

Appendices

APPENDIX 1.....	73
NSW POLICE ASSOCIATION.....	73
Questions On Notice.....	73
NSW OMBUDSMAN.....	74
Response To Questions On Notice.....	74
POLICE INTEGRITY COMMISSION.....	79
Response To Questions On Notice.....	79
NSW POLICE.....	96
Response To Questions On Notice.....	96
APPENDIX 2.....	118
TRANSCRIPT OF PUBLIC HEARING, THURSDAY 5 th SEPTEMBER 2002.....	118
TRANSCRIPT OF PUBLIC HEARING, FRIDAY 20 th SEPTEMBER 2002.....	133
APPENDIX 3.....	202
NSW POLICE RESPONSE TO QUESTIONS TAKEN ON NOTICE.....	202
APPENDIX 4.....	233
NSW OMBUDSMAN'S RESPONSE TO SUPPLEMENTARY QUESTIONS.....	233
NSW POLICE RESPONSE TO SUPPLEMENTARY QUESTIONS.....	238
APPENDIX 5.....	246
LIST OF JUDICIAL INQUIRIES AND OTHER REPORTS INTO POLICE MISCONDUCT AND POLICE CORRUPTION.....	246
APPENDIX 6.....	249
FLOW CHART FROM NSW OMBUDSMAN'S ANNUAL REPORT 2001-2002.....	249

APPENDIX 1

NSW POLICE ASSOCIATION

Questions On Notice

1. The Police Service Annual Report for 2000-2001 says that during the reporting year 264 officers nominated under s.181D were medically discharged. Some assert that medical discharge allows officers to escape from disciplinary action and retain their service entitlements. Do you think this is the case?
2. Are there any proactive measures (eg psychological testing of recruits) you consider may be useful in helping to manage the risks arising from these new forms of corruption or corruption generally?
3. Does the Police Association consider that s.181D 'Commissioner's Confidence' provisions are operating in a timely and effective manner? If not, how could this process be improved?
4. Does the Police Association consider that s.173 reviewable and non-reviewable management actions are an appropriate and effective way to respond to issues of misconduct? If not, how could these processes be improved?
5. Would the introduction of random integrity testing and random drug and alcohol testing be of any utility in assisting to identify police misconduct and or corruption? If not, why?
6. Legislation providing penalties for vexatious complainants has recently been introduced in NSW. Does the Police Association see this as helpful? Does the Association know of any action that has been taken against complainants under this legislation? Has the Association developed any guidelines for pursuing vexatious complainants, or been involved in developing any guidelines with the Police Service?

NSW OMBUDSMAN

Response To Questions On Notice

1. Has there been any impact on complaints from the enactment of new legislation concerning vexatious complainants? Has any action been taken against people deemed to be vexatious complainants, and if so, what has been the result of the action?

The Police Service Amendment (Complaints) Act 2001 inserted s.167A of the Police Act 1990. S 167A makes it an offence for a person to:

- knowingly make a false complaint; or
- knowingly provide false or misleading information in the course of the investigation of a complaint.

S 167A does not directly deal with vexatious complainants – it is focussed on persons who knowingly make false complaints.

It is important to note that, prior to the commencement of this provision, the Police Act already provided for frivolous complaints. In particular, s 141(1)(b) provides that, in making a decision about whether a complaint should be investigated, the Ombudsman and NSW Police may have regard to whether the complaint is frivolous, vexatious or not made in good faith.

My office has recently completed a detailed review of police complaints across 15 local commands. Most commands had a small number of repeat complainants, some of whom made vexatious complaints. Some commands had difficulty in dealing with these complainants. NSW Police is presently developing a policy to guide commanders in dealing with difficult complainants.

In addition, prior to the commencement of s 167A Police Act, the Crimes Act already provided for the offence of Public Mischief (s 547B Crimes Act), and complainants had been prosecuted under this provision on a number of occasions.

Records held by my office indicate that in 1999-2000, 16 public mischief prosecutions were considered or commenced by NSW Police against persons who were said to have made false complaints against police officers. In 2000-2001 the number was 11, and last financial year five persons were prosecuted or considered for prosecution.

At this time, my office has been advised of one prosecution under s 167A of the Police Act. A correctional centre inmate alleged that a police officer had acted corruptly and sold drugs to another person. We have been advised that the investigation exonerated the officer, and the inmate has admitted that the complaint was false. We have not as yet been provided with the investigation papers, and have been informed that the prosecution is not yet finalised.

2. Have complaint numbers changed at all since the commencement of the new class and kind agreements in January 2001?

There have been two amendments to the class and kind agreements this year.

- Since January 2002, minor written complaints from community members are no longer to be notified to the Ombudsman, although NSW Police remains responsible to take appropriate action in relation to these complaints.
- Since June 2002, minor workplace grievances can be dealt with by police officers without notification to the Ombudsman, provided the aggrieved person agrees and the conduct is one-off. The Employee Management Branch is notified of these grievances.

Since January 2002, there has been a significant decrease in the number of written complaints notified to the Ombudsman. Complaint numbers have decreased from around 2600 complaints in the first six months of 2001 to 1600 complaints in the first six months of 2002.

The primary reason for this has been the decrease in complaints from community members – a direct consequence to the changes to the class and kind agreements. This is confirmed by our recent audit of local commands (discussed below), which identified a substantial number of these complaints being managed effectively at the local level.

Last financial year, written complaints notified to the Ombudsman totalled about 3800, down from almost 5000 written complaints in 2000-2001.

In addition to these complaints, this office fielded some 3350 telephone inquiries in 2001-2002 from persons considering making a complaint against a police officer.

A significant number of written complaints were also dealt with in local commands, without our office being notified. These are the minor complaints made by police officers and community members, frequently through their local Member of Parliament. On the basis of our recent audit, discussed below, we estimate that local commands across NSW deal with more than 3000 minor complaints without the Ombudsman or the Police Integrity Commission being notified.

To ensure appropriate classification and management of these minor complaints, Ombudsman officers visited a number of commands in August 2002 to review local complaint management systems. Although we are yet to finalise our findings, the following matters are of note:

- Most minor complaints are being managed well by local commanders.
- Some commands have numerous systems to deal with local complaints, which can be confusing and inefficient.
- A substantial number of matters which should be notified by NSW Police to the Ombudsman are not being notified.

Before finalising the audit, we have undertaken to discuss our preliminary results with local commanders and senior managers within NSW Police. The review may also suggest further appropriate amendments to the class and kind agreement, to make its operation simpler and more effective.

The new NSW Police complaints computer database, c@ts.i, includes a local management database in addition to the complaint information system. My office will have full access to this local database. When c@ts.i is fully operational, my officers should be able to audit the management of minor complaints more efficiently and effectively.

3. Is this significant, and is it likely to continue?

See Q&A 2.

4. Is there evidence that reviewable penalties under s173 are providing adequate responses to instances of misconduct, as well as safeguarding against recidivism?

While this question focuses on reviewable action, it is important to note the extensive oversight by my office of Commissioner's confidence matters (s 181D Police Act). In my Special Report to Parliament, *Assessing police performance in complaint management*, I detailed some of the initiatives employed to ensure accountability in respect of s 181D considerations:

'In assessing outcomes, we use similar methods to those employed in assessing timeliness and the quality of investigations: analysing trends across all complaints, auditing particular types of matters, and raising particular concerns on a case by case basis. Processes employed in considering whether an officer should be removed because they have lost the confidence of the Commissioner of Police provide a good example of our performance measurement approach:

- *we collect information from every complaint file to establish which officers are nominated for removal – our trend reports provide information across commands and regions.*
- *we audit the process used by NSW Police in dealing with nominations for removal.*
- *where a decision is made to retain a police officer, we examine the reasons and supporting material – if we are concerned that the decision is not reasonable, we will require further information or recommend that the decision be reconsidered if all relevant factors have not been taken into account...'* (at page 20)

I noted concerns raised with NSW Police, including the present mandatory nomination guidelines, poor documentation and endemic delays. I also noted proposed NSW Police initiatives, including a new process and increased resources.

