



briefing paper



NSW Parliamentary Research Service

External oversight of police conduct

Briefing Paper No 6/2015

by Lenny Roth

ISSN 1325-5142
ISBN 978-0-7313-1933-6
June 2015

© 2015

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior consent from the Manager, NSW Parliamentary Research Service, other than by Members of the New South Wales Parliament in the course of their official duties.

External oversight of police conduct

by

Lenny Roth

NSW PARLIAMENTARY RESEARCH SERVICE

Gareth Griffith (BSc (Econ) (Hons), LLB (Hons), PhD),
Manager, Politics & Government/Law (02) 9230 2356

Daniel Montoya (BEnvSc (Hons), PhD),
Senior Research Officer, Environment/Planning (02) 9230 2003

Lenny Roth (BCom, LLB),
Senior Research Officer, Law..... (02) 9230 2768

Christopher Angus (BA(Media&Comm), LLM(Juris Doctor)),
Research Officer, Law (02) 9230 2906

Tom Gotsis (BA, LLB, Dip Ed, Grad Dip Soc Sci)
Research Officer, Law (02) 9230 3085

Andrew Haylen (BResEc (Hons)),
Research Officer, Public Policy/Statistical Indicators (02) 9230 2484

John Wilkinson (MA, PhD),
Research Officer, Economics (02) 9230 2006

Should Members or their staff require further information about this publication please contact the author.

Information about Research Publications can be found on the Internet at:

<http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/V3L1stRPSubject>

Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion.

CONTENTS

Summary	i
1. Introduction	1
2. Basic models of police oversight	2
3. History of police oversight in NSW	3
3.1 Overview.....	3
3.2 Wood Royal Commission.....	3
4. Current oversight system in NSW	4
4.1 Overview.....	4
4.2 NSW Police Force.....	5
4.3 Ombudsman NSW	7
4.4 Police Integrity Commission NSW	10
4.5 NSW State Coroner	14
5. Complaint statistics and surveys in NSW	14
5.1 Number of complaints	14
5.2 Number of critical incidents.....	15
5.3 Satisfaction survey.....	16
6. Reviews of oversight system in NSW	16
6.1 Ten year review of police oversight system: 2006	16
6.2 Review of Police Integrity Commission Act: 2011	17
6.3 Review of oversight of police critical incidents: 2013	18
6.4 Joint Standing Committee report: 2014.....	19
6.5 Review of Ombudsman’s inquiry “Operation Prospect”: 2015	20
7. Other Australian jurisdictions	21
7.1 Overview.....	21
7.2 Commonwealth	23
7.3 South Australia	25
7.4 Victoria.....	30
7.5 Queensland	31

8. England and Wales	35
8.1 Organisation	35
8.2 Functions	35
8.3 Number of complaints	36
8.4 Reviews and reform	37
8.5 Public confidence surveys	39
9. Northern Ireland	39
9.1 Organisation	39
9.2 Functions	40
9.3 Number of complaints	41
9.4 Reviews	41
9.5 Satisfaction surveys	42
10. Conclusion	43

SUMMARY

A 2015 Legislative Council Committee report considered that the police oversight system was in need of significant reform. The NSW Government has appointed the former Shadow Attorney-General, Andrew Tink, to review the system, including examining options for a single civilian oversight model.

Basic models of police oversight

Prenzler and Ronken categorised police complaints systems into three models:

- The *internal affairs* model involves the police agency establishing dedicated internal affairs units to conduct investigations. The external ‘oversight’ involved in this model is limited to that provided by the courts and elected officials.
- The *civilian review* model involves police conducting investigations and determining disciplinary actions, with the external agency playing a monitoring role. This model represents a compromise between those demanding and those opposing a fully independent system of complaints investigation.
- The *civilian control* model involves genuinely independent investigation of complaints and processing of other intelligence about police misconduct. Police ‘administrative matters’ would be the exception to the rule. This model is based on the principle that (except for minor matters) the police should not investigate police. [2]

History of police oversight in NSW

The NSW Ombudsman, established in 1974, was given jurisdiction over police complaints in 1979, with a review-style brief. The Independent Commission Against Corruption (ICAC) was set up in 1989 after decades of endemic corruption across government and the police. Following the Wood Royal Commission of Inquiry in the mid-1990s, the NSW Ombudsman retained its review role in relation to police complaints and a new body – the Police Integrity Commission – was established to take over from ICAC the role of investigating serious police misconduct. The Wood report did not favour combining external review and corruption investigation roles into a single agency for various reasons including that the two roles needed different approaches. [3.1]-[3.2]

Current oversight system in NSW

The following table provides an overview of the current oversight system [4.1]

Organisation	Role	Legislation
NSW Police Force	Handles the vast majority of complaints and also investigates critical incidents (i.e. cases of serious injury or death of a person arising from a police operation).	<i>Police Act 1990</i>
Ombudsman NSW	Reviews NSW Police complaint handling; and also investigates some complaints. Only has jurisdiction in relation to critical incidents if a complaint is made in relation to the incident.	<i>Police Act 1990</i> <i>Ombudsman Act 1974</i>

Police Integrity Commission NSW	Investigates serious misconduct in response to complaints, reports, and on its own initiative. Reviews NSW Police handling of certain complaints. Can investigate a critical incident if it raises an issue of serious officer misconduct.	<i>Police Act 1990</i> <i>Police Integrity Commission Act 1996</i>
State Coroner	Holds inquests into deaths of persons arising from a police operation.	<i>Coroner's Act 2009</i>

Complaint statistics and surveys in NSW

The following table provides a summary of key statistics in NSW. [5.1]-[5.2]

Organisation	Number of complaints in 2013-14
NSW Police	NSW Police received 4,995 complaints against police officers from both NSW Police Force staff and members of the community. The complaints contained 9,150 separate allegations, 18% of which were sustained. More than 77% of complaints were successfully resolved without needing a formal investigation.
Ombudsman	The Ombudsman received 3,390 complaints about police: 579 complaints were investigated by the police with Ombudsman oversight; 1,163 were resolved by police through informal resolution with Ombudsman oversight; 413 complaints were assessed as local management issues and referred to local commands; 1,093 were assessed as requiring no action; and 1 complaint was investigated by the Ombudsman.
Police Integrity Commission	PIC assessed 1,297 complaints against sworn and administrative officers. PIC oversighted 24 investigations by the police. PIC conducted 141 preliminary investigations and 36 full investigations. Of finalised investigations, 24% resulted in material being sent to NSW Police for consideration of further action. No finalised investigations resulted in briefs being referred to the DPP.
State Coroner	In 2013, there were 17 cases reported to the Coroner of persons who died as a result of, or in the course of, police operations.

Reviews of oversight system in NSW

There have been a range of reviews relating to the oversight system:

- A 2006 Joint Standing Committee review of the police oversight system disagreed with submissions by NSW Police and the NSW Police Association, both of which called for a single agency model of oversight.
- A 2011 Ministerial review of the *Police Integrity Commission Act 1996* supported maintaining the PIC and the ICAC as separate entities.
- A 2013 independent review of the oversight of police critical incidents made several recommendations including that the various oversight bodies form a Committee to review issues relating to critical incidents on a regular basis; and that legislation provide for the Ombudsman to oversight critical incidents subject to certain limitations.
- A 2014 Joint Standing Committee report agreed with some criticisms made by the Ombudsman and PIC of the 2013 review recommendations. The Committee also stated that it was not convinced that duplication existed in the oversight of critical incidents.
- A 2015 Legislative Council Select Committee report referred to problems

with the multi-agency model, and with the police investigating most police complaints. It recommended that another Legislative Council Committee examine options for establishing a single oversight body that deals with complaints quickly, fairly and independently. [6.1]-[6.5]

Other Australian jurisdictions

Complaints and issues of misconduct: At the Commonwealth level and in all other States, the police force handles the vast majority of police complaints. The Commonwealth has broadly the same model of external oversight as in NSW: a general Ombudsman reviews police complaint handling and a police integrity body reviews police complaint handling and investigates cases involving significant corruption. The South Australian model is similar but the two external oversight bodies are: a dedicated Police Ombudsman and the Independent Commissioner Against Corruption. There is currently a review of this model in South Australia. In Queensland, Victoria and Western Australia, broad-based anti-corruption commissions review police complaint handling and investigate certain complaints and issues of misconduct. [7.1]

Critical incidents – serious injury and death: Most Australian jurisdictions appear to adopt the same approach as NSW in dealing with critical incidents; the police investigate the incident and, in cases of death, the coroner has jurisdiction to conduct an inquest. A police oversight body could conduct an investigation in relation to a critical incident based on a complaint or using its own-motion powers. In Queensland, the Crime and Corruption Commission oversees investigations of police-related deaths. [7.1]

England and Wales

The Independent Police Complaints Commission (IPCC) was established in 2004, replacing the Police Complaints Authority. The police deal with the majority of cases but must refer serious cases – whether or not someone has made a complaint – to the IPCC. The IPCC also considers some appeals from people who are dissatisfied with the way the police force has dealt with their complaint. A 2013 House of Commons Committee report concluded that the IPCC had neither the powers nor the resources to achieve its objectives. The Government responded by committing more resources to the IPCC and conducting a review of the police complaints system. In 2014, the Government released a consultation paper with proposals for reform and in March 2015 it responded to the consultation process. [8.1]-8.5]

Northern Ireland

The Police Ombudsman for Northern Ireland was established in 2000 and was said to be “the first fully funded and completely independent police complaints organisation in the world”. The Police Ombudsman is required to investigate all serious complaints; and it also investigates police critical incidents. In 2012 the Department of Justice published a consultation paper on the future operation of the Police Ombudsman. It appears that no proposals for reform emerged from this consultation process. According to the Police Ombudsman’s 2013-14 survey, 65% of complainants thought they had been treated fairly but only 50% said that they were satisfied with the service they received. In contrast, 80% of police officers thought that they had been treated fairly but only 67% of police officers were satisfied with the service they had received. [9.1]-9.5]

1. INTRODUCTION

The police perform a vital and often dangerous role in protecting the community through preventing, detecting and investigating crime. This role comes with significant responsibilities and powers, including the use of force. In the vast majority of cases, the police discharge these responsibilities and exercise these powers in a professional and ethical manner. In some cases they do not. The Wood Royal Commission of Inquiry in the mid-1990s uncovered pervasive corruption and led to the establishment of a new body – the Police Integrity Commission – to take over from the Independent Commission Against Corruption the role of investigating serious police misconduct. The Ombudsman retained its role of primarily reviewing NSW Police complaint handling.

In recent times, the effectiveness of this system has been called into question. On 25 February 2015, a Legislative Council Select Committee report on an Ombudsman’s inquiry into the investigation of police misconduct allegations dating back to 1998 referred to “dysfunction” within the system and recommended that another Legislative Council Committee inquire into options to reform it, “with a view to establishing a single, well-resourced police oversight body”.¹ On the same day, Premier Baird announced that, if re-elected, his Government would appoint former Shadow Attorney-General, Andrew Tink, to review the system.² On 21 May 2015, the NSW Government released the terms of reference for the review.³ In brief, these include:

1. Options for a single civilian oversight model for police in NSW.
2. Any gaps in the current police oversight system.
3. Functional overlap between oversight bodies.
4. Best practice models from around the world.
5. A recommended model for police oversight including guidance on its design, structure, cost and establishment.

Mr Tink has been asked to complete his report by 31 August 2015.

This paper begins with an outline of some basic models of police oversight. It then provides some background to the system in NSW, summarises the current system, and discusses several reports over the past decade which have examined this system, in whole or part. Next, the paper reviews the police oversight systems in other Australian jurisdictions, looking in detail at the Commonwealth, South Australian, Victorian and Queensland models. The final sections of the paper examine two police oversight bodies that are often referred to in commentaries: the Independent Police Complaints Commission in England and Wales and the Police Ombudsman for Northern Ireland.⁴

¹ Legislative Council Select Committee on the Conduct and Progress of the Ombudsman’s Inquiry “Operation Prospect”, [The conduct and progress of the Ombudsman’s inquiry “Operation Prospect”](#), 25 February 2015, Recommendation No. 6

² Mike Baird, [Baird Government to improve police oversight](#), *Media release*, 25 February 2015

³ NSW Government *Have Your Say*, [Review of Police Oversight in NSW](#), 21 May 2015

⁴ For a summary of the police oversight systems in the United States and Canada, see F Ferdik, J Rojek and G Alpert, ‘Citizen oversight in the United States and Canada: an overview’

2. BASIC MODELS OF POLICE OVERSIGHT

In a 2001 article, Prenzler and Ronken categorised police complaints systems into three basic models: the internal affairs model, the civilian review model, and the civilian control model.⁵ In summary, they described the models as follows:

- The *internal affairs* model involves the police agency establishing dedicated internal affairs units to conduct investigations. The external ‘oversight’ involved in this model is limited to that provided by the courts and elected officials. It was noted that “there is now an extensive critique of internal affairs units that stresses the apparent pathological ability of police to objectively investigate their peers”.
- The *civilian review* model covers a number of possible relationships between the police and the external body, although it usually involves police conducting investigations and determining disciplinary actions, with the external agency playing a monitoring role. The agency may audit complaint investigation files, respond to appeals by complainants, provide an advisory role in investigations, and occasionally mount joint investigations with police. This model represents a compromise between those demanding and those opposing a fully independent system of complaints investigation. Critics of civilian review agencies emphasise the problem of continued dependence on police investigators, as well as politicisation and lack of appropriate powers.
- The *civilian control* model is based on the principle that the police should not investigate police. Civilian control involves genuinely independent investigation of complaints and processing of other intelligence about police misconduct. Police ‘administrative matters’ would be the exception to the rule. The police would retain a large role in discipline and the maintenance of integrity, with prime responsibility for mediation of complaints. The independent commission in this model would not employ seconded or retired police officers from the subject agency. There are two types of criticisms that have been made of this model. The first concerns the competency of the investigators and their capacity to penetrate the police world. The second is that external investigation will destroy the authority and responsibility of police managers.

These models are simplistic; and it will be seen later in this paper that the oversight systems adopted in NSW and other Australian jurisdictions contain elements of both the civilian review and civilian control models. This is also true of the oversight bodies in England and Wales and Northern Ireland, although they are much closer to the pure civilian control model.

