a result of recent incidents, has there been any discussion between yourself and the Police Integrity Commission?

Mr WOOD: There has been some discussion, and I am not sure to what extent that goes into operational matters, but it has been raised between me as to whether there is a problem that is worth further investigation or whether what has already happened, particularly the fact that the Ombudsman has been heavily involved, is sufficient.

Mr MALCOLM KERR: Have you read the Ombudsman's report?

Mr WOOD: No, I have not.

The Hon. JAN BURNSWOODS: On a couple of occasions when giving evidence this morning Assistant Commissioner Carroll and Commissioner Moroney made the point that 50 per cent of complaints that go to the Ombudsman et cetera are now coming internally from the police themselves. Do you have a comment to make on the significance of that figure? I think they said that at the time of your royal commission the figure was 5 per cent.

Mr WOOD: That is about right. I think that is a most remarkable and very impressive result. If that be true, and it continues, then it is a very healthy sign for the police, but what follows is whether those police thereafter are being in any way punished, or do they feel comfortable about bringing forward material under their own name or are they doing that anonymously? As to the latter, I do not know the proportion that is anonymous and the proportion of those prepared to name themselves. But I think it is a very healthy sign.

The Hon. JAN BURNSWOODS: Is that because you see it as a reflection of a change of culture?

Mr WOOD: Yes. It indicates preparedness by honest police not to be associated with, or not be placed in jeopardy by, having to work with corrupt police.

CHAIR: Do you have a sense as to whether the police service is providing adequate protection and support for the police who have made complaints?

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Mr WOOD: I am not sure about that. One always hears that individual police say they are being perhaps ostracised or given an inappropriate transfer. My understanding is that the procedures that were put into place after the royal commission, certainly on their face, were suitable and appropriate. To what extent they are being carried out in practice, I simply do not know. All I know is that there has been comment in the media in recent times that some police have suffered because of it. Whether that is true or not, I have not the faintest idea. But I think it is a very important matter to ensure, first, that police do come forward, and, second, that they are protected.

The Hon. JAN BURNSWOODS: I think it was Commissioner Moroney who, in a sort of throwaway remark, said something about the percentage of leaks as well as the percentage of complaints. I guess there are a couple of implications about that. But I wondered whether one of the things that is perhaps less positive about the percentage of complaints coming internally might be a degree of factionalism and a degree of internal dissension, in other words, complaints being used as a weapon internally, rather than reflecting the positive things that we were talking about.

Mr WOOD: That has always been a possibility. Indeed, before the royal commission it was a reality that a large proportion of complaints were pay-back type complaints. It is a very hard thing to sort out. It can only be sorted out by complaints being properly investigated. Hopefully, any real investigation will determine whether they are pay-back complaints, or whether the complaints are being made to spike someone's chances of promotion, or whether they are genuine. At the moment, I would be confident that the mechanisms are there for proper investigation to sort that out.

Ms LEE RHIANNON: On page 2 of your submission you talk about inconsistencies with respect to laws on public disorder, crime scene powers and coercing powers. I was wondering how that played out. Do you see the police as being attracted to using those regimes under which there is less accountability and it is easier to get the measures to carry out their work?

Mr WOOD: It is very hard for me to know. I do not know the origin of the drafting of these various provisions. The reality is that it is very simple to approach a judge, if need be, to get an approval. It can be done by telephone. There are telephone warrants, and there are always duty judges available. Obviously, in some situations, it is going to be a matter of extreme urgency and there will not even be time to do that. But, if that be the case, one can always get a retrospective approval. My only point really is that there are so many different procedures that there is a real risk that police faced with a situation just do not have the time to sort out what is the proper procedure.

Ms LEE RHIANNON: Do you think that there should be consistency between those laws?

Mr WOOD: I think there should be consistency, yes. I suspect the police would welcome it.

Ms LEE RHIANNON: On page 4 you talk about some of the new laws and how strong they are, and you say that they are entirely justifiable. In the next paragraph—and I may have misunderstood this, so I am seeking clarification—you talk about the powers of various bodies and say that they "would appear to be excessive in relation to routine investigations". Could you explain that? It seems to be somewhat contradictory.

Mr WOOD: What I am talking about in this context are the powers that PIC or the Australian Crime Commission can exercise when interrogating suspects and requiring the production of information or documents. Those are powers well in excess of conventional policing powers. These are the special powers that those organisations have to target organised crime, serious drug crime or terrorism. I think those are exceptional powers. People have no right in effect to decline to answer questions, and they can be held for extensive

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periods without proper opportunity of legal protection. The powers are justified, in my view, for terrorism, major organised crime and serious drug crime. What I am saying there is that I do not think the police need those extensive powers for routine investigations.

Ms LEE RHIANNON: Do you think that they are using them for routine investigations?

Mr WOOD: No, I do not. They have not got those powers. What I am saying in effect is that they should not be given them for routine investigations.

Mr STEVEN CHAYTOR: In your opening remarks you referred to consolidation of police power legislation. How long did that process take in the United Kingdom?

Mr WOOD: It has been a huge exercise. Lord Justice Auld has been leading the exercise. The Lord Chancellor's Department did most of the work, under the leadership of an academic from either Oxford or Cambridge. It has taken a couple of years. But, again, I have to say that the United Kingdom situation was far worse than that in this State. At least a lot of these powers had appeared in the Crimes Act or in the Criminal Procedure Act, so there was a partial consolidation. It would not take a huge amount of time. I think it is the sort of exercise Police and the Attorney General's Department would need to work on. It is the kind of thing in which the Criminal Law Review Division, or indeed the Law Reform Commission—of which I am chairman—could have a role. But I think it could be beneficial in the long run.

Mr STEVEN CHAYTOR: If one agrees with the statement that the powers of police in relation to counter-terrorism are constantly under review by governments around the world, is it your opinion that it is preferable to have those police powers changes effected through one guiding piece of legislation, rather than through specific pieces of legislation that may follow?

Mr WOOD: I would rather see it codified in a single Act. I think the Commonwealth Criminal Code, for example, is potentially a very valuable codification of substantive criminal law. I would very much like to see the other States pick that up. The hope was, I understand, that that codification would be picked up across the States. I cannot say I am happy with the drafting. It think it is very difficult drafting. Codification of criminal law is very helpful, but it is even more helpful on procedural law and police powers.

CHAIR: On the issue of codification and getting all of the laws under the one umbrella, there is ever attraction in that. The concern I might have is that there are perhaps more extreme, more invasive powers which are subjected to more onerous oversight and regulation. Is there a danger that, if you are trying to get them all to the one standard, that either less intrusive powers are subjected to more onerous regulation than perhaps is necessary, or alternatively the more intrusive and invasive powers are subjected to less oversight than they currently are?

Mr WOOD: I understand the point. What I am saying is that if you have a single Act, that sets out each area of potential investigation, what is available and what is required for that. But, obviously, in relation to terrorism, one would need a second set of provisions with the rules that apply there. As it presently stands, the people involved in anti-terrorism research can use the conventional police powers or the additional ones. What I am saying is that for the conventional powers there should be a set of rules that are workable; and then, so far as one needs enhanced powers—say the Crime Commission or PIC or the Counter-Terrorism Command—one then has a separate section in the Act that deals with those.

CHAIR: Are you suggesting that in that separate section all of the approvals for the use of those powers and all the oversight mechanisms will be the same for all of those individual counter-terrorism powers?

Mr WOOD: Depending on what they are. There are different steps, but there can be a lot of common ground. At the moment, it is all over the place. There can be a lot of common

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ground and some significant principles. I would have liked to see a sort of hierarchy that really requires judicial approval for the exercise of all of those really intrusive powers, but with some saving provisions in the cases of emergency that would allow an Assistant Commissioner or some senior commander to grant the approval—however, subject to, within 24 hours, an application to a Supreme Court judge to continue the authorisation.

CHAIR: That sounds like a significant extension of the role of judicial oversight in the use of those counter-terrorism powers.

Mr WOOD: I think that is right. I think the powers are potentially so intrusive that there has to be a degree of judicial oversight. At present, Supreme Court judges are eligible officers under most of the legislation, and have an oversight power as it is. I just think there needs to be a considerable independent judicial oversight—subject to emergency, where there obviously has to be immediate response. But, so long as the authorisation is given by a suitably qualified senior officer, and so long as that is looked over quickly, I would have no problem with that.

CHAIR: Are there any questions on that point?

Mr GEOFF CORRIGAN: On a different matter, Mr Wood. When the police argued here about removal of the Ombudsman from the process—what they call local management investigations [LMI]—they gave the example of 500 investigations that were completed, and the Ombudsman issuing a section 16 notice to contact 500 complainants to see their level of satisfaction with the process. The police argued that took a lot of time. I know you were not here to hear that, and it is probably unfair to ask you the question, but I wanted your view as to whether the Ombudsman should be removed from local management investigation.

Mr WOOD: I do not think so. I think someone has to audit the performance of those local investigations, and the only way to do that is for someone to speak to those who are caught up to see what their impression was. Though 500 seems a fairly large number, it depends how often that is done, and whether that 500 is done in one batch or whatever. I do not know what was said in that regard. But there has to be some audit process, and that is really the only way to do it. Otherwise you have not the faintest idea whether it is working or not.

CHAIR: In your submission you mention that because of a loophole you are unable to investigate former PIC officers, and that that loophole is being addressed by way of amendment to the legislation. Do you know where that is up to?

Mr WOOD: I have seen the bill, and I suspect it is going before the House at the next sittings.

CHAIR: You are far better informed than the backbench. But that is probably not surprising.

Mr WOOD: I have certainly seen the bill, and I have said that I have no problems with it. Can I draw to your attention though that the same problem potentially affects ICAC, because the ICAC legislation was modelled on the PIC legislation, and I do not know whether any similar amendment was made or is to be made to the ICAC Act to give the ICAC Inspector the power to investigate past officers. I have drawn that to the attention of the ICAC Inspector, but I just do not know what happened beyond that.

CHAIR: One of the other points you make in your submission relates to your lack of power to do more than make a recommendation to correct or overcome a perceived deficiency. Has the lack of that power been a problem for you to date?

Mr WOOD: It has not been a problem for me nor, as I understand it, to my two predecessors, because each of us has had nothing but support from the PIC who have

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responded to recommendations promptly and properly. I draw it to attention really because one cannot know whether that situation will continue. The PIC very much depends upon who is in the chair. I would have no reason to suspect that the Commissioner will not respond because otherwise I suspect there can be an adverse report, but in some ways it might be useful if the PIC could give some directions or orders on a formal basis, although I must say that I do recognise that doing that perhaps unduly formalises the process and the implementation might be a little hard.

There is an allied question which has crossed my mind from time to time and I do not really know what the answer to it is: the Inspector has the power to issue a report but it is by no means clear to whom the report should go. I know that Mr Finlay, when he was the Inspector, did provide a report in relation to Operation Florida and the exposure of the proposed investigation through a television program, but the legislation does not make it entirely clear to whom the Inspector should report. My understanding in the past is really if there have been reports they have primarily gone to the PIC itself and in each case, where necessary, there has been a follow-up and a change in procedures. I think probably the Inspector can report to either Parliament or to this Committee.

CHAIR: I must say I had thought that the legislation allowed you to report to the Parliament.

Mr WOOD: It just says "report", as I understand. The legislation is not clear. If it said, "Report to Parliament", that would be clear.

CHAIR: That might be something arising out of our recommendations by the sounds of that.

Mr WOOD: Of course, for a large number of the actual complaints that come in—in fact, the vast bulk of them—the complaint is really misguided or not of that kind that would require the Inspector to intervene, because a decision, for example, by the PIC not to investigate a matter has to really be unreasonable before the Inspector can make a recommendation that the PIC relook at it. So in those cases the practice has been followed that where the complaint is dismissed both the PIC and the complainant are informed of that fact and of the reasons for it; it has not led to any formal report. In my understanding the legislation really is that formal reports should be confined to those cases where there is an inquiry conducted or where there is some major matter which does require attention, in which case a report to Parliament would be entirely appropriate.

CHAIR: I have no further questions. Does any other Committee member want to raise anything on notice?

Mr MALCOLM KERR: I was wondering if you had any knowledge of a body called the Police Executive Complaints Committee?

Mr WOOD: No, I do not. I just raise one thing. In my submission, at the very concluding paragraph, I refer to section 181D and in that submission I suggested that rather than for the review to go to the Industrial Relations Commission it might best be to the District Court. I think, on reflection, that a better course would be—and this is really, I guess, what I recommended originally in the royal commission report—that there be no appeal on the merits as such but rather that if there is to be a review of the Commissioner's lack of confidence decision it should be confined to an administrative law type review to the Supreme Court to be dealt with by the Supreme Court in its Administrative Law Division, confined to administrative law grounds, such as denial of natural justice or a decision which could not reasonably be made on the facts, or an error of law, that kind of thing.

I have always been concerned, and I know this is controversial, that the Commissioner's section 181D powers have been difficult to apply and have taken time to carry into effect and have probably worked hardship to officers who are caught up with it

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because of the uncertainty and delay. My own view is that if that power is to be effective it should be exercised promptly on clear grounds and then subject to review only on natural justice or administrative law type grounds.

CHAIR: I noticed the comment in your submission. I must say my initial response was that it was probably outside the jurisdiction of our inquiry, but that is obviously a matter the Committee will consider. I think the police put up a proposition similar to the one you have just put. Any further questions?

Mr GEOFF CORRIGAN: I was just looking at section 101 of the Act, which says, "Reports by Inspectors: Special reports. The Inspector may at any time make a special report to the presiding officer of each House of Parliament". Is that not clear?

Mr WOOD: That is probably clear enough in that respect. Let me just look at my copy of the Act. That is not included in part 6, it is a separate matter. My fault. I am more than happy to take that on board. I go back to where I was, I am sorry. It is a report on the matters referred to, A and B, it is not actually a report on investigation of a complaint. Obviously, of course, the annual report is a separate matter. I fully understand that is to be provided to the presiding officer of each House. In fact, I have completed that report and it will be available as soon as it is printed. But section 101 does not deal with the problem I had in mind.

CHAIR: Without having a deliberative meeting, I suspect our recommendations might at least try to attempt to address that gap. If there are no further questions I would thank you for your attendance. Your evidence, as always, has been most helpful.

(The witness withdrew)

(Luncheon adjournment)

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COLIN JAMES FORREST, Queensland Public Interest Monitor, Level 19, Inns of Court, 107 North Quay, Brisbane, Queensland, sworn and examined:

CHAIR: Thank you for appearing before the Committee to give evidence in relation to our inquiry into the scrutiny of NSW Police counter-terrorism and other powers. In what capacity do you appear before the Committee?

Mr FORREST: Principally I am a barrister in private practice at the Queensland Bar. I also hold the statutory office of Public Interest Monitor under the Police Powers and Responsibilities Act.

CHAIR: Would you like to make an opening statement?

Mr FORREST: I expected you might ask me that. I will start by telling you in summary form what the Queensland Public Interest Monitor does. The Public Interest Monitor's office was established, if I recall correctly, in 1998, within the provisions of the Police Powers and Responsibilities Act. The office was introduced by the Borbidge-led National-Liberal Coalition Government that was in office at the time, and the Police Minister who was responsible for introducing the monitor's position was Mr Russell Cooper. The Public Interest Monitor position has been occupied by two gentlemen before me: Mr Richard Perry and Mr Rob Sibley. The Monitor also has one or two deputies, who have exactly the same powers effectively as the Monitor. Currently I have two deputies: Miss Karen Carmody, a barrister in private practice; and Mr Peter Lyons, a solicitor in the employ of the Queensland Law Society.

The office is principally involved in the oversight—monitoring is the appropriate term—of applications made to the Supreme Court of Queensland or, in limited circumstances, magistrates in the Queensland Magistrates Court, by officers of the Queensland Police Service or, indeed, officers attached to the Crime and Misconduct Commission [CMC] for warrants that authorise a number of different types of covert investigative techniques or investigative operations. The Police Powers and Responsibilities Act gives the Queensland Police Service and the Crime and Misconduct Commission the ability to obtain from the courts warrants that allow them to do covert searches; that is, to effectively covertly enter private property: "covertly" meaning, of course, without the owner of that private property knowing that they are going in or, indeed, knowing that they have been there.

They authorise the use of covert listening devices and covert visual surveillance devices. So, naturally, they authorise covert entry into private property and the installation of listening devices and/or visual devices in various places throughout private property that enables them external remote monitoring of what is being said and what is being done in the place that is being monitored. They also authorise in other instances covert entry into a motor vehicle or any other form of conveyance and the installation in that vehicle of a GPS [global positioning satellite] tracking device, and listening or visual devices if that is felt to be operationally effective.

The police or Crime and Misconduct Commission have legal officers, who are involved, almost exclusively, in the preparation of the applications that have to go before judges or magistrates. When they determine that they are going to make an application they make initial contact with me or one or other of my deputies if I am not available. They tell us their intention and a bit about it. They know by now fairly well the sorts of things we are interested in knowing about and we tell them the sorts of things that we want them to deal with in their affidavit material that they will file and use to support the application. Within a relatively short time thereafter they will serve the material upon me or my deputies, usually in draft form before it is sworn.