In respect of reviewable action, I have been concerned for some time that these management responses, that is reduction in rank, seniority or deferral of salary increment, are not being used effectively to manage police officers who have engaged in misconduct.

In 1999-2000, NSW Police notified my office of only two officers who were subject to reviewable action – that figure had climbed to 20 officers last year. This increase in part reflects improved processes with NSW Police, such as internal review panels, which are better ensuring that all appropriate management actions are considered.

However, consistent issues concerning management outcomes that have arisen in respect of complaints where more serious misconduct is found include:

- a lack of consistency between commands dealing with the same misconduct, as demonstrated in my Special Report to Parliament concerning misuse of email;
- a failure of management to clearly explain what is expected of officers, such as where officers are charged with drink driving offences (reported in my 2000-2001 Annual Report); and
- the failure to appropriately consider past complaints in determining management outcomes, as documented in my Special Report to Parliament concerning officers with complaint histories of significance.

The deployment across NSW Police of the decision making framework, which resulted from recommendations made by my office in 2000, is a part response to these issues. The framework benchmarks decision making against relevant criteria including the nature of the misconduct, the history of the officer and the risk to the community and NSW Police.

A significant weakness in the present processes is that officers who are nominated for removal for loss of the Commissioner's confidence, but who remain within NSW Police, are not then considered for reviewable management action. This flaw is being addressed in new procedures (which include s 181D procedures) being developed with input from my office and other organisations, notably the Police Association.

Whether police initiatives will be successful is uncertain. My office will continue, however, to monitor outcomes through trend reports, audits and individual matters, with a view to testing, and improving on, police practices.

5. Have there been any changes in reporting of complaints?

See Q&A 2.

6. Has the evaluation of the Command Management Framework begun?

As reported to Parliament at the 10th General Meeting with the Ombudsman on 12 June 2002, a project team from the Ombudsman's police area has been established to examine the effectiveness of the operation of the Command Management Framework (CMF) as an audit tool. A draft project plan is prepared and awaits the availability of project leaders who are presently focussing on speeding fines and police promotions matters.

The project will examine implementation of measures by NSW Police to ensure regular and effective monitoring of COPS accesses. In addition, the team may review the role of the CMF in monitoring lost property and exhibits within local commands. The audit will commence in late 2002.

7. From the complaint numbers reported in the Police Service Annual Report 2000-2001, approximately 69% of all public complaints against police result in 'no adverse finding'. This compares with approximately

47% of all internal complaints. Has your office ever assessed the matter of 'no adverse findings', to ensure consistency in its application?

Our own figures suggest that the comparison between adverse findings of police internal complaints as opposed to complaints from community members is even more stark. For example, in 2001-2002, 59% of police internal complaints resulted in adverse findings, compared to 28% of other complaints. In 2000-2001, 67% of police internal complaints resulted in adverse findings compared to 26% of community complaints.

A further demonstration of this is that, in the past four years police internal complaints have made up only about 20% of all complaints. However, 56-65% of all officers who are charged with criminal offences have informations laid against them as a result of police internal complaints.

I am not surprised that police internal complaints are more often sustained than complaints from members of the community. Systems within NSW Police mean that matters must be notified in certain circumstances – such as failed prosecutions and irregular COPS audits. The evidence in these matters is frequently compelling. In addition, complaints by community members, many of which are conciliated, will not be sustained if they can be resolved.

I note that, for every complaint NSW Police is required to notify, Ombudsman officers review the outcome – if we disagree we write to NSW Police and ask that the outcome be reviewed. While we cannot require that our recommendations be adopted, they must be considered and NSW Police will usually adopt our recommendations where possible.

8. The Ombudsman's Annual Report 2000-2001 shows complaint numbers have remained relatively stable over the last five years – although the number of complaints investigated have risen substantially over the last three years. What are the reasons for this?

The reason for the increase in complaint investigations is that, following legislative changes in March 1999, some matters that were previously classified as enquiries (or preliminary or informal investigations) were reclassified as investigations. Under the current Police Act, all complaints are declined or investigated (which includes resolution by means of alternative dispute management procedures by the investigating officer, s 148A). There are no longer any preliminary or informal investigations, these matters now being classified as investigations.

POLICE INTEGRITY COMMISSION

Response To Questions On Notice

- 1. Is there any evidence from the operation of your respective organisations that there are new forms of police corruption emerging?***
- 2. If so, what are they and how do they differ from other forms of corruption?***
- 3. What does your organisation consider has given rise to these new types of corruption?***

The Committee is referred to the subsequent response to Q4. which discusses the difficulties associated with measuring trends in serious police misconduct. It is the Commission's view that it is not presently possible to set benchmarks and measure trends, particularly with a view to extrapolating findings to comment on state-wide patterns.

The Royal Commission provided detailed comment on the association by detectives with criminals in clubs and bars, criminals who were often known to have been involved in theft, armed robbery and like offences. The risks of the association between detectives and known criminals in pubs, as identified during the Royal Commission, were often justified by police on the basis that associating with criminals produced useful information.

During the course of its investigations, the Commission has noticed a disturbing increase in the incidence of a form of serious police misconduct which received little attention from the Royal Commission but which pose similar risks for the NSW Police.

Commission investigations such as Saigon, Regal and Dakota have identified a number of examples of younger, uniformed officers attending nightclubs, taking illicit drugs and associating with drug dealers. The Commission has received evidence from such officers that when they are off-duty, they no longer have the responsibilities that go with being a police officer. They appear to see no conflict in taking recreational drugs when off-duty.

In its report on Operation Saigon, the Commission noted its concern that the officers involved viewed recreational drug use as acceptable and failed to take any action against people using or supplying prohibited drugs as they were off-duty at the time.

Note: Additional information to be provided to PJC 'in camera'.

On a more general level, one of other problems associated with police officers using drugs is that they are mixing, and conducting illegal transactions, with criminals. This act can potentially compromise a police officer's ability to discharge their duties in relation to drug dealers from whom they have purchased drugs. Furthermore, it places them in circumstances where they may be forming personal associations with criminals. Both the Commission and the Royal Commission have highlighted police forming personal associations with criminals as being a major causal issue in corrupt conduct.

The Commission notes the results of NSW Police random, targeted and critical incident drug testing where 30 positive tests have been returned since 1998 and none since 1 September 2001 (501 tests undertaken). On average about one officer per month is also coming forward under amnesty for treatment.

However, the Commission has also received evidence of the susceptibility of testing processes to manipulation by informed police. There is evidence of police warning other police away when drug testing is occurring. There is evidence of police being aware that some drugs either leave the body quickly or are broken down into components which might just as easily have originated from 'cold and flu' tablets, and then planning to take drugs at the end of their rostered shift. Test samples can also be physically tampered with and substitute samples provided or drug content masked with the consumption of large quantities of water or possibly quinine.

The Commission has not conducted detailed research in regard to recreational drug use by police so cannot say with certainty what has given rise to its increased detection in Commission investigations. The Commission is not suggesting that recreational drug use by young uniformed police is widespread, nor is it suggesting that the problem is substantial. The results of NSW Police drug testing would, regardless of the susceptibility of testing to manipulation, seem to preclude the existence of such a 'trend'. The Commission can only say, that within the confines of its recent investigations, the incidence for recreational drug use has noticeably increased.

The Commission can only speculate on possible causes. Whether the increased detection rate is due to an increase in drug use within the NSW Police, perhaps reflecting a corresponding increase in use and acceptance within the broader community¹, or whether it is just a product of the Commission's targeting process, cannot be determined at this time. It is also possible that the impact of the Royal Commission may not have been felt among some younger officers. Recreational drug use was not targeted as part of the Royal Commission, and therefore young officers may not readily acknowledge recreational drug use as a potential pathway to serious police misconduct. Increased availability in recreational drugs may also be a factor.