(2013) 14(2) *Police Practice and Research* 104

⁵ T Prenzler and C Ronken, ‘Models of Police Oversight: A Critique’ (2001) 11 *Policing and Society* 151 at 156-173

3. HISTORY OF POLICE OVERSIGHT IN NSW

3.1 Overview

Prenzler provides this brief history of police oversight in NSW as follows:

The New South Wales Ombudsman, established in 1974, was given jurisdiction over police in 1979, with a typical review-style brief. The Independent Commission Against Corruption was then set up in 1989 after decades of endemic corruption across government and the police. Although the ICAC had some successes it was unable to devote sufficient resources to adequately address police misconduct. The Wood Commission of Inquiry into the New South Wales Police ran from 1994 to 1997 and identified widespread, diverse and entrenched corruption and other abuses. An interim report led to the establishment of the powerful Police Integrity Commission (PIC) in the same year. The new system in place in 1999 left the review of minor and intermediate complaints investigations with the Ombudsman and gave responsibility for serious matters to the PIC, along with oversight of police integrity management.⁶

3.2 Wood Royal Commission

The Wood Royal Commission's 1996 interim report noted that there was a general acceptance that a new approach was needed in dealing with police complaints and corruption investigations; and it stated that "the debate has largely centred upon the model now appropriate for NSW, and the agency or agencies which should be tasked with appropriate responsibility".⁷ It concluded that the model that should be adopted was one in which:

- the Police Service retains a meaningful role in dealing with management matters and customer service complaints, and certain matters of misconduct; but in which
- there is both oversight of the Police Service, and an external responsibility to investigate serious corruption.⁸

The report added:

Although combining these external oversight and corruption investigation responsibilities in a single agency would have the attraction of simplifying and integrating the process, that option is not favoured because of:

- the different approaches needed for supervision of the complaint system, and for corruption investigation;
- the need for a specific focus on corruption with an aggressive and sophisticated investigative capacity
- the resources needed for effective monitoring of the complaint system.

⁶ T Prenzler, 'The evolution of police oversight in Australia (2011) 21(3) *Policing and Society* 284 at 287

⁷ J Wood, *Royal Commission into the New South Wales Police Service: Interim Report*, February 1996, p88.

⁸ J Wood, note 7, p91

Again, these propositions seem to have general acceptance, and the issue which is left is whether the external corruption investigation agency should be a dedicated Unit or Division created within the ICAC, or a new purpose-built agency.⁹

The report did not favour creating a Unit within the ICAC for several reasons including: there was a public perception that the ICAC had failed to tackle police corruption; there was a real difficulty in structuring a Division of the ICAC to keep it separate from the rest of the organisation; and there was a risk that the resources of the Division would be drawn away from police corruption.¹⁰

The report had previously rejected the idea, advanced in some submissions, of establishing a single agency with total responsibility for the management of police complaints and the investigation of police corruption, to the exclusion of the Police Service.¹¹ While noting that this model would have some advantages including unifying the presently fragmented system, providing a cost-effective structure, and preventing duplication of effort and operational conflict, the report concluded that these were outweighed by several disadvantages. The disadvantages were similar to those noted above in relation to the idea of combining external oversight and corruption investigation responsibilities in a single agency. In addition, the report noted that “the ownership and responsibility of the Police Service to deal with its problems, and the incentive to pursue integrity as a first priority may be severely threatened”.¹²

4. CURRENT OVERSIGHT SYSTEM IN NSW

4.1 Overview

The following is a brief summary of the roles that the NSW Police Force and external oversight bodies have in reviewing police conduct.

Organisation	Role	Legislation
NSW Police Force	Handles the vast majority of complaints and also investigates critical incidents (i.e. cases of serious injury or death of a person arising from a police operation)	<i>Police Act 1990</i>
Ombudsman NSW	Reviews NSW Police complaint handling; and also investigates some complaints. Only has jurisdiction in relation to critical incidents if a complaint is made in relation to the incident.	<i>Police Act 1990</i> <i>Ombudsman Act 1974</i>
Police Integrity Commission NSW	Investigates serious misconduct in response to complaints, reports, and on its own initiative. Reviews NSW Police handling of certain complaints. Can investigate a critical incident if it raises an issue of serious officer misconduct.	<i>Police Act 1990</i> <i>Police Integrity Commission Act 1996</i>

⁹ J Wood, note 7, p91

¹⁰ J Wood, note 7, p91-92

¹¹ J Wood, note 7, p89-90

¹² J Wood, note 7, p90

State Coroner	Holds inquests into deaths of persons arising from a police operation.	<i>Coroner's Act 2009</i>
---------------	--	---------------------------

4.2 NSW Police Force

Complaints: The police complaints system is governed by the *Police Act 1990*, Part 8A. These provisions confer responsibilities on and give powers to the Police Commissioner. The Commissioner has delegated these to commanders and managers in order to enable the localised management and administration of complaints.¹³ The Professional Standards Command (PSC) within NSW Police primarily has an advisory role in relation to complaint handling.¹⁴ The following is a summary of the main provisions of Part 8A. It is difficult to separate out the roles of the Police Commissioner and Ombudsman and the summary below therefore refers to several provisions that relate to both.

Receipt of complaints: A person may make a complaint about police conduct to the Police Commissioner; and a complaint is taken to be made to the Commissioner if it is made to a police officer personally, or received by a member of the NSW Police Force.¹⁵ Information about all complaints received must be registered in the complaints information system.¹⁶ If the Commissioner receives a “notifiable complaint”, he or she must send a copy of the complaint to the Ombudsman.¹⁷ A “notifiable complaint” is any complaint that (in accordance with guidelines agreed between the PIC and the Ombudsman after consultation with the Commissioner) is required to be notified to the Ombudsman.¹⁸ The current guidelines outline a range of matters that are notifiable: e.g. criminal conduct, corrupt conduct, any unreasonable conduct resulting in death or injury, and any unreasonable conduct involving the use of weapons.¹⁹

Investigation of complaints: The Commissioner may decide that a complaint should be, or does not need to be, investigated.²⁰ If the Commissioner decides that the complaint should be investigated, he or she must notify the Ombudsman and the complainant, and must investigate the complaint.²¹ If the Commissioner decides that the complaint does not need to be investigated, he or she must notify the Ombudsman and the complainant. If the Ombudsman disagrees with the Commissioner’s decision not to investigate a complaint, he or she must notify the Commissioner who must then investigate the complaint.

The Commissioner’s power to investigate a complaint includes the power to

¹³ See NSW Police Professional Standards Command, [NSW Police Force Complaint Handling Guidelines](#), March 2012, p2

¹⁴ See NSW Police Professional Standards Command, note 13

¹⁵ *Police Act 1990*, s 127

¹⁶ *Police Act 1990*, s 129

¹⁷ *Police Act 1990*, s 130

¹⁸ *Police Act 1990*, s 121

¹⁹ NSW Ombudsman, [Guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner of Police under the Police Act 1990](#), 11 December 2013

²⁰ *Police Act 1990*, s 139

²¹ *Police Act 1990*, s 139

resolve the complaint in the manner that he or she thinks fit; including by means of alternative dispute resolution.²² A police officer carrying out an investigation (a) must carry it out in a manner that, having regard to the circumstances of the case, is both effective and timely, and (b) must have regard to any matters specified by the Commissioner or Ombudsman as needing to be examined or taken into consideration.²³ If it appears to a police officer that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is to cause appropriate proceedings to be instituted against the person.²⁴

After an investigation has been concluded and a report finalised, the Commissioner must advise the complainant of the decision; and must provide the Ombudsman with a copy of the finalised report, advice as to the Commissioner's decision concerning any action taken or to be taken, and whether or not the complainant is satisfied with this.²⁵

If the Ombudsman is not satisfied that a complaint has been properly investigated, he or she may request the Commissioner to conduct a further investigation, specifying the deficiencies in the earlier investigation.²⁶ The Commissioner is not obliged to comply with this request, but must notify the Ombudsman of his or her reasons. If the Ombudsman is not satisfied with the Commissioner's decision concerning any action to be taken as a result of an investigation, the Ombudsman may request the Commissioner to review the decision.²⁷ The Commissioner is not obliged to change the decision, but must notify the Ombudsman of his or her reasons.

Critical incidents: The NSW Police Force investigates cases of serious injury or death arising out of police operations. These investigations are conducted in accordance with its critical incident guidelines. In 2013, when announcing a review of the oversight of critical incidents, the NSW Government stated that the guidelines would be made publicly available but this is not yet the case.²⁸ The 2013 review report provided this overview of the guidelines (in part):

Under the Guidelines, the Regional Commander is responsible for determining and declaring an incident as a critical incident. The Regional Commander is also responsible for appointing a suitably experienced Critical Incident Investigation Team (CIIT). The primary role of the CIIT is *"to ensure the critical incidents are rigorously and thoroughly investigated"* and to *"conduct a full investigation of the incident including relevant events and activities leading to the incident"*.

The Guidelines provide that the CIIT's responsibility is to investigate those matters that constitute the critical incident and to examine the circumstances surrounding the critical incident itself. This includes the prosecution of any person for any offence found to have been committed and/or the presentation of a brief of evidence to the on duty State/Deputy State Coroner.

²² *Police Act 1990*, s 144

²³ *Police Act 1990*, s 145

²⁴ *Police Act 1990*, s 148

²⁵ *Police Act 1990*, s 150

²⁶ *Police Act 1990*, s 153

²⁷ *Police Act 1990*, s 154

²⁸ B O'Farrell, [Oversight of police critical incidents](#), *Media Release*, 18 September 2013

Under the Guidelines, the Senior Critical Incident Investigator (SCII) is also "*responsible for reporting any management issues that need to be addressed concerning any police officer*". The Guidelines contain a long list of matters as a "*guide to required action*" that must be considered by the SCII including:

- Ensuring that any complaint issues are identified and reported to the Region Commander in a timely manner to ensure that appropriate notifications to relevant agencies such as the Ombudsman and Police Integrity Commission are completed.
- In the case of death, to arrange for the appropriate notification form to be prepared and forwarded to the Duty State/Deputy State Coroner.
- To ensure that a copy of the situation report has been forwarded to the Commissioner's Inspectorate; and
- Upon completion of the investigation, to prepare an investigation report.

In circumstances where a critical incident involves the death of a person or serious injury as a result of the use of physical force by police officers, the investigation must be led by the Homicide Squad and reviewed by an officer from the Professional Standards Command. In the case of death the CIIT investigators liaise with the State Coroner and Counsel assisting the Coroner to ensure that all relevant evidence is gathered for the Coronial inquest.²⁹

4.3 Ombudsman NSW

The Ombudsman was established under the *Ombudsman Act 1974* with jurisdiction in relation to a wide range of public authorities. With respect to the NSW Police Force, the Ombudsman's functions are set out in the *Police Act 1990*, Part 8A and involve reviewing and investigating police complaints.

The Ombudsman is appointed by the Governor for a period of up to seven years. The Ombudsman may employ staff and, with the approval of the responsible Minister, make use of the services of any public authority. In 2013-14, the Ombudsman's total expenses were \$29.3 million and it employed an average of 193 full-time equivalent staff.³⁰

Complaints: The following is a summary of the main provisions of Part 8A. As noted, when outlining these provisions it is difficult to separate out the roles of the Police Commissioner and Ombudsman and the summary below therefore overlaps with the summary in the section on the NSW Police Force.

Receiving notifications of complaints: If the Police Commissioner receives a "notifiable complaint", he or she must send a copy of the complaint to the Ombudsman.³¹ A "notifiable complaint" is any complaint that (in accordance with guidelines agreed between the PIC and the Ombudsman after consultation with the Commissioner) is required to be notified to the Ombudsman.³² The current guidelines outline a range of matters that are notifiable: e.g. criminal

²⁹ R McClelland, [Oversight of Police Critical Incidents](#), Report to Hon Barry O'Farrell Premier of NSW, 29 November 2013, p12-13

³⁰ Ombudsman NSW, [2013-14 annual report](#), p28, p32

³¹ *Police Act 1990*, s 130

³² *Police Act 1990*, s 121

conduct, corrupt conduct, any unreasonable conduct resulting in death or injury, and any unreasonable conduct involving the use of weapons.³³

If the Commissioner decides that the complaint does not need to be investigated, he or she must notify the Ombudsman and the complainant.³⁴ If the Ombudsman disagrees with a decision not to investigate a complaint, he or she must notify the Commissioner who must then investigate the complaint.

Receiving complaints directly: A person may make a complaint about police conduct directly to the Ombudsman.³⁵ If the Ombudsman receives a complaint about police conduct, he or she must refer the complaint to the Commissioner, unless it is not in the public interest to do so.³⁶ If the Ombudsman decides that the complaint should be investigated, he or she must notify the Commissioner, who must then investigate the complaint.³⁷

Monitoring and review of police investigations: The Ombudsman may monitor the progress of a complaint investigation by the Commissioner if he or she is of the opinion that it is in the public interest to do so.³⁸

At the conclusion of a complaint investigation by the Commissioner, he or she is to send a copy of the report to the Ombudsman. For the purpose of determining whether a complaint has been properly dealt with, the Ombudsman can request certain types of information from the Commissioner.³⁹

If, at the conclusion of the Commissioner's investigation, the Ombudsman is not satisfied that a complaint has been properly investigated, he or she may ask the Commissioner to conduct a further investigation.⁴⁰ The Commissioner is not obliged to comply with this request, but must notify the Ombudsman of the reasons for this decision. If the Ombudsman is not satisfied with the Commissioner's decision concerning any action to be taken as a result of an investigation (including a decision to take no further action), the Ombudsman may request the Commissioner to review the decision.⁴¹ The Commissioner is not obliged to change the decision, but must notify the Ombudsman of his or her reasons. The Ombudsman may prepare a report on the investigation and, if so, must provide a copy of the report to the complainant, the Commissioner and the Minister.⁴² The Ombudsman may also make a special report to Parliament.

³³ Ombudsman NSW, [Guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner of Police under the Police Act 1990](#), 11 December 2013

³⁴ *Police Act 1990*, s 139

³⁵ *Police Act 1990*, s 127

³⁶ *Police Act 1990*, s 132

³⁷ *Police Act 1990*, s 140

³⁸ *Police Act 1990*, s 146

³⁹ *Police Act 1990*, s 151

⁴⁰ *Police Act 1990*, s 153

⁴¹ *Police Act 1990*, s 154

⁴² *Police Act 1990*, s 155

Investigation by Ombudsman: If of the opinion that it is in the public interest to do so, the Ombudsman may make a complaint, together with any investigation of the complaint, the subject of an investigation under the *Ombudsman Act 1974*.⁴³ The Ombudsman may take action before the commencement of an investigation by the Commissioner, during the progress of such an investigation or after the conclusion of such an investigation.

The Ombudsman has broad investigative powers.⁴⁴ The Ombudsman may require a public authority to give the Ombudsman a statement of information, or any document or other thing (s 18); and may also enter and inspect any premises occupied or used by a public authority, and may inspect any document or thing on the premises (s 20). The Ombudsman may make or hold inquiries, and for these purposes, has the powers (except for the special powers) conferred on a Commissioner under the *Royal Commissions Act 1923* (s 19). A person can refuse to provide a statement or document, or refuse to answer a question, if he or she has a ground of privilege, whereby, in court proceedings, he or she could resist a like requirement: s 21.