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I will go through it and consider it and will ring the police legal officer or the CMC legal officer and tell them what I think about it. I will ask them questions if I need to. Sometimes I have to go back to the senior officer who will swear the affidavit, which has to be at inspector level or higher within the service. They will come back to us with information to try to satisfy us. Later we will either say, "Okay, we are content with it to go forward on this basis", and tell them what our position will be when it ultimately goes before the judge or magistrate. Alternatively, they might withdraw the application if we have reached a position where we tell them we are not going to support it, and the reasons why. Alternatively, they will tell us that notwithstanding what we have said they will argue for it or for the conditions, or for it to be issued without the conditions that we are telling them we want attached.

The matter will then go before the judge or magistrate. The police applicant, through the lawyer who acts as advocate, will argue for the issue of the warrant in the terms that they are applying for. Then myself or either of my deputies who are doing it on the day will stand up and make submissions, if appropriate, to the judicial officer who is deciding the application. Then, if a warrant is issued, my office has an ongoing monitoring role. We can speak to the police through the legal officer or to the CMC through their legal officer or we can go down to police headquarters and say that we want to listen, we want to see where the monitoring is taking place and we want to check that everything is going according to what is expected. At the end of the warrant period—and until recently it was only ever a maximum of 30 days, but significant amendments to the Police Powers and Responsibilities Act increased the maximum to 90 days, essentially because so many operations are long and ongoing, particularly in serious organised drug trafficking investigations.

Too often there were instances where every 30 days they had to go back and get renewals of the warrants in circumstances where there was no opposition from us, and no likely opposition from the Supreme Court judge who issued it. It was determined that a maximum of 90 days is more appropriate and saves those sorts of repeated renewal applications. At the expiry of the time that the warrant is issued for, or the time that the device is pulled out if it is before that, the police then have to swear what we call a compliance affidavit, and deliver that to my office. What it has to contain is initially set out in the warrant itself. It says that they have to provide a compliance affidavit within seven days and it has to provide us with information that effectively gives us the opportunity to oversee what they have gathered, what covert intelligence or evidence of any use they have gathered in the process.

We require them to tell us in their view whether it has been an effective use of the technique in the particular circumstance. I then have to make some assessment on looking at the material that is in it, the logs that are attached, to determine whether it has been effective. It is very difficult to understand the logs attached to tracking devices, because they are all GPS co-ordinates, effectively. Putting that aside, my deputies and I often discuss these things amongst ourselves to work out whether we think it has been effective. We keep records of that. At the end of each financial year I am required to provide what is called my annual report to Parliament, through the Minister for Police, setting out effectively what we have done for the past year, and setting out the statistical information and our views about whether the use of the devices has been effective and in what number of operations and in what number they have not.

Under the amendments to the legislation that came in on 1 July this year, I am required to report every six months to the Minister. I hope that is a useful summary of what we do. You may recall that the Premier of Queensland in the arrangements that were made late last year between all of the State and the Commonwealth that resulted in the counter-terrorism legislation being introduced nationally, argued for the retention of the Public Interest Monitor, or at least the use of the Public Interest Monitor, insofar as Queensland is concerned, in respect of the powers that have now been legislated in the incidence of control orders and preventative detention orders.

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The Public Interest Monitor has a role under Queensland legislation with respect to those matters where a resident of Queensland is the subject of a control order or a preventative detention order or a court in Queensland makes one of those orders.

We have a similar role to what I have just outlined to you in respect of our own State covert operations role—very similar. In respect of the preventative detention orders, the Public Interest Monitor is to be notified right at the start when even an interim preventative detention order is being made and I have the right to be heard on the hearing of the application and the right to make submissions and what I did not mention before is that at the hearing of an application I also have the right to ask questions of anyone.

I can insist that the police inspector who is swearing the affidavit goes into the witness box and I can cross-examine him, and I have done that on occasion and I know it has been done by others on occasions—witnesses have been cross-examined. I have that same power under the preventative detention regime to ask questions, on my reading of the legislation, of anyone who gives information to the court. When preventative detention orders come back for final hearing, as they are required to do fairly quickly after the interim one is made—I think after 24 hours—as I read the legislation I would even have the right to ask questions of the person who is being detained if he or she is either by himself or herself or through a lawyer giving what might be regarded as information to the court. That is how I read the legislation.

I just mentioned to some of you before the break that I rang the Australian Federal Police yesterday, just out of courtesy, to tell them that I would be here, raising the notion of whether they would have any problem with me telling you that from a Queensland perspective I have not been called upon, since the legislation was introduced late last year, to appear and have any involvement in either a control order or a preventative detention order and the Federal police officer told me they have no problem whatsoever with that. They tabled their annual report in Federal Parliament as recently as last week and nowhere in Australia has there been a control order or a preventative detention order made since the legislation was introduced.

CHAIR: Let us hope that remains so.

Mr FORREST: That was very pleasing to hear and that was one area of the PIM's work where I would be very happy never to have to appear.

CHAIR: In relation to your work you have just said there had been no preventative detention orders or control orders in Queensland, so you have not actually been involved in that process.

Mr FORREST: No.

CHAIR: What do you think your involvement would actually consist of?

Mr FORREST: I think my involvement is going to be very much like it is with respect to the covert investigative regime. I would expect that when either the Federal police or the State police ring me and tell me that they are about to make an application for one of those orders, that I will do exactly the same thing that I currently do: ask them some brief initial questions about it and start determining quickly the apparent basis for the belief that they must hold in order to apply for and successfully obtain such an order. Then I would expect to receive very quickly the material that the legislation requires them to prepare, file or put before the deciding judicial officer—I would expect to see that—and I would expect to have my views and wishes heard and respected by the police. That is what happens now.

As I was saying before, we have a very fine working relationship between the Public Interest Monitor's Office and the Police Service in Queensland and the Crime and Misconduct Commission. I would not expect that to be any different and I expect, in appropriate cases,

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bearing in mind the interest that I represent, I would be able to make submissions, ask questions, cross-examine and have my submissions respectfully heard by the judge or judicial officer who is ultimately having to make the order. I just mentioned the interests that I represent. It is defined nefariously as "the public interest". I challenge any of you in this room to tell me in 10 words or less what that is.

Essentially, the Public Interest Monitors who preceded me and I hold the same view and have always worked on the same basis that there is intense public interest in this country in seeing serious and major crime—and it follows, of course, even more so perhaps, terrorism—detected and prevented wherever possible. Most of the work that I do in respect of the covert investigative processes in Queensland relates to organised drug trafficking, probably 80 per cent of it; the rest is a mix of murders, less rape and even more recently there has been some very serious physical child abuse cases that brought the powers into play.

The public has an interest in having that sort of crime detected and prevented and the culprits prosecuted. But on the other hand there is also the very significant public interest in the privacy and the rights of the individuals who make up our society that have to be guarded and secured. It is a fine balancing exercise between those and that is the job that my deputies and I do on a daily basis when we assess these applications and in the submissions that we make to the court.

CHAIR: How do the judges react now when you appear on those covert matters?

Mr FORREST: I was saying during the break—and I say this with all humility—that the people who appreciate our role the most are the judges. The judges of the Supreme Court who have to decide the applications have made it well and truly clear in the years that the Monitor has been in place that they really appreciate the role that we play and they usually always hear us and welcome our submissions and treat them with the seriousness and the respect that one would expect they would. Judges in our particular system are used to determining cases after hearing two sides of an argument, after having both sides presented ably and competently before them.

The judges, in my experience, see our role in the issue of warrants process as no different to the normal adversarial litigation that occurs in front of them. They hear from the police or the CMC who are making the application. They hear submissions from us and they are then able to weigh those up and make the decision. I think they would be disappointed if we were not around anymore. It makes their job that much easier, they tell us.

CHAIR: You are obviously the Public Interest Monitor and you have two deputies?

Mr FORREST: That is correct.

CHAIR: Do you have any support staff or secretarial staff?

Mr FORREST: No, none whatsoever. I have a very capable and loyal secretary, who works for me and three other barristers. One of those other barristers is my deputy, Karen Carmody, and the two of us are in chambers, so together that makes it a little bit easier for us. We do not have any particular office or secretariat set up permanently. The office is a part-time office. It really would not sustain a full-time person in the position.

The Hon. JAN BURNSWOODS: Do you not keep files?

Mr FORREST: We keep files. I have a massive safe in my office where all of the material that I get served with gets stored. Yes, I keep files in the safe.

The Hon. JAN BURNSWOODS: Under conditions of security, which is thought about in advance, I assume?

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Mr FORREST: Yes, because the documents that we see, as you would imagine, are highly secretive and contain information that you would not want to get out, so we keep files and we keep them in a safe and secure location, but we simply come into the job on a part-time basis as and when the police call us. I might be at court when the call comes through doing one of my other cases. I have indeed been on holidays fishing when I have received a phone call that there is an application coming within the next 24 hours. Indeed, I have been called out to Supreme Court judges' houses and magistrates' houses in the middle of the night to hear applications.

We are remunerated on an hourly rate, a sessional rate. We keep a record of the time we spend on each particular matter and then at irregular intervals we send off accounts for our fees to the finance section of the Queensland Police Service. It is their budget that pays for us. It comes out of their budget.

CHAIR: It comes out of the police budget?

Mr FORREST: I think I can safely say it is around about \$200,000 a year perhaps, give or take a few thousand, give or take a few tens of thousands. It just depends on the numbers of applications that are coming through. There might be four or five in one week and there may not be any for two or three weeks thereafter but on average we would probably see one or two every week.

CHAIR: And that ballpark figure that you just quoted is for yourself and the deputies?

Mr FORREST: Yes.

CHAIR: Do you do the bulk of the work or is it spread evenly?

Mr FORREST: I do not actually. I was a deputy for the years 2001 to 2004 and the previous Public Interest Monitor, who in his other career was a university lecturer, seemed to have a bit more time and did a lot of the applications himself. Since I have taken on the role, I have a busy practice at the private bar and I tend to give a lot more to the deputies to do. They have had a lot more to do as deputies than I did when I was deputy. I was only appointed to the Monitor's position in November last year. Between the three of us, my deputies would do more than half the work between them but they have exactly the same power and responsibilities as I do.

CHAIR: As I understand what you have said, when your jurisdiction extended to the counter-terrorism legislation you were not actually appearing in anything other than covert applications, so that all the work you were doing was essentially ex parte stuff?

Mr FORREST: That is right, ex parte to the extent that the targets do not know about it, yes, but always with the police applicant and the Monitor at the other end of the bar table. We would turn up at a Supreme Court call-over at 10 o'clock and after all of the other matters were called through, we would simply step up and say, "Your Honour, there is a covert application" and that is as public as it gets. Each of the applications is heard in camera. Once we get called to the bar table the Supreme Court judge has his court bailiff clear the court. Usually only the judge, his associate, myself and the police legal officer are left in the room. They have a security system at the Supreme Court where all of the documents that the court retains get held in safe custody in the Supreme Court and the police, of course, take back one of the copies of the warrant with them and retain them for their own records.

I understand that is an issue that we have recently had to start thinking about somehow having to deal with. In the safe in the Supreme Court in Brisbane now there is eight years worth of documents starting to accumulate.

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The Hon. JAN BURNSWOODS: I thought before of asking whether you had an archive, a retention order and so on.

Mr FORREST: Once I have finished a particular operation most of my material goes back to the police service after I have retained it for about a year. My safe fills up and I just give back the matters that are finished and that we have reported on. We recently met with the Chief Justice, the Senior Judge Administrator and the Registrar of the Supreme Court and we all started scratching our heads thinking, "We really are going to have to come up with some solutions to what we do with eight years worth of material." It really has to be retained until every possible criminal proceeding that might arise out of that operation is concluded right through to the level of any potential High Court appeals. We are going to have to start liaising and talking with the police and prosecutorial authorities in Queensland about which of these matters from seven or eight years ago it is safe enough now to destroy.

Mr STEVEN CHAYTOR: Is it likely that you would seek access to a person subject to a control order or a preventative detention order?

Mr FORREST: To go and speak to them?

Mr STEVEN CHAYTOR: Yes.

Mr FORREST: I do not think that would be really the role that is conferred upon me by the legislation. But, as I said before, I consider the way our preventative detention Act in Queensland is worded that once the matter is before a Supreme Court judge—or the "issuing authority" I think is the language used in the Act—I am entitled to ask questions of anyone who is providing information to the court. So I could certainly ask questions of the individual in the court in front of the judge. Actually seeking out and speaking to a person detained or subject to a control order is not something I have thought about doing, and I would not expect to.

Mr STEVEN CHAYTOR: It was only that in an earlier submission to the Committee during an earlier hearing it was put to us that your role was very much standing in the shoes of the person who is subject to a control order and evaluating that. That does not seem to be quite a fair description.

Mr FORREST: I do not think so because each of those persons is entitled to have their own legal representation. My job is more representing the public interest not the individual interest of the person detained.

Mr STEVEN CHAYTOR: Thank you.

Mr MALCOLM KERR: Has your office attracted any controversy during its lifetime?

Mr FORREST: To be honest, yes. The only controversy that I can really point to was some just in the lead-up to or around the time that the counter-terrorism legislation package was being debated nationally late last year and Mr Beattie, our Premier, was advocating the use of a Public Interest Monitor. The Queensland newspaper, the *Courier Mail*, approached Mr Sibley, my predecessor, and said, "Well, Mr Beattie is talking all about having a Public Interest Monitor and you're it; can we talk to you? Tell us about it." Mr Sibley chose not to participate in interviews with the *Courier Mail* and of course the *Courier Mail* was most indignant about that—I was nearly going to say that it did a job on him. They wrote an editorial and they wrote an article quite critical of his decision not to speak to them, given the nature of his public interest role. Just after that period of time we had the changeover and I became the Public Interest Monitor. It was still around the time that the process was being debated nationally and the *Courier Mail* came and interviewed me and my deputies and things improved. That would be the highest controversy that I could say that I know of the role attracting in the time that it has been in existence in Queensland. Let us hope that is as high as the controversy ever gets.

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Mr MALCOLM KERR: Does your practice as a barrister include criminal work?

Mr FORREST: No. That is a good question. I was telling someone during the break before that when the role was initially established the Public Interest Monitor could still practise in criminal law. Then there was some revelation a few years after it was established that it would probably be better to avoid perceived conflict of interest if the Public Interest Monitor and the deputies eschew practising criminal law during the course of their contracts. Whilst I practised in criminal law in my early years at the Bar—I have been a barrister in Brisbane now for going on 17 years and probably for the first eight years I had a part-criminal practice—I now specialise in family law and estate law. I have not done any criminal matters for probably eight or nine years.

So when the Public Interest Monitor role first attracted me and I saw that you had to eschew criminal practice—you were not allowed to accept briefs for defence or for the prosecution during the term of your office—it was something that I was quite content to live with. Whilst some criminal experience is probably useful, it is unlikely that any barrister with a good criminal practice is ever going to put his or her hand up to do the role of Public Interest Monitor. But you do not have to be a barrister of course, as I said, so long as you are a solicitor or a barrister of at least five years standing. My deputy Mr Lyons, who is a solicitor, is doing a very able job.

The Hon. JAN BURNSWOODS: You mentioned that before talking to us you spoke to the Australian Federal Police about whether it was okay to give us certain information.

Mr FORREST: Yes. In the Police Powers and Responsibilities Act there is a provision that of course imposes significant secrecy obligations upon me, and I am ever mindful of that.

The Hon. JAN BURNSWOODS: I was going to ask whether you have had, or expect to have, many dealings with Federal authorities in relation to the combination between Queensland and Federal.

Mr FORREST: I do not. When the *Courier Mail* interviewed me last year I said that I sincerely hope and expect that at least in Queensland the Public Interest Monitor will not have much to do in respect of counter-terrorism. So far, so good.

The Hon. JAN BURNSWOODS: But if it were to come up you would need to talk to Federal people in relation to processes. That would be a whole new experience for the Public Interest Monitor.

Mr FORREST: Yes. Earlier this year my deputy Ms Carmody—we were all invited but Peter Lyons and I could not make it—represented us at a meeting between the Queensland Police Service and the Federal Police that went for a day at headquarters in Brisbane, talking about the arrangements that were to be put in place with respect to the operation of the control orders process and the preventative detention process. So we were involved in that. The three of us then also met with two Federal agents. Federal agent Ingrid Tomanovits is in charge of counter-terrorism in the Australian Federal Police. She is the director. I am not quite sure what her position is but she is the Federal police officer who is in charge of the processes involved in implementing the counter-terrorism legislation at least insofar as the control orders and preventative detention orders are concerned. She and another one of her officers met with us and we had discussions with them about the protocols involved in how we would be contacted and involved.

I was particularly involved in settling the draft of the first written protocol that would be used when the Public Interest Monitor comes into play. Just as I have ongoing discussions with officers in the Queensland Police Service and the Crime and Misconduct Commission in Queensland, I would expect to do so with the Federal Police. As I said, I am hoping and

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expecting that it will not be nearly as much. I do not mind if I never do an application involving a control order or a preventative detention order. That would be greatly in the public interest.

Mr STEVEN CHAYTOR: What proportion of all matters for applications for covert warrants would go to a hearing and be rejected?

Mr FORREST: I would say, at a rough guess, 90 per cent to 95 per cent would go to a hearing of those that the police ring up about initially. I would say that, of those, roughly only about 5 per cent would end up being rejected and another 20 per cent would have conditions made on them different from those that the police sought, or were willing to accept, in the first instance. You might think that is a low number. The reason I can give you is because over the eight years that the office has been in existence, especially in the early years when Mr Perry was the PIM, he worked very hard with the police officers involved to basically settle standard warrant applications and standard protocols and accepted procedures. He was even involved at that stage in going down and lecturing senior police officers in the process of what sorts of applications the Public Interest Monitor would oppose and what sorts of conditions they would impose. So nowadays we get a fairly standard warrant. Recently when the legislation was amended the first thing we did was my deputies and I and the officers from both agencies we deal with met and settled on some changes to the standard warrant form that were required by the legislative changes.