Another issue is that of inadequate supervision of police officers. Many police left the NSW Police after the Royal Commission, or have done so since, leaving insufficient experienced officers. The importance of adequate supervision has been a recurring theme that the Commission has noted in relation to serious police misconduct. It is commonly understood that effective supervision and management are critical in reducing opportunities for misconduct. The Qualitative and Strategic Audit of the Reform Process (the 'QSARP') of the NSW Police has reported that officers receive inadequate supervision training and can be promoted without adequate supervisory experience or meeting the core competency of leadership.

The Commission is maintaining a watch in regard to recreational drug use and should increased detection continue in spite of NSW Police random, targeted and critical incident drug testing, detailed investigation and/or research will be considered.

4. *How widespread do you think such corruption is?*

¹ In 1995, 2.4% of Australians aged 14 and over had tried MDMA (Ecstasy), by 2001 this had increased to 6.1%. Source: 2001 National Drug Household Survey

The Commission considered a process for assessing trends in serious police misconduct in the 1999-2000 reporting year and again in 2000-2001. Through the process the Commission attempted to determine benchmarks and evaluate whether there was a discernible increase or decrease in the level of serious police misconduct over time. The methodology employed involved the application of a set of indicators which when collectively used were designed to signify whether serious police misconduct was trending up or down. The indicators originally chosen related to:

- ❑ nominations of officers under section 181D of the *Police Service Act 1990*,
- ❑ integrity tests,
- ❑ complaints against police,
- ❑ officers charged with criminal offences,
- ❑ officers suspended from duty with or without pay, and
- ❑ officers participating in the Internal Witness Support Program.

Indicators such as numbers of complaints of serious misconduct were not included due to their susceptibility to be influenced by a range of factors such as media attention, exposure of particular misconduct in Commission public hearings etc., and a clear skew towards the less serious forms of misconduct.

The Commission reported in its Annual Report for 1999-2000, amongst other things, that:

- ❑ some shortcomings with the indicators had become apparent when the Commission began to analyse the information, leading to a reduction in the range of indicators considered; and
- ❑ the indicators selected for serious police misconduct showed a gradual fall since 1997-1998 in stark contrast to evidence arising from internal investigations conducted by the NSW Police and investigations undertaken by the Commission.

During the course of the 2000-2001 reporting year, further issues emerged which raised questions about the efficacy of the indicators as a means of accurately identifying trends in serious police misconduct. Ordinary police misconduct, which is relatively common and covers matters such as low level assaults, rudeness and drug/alcohol abuse, is susceptible to specific purpose research by, for example, various kinds of surveys and random testing. Serious police misconduct, however, is relatively uncommon and is not susceptible to specific purpose research. Much serious police misconduct (bribery is a good example) consists of acts of consensual corruption, where it is in the interests of both parties to remain silent.² The methodology fails to capture data on the secretive, more serious forms of police misconduct such as bribery and 'greenlighting'.

² Further discussion on this subject is available in the paper entitled 'Strategies for Monitoring Trends in Police Misconduct' by Dr D Brereton, Director, Research, Queensland Criminal Justice Commission, delivered at the US National Institute of Justice Research Conference in 1998. Dr Brereton's findings are consistent with the Commission's own experiences in attempting to quantify serious police misconduct.

In the absence of a reliable means of directly measuring serious police misconduct, the Commission is not able to provide a definitive view as to how widespread serious police misconduct might be. The Commission can rely on indirect indicators, and then only within the scope of individual investigations and research projects. The Commission is a small agency and is limited to conducting 4 or 5 major investigations at any one time³. Extreme caution must be exercised in extrapolating across the whole state results from a relatively small number of investigations of corrupt activity with a narrow scope⁴. Indirect indicators of the extent of serious police misconduct within the confines of a specific investigation include:

- ❑ the strength and validity of police systems and procedures to resist corrupt practices;
- ❑ the extent of compliance with police systems and procedures;
- ❑ the effectiveness of supervision in terms of corruption prevention; and,
- ❑ the extent of actual evidence of serious police misconduct obtained.

Is serious police misconduct widespread? Is serious police misconduct endemic? The Commission cannot answer these questions. Is recreational drug use by police and associations with drug dealers widespread? The Commission cannot say. It appears unlikely in the face of random, targeted and critical incident drug testing results.

Do police systems and procedures provide opportunities for serious police misconduct? Since its inception, the Commission has made numerous recommendations that seek action from the NSW Police in relation to all three areas. For example, most recently in its report concerning Operation Saigon, the Commission made a suite of recommendations in relation to drug testing of NSW Police. These recommendations are intended, amongst other things, to deter police from using illicit drugs and detect those that have.

One of the principal means by which serious police misconduct is prevented, detected and deterred is through the implementation of effective systems and procedures and compliance with those procedures. For example, informant management procedures have been developed and modified over the years for the purpose of improving accountability and reducing the opportunities for corruption; the relationships between informants and police is a well-established risk area for police corruption.

Procedures in and of themselves do not provide opportunities for serious police misconduct. Opportunities for serious police misconduct arise from circumstances where:

- ❑ procedures are inadequate or in some way flawed;
- ❑ there is an absence of a system or procedure to regulate behaviour; and
- ❑ there is a failure to comply with an established system or procedure.

³ A number of minor investigations will also be on foot.

⁴ Such as an investigation of corrupt activity in a single Local Area Command, or, one aspect of a problematic system or procedure (that part of the promotions system considered in Operation Jetz for example).

Has there been a high level of compliance with critical corruption prevention procedures in the NSW Police? Where the Commission has considered compliance with corruption prevention procedures, evidence has been received which indicates compliance has been considerably less than high (Operations Jade and Florida for example). The Commission has not systematically collected information in relation to this issue. It cannot accurately assess the NSW Police compliance on an organisation-wide level.

In these circumstances, how effective was supervision? Based on the experience of the Commission, poor supervision and an absence of leadership has been a significant contributory factor in the failure by police to comply with corruption prevention procedures (Operations Jade and Florida).

Does the Commission consistently obtain evidence of serious police misconduct during its investigations? Unfortunately, the answer, is yes. While often there are claims of incompetence and inadvertence received into evidence, more often than not, where the Commission investigates allegations of serious police misconduct it consistently finds evidence of such misconduct occurring.

The Commission intends keeping abreast of developments in methodologies for benchmarking and measuring serious police misconduct and will continue to report on the extent to which its investigations and research-based projects identify issues and trends in serious police misconduct.

5. *What are the range of corrupt behaviours that the Commission has uncovered during its investigations?*

The PIC has released a number of public reports concerning various operations that have been undertaken in relation to serious police misconduct. The following are categories of misconduct that have arisen as a result of those operations:

- ❑ the unauthorised release of information by a member of the former Task Force Bax of the New South Wales Police Service to a convicted heroin dealer;
- ❑ the falsification of the signature of a police officer, by another police officer, on documents intended for court proceedings;
- ❑ the unauthorised release of information by a member of the New South Wales Police Service to a member of the public;
- ❑ the involvement of officers of the New South Wales Police Service in relation to unauthorised release of information and the protection of illegal activities;
- ❑ the alleged use and/supply of prohibited drugs by members of the New South Wales Police Service;
- ❑ allegations of serious police misconduct in the police investigations of three violent incidents;

Briefs for charges against numerous police officers have been referred to the DPP for possible prosecution. Those charges include:

- ❑ Furnish False and Misleading s.6 Statement to RCPS;
- ❑ Perjury (s 327 Crimes Act);