After an investigation by the Ombudsman has been completed, the Ombudsman must prepare a report, which may include such comments and recommendations as he or she considers appropriate.⁴⁵ The Ombudsman must provide a copy of the report to the complainant, the police officer who was the subject of the complaint, the Commissioner and the Minister.⁴⁶ After receiving such a report, the Commissioner must notify the Ombudsman of the nature of the action taken, or to be taken, as a result of the report.⁴⁷

Special reports: The Ombudsman may, at any time, make a special report to Parliament on any matter arising in connection with the exercise of his or her functions in relation to police complaints under Part 8A of the *Police Act*.⁴⁸

Critical incidents: The Ombudsman only has jurisdiction in relation to critical incidents if a complaint is made about the incident to the NSW Police Force or to the Ombudsman. A recent case of Ombudsman oversight of a critical incident investigation was its monitoring of the police investigation into the death of Roberto Laudisio-Curti.⁴⁹ In that case, the Ombudsman received notification of an internal police complaint raising issues of excessive use of force; and this meant that the Ombudsman had jurisdiction to oversight the investigation. The Ombudsman's report on the investigation commented on the oversight system in relation to critical incidents as follows (in part):

There is currently no requirement for police to notify this office of incidents involving the death or serious injury of persons during policing activities unless a

⁴³ *Police Act 1990*, s 156

⁴⁴ *Ombudsman Act 1974*, Part 3

⁴⁵ *Police Act 1990*, s 157

⁴⁶ *Police Act 1990*, s 157

⁴⁷ *Police Act 1990*, s 158

⁴⁸ *Police Act 1990*, s 161

⁴⁹ Ombudsman NSW, [Monitoring of the police investigation into the death of Roberto Laudisio-Curti](#), A Special Report to Parliament under s.161 of the Police Act 1990, February 2013

complaint has been made about the conduct of the officer/s involved in the critical incident. This means that most critical incident investigations are not subject to any independent scrutiny or oversight by this office.

In our view, there will always be occasions where it is in the public interest for there to be some independent scrutiny of critical incident investigations into the death or serious injury of persons during policing activities. Accordingly, it would be preferable for police to notify this office of all critical incidents at the outset irrespective of whether the conduct of any of the involved officers is to be the subject of a complaint notified to this office. We appreciate that the declaration of a critical incident of itself does not suggest the involved officers have engaged in misconduct. The timely notification of critical incidents to this office would ensure that we are well placed to identify any possible misconduct issues in the absence of a complaint and decide whether it is in the public interest to oversight the critical incident investigation.

In our view, such a system would not interfere with or duplicate the statutory role of the Coroner. The Coroner is responsible for examining the circumstances of the critical incident in order to determine manner and cause of death. Our oversight of the critical incident investigation is confined to scrutinising the investigative process to ensure that the critical investigation team conducts an appropriate, accountable and transparent investigation into the critical incident.⁵⁰

When announcing a review of the oversight of police critical incidents in September 2013, the NSW Government announced that the NSW Police Commissioner would now advise the Ombudsman of all critical incidents, not only those that are subject to a formal complaint.⁵¹

4.4 Police Integrity Commission NSW

The Police Integrity Commission (PIC) was established under the *Police Integrity Commission Act 1996*. PIC's main functions are to prevent officer misconduct, and to detect or investigate, or manage or oversee other agencies in the detection or investigation of officer misconduct.⁵²

Officer misconduct means:

- police officer misconduct;
- corrupt conduct of an administrative officer of the NSW Police Force; or
- misconduct of a Crime Commission Officer.⁵³

Examples of police officer misconduct are:

- (a) police corruption,
- (b) the commission of a criminal offence by a police officer,
- (b1) misconduct in respect of which the Commissioner of Police may take action under Part 9 of the *Police Act 1990*,

⁵⁰ Ombudsman NSW, note 49, p6

⁵¹ B O'Farrell, [Oversight of police critical incidents](#), *Media Release*, 18 September 2013

⁵² *Police Integrity Commission Act 1996*, s 13(1)

⁵³ *Police Integrity Commission Act 1996*, s 5

(c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,

(d) any other matters about which a complaint can be made under the *Police Act 1990*:

PIC is required to turn its attention principally to “serious officer misconduct”.⁵⁴ The Act does not define the term “serious officer misconduct”.

The Police Integrity Commissioner is appointed by the Governor for a term up to five years. NSW police officers and former NSW police officers cannot be appointed to, employed or engaged by, or seconded to the service of, the Commission.⁵⁵ Members of the Australian Federal Police or the police force of any other State or Territory or country can be seconded to or otherwise engaged by PIC. In 2013-14, PIC’s total expenses were \$18.2 million and it employed an average of 97 full-time equivalent staff.⁵⁶

Complaints, reports and issues of misconduct: The following is a summary of the main provisions in the *Police Integrity Commission Act 1996* relating to complaints, reports and issues of misconduct.

Receipt of complaints and reports: PIC can monitor complaints registered on the NSW Police Force complaints information system. Certain officers (e.g. the Police Commissioner, the Ombudsman, and the Crime Commissioner) have a duty to report to PIC any matter that they suspect on reasonable grounds concerns or may concern officer misconduct.⁵⁷ In addition, any person may make a complaint to PIC about police conduct (a “police complaint”)⁵⁸; or about a matter that involves or may involve corrupt conduct of an administrative officer,⁵⁹ or misconduct of a Crime Commissioner officer.⁶⁰ PIC may decide to investigate or take over the investigation of a police complaint or part of it, or refer the complaint or part of it to the Ombudsman or Police Commissioner to be dealt with under Part 8A of the *Police Act 1990*.⁶¹

Oversight of NSW Police complaint handling: As noted, one of PIC’s statutory functions is to manage or oversee other agencies in the detection or investigation of officer misconduct. There are no detailed provisions in relation to this function except in a case where PIC refers a matter for investigation by the Police Commissioner under Part 5 of the Act.⁶² PIC may, when referring a matter, recommend what action should be taken by the Police Commissioner; and may require the Commissioner to submit to the PIC a report or reports in relation to the matter and the action taken by the Commissioner.⁶³ If PIC is not

⁵⁴ *Police Integrity Commission Act 1996*, s 13(2)

⁵⁵ *Police Integrity Commission Act 1996*, s 10

⁵⁶ Police Integrity Commission, [2013-14 annual report](#), p62, p101

⁵⁷ *Police Integrity Commission Act 1996*, s 75D

⁵⁸ *Police Act 1990*, s 127.

⁵⁹ *Police Integrity Commission Act 1996*, s 75A

⁶⁰ *Police Integrity Commission Act 1996*, s75C

⁶¹ *Police Integrity Commission Act 1996*, s 70

⁶² *Police Integrity Commission Act 1996*, s 77

⁶³ *Police Integrity Commission Act 1996*, s 78

satisfied that the Commissioner has properly taken action in relation to a referred matter, PIC must inform the Commissioner.⁶⁴ If PIC is not satisfied with the Commissioner's response, it may submit a report to the Minister of Police; and if not satisfied with his or her response, may submit a report to Parliament.

Investigations: PIC may conduct an investigation:

- (a) on its own initiative, or
- (b) on a police complaint made or referred to it or on a police complaint of which it becomes aware, or
- (c) on an administrative officer complaint made to it, or
- (c1) on a Crime Commission officer complaint made to it, or
- (d) on a report made to it.⁶⁵

A complaint, to the extent that it is investigated by PIC, cannot be dealt with as a complaint under Part 8A of the *Police Act 1990* and for that purpose is taken not to be a police complaint, except as directed by PIC or by the regulations.⁶⁶ If the Police Commissioner is notified of a decision by PIC to investigate or take over the investigation of a police complaint, he or she must not commence any such investigation or, if such an investigation has already commenced, must discontinue it.⁶⁷ However, this does not prevent an investigation relating to an alleged offence that is conducted in accordance with arrangements made between PIC and the Commissioner.⁶⁸

PIC has a range of investigative powers including the power to require a public authority or official to provide a statement (s 25), to require any person to produce a document or other thing (s 26), and to enter and inspect public premises (29). It has the power to conduct a public or private hearing (s 33) and it can summon witnesses to give evidence and/or to produce documents or other things (s 38). The PIC Commissioner can issue search warrants (s 45) and the PIC Commissioner or an officer may seek a warrant under the *Surveillance Devices Act 2007* (s 50). PIC can also apply for a warrant under the *Telecommunications (Interception and Access) Act 1979* (Cth).

Witnesses cannot refuse to answer questions during a hearing, and also cannot refuse to produce documents that they are asked to produce.⁶⁹ However, if a witness objects to answering questions or producing a document, his or her evidence is not admissible against him or her in any civil or criminal proceedings, unless those proceedings are for an offence under the PIC Act (e.g. giving false or misleading evidence during an inquiry). The Commissioner may declare that all answers given or documents produced by a witness be regarded as having been given or produced on objection.⁷⁰

⁶⁴ *Police Integrity Commission Act 1996*, ss 79, 79A

⁶⁵ *Police Integrity Commission Act 1996*, s 23(1)

⁶⁶ *Police Integrity Commission Act 1996*, s 70

⁶⁷ *Police Integrity Commission Act 1996*, s 74

⁶⁸ *Police Integrity Commission Act 1996*, s 74

⁶⁹ *Police Integrity Commission Act 1996*, s 40

⁷⁰ *Police Integrity Commission Act 1996*, s 41

Assessments, opinions and recommendations: PIC may make assessments and form opinions as to whether police misconduct, misconduct of a Crime Commission officer, or corrupt conduct of an administrative officer has or may have occurred; and it can also make recommendations as to whether consideration should be given to the prosecution or the taking of action under Part 9 of the *Police Act 1990* (management of conduct within NSW Police Force) or other disciplinary action.⁷¹ PIC can also recommend the taking of other action that it considers should be taken. It cannot make a finding that a person has committed an offence; and nor is it authorised to make a recommendation that a person should be prosecuted.

PIC may prepare reports in relation to any matter that has been or is the subject of an investigation.⁷² PIC must prepare reports in relation to matters as to which it has conducted a public hearing. These reports are to be furnished to each House of Parliament. PIC may include in a report statements as to any of its assessments, opinions and recommendations.⁷³ The report must include, in respect of each affected person, a statement as to whether PIC is of the opinion that consideration should be given to:

- (a) the prosecution of a person for a specified criminal offence,
- (b) the taking of action against the person for a specified disciplinary offence,
- (c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer,
- (d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer.⁷⁴

Critical incidents: PIC does not have a specific role in relation to cases of serious injury or death arising out of police operations. PIC could conduct an investigation if it received or was notified about a complaint in connection with such a case which raised an issue of serious officer misconduct; or using its own-motion investigation powers.⁷⁵ Examples of recent PIC investigations in relation to critical incidents include its investigation of the police investigation into the death of Adrian Salter, which resulted from a complaint made to PIC;⁷⁶ and its investigation into the death of Roberto Laudisio-Curti, which appears to have been an own-motion investigation following the coronial inquest.⁷⁷

In the Salter case, PIC considered a submission that all critical incidents be investigated by a body independent of the NSW Police Force, and it concluded that it was for the government to decide whether the very large allocation of

⁷¹ *Police Integrity Commission Act 1996*, s 16(1)

⁷² *Police Integrity Commission Act 1996*, s 96

⁷³ *Police Integrity Commission Act 1996*, s 97

⁷⁴ *Police Integrity Commission Act 1996*, s 97

⁷⁵ *Police Integrity Commission Act 1996*, s 23

⁷⁶ Police Integrity Commission, [Operation Calyx](#), Report to Parliament, June 2013

⁷⁷ Police Integrity Commission, [2013-14 annual report](#), p29

resources that would be required to achieve this would be warranted.⁷⁸ PIC also discussed a submission that it should become a Review Officer for all critical incident investigations and reports. It noted problems with this, including that it might be disqualified from considering any complaint about the investigation; and that being a Review Officer would require it to enter into a close working relationship with the police officer investigating the incident.

4.5 NSW State Coroner

The Coroner is established and governed by the *Coroners Act 2009*. The Coroner's functions include ensuring "that all deaths, suspected deaths, fires and explosions concerning which a coroner has jurisdiction to hold an inquest or inquiry are properly investigated".⁷⁹ A senior coroner has jurisdictions and is required to hold an inquest concerning the death or suspected death of a person if it appears that the person died in the custody of a police officer, while escaping or attempting to escape from the custody of a police officer, or as a result, or in the course of, police operations.⁸⁰

A coroner may give a police officer directions concerning investigations to be carried out for the purpose of coronial proceedings.⁸¹ If during the course of an inquest the coroner forms the opinion that the evidence is capable of satisfying a jury that a person has committed an indictable offence; that there is a reasonable prospect that the jury would convict the person; and that the offence would raise the issue of whether the person caused the death, the coroner must suspend the inquiry and forward the matter to the DPP.⁸² The coroner holding an inquest must, at its conclusion, record in writing the coroner's findings as to the manner and cause of the person's death; but must not indicate or in any way suggest that an offence has been committed by any person.⁸³ The coroner may also make recommendations including that a matter be investigated or be reviewed by a specified person or body.⁸⁴

5. COMPLAINT STATISTICS AND SURVEYS IN NSW

5.1 Number of complaints

In 2013-14, the NSW Police Force received 4,995 complaints against police officers from both NSW Police Force staff and members of the community.⁸⁵ The complaints contained 9,150 separate allegations, 18% of which were sustained. The most common categories of complaint were: local management issues (1,765), customer service related (1,603), and investigations (1,135). There were 365 complaints about corruption/misuse of office, and 519

⁷⁸ Police Integrity Commission, note 76, p269

⁷⁹ *Coroners Act 2009*, s 10(1)(b)

⁸⁰ *Coroners Act 2009*, ss 23, 27

⁸¹ *Coroners Act 2009* s 51.

⁸² *Coroners Act 2009*, s 78

⁸³ *Coroners Act 2009*, s 81

⁸⁴ *Coroners Act 2009*, s 82

⁸⁵ NSW Police Force, [2013-14 annual report](#), p90

complaints of unreasonable use of force. More than 77% of complaints were successfully resolved without needing a formal investigation.

In 2013-14, the Ombudsman received 3,390 complaints about police.⁸⁶ 75% of complaints were notified by the NSW Police Force and PIC; 25% were direct complaints to the Ombudsman. 63% of complaints were made by the public and 37% were made by police officers. The most common complaint categories were misconduct (1,696), service delivery (1,145) and investigation (829). There were 290 complaints about misuse of public office and 503 about excessive use of force. The Ombudsman's actions in relation to finalised police complaints are shown below. The Ombudsman *investigates* very few cases (1 in 2013-14).