Mr STEVEN CHAYTOR: Could you describe it as a cultural change over the last eight years within the legal services division of the police that has led to that role?

Mr FORREST: I think so. I know—I was also telling this story during the luncheon break—that the chief superintendent in charge of crime operations in Queensland, Paul Wilson, has told me that when he attends conferences with his State counterparts throughout Australia he is often asked, "How do you cope? How do you deal with this Public Interest Monitor looking over your shoulder?" He speaks with pride of how he tells them what a good system it is and how useful it actually is. It helps the police work out what applications they should be bringing and which ones they should ditch. It is a very useful system, and they acknowledge that in Queensland. I have not perceived any resistance from them in the time I have been involved.

CHAIR: There being no further questions, thank you for your attendance, Mr Forrest. That has been most helpful.

Mr FORREST: Thank you for having me down.

(The witness withdrew)

CORRECTED TRANSCRIPT

TERRENCE PETER GRIFFIN, Commissioner, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, sworn and examined:

ANDREW STEWART NATTRESS, Director Operations, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, and

ALLAN GEOFFREY KEARNEY, Director, Intelligence and Executive Services, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: Thank you for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission [PIC]. The Committee has received a written submission in relation to the 10-year review dated 23 May 2006. I take it you would like that to be part of the sworn evidence and released to the public.

Mr GRIFFIN: Yes. We have no difficulty with the letter and the submission being made public.

CHAIR: The Committee also has some background material about the Commission's current project concerning the Counter Terrorist Co-ordination Command [CTCC]. I understand that has been provided for the information of the Committee members. As your report is pending, do you wish that document and any material relating to it to be treated confidentially?

Mr GRIFFIN: Yes, we do. In relation in the letter and the attachments, at least until the consultation process is settled we request that they be dealt with as confidential to the members of the Committee.

CHAIR: That will be noted. Would you like to make an opening statement?

Mr GRIFFIN: No. Apart from those things, there is nothing else I need to deal with.

CHAIR: The Committee received evidence this morning from Mr Kaldas, the Assistant Commissioner, who appeared to indicate that he would have no difficulty with an internal audit of the CTCC, the results of which could then be examined by an outside body such as the PIC. Do you see that as a useful way of ensuring accountability and oversight of the CTCC?

Mr GRIFFIN: It could be a useful adjunct to a process that needs to be put in place. Perhaps more needs to be done than that alone. If it is any help, I could probably develop that. However, I think we have given an indication of the Commission's view of that in the material sent to the Committee. The essence is that the CTCC has components of Special Branch included in it. As I think the Committee knows, our preliminary work has developed a position that the CTCC is not significantly different from ordinary police commands. If it were seen to be significantly different, I would see that as a weakness rather than a strength. The fact that the police will treat it as they treat all their commands is a useful approach. If it becomes boutique-like, specialist or some other version of Special Branch, that would concern me and the Commission. Having said that it is the same in most respects, it is different in several respects, which we identified in the document provided to the Committee. Do you want me to touch on that?

CHAIR: If you think you can do that without the Committee having to go into a confidential session, yes, please.

Mr GRIFFIN: Santayana said, "Those who cannot remember the past are condemned to repeat it." That is the problem with the Special Branch and the CTCC. The Special Branch was criticised about targeting and retention of records when it was inappropriate. That remains a danger in an area where targeting may not be the same as in normal commands

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because of the nature of the work and the retention of records may not be treated the same. In dealing with it, I understand the CTCC will say in broad terms that its records are different because they might have Commonwealth information and information that might be provided by the FBI. It seems to me that those sorts of things start to change the nature of their records and therefore they probably remain things that need focus in terms of management. There are differences between the Special Branch, which has been criticised, and the work done by the CTCC in both targeting and records management. We think those things are good and they should be continually focused upon to ensure they remain effective. They are the areas we think are dangerous. I do not think auditing or checking an audit that has been done by that branch itself will necessarily be a sufficient safeguard on its own. More needs to be done. Some of the history that will be repeated can be told to the people in the CTCC. Many people would not have any recollection or knowledge of the Special Branch working there. I suspect most of them would not. That is one of the areas in which the Commission would say there is room for training, management and control. I think that is all I want to say in broad terms. They are the principal differences we see.

CHAIR: Is there any indication, even in broad terms, of when the Commission's work on those issues is likely to be finished?

Mr GRIFFIN: I apologise for not having this done in time, but it is the nature of the beast that it would perhaps never be. I expect the consultation to be finished in early September, which is not long off, and that we should have the final product for the Committee by the end of September or the beginning of October—hopefully before I leave.

CHAIR: Indeed. Some concern was expressed in the CTCC submission about the onerous nature of an audit. Do you think that is a reasonable concern?

Mr GRIFFIN: Perhaps not, given the dangers of the material and the concerns that might arise if it were not properly audited. We are talking later about oversight. Audit is oversight. No-one likes it. I am subject to oversight and I believe I could use my resources differently if I were not, but I do not say it is not a good idea. The same applies to oversight generally and audit in particular. If there is an issue about how it is done, that should be settled in a sensible way. If sense cannot prevail then the power to audit, if it is deemed necessary, should prevail. If someone finds it difficult, perhaps they need to change their processes or work out why they think it is difficult. In broad terms, I think that is the same for oversight.

CHAIR: Has the PIC received any complaints arising from the exercise of the CTCC legislation?

Mr GRIFFIN: No. We have an arrangement in place that we are advised of any complaints that have been identified as such. So we hope to get advice even more quickly on those than we would normally get through the system. There has been no such thing arise as yet.

CHAIR: Do you see the risk of police misconduct in relation to the CTCC and any other police bodies exercising the counter-terrorism powers? Do you see those risks as significantly different from the risks of misconduct on the part of other police?

Mr GRIFFIN: No, although I should probably say that in relation to the CTCC it is the dignitary protection area that perhaps links closest to the Special Branch. It is probably there that the differences I spoke about earlier are most pertinent. In broad terms, the CTCC and people working in the terrorist area are looking at people who are committing, are about to commit or would like to commit criminal offences. I do not think there is a huge difference. If some unfortunate incident occurs and there is a need to respond quickly, things might be done that no-one would be happy with. They might be good or bad decisions. Police misconduct might not be involved in any of that; it might become an issue only when someone says, "We have made a mistake" or "We had better cover up this mistake." That

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would perhaps be the greatest problem for misconduct in the CTCC area. I think that is probably true of any area where people might make a mistake in the heat of the moment. I do not think it is significantly different in normal counter-terrorist work, except the heat might be slightly greater in the kitchen at times.

CHAIR: One idea that has been raised is that the risk of noble-cause corruption is slightly higher in this area simply because of the targets of investigative activity; that is, that police officers might be so horrified at what they are investigating that they might cut corners, jump to conclusion or do things to fit up people or whatever. Do you think that is a realistic concern?

Mr GRIFFIN: I do not because it seems to me that the corruption that is likely to occur in normal policing and the stuff that we see is primarily opportunistic and greed driven to some extent. Noble-cause corruption is usually developed around systems that are not working perfectly and police who are inclined to do the right thing take shortcuts because the system does not work.

I do not think there is any indication that the powers and processes that are available to the CTCC will not work. I do not think that will be a catalyst for more corruption. I suspect probably the reverse will be true, that people will be inclined to be doing the work as well as they can and using the powers, significant as they are, effectively so they get the work done.

CHAIR: Police now have access to a large body of powers to deal with terrorist incidents. Could the lack of uniformity in authorisation regimes to access those powers and the various reporting requirements, once they have been used, lead to confusion or a greater likelihood of use or misuse by police about the appropriate way to exercise these powers?

Mr GRIFFIN: Probably, I would think. In the early stages, I suspect, of oversights that will have a lot of emotion and things running, there will be areas where the senior police management will recognise, I imagine, that things are not perfectly set up, but it is difficult to identify them beforehand.

CHAIR: This morning the Inspector suggested that it might be beneficial both to have all the powers concentrated in one piece of legislation to make it easy to access and understand, and that if possible the authorisation regimes might be standardised. On the face of it, that sounded sensible. Do you have a view about that?

Mr GRIFFIN: I agree that, on the face of it, it sounds sensible. It would probably depend on the skills of the draughtsman and whether or not the right people were trained properly in relation to the Act. That is not significantly different now. The powers are there. The authorisation regime is there. If people are taught properly it is not an issue. I suspect that it would be easier to teach them, given what the Inspector said, in that form but that will be marginal.

CHAIR: One issue that has been raised with the Committee is the exercise of covert search warrants. Do you see the execution of covert search warrants as a particular problem area?

Mr GRIFFIN: I see the existence of them as the problem in a sense that society has come a long way to a position where we are prepared to do that. There has been a lot said philosophically about giving up your freedoms to provide powers for security you might not get. That is a big issue in relation to management and of accepting that Parliament has seen fit to grant the powers. They are not all that different to the capacity that is available in ordinary search warrants for judges to extend reporting times. If Parliament thinks that they are appropriate, I think they can be managed properly. The reporting function to the Ombudsman, which will be reviewed after a period of time, might tell us more when we have something to work with. It is an extraordinary power but there have been significant steps

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taken to manage the use of it, if you like. And given that the legislation is there and people from where you are have concluded that it is a good idea, I think it can be managed.

CHAIR: Some of us have; some of us have not.

Mr GRIFFIN: I was using it in some sort of general sense.

CHAIR: Do you see the potential for these extraordinary powers in the antiterrorism legislation to be used for more routine policing functions?

Mr GRIFFIN: Personally, I would hope not. I think all of our experiences would show that when powers are granted in law enforcement they are granted, to start with, in a narrow way—telephone interception is a good example and there have been others—and they are gradually extended out because there is a need for other people to have them. I mean, we could not function probably as effectively as we do without telephone intercept powers. Yet if you put that at the original meeting in Canberra about who would have these powers, everyone would have laughed. I think those powers will be extended and it will be a challenge for you and people who are doing the oversight work to make sure that they are used appropriately. The problem will be that when there are abuses they will be serious, I suppose, because they are abuses of significant powers. So we all need to be careful you do not extend them lightly and people in oversight positions need to be pretty rigorous about the way they look at them. I do not mean function; I mean substance—that they are not abused in substance.

CHAIR: One issue that arose this morning was the capacity of bodies like the PIC to oversight or to investigate police activity when New South Wales agencies are involved with federal agencies. That is one category. The second category is where there is information flowing from federal bodies or international bodies such as the FBI to New South Wales bodies and there is a reluctance for that information to be shown to anyone else, including the PIC. Is that a problem you have come across and how is it dealt with?

Mr GRIFFIN: It is not a problem we have come across. I suspect that it is a stalking horse for a problem that will be used to limit, if you like, the powers of places such as the PIC. There are members of the PIC staff who are cleared to the highest level at the Commonwealth level. We can deal with the practical issues of not actually in the eyes of the police being allowed to look at the material if it is Commonwealth material. I wonder how much of such material is in fact in the hands of the CTCC, for instance, that the people who have given it to them would object to someone like the PIC looking at it. In the final analysis I would say that we have the power to kick in the doors, and if we upset a MOU that the police have with the FBI, if there is such a thing, we would not do it lightly but we would say we could do it. So the first thing would be, "Let's talk about what it is that is being claimed." That would need a pretty good look I think before anyone would be satisfied that it was a real issue. The next step would be, particularly in relation to the Commonwealth, to go to the Commonwealth and say, "These are our functions. We must be able to work out some way to do them." I think that could be done. If all that failed and we thought we had a matter of such significance that it would put at risk some other relationship, we would say we are in New South Wales and we have the bolt cutters, but I would not imagine it would come to that.

The Hon. JAN BURNSWOODS: Would you make any extra or different comments in relation to the powers of the Ombudsman in this area, or does what you have said so far apply to them as well?

Mr GRIFFIN: I think much more eloquently than me they can speak for themselves but, no, I do not have any views on the things I have said and in general I suspect there would not be huge differences from the Ombudsman about the use and management of these powers.

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The Hon. JAN BURNSWOODS: Would you expect the Ombudsman to be involved little or rarely even within the context of hopefully everyone being involved little or rarely?

Mr GRIFFIN: My mind goes immediately to "hopefully this is a horrifying unreality", but I think that is a bit naive. There will be incidents. I would expect them to be involved little, and I would expect the much more enlightened management of the New South Wales police than was involved in the Special Branch to be doing all they can to ensure that these things are dealt with properly. I would expect all those things but we would all be very foolish to abandon oversight on the basis that we would expect things to work perfectly. So it would be used little but having the stick in the pocket is a very good idea.

CHAIR: I will now turn to the 10-year review. The New South Wales police have submitted that it should be only one agency to provide external oversight of police misconduct. They say they do not want to nominate which agency but it was blatantly clear from the evidence this morning that they thought it should be the PIC, not the Ombudsman.

Mr GRIFFIN: Of course.

CHAIR: What would the implications of such a proposal be for the PIC's capacity to maintain its targeted focus on serious police corruption and serious police misconduct?

Mr GRIFFIN: Can I do something that is regularly done in this place and not answer the question directly?

CHAIR: You can tell your term is coming to an end.

Mr GRIFFIN: I have read the transcript of all of my missions and appearances up here and every time I attempt humour I think, "why did I do that?", because it reads terribly so. I have touched on this before. For oversight to work there must be a general acceptance of the need for it in the public. That is the first point. The second is that there has to be realistic resourcing. Have all the understanding you like but if there is no resourcing it will not work. That applies to the structure we have now and any other. There needs to be some enlightened management. By that, I mean people who understand the problem, know what they are doing and are not interested particularly in parading around on grandstands but wanting to get the work done. And then independence. If you are given those four things I do not think the structure or the name matters at all. I have thought about this lot, as I am sure everybody has.

If you have resourcing—I do not know how many people in the Ombudsman's Office do the equivalent oversight work. There are probably fewer than 100. We have 100 people. If that was one agency, you are talking about managing 200 people. Ken Moroney manages 17,000. It is not an undoable task and I do not think it would matter whether it was called the Police Integrity Commission or the Ombudsman's police office or some combination of those or any other name. It is only about adequate resourcing, proper management, will and independence. Having said that, I think it is a significant starting point, but I would because I have said it.

The Ombudsman's role and the PIC's role at the moment are complementary. I do not think there is any doubt about that. We work in different pools. If we were to take on now all the work of the Ombudsman we would need resourcing to deal with it. Quite clearly, we cannot deal with it the way we are. The question of focus would need to be managed. We would have to be able to say the work we do, which is specialist and quite technical investigation work, should not suffer at the expense of putting our staff on to the complaints management stuff, and the work that is now done by the Ombudsman that is now in our division of complaints should not suffer either.

The fact that this is working at the moment is a fairly significant point. There is perhaps an area where there is a slight loss, a marginal loss, because we say we overcome the

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problems of there being two agencies by consultation. That is true and it works quite smoothly, but by that very use of the words "there is consultation" it must take up some time and then a little bit of money but it is marginal and probably half of it you would have to do inside one organisation anyway because you would have divisions talking to each other.

This defies commonsense, if you try to explain to somebody outside New South Wales how the oversight system works—and I was talking about this to Mr Nattress earlier—they look at you in a very peculiar way because it does not seem to make any sense. You have how many people doing it and why? That is the sort of natural response, "Gee, why is it like that?" But it does work. The James Wood approach to dividing it—it does defy commonsense and it is very lateral thinking but it does function. I think that is something to be said in its favour. I still though think the four main points I make—will, resources, management and independence—are the things that matter. I do not think anything else matters a lot. I think if you are fiddling around the margins with structures, savings of very small percentages of the total probably does not matter. The important thing about the management would be that you look at the substance of problems, not the form.

CHAIR: So it flows from that that an amalgamation or taking away of the Ombudsman's functions and vesting them with the PIC would be fiddling round the edges in a sense because that does not deal with those four substantive points?

Mr GRIFFIN: If you can take that as flowing, I have failed miserably. What I am trying to say is that the basic building blocks need to be in place, and that once they are how you structure it—assuming it is an effective structure, and the one we have is one effective structure, and you can imagine others—probably does not matter. If we took over all the work of the Ombudsman, or the Ombudsman took all the work of PIC, you would need pretty much the same resources, the same number of people, the same technical skills, the same investigative skills as we now have, and you would need to have managers who could manage the specialist skills that we now deal with and the more structural machine that the Ombudsman uses. I do not think it would make much difference to the end result, assuming that the work that is being done is properly aimed.

CHAIR: So it does not matter whether the Police submission gets up or not?

Mr GRIFFIN: I do not think it does, no.

CHAIR: You have obviously read the submission that came in with your covering letter. The tone of that is very different. The tone that I get from the submission is that you are fairly strongly opposed to having a one-agency model.

Mr GRIFFIN: If that is the tone, it is not meant to be. It is meant to say this is working well. If you adopt the "if it ain't broke, why play with it" sort of line, why would you change it? That is what we were trying to say. The processes that are in place work. We can tidy up things. Perhaps the whole complaints area could be refocussed a bit. But the structure works, and it works effectively. From PIC's point of view, it is a great luxury to be able to focus on the ones we choose to do and not have to fret about the rest. There is no question that, from PIC's point of view, this is the best model. As an organisation, it is easy to say that—and perhaps that comes through in the document.