- ❑ Pervert Course of Justice;
- ❑ Give False or Misleading Evidence (S 21 RCPS Act);
- ❑ Use False Statement (s 300 Crimes Act);
- ❑ Make False Statement (s 300 Crimes Act);
- ❑ Hinder Investigation for Serious Criminal Offence;
- ❑ Tamper with Evidence (s 317 Crimes Act);
- ❑ Former Key Official Knowingly have Business or Financial Association with Person Known to be Close Associate of Licensee (s.105B Liquor Act);
- ❑ Theft;
- ❑ Attempt to Pervert Course of Justice;
- ❑ False Imprisonment;
- ❑ Assault (s 61 Crimes Act);
- ❑ Attempt to Pervert Course of Justice (common law);
- ❑ Assault Occasioning Actual Bodily Harm (s 59 Crimes Act);
- ❑ Conspiracy to Bribe (common law);
- ❑ Incite Supply Prohibited Drugs (s 27 Drug Misuse & Trafficking Act);
- ❑ Conspiracy to Receive Corrupt Commission or Reward (s 249B Crimes Act);
- ❑ Common Assault;
- ❑ Obtain Money by False and Misleading Statement;
- ❑ Corruptly Give Benefit (s 249B Crimes Act);
- ❑ Fraudulent Misappropriation;
- ❑ Unlawful and/or unauthorised access to data stored in a computer (s 309 Crimes Act);
- ❑ Aid and Abet False Pretence (ss. 179, 351 Crimes Act);
- ❑ Obtain Benefit by Deception (s 178BA Crimes Act);
- ❑ Conspiracy to Make Corrupt Payment (common law misdemeanour);
- ❑ False Testimony with Intent thereby to Pervert Court of Justice (common law misdemeanour);
- ❑ Larceny;
- ❑ Hinder Investigation;
- ❑ Destroy Document Knowing it may be required in Evidence (s 23 RCPS Act);
- ❑ Conspiracy to Pervert Course of Justice (ss 319 and 393 Crimes Act);
- ❑ Knowingly Give False Evidence;
- ❑ Supply Prohibited Drug;
- ❑ Give False or Misleading Evidence (s 107 PIC Act);
- ❑ Make False Statement with Intent Obtain Advantage (s 178BB Crimes Act);
- ❑ Possess Equipment Administer Prohibited Drug;

- ❑ Goods in Custody;
- ❑ Possess Prohibited Drug;
- ❑ Possess Prohibited Drug - Traffickable Quantity;
- ❑ Supply Prohibited Drug on Ongoing Basis;
- ❑ Conspire to Supply Prohibited Drug;
- ❑ Corrupt Commissions or Reward (s 249B Crimes Act);
- ❑ Breach of Secrecy provisions (s 111 ICAC Act);
- ❑ Fabricate Evidence with Intent Mislead Judicial Tribunal;
- ❑ Fraud.

6. *Do you think the current complaints system can respond adequately to this?*

For many of the matters listed above the complaints system is largely an irrelevancy. Matters such as using and selling drugs, stealing from criminals in return for a reduction in charges, bribery and 'greenlighting' are rarely the subject of a complaint. These are more likely to come to attention during a current investigation or a 'roll-over', through a disgruntled criminal or an informant, or through the Commission's target development processes.

However, for those matters which are susceptible to complaint, it is the Commission's view that current arrangements⁵ are essentially sound.

7. *Is there some way the current system could be improved to minimise the risk of this type of corruption occurring?*

It is likely that the complaints system will be considered during the review of the *Police Act 1990*. One of the key matters for consideration will be the notion of a single agency handling/oversighting complaints concerning NSW Police. There may be a number of advantages in one agency or the other overseeing all complaint investigations. There can be greater clarity and consistency in approach in terms of oversight and guidance, more rapid decision making early in the complaint process (as there are no doubts over which agency will be overseeing) and there is a capacity for more streamlined reporting.

The advantage in the Commission overseeing all police complaint investigations is that there would be a single agency, a 'one stop shop', with responsibility for overseeing the investigation of, and for investigating the most serious forms of, police misconduct. You could expect a number of efficiencies to flow from a 'one stop shop' arrangement.

The advantage in the Ombudsman overseeing all police complaint investigation processes is that you have an organisation which is specifically set up and resourced to handle complaints of misconduct across a range of organisations and about which there is a deeply embedded public perception that this is the agency to go to if you have complaint. There is a 'customer service' aspect to the work of the Ombudsman.

⁵ Internal investigation by NSW Police, oversight by Ombudsman and serious matters investigated/oversighted by the Commission.

The advantage of the current system is that it works. The bulk of complaint investigations are oversighted by the Ombudsman, as it is set up to do so, and the Commission investigates the most serious forms of misconduct. Both agencies meet regularly and work together to clarify roles, in particular matters where there is a common interest, and to ensure an overall consistency in approach to the NSW Police.

It should be noted that the new complaints management system, c@ts.i, streamlines the complaints process considerably, significantly reducing paper handling between agencies. There is scope for further improvements with minor changes to legislation. The following submissions were made to the recent Review of the *Police Integrity Commission Act 1996*.

“Under the scheme created by Part 8A of the *Police Service Act* and Part 4 of the PIC Act, responsibility for the handling of complaints against police is shared between the Police Service, the Ombudsman and the Commission.

The Police Service and the Ombudsman are responsible for bringing to the Commission’s attention all complaints they receive which are of a class or kind that the Commission and the Ombudsman have agreed, pursuant to s 67 of the PIC Act, should be referred to the Commission. These are known as Category 1 referred complaints. The present agreement provides that complaints in the following categories will be Category 1 complaints:

- (a) a complaint that a police officer has or may have sought or may seek to pervert the course of justice;
- (b) a complaint that a police officer has or may have committed or may commit an assault involving the malicious wounding of any person or the malicious infliction of grievous bodily harm upon any person;
- (c) a complaint that a police officer has or may have committed or may commit a property offence (including larceny) where the value of the property exceeds \$5,000;
- (d) a complaint that a police officer has or may have committed or may commit an offence (other than assault occasioning actual bodily harm) punishable on conviction on indictment by a maximum sentence of imprisonment or penal servitude for five years or more;
- (e) a complaint that a police officer has or may have solicited or accepted, or may solicit or accept, a benefit in return for failing to carry out his/her duties;
- (f) a complaint that a police officer has or may have sought or may seek to interfere improperly in the investigation by another police officer of an alleged offence;
- (g) a complaint that a police officer investigating an offence alleged to have been committed by another police officer, has or may have improperly failed to carry out, or may improperly fail to carry out, his/her duties in the course of that investigation;
- (h) a complaint that a police officer has or may have manufactured, or may manufacture, a prohibited drug, cultivate or may cultivate a prohibited plant, or supplied or may supply a prohibited drug or prohibited plant, where the quantity of the prohibited plant or drug is an indictable quantity.

The Commission is responsible for deciding whether or not to take over the investigation of a referred complaint. If the Commission decides not to take over

investigation of the complaint, it must refer the complaint back to be dealt with in accordance with Part 8A of the *Police Service Act* (sub-s 70(3)(b)). The Commission must notify the Ombudsman of its decision in respect of each Category 1 referred complaint as soon as practicable after the complaint was received by the Commission (sub-s 70(2)).

For non-referred Category 1 complaints – that is, Category 1 complaints that are received directly from the complainant rather than via the Police Service or the Ombudsman – again the Commission must determine whether or not to investigate the complaint. The PIC Act contemplates that the Commission may, but need not, refer complaints to the Police Service for investigation. It is nevertheless the practice of the Commission, having regard to the general principle that no complaint should go uninvestigated, to seek to refer all such complaints to the Police Service in circumstances where it determines not to conduct its own investigation. Having regard to the secrecy provisions in s 56 of the PIC Act, the Commission will first seek to obtain the complainant's consent to referring the complaint, unless the particular circumstances of the complaint (eg, imminent danger to life or limb) give rise to a countervailing public interest that dictates otherwise.