Action in response to formal complaints about police that have been finalised

Action taken	2009-10	2010-11	2011-12	2012-13	2013-14
Investigated by police and oversighted by us	1,143	998	846	706	579
Resolved by police through informal resolution and oversighted by us	751	979	1,309	1,168	1,163
Assessed as local management issues and referred to local commands for direct action	340	398	323	307	413
Assessed by us as requiring no action	857	899	909	990	1,093
Ombudsman report to Commissioner Minister and	1	0	2	2	0
Investigated by Ombudsman	1	4	1	5	1
Total complaints finalised	3,093	3,278	3,390	3,178	3,249

In 2013-14, PIC assessed 1,297 complaints against sworn and administrative officers of the NSW Police Force.⁸⁷ Of the 1,235 complaints assessed in regard to sworn officers, 396 were made direct to the PIC, 804 were extracted from the NSW Police Force complaints information system or were otherwise referred by the NSW Police Force or by the Ombudsman. PIC oversighted 24 NSW Police Force investigations. It also conducted 141 preliminary investigations and 36 full investigations. Of the finalised investigations, 24% resulted in material being communicated to NSW Police Force for consideration of further action. No finalised investigations resulted in briefs being referred to the DPP.

5.2 Number of critical incidents

The NSW Police Force does not publish statistics on critical incidents. The State Coroner is required to report annually to the Minister on the deaths or suspected deaths of persons who died in the custody or as a result, or in the course of, police operations.⁸⁸ The report for 2013 noted that there were 43 of these deaths reported to the Coroner in that year, including 17 deaths as a result of, or in the course of, police operations.⁸⁹

⁸⁶ Ombudsman NSW, [2013-14 annual report](#), p41ff

⁸⁷ Police Integrity Commission, [2013-14 annual report](#), p3, p16

⁸⁸ *Coroners Act 2009*, s 39

⁸⁹ NSW State Coroner, [Report by the NSW State Coroner into deaths in custody/police operations for the year 2013](#), March 2014, p17

5.3 Satisfaction survey

The only published survey that could be found of satisfaction with the police complaints system is a 2011 survey of the experiences of client advocates and legal practitioners with the NSW Police Force complaints process.⁹⁰ A total of 378 completed survey responses were received: the majority (61%) were client advocates in social or community services; 35% were legal practitioners. One half of respondents had personal experience submitting one or more police complaints. The survey found that 76% of users were dissatisfied with the complaint process and 75% of users were dissatisfied with the outcome. A high proportion (67%) also reported that clients with legitimate complaints declined to make a formal complaint against their advice; clients were reluctant to complain because – they were afraid of complaining (51%), they believed the behaviour was normal for police (42%), the process was too protracted (18%).

6. REVIEWS OF OVERSIGHT SYSTEM IN NSW

6.1 Ten year review of police oversight system: 2006

In November 2006, the Joint Standing Committee on the Office of the Ombudsman and the Police Integrity Commission published a report entitled *Ten year review of the police oversight system in New South Wales*. One key issue that it considered was whether, as submitted by NSW Police and the NSW Police Association, there should be a single agency model of oversight of police complaints. The report noted that:

The NSW Police Association described the current system of oversight as “cumbersome and complex”. In the Association’s view the PIC has become “the pre-eminent expert police oversight body” and “has successfully shown itself to be an effective corruption fighter”. It recommended that there should be one specialist police oversight body, which should logically be the Police Integrity Commission...

Similarly, NSW Police submitted that “in 2006 there is too much external oversight of police complaints and one external oversight agency too many”. It argued that the roles of the oversight agencies overlap in key respects and that,

because of their overlapping roles it would be sensible and cost effective to have one external oversight agency with powers to investigate serious police misconduct and to keep under scrutiny the systems police use to manage complaints.

Although NSW Police did not expressly state which body should fill the police oversight role, it was clear from the submission and evidence that their preferred single-agency model centred on the Police Integrity Commission.⁹¹

⁹⁰ J Goodman-Delahunty, A Beckley and B Hanckel, [The NSW Police Force complaints process: Experiences of client advocates and legal practitioners](#), Community Legal Centres NSW, 2012

⁹¹ Joint Standing Committee on the Office of the Ombudsman and the Police Integrity Commission, [Ten year review of the police oversight system in New South Wales](#), November 2006 Committee report, p21

The Committee did not agree with these submissions. It concluded (in part):

The oversight role performed by the NSW Ombudsman is not analogous to the role performed by the PIC and while the roles are complementary, the capacity for both roles to be performed effectively in one organisation has not been clearly made out. As both the Inspector of the PIC and the Commissioner of the PIC have pointed out, there is much to be said for the fact that the current police oversight system in New South Wales actually works. It is also a concern to the Committee that any administrative efficiencies that may be achieved in a merged body may be countered by the loss of less quantifiable but nevertheless important aspects of the oversight system, in particular public confidence.⁹²

In the final section of the report, the Committee concluded:

The framework for the current system embodies an appropriate balance between self-regulation and completely external oversight: it is more the case that the system needs to be streamlined and refocussed. However, any initiatives to promote further efficiencies and effectiveness within the police oversight system should accord with the following key principles, which the Committee considers to be necessary prerequisites for shifting the balances between self-regulation and external oversight...⁹³

The Committee outlined nine key principles including that “a distinct approach needs to be preserved between complaint handling and corruption investigation”; and “there must be provision for a sufficient level of oversight to ensure the proper and effective handling of complaints and to maintain public confidence in the police complaints system”.⁹⁴

6.2 Review of Police Integrity Commission Act: 2011

In November 2011, the NSW Government published *Review by the Minister of the Police Integrity Commission Act 1996*. One part of the review considered whether the functions performed by PIC should continue to be performed by a stand-alone body or whether they would be better performed as part of a specialist division of another body such as the Independent Commission Against Corruption. The report stated:

Some submissions to this review suggested there may be compelling policy reasons for such a step. These pointed to the potential synergy to be gained from combining expertise in corruption prevention and investigations.

It is important to recall, however, the principles that led to the establishment of the PIC set out by the Royal Commission into the NSW Police Service in 1996 – principally that different approaches and separate organisations are appropriate for the supervision of the complaint system concerning police and for corruption investigation.

Furthermore, even if the PIC were to be brought within the ICAC, there would be sound reasons for maintaining it as a stand-alone division of the ICAC with a

⁹² Joint Standing Committee, note 91, p44

⁹³ Joint Standing Committee, note 91, p137

⁹⁴ Joint Standing Committee, note 91, p137-138

specific statutory officer being invested with the relevant police oversight statutory functions.

The Government considers that State's integrity interests are best served at present by the PIC and the ICAC remaining separate entities. The Government considers that it is important to provide certainty and stability to the organisation, through a commitment to its continuation as a body and through the appointment of a permanent commissioner...⁹⁵

6.3 Review of oversight of police critical incidents: 2013

In November 2013, Robert McClelland presented his report to Premier O'Farrell on the oversight of police critical incidents. With respect to the issue of police having responsibility for investigating such incidents, the report noted:

The Terms of Reference to this Review state the NSW Police Force has unique skills, expertise and resources to investigate critical incidents and should therefore retain responsibility for investigating and reviewing critical incidents.

While this was the subject of some controversy, particularly among non-government organisations that made submissions, it is unquestionably the reality. The skills required to examine a Police related death or injury are the same as those required to investigate any other death or severe injury.

Police services are provided on a 24/7 basis and have at their disposal a range of technology and other resources to undertake an investigation including, for example, specialists and scientists, accident re-constructionists and engineers. The NSW Police Force is literally the only body in NSW with the ability to readily deploy experts with law enforcement experience who can physically and lawfully secure the scene of an incident, analyse evidence and plan and undertake a comprehensive investigation utilising modern forensic skills.⁹⁶

The report's recommendations to improve the oversight system included that:

- The NSW Police Force should, in the case of critical incidents involving death, prepare a Review of the Critical Incident Investigators Report which should be made publicly available as soon as is reasonably practicable after the Critical Incident Report has been completed.⁹⁷
- The Commissioner of Police, the State Coroner, the Police Integrity Commissioner, the Ombudsman and the General Manager of the WorkCover Authority constitute a Committee to ensure issues relevant to the investigation and oversight of police critical incidents are reviewed and resolved on a regular basis; and that consideration should be given to developing a Framework for Cooperation;⁹⁸

⁹⁵ NSW Government, [Review by the Minister of the Police Integrity Commission Act 1996](#), November 2011, p2-3

⁹⁶ R McClelland, [Oversight of Police Critical Incidents](#), Report to Hon Barry O'Farrell Premier of NSW, 29 November 2013, p43

⁹⁷ R McClelland, note 96, Recommendation No.3

⁹⁸ R McClelland, note 96, Recommendation No.4

- The Government consider proposing amendments to the *Police Act 1990* to include a new Part that provides for the oversight of critical incident investigations by the Ombudsman, such that: the NSW Police Force shall advise the Ombudsman of the occurrence of a critical incident; and the Ombudsman may provide oversight of the investigation of the critical incident if the Ombudsman considers that it is in the public interest to do so; provided that: such oversight would be conducted in accordance with arrangements agreed between the Ombudsman and the Commissioner of Police; and would not include the power to supervise, control or direct the course of the police investigation;⁹⁹
- The Government give consideration to requesting the Police Integrity Commission and the Independent Commission against Corruption confer with a view to examining the feasibility of those Agencies entering into a Memorandum of understanding to facilitate the sharing of staff, resources, expertise and capabilities.¹⁰⁰

6.4 Joint Standing Committee report: 2014

In August 2014, the Joint Standing Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission published its report *General Meetings 2014*. One section of that report examined the findings of the review of the oversight of police critical incidents and the responses of PIC and the Ombudsman.¹⁰¹ It noted that both of these agencies were opposed to some of the recommendations in the McClelland report, including most of those referred to above. The Ombudsman stated that the limitations in the proposed legislative provisions on the Ombudsman's oversight role in relation to critical incidents would diminish his current role. PIC was concerned about comments in the report which appeared to suggest that the ICAC and PIC should be merged; a matter which was said to be outside the review's terms of reference.

The Joint Committee generally agreed with the Ombudsman's and PIC's views on the report. It considered that the recommendation to form a Committee in relation to critical incidents "had the potential to limit the agencies' independence and impede their respective roles". Further, it stated:

The Committee is not convinced that duplication exists in respect of the oversight of police critical incidents. Each agency involved performs distinct and valuable oversight roles in relation to the way that police respond to critical incidents. The Ombudsman monitors and reports on police investigations into critical incidents, such as the death of Roberto Laudisio-Curti. In addition to investigating police misconduct connected with critical incidents, the PIC is undertaking research work to ensure critical incidents are prevented and investigated appropriately. The Committee supports the PIC and Ombudsman's work and considers that prevention and research, and monitoring of police investigations into specific critical incidents, are vital to the management of critical incidents.¹⁰²

⁹⁹ R McClelland, note 96, Recommendation No. 5

¹⁰⁰ R McClelland, note 96, Recommendation No. 8

¹⁰¹ Joint Standing Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission published, [General Meetings 2014](#), August 2014, p1ff

¹⁰² Joint Standing Committee, note 101, p7

6.5 Review of Ombudsman's inquiry "Operation Prospect": 2015

On 25 February 2015, a Legislative Council Select Committee published its report on *The conduct and progress of the Ombudsman's inquiry "Operation Prospect"*. Operation Prospect was "an ongoing inquiry being conducted by the Ombudsman that is primarily investigating allegations of misconduct by officers of the NSW Police Force, the Crime Commission and the Police Integrity Commission in relation to certain investigations conducted by these agencies between 1998 and 2004".¹⁰³ These allegations had previously been the subject of internal review in the NSW Police Force, and review by the Inspector of the Police Integrity Commission. The final chapter of the Select Committee's report discussed the efficacy of existing police oversight arrangements.

The Select Committee noted that concerns were raised about "the multiple number of agencies involved in the investigation and oversight of police conduct, and the conflict of interest inherent in a system in which police oversight their own colleagues".¹⁰⁴ It also noted that "many critics of the current system for police oversight called for a single agency to be established to investigate complaints related to police conduct".¹⁰⁵ The Police Association proposed that the Ombudsman and PIC be amalgamated with ICAC "to form one external oversight agency for serious matters".¹⁰⁶ The Select Committee considered whether there was "an argument to establish an agency similar to the Independent Police Complaints Commission in the United Kingdom".¹⁰⁷ The NSW Police Commissioner, Andrew Scipione, expressed support for this model but the NSW Police Association asserted that this was "far from an ideal model of oversight", referring to a House of Commons Committee report which was critical of the police complaints oversight system.

The Select Committee concluded:

The committee acknowledges that there are several agencies with responsibility for investigating police actions, conduct or corruption in New South Wales. This multi-agency approach can be confusing and has the potential to undermine each agency's findings.

It is also problematic when police have to investigate their own, particularly given the conflict of interest between officers' obligations to their colleagues and the public. Most police complaints are indeed managed internally and the committee believes that this conflict of interest is both inappropriate and counterproductive.

The committee accepts the thrust of the submissions from within and outside the NSW Police Force that a single well-resourced oversight body would be a far preferable structure to the current system of multiple agencies with overlapping responsibilities. The fact that the allegations arising from Operation Mascot more

¹⁰³ Legislative Council Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "Operation Prospect", [The conduct and progress of the Ombudsman's inquiry "Operation Prospect"](#), 25 February 2015, p22

¹⁰⁴ Legislative Council Select Committee, note 103, p114

¹⁰⁵ Legislative Council Select Committee, note 103, p117

¹⁰⁶ Legislative Council Select Committee, note 103, p117

¹⁰⁷ Legislative Council Select Committee, note 103, p118

than 15 years ago have failed to be addressed by the current system is clear evidence of its dysfunction. It is important to note that the delays and lack of resolution impact as seriously on police, who are the subject of unresolved allegations and inordinately delayed investigations, as they do on the public. Both the public and police have a right to expect that if a complaint is made against police then it will be dealt with quickly, fairly and independently. The existing system largely fails on all three of these measures.

However, given the committee took limited evidence on what the ultimate structure of a single oversight body would look like, it is necessary that this matter be addressed in more detail at the earliest opportunity in the new Parliament. The committee therefore recommends that the Legislative Council Standing Committee on Law and Justice inquire into and report on options to reform the management of police complaints in the 56th Parliament, with a view to establishing a single, well-resourced police oversight body that deals with complaints quickly, fairly and independently.¹⁰⁸

7. OTHER AUSTRALIAN JURISDICTIONS

7.1 Overview

Complaints, reports and issues of misconduct: At the Commonwealth level and in all other States, the police force handles the vast majority of police complaints. The Commonwealth has broadly the same model of external oversight as in NSW: a general Ombudsman reviews police complaint handling and a police integrity body reviews police complaint handling and investigates cases involving significant corruption. The South Australian model is similar but the two external oversight bodies are: a dedicated Police Ombudsman and the Independent Commissioner Against Corruption. There is currently a review of this model in South Australia. In Queensland, Victoria and Western Australia, broad-based anti-corruption commissions review police complaint handling and investigate certain complaints and issues of misconduct. In all six jurisdictions, the external oversight bodies can conduct own-motion investigations. Queensland is the only jurisdiction where recent published surveys could be found on levels of satisfaction with the police complaints system.