My other comments are more widely directed at the community model. That is, is everybody better off in one way or the other? Probably not. Is PIC better off? Certainly, because I believe we have a very specialist and efficient investigative agency that can do what is very hard investigative work. I think I have said before that the people we investigate are hard targets. Nothing has changed my view on that. They are hard targets. We do that investigation efficiently and effectively, and it is very nice to be able to say: Gee, this looks really interesting, and a bit tricky, and we can use our special powers, so we will take it; but we won't take those other 1,000 that don't look quite so interesting. It is good for us. That

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perhaps comes through in the tone of the letter, it being written from the agency perspective, and not quite the "I'm going in three months" perspective.

CHAIR: Well, it's good for people and it is also bad for corrupt police, and that is the general issue that I guess motivates us. My concern is that if you then move away from the model that allows a stand-alone, specially dedicated agency, with special powers to go after the bad cops, then the chances of them being able to continue to do that becomes a bit more doubtful.

Mr GRIFFIN: That is certainly unarguable. The danger is that if you amalgamate and you swamp one agency with a different form of complaints, or a huge increase in the number of complaints, you have to dilute, because the work you do in the investigative area is elective. You have to manage complaints, and you dilute the work of that elective area, and you fail at the pointy end. I am sure that is true. That is why I go back to the resourcing. If it is properly resourced, that is not an issue. That is why I go back to those four things. If you have got them, you are all right. Probably, in the real world, it is never going to be perfectly resourced, and that may make everything a real issue.

CHAIR: I go to something else. One of the things that I have, over time, failed to understand is a thing called c@tsi. The PIC, as I understand it, uses c@tsi.

Mr GRIFFIN: We do.

CHAIR: Are there any difficulties with c@tsi from the PIC's perspective?

Mr GRIFFIN: I will throw this to Allan in a minute. But c@tsi serves us very well because it provides us with an opportunity to dip into what is around. We do not have to rely on it extraordinarily heavily for information because we can go and get our own if we decide to develop investigations. But Allan, I think, is almost married to it.

Mr KEARNEY: I have some people who work for me that are married to it! C@tsi is the repository of police complaints. It serves our purposes well as a system. We can get immediate access to complaints once they are input to the system. The only issues that occur in relation to it are not to do with the system, but more to do with how it is used. That is: Do complaints get on there in a timely way? And are adequate records made of decisions that occur in regard to complaints? But, as a system, it is quite useful from our perspective.

CHAIR: This morning the police and their submission argued that it is a significant failing of the current complaints system that no corruption prevention function is required of either the PIC or the Ombudsman, and that recommended changes to processes occur only following an investigation that has been oversighted by the Ombudsman or run by the PIC. Do you share that concern? Do you make recommendations to the police on procedural or systemic reforms as it currently operates?

Mr GRIFFIN: Yes, there is always a concern that there is not enough done in corruption prevention. I think probably most of our reports would have areas dealing with prevention issues that arise. We always look at things with a view to finding out whether there are things we could do or talk about in relation to corruption prevention. Abelia, perhaps, focussed on drugs, but part of what we hope to get from that was aimed at prevention, or, perhaps even wider than that, what was happening out there that might be changed to benefit the police and the community—which is prevention in the broad sense.

One of the most important areas for corruption prevention is the training that police or would-be police are given at very early stages. To some extent, we have been involved in that. It is one of the things that could easily be a project. But it is an issue, and it probably always will be one. Currently, the ball on prevention education in relation to police is perhaps not squarely with us, and maybe ICAC has an interest in that general prevention area. If you were going to develop PIC in a way such that it was resourced to deal with some other avenue,

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I would have thought that prevention area would be something that you could effectively provide to PIC. It would make sense to me, perhaps more sense than having the complaints, because you would be looking at broadening it and saying, "Here, have this bit of what ICAC does." Mr Kearney has written a note "resources". I was going to come to that.

CHAIR: You really can tell his term is almost at an end, can't you!

Mr GRIFFIN: I am sorry. If I do not appear to be serious, the truth is far from that. I am taking this extraordinarily seriously. There are things that I think are important to say. The whole corruption prevention education part of the police portfolio could easily come to PIC, or to some other place where it could be dealt with more robustly. We would need more resources to do it. But that does not mean that is not a sensible proposition. I assume resources are allocated somehow in ICAC for that sort of work anyway. I do not think a whole lot of work is being done there, but I really do not know. That is not a criticism of ICAC.

CHAIR: What is PIC's experience generally of the quality and the manner of police investigations into serious police misconduct?

Mr GRIFFIN: We do not oversight a lot of them, although we oversight some. I notice that, looking at the figures for the Ombudsman, out of the total number of complaints—and there are a lot of them—they find only something like 9 or 10 per cent to be deficient across the board in any event, which I think is an interesting figure. It is something we should all keep in mind when talking about how the police are going with this stuff. The matters that we look at and oversight ourselves generally are approved as acceptable, I would think probably at the same 10 per cent level, significantly they are done appropriately.

One of the problems with police investigating misconduct that seems to have been lost sight of is that a lot of this is done by the regions. Though the figures would come from the police, the bulk of it would be done by the regions and they are not specially resourced to do that. In country areas in particular, it is a very big impost if you suddenly have thrust upon an investigation of a complaint that must be done properly. They do not have access to electronic surveillance, and perhaps physical surveillance and often specialist resources. That is a failing, if you were to look at structural failings, which might run across the board in relation to investigations by police. But, in broad terms, I think the Ombudsman's figures—if it is right that they run at about 9 per cent—would be consistent with what we see, and it is not a bad figure.

CHAIR: How many investigations would you oversight?

Mr GRIFFIN: Not many. According to the figures I have just been handed, we took on 18 new complaints last financial year, and we have about 120 currently under way. I might say we seem to be a bit beneath the radar of most people, and nobody has any great sense of what we do. We report annually on what we have done, but comparatively there is a huge part of that iceberg that no-one sees. At any one stage our investigation unit would be looking at 30 to 60 matters to see whether or not we are going to make them into investigations. This year, I think 189 matters have gone through our investigation unit. We would actually do 25 or 30 investigations. Some work is done on the ones that are looked at, and some preliminary assistance might be given to police, but they do not appear in our figures anywhere. But, from those, we also get a sense of how the police are going about them. We also, of course, have a very regular meeting with the Professional Standards people. The work they do, I think, is generally of high quality.

The Hon. JAN BURNSWOODS: What proportion of those though would stem from what could properly be called a complaint? Much of what you are doing comes from your own investigations and following up things. The word "complaint" is really quite specific, is it not?

Mr GRIFFIN: Nevertheless, most of those would come from a complaint. We have complaints that come direct to us, and complaints that we pull off c@tsi. As I was saying

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earlier to the Chair, it might be something that is really interesting, or else fits in with something we have been looking at. Maybe it is another example of something that has piqued our interest. But they mostly come from what are technically complaints. Of course, that is a very wide definition. Just about anything is deemed to be a complaint as soon as somebody raises something.

Mr GEOFF CORRIGAN: Assistant Commissioner Carroll raised the point this morning: What is a complaint? He was arguing that LMIs should not be treated as complaints and should be put on a system other than c@tsi, because everything that goes onto c@tsi becomes a complaint.

I would be interested if you have any idea or sense of how many matters that started out as LMIs have now become matters that PIC could investigate?

Mr GRIFFIN: No, I do not. I will see if Mr Kearney has in a moment. We are a little concerned about the separate system too in as much as it is not a difficult matter to categorise a low-level Category 2 complaint as an LMI, if you like, if you were either devious or not quite on the ball, and some of the LMIs might be indicative of a systemic low-level problem. We want to see all those so that we can say, "That is actually a Category 2", and all these LMIs about beating up ladies between nine and 11 at night, we want to see what the story is there. So we want to know about the LMIs. That has been satisfactorily dealt with, I think, in the sense that the police have promised us at this stage that we will have access to SAPS, or whatever that is—I do not know either.

But we would be very uncomfortable if they could categorise down and take away from our vision a whole number of complaints which they call LMIs. That will not happen because we will not agree to it, but there might be a little bit of uncomfortable consultation if they are not, as I think they are, willing to provide it to us. Allan, do you have any sense of figures?

Mr KEARNEY: I do not have a sense of figures, and LMIs are not something we would normally pay much attention to. They may come up incidentally during investigations and for the sake of completeness they will be bundled up with any other recommendations for disciplinary action, but they are not something we focus on normally. Where we might pay them particular attention is where they are miscategorised, as the Commissioner just alluded to. Sometimes you get Category 2 complaints miscategorised as LMIs and they fall below the radar. Things like, for example, inappropriate associations can be referred to or categorised as a breach of the code of conduct and therefore an LMI rather than a Category 2. Some of those we can pick up because we can see the systems and have them elevated.

Mr GEOFF CORRIGAN: There were a couple of other acronyms that I came across this morning that I was not aware of. Something called SOURCE that handles police informants.

Mr KEARNEY: The SOURCE database, yes.

Mr GEOFF CORRIGAN: Do you have access to that?

Mr KEARNEY: Yes, under particular conditions.

Mr GRIFFIN: The SOURCE database is a database that contains details of informants. It is highly volatile and whilst we could probably do what we wanted to, it suits all of our purposes, the police and ours, to have a very tightly controlled and restricted access to that because it is the sort of thing that is life or death to some people. So yes, we have access, we are all very careful about it. But it is not a problem for us.

Mr GEOFF CORRIGAN: Going on to your obvious contention that the PIC and the Ombudsman remain separate—without wishing to verbal you—one of the things that occurs to

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me, it would seem that just say, for example, there was to be a combined PIC and Ombudsman, you would have different recruiting standards for PIC. How could you reconcile what the Ombudsman has and how could you reconcile those different recruiting standards that would be needed for one organisation?

Mr GRIFFIN: I do not know if it is a given because I do not know how the Ombudsman recruits people. We have statutory obligations in relation to recruitment and yes we are meticulous in relation to our checking; there is no question about that because we have exceptional databases. If that amalgamation was actually to happen I do not think it would be anything more than a management issue because you could control access and probably have two levels. In fact, we do have on the premises sometimes people who have limited access to our places. Sometimes we have tradesmen and consultant type people to whom we say, "You can come in if you have got somebody with you", or, "You can come in but only to this floor". It is manageable and that could be done, I think, if you had two places together. There would be, in my mind, I imagine, a clearly divided organisation with a single name. I do not think it would be an issue. But given that I am clearly against it, it is not a problem.

The Hon. JAN BURNSWOODS: Would there be a specific problem because of the fact that the Ombudsman deals with so many organisations other than police?

Mr GRIFFIN: I do not think it would be for the agency PIC if it had that work but there would clearly be some doubling up of training and so on. The Ombudsman is a very good brand name for the general complaints process and it handles those in an effective manner. If we, PIC, had that area we would have to have the same skills and perhaps some of the same people.

The Hon. JAN BURNSWOODS: And a lot of publicity?

Mr GRIFFIN: Perhaps that is right. It would be different, but it would be a duplication, you would think, of the sort of training and development and work that the Ombudsman already does. That is one area where I think that division is sensible if it is just a complaints sort of process, and the Ombudsman is a very good brand name for that work, it is well known and, as you say, you do not have to publicise it because it is where people go. One of those savings around the margins, I think that I spoke about, it is not structurally impossible; there would be a marginal cost probably in duplicating the sort of training you would put in place for staff at PIC if they were to do that work. Did that make sense?

CHAIR: The access to the LMI data you were talking about, that is just access to data, is it not? You would actually take action about it on a very small number of occasions?

Mr GRIFFIN: I am sure that is right. It is a comfortable feeling that we are not being flimflammed in any way because we have access to the data. Not that I am suggesting the police would attempt to flimflam.

Mr MALCOLM KERR: Commissioner, I was just wondering if you had any knowledge of a body, the Police Executive Complaints Committee?

Mr GRIFFIN: No, I do not.

Mr MALCOLM KERR: Can I ask the other two witnesses if they have any? Mr Kearney?

Mr KEARNEY: Is it foreign?

Mr MALCOLM KERR: No, it is NSW Police.

Mr KEARNEY: No, I am not aware of it.

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Mr NATTRESS: Is that a term that you have seen written somewhere?

Mr MALCOLM KERR: Yes.

Mr NATTRESS: I think it is the executive CMT.

Mr MALCOLM KERR: It might be the same thing.

Mr NATTRESS: That is the group that sits and considers serious initial complaints involving senior officers and it is in the Commissioner's office. I suspect that is what that is.

Mr MALCOLM KERR: How is that composed, do you know?

Mr NATTRESS: I do not think the Commissioner is on it. It would be one of the deputies. John Carroll is.

Mr GRIFFIN: You understand how the CMTs work in regions, in broad terms?

Mr MALCOLM KERR: No, I am sorry.

Mr GRIFFIN: Would you, Allan, like to give a potted version of the CMTs in the executive CMT, being the body that deals with the senior officers?

Mr KEARNEY: The CMTs are responsible for the management of complaints. They own complaints within each of the commands. So there is a CMT in each command. They make decisions about complaints—whether there will be action in regard to them, whether they will be investigated, how they might be investigated—and they then sign off on whatever outcomes are achieved. The executive CMT is the CMT, the complaint management team, for the NSW Police executive.

Mr MALCOLM KERR: Do you have any oversight or role in that?

Mr KEARNEY: We have an oversight role similar to what we might have in regard to any complaints management team. The only difference really concerns complaints about the Commissioner and in those cases all complaints about the Commissioner are referred to the PIC for a decision as to whether it will conduct the investigation or will oversight its investigation.

Mr GRIFFIN: There have been occasions where the work of the executive CMT, that senior body, has been reviewed and criticised by PIC and we do take an interest in some of the matters.

Mr MALCOLM KERR: If there were long delays in coming to a determination, that would be a matter of concern to PIC, I take it?

Mr GRIFFIN: It could be.

Mr MALCOLM KERR: Police training, there has been a lot of controversy about the Goulburn academy. Has that been a matter of concern to PIC, Commissioner?

Mr GRIFFIN: The training itself, not particularly. The syllabus is something that has been looked at. There was an earlier occasion when the ethics part of the course had been removed by the police and by name we satisfied ourselves at the time that happened that the ethics component was in fact spread across the whole course and that it had not been diluted in any way, our interest being in the ethics part of that course. The behaviour of individuals at the college, I suppose it is embarrassing or a concern at times but, once again, we are conscious of the complaints; they are not the sorts of things that normally we would be

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involved in and, for the most part, they have been dealt with by the police management in the way they thought was fit. We do not have any issues with those.

Mr MALCOLM KERR: I suppose there are two aspects: the misbehaviour and the way that misbehaviour was dealt with. The concern is the inappropriateness of the way it was dealt with.

Mr GRIFFIN: As to the misbehaviour, in the first place you have got a university type situation concerning adults. If their behaviour is misbehaviour because it is linked in some way to passing or not passing courses then it would concern everybody, I am sure. It is still—unless there is some indication that it is systemic or institutionalised in some way—not something that we would look at as a major problem. We would want to be satisfied that it has been looked after, and the individual management decisions are not things that we would review. This is an indication that the process is working and I think the Ombudsman may have had things reviewed. But it is not stuff that we would normally do.

Mr MALCOLM KERR: When you became Commissioner did you set yourself certain goals to achieve?

CHAIR: I think that is probably outside the jurisdiction of this Committee. It is not the 10-year review of this Commissioner, it is the 10-year review of the complaints system. And, indeed, we asked that question the last time he was in here, as I recall.

Mr GRIFFIN: I was going to rely on those answers—poor as they were.

CHAIR: Any further questions, even tangentially related to our inquiry, Mr Kerr?

Mr MALCOLM KERR: In terms of the 10-year review, what do you see as the major achievement of the PIC over those 10 years, Commissioner?

CHAIR: No. Any questions relevant to the inquiry?

Mr MALCOLM KERR: No.

CHAIR: Any further questions from any other Committee members? If there are no further questions from Committee members can I thank the Commissioner and his staff for being here and thank them for their helpful evidence. I thank the Commissioner for his co-operation with this Committee over a period of time.

Mr GRIFFIN: Thank you. It has been a pleasure to work with the Committee. I think I have said before, and I will make it my swansong, this Committee does a great deal of good by seriously taking on the oversight of the PIC. It has been an enlightening and useful experience for me to work with the Committee.

(The witnesses withdrew)

(Short adjournment)

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SIMON JUSTIN COHEN, Assistant Ombudsman (Police), New South Wales Ombudsman's Office, Level 24, 580 George Street, Sydney, and

GREGORY ROBERT ANDREWS, Assistant Ombudsman (General), New South Wales Ombudsman's Office, Level 24, 580 George Street, Sydney, affirmed and examined:

CHAIR: Thank you for appearing before the Committee to provide evidence on the Committee's two inquiries, the 10-year review of the police oversight system in New South Wales and the scrutiny of NSW Police counter-terrorism and other powers. We are, of course, delighted to hear your evidence. The Committee has received a separate submission from the Ombudsman for each inquiry. Is it your desire that the submissions be made public and form part of your sworn evidence?

Mr COHEN: It is.

CHAIR: Do either of you wish to make an opening statement?

Mr COHEN: Chairperson, the Ombudsman has asked that I make an opening statement on his behalf.

CHAIR: Certainly.