For non-referred Category 2 complaints – that is, less serious complaints that are received directly from the complainant – the Commission is required to refer a copy of the complaint to the Police Service (s 131(1)(b)). If the complaint is a notifiable complaint, a copy of the complaint must also be referred to the Ombudsman (s 131(1)(a)).

A “notifiable complaint” is presently defined by agreement between the Commission and the Ombudsman as follows:

- (a) all Category 2 complaints by members of the public; and
- (b) Category 2 internal police complaints that allege:
 - (i) criminal conduct;
 - (ii) conduct which is of a nature that might warrant the taking of action under s 181D of the *Police Service Act* or “reviewable action” as defined by s 173 of the *Police Service Act*;
 - (iii) lack of integrity;
 - (iv) serious incompetence;
 - (v) harassment or victimisation of any person;
 - (vi) possible payback complaints, as identified by the Internal Witness Support Unit;
 - (vii) any inappropriate conduct involved in serious incidents of the following type:
 - deaths and injuries in custody;
 - shootings by police;
 - police motor vehicle pursuits resulting in death or serious injury.

It is to be noted that, subject to consultation with the Police Service, the Commission and the Ombudsman have tentatively agreed to modify the abovementioned agreement such that only those Category 2 complaints by members of the public falling into the categories specified above with respect to police internal complaints, need be notified to the Ombudsman. This proposed change follows the recent amendment to the definition of notifiable complaint”

removing the distinction between police internal complaints and complaints by members of the public: see *Police Service Amendment (Complaints) Act 2001*.

In addition to writing to the Police Service and, where necessary, the Ombudsman, and forwarding on copies of Category 2 non-referred complaints therewith, the Commission must also write to each complainant to advise of the fact of each complaint's referral.

It is estimated that just over 100 person-days are currently applied to administrative processes associated with complaints handling. In the Commission's view, these resources could be better utilised, for example, in developing investigative opportunities or in relation to the conduct of further audits of the quality of police internal investigations. It is noted in this regard that since 1 February 1998, only 9 out of 1,574 Category 1 referred complaints (0.57%) have formed the basis for an investigation by the Commission. None of this small percentage of complaints has involved the conduct of public hearings or the issue of a report to Parliament.

It is proposed that the complaints handling regime be modified such that the Commission be relieved of its obligation to notify the Ombudsman of its determinations in respect of Category 1 referred complaints. Rather, the Police Service and the Ombudsman should be entitled, by force of statute, to assume that such complaints will be investigated by the Police Service, unless the Commission advises otherwise. Such an amendment will cement the current practice. The Commission may desire that the Police Service not proceed any further with its investigation where, for example, the Commission intends to take over the investigation, or, the Commission proposes to manage or oversee the investigation and, to this end, first requires, for example, an investigation plan.

For the time being, the Commission should continue to be notified of Category 1 referred complaints. I hasten to add that, at an appropriate point in time, there may be scope for the Ombudsman and the Police Service to be relieved of this requirement if, as is proposed, changes to the complaints information system expected next year will enable the Commission independent, immediate, on-line and efficient access to the same information.

It is submitted that appropriate changes to sub-ss 70(2) and (3) would give effect to the proposal set out above. Accepting the wisdom of these proposed amendments, s 72 of the PIC Act would seem otiose and thus apt to be omitted.

It is further proposed that the Commission be relieved of its responsibility to refer Category 2 non-referred complaints to the Police Service and, where necessary, also to the Ombudsman. Instead, it is proposed that the Commission write back to each complainant informing him or her that the Commission is not in a position to investigate the complaint and that it may be appropriately referred to the Ombudsman. This proposal eases slightly the administrative burden on the Commission. It also has the advantage that it enables complainants to make their own decisions as to whether they consider it appropriate for the matter to be referred to an agency other than the Commission.

It is not proposed that there be any change to arrangements in relation to Category 1 non-referred complaints, at least not until such time as the impact of the expected changes to the complaints information system can be more thoroughly considered.⁶

⁶ Submission to the Review of the Police Integrity Commission Act 1996, letter from Commissioner TP Griffin to Mr L Tree Director-General Ministry for Police, 21 December 2001.

8. Are there any proactive measures (eg psychological testing of recruits) you consider may be useful in helping to manage the risks arising from these new forms of corruption or corruption generally?

The Commission recently received a report from Victorian Police on data that had been collected using the Minnesota Multiphasic Personality Inventory (the 'MMPI') which has been conducted on Victorian Police recruits since 1985. The report examined whether a predictive model could be relied upon to determine what were 'desirable' and 'undesirable' recruits.

The methodology of the research was to analyse two independent samples of MMPI scores, one sample representing those officers with an inappropriate complaint history the 'undesirables', the other representing those officers that have no complaint history recorded against their name, the 'desirables'. The two samples were matched for age, years of service, duties and rank (women officers were excluded from the study as there were insufficient numbers) with the aim of determining whether or not the 'undesirable' officers had significantly different MMPI scores to the 'desirable' officers.

The study carried out a 'Discriminant Analysis' to produce a predictive model. Overall, the model correctly classified, as desirable or undesirable, 81.9% of all cases. However, the model was less accurate in classifying the 'desirables' (61.9% - 68.8%) than the undesirables (95.3%). The conclusion and recommendation of the study was for a pilot project to commence which would continue with the MMPI testing of recruits. However, those recruits that the predictive model identifies as 'undesirable' are referred on for further scrutiny and appraisal, thereby ensuring that determination is not solely based upon psychological testing.

The Commission is of the opinion that the methodology applied during the research was reliable, however the data used to build the model is based on MMPI scores, and the reliability of the MMPI, although widely tested and accepted, is still debated. The Commission looks forward to examining the results of the Victorian pilot study.

In January 2000, NSW Police also introduced the use of psychological testing of its recruits, however it uses a variety of psychological tests, including the MMPI-2. Since January 2000, two thousand students have participated in the psychological testing. The psychological testing is compulsory for all new recruits and is not used as the sole basis of determining a student's suitability.

NSW Police also use a psychological test for those officers attached to High Risk/Specialist areas, such as Forensics, Child Protection, and the Crash Investigation Unit. SCIA, Homicide and Serial Violent Crimes currently do not use the process although they have expressed an interest. The psychological testing of officers in High Risk/Specialist areas was recently taken over by Workforce and Careers Directorate during late 1999 to streamline and improve the process. The officers are tested more than once (approximately every 12-18 months) and include interviews as well as psychological tests, (one of which is MMPI-2).

NSW Police has commissioned the Graduate School of Management (UNSW) to research the effectiveness of their psychological testing of recruits. The study is a longitudinal study of two years on the data stemming from the psychological tests and is designed to assist with determining the predictive validity and reliability of

psychological tests in relation to NSW Police. The results of this research are expected some time in 2003. Some students undertaking their Masters at the UNSW are also undertaking similar research, using the data from the psychological tests of officers working in High Risk/Specialist areas. The results of that research are expected by the end of 2002.

As the Commission has not carried out specific research into the effectiveness of psychological tests used by NSW Police, and their own commissioned research is yet to be published, it is not in a position to comment on whether or not it considers psychological testing useful in managing the risks arising from new or other forms of corruption. Having said that, the Commission is also currently trialling psychological testing on applicants for investigator positions. The psychological test used is called the 15 Factor Questionnaire (15FQ) which is derived from the clinical test 16 Personality Factor (16PF). The difference between a psychological test such as the 15FQ and MMPI is that the 15FQ is a more general occupational recruitment test, whereas the MMPI is a far more clinical analysis of personality traits. To date 22 applicants have carried out the 15FQ test as part of the application process at the Commission. Due to the small number tested individuals and the even smaller number that have since taken up a position, the Commission has not yet formally evaluated the methodology's effectiveness in testing its own staff. The Commission anticipates doing so in the future.