External oversight bodies in other Australian jurisdictions

	External oversight body	Review of police complaint handling	Investigations into complaints and on own motion
CTH	Commonwealth Ombudsman	Reviews police handling of complaints.	Investigates some complaints involving <i>serious misconduct</i> but not those raising a <i>significant corruption issue</i> . Can conduct own motion investigations into a matter of public <i>administration</i> .
	Australian Commission for Law Enforcement Integrity	Reviews police handling of some complaints involving a <i>corruption issue</i> .	Investigates some complaints involving a <i>corruption issue</i> or a <i>significant corruption issue</i> . Can conduct own-motion investigations into a <i>corruption issue</i> .

¹⁰⁸ Legislative Council Select Committee, note 103, p119

	External oversight body	Review of police complaint handling	Investigations into complaints and on own motion
SA	Office of the Police Ombudsman	Reviews police handling of complaints about <i>conduct</i> (but not where complaint was made by another police officer).	Investigates some complaints about <i>conduct</i> of police officer. Can conduct own-motion investigations into matters of possible <i>misconduct</i> that are a matter of public interest or may raise questions as to police practices and procedures
	Independent Commissioner Against Corruption	Reviews police handling of some complaints involving <i>corruption, misconduct</i> and <i>maladministration</i> .	Investigates some complaints involving <i>corruption</i> . Can conduct own motion investigations into matters of <i>corruption, misconduct</i> or <i>maladministration</i> .
VIC	Independent Broad-based Anti-Corruption Commission	Reviews police handling of some complaints involving <i>corrupt conduct</i> and <i>police personnel misconduct</i> .	Investigates complaints involving <i>serious corrupt conduct</i> and some complaints involving <i>police personnel misconduct</i> . Can conduct own-motion investigations of <i>serious corrupt conduct</i> or <i>police personnel conduct</i> .
QLD	Crime and Corruption Commission	Reviews police handling of some complaints involving <i>police misconduct</i> and <i>corrupt conduct</i> .	Investigates some complaints involving <i>police misconduct</i> and <i>corrupt conduct</i> . Can conduct own motion investigations into <i>corrupt conduct</i> .
WA	Corruption and Crime Commission	Reviews police handling of some complaints involving <i>misconduct</i> and <i>reviewable police action</i> .	Investigates some complaints involving <i>misconduct</i> and <i>reviewable police action</i> . Can conduct own motion investigations into matters of <i>misconduct</i> .
TAS	Ombudsman Tasmania	Reviews police handling of complaints that have been received by Ombudsman and then referred to the police.	Can investigate complaints about <i>administrative actions</i> of public authorities. Can conduct own-motion investigations into such actions.
	Integrity Commission	Reviews police handling of complaints involving <i>police misconduct</i> .	Investigates complaints involving <i>serious police misconduct</i> . Can conduct own-motion investigations into matters of <i>police misconduct</i> .

Critical incidents: Most other Australian jurisdictions appear to adopt the same approach as NSW in dealing with critical incidents; the police investigate the incident and, in cases of death, the coroner has jurisdiction to conduct an inquest. A police oversight body could conduct an investigation in relation to a critical incident based on a complaint or using its own-motion powers. In Queensland, the Crime and Corruption Commission has a specific role in overseeing investigations of police-related deaths.

The following is a more detailed summary of the external oversight bodies in four Australian jurisdictions: the Commonwealth, South Australia, Victoria and

Queensland. The focus here is on the main oversight bodies; the coroners' roles in cases of death are not outlined.

7.2 Commonwealth

There are two oversight bodies for complaints about the Australian Federal Police (AFP): the [Commonwealth Ombudsman](#) and the [Australian Commission for Law Enforcement Integrity](#) (ACLEI). In 2013-14, the Ombudsman's total expenses were \$20.8 million and it employed an average of 136 full-time equivalent staff.¹⁰⁹ The ACLEI's total expenses were \$8.1 million and it employed an average of 25 full-time equivalent staff.¹¹⁰ The key legislation is the *Australian Federal Police Act 1979*, Part V; the *Ombudsman Act 1974*; and the *Law Enforcement Integrity Commissioner Act 2006*.

Ombudsman's role: Pursuant to the *Australian Federal Police Act*, the AFP must notify the Ombudsman of a complaint raising a Category 3 (serious misconduct) issue.¹¹¹ Generally, the head of the AFP Professional Standards Unit allocates an issue to a police officer for investigation.¹¹² The Police Commissioner may allocate a complaint raising a Category 3 conduct issue to be investigated by the Ombudsman if satisfied that it would be inappropriate for it to be allocated to the AFP Professional Standards Unit.¹¹³ The Ombudsman is required to report to the Parliament annually on the adequacy of the AFP's complaint handling.¹¹⁴ In addition, the Ombudsman may conduct ad hoc reviews of the AFP's complaint handling.¹¹⁵

Under the *Ombudsman Act*, complaints about the AFP can be made directly to the Ombudsman.¹¹⁶ The Ombudsman can refer the complaint to the Police Commissioner if of the opinion that the issue could be more conveniently or effectively dealt with under the *AFP Act*.¹¹⁷ If a complaint raises a significant corruption issue, the Ombudsman *must* refer it to the ACLEI – if a complaint raises a non-significant corruption issue, the Ombudsman *may* refer it to the ACLEI.¹¹⁸ The Ombudsman can also conduct own-motion investigations of any action that relates to a matter of administration taken by the AFP.¹¹⁹ The Ombudsman may arrange with the Police Commissioner for: (a) a Category 3 conduct issue; or (b) an AFP practices issue (i.e. an issue about the AFP's practices) to be dealt with jointly by the Ombudsman and the AFP.¹²⁰

If the Ombudsman investigates a complaint, and forms the opinion that there is

¹⁰⁹ Commonwealth Ombudsman, [Annual report 2013-14](#), p24, p111.

¹¹⁰ Australian Commission for Law Enforcement Integrity, [Annual Report 2013-14](#), p46

¹¹¹ *Australian Federal Police Act 1979*, 40TM

¹¹² *Australian Federal Police Act 1979*, 40TN

¹¹³ *Australian Federal Police Act 1979*, 40TO

¹¹⁴ *Australian Federal Police Act 1979*, s 40XA

¹¹⁵ *Australian Federal Police Act 1979*, s 40XB

¹¹⁶ *Ombudsman Act 1974*, s 5

¹¹⁷ *Ombudsman Act 1974*, s 6(20)

¹¹⁸ *Ombudsman Act 1974*, s 6(16)

¹¹⁹ *Ombudsman Act 1974*, s 5

¹²⁰ *Ombudsman Act 1974*, s 8D

evidence that an officer of the AFP has been guilty of a breach of duty or of misconduct and that the evidence is of sufficient force to justify doing so, the Ombudsman is to bring the evidence to the notice of the Police Commissioner.¹²¹ In addition, following an investigation, the Ombudsman has broad powers to make recommendations to the AFP.¹²² If the AFP does not take action in relation to the Ombudsman's recommendations, the Ombudsman can report to the Prime Minister and to both Houses of Parliament.¹²³

ACLEI's role: Under the *Law Enforcement Integrity Commissioner Act*, the Minister may refer to the ACLEI an allegation or information that raises a corruption issue.¹²⁴ If the head of a law enforcement agency becomes aware of an allegation or information that raises a corruption issue relating to the agency, he or she must notify the ACLEI and indicate whether it is a significant corruption issue.¹²⁵ If it is a significant corruption issue, he or she must give the ACLEI all information relating to the issue and must stop any investigation of the issue that the agency is conducting.¹²⁶ If it is not a significant corruption issue, he or she must ensure that the agency investigates the corruption issue.¹²⁷ Any person may also refer to the ACLEI information that raises a corruption issue.¹²⁸ The ACLEI may also deal with a corruption issue on its own motion.¹²⁹

The ACLEI may investigate a corruption issue; or may refer it to the law enforcement agency with or without management or oversight of the investigation.¹³⁰ After completing an investigation, the ACLEI must prepare a report on the investigation.¹³¹ The report must set out its findings on the corruption issue, any action that the ACLEI has taken or proposes to take under Part 10 (referring evidence to a prosecuting authority), and any recommendations the ACLEI thinks fit to make. The ACLEI may request the head of a law enforcement agency to advise what action the head proposes to take with respect to the recommendations.¹³² If it is not satisfied with the response, the ACLEI may refer the matter to the responsible Minister; and may also send the material to both Houses of Parliament.

Number of complaints: The number of complaints received in 2013-14 by the AFP, Ombudsman and ACLEI are shown in the Table below.

¹²¹ *Ombudsman Act 1974*, s 8(10)

¹²² *Ombudsman Act 1974*, s 15

¹²³ *Ombudsman Act 1974*, ss 15, 16

¹²⁴ *Law Enforcement Integrity Commissioner Act 2006*, s 18

¹²⁵ *Law Enforcement Integrity Commissioner Act 2006*, s 19

¹²⁶ *Law Enforcement Integrity Commissioner Act 2006*, s 20

¹²⁷ *Law Enforcement Integrity Commissioner Act 2006*, s 22

¹²⁸ *Law Enforcement Integrity Commissioner Act 2006*, s 23

¹²⁹ *Law Enforcement Integrity Commissioner Act 2006*, s 38

¹³⁰ *Law Enforcement Integrity Commissioner Act 2006*, s 26

¹³¹ *Law Enforcement Integrity Commissioner Act 2006*, s 54

¹³² *Law Enforcement Integrity Commissioner Act 2006*, s 57

Organisation	Number of complaints in 2013-14
Australian Federal Police	The AFP received 522 complaints alleging 873 conduct breaches. ¹³³ This included: 263 Category 3 breaches and 46 corruption issues. 47% of the total alleged conduct breaches were from an AFP member. Of the 1,025 alleged conduct breaches finalised in 2013-14, 278 (27%) were established.
Commonwealth Ombudsman	The Ombudsman received 227 complaints about the AFP and it investigated 29 of those complaints. ¹³⁴ The Ombudsman also presented this report on the AFP's complaint handling.
ACLEI	The ACLEI received 41 referrals and notifications of corruption issues relating to the AFP. ¹³⁵ Of the 71 corruption issues relating to the AFP investigated during the year, the ACLEI investigated 16 issues, it supervised the AFP's investigation of 1 issue, and it allowed the AFP to investigate 54 issues without supervision (20 of which were not notified as being significant).

Review of ACLEI: In July 2011, the Parliamentary Joint Committee on the ACLEI published a report on the operation of the *Law Enforcement Integrity Commissioner Act 2006*.¹³⁶ In considering whether a broad public sector integrity commission was needed at the federal level, the Committee noted “one suggestion introduced by the Attorney-General’s Department would be to merge ACLEI with the Commonwealth Ombudsman’s Office.”¹³⁷

The Committee stated that “this proposal was not endorsed by anti-corruption experts and practitioners”. Professor A J Brown (Griffith University) had pointed to the risk that “the anti-corruption function could be pushed aside in order to direct limited resources to the Ombudsman’s primary function of complaint handling”. Professor McMillan (former Acting Commissioner of ACLEI and former Ombudsman) suggested that it would not work well in practice because: (i) the staff of the different agencies have different skill sets; (ii) ACLEI has intrusive and coercive powers which would not be appropriate for an Ombudsman’s office; and (iii) the Ombudsman has a role in overseeing the exercise of those functions by ACLEI. Accordingly, the Committee “did not consider that further attention should be directed to this option”.

7.3 South Australia

There are three oversight bodies: the [Office of the Police Ombudsman](#); the [Office for Public Integrity](#) (OPI); and the [Independent Commissioner Against Corruption](#) (ICAC). Prior to the 2013, the Police Ombudsman was known as the Police Complaints Authority. The OPI and ICAC were established in 2013 and form part of the one organisation, with the ICAC being responsible for the OPI.

¹³³ Australian Federal Police, [Annual Report 2013-14](#), p194

¹³⁴ Commonwealth Ombudsman, [Annual Report 2013-14](#), p65

¹³⁵ Australian Commission for Law Enforcement Integrity, [Annual Report 2013-14](#), pp66-72

¹³⁶ Joint Committee on the Australian Commission for Law Enforcement Integrity, [Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006](#), Final report, July 2011

¹³⁷ Joint Committee, note 136, p48-49

In 2013-14, the Police Ombudsman had total expenses of \$1.7 million and employed an average of 11 full-time equivalent staff, none of which were police officers.¹³⁸ The ICAC and the OPI had total expenses of \$5.8 million and, as at 30 June 2014, had 38 full-time equivalent staff, including 8 police officers on secondment from the South Australian Police Force.¹³⁹ The key legislation is the *Police (Complaints and Disciplinary Proceedings) Act 1985* and the *Independent Commissioner Against Corruption Act 2012*.

Police Ombudsman's role: If a person makes a complaint to a police officer about the conduct of another police officer, the complaint must be referred to the Police Force's Internal Investigation Section (IIS) for investigation, and the complaint must be notified to the Police Ombudsman.¹⁴⁰ Note however that the Police Ombudsman has taken the view that complaints made *by a police officer* to the Police Commissioner fall outside of the Police Ombudsman's jurisdiction and do not need to be notified to the Police Ombudsman.¹⁴¹

A person can also make a complaint directly to the Police Ombudsman and in that case, the Ombudsman must notify the Police Commissioner and, subject to the following provisions, must refer it to the Police Commissioner.¹⁴² The Police Ombudsman may refuse to entertain a complaint.¹⁴³ The Police Ombudsman may determine that a complaint is a minor complaint that should be the subject of an informal inquiry by a police officer.¹⁴⁴ The Police Ombudsman may allow the Police Commissioner to attempt to resolve a matter by conciliation, or the Police Ombudsman may attempt conciliation.¹⁴⁵ The Police Ombudsman may determine that the matter should be investigated by him or her.¹⁴⁶

The Police Ombudsman may also, on his or her own initiative, raise a matter for investigation that concerns possible misconduct affecting a member of the public that has become a matter of public interest or comment or may raise questions as to the practices, procedures or policies of the police.¹⁴⁷

The Police Ombudsman may, at any time after a matter has been referred to the IIS for investigation, require the Police Commissioner or IIS to provide information about the progress of the investigation.¹⁴⁸ The Police Ombudsman may give directions to the officer in charge of the IIS as to the matters to be investigated, or the methods to be employed, in relation to a particular

¹³⁸ Attorney-General's Department, [Annual Report 2013-14](#), p88ff; Office of the Police Ombudsman, [Role of the Office of the Police Ombudsman](#), [online]; and Government of South Australia, [2014-15 Budget Paper 4, Agency Statements, Vol 1](#), p37

¹³⁹ Independent Commissioner Against Corruption and Office for Public Integrity, [Annual Report 2013-14](#), p21, p70

¹⁴⁰ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 18

¹⁴¹ See Independent Commissioner Against Corruption, [Annual Report 2013-14](#), p60

¹⁴² *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 19

¹⁴³ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 21

¹⁴⁴ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 21A

¹⁴⁵ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 22

¹⁴⁶ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 23

¹⁴⁷ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 22A

¹⁴⁸ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 26

investigation. The Police Commissioner may notify the Police Ombudsman of his or her disagreement with such a direction and it will cease to be binding.