Mr COHEN: Chairperson and members of the Committee, the Ombudsman thanks the Committee for the opportunity to make verbal submissions in respect of both the inquiry into the scrutiny of NSW Police counter-terrorism and other powers and the 10-year review of the police oversight system in New South Wales. The Ombudsman has advised the Committee of the reasons for his inability to attend the inquiry today and has asked that I read this statement to the Committee on his behalf.

It is more than 10 years since the royal commission into the NSW Police Service handed down its interim report recommending the creation of the Police Integrity Commission and reform of the police complaint system. Much has been achieved in NSW Police under the oversight of the Police Integrity Commission and the Ombudsman in the intervening time to improve the conduct of police officers and reduce the opportunities for misconduct. A very substantial reason for the improvements made in NSW Police has been the capacity of the Ombudsman and the Police Integrity Commission to focus on their separate responsibilities.

The Commission has undoubtedly informed the Committee as to how its activities have detected, investigated and prevented serious misconduct. The Ombudsman's role in the oversight of NSW Police is primarily concerned with ensuring that complaints about the conduct of police officers are dealt with in a timely and effective manner. Some 99 per cent of all notifiable complaints, including criminal matters, corruption issues, and other misconduct complaints, are oversighted by the Ombudsman with investigation by police commanders. Almost 95 per cent of the most serious complaints—Category One complaints, including police perjury allegations and complaints about interfering in internal investigations—are investigated by police commands, including the Professional Standards Command, with direct oversight by the Ombudsman.

Over the past 10 years there has been unquestionably an improvement in the performance of police in handling complaints. Today complaints are finalised much more quickly. Generally they are investigated well by police investigators and commanders. Most complainants are satisfied with the response to their concerns, they also have the opportunity to deal directly with local police to sort out their issues. We are certain these improvements would not have occurred had the Ombudsman not been effective in holding Commissioners and Commanders to account for their actions or inactions. For example, our recommendations have resulted in Commanders' performance agreements including measures for effective

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complaints management. Our audits and investigations have given a real incentive to NSW Police to monitor and act on poor complaint management trends.

We continue to intervene, case by case, in circumstances where complaints are not well handled and the action of police commanders are unreasonable. Importantly the complaints system has shown success in identifying those officers who conduct themselves criminally. In past years hundreds of charges have been made against officers where there is strong evidence of criminal offences being committed. Many officers have been dismissed, demoted or the subject of disciplinary transfers. Last year almost 1,000 substantive management actions, performance agreements, increased supervision, training and counselling resulted from complaint investigations. This is clear evidence of an organisation that sees value in dealing with complaints properly and that is prepared to take action when that conduct is identified. It is clear evidence also of effective oversight by the Ombudsman to force Commanders to deal with complaints properly and respond firmly and fairly where appropriate.

A vital challenge for an effective complaints system is to deliver fairness to officers who have made honest mistakes and vindication to officers when their conduct is found not to be of concern. Recent changes pushed by the Ombudsman have clarified what effect, if any, a complaint will have on an officer's prospect of promotion. This is one of a number of positive steps to better support police officers caught up in complaints. Another has been to ensure less serious matters, customer service complaints and management issues are generally kept out of the complaints system. Changes to legislation in 1999 and again in 2001 committed the Ombudsman, with the agreement of the Police Integrity Commissioner and after consultation with the Commissioner of Police, to hand back less serious complaints to Commanders to be dealt with directly and without Ombudsman oversight.

Since then, literally thousands of lower-level management and customer service issues have been dealt with locally by Commanders without any involvement by the Ombudsman. These steps have been taken only because most police commanders have demonstrated a willingness and capacity to deal effectively with complaints. Our auditing ensures that decisions to deal with matters locally are made in an accountable manner, but we do not intervene in the handling of these matters by local commanders. We will review matters where persons involved, be they police officers or members of the public, are not satisfied. However, we do this for any public agency.

Against that background it is particularly disappointing to note the wrong information conveyed to the Committee by representatives of the Police Association about how the complaint system works. In particular, the Association submitted that every complaint about serious conduct through to a complaint about being late to court, or being rude to a member of the public, must be notified to the Ombudsman. That is simply not correct. If a commander forwarded to the Ombudsman a complaint about an officer being late to court we would send it back and say, "Deal with it yourself." While we insist that serious complaints are notified and the investigation of those matters closely reviewed, we equally insist that commanders deal directly with minor complaints without Ombudsman involvement.

Such a fundamental misunderstanding of the complaint system suggests a lack of knowledge by the Police Association representatives as to how it works. This, in turn, feeds ongoing myths and wrong perceptions as to how the complaint system impacts on police officers. More disturbingly, the Police Association proposal to limit external oversight to criminal and corruption matters would remove many serious complaints from review. Complaints about strip searches, police pursuits that result in serious injury, failure to provide medical attention while in police custody, miscarriages of justice because of police errors, or gross incompetence leading to failed criminal proceedings would no longer be the subject of scrutiny.

No hard evidence is provided to support this substantial downscaling in oversight. Significantly, the position of the Police Association sits in marked contrast with the many

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change indicators in its written submission that demonstrate the success of current oversight arrangements. Indeed, by most measures the current complaints system for police officers is delivering good outcomes. A primary reason for this is the oversight by the Ombudsman of police complaints. There remains, of course, room for improvement. In our submission we have made a number of recommendations to improve the operation of the Police Act.

In addition, we have made recommendations to NSW Police, not accepted at this time, to reduce the red tape involved in dealing with less serious complaints by local commands. These will refine what is, at its essence, a flexible, appropriate and accountable complaint management system. Our work with NSW Police, as with other public sector agencies, has concerned not only complaints. We have improved the workings of NSW Police through our projects, audits and reviews. We are particularly proud of our achievements in fostering better relationships between police and Aboriginal communities. Our reports have also examined and improved police practices in areas as diverse as the use of capsicum spray, the issuing of speeding fines, the management of officers under stress, the use of confidential police information and the monitoring of persons on the child protection register.

Turning briefly to address the Committee's inquiry concerning counter-terrorism and other powers, the Ombudsman is somewhat constrained in providing substantive comments about certain of the matters being considered by the Committee, because of ongoing reviews of the preventative detention and covert search warrant powers. That said, there is a need to approach oversight of law enforcement functions in a consistent manner. This includes not only the external monitoring of particular covert investigative methodologies or technologies such as telecommunications interception and listening or other surveillance devices, but also a consistent approach to the scrutiny of those organisations or persons who use them. We have made observations in our written submission to the Committee about these matters.

CHAIR: Mr Andrews, do you want to make an opening statement?

Mr ANDREWS: Not at this stage.

CHAIR: I will commence by taking you to some of today's comments from NSW Police and ask if you have any response to their written submission and oral comments. They talk about the complaint system and said, amongst other things, that the definition of complaints under part 8A of the Police Act captures even the most minor grievance about police conduct. They said that the complaint system is still largely the same as it was described in the royal commission and 10 years on nothing much has changed and that the Ombudsman's comprehensive oversight powers under part 8A prevent NSW Police from fully adopting the managerial model of complaints handling recommended by the royal commission. Do you have some comments on that?

Mr COHEN: The definition of "complaint" in part 8A is unquestionably a wide definition but the use of the class in kind agreements, which were agreed by the Ombudsman with the Police Integrity Commissioner, after consultation with the Police Commissioner, mean that there is flexibility to hand back management issues and low level customer service matters to commanders to handle directly. That has been done from the very time those provisions were put in place. In the last year more than 2,000 customer service and management issues—somewhere in the vicinity of 40 per cent of the total number of complaints received by NSW Police—were handled locally without any oversight or intervention by the Ombudsman.

My own view is that much has changed in NSW Police and much has changed in complaints management in NSW Police over the past 10 years. I think most of the commanders are doing a pretty fair job in handling complaints. Most of them are doing it much more quickly than they did 10 years ago; 10 years ago 30 per cent of complaint investigations took longer than a year. Today that figure is less than 10 per cent. I think that most complainants are reasonably satisfied with the job that police commanders do with their complaints. Some 75 per cent of those complainants who are asked how satisfied they are

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with the investigation say that they are satisfied with it; I think, on the whole, police commanders do a pretty fair job with the quality of their investigations.

With the most serious matters, the Category One matters, the perjury and pervert type matters, in the vicinity of around 16 per cent of those matters are dealt with in a manner that we think requires improvement but across all complaints that figure is around 9 per cent and for the less serious matters, the Category Two matters, it is around 7 per cent. My own view is that much has changed and most of it has been change for the good.

I would say that one of the difficulties in complaints management for police commanders is that they are not being freed up to manage some of the less serious matters in a managerial model but my own view is that that is not because of part 8A of the Police Act; that is because of requirements placed on commanders by NSW Police in terms of how those matters are being dealt with. I will give you a particular example. We conducted an investigation to try and identify the reasons why some commanders were not dealing with the substantial body of their matters with reasonable expedition.

One of the issues that we noted through that and through our own observation of complaints handling in local commands was that many of the less serious matters continue to get dealt with through the complaints management team rather than being handled at the time that they arise by supervisors. We suggested to NSW Police that for that body of matters there may be an opportunity to remove them from the complaints management team process. That recommendation was not accepted by NSW Police, but my own view is that that is a recommendation that has substantial merit to it and would reduce much of the red tape involved in the management-type matters that police deal with.

CHAIR: So the alternatives are to be dealt with simply by the supervising officer or go to the complaints management team, which, I assume, involves a number of people?

Mr COHEN: That is right. The complaints management team usually involves the commander, another senior officer, the duty officer usually, an executive officer who is the administrative officer in charge of complaints within most commands and sometimes a number of other officers. The purpose of those, when they work well, is to monitor how serious matters are being dealt with in the command to keep an overall view of professional standards within the commands, to consider whether there are any particular risks within the commands from a corruption or a conduct perspective, but we do not think they should be used to handle every single conduct or management issue that arises. We think that that is pretty ineffective. There is little point when somebody has had an interaction with a police officer that is a rudeness-type matter to go back to them eight weeks later and say, "We're sorry". It's much better if it is dealt with at the time it arises. Certainly that would be our preference.

CHAIR: Just to make sure we are clear about this: the decision as to whether to deal with it by supervising officer or by the CMT is a decision purely for the local police?

Mr COHEN: It is a decision for NSW Police. At the moment there is a requirement for some of those matters to be dealt with through complaints management teams. We would like to see those matters being dealt with much more instantly locally. I have certainly communicated both to the Professional Standards Command in a report and to local commanders at forums my own views about those matters.

CHAIR: So the reason that they are being dealt with by the CMT and not by the supervising officer is because of the decision of the people who were here this morning complaining about how bureaucratic the system is?

Mr COHEN: I do not know if I could comment on that.

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CHAIR: Perhaps I should not put words into your mouth, but I am a bit astonished after the evidence we had this morning. Have you raised with senior NSW Police this concern because they gave us a long lecture today about how bureaucratic the complaints system is?

Mr COHEN: I have certainly raised with NSW Police my concerns about the way that less serious matters are managed but I do not want to create a wrong perception. There are many very serious complaints that are made against police officers; complaints about assaults, complaints about misusing confidential information, complaints about inappropriate searches and poor treatment in custody and my own view about those matters is that the beginning point when you receive one of those complaints should be to try and find out what happened and then make a decision about what action, if any, should be taken. I think that is in the interests not only of complainants but also of officers the subject of those matters.

I certainly think that outside of that there are minor grievances or minor issues that are raised every day in police workplaces, as indeed in many other workplaces, that should be dealt with on the spot and I think that commanders should be freed up to do that.

CHAIR: If it goes to the CMT process, does that mean formal taking of statements from witnesses and those sorts of things?

Mr COHEN: It does not have to mean that. Certainly the more serious allegations, criminal allegations or those that may have proved true result in the removal of officers, if there appears to be some substance to them they need to be dealt with in a formal way so that at the end of the day, should they be proven to be true, appropriate action can be taken in respect of them. But many other matters can be the subject of, for example, a brief notebook statement taken by the investigator, a very brief report back to the complaints management team and then a record of their decision making in respect of those matters. Other matters, matters that are pure management matters, should be dealt with in even a less formal manner than that.

CHAIR: If a matter is submitted in writing, does that mean it is automatically captured as a complaint under part 8A and cannot be treated as an LMI?

Mr COHEN: No, if a written document making allegations in relation to police conduct is received, a decision has to be made as to whether it is a matter that requires notification to the Ombudsman or the Police Integrity Commission or whether it is a matter that can be dealt with locally and that it is going to be on the basis of the allegation that is raised. For example, if it is an allegation of somebody being late for court, that is a matter that could be dealt with as a local issue. If it is a matter that somebody was assaulted while being arrested or that there had been police misconduct in a prosecution, that would be a matter that would have to be treated as a complaint. An initial decision has to be made as to whether it is a matter that is notified or a matter that can be dealt with locally.

CHAIR: So the short answer is that it does not matter whether it is in writing or not?

Mr COHEN: There is a requirement if a matter raises criminal or other serious misconduct issues to reduce it to writing.

CHAIR: But the mere fact that it is in writing does not necessarily mean that it is caught under Category One or Category Two?

Mr COHEN: That is exactly right.

CHAIR: The LMIs are subject to an audit process.

Mr COHEN: That is right.

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CHAIR: My recollection from something I read was that the number of matters that are audited by the Ombudsman is only a portion of the total LMIs?

Mr COHEN: That is correct.

CHAIR: Do you have any idea what percentage it is?

Mr COHEN: Of some 2,000 matters that were dealt with as LMIs in 2004-05, 350 of those matters were subject to what we call desktop audits, so examining the records through the electronic complaints management system to make sure they have been correctly categorised and appropriately dealt with. This financial year we are conducting audits of six local area commands, one in each of the regions, which is somewhere in the vicinity of about 6 or 7 per cent of the total regions in NSW Police.

CHAIR: That is 350 out of how many?

Mr COHEN: Over 2,000.

The Hon. JAN BURNSWOODS: 2117. It is on page 8.

CHAIR: Assistant Commissioner Carroll said today that he thought it was closer to 99 per cent but he did say he was not absolutely certain about that, to be fair to him and he was under cross-examination. Of those 350 or however many you audit, how many of those require further action?

Mr COHEN: There are two reasons why we conduct audits. The first is to determine that they have been correctly categorised. Sometimes police might categorise a matter as a less serious matter when it has criminal allegations. That is the first thing we consider in relation to those matters. We then, for some of those matters, do a brief quality audit. I think of the 350 records we looked at, we did a quality audit of 100 of them or 96 I think it was, and 93 proved to be satisfactory, but we do not require further action in relation to matters other than requiring that we be notified of matters should that be necessary having regard to the allegations that are raised.

CHAIR: It is clear that both the Police Association and the police, whether their belief is well founded or not, say that nothing much has changed in the last 10 years and they all seem to think that minor matters are captured under the complaints system. That does not seem to be correct but leaving aside whether it is objectively correct or not, that seems to be a belief that is being held. How do you deal with that?

Mr COHEN: I think there is a tendency on the part of local commanders to overmanage some complaints and part of it is about communicating, for example, in relation to matters that we deal with, our expectations in respect of those matters and then where we see matters that are being overmanaged, to actually raise those matters with commanders at that time they occur. We have done that in a substantial number of matters.

The other thing that we do in relation to that is go out and actually observe complaints management team processes to try and look at circumstances where this is happening and give advice to commanders about our own views about how to try to do that in a less resource-intensive way. I have brought for the Committee's information, if it is useful, a copy of our discussion paper, our observations, of complaints management teams. I will hand that up if that would be of assistance

CHAIR: Yes, that would be interesting.

Mr COHEN: I think that the primary responsibility in relation to dealing with those matters and giving that message lies with NSW Police itself and it does need to be clearly

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communicated to police officers generally that less serious matters are not matters that are oversighted by the Ombudsman.

CHAIR: Can I clarify whether that discussion paper is available for general publication?

Mr COHEN: It is available to all police commanders. There is nothing in there that identifies particular commands per se.

CHAIR: Do you have a problem if we place that on our web site?

Mr COHEN: I only envisaged that it would be for the information of the Committee. Can I take that under advisement?

CHAIR: That is fine. We will not publish that unless we talk to you further. There was a process at one stage, I think under the aegis of the Ministry for Police, about trying to streamline the complaints process. Is that process ongoing or is it finished?

Mr COHEN: There has been a preliminary discussion held in relation to the Ministry review of the complaints system. We have put on the table our very serious concerns about the proposal that is being made. There has been a review undertaken already that has made some recommendations which, if adopted by the Parliament, will streamline the complaints system.

CHAIR: Can we deal with that one first?

Mr COHEN: Sure.

CHAIR: Where is that up to?

Mr COHEN: My understanding is that legislation has been drafted. We have been given an opportunity to comment on that legislation and there is a discussion paper that has been largely completed as well.

CHAIR: As always you are far better informed than the back bench in this place.

Mr COHEN: Some of the recommendations, if adopted, will significantly streamline the complaints system. It removes the Category One, Category Two distinction. That will remove a lot of the requirements to notify the Police Integrity Commission of matters and will reflect the way it goes about doing its business, which is primarily to look across the whole range of complaints for intelligence and other opportunities where it can move to investigate.

It will also free up our capacity to communicate with the Minister. For example, there is currently a restriction on us providing critical police information to the Minister unless the Commissioner agrees to that course and the legislation removes that anomaly. Those recommendations, we think, will significantly streamline the complaints process. There is a further review that has been announced and we have been the subject of one meeting and some consultation. The present proposal that has been put on the table in relation to that review has been to reduce the range of complaints that would be the subject of oversight of criminal and serious misconduct matters. We have advised the ministry secretariat of a number of views about that. Firstly, we do not think that the problems with police complaints management will simply be solved by changing the definition of "complaints". We do not think that is a solution.