In terms of the Commission undertaking other proactive measures to assist in the management of corruption, the Commission is currently considering the possibility of working with the data that will become available through the Police Oversight Data Store (PODS) with a view to manipulating it with appropriate software to quantify and develop reliable and valid indicators of some aspects of police misconduct, if not trends in serious police misconduct.

9. *Has there been any impact on complaints from the enactment of new legislation concerning vexatious complainants? Has any action been taken against people deemed to be vexatious complainants, and if so, what has been the result of this action?*

On 23 November 2001 an amendment was made to Part 8A of the Police Act 1990 creating the offence of knowingly making a false complaint about the conduct of a Police Officer: sub-s.167A(1). The provision also makes it an offence to knowingly provide false information to the Police Integrity Commission in the course of the investigation of a Part 8A complaint: sub-s.167A(2).

The Commission has not yet received a complaint it has suspected of being knowingly false, nor information during the course of its investigation of a complaint which it considers to have been knowingly false. Accordingly, it is unable to provide an assessment on whether the new legislation has had any impact.

10. *The Police Service Annual Report for 2000 – 2001 says that during the reporting year 264 officers nominated under s181D were medically discharged. Some assert that medical discharge allows officers to escape from disciplinary action and retain their service entitlements. Do you think there is any basis to this?*

Some clarification seems necessary before responding to Question 10. There is an assumption in the question that all officers medically discharged from NSW Police were also nominated under s181D provisions. This is not the case. The reference made in NSW Police Service Annual Report 2000-2001⁷ is capable of being easily misconstrued. There were 20 officers discharged under s181D during 2000-2001.⁸ There were 264 officers medically discharged. In the absence of research the Commission can only say that a proportion of the 264 were nominated, or were in the process of being nominated, under s181D provisions, rather than specify actual figures.

Also, the term 'medically discharged' needs clarification. Officers employed with NSW Police before 1 April 1988 are entitled to apply for Hurt on Duty (HOD) benefits under the Police Regulation (Superannuation) Act 1906. Officers employed after 1 April 1988 are entitled to apply for a 'medical discharge'. The NSW Police may be able to provide details on the distinctions between the two categories.

The details of HOD outcomes are reported in the Police Superannuation Scheme outcomes statement contained within the State Superannuation Board Annual Report 2000-2001. According to this report, the Police Superannuation Scheme has 5652 members.⁹ In this reporting year, 163 members were granted HOD benefits.¹⁰ A total of 2435 people were receiving an invalidity pension and of these people, 1756 were classified as HOD.¹¹ The average HOD pension was approximately \$1606 per fortnight.¹² In 2001, \$84.6 million was paid out, in total, for invalidity pensions, including HOD.¹³

As at 16/11/01, 535 officers were awaiting a decision on their HOD application.¹⁴ Of the approximate 1200-1300 HOD applications processed per year by NSW Police Health Services, approximately 92% are successful in gaining benefits.¹⁵ These benefits include 72.5% of their salary at the time of injury and continue until an officer's retirement age. On-going medical expenses continue to be met by NSW Police.

The Commission has noted in investigations such as Mosaic, Dakota, Belfast, Togo, Rosella, that a correlation exists between those officers under investigation and those applying for, and receiving HOD benefits before subsequent disciplinary action, such as a 181D nomination, can be resolved. It is also noted that in relation to Operation Saigon, the Commission made recommendations that three officers be removed from the NSW Police under the provisions of s181D of the NSW Police Act; one of the three was discharged on medical grounds before any action could be taken. Similarly, in relation to Operation Oslo, the Commission recommended that disciplinary action be taken in relation to two officers; one of the two officers was discharged on medical grounds before the recommendation could be implemented.

⁷ NSW Police Service Annual Report 2000-2001, p54

⁸ NSW Police Service Annual Report 2000-2001, p53

⁹ NSW State Superannuation Board Annual Report 2000-2001, p88

¹⁰ NSW State Superannuation Board Annual Report 2000-2001, p89

¹¹ NSW State Superannuation Board Annual Report 2000-2001, p99

¹² NSW State Superannuation Board Annual Report 2000-2001, p96

¹³ NSW State Superannuation Board Annual Report 2000-2001, p53

¹⁴ Advice from NSW Police, 16/11/01

¹⁵ Advice from NSW Police, 17/05/02

Despite the fact that the Commission has uncovered officers who appear to have applied for a medical discharge in order to escape disciplinary action, these findings have been incidental to its ongoing investigations. The Commission has not initiated a specific project into the extent of the practice, and cannot answer with certainty whether it is occurring in isolated incidents, is widespread in the NSW Police, or particular to Commission investigations.

Regardless of the dubious ethics of the practice, current legislation allows for it to continue, it therefore cannot be regarded by the Commission as serious police misconduct. That is not to say that the Commission cannot form an opinion that the legislation and subsequent departmental policy that allows this practice to continue is in need of review. However, in the first instance, the Commission believes that any situation that allows officers to be medically discharged in order to escape from potential disciplinary action, while retaining their service entitlements, is an issue for the senior management of the NSW Police.

11. *Is there any currency in the notion that the Police Service requires a 'generational change' in officers to rid itself of corruption?*

The Royal Commission found in 1997 that corruption was "... systemic and entrenched..."¹⁶ in the NSW Police. The Royal Commission envisaged that the reform of the Service would be a major undertaking, requiring strong foundations, careful planning and adequate resourcing and guidance for each phase of implementation by skilled, capable people. Reform would take considerable effort and require a detailed commitment in the long term to effect substantial change to the Service's old culture and systems. In the environment at the time, and given signs that some progress was being made the Royal Commission was optimistic and cautiously concluded:

So long as the opportunity is now taken and the pressure is not released through reduction of resources, failure to draw on external expertise, loss of interest, or complacency when the job is done, this Commission is confident that reform can be achieved.¹⁷

While the Commission and other agencies play an important part in preventing, detecting and investigating serious police misconduct, the single most critical factor in reducing serious police misconduct over time is the reform of the leadership and culture of the NSW Police.

The QSARP is the most structured and formal means by which the Commission is informed on the progress of reform in the NSW Police. The template for the QSARP, which was developed in concert with a group of experts on transformational change, was provided by the Royal Commission in Appendix 31 of its Final Report. The template focuses on leadership, culture, corruption resistance and organisational management practices and systems.

¹⁶ *Royal Commission into the New South Wales Police Service Final Report Volume 1: Corruption*, May 1997, p.84

¹⁷ *Royal Commission into the NSW Police Service, Final Report Volume II: Reform*, May 1997, p. 213.

In the Year 1 Report¹⁸, while pointing to discrete areas where some progress has been made in terms of the Royal Commission reform agenda, the Auditors reported that 'the full scope of reform objectives, as intended by the Royal Commission has faltered or fallen short in a range of key areas due to some recurring factors'¹⁹, they being:

- ❑ A departure by the NSW Police Service from the Royal Commission's vision for reform.
- ❑ Consistent failure of good, positive reform initiatives through poor implementation.
- ❑ A fragmented rather than integrated approach to change.
- ❑ An overstatement of reform progress.

The Year 2 Report²⁰ again outlined areas where progress has occurred, but continued to identify similar barriers to the progress of reform in the NSW Police. The Auditors reported:

- ❑ a need for more effective integration of reform initiatives; and,
- ❑ an absence of evidence of executive leadership in reform.

The Commission is yet to consider the final report for the QSARP which covers the period July 2001-July 2002.

The Royal Commission and its group of experts each recognised that the rebuilding of the Service would take many years. In his Final Report, Justice Wood warned that:²¹

The culture of the NSW Police Service is sufficiently entrenched to resist even modest change. The culture can be mapped and it can and must be changed. This requires focused effort, effective strategies and resolve.