When the IIS completes an investigation, it must furnish a report to the Commissioner, who must furnish a copy of the report to the Police Ombudsman.¹⁴⁹ The Police Ombudsman must then consider the report and notify the Police Commissioner of his or her assessment and recommendations, which can include taking action to charge a designated officer with an offence or breach of discipline.¹⁵⁰ When the Police Ombudsman completes an investigation conducted by him or her, he or she must furnish to the Police Commissioner a report of the investigation and must include his or her assessment of the case and recommendations.¹⁵¹

In both cases, the Police Commissioner must notify the Police Ombudsman whether he or she agrees with the assessment or recommendations.¹⁵² If the Police Commissioner disagrees, the Police Ombudsman must consider the reasons for disagreement, and confirm or vary the assessment or recommendations. The Police Commissioner must take all necessary steps to give effect to the Police Ombudsman's recommendations, or refer the matter to the Minister, who may then determine that certain action should be taken.¹⁵³

OPI's role: The OPI can receive complaints about public administration from members of the public; and can receive reports about corruption, misconduct and maladministration from inquiry agencies, public authorities (including the Commissioner of Police) and public officers (including police officers).¹⁵⁴

As required by the Act (s 20), the ICAC has published directions and guidelines on reporting matters to the OPI. Under the guidelines, the Police Commissioner and police officers must report to the OPI any matter that they reasonably suspect involves corruption in public administration; and the Police Commissioner must also report to the OPI any matter that he or she reasonably suspects involves misconduct involving a police officer or maladministration in the police force. The Police Ombudsman must report to the OPI any matter that he or she reasonably suspects involves corruption, serious or systemic misconduct, or serious or systemic maladministration.

The OPI must assess a complaint or report as to whether: (a) it raises an issue of corruption; (b) it raises an issue of misconduct or maladministration; (c) it raises some other issue that should be referred to an inquiry agency, public authority or officer; or (d) no action should be taken; and the OPI is to make recommendations to the ICAC accordingly.¹⁵⁵

ICAC's role: The ICAC is not bound by the OPI's recommendations. The ICAC

¹⁴⁹ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 31

¹⁵⁰ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 32

¹⁵¹ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 33

¹⁵² *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 34

¹⁵³ *Police (Complaints and Disciplinary Proceedings) Act 1985*, s 34

¹⁵⁴ *Independent Commissioner Against Corruption Act 2012*, s 17

¹⁵⁵ *Independent Commissioner Against Corruption Act 2012*, s 23

may also assess, or require the OPI to assess, any other matter identified by the ICAC acting on his or her own initiative or by the ICAC or the OPI in the course of performing functions under the Act.¹⁵⁶

If a matter is assessed by the ICAC as raising a potential issue of corruption that could be the subject of prosecution, ICAC must investigate it or refer it to the Police Ombudsman.¹⁵⁷ On completing an investigation or at any time during it, the ICAC may (a) refer a matter to the relevant law enforcement agency for further investigation and potential prosecution; and/or (b) refer the matter to a public authority (in this case, the Police Commissioner) for further investigation and potential disciplinary action.¹⁵⁸ In the case of (b), the ICAC may give directions or guidance, including a recommendation as to the action that should be taken. If not satisfied with the action taken by the Police Commissioner, the ICAC may report to the Minister and, if still not satisfied, to Parliament.¹⁵⁹

If a matter is assessed by the ICAC as raising a potential issue of misconduct or maladministration, the ICAC may refer it to the Police Ombudsman or to the Police Commissioner, with or without directions or guidance, or the ICAC may exercise the powers of the Police Ombudsman.¹⁶⁰ If the ICAC is not satisfied that the Police Commissioner or the Police Ombudsman has properly taken action in relation to a matter referred by the ICAC, it may report to the Minister, and if still not satisfied, report to Parliament.¹⁶¹

Number of complaints: The number of complaints received in 2013-14 by SA Police, the Police Ombudsman and the ICAC are shown in the Table below.

Organisation	Number of complaints in 2013-14
SA Police	SAPOL received 1,731 complaints: 1,365 of these complaints were registered with the Police Ombudsman. ¹⁶² The complaints not registered were those where a SA Police employee complained about the conduct of another SA Police employee.
Police Ombudsman	The Police Ombudsman received 2,272 matters: ¹⁶³ <ul style="list-style-type: none"> • 694 matters were referred for conciliation; 692 conciliations were undertaken; and 627 conciliation reports were assessed. • 64 matters were referred for informal inquiry; 81 informal inquiries were undertaken and 70 informal inquiry reports were assessed. • 89 matters were referred for Preliminary Investigation, 87 preliminary investigations were undertaken, and 42 preliminary investigation reports were assessed.

¹⁵⁶ *Independent Commissioner Against Corruption Act 2012*, s 23

¹⁵⁷ *Independent Commissioner Against Corruption Act 2012*, s 24

¹⁵⁸ *Independent Commissioner Against Corruption Act 2012*, s 36

¹⁵⁹ *Independent Commissioner Against Corruption Act 2012*, s 36

¹⁶⁰ *Independent Commissioner Against Corruption Act 2012*, s 24

¹⁶¹ *Independent Commissioner Against Corruption Act 2012*, ss 37,38

¹⁶² South Australia Police, [Annual Report 2013-14](#), p51

¹⁶³ Office of the Police Ombudsman, [Annual Report 2013-14](#), p14, p16, p18, p20-21, p34

	<ul style="list-style-type: none"> • 46 matters were referred for full investigation; 43 full investigations were undertaken; and 14 full investigation reports were assessed. • The Police Ombudsman conducted 4 of its own investigations.
OPI	Between September 2013 and June 2014, the OPI received a combined total of 923 complaints and reports (it is not known how many of these related to police officers).
ICAC	Between September 2013 and June 2014, ICAC investigated a total of 90 complaints and reports that were assessed as raising a potential issue of corruption (it is not clear how many of these related to police officers). ¹⁶⁴ It referred to the Police Ombudsman 21 complaints and reports which raised a potential issue of corruption; ¹⁶⁵ and 45 complaints and reports which raised an issue of misconduct or maladministration. ¹⁶⁶ It exercised the powers of the Police Ombudsman in relation to an issue of misconduct and/or maladministration on 5 occasions. ¹⁶⁷

Comments and review: In its 2013-14 annual report, the Police Ombudsman expressed concerns about the level of funding for his office, stating that “unless considerable and urgent measures are taken, the viability of the office will become increasingly precarious”.¹⁶⁸ The Police Ombudsman also criticised “the level of interest that ICAC has shown in police related matters which would ordinarily be assessed as neither serious or systemic and minor in nature”; and noted that “tensions between the OPO and ICAC have at times been high”.¹⁶⁹

The ICAC’s annual report for 2013-14 identified some areas for reform including: reducing duplication in relation to the assessment of complaints and reports about public administration; and making more seamless the integration of the ICAC Act and other agency Acts.¹⁷⁰ In October 2014, the ICAC Commissioner announced that he would review the legislative schemes for the oversight and management of complaints about police; and in February 2015 he released a discussion paper.¹⁷¹ It asks various questions including: whether there are too many agencies with responsibility for the receipt, assessment, investigation and review of complaints? The review has received submissions and held hearings but the report has not been completed.¹⁷²

¹⁶⁴ Independent Commissioner Against Corruption, [Annual Report 2013-14](#), p39

¹⁶⁵ Independent Commissioner Against Corruption, [Annual Report 2013-14](#), p44

¹⁶⁶ Independent Commissioner Against Corruption, [Annual Report 2013-14](#), p47

¹⁶⁷ Independent Commissioner Against Corruption, [Annual Report 2013-14](#), p48

¹⁶⁸ Office of the Police Ombudsman, [Annual Report 2013-14](#), p5

¹⁶⁹ Office of the Police Ombudsman, [Annual Report 2013-14](#), p28

¹⁷⁰ Independent Commissioner Against Corruption, [Annual Report 2013-14](#), p63

¹⁷¹ Independent Commissioner Against Corruption, [Review of legislative schemes discussion paper: oversight of complaints relating to the conduct of members of SA Police complaints and reports about public administration](#), February 2015

¹⁷² See Independent Commissioner Against Corruption, [Submissions and transcripts](#), [online]

7.4 Victoria

The only oversight body is the [Independent Broad-Based Anti-Corruption Commission](#), which was established in 2013. The IBAC replaced the Office of Police Integrity, which was set up in 2004. In 2013-14, IBAC had total expenses of \$27.3 million and, as at 30 June 2014, employed 142 full-time equivalent staff.¹⁷³ The key legislation is the *Independent Broad-Based Anti-Corruption Commission Act 2011*; and the *Victoria Police Act 2013*, Part 9.

IBAC's role: Under the *Independent Broad-Based Anti-Corruption Act*, a person may make a complaint to the IBAC about conduct the person believes may be *corrupt conduct*.¹⁷⁴ A person may also make a complaint to the IBAC about *police personnel conduct*.¹⁷⁵ This is a complaint about:

- (i) an act or decision or the failure or refusal by the public officer to act or make a decision in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside Victoria, of a power, function or duty which the public officer has as, or by virtue of being, a police officer...; or
- (ii) conduct which constitutes an offence punishable by imprisonment; or
- (iii) conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- (iv) disgraceful or improper conduct (whether in the public officer's official capacity or otherwise);

The Chief Commissioner of Police must notify the IBAC of any complaint received about corrupt conduct or police personnel misconduct.¹⁷⁶ If the Chief Commissioner investigates a complaint about police personnel misconduct, after completing that investigation, he or she must report to the IBAC on the results and the action taken or proposed to be taken.¹⁷⁷

In relation to any complaint or notification to the IBAC, the IBAC must dismiss it, investigate it, or refer it to another person or body: e.g. to the Chief Commissioner.¹⁷⁸ The IBAC must not investigate corrupt conduct unless satisfied that it is serious corrupt conduct.¹⁷⁹ The IBAC may attempt to resolve a police personnel conduct complaint by conciliation.¹⁸⁰ The IBAC can conduct own-motion investigations of corrupt conduct and police personnel conduct.¹⁸¹

After conducting an investigation, the IBAC may refer the matter to a prosecutorial body, make a recommendation as to any action that it considers should be taken, make a special report to Parliament, or make no finding or

¹⁷³ Independent Broad-based Anti-Corruption Commission, [Annual Report 2013-14](#), p13, p43

¹⁷⁴ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 51

¹⁷⁵ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 52

¹⁷⁶ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 57

¹⁷⁷ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 57

¹⁷⁸ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 58

¹⁷⁹ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 60

¹⁸⁰ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 64

¹⁸¹ *Independent Broad-Based Anti-Corruption Commission Act 2011*, ss 60, 64

take no action.¹⁸² After receiving a report of the Chief Commissioner (including a report made under the *Victoria Police Act* as outlined below), the IBAC may request the Chief Commissioner to take any action that the IBAC considers is appropriate.¹⁸³ If the IBAC has made a recommendation or a request to the Chief Commissioner, he or she must either (a) adopt the recommendation or take the action; or (b) report to the IBAC stating the reason for not doing so.¹⁸⁴

Pursuant to the *Victoria Police Act 2013*, the Chief Commissioner must as soon as practicable after a complaint of *misconduct* is made give the IBAC details of the complaint.¹⁸⁵ Further, the Chief Commissioner must as soon as practicable after commencing an investigation into any alleged misconduct give to the IBAC details of the investigation. The Chief Commissioner must as often as requested by the IBAC report to IBAC on the progress of an investigation.¹⁸⁶ The Chief Commissioner may attempt to resolve a complaint by conciliation but must notify IBAC of the proposed attempt and of the results of the attempt. After completing an investigation, the Chief Commissioner must report to IBAC on the results and the action taken or proposed to be taken.

Number of complaints: The number of complaints received by Victoria Police and IBAC in 2013-14 is shown in the Table below.

Organisation	Number of complaints in 2013-14
Victoria Police	Not reported
IBAC	IBAC received 2,567 complaints and notifications involving 4,860 allegations, including 3,551 allegations against police officers. ¹⁸⁷ IBAC investigated 64 allegations and referred 1,783 allegations to other agencies, including 1,427 to Victoria Police. IBAC completed 79 reviews of police investigations. ¹⁸⁸

7.5 Queensland

The only oversight body is the [Crime and Corruption Commission](#) (CCC). After the Fitzgerald inquiry into police corruption (1987-1989), a Criminal Justice Commission was established; in 2001 this body was replaced by the Crime and Misconduct Commission (CMC) and in 2014, the CMC was renamed the Crime and Corruption Commission. In 2013-14, the CCC had total expenses of \$51.6 million and, as at 30 June 2014, it had 329 full-time equivalent staff, including some police officers.¹⁸⁹ The legislation is the *Crime and Corruption Act 2001*.

¹⁸² *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 164

¹⁸³ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 160

¹⁸⁴ *Independent Broad-Based Anti-Corruption Commission Act 2011*, s 161

¹⁸⁵ *Victoria Police Act 2013*, s 169

¹⁸⁶ *Victoria Police Act 2013*, s 170

¹⁸⁷ Independent Broad-based Anti-Corruption Commission, [Annual Report 2013-14](#), p17-18

¹⁸⁸ Independent Broad-based Anti-Corruption Commission, [Annual Report 2013-14](#), p22

¹⁸⁹ Crime and Misconduct Commission, [Annual Report 2013-14](#), p51

CCC's role: Any person may make a complaint about corruption to the CCC.¹⁹⁰ The Police Commissioner must notify the CCC of a complaint which is suspected to involve *corrupt conduct or police misconduct*.¹⁹¹ Police misconduct is defined as conduct, other than corrupt conduct, of a police officer that is (a) disgraceful, improper or unbecoming of a police officer; (b) shows unfitness to be a police officer; or (c) does not meet the standard of conduct the community reasonably expects of a police officer.¹⁹²

The Police Commissioner has primary responsibility for dealing with complaints involving *police misconduct*.¹⁹³ The Commissioner must deal with a complaint about police misconduct in the way that he or she considers most appropriate, subject to the CCC's monitoring role.¹⁹⁴ The Commissioner is also responsible for dealing with a complaint involving corrupt conduct that the CCC refers to him or her. The Commissioner must deal such a complaint in the way he or she considers most appropriate, subject to the CCC's monitoring role.¹⁹⁵

The CCC has primary responsibility for dealing with complaints involving *corrupt conduct*.¹⁹⁶ The CCC may itself deal with a complaint about corrupt conduct; or refer the complaint to a public official (i.e. the Police Commissioner) to be dealt with by him or her, or in cooperation with the CCC, subject to the CCC's monitoring role.¹⁹⁷ The CCC can also investigate on its own initiative cases of corrupt conduct.¹⁹⁸ The CCC is also responsible for monitoring how the Police Commissioner deals with police misconduct. If the CCC is notified of or receives a complaint about police misconduct, it may allow the Police Commissioner to deal with the complaint, subject to the CCC's monitoring role.¹⁹⁹

In exercising its monitoring role in relation to police misconduct, the CCC may (a) issue guidelines for the conduct of investigations by the Police Commissioner; or (b) review or audit the way the Police Commissioner has dealt with misconduct; or (c) assume responsibility for and complete an investigation by the Police Commissioner.²⁰⁰ The CCC has the same powers in exercising its monitoring role in relation to corrupt conduct, and it can also require the Police Commissioner to report to the CCC about an investigation in the way the CCC directs; or to undertake further investigation that it directs.²⁰¹

If the CCC investigates, or assumes responsibility for the investigation of a complaint involving corruption and decides that prosecution or disciplinary

¹⁹⁰ *Crime and Corruption Act 2001*, s 36

¹⁹¹ *Crime and Corruption Act 2001*, ss 37-38

¹⁹² *Crime and Corruption Act 2001*, s Sch2

¹⁹³ *Crime and Corruption Act 2001*, s 41

¹⁹⁴ *Crime and Corruption Act 2001*, s 42

¹⁹⁵ *Crime and Corruption Act 2001*, s 42

¹⁹⁶ *Crime and Corruption Act 2001*, s 45

¹⁹⁷ *Crime and Corruption Act 2001*, s 46

¹⁹⁸ *Crime and Corruption Act 2001*, s 35(1)(f)

¹⁹⁹ *Crime and Corruption Act 2001*, s 46

²⁰⁰ *Crime and Corruption Act 2001*, s 47

²⁰¹ *Crime and Corruption Act 2001*, s 48

action, should be considered, the CCC may report on the investigation to the Director of Public Prosecutions, or to Police Commissioner.²⁰²

The CCC has an oversight role in relation to the investigation of police-related deaths. The CCC website states:

At present, the CCC attends the initial investigation of all police-related deaths and provides independent oversight regarding the probity and sufficiency of the investigation. Pending determination of any question of police misconduct and who should lead further investigation, we also liaise with family members of the deceased person.