What we think is that police need to be smarter about how they deal with complaints and get rid of some of the red tape around some of the less serious matters. But, more importantly—and I suppose to take a complainant's perspective—there are some matters that, if the submission of the police in relation to that review were accepted, would not be the

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subject of our review. These are matters that the Committee itself has referred to our office. There was a complaint about somebody who was held in custody for a number of days and received only one meal a day and was charged unnecessarily with a matter. That matter would be excluded from external oversight. For example, complaints about police failing to properly investigate a murder matter and treating it as a suicide in the first instance are not a criminal matter but a very serious issue that, in our view, the community would expect there to be external oversight in relation to.

So we have raised our concerns that limiting the complaints system to only the most serious matters has, firstly, the potential to substantially disenfranchise complainants. But, secondly, there is a range of less serious matters—non-criminal matters—that if they are not the subject of appropriate rigour and review reduces the corruption resistance of NSW Police. I think in evidence earlier today the issue of improper association was raised. That is a very clear matter. It is not criminal but it is a matter that needs to be thoroughly looked at otherwise much of the hard work in the past 10 years to increase the corruption resistance of NSW Police would be in jeopardy. That is something that, from our perspective, we simply could not support.

CHAIR: In relation to the first review that seems to have given rise to draft legislation, the Office of the Ombudsman is generally relaxed about the proposals in that legislation?

Mr COHEN: Until very recently our understanding was that everybody involved in those discussions was very relaxed about them. All of the recommendations were reached by consensus. The recommendations are sensible and they move to refine and streamline what, until possibly today, it was our understanding that police supported and was certainly something that the Commission and the Ombudsman very much supported.

CHAIR: Is the newer review being conducted by the Ministry for Police?

Mr COHEN: It is.

CHAIR: Is there any indication of a time frame for that?

Mr COHEN: I have not got any firm indication of that. We have had one meeting with them in a group setting and one meeting with them privately and we have had some other email contact with them since then.

CHAIR: Do Committee members have any questions about the 10-year review?

Mr GEOFF CORRIGAN: Another thing that the police said this morning—and it only arises because of what you said—was that they had made a submission to the Government's red tape review committee to reduce red tape. You have made suggestions to them to reduce red tape. Why is it not happening?

Mr COHEN: Well, it should be and much of the power to do that lies with NSW Police. It is NSW Police's complaints system and it is for NSW Police to determine how it deals with matters. Our role is to require investigation should that be necessary and then to assess the quality of the investigation of those matters that we are notified of. For those matters that fall below that threshold—and my own view is that it is a reasonably high threshold and includes the sorts of matters you would expect there to be external oversight of; it does not include lower level management matters—police are free to do with them as they will. We would encourage them to take a managerial approach to dealing with those matters. I suspect that sometimes they have a fear that if they do not deal with them in a particular way they will be the subject of some form of criticism. But that is certainly not the reality from our office's perspective because we simply do not look at most of them.

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Mr GEOFF CORRIGAN: I have two other questions. This morning Assistant Commissioner Carroll gave us a range of examples, which were very interesting, and one of my colleagues asked a question about a more serious example. That is quoted on page 12 of the NSW Police submission, which will now become public property. I am interested not in a verbal response now but a written response to the serious matter that they have raised on page 12 of their submission to the Committee.

Mr COHEN: I would be pleased to provide that.

Mr MALCOLM KERR: Arising from that, it might be an idea to get a response to the whole of that submission and perhaps the evidence that was given by Assistant Commissioner Carroll, because he gave a range of examples that I would be interested in the Ombudsman's response to.

CHAIR: I think it would certainly help the Committee's deliberations if we had specific responses to the specific items that were raised.

Mr MALCOLM KERR: The specific examples.

Mr COHEN: I would be pleased to do that.

Mr GEOFF CORRIGAN: The third matter—which I am surprised that the Chairman did not raise but has given us the opportunity to do so—

CHAIR: I have a pile more questions. I thought I would give the rest of you a go.

Mr GEOFF CORRIGAN: It seems apparent that c@tsi is not being used by the Ombudsman. I just reread your submission in relation to that. It would seem like a hell of a lot of work to have local police printing out hard copies of what is on an electronic system because you do not want to use the system.

CHAIR: Can I perhaps interpose there? To be absolutely fair, we should put to the witnesses precisely what is in the police submission—which was indeed on my list of things to do in the not too distant future.

The Hon. JAN BURNSWOODS: That one was mentioned quite a bit in the evidence this morning as well.

CHAIR: Can I put this to so that you know precisely what the police said in their submission? It states:

NSW Police is the agency responsible for managing the c@tsi component of that system on behalf of the oversight agencies ... The Ombudsman was a significant contributor and stakeholder in the development and modification of the c@tsi system to suit that agencies needs, however despite this, in 2005 the NSW Ombudsman ceased to be a primary user of the c@tsi system on the basis that it was a conflict of interest for it to rely on a police system to oversight police complaints. This position is unacceptable given the additional resource implications for NSW Police of having to maintain both an electronic system and a manual system. The PIC has continued to be a full user of the c@tsi system.

The only other thing I should add is that in answer to my question this morning Assistant Commissioner Carroll said he was told that by either you or Mr Barbour. So that is where he says it came from.

Mr COHEN: Told that we had a concern because of our independence?

CHAIR: What they ascribed your position to is that:

... the NSW Ombudsman ceased to be a primary user of the c@tsi system on the basis that it was a conflict of interest for it to rely on a police system to oversight police complaints.

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Mr COHEN: I expected that this issue of c@tsi would come up today. I have for the Committee—and I am happy to hand it up now or address it in further submissions to the Committee—what I think is a reasonably complete list of correspondence about our dealings with c@tsi. I think it is important to distinguish how we use c@tsi from how the Police Integrity Commission use c@tsi. It was envisaged that the Ombudsman would use c@tsi as our own business system—that we would use it to record our own information on it, that we would use it to record reports on and that we actually would not maintain our own independent complaints system at all. We would have no business system to do our business other than c@tsi. That stands in marked distinction to the Police Integrity Commission, who use it as I think what is called technically a "read-only system". So they use it for the purpose of looking for information but they do not use it as a business system—a system to do their business on.

CHAIR: I think that was their evidence today, I must say.

Mr COHEN: We, for a number of years, engaged with police to try to make a workable system that we could both share. In January 2004, after a number of years of development and eight months after NSW Police had promised to fix substantial problems in c@tsi, we advised police that we were going to downgrade our use of it until those problems were fixed. They were pretty substantial problems. In a technical sense, I understood that they were called a flawed data structure, a flawed security, flawed code and no disaster recovery plan. But what it meant in real terms for our people was that the system was unstable. They were frequently being blocked out of the system. It would take literally seconds and seconds to move from one function to the other. That meant that they could not do their job and, as an organisation, we could not do our job.

Following our decision to reduce our involvement, NSW Police received \$1.4 million to remediate the c@tsi project. That project was supposed to begin in late 2004 and be fully delivered by June 2005. We were assured at the time that we agreed to participate in the steering committee process for that project that it would deliver on all of our outstanding matters—on our reports, it would give reliability, it would have appropriate security and there would be an appropriate disaster recovery plan. I sat on that committee and continually raised my concerns that it would not deliver on our needs and it would not deliver in time. By the end of July 2005—a month after it was supposed to have been fully delivered—it was still not completed and it was clear that our requirements would not be met. I think of the 10 reports we required, seven had been delivered and all of them had failed user acceptance. Another three reports had not been delivered at all. There was still no disaster recovery plan in place or a future plan to make sure it was in place. All the money that had been put aside for the remediation project had been spent.

In February 2006—eight months after it was supposed to be delivered—it was finally delivered. As recently as last month, we received a letter from the Acting Chief Information Officer from NSW Police and as part of that letter he stated, "On behalf of BTS, I sincerely regret the longstanding production and performance issues you and other stakeholders have experienced with the c@tsi system and we are working hard to achieve some fundamental improvements." When I met with the same Acting Chief Information Officer this month he expressed the view that the c@tsi remediation project had failed to deliver on its objectives. There is no question about that. For those reasons, we determined that we could not effectively go about doing our business, relying on c@tsi. I am happy to provide all of our material and address in particular the issues that might have been raised by Mr Carroll this morning.

In response to your particular question about why we cannot use it for the delivery of reports, my understanding is that presently because of unrealistic commitments, quite frankly, given by the Professional Standards Command to local commands, they no longer have to print out those reports. That is in fact done by the Professional Standards Command on their behalf. We agreed to receive reports electronically through c@tsi on the basis that it was a fully functioning system that would let us do all our work. It does not do that. It fails on

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almost every measure to deliver a workable complaints system for us. To then turn around and say, "We didn't deliver you what we said we would but we're going to make you carry the cost of printing out all the reports that you need to do your work" the Ombudsman thought was simply not something that we could countenance given our own resource constrictions.

CHAIR: So you still use c@tsi for some things?

Mr COHEN: We use c@tsi for a number of functions. We use it for our monitoring of complaint investigations. We use it for our own intelligence functions. We use it for our auditing functions. We did use it to receive new complaint notifications and we put on the table to police that we were happy to do that, even though we were downscaling our involvement. They made a unilateral decision to stop that process from happening. So they in fact took the first steps to reduce the electronic transfer of information to us through c@tsi. We have been working constructively to try to solve some of those problems and it looks as though a work-around in terms of receiving complaints electronically in the first instance has been achieved. We are trialling it, I think starting next week, for a month and if it works we will agree to do business in terms of new complaint notifications electronically. In terms of 150 reports, I have offered to the Assistant Commissioner of Professional Standards to look at options to receive smaller of those reports electronically. But I do not think it is fair, given what we were promised through c@tsi, to then take on the responsibility of having to print out the voluminous reports in some matters that need to be gone through page by page, given the serious nature of the allegations that are raised in them.

CHAIR: Thank you. We would be delighted to have those documents handed up.

The Hon. DAVID CLARKE: Mr Cohen, do you ever receive complaints or recommendations from the Council for Civil Liberties as to how the Ombudsman investigates or should investigate complaints?

Mr COHEN: We do.

The Hon. DAVID CLARKE: Are they mainly recommendations or complaints, or a mixture?

Mr COHEN: I know we have received complaints from them and I know that they have made submissions to legislative reviews that we have conducted. As to the proportion, Mr Clarke, I could not honestly tell you.

The Hon. DAVID CLARKE: Is there a general theme to the complaints they make?

Mr COHEN: I honestly could not answer that question. I could take it on notice perhaps. I know of one complaint that they raised but beyond that particular matter I could not give you any more detailed information.

The Hon. DAVID CLARKE: Does the Ombudsman provide drafts or partial drafts of its final reports and recommendations to the police?

Mr COHEN: Prior to making any report on complaints, we provide a preliminary report to police and give them the opportunity to comment in respect of those matters, and we have regard to those comments in making our final report. For our legislative review functions, we provide a full draft report to police about both our findings and recommendations and give them an opportunity to comment on those matters. If there is anything they think may be operationally too sensitive to make available publicly, we give them the opportunity to identify that material as well.

The Hon. DAVID CLARKE: Do you provide drafts to other agencies?

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Mr COHEN: It depends on the nature of the recommendations. For example, if there are recommendations that affect another agency, prior to finally forming our view we give them an opportunity to comment.

The Hon. DAVID CLARKE: So the same principles apply to all agencies and to the police?

Mr COHEN: To all public sector agencies.

The Hon. JAN BURNSWOODS: We have had a couple of comments today about the current level of complaints from inside the police; in other words, from police officers themselves. In your snapshot you say more than 40 per cent and almost 30 per cent of the more serious matters were reported by police officers. Can you comment on the significance of that statistic? I gather it is a huge increase over the past 10 years.

Mr COHEN: That is right. I think the proportionality of member-of-the-public complaints and police complaints is stabilising. Internal police complaints tend to relate to the more serious matters. About 70 per cent of those complaints that result in criminal charges are lodged by police officers. They are matters that raise very serious issues. Because police officers are often witnesses in those matters, the complaints are given a lot of credibility. A matter of some concern to us is how some of the people who make those complaints are treated. A recent report by Urbis Keys Young in relation to people who access the internal witness support unit found that some 75 per cent of people surveyed complained about harassment as a result making a complaint and some 45 per cent said that they did not feel supported by senior officers in making their complaints.

We have raised with police through the Internal Witness Advisory Council two particular things that we hope will assist in redressing that situation. The first is that we would like to see commanders freed up to protect whistleblowers. At the moment some of the constraints in legislation prevent them from defending people who have come forward with serious misconduct issues. We would also like to see better tracking of how the whistleblowers go in commands. We would like to examine why some commands are working so well and share that information. We would also like to see some action taken in those commands doing a bad job to improve their performance.

The Hon. JAN BURNSWOODS: Given your comment about the more serious matters, I assume that many of them are dealt with by the PIC as well. Do you discuss some of these issues with the PIC?

Mr COHEN: Not that many of the more serious matters are dealt with by the PIC. Of the matters formally in the complaints system, the last reported figures suggested that the PIC had investigated, I think, seven, and oversighted 18.

The Hon. JAN BURNSWOODS: That is complaints in general?

Mr COHEN: That is right.

The Hon. JAN BURNSWOODS: I meant the ones coming from the police specifically. Is it still a small percentage?

Mr COHEN: Yes. It is still a small proportion of those matters. I guess it reflects the reality of the distinction in our functions. In a way, it reflects the distinction of our work with most public sector agencies. We deal with complaints and the Independent Commission Against Corruption deals with corruption issues for most public sector agencies. It is a similar break up with police. We deal with complaints and the PIC deals with corruption issues. We speak to them regularly at all levels—the Ombudsman and the Commissioner meet on a regular basis and our officers deal with each other regularly. We share information or intelligence. That is an area in which we could probably improve, but we have taken tentative

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steps on that. We hope that over time we will increase the sharing of intelligence holdings. However, there are no specific discussions about internal police complaints.

The Hon. JAN BURNSWOODS: However, you do not think that your whole job in relation to the police should be handed to the PIC?

Mr COHEN: I do not.

The Hon. JAN BURNSWOODS: Some of the evidence we heard this morning suggested that some people might want to do that.

Mr COHEN: I believe that our focus on complaints has delivered real results for New South Wales Police and the broader community. The debate seems to be whether the PIC should be able to do it all or whether the Ombudsman should do it all. In defence of the current system, the Office of the Ombudsman brings its broader public sector experience. We share that both ways. We undertook an investigation in relation to transit officers last year. Part of our expertise in police investigations was able to be directly transferred to our examination of the complaints system for people who exercise some similar functions.

It goes the other way as well. We have two projects on foot in which the Ombudsman has a reasonably significant role. One involves examining difficult complainants and the other involves examining whistleblowers. That broader public sector experience will feed back into our complaints work with police as well. That is a real support for maintaining a generalist agency having a role in complaints handling. It is a real strength that we bring to it. It would be a real loss to the detriment of NSW Police if that were not continued. I could speak of the other advantages for some time, but that is a particular one.

The Hon. JAN BURNSWOODS: We will leave that to the Chair to decide. Do you think that the role of the Ombudsman and what comes out of complaints handling and so on is doing sufficient in relation to longer-term prevention strategies?

Mr COHEN: In relation to getting better outcomes for the community, I think it is. We have two projects on foot at the moment, one dealing with policing domestic violence and the other dealing with police pursuits that are informed partly by our complaints work and partly by other investigative work. Not only do I hope they improve the outcomes for the community but also that they will result in a commensurate decrease in conduct allegations coming out of those matters. We have done projects looking at the use of OC spray and the use of confidential information by police. That is a particular area in which there has been a real change in the way that police view the use of confidential information. Our investigations and the setting of clear rules that were explained to all officers with good enforcement have unquestionably resulted in cultural change. Complaints are part of that, but I certainly do not think they are all of it. Corruption prevention more broadly is a much bigger brief, perhaps lying more naturally with the agency that is most focused on corruption.

Mr STEVEN CHAYTOR: Today we have had considerable discussion about a requirement from your office that the police undertake a survey of 500 complainants to ascertain the level of satisfaction about the way complaints have been handled. Much of that discussion, particularly from the police, focused on that as an onerous task—it is time and resource consuming. Do you wish to comment?

Mr COHEN: I am not entirely sure what the police think we have asked them to do. What we have asked them to do with local management issues—

Mr GEOFF CORRIGAN: It is a section 16 notice, I think they said.

Mr COHEN: —in the end we had to use a direct investigation because we could not coax them to do it—is to collect information in relation to locally managed issues and whether people were happy. For example, at the end of dealing with a complaint about rudeness the

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person involved would be asked, "Are you satisfied with the way in which your complaint has been handled?" That would be done to inform NSW Police management as much as the oversight agency and the community that they can have confidence that most people are satisfied with how these minor matters are handled by local commanders. That has had some success and some impressive results for New South Wales Police. My best recollection is that about 90 per cent of the people surveyed were satisfied with the way in which their matters were handled.

We had that direct investigation in place for two quarters and received information in relation to those matters. Because there was a good compliance rate, we removed the formal requirement, but we asked police to ensure that they continued to collect this information so they could be assured that commanders were dealing with these matters properly. As to the resources involved, police have raised some concerns and said that perhaps a better way to do it would be by way of dip sample. I have indicated that I am happy to look at a proposal in relation to that and to run a trial. If that works well, we are entirely happy to proceed on that basis. If it does not then we will give some honest feedback about that as well. As to the exact person hours it takes police to do that, I cannot say.