The NSW Police readily acknowledged the difficulty of the task at hand when referring to Justice Wood's comments, Commissioner Ryan said:²²

... these factors alone mean that, while the Police Service has already achieved major reform across a broad range of areas, there will always be more to do. Reform of an organisation the size of the Service was an enormous task that had to be broken down and tackled piece by piece reform remains an ongoing process

and:

I have always believed that real and lasting cultural change would be difficult and take up to ten years to complete.²³

¹⁸ For the year March 1999-March 2000.

¹⁹ *Qualitative and Strategic Audit of the Reform Process of the NSW Police Service Year 1 Report*, March 1999-March 2000, p.283.

²⁰ For the year July 2000-June 2001.

²¹ *Final Report of the Royal Commission into the NSW Police Service*, Volume III, Appendix 31, p. A247.

²² PJ Ryan QPM Commissioner of Police, *The QSARP Report*, Article contained in the *Police Service Weekly*, Volume 13 No. 8 26 February 2001, p. 3.

²³ PJ Ryan QPM Commissioner of Police, *Future Directions 2001-2005*, December 2000, p.3.

Recognition that reform will take time is reflected in the template for the QSARP. There is also an expectation in the template that substantial, measurable progress will have been made over the three years of the Audit. Against the Audit template, progress has been somewhat less than that expected by the Royal Commission.

The Commission is comforted by the effort the NSW Police is currently applying to the development of an integrated reform plan and program management framework, critical precursors to effective transformational change. The NSW Police Strategic Plan for Reform details reform activity to occur over a two year period but which is expected to have impacts, in terms of leadership and culture change, for many years to come. The Plan is due to be finalised and endorsed by the NSW Police Executive later this year.

It is the view of the Commission that 'generational change' may not be necessary as there are many good, committed, professional officers, at all levels of the NSW Police, serving the community of NSW. However, based on overall progress on reform to date, the Commission is also of the opinion that the original estimate made by Commissioner Ryan appears somewhat optimistic. A reformed NSW Police with a proud, professional, corruption resistant culture and good effective leadership, may still be years away. This will only be achieved if committed action is taken to implement the NSW Police Strategic Plan for Reform over the next 2-3 years.

12. *What was the outcome of the Commissioner's visit to the Goulburn Police College on 17 May 2002? Have the ethics components of the Diploma of Policing Practice been retained?*

As noted in its response to question on notice 7.2 in regard to the PJC's General Meeting of 16 May 2002, the Commission has taken an interest in some of the recent changes to the recruit training for police, particularly the removal of the unit relating to ethics and accountability.

Following a meeting between Commission staff and NSW Police in mid-March, an exchange of correspondence and a subsequent meeting between Commissioner Griffin, Assistant Commissioner Sage and the Commissioner's Executive Officer with staff of the Goulburn Academy, the Commission received the following advice from the Acting Deputy Commissioner, Support:

- The Ethics and Accountability unit, as a stand alone subject has been removed from the Diploma of Policing Practice (DPP) Course.
- The issue of ethics and professional performance of the police role continue to be regularly discussed with students in various contexts throughout the DPP curriculum. The range of courses currently including ethics and professional performance components include: Ethical Dimensions of the Police Role; Introduction to Policing B (for graduate entrants); Policing as a Profession (a distance education subject during field placement – includes societal issues); Society, Law and Practice; Critical Assessments of Investigative Practice; and a range of other units.
- The NSW Police College and the Charles Sturt University have established a Curriculum Review Team to ensure that ethics and accountability course material is sufficiently integrated into the DPP course.

The Commission has been invited by the NSW Police to participate on the Team, an invitation which the Commission has accepted. The Team was due to report the outcome of their review by September 2002 to the DPP Course Committee, although this is unlikely as the Team is yet to meet.

The Commission remains concerned about the removal of Ethics and Accountability as a stand alone unit of the DPP and will report on the outcome of its participation on the Curriculum Review Team.

13. *The Annual Report 2000 – 2001 noted a gradual fall in statistical indicators for serious police corruption since 1997. What could be the reasons for this? Does this indicate that less corrupt behaviour is occurring, or that corrupt behaviour has taken new, harder to detect, forms?*

The Parliamentary Committee is referred to the response to Q.4 concerning the validity of the Commission's attempt in 1999/2000 to identify trends in serious police misconduct. The Commission is not satisfied that it is possible at this time to measure trends in serious police misconduct. As such, it is not possible for the Commission to say with even qualified certainty that more, or less, 'corrupt behaviour is occurring'. The Commission can say that, more often than not, where it investigates allegations of serious police misconduct, it consistently finds evidence of such misconduct occurring.

14. *Is the Commission undertaking any other research project style reports such as Project Oracle?*

Yes. The Commission is currently undertaking Dresden 2. Further projects will be undertaken once the Commission's current commitment to the production of s.96(2) reports has eased.

NSW POLICE

Response To Questions On Notice

INTRODUCTION

Since the Wood Royal Commission, the NSW Police, (NSWP) has undertaken a process of widespread reform and restructure with aspects of corruption resistance and identification being integrated into all practices, procedures and processes within the organisation. There has been extensive oversight of the reform process by a number of agencies, particularly the NSW Ombudsman and the Police Integrity Commission. These agencies have reviewed the reform process by way of hearings, investigations and the Qualitative Strategic Audit of the Reform Process – QSARP. The NSWP maintains its commitment to working with the oversight agencies and facilitate the continuous improvement of its practices and processes, particularly in the area of corruption resistance and complaints management. Such policies and procedures include:

Corruption Detection Measures

- Targeted Integrity Testing
- Random and Targeted Drug & Alcohol Testing
- Computer Access Audits
- Critical Incidents - Mandatory Drug and Alcohol testing

Policies, Procedures and Planning

- Code of Conduct & Ethics
- CRIME Code of Practice
- Transfer and Tenure Policy
- Promotions System including the incorporation of Pre-Qualify Assessments
- Secondary Employment Policy & Guidelines
- Region and Local Area Command (LAC) business planning
- Policy and Guidelines for the Use by Staff of Employer Communication Devices
- Internal Witness Support Policy
- NSW Police Handbook
- Employee Management Manual
- Decision Making Framework
- Conduct Management Plans
- Guide to the Conduct of Criminal Investigations Involving Police Officers

Legislation

- *Police Act 1990*
 - s181D - Commissioner's Confidence provisions
 - s173 - Reviewable Action
 - s167A - False Complainants

Education & Training

- Constable Development Program
 - Leadership Development Program (LDP)
 - Internal Affairs Investigators Course
 - Complaint Management Team (CMT) training
 - Duty officer training
 - LAC forums & training
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- Police TV
- LAC duty officer development program

Risk Management

- Command Management Framework (CMF)

Information Technology

- c@ts.i - Customer Assistance Tracking System
- Complaints Information System (CIS)
- Local Management Issues Database (LMID)
- Police Oversight Data Store (PODS)

The commands and groups within the NSW Police which have a key role in implementing reform and corruption resistance projects are:

Special Crime & Internal Affairs (SCIA)

SCIA has existed in its present form since 1997. It was established under the direction of the former Police Commissioner Ryan with a special brief to work with the NSW Crime Commission, (NSWCC) to examine the conduct of police involved in criminal activities. This role has since expanded to include Police Integrity Commission, (PIC) references.

SCIA is a specialist command of the NSW Police, which reports to the Senior Assistant Commissioner. The main units incorporated within the command are:

- Investigations Unit
- Special Crime Unit
- Integrity Testing Unit

SCIA's core business is:

- Conduct investigations into corruption and serious criminal allegations where police officer involvement is suspected
- Conduct internal investigations where significant legal, political or strategic issues are present
- Promote professional standards in complaint investigation management
- Identify and respond to high-risk behaviours, people, places and systems related to corruption and police complaints.