In May 2010, the Acting Coroner...delivered his findings in the re-opened inquest into the death in police custody of Mulrunji Doomadgee on Palm Island in 2004. Among other things, [he] made a recommendation about the future investigation of police-related deaths and our role in these investigations. The State Coroner, the Commissioner of Police and the CMC Chairperson reached agreement about the future approach to investigating these matters, and the Queensland Government is currently considering a memorandum of understanding for the proposed arrangements. Detailed protocols are being developed to support the proposed investigative model.²⁰³

Number of complaints: The number of complaints received by Queensland Police and the CCC in 2013-14 is shown in the Table below.

Organisation	Number of complaints in 2013-14
Queensland Police	QPS received 1,310 complaints by members of the public against officers on or off duty. ²⁰⁴
CCC (formerly the CMC)	<p>The CMC received 1,839 complaints containing 4,398 allegations against police officers: allegations against police represented about 51% of the total allegations.²⁰⁵ The most common allegations concerned assault/excessive use of force (929 allegations), official conduct, such as misuse of police powers (686 allegations) and demeanour/attitude (428 allegations).</p> <p>The CMC conducted 27 investigations into 150 allegations of police or official misconduct (the term "official misconduct" has now been replaced with the term "corrupt conduct"). The most common types of allegations investigated related to official conduct; the unauthorised release of information from the QPS database; inappropriate relationships with members of criminal organisations; and misuse of authority for personal benefit. As a result of its investigations, the CMC recommended that 10 criminal and 93 disciplinary charges be instituted against 17 persons.²⁰⁶</p>

²⁰² *Crime and Corruption Act 2001*, s 49

²⁰³ Crime and Corruption Commission, [Deaths in custody](#), [online]

²⁰⁴ Queensland Police Service, [Annual Report 2013-14](#), p47

²⁰⁵ Crime and Misconduct Commission, [Annual Report 2013-14](#), p21

²⁰⁶ Crime and Misconduct Commission, [Annual Report 2013-14](#), p22

	The CMC conducted an individual case review of 128 police matters. ²⁰⁷ The CMC was satisfied with the way in which QPS dealt with matters in 95% of these cases. In addition, the CMC conducted a compliance and integrity audit of the way in which complaints relating to inappropriate associations between police officers and criminal motorcycle gangs were dealt with by QPS.
--	---

Satisfaction survey: In 2010, the Crime and Misconduct Commission conducted a survey on public perceptions of the Queensland Police Service.²⁰⁸ One of the survey's findings was that:

Fifty per cent of the respondents who had made, or tried to make, a complaint to the QPS ($n = 10$) were fairly or very dissatisfied with the way the complaint was handled...This is less than the 2008 survey, which showed that 71 per cent of people who complained to the QPS were dissatisfied with how it was handled.²⁰⁹

The survey also found that:

Respondents who had a recent unsatisfactory experience with a police officer but had not made an official complaint ($n = 137$) were asked why they had chosen not to complain. The reasons did not vary substantially compared to those reported in 2008...Approximately one in four respondents reported that either it would be too much trouble (27%, $n = 37$) or it would not do any good (25%, $n = 34$), while one in five (20%, $n = 28$) reported that the matter was not serious enough to make a complaint.²¹⁰

Review of system: In May 2011, an Independent Panel published its review of the police complaints, discipline and misconduct system.²¹¹ In relation to the oversight of police complaints by the Crime and Misconduct Commission (the predecessor to the CCC), the report looked at alternative models from other jurisdictions, and while noting that it was "beyond the scope of the review to make a business case advancing significant structural and policy change in the framework", it commented that the CMC:

...would be improved on public confidence measures if it adopted at least some of the features of interjurisdictional models designed to increase external civilian independent control over the police complaints system regarding:

- secondment of QPS officers to the CMC; and
- a new adjudication power over disciplinary matters

The Independent Panel explained that:

The [proposed] new power for the CMC to substitute a disciplinary decision provides an additional safeguard for community confidence in the police

²⁰⁷ Crime and Misconduct Commission, [Annual Report 2013-14](#), p23

²⁰⁸ Crime and Misconduct Commission, [Public perceptions of the public service: findings from the 2010 Public Attitudes Survey](#), October 2011

²⁰⁹ Crime and Misconduct Commission, note 208, p29

²¹⁰ Crime and Misconduct Commission, note 208, p30

²¹¹ S Webbe, G Williams AO QC, F Grayson, [An independent review of the Queensland police complaints, discipline and misconduct system](#), May 2011

complaints, discipline and misconduct system because of its oversight capacity to do more than make a recommendation back to the QPS decision-maker. Other oversight bodies in jurisdictions with '*mature form in police integrity agencies*' such as in Northern Ireland, England and Wales, make recommendations which the police organisations are obliged to follow. This Review considers it preferable to attain the same result more directly and more transparently. Public confidence is likely to favour a power that enables a timely and cost effective *decision* in external review by the primary civilian oversight body, than a power for making *recommendations* back to the QPS (even where there is a duty to comply with thus the same result, albeit likely more slowly).²¹²

This recommendation has not yet been implemented.

8. ENGLAND AND WALES

The [Independent Police Complaints Commission](#) (IPCC) was established in April 2004, replacing the Police Complaints Authority. The IPCC had its origins in a 1999 report of inquiry into a police investigation of a murder case.²¹³ The IPCC was set up by the *Police Reform Act 2002*.

8.1 Organisation

The IPCC consists of a Chairman, appointed by Her Majesty on the recommendation of the Home Secretary; and not less than ten other members appointed by the Home Secretary.²¹⁴ A person cannot be appointed Chairman, or other member of the IPCC if he or she holds or has held certain positions: e.g. he or she holds or has held office as a constable in any part of the United Kingdom. The Home Secretary may appoint not more than two deputy chairmen of the IPCC from its members.²¹⁵ The IPCC may appoint such employees as appear to it to be appropriate. As at 31 March 2014, the IPCC had 560 staff, including 80 ex-police officers and 71 ex-police civilian.²¹⁶ In 2013-14, the IPCC had total expenditure of £40.9 million.²¹⁷

8.2 Functions

Overview: The IPCC explains that:

Police forces deal with the majority of complaints against police officers and police staff. The IPCC considers some appeals from people who are dissatisfied with the way a police force has dealt with their complaint. Since November 2012, the responsibility for determining appeals is shared with local police forces.

In addition, police forces must refer the most serious cases – whether or not someone has made a complaint – to the IPCC. Serious cases include those

²¹² S Webbe et al, note 211, p64

²¹³ W Macpherson, [The Stephen Lawrence Inquiry](#), Report, February 1999. See also KPMG, [Feasibility of an Independent System for Investigating Complaints Against the Police](#), Home Office, Police Research Paper Series 124, 2000

²¹⁴ *Police Reform Act 2002*, s 9

²¹⁵ *Police Reform Act 2002*, Sch 2

²¹⁶ Independent Police Complaints Commission, [Annual Report 2013-14](#), p113

²¹⁷ Independent Police Complaints Commission, [Annual Report 2013-14](#), p46

where there has been a death or serious injury, or allegations of serious assault or serious sexual offence. The IPCC may decide to investigate such cases independently, manage or supervise the police force's investigation, or return it for local investigation.²¹⁸

IPCC powers after an investigation: In the case of an independent or managed investigation of a referred case, the IPCC will determine whether to notify the Director of Public Prosecutions of the findings in the investigation report; and it will notify the appropriate authority (generally the chief officer of the police force) that it must determine whether any person has a case to answer in respect of misconduct or gross misconduct; and what action it will take in respect of the matters dealt with in the report.²¹⁹ The appropriate authority must then make those determinations and submit a memorandum to the IPCC setting out its determinations. The IPCC is then to consider the memorandum and can recommend that a person has a case to answer in respect to answer in respect of misconduct or gross misconduct, or has no case to answer; and that disciplinary proceedings are brought against that person.²²⁰ If the appropriate authority does not give effect to the recommendation, the IPCC can direct the authority to take steps for that purpose.

IPCC powers after an appeal: A complainant has a right to appeal to the IPCC about the findings of an investigation conducted by an appropriate authority; or about the taking, or not taking, of action by the authority in respect to matters in the investigation report.²²¹ In dealing with an appeal, the IPCC has similar powers to those outlined above. If the IPCC determines that the findings of the investigation need to be reconsidered, it must review those findings or direct that the complaint be reinvestigated. If it considers that it is appropriate for matters dealt with in the investigation report to be considered by the Director of Public Prosecutions, it can direct the authority to notify the Director. The IPCC can also recommend that a person has a case to answer in respect of misconduct or gross misconduct; and that disciplinary proceedings are brought against that person.²²² If the authority does not give effect to the IPCC's recommendation, the IPCC can direct it to do so.²²³

8.3 Number of complaints

In 2013-14, a total of 34,863 complaints were recorded by police forces across England and Wales. In the same year, the IPCC received 3,176 referrals of complaints from police forces.²²⁴ The IPCC noted that "five per cent were independently investigated by the IPCC, 10 per cent were managed or supervised by the IPCC, 70 per cent were investigated by the local force, and 14 per cent were returned to the force".²²⁵ In addition to referrals, 4,079 appeals

²¹⁸ Independent Police Complaints Commission, [Annual Report 2013-14](#), p6

²¹⁹ *Police Reform Act 2002*, Sch 3, para 23

²²⁰ *Police Reform Act 2002*, Sch 3, para 27

²²¹ *Police Reform Act 2002*, Sch 3, para 25

²²² *Police Reform Act 2002*, Sch 3, paras 25, 27

²²³ *Police Reform Act 2002*, Sch 3, para 27

²²⁴ Independent Police Complaints Commission, [Annual Report 2013-14](#), p17

²²⁵ Independent Police Complaints Commission, [Annual Report 2013-14](#), p11

were made to the IPCC about the handling of a complaint by a police force.²²⁶ 46% of appeals completed by the IPCC were upheld.

8.4 Reviews and reform

In February 2013, a House of Commons Home Affairs Committee published a report on the IPCC.²²⁷ One of its key findings was that the IPCC:

...is not yet capable of delivering the kind of powerful, objective scrutiny that is needed to inspire [public] confidence.

Compared with the might of the 43 police forces in England and Wales, the IPCC is woefully underequipped and hamstrung in achieving its original objectives. It has neither the powers nor the resources that it needs to get to the truth when the integrity of the police is in doubt. Smaller even than the Professional Standards Department of the Metropolitan Police, the Commission is not even first among equals, yet it is meant to be the backstop of the system. It lacks the investigative resources necessary to get to the truth; police forces are too often left to investigate themselves; and the voice of the IPCC does not have binding authority. The Commission must bring the police complaints system up to scratch and the Government must give it the powers that it needs to do so.²²⁸

The Committee made a range of other findings and recommendations including that “the Commission must improve its in-house investigative resources and move to a target of 20% of investigators who have moved directly from a career as a police officer, or fewer, so that the number of former officers investigating the police is significantly reduced”.²²⁹

In response to the report, on 12 February 2013, the Home Secretary, Theresa May, said that she would draw on the resources currently devoted to the internal professional standards departments of individual police forces to provide capacity for the IPCC to deal with all serious complaints.²³⁰

In July 2014, the Home Secretary announced a review of the police complaints system.²³¹ The Home Secretary said that “we need the...system to keep up with the changes we’ve seen in police structures, to reflect the changes made locally by [Police and Crime Commissioners] and chief constables, and to meet public expectations”. The review was conducted by the Home Office and it found:

...elements of the police complaints system do not work efficiently or effectively. Few of those involved with the system have confidence in its ability to operate effectively. Large numbers of members of the public do not believe that the system will respond to their complaints fairly or effectively. Complaints take too long to resolve, either by local resolution or following the outcome of an

²²⁶ Independent Police Complaints Commission, [Police complaints: statistics for England and Wales 2013/14 and 2012/13](#), February 2015, p9

²²⁷ House of Commons Home Affairs Committee, [Independent Police Complaints Commission](#), Eleventh Report of Session 2012–13, February 2013

²²⁸ House of Commons Home Affairs Committee, note 227, p4

²²⁹ House of Commons Home Affairs Committee, note 227, p35ff

²³⁰ T May, [Radical package of police reforms announced](#), *Media Release*, 12 February 2013.