CHAIR: Presumably it would have involved a letter to each complainant asking them to tick a box.

Mr COHEN: Less than that I would hope. At the end of speaking to a complainant they would be asked whether they were satisfied with the outcome and the response would be recorded. Hopefully it is much less than writing and sending a letter.

CHAIR: About 15 seconds?

Mr COHEN: One would hope.

The Hon. JAN BURNSWOODS: I thought the suggestion was more that this was revisiting complaints later to assess their satisfaction.

Mr COHEN: No, we would rather they assess satisfaction at the time they deal with the less serious matters. That would be a preferable approach. It is better to know at the time if they are not happy and see whether the problem can be fixed rather than going back later.

The Hon. DAVID CLARKE: The truth is that you would not know how much time the police had to spend doing that survey, would you?

Mr COHEN: The truth is that I would not know exactly how much time they spend doing it.

The Hon. DAVID CLARKE: No. Thank you.

Mr MALCOLM KERR: How would you characterise the Office of the Ombudsman's relationship with the New South Wales Police?

Mr COHEN: I think it is a positive and robust relationship.

Mr MALCOLM KERR: It is certainly robust.

Mr COHEN: I will provide a couple of examples. Last week and next week I am convening a round-table meeting with 12 local area commanders to discuss preliminary recommendations arising out of our domestic violence review. We will speak to them about some of our thoughts and things that we have heard and ask them what they think about those matters. Falling over themselves is probably a little strong, but local commanders have been very keen to attend. I speak to local commanders almost every day of the week. Generally it is a very constructive relationship. Undoubtedly there is tension in the

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relationship. Sometimes I am saying things they do not want to hear, sometimes I am investigating matters that they do not want investigated and sometimes I am looking at their conduct and they are not happy about it. I accept that. I know it is not a relationship without its tension, but it is fair to say that commanders, in conjunction with the Ombudsman, have achieved a lot out of complaints over the past 10 years and the foundation of that has been constructive engagement about how matters are dealt with.

Mr MALCOLM KERR: How often do you speak to Assistant Commissioner Carroll?

Mr COHEN: I would speak to Mr Carroll on almost a weekly basis. I meet with him every second month and we have a schedule of matters that we discuss. We keep track of those matters—joint projects or matters where we have made recommendations and we are following up how police deal with them. I think it is a very professional and good relationship.

Mr GEOFF CORRIGAN: You referred earlier to looking at police investigations that might not have been properly carried out or where wrong judgments have been made. If something happened in 2000 and down the track some officers involved in the investigation had left the force or were on stress leave, is there any capacity for the police or the Office of the Ombudsman to require them to provide information?

Mr COHEN: If someone has left the force, using powers under section 19 of the Ombudsman's Act, which brings in some of the royal commission powers, we can require them to attend and give evidence if we are conducting an investigation. However, they are not required to give evidence in respect of matters where they might otherwise have a common law privilege; for example, self-incrimination or legally privileged information.

For officers who are on stress leave, we are able to require them to attend and give evidence. Of course, we are able to ask them questions even when they may incriminate themselves. However, if I was advised that an officer was on stress leave and there were good medical reasons why they could not give information, then it is unlikely that I would require them to do that.

CHAIR: You indicated in your evidence earlier that there were more deficiencies in investigation of Category One complaints than in other matters where the police pursue them. I think in your submission you have identified things like lack of expertise on the part of local commands, competing police priorities and resources and so forth as the reasons for that. I think you proposed a central professional conduct unit or increasing the resources available to the Professional Standards Command to try to overcome that problem. Have those proposals been raised with the police, and what was their response?

Mr COHEN: The proposals have been discussed informally, and I understand the police were considering those matters themselves. One of the problems with Category One complaints was a requirement under what were called the Dresden protocols, which arose out of the Police Integrity Commission's investigation, that they be moved to another command to be investigated. All local commands have a number of competing priorities. Where I guess something does not directly affect their officers there is less of an incentive to deal with those matters quickly and effectively. We think that the proposal to put in place a risk assessment process should mean that more of those matters should be able to be dealt with locally, provided there is rigorous oversight.

In addition, there is a range of smaller, more serious matters, particularly some of the serious drug allegation matters, where we have agreed with suggestions from local commands that they should be dealt with centrally. However, the Professional Standards Command, rightly given its limited resources, I suppose, has said that it is unable to deal with it at that time. So individually we have raised those matters and certainly they have been the subject of informal discussion but in terms of a formal request we have not made that at this stage.

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CHAIR: I think there are three areas you indicated in your submission that the Office of the Ombudsman had experienced some problems in relation to the powers that are available to the office to externally oversight police complaints. I was wondering where things are up to in relation to those, whether there has been a proposal for legislative change. One of them was the need for legislation to remove any obstacles to the provision of relevant information to the Ombudsman, for example information withheld on the basis of legal professional privilege; monitoring of police complaint investigations, clarification is suggested to be needed as to whether the Ombudsman's officers can confer with police investigators during breaks in interview, and the third is appropriate management action in relation to officers. There is said to be needed clarification of the grounds on which police may refuse requests from the Ombudsman to review management action taken against officers who have engaged in serious misconduct.

Mr COHEN: In relation to the first issue around accessing information for monitors, at an operational level we have had further discussions about that and I am confident that those will be solved through those discussion processes, although I think the legislation could be clearer in terms of our access to information during monitored investigations.

CHAIR: And that is discussion with New South Wales Police?

Mr COHEN: That is right. In relation to access to legal advice, again on a case-by-case basis we are mostly able to persuade New South Wales Police that there would be value in making available information to us for the purpose of doing our job, but it would certainly be appropriate for that information to be generally made available to us in our oversight functions. I understand, although I stand to be corrected, that we have previously made the observation that other Ombudsman offices are able to access legally privileged information for the purpose of their functions but the Ombudsman is unable to obtain it for the purpose of his functions not only in police but in relation to all of our jurisdictions. In relation to the issue of the Commissioner reconsidering matters following our recommendation, there has been no change in terms of the legislation and we have not pursued that in a formal way other than through our submission to the Committee.

CHAIR: Just returning to the issues of the review, I take it you will be putting up in the review proposals you have discussed about not requiring local commanders to issue LMIs through the CMT process?

Mr COHEN: That is right. We have already raised that issue with the Ministry review, and certainly it is something we will continue to press as the review takes place, and indeed in any forum that we get an opportunity to do it.

CHAIR: Can I just in the time remaining turn to counter terrorism? Have you received any complaints about police exercise of counterterrorist powers?

Mr COHEN: We have not received any complaints that directly concern the exercise of powers under the Terrorism (Police Powers) Act.

CHAIR: In relation to the reviews of legislation you are doing, without going into things that you should not tell us, what sort of methodologies are you using or proposing to use to conduct the reviews?

Mr COHEN: In the first instance we are seeking to set up more information exchange arrangements with New South Wales Police so that we are able to obtain information in real time as events the subject of our review occur. In addition to that, we sought to make arrangements to monitor persons who are held in preventive detention. We have put in place arrangements to prepare an issues paper that we hope to release in the next few months to seek submissions from the various interested parties across New South Wales. We have put in place arrangements with the Police Integrity Commission to ensure that we can share information in relation to complaints we receive. We have briefed a number of community

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forums in relation to our work and met with senior police and other agencies in relation to the reviews. We propose next year to meet with agencies that are undertaking similar functions in other jurisdictions to talk to them about their experiences, such as the Public Interest Monitor in Queensland. In addition to that, we are continuing to closely monitor any media or other information that comes to our attention in relation to matters the subject of review.

CHAIR: There is now a significant range of powers with different sorts of oversight and a whole different series of Acts that give police power in relation to counter-terrorism. Do you think, as suggested by the PIC Inspector, that there is some benefit in consolidating all those bits of legislation into one Act and also perhaps to standardise the oversight and the approvals regimes?

Mr COHEN: My understanding is that many of the counter-terrorism powers have been referred to the Commonwealth in terms of the particular criminal offences that come about as a result of terrorist-related activity. In relation to the requirements to approve the use of powers, I think our submission makes observations that there are distinctions in relation to them, certainly in relation to what I think are called the special powers in part 2. For example, they are not the subject of judicial consideration; nor are they the subject of a review mechanism like the other powers. The starting premise that we have is that similar powers should be oversighted similarly and that where you increase the powers that you give to an agency you need to think commensurately about whether there should be an increase in the oversight of those powers.

CHAIR: The PIC Inspector today argued there should be a greater use of judicial oversight in some of those powers. Is that a view you would share?

Mr COHEN: I think it is something that we will specifically consider in our review.

CHAIR: One issue that has been raised in some of the submissions concerns the Controlled Operations Act and things done under the Act. Do you think there are particular problems in relation to the Controlled Operations Act and New South Wales Police counter-terrorist activities?

Mr ANDREWS: I deal with controlled operations so maybe I can answer this. The short answer is no. The Controlled Operations Act seems to be working quite well. We have not seen any particular problems, and we do not anticipate any particular problems. Just echoing one of the comments of the PIC Commissioner, because of the nature of the special powers the police will probably cross the T's and dot the I's even more than they normally do. I think that would be my expectation as well.

CHAIR: Is there anyone in the Ombudsman's office with security clearance to deal with counter-terrorism material that might emanate from the Federal level?

Mr ANDREWS: Two people work directly to me in the secure monitoring unit who have security clearances. We have just had security clearance obtained for two other people in the Police Team who are working on the counter-terrorist reviews and they are done through a national agency.

CHAIR: So it would not be a substantial argument to put up to argue against increased oversight of counter-terrorist bodies that groups like the Ombudsman that might be doing some of the oversight would jeopardise the information flow from federal agencies. In addition to that, presumably you would adopt the same attitude as the PIC Commissioner who said he would kick in the doors that he needed to.

Mr ANDREWS: Yes. We think we have appropriate procedures in place. As you know, we have a highly secure office that we work from. We have gone to these steps that are not required of us but we have done so because we think it is appropriate to get security

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clearances for the people who are actually engaged in this sort of work. So we think we have covered all bases.

CHAIR: Do you think the involvement of New South Wales agencies with either national or international agencies, be it ASIO, the FBI or whatever, poses particular problems for oversight of counter-terrorist activities?

Mr COHEN: I think there are problems in a number of areas. One is that while we are permitted to oversight narrowly the exercise of functions by New South Wales agencies, there is not a facility for us to communicate with the oversight bodies for other agencies in relation to particular matters that we might be looking at, and there has been no facility provided for a free flow of information in that respect. The second, I suppose, is that in relation to some of the information that would be used in those types of operations—a particular example is telecommunications interception material. That is not material that New South Wales police is permitted to disseminate to us for the purpose of our reviews. Indeed, we have made it very clear to them that we think it would be unlawful for them to do that. So that limits the nature of the information for the purpose of our reviews that we are able to have regard to. I think that could prove to be a limiting factor in terms of the effectiveness of our reviews.

CHAIR: In terms of contacting other oversight bodies, would that require a legislative change in terms of your powers and duties?

Mr COHEN: In terms of exchanging information, yes. In terms of speaking to them more broadly about how we do our work, no.

Mr ANDREWS: There are already some anomalies where, for instance, the oversight body in the Commonwealth, the Commonwealth Ombudsman, has a distinct power in some Acts to provide information to the State Ombudsman but there is no reciprocal power to receive it or give it.

CHAIR: Do you think there is a danger that the extraordinary counter-terrorism powers given to police might be used by police in non-terrorist situations and used for ordinary police work?

Mr ANDREWS: There is a fairly strict definition of what these powers can be used for. So while the general description is about criminal acts relating to the loss of life, it has to be for a particular ideological cause so there are certain threshold tests. That is just a matter of objective fact; they either exist or they do not exist.

(The witnesses withdrew)

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CHAIR: Dr Kennedy and Mr Murphy, thank you for coming to give evidence to the Committee of the Office of the Ombudsman and the Police Integrity Commission. Your evidence today is to assist us in our inquiry into the ten-year review of the police oversight system in New South Wales. We are delighted to have your evidence.

CAMERON LIONEL MURPHY, President, New South Wales Council for Civil Liberties, and

MICHAEL HARTLEY KENNEDY, Academic, University of Western Sydney, Bankstown Campus, affirmed and examined:

CHAIR: The Committee has received a submission from the Council for Civil Liberties. I take it is your desire that that submission be made part of your sworn evidence and made public.

Mr MURPHY: It is.

CHAIR: Dr Kennedy, I understand there are some matters that you wish to raise in confidential session.

Dr KENNEDY: I am happy to deal with it confidentially, or in whatever way the Committee decides.

CHAIR: I should indicate to Committee members that I had a discussion with Dr Kennedy a few days ago, and it seems to me that it is the sort of material that could be dealt with more fully in confidential session at the end of these public proceedings.

Dr KENNEDY: Yes, Mr Chair.

CHAIR: Do either of you wish to make an opening statement?

Mr MURPHY: We are of the view that there is a serious problem in the way that Category 2 complaints are dealt with. The Ombudsman and the Ombudsman's Office are doing a fantastic job of investigating complaints, but they are dealing with those matters in circumstances where they either do not have sufficient legislative scope to fully investigate them or do not have the funding to do that adequately.

The Police Integrity Commission has about three times the resources of the New South Wales Ombudsman, and in our view the Ombudsman is reliant on local area commanders investigating complaints and simply oversighting that process. That leads to a situation where most people who complain to our organisation and discover this cannot believe that police are effectively investigating police and that the Ombudsman is not conducting the full investigation independently of police. That is all I would say in addition as an opening statement.

CHAIR: Dr Kennedy, do you want to add anything?

Dr KENNEDY: All in Civil Liberties do not agree with each other on everything we do. We are a very broad-based organisation. I agree with much of what Mr Murphy has to say, but I look at the macro as well. The system in place is very fragmented. For example, and topically, anti-terrorism investigation is a multi-disciplinary framework of policing. It involves the State, Commonwealth policing agencies, Intel agencies, fire brigade and ambulance, with an army of lawyers mixed in. Despite this, the New South Wales Police Integrity Commission at one stage wanted the jurisdiction to look at it and to audit anti-terrorism investigation.

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It does not seem to make sense that it only has jurisdiction to look at New South Wales Police. On top of that is the PIC legislation and a whole range of people—Jacqueline Milledge, who is the Senior Deputy State Coroner, or Justice Stewart—could never work at the Police Integrity Commission because a lifetime ago, in another era, they were police officers in New South Wales. Yet a range of other people who have worked with NSW Police—such as interstate or Commonwealth police, or even lawyers who have advised NSW Police—are able to work at the PIC, and there does not seem to be a conflict of interest.

In regard to talk about a multi-agency approach, the PIC does not have the jurisdiction to investigate anything other than New South Wales Police, but it has a budget that is far in excess of ICAC's budget, for example. Yet ICAC has to deal with everything else other than police. The PIC does not have responsibility for public education in respect of what it does, yet ICAC does have that responsibility. More importantly, there are jurisdictional issues across all of this in that you have the New South Wales Crime Commission with not even a parliamentary oversight committee. So employees of the Crime Commission can engage in questionable conduct and no other government agency has jurisdiction to look at it. A recent example is an Australian Federal Police [AFP] agent and an investigator from the Crime Commission who were both alleged to have had unsatisfactory communication with a target of the Crime Commission. I am led to believe that the AFP officer has now been dismissed—I am not quite sure why—yet no-one has the jurisdiction to even look at the activities of the Crime Commission investigator.

At the end of the day, the rule of law is the foundation of what we do. The rule of law is not just about enforcing the law, but also about the humanity of it. There has to be an equal balance, and the law should be applied equally. All these agencies are competing with each other for funding and consequently arguing that they are more important than the other, and this huge competition has left a fragmented mess. On top of all of that, I am led to believe that the majority of complaints being made about the policing institution are made by police themselves. They are as dissatisfied with the system as is the public. We get a whole heap of complaints from police themselves complaining about the police organisation, especially its upper management. The Ombudsman cannot deal with those because they are deemed to be administrative or management issues—to do with the promotion system and things like that. I will not go further. I have an example that would be best given in camera. But it is my submission that if it is all over the place it is because the system is all over the place.

CHAIR: Can I draw from that—and the precise example we can deal with later—that part of the problem is that with so many different agencies there is a potential gap in the oversight, and that complaints may well fall through cracks because the oversight mechanism is dependent upon the agency and that is so fragmented?

Dr KENNEDY: It is because it is fragmented, yes. But it is also because these days competency is measured in terms of productivity, and if it seems there is not going to be a quick resolution of some of these matters, or that there may not be a resolution at all, there is a tendency for organisations not to pay too much attention to things and say, "We do not have jurisdiction" or, "We will get back to you." These matters get old and lose their impetus, and members of the public or police lose faith in the system.

Mr MURPHY: There are two ways that you can look at that. I think it is right to say that there are gaps in the process. There are a couple of outcomes from those gaps. One is that the public do not know whom to complain to; they are not sure whether to go to the Ombudsman, or whether it is a Police Integrity Commission matter, or whether it falls elsewhere. Also, if you have an issue that is particularly difficult, or where there is questionable jurisdiction, you get all of the agencies passing the buck and saying, "It's not us."

We have one example where we raised an issue about police promotions that came to our attention at the Council. We took it up with all of the bodies, and for some time none of

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the bodies thought it was really a matter that came within their core area of dealing with the complaints. Ultimately, the matter was investigated and dealt with. But there are gaps in the process, particularly from the public's perspective. You simply do not know where to go, and when one agency says, "Look, it's not our issue, go to one of the others," and those others do the same thing, there is a reduction in public confidence that the system is able to cope with serious complaints.

Dr KENNEDY: And I would finish off by saying—and I have spoken to Cameron and I think we are agreed on it—that when we look at the rule of law in terms of these things, the rank and file police are entitled to the same benefits of the rule of law as members of the public are, and they have not been getting it. I think the times of the royal commission, what has happened then, what is happening now, we are looking at different timeframes, different areas, a different organisation and different problems, and we have got to move on a little bit. But we have also got to bear in mind that there is no affirmative action program in terms of this where any group—in particular the lower-level functionaries within the criminal justice system—should be given special attention if those at the top seem to get the benefit of the humanity of the law and those at the bottom we seem to impress upon them that what they have got to be subject to is the enforcement of the law. It is supposed to be an equal thing and it does not seem to be that way.

CHAIR: Picking up on that last point, one of the comments in the submission suggests that if lower-level police are doing what they are told by senior police and complaints come in that there should be blame attached to the senior police, it should not just all fall on the heads of the junior police—that is a potted version of what is involved. I am wondering if there are particular examples or cases that you could tell us about?

Dr KENNEDY: I think Operation Viking is a classical example. There is no secret of the fact that it was a New York strategy policing. But they did not embrace all of the supervisory or the oversight mechanisms that the New York Police Department put in place with it. Police were not mentored, they were seconded, and it gave patrol commanders an opportunity to get rid of their dead wood. In New York this is not what happened; different things happened. There were different reasons. I cannot go into it, we just do not have enough time. But, as a consequence, a whole range of young police that were immature and inexperienced just did the bidding of certain other senior police and created enormous problems not only for the public but also for their rank and file colleagues in different stations who have to pick up the mess. This group run in, create a whole range of problems and then run out and the local police would be expected to clean up the mess.

That is one of the big areas, and senior police, because they are non-operational, if complaints were made to the Ombudsman about it, it was not considered to be a corrupt complaint or whatever, it was a management issue. Needless to say, we had examples that the same senior police that were complained about actually had to oversight complaints into themselves and then reviewed the Ombudsman's directions into themselves themselves. Nothing happened to them but they mysteriously resigned. And that is the problem.

Mr MURPHY: There is no system in place that formalises accountability for senior police. So if they provide a direction to junior police and say, "This is the way you need to go about doing that", a complaint is made, the complaint is sustained, the action is taken against the officer who has followed the direction of the senior police and there is no mechanism for accountability of those senior police really except for their performance bonuses if junior officers underneath them have a large level of complaints that may affect that. But, other than that, there does not seem to be any formal process where they are also held accountable for mistakes that they cause through the directions that they provide.

CHAIR: You just mentioned the performance bonus, and it is in the submission. Can you tell us a bit more about that?

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Mr MURPHY: As we say in our submission, it is our view that there is a clear conflict of interest because at the moment Category 2 complaints—the complaints that are about serious police corruption that should go to the Police Integrity Committee—they are dealt with by the Ombudsman. The process is that the Ombudsman will refer the complaint to the local area commander to investigate. The local area commander who investigates that has performance targets and in their packages they are able to receive a 12.5 per cent bonus if they reach the performance targets, and those targets include, amongst other things, reducing the level of complaints.

So it creates a conflict of interest because there is an interest for the police in reducing the number of complaints or not sustaining them, and they are the people who are primarily involved in the investigation. The Ombudsman simply, it seems to us, overlooks that process. So they can audit it, can look at the response from the local area commander and can further investigate, if that is necessary, but, as I said in my opening statement, the reality of the situation is the Ombudsman's office, while we think it does a terrific job, in the circumstances just does not have the resources or the funding to go and investigate all of those matters themselves and to do it properly. In our view it would be better to have a single complaints body or certainly to have the Ombudsman investigating all Category 2 complaints themselves; not relying on local area commanders but conducting an independent investigation.

CHAIR: You do not go so far as to say that what we have been talking about is local management issues, LMIs, that they should be investigated by the Ombudsman? You are content for those to be investigated by police?

Mr MURPHY: The police, as I understand it, have given evidence this morning saying that there are a lot of spurious complaints that are lodged, small issues people are complaining about, police being rude and so forth, that consume a lot of police resources. I think it would be better to have one organisation and that may fix the problem where there are gaps between the organisations at the moment and it should be investigated independently. If the complaint from the police is that there are many complaints that are not serious, there are already systems in place to categorise them and deal with them appropriately according to the level of seriousness involved.

What I think should be done is to remove them into another organisation—perhaps the Ombudsman's office—where you resource them appropriately so they can come in, extract the information they need to examine the complaint, can deal with it and report on it. At the moment the Ombudsman's office is relying on police to do that.

CHAIR: Are there any circumstances in which you think the police should be able to investigate allegations against police?

Mr MURPHY: I think that it is best to have an independent body investigating police. If you really want to ensure that there is not going to be a perception of bias, that the public have confidence that it is going to be treated seriously and investigated appropriately, it is best to have another organisation properly resourced to do that.

CHAIR: Are there any questions from Committee members?

The Hon. DAVID CLARKE: Following on from that, would you say that any complaints against barristers should be investigated by others apart from barristers?

Mr MURPHY: I do not know why that is relevant to this.

The Hon. DAVID CLARKE: What you are saying is that police should not investigate police, it should be independent, it should be a separate body. Why would that principle not apply to all groups: doctors, lawyers, barristers, accountants?

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Mr MURPHY: Members of Parliament?

The Hon. DAVID CLARKE: And members of Parliament.

Mr MURPHY: What I am saying here is that you have a number of different organisations that have overlapping responsibility to conduct investigations that are quite similar in their nature. You have the police investigating themselves, you have the Ombudsman's office investigating the Police Integrity Commission, and the problem is that there are gaps in that process. What I think can assist to resolve it is to at least with complaints of a serious nature—and I think they are Category 3 complaints certainly; Category 2 complaints may be better dealt with with one organisation looking at them. I think you can distinguish complaints on the type of basis where it is simply about someone's perhaps professional conduct is obviously going to be a different complaint to something that may involve serious allegations of corruption or perhaps if a police officer is alleged to have been rude; it is quite different to police corruption.

Maybe police could investigate management issues and deal with the way they manage themselves as a profession, but I think you can separate that from dealing with complaints. We are not talking about frivolous complaints here, they are quite serious.

The Hon. DAVID CLARKE: But you did mention rudeness, for instance. Unless I am wrong did you not say that police should not investigate complaints of rudeness by other police?

Mr MURPHY: No, what I am saying is I think there are different issues here: one is about how you manage yourselves as a profession—the police force, its role in educating its officers and training them—and an issue of accountability of senior police over the actions of junior police. I think the second issue is when a member of the public complains about a specific issue and the way it is dealt with by a police officer in an investigation or some other way. I think you can separate the management issues in that sense and there should be a separate body investigating serious complaints.

The Hon. DAVID CLARKE: Should police investigate minor complaints against themselves?

Mr MURPHY: What I say is that at the moment you have different organisations with different responsibilities and what is happening is complaints are not being investigated appropriately. That system is not working. Perhaps it is better to have a system where all the complaints are investigated by one body which is properly resourced.

The Hon. DAVID CLARKE: But not involving police?

Mr MURPHY: I think that the investigative process should be one where police have an opportunity to respond, but the process of investigating and fact finding is one that should be done independently. And if there is an issue then police should be brought in, given an opportunity to respond, of course, as a matter of fairness, and then recommendations about the complaint or issue should be put forward.

The Hon. DAVID CLARKE: Yes, but responding by police is one thing, what I am talking about is the body to investigate complaints against police. You are saying that in no circumstances should police be involved in that investigative process?

Mr MURPHY: How are you suggesting that police should be involved in that process?

The Hon. DAVID CLARKE: What I am putting is that you are suggesting that they should not be and I am saying would that apply to all professions: barristers, politicians, doctors?

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Mr MURPHY: Let me give you an example. At the moment somebody says, perhaps as one of the examples we have provided in our submission, that they were rashly profiled unfairly by police; pulled up because they were travelling in a car through a particular suburb and told, "Don't come back into this suburb. Stay where you belong". The process at the moment is they make a complaint to the Ombudsman, who they think is going to independently investigate; they are concerned about the way the police have treated them and that they might become a target of police. The Ombudsman simply refers that complaint to the local area commander who is the direct supervisor of the police involved. The police then investigate it, and in this case they decided that no further action was warranted and sent that back to the Ombudsman.

The Hon. DAVID CLARKE: So even in minor matters such as rudeness police should not be investigating police?

Mr MURPHY: What I am saying is at the moment that system is not working, having the police investigate themselves because there are serious issues that are not being appropriately investigated. So if you can find a way that police can successfully investigate themselves I think it is worth looking at. But at the moment it is not working.

CHAIR: Is your concern the substance of the police investigating police or the public perception of that and the fact that people do not have faith in it?

Mr MURPHY: I think the probability is both, that in some cases there are certainly conflicts there if police attain a direct benefit from reducing the number of complaints or making it look as though the number of complaints have been reduced, and I think that provides a view that there may be bias involved in the way that they address them or look at it, but I think more importantly that most of the people who decide to complain it takes a lot of courage to do so and they expect that their complaint is going to be dealt with independently and they fear reprisals from police and they are just astounded to know that the first thing that happens in the process is that their complaint goes from the Ombudsman to other police who work with the police who they are complaining about.

The Hon. DAVID CLARKE: This would be a public perception that would apply to other professions and trades, would it not?

Dr KENNEDY: This is not just about public perception, it is also about police themselves that complain about their own organisation. I think one of the problems is with the minor complaints I do not think we would have an issue—or there may be some micro discussion around it—but if with minor complaints police were involved and it was used as an education process rather than as a serious weapon to try and rid the organisation of someone who is doing serious damage, in other words, criminal allegations, I do not think there is anything wrong with the organisation then using their own resources in order to have an education process that they can then bring serious flaws to light. But I think even that has to be overlooked by someone who is independent, and that is not just for the public.

That is what the rank and file want as well. They want to be able to be reassured that if they complain about their senior colleagues, or senior counterparts, that they will be reassured that they are not going to be treated like whistleblowers, that they are not going to suffer the fate that whistleblowers suffer, that their careers will not be sidelined and that they are not going to have to be looking for something else to do for a living, that they are going to be treated fairly. I do not think we have an issue but there are two areas here, and one is education. It is much the same as universities that are looking at anti-plagiarism software. You can use it as a weapon or as an education tool whereby everybody benefits. I think somehow or another that is what the complaints process has to sort of do; it has to address both those issues so that serious matters can be dealt with seriously and others can be dealt with in terms of exit interviews and that sort of stuff.

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Mr MURPHY: Also to answer that, what you are putting to me is, effectively, there is a problem with these professions and that they are all the same. Doctors investigating doctors, lawyers investigating lawyers. The single thing that is different about police, of course, is that people fear reprisals that they might be targeted by police, beaten up even, and so on. If you make a complaint to a professional body about a doctor, a bunch of doctors are not going to go around to your house and belt you up or arrest you the next day. The same thing is not going to happen if you make a complaint about lawyers. That is the thing that makes police—

Dr KENNEDY: I do not agree with you about lawyers.

The Hon. DAVID CLARKE: You think that is the only reason for the difference?

Mr MURPHY: There is not that problem with those other professional bodies, or the perception of that problem and people have a real fear that they might be targeted by police in terms of arrest or being roughed up or whatever, that you do not have any of those other professions.

The Hon. JAN BURNSWOODS: What about politicians? You might be a bit frightened of some of them?

The Hon. DAVID CLARKE: They investigate themselves, do they not?

Ms LEE RHIANNON: Well, they should not do that.

The Hon. DAVID CLARKE: That is what I am saying.

Mr MALCOLM KERR: Dr Kennedy, I think you said that police do not have the same benefit of the rule of law as do members of the public.

Dr KENNEDY: No, they do not.

Mr MALCOLM KERR: What did you mean by that?

Dr KENNEDY: We only have to go back to the royal commission. There were issues during the royal commission where the royal commission itself embraced the standard that the ends can justify the means whilst investigating the New South Wales police department on the basis that the end cannot justify the means. There were many issues of complete hypocrisy. The Ombudsman does not have the powers to investigate the royal commission; it does not have the jurisdiction to look at the royal commission and neither does anyone else. There are serious complaints that were lodged against the royal commission that are part of the public record. Most people would be unaware of what they are today. Those complaints will never go anywhere.

Mr MALCOLM KERR: Are you saying most people would be aware or would not be aware?

Dr KENNEDY: I think most people are aware. Most people involved in the criminal justice industry would be aware of what they are. I do not know if they can be sustained or not. The bottom line is no-one had to answer for them. No-one had to even address it. Yet some of those people have gone on. One of them is sitting on the wheat board inquiry in Canberra and he has never had to account for some of the things he is alleged to have done. Justice Wood himself is on the Police Integrity Commission and he has never had to account for what he has done. The rule of law is quite specific. Everybody is as accountable as everybody else; it seems to me we are all equal but some people are just a bit more equal than others in this setting. It has gone to the point of being absurd. We live in a real world and I am not suggesting that that is not the reality. All of a sudden at least there was

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pretence, there was once a time of pretence that everybody had an equal show in things. These days there is not even pretence about it.

On the basis of that, a lot of junior police, who were very immature, were outcome driven and they should not be. I gave a lecture the other week to a group of junior police, and not one of them knew what the rule of law meant. When I spoke to a colleague at university, he said "Don't be surprised, most lawyers would not know what it meant either." He gave examples where that is quite the case and yet we are talking about the foundations of our system. I think police have been, and in many instances deserve to be, targeted. They deserve to be pulled into line, but they are no different to any other vocation or profession. I take on board what you say there. In particular, they are not as well educated as most of the vocations who insist that they should be given separate treatment. They do not understand the system as much. We think they do, but they do not. I am an ex-police officer and I can tell you for certain: they simply do not understand a lot of these things.

Mr MALCOLM KERR: You have raised important concerns about Operation Vikings. Can you provide written material to the Committee in relation to what you saw as the shortcomings?

Dr KENNEDY: I think the Macquarie Fields inquiry would give you adequate information.

Mr MALCOLM KERR: If you could tell the secretariat, so we could get that material—

Dr KENNEDY: You have the material, it is a parliamentary report and it discusses that.

Mr MALCOLM KERR: Is that what you are talking about in relation to Operation Vikings?

Dr KENNEDY: That was in particular one of the instances that I was talking about where a group of people went into an area and moved out. It benefited neither the rank and file police nor the public.

Mr MALCOLM KERR: That is on the public record and that is what you were referring to?

Dr KENNEDY: Yes.

Mr MALCOLM KERR: Mr Murphy, page 11, point 39 commences "The CCL is highly critical of the Ombudsman providing police and other agencies with drafts or partial drafts of the final report and recommendations". Has the Ombudsman ever given you justification for that practice?

Mr MURPHY: We raised this issue with the Ombudsman. The Ombudsman put to us that it was about, effectively, natural justice and putting to the police the information contained in their report. Really, you need to ask the Ombudsman his view about that. I think it is an inappropriate process. Our view is that the Ombudsman should engage in fact finding, take evidence, determine the facts in terms of the operation of any legislation, then, if it needs to put particular questions to people it can do that and it should be an open and transparent process. Our concern is with the Ombudsman providing its findings to particular bodies like the police to comment on before it prepares a final report.

There may be a draft report but it is provided to stakeholders with a direct interest. It is not public, it is not open, it is not available to others. I think it would be a far better process for them to complete their report, make their decisions about recommendations independently and for there then to be a public debate about the merits of their

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recommendations. I am certain that they have great integrity and they do a good job in the process. I think it is just a constraint in the limited resources they have and the way they go about doing it. If the Ombudsman's office were better resourced they may be able to manage that process better.

The Hon. DAVID CLARKE: When you say they give as their reason a question of natural justice, you do not believe that there is a question of natural justice? You say the Ombudsman is wrong on that?

Mr MURPHY: No, that is not what I am saying. I am saying that the question arises if the police or an interested party—say, for example, the current report into the use of police sniffer dogs—the Ombudsman provides the police with a draft report and asks the police for comments. A number of other stakeholders have an interest in that issue. Why are they not provided with a copy of the report and asked to comment on the recommendations? Why are the police provided at all? It would be a better process if specific allegations or issues arose for the Ombudsman, in the process of fact finding, before determining the facts and before making a recommendation, to put those issues to the police and ask them to answer them. It will be better if it were a public process.

The Hon. DAVID CLARKE: The Ombudsman says it is the same process that they use with other statutory bodies: They also supply them with a draft.

Mr MURPHY: I understand that is the case, yes. I think it is a general comment about that process. Really, if the Ombudsman is going to independently review legislation, any of the issues of fact and so forth that they might want to test can be done in the fact-finding exercise. If someone makes an allegation about the conduct of police or another agency about them, the Ombudsman can put it to the agency and ask how they respond to this. Once the Ombudsman has all of that evidence, the Ombudsman should then determine what the facts are and should make recommendations based on that. Our view is that it is not appropriate to provide draft recommendations, or a draft report, to agencies and ask them to comment on the draft. That is something that should go to the Minister responsible and be released. It should be dealt with in the public sphere. People may want to comment on the Ombudsman's recommendations.

(The witnesses withdrew)

(Evidence continued in camera)