²³¹ T May, [Home Secretary on police reform](#), Oral statement to Parliament, 22 July 2014

investigation by either the police or the IPCC. Those working in the system feel they spend too long dealing with persistent and vexatious complaints, limiting the amount of time they can devote to other, more legitimate complaints. Police officers feel unable to admit to a mistake without fear of being subject to disciplinary proceedings.²³²

In December 2014, the Government released a consultation on proposals for reforming the system.²³³ In a Ministerial Statement, the Home Secretary, said:

The government's proposed reforms put the public at the heart of the system, replacing bureaucracy and complexity with accountability and transparency. We propose giving Police and Crime Commissioners [PCCs] the powers to handle complaints in a way that makes sense for their local electorates. This includes PCCs taking on responsibility for how complaints appropriate for local resolution are dealt with, making sure that issues are resolved quickly and effectively. We propose giving the IPCC new powers, strengthening its role as an independent oversight body and building on this government's commitment to transfer resources to enable the IPCC to investigate all serious and sensitive cases. We suggest the introduction of police super-complaints...to allow designated organisations to present evidence of systemic problems to the [IPCC], and give a voice to those who choose not to complain directly.²³⁴

In March 2015, the Government outlined its response to the consultation and also published a triennial review of the functions, efficiency and governance of the IPCC, which informed the Government's response.²³⁵ The reforms proposed in relation to the IPCC include:

- Ending the option of undertaking managed and supervised investigations;
- Giving the IPCC the power to conduct 'own motion' investigations;
- Clarifying the IPCC's the ability to uphold complaints following investigation or appeal;
- Providing the IPCC with powers to recommend a wider range of actions when considering an appeal, and possibly also where the IPCC undertakes an investigation;
- Giving the IPCC a power to present cases at disciplinary hearings.²³⁶

The Government intends to introduce legislation to implement these reforms. In addition, the Government stated that there is a "clear need to revisit IPCC's governance and structure to ensure that an expanded IPCC can function as

²³² Home Office, [Improving police integrity: reforming the police complaints and disciplinary systems](#), December 2014, p12

²³³ Home Office, note 232

²³⁴ T May, [Police Integrity](#), Ministerial Statement, 11 December 2014

²³⁵ Home Office [Improving police integrity: reforming the police complaints and disciplinary systems - Summary of consultation responses and next steps](#), March 2015; Home Office, [Triennial review of the Independent Police Complaints Commission, A review of the functions, efficiency and governance of the IPCC](#), March 2015

²³⁶ Home Office [Improving police integrity: reforming the police complaints and disciplinary systems - Summary of consultation responses and next steps](#), March 2015, Ch5

effectively and efficiently as possible”.²³⁷ The Government expects the IPCC to present proposals for structural reform by the end of June 2015.

8.5 Public confidence surveys

The IPCC has conducted a number of surveys on public confidence in the police complaints system.²³⁸ The findings from the 2014 survey, which was based a sample of over 4,000 members of the general public, included:

- 62% of people said they were very or fairly confident that they would know how to make a complaint against the police;
- 62% of people also said that they felt that the IPCC was not part of the police;
- 77% of people said that they were confident that the IPCC deals with its work in an impartial way;
- 52% of people who had heard of the IPCC agreed that it was effective in dealing with its core objectives (10% of people disagreed).²³⁹

9. NORTHERN IRELAND

The [Police Ombudsman for Northern Ireland](#) was established in 2000 under the *Police (Northern Ireland) Act 1998*. This followed a recommendation in a 1997 report on the police complaints system, which was endorsed in a 1999 report on policing by an Independent Commission for Policing.²⁴⁰ The Police Ombudsman was said to be “the first fully-funded and completely independent police complaints organisation in the world”.²⁴¹

9.1 Organisation

The Police Ombudsman is appointed by Her Majesty for a period of 7 years and is constituted as a corporation sole.²⁴² The Police Ombudsman may, with the approval of the Secretary of State as to numbers, remuneration and other conditions of service, employ such persons as he or she thinks fit.²⁴³ The Police Ombudsman may enter into arrangements for members of the Police Service of Northern Ireland (PSNI) or a police force in Great Britain to be engaged for a period of temporary service.²⁴⁴ In 2013-14, the Police Ombudsman employed an average full time equivalent of 151 staff.²⁴⁵ None of its staff are members of

²³⁷ Home Office, note 236, p47

²³⁸ Independent Police Complaints Commission, [Public confidence surveys](#), [Online]

²³⁹ P Harvey, S Shepherd and T Macgill, [Public confidence in the police complaints system](#), Independent Police Complaints Commission and Ipsos MORI, July 2014, p1-4

²⁴⁰ M Hayes, *A police ombudsman for Northern Ireland? A review of the police complaints system in Northern Ireland*, January 1997. See also C Patten, [A New Beginning: Policing in Northern Ireland – The Report of the Independent Commission for Policing for Northern Ireland](#), September 1999

²⁴¹ Police Ombudsman, [History of the Office](#), [Online]

²⁴² *Police (Northern Ireland) Act 1998*, s 51; Sch 3

²⁴³ *Police (Northern Ireland) Act 1998*, Sch 3

²⁴⁴ *Police (Northern Ireland) Act 1998*, Sch 3

²⁴⁵ Police Ombudsman for Northern Ireland, [Annual Report 2013-14](#), p16

PSNI but several police officers are seconded from other police services.²⁴⁶ In 2013-14, the Police Ombudsman had total expenditure of £9.5 million.

9.2 Functions

All complaints about the police force are either (a) to be made to the Police Ombudsman; or (b) if made to a member of the police force, shall be referred immediately to the Police Ombudsman.²⁴⁷

The Police Ombudsman is to consider whether a complaint is suitable for informal resolution, which will only be the case if the complainant consents, and it is not a serious complaint.²⁴⁸ If the complaint is suitable for informal resolution, the Police Ombudsman is to refer it to the appropriate disciplinary authority (generally the Chief Constable). If a complaint is not suitable for informal resolution and it is a serious complaint, the Police Ombudsman is required to formally investigate the complaint.²⁴⁹ In the case of non-serious complaints, the Police Ombudsman may formally investigate the complaint or refer it to the Chief Constable for formal investigation by a police officer. The Police Ombudsman may supervise the investigation of any complaint by a police officer if he or she considers that it is in the public interest to do so.²⁵⁰

The Northern Ireland Policing Board or the Chief Constable may refer to the Police Ombudsman any matter which appears to indicate that a member of the police force may have committed an offence, or behaved in a manner which would justify disciplinary proceedings.²⁵¹ The Police Ombudsman shall investigate the matter if it appears desirable in the public interest to do so. The Police Ombudsman may, of his or her own motion, investigate any matter which appears to indicate that a member of the police force may have committed an offence, or behaved in a manner which would justify disciplinary proceedings.

After an investigation, the Police Ombudsman officer or police officer appointed to conduct the investigation is to submit a report to the Police Ombudsman.²⁵² The Police Ombudsman is to consider the report and determine whether it indicates that a criminal offence may have been committed by a member of the police force.²⁵³ If so, the Police Ombudsman must send a copy of the report to the Director of Public Prosecutions together with such recommendations as appear to be appropriate.²⁵⁴ If not, and the Police Ombudsman considers that the complaint is not a serious one, the Police Ombudsman may determine that the complaint is suitable for mediation.²⁵⁵ If the complainant and police officer

²⁴⁶ Police Ombudsman for Northern Ireland, [FAQs](#), [Online]

²⁴⁷ *Police (Northern Ireland) Act 1998*, s 52

²⁴⁸ *Police (Northern Ireland) Act 1998*, s 53

²⁴⁹ *Police (Northern Ireland) Act 1998*, s 54

²⁵⁰ *Police (Northern Ireland) Act 1998*, s 57

²⁵¹ *Police (Northern Ireland) Act 1998*, s 55

²⁵² *Police (Northern Ireland) Act 1998*, ss 56-57

²⁵³ *Police (Northern Ireland) Act 1998*, s 58

²⁵⁴ *Police (Northern Ireland) Act 1998*, s 58

²⁵⁵ *Police (Northern Ireland) Act 1998*, s 58A

agree to mediation, the Police Ombudsman is to act as the mediator.²⁵⁶

If (a) criminal proceedings are not instituted, or have been concluded; or (b) a complaint is not suitable for mediation or attempts to resolve it in that way have been unsuccessful – the Police Ombudsman is to consider the question of disciplinary proceedings.²⁵⁷ The Police Ombudsman is to send the appropriate disciplinary authority (generally the Chief Constable) a memorandum containing a recommendation as to whether or not such proceedings should be brought. If the Police Ombudsman recommends that such proceedings should be brought, and the Chief Constable is unwilling to bring such proceedings, the Police Ombudsman may, after consultation with the Chief Constable, direct him or her to bring disciplinary proceedings; and this direction must be complied with.

The Police Ombudsman also has a role in investigating police critical incidents, although this role is not outlined in legislation. A Police Ombudsman fact sheet notes that it investigates all discharges of police firearms; all fatal road traffic collisions involving police officers; and any death that may have occurred as a result of the actions of a police officer.²⁵⁸

9.3 Number of complaints

In 2014-15 (up to 31 March), the Police Ombudsman received 3,367 complaints containing 5,587 allegations.²⁵⁹ The most common situations relating to complaints were criminal investigations (828), arrests (624) and searches (287); and the most common categories of allegations were failure in duty (2,381), oppressive behaviour (1,994) and incivility (421). The outcomes in relation to these complaints have not been reported; but in the previous year, the Police Ombudsman made 250 recommendations to the Chief Constable/Chief Officer for action to be taken in respect of police officer and staff conduct; and made 11 recommendations to the Director of Public Prosecutions.²⁶⁰

9.4 Reviews

In 2011, as a result of concerns raised by the then Chief Executive of the Police Ombudsman, two separate independent reviews were commissioned. The first addressed the relationship between the Police Ombudsman and the Department of Justice, and found some issues of concern.²⁶¹ The second looked at the operational independence of the Police Ombudsman from the Police Service of Northern Ireland.²⁶² This review found that “the legislative base for the work of the Police Ombudsman’s Office is solid and provides the necessary framework for the operation of an independent police complaints

²⁵⁶ *Police (Northern Ireland) Act 1998*, s 58A

²⁵⁷ *Police (Northern Ireland) Act 1998*, s 59

²⁵⁸ Police Ombudsman, [The Police Complaints System in Northern Ireland, Fact Sheet](#), p5

²⁵⁹ Police Ombudsman, [Complaints and Allegations Received by the Police Ombudsman for Northern Ireland: Quarterly Statistical Update to 31st March 2015](#), April 2015

²⁶⁰ Police Ombudsman, [Annual Report 2013-14](#), p8

²⁶¹ T McCusker, [Police Ombudsman Investigation Report](#), June 2011

²⁶² Criminal Justice Inspection Northern Ireland, [An inspection into the independence of the Office of the Police Ombudsman for Northern Ireland](#), September 2011

body”.²⁶³ However it also “identified significant concerns over the ways in which the Police Ombudsman conducted investigations into historical cases”.²⁶⁴

In March 2012, the Department of Justice published a consultation paper on the future Operation of the Police Ombudsman. The issues covered included:

- Whether it is appropriate that the Ombudsman can have a policing background.
- Whether the corporation sole model, in other words, a single individual acting as Ombudsman, continues to be the most appropriate.
- Whether the functions of the Police Ombudsman could be located as part of a Justice Ombudsman, Justice Ombudsmen, public sector Ombudsman, or remain as a stand-alone office.
- Whether the proposals for adjustments to the role and powers of the Ombudsman emerging from the [Ombudsman’s] five year review are appropriate.²⁶⁵

In September 2012, the Department published a summary of consultation responses.²⁶⁶ Some common themes noted included: the need for a balance between policing and civilian background throughout the organisation; strong support for maintaining the corporation sole model as the legal structure; strong support for the Police Ombudsman to remain distinct from other Ombudsmen; and strong support to allow certain classes of less serious complaints to be subject to local resolution procedures with the Police Ombudsman’s guardianship function preserved.²⁶⁷ The paper stated that the Minister would set out detailed policy and legislative proposals for consultation, probably in the first half of 2013.²⁶⁸ It appears that no such proposals eventuated.

9.5 Satisfaction surveys

The Police Ombudsman conducts an annual Complainant Satisfaction Survey, which allows complainants to express their views on the services provided. Key findings from the 2013-14 survey included:

- Sixty-five percent of complainants thought they had been treated fairly in 2013/14, although this proportion has decreased from 74% in 2009/10.
- In 2013/14, 65% of complainants said they would use the complaints system again, and this has decreased from 71% in 2009/10.
- Overall complainant satisfaction has fallen from 65% in 2009/10 to 50% in 2013/14.²⁶⁹

²⁶³ Criminal Justice Inspection Northern Ireland, note 262, p v

²⁶⁴ Criminal Justice Inspection Northern Ireland, note 262, p v

²⁶⁵ Department of Justice, [Future Operation of the Office of the Police Ombudsman for Northern Ireland: a consultation paper](#), March 2012, p5

²⁶⁶ Department of Justice, [Future Operation of the Office of the Police Ombudsman for Northern Ireland: summary of consultation responses](#), March 2012, p5

²⁶⁷ Department of Justice, note 266, p7-8

²⁶⁸ Department of Justice, note 266, p6

²⁶⁹ Police Ombudsman, [Annual Report on Complainant Satisfaction with services provided by the Police Ombudsman’s Office in Northern Ireland 2013/14](#), October 2014

The Police Ombudsman also conducts an annual Police Officer Satisfaction Survey, which allows officers subject to investigation to express their views on services provided. Key findings from the 2013-14 survey included:

- In 2013/14, 80% of police officers thought that the Office treated them fairly.
- In 2013/14, police officers displayed a high level of satisfaction with most aspects of the investigation process, however as in previous years, police officers were less likely to be satisfied with the frequency of updates and the length of time it took to investigate a complaint.
- Police officer satisfaction with the level of service remains high (67%) but has fallen since 2010/11.
- In 2013/14 nearly three quarters of officers were confident that the Office deals with complaints impartially, but confidence has fallen since 2010/11.
- In 2013/14, the majority of police officers agreed that the police complaints system makes for a more accountable police service.²⁷⁰

10. CONCLUSION

External oversight of police conduct is now an accepted part of police accountability in NSW. However, the model that has been in place in NSW for almost 20 years is currently under review. The Tink review will, in part, consider options for establishing a single civilian oversight model for NSW. It will therefore be necessary to revisit the arguments advanced by the Wood Royal Commission report for not combining external review and corruption investigation roles within a single agency; arguments that were supported by a Joint Parliamentary Committee in its 10-year review of the oversight system. It is not clear whether the review will consider the contention in the 2015 Legislative Council Select Committee report that more police complaints should be investigated (rather than being reviewed) by an independent body.

A similar two-agency oversight model exists at the Commonwealth level, and in South Australia and Tasmania. In contrast, Victoria, Queensland and Western Australia have a single oversight agency in the form of a general anti-corruption commission. As in NSW, these oversight bodies have review and investigative functions but only investigate a small proportion of complaints. In England and Wales there is a single agency, the IPCC, which has jurisdiction in relation to serious complaints and critical incidents. Reports have expressed concern at the IPCC's lack of resources and the effectiveness of the complaints system as a whole, and this has led to reform proposals. In Northern Ireland, the Police Ombudsman investigates all serious complaints and critical incidents; and may investigate or refer non-serious complaints to the police.

²⁷⁰ Police Ombudsman, [Annual Report on Police Officer Satisfaction with services provided by the Police Ombudsman's Office in Northern Ireland 2013/14](#), October 2014