Employee Management Branch (EMB)

The command is responsible for the development and implementation of the employee management policy and tools, which assist to ensure consistency of management responses across the organisation. This includes the oversight of s173(2) matters. The Commander, EM Branch chairs the Internal Review Panels (IRPs) that are responsible for providing advice to Commanders to ensure consistency in the application of 173(2) reviewable matters across the organisation. The Employee Management Branch is also responsible for the development of grievance procedures, the negotiation of the Class and Kind agreement with the Ombudsman and Police Integrity Commission, Complaints Management Training, the development of Harassment and Discrimination guidelines, the development of Alternate Dispute Resolution guidelines, the development and production of the Complaints Management Policy and Manual and (with other groups), the alignment of the Section 181D processes with Section 173(2) processes.

Audit Group

The command is responsible for the development, implementation and evaluation of the Command Management Framework (CMF). It also conducts a variety of audits concerning aspects of NSW Police operations.

Health Services Directorate

The Health Services Directorate works to ensure the health and wellbeing of all members of the NSW Police. It is responsible for conducting drug and alcohol testing of NSW Police officers and providing a drug and alcohol counselling service. The random, targeted and mandatory testing programs administered by the directorate are an important part of the organisation's response to substance abuse problems and dependency issues.

The Drug and Alcohol Policy adopted by the NSW Police, has become a benchmark for other emergency services and interstate policing organisations. The opportunities for police to access counselling support services and education workshops is indicative of the organisation's proactive approach to health and welfare issues.

Complaints Management Steering Committee

The committee is responsible for overseeing the ongoing development and implementation of the complaints management process and related projects. The committee is chaired by Senior Assistant Commissioner Walsh, and includes representatives from various specialist and operational commands across the organisation.

Complaint Management Teams (CMTs)

CMTs consist of senior LAC officers, and are responsible for the investigation and management of all complaints at their LAC.

Interagency Liaison

The NSW Police maintains regular contact with both the Police Integrity Commission and the Office of the Ombudsman. This contact occurs at various levels within the organisation and includes:

- The Police / Ombudsman Standing Committee
- Commissioner/Ombudsman meetings
- PIC/NSW Police liaison meetings.

RESPONSES TO QUESTIONS

NEW FORMS OF CORRUPTION:

1. **Is there any evidence from the operation of your organisation that there are new forms of police corruption emerging?**
2. **If so, what are they and how do they differ from other forms of corruption?**
3. **What does your organisation consider has given rise to these new types of corruption?**

A significant proportion of misconduct is opportunistic. The risks inherent in exposure to high risk situations, the opportunity to engage in improper activity, and individual and cultural ethical standards, all contribute to the opportunity of some police engaging in corruption. There is limited scope for 'new' forms of corruption *per se* however, new tools or mediums may at times arise or materially change e.g. electronic communication such as email.

The revelations arising from the Wood Royal Commission and the very significant organisational emphasis on the identification and response, both proactive and reactive, to corruption issues within NSWSP have ensured that the issue of corruption remains very visible. However, the revelations from the PIC Florida/Mascot references have again brought into focus the risks and scope for corrupt activity by police officers. This reference was a NSWSP intelligence driven investigation, which has not only identified and charged corrupt police, but also provided further information to assist in the development of proactive strategies and acted as a deterrent to future, similar activities.

NSWP has moved to embrace a risk management approach that identifies and responds to risk, notably high risk issues which have the scope to facilitate corrupt activity e.g. informant management, which is considered in question 18.

Risks are not limited to the workplace itself, the behaviours of police whilst off duty is also a concern for NSWSP. Related concerns include activities such as recreational drug use, which have ethical, criminal, police culture and wider social implications, as well as the immediate physical health and impairment issues. NSWSP strategies take into consideration the human and environmental factors that contribute to these behaviours.

Clearly it is important not to limit the scope of strategies adopted in regards to corruption prevention and resistance within the organisation. It is imperative to acknowledge that systems can facilitate both (mis) conduct and (poor) performance. SCIA initiatives aim to identify and work with officers in the 'field' in response to workplace issues. These issues are identified through the Professional Standards Review Panels, Professional Standards Managers Forums, and the Complaints Management Unit, (CMU). The CMU will, *inter alia*, provide advice on a consultancy basis to the field, and assist Education Services in the development and delivery of training. The CMU positions are currently undergoing recruitment action.

Other initiatives that address systems issues include the introduction of Complaint Management Teams (CMTs) who provide a team based approach to complaint and management matters, principally in regards to identification, management of investigations and issues arising. The Command Management Framework (CMF) is

another systems tool that assists local commands in identifying, prioritising and responding to local issues, inclusive of corruption resistance approaches.

4. How widespread does your organisation think such corruption is?

Police are representative of the community from which they are drawn and to some extent simulate the behaviours of the wider community. However, the opportunity for corrupt activity is proportionally greater for police than within the wider community. Also the ability to detect and deal with corruption is greater than the wider community.

The actual extent of corruption is not easily ascertainable. A number of strategies are in place to identify and respond to corruption e.g. the Corruption Hotline and the complaints process. The complaints process, both CIS and [c@ts.i](#) have been, and continue to be utilised to proactively identify risk behaviours. Initiatives to proactively test ethical approaches include Integrity Testing. An example of a locally focussed initiative to identify and respond to corruption issues is the Command Management Framework.

5. Does your organisation think the current complaints system can respond adequately to this?

Complaints systems in essence, are recording systems and cannot of themselves respond to corruption issues. However, a system can be a tool for the collection of information, which can be applied and used to discern corruption indicators. With this in mind, the new Customer Assistance Tracking System (c@ts.i) has been built to provide an in-depth reporting capability which was not previously available, and will provide both data quality and decision quality reviews to ensure high integrity information and management.

6. Is there some way the current system could be improved to minimise the risk of this type of corruption occurring?

Again, complaints systems cannot solely minimise risk. However, the enhanced functionality provided by c@ts.i will assist the identified needs of police in corruption prevention and risk identification. c@ts.i will be the first complaints system that is flexible enough to enhance and adjust as desired. There is a business advisory panel in place where the Police and its oversight agencies are represented. This panel meets on a regular basis to prioritise requested enhancements and changes from the users. A skills transfer plan is in place to ensure that Police technical staff within the organisation are adequately skilled to provide all future system work (short of a major design change) at no additional cost to the agencies. This allows for continuous improvement in the assistance of minimising corruption.

[c@ts.i](#) has much greater scope in the search and retrieval capability than its predecessor. Heightened analytical capacity allows for more scope for predictive, proactive approaches i.e. to identify trends to anticipate matters. Recording systems of themselves will not minimise risks, but can better inform of the existence, scope for harm and response to risks.

RISK MANAGEMENT

7. The 2000 – 2001 Annual Report notes that SCIA is undertaking two research projects. Has the ‘Analysis of Sustained Criminal Allegations 1999 – 2001’ to identify characteristics of ‘at risk’ officers and duty type been completed? If so, has it resulted in any conclusions about ‘at risk’ officers? If not, have any trends or themes emerged from this research? Would it be possible to demonstrate to the Committee how this profiling works?

The project was completed in June 2001 and reached the following conclusions based on the findings of the research project into sustained criminal allegations:

- Police officers involved in behaviour of a corrupt nature should be addressed in relation to their offence not by a ‘blanket approach’ for all complaints and offences. As with the general crime population different interventions exist for offenders depending on the crime they have committed. This approach should also apply for police officers who commit different crimes and as such interventions need to be tailored towards the offender group to hopefully dissuade the offence being committed.
- Recruitment should continue to encourage females in joining the NSW Police. On the basis of these results and previous studies it can be concluded that females generally exhibit more ethical behaviour than male police officers.
- Discrimination on the basis of age should not exist as this research found no findings to support the notion that younger employees are more vulnerable to corruption. This research highlighted police officers 28-31 years of age were at a higher risk of receiving sustained criminal allegations.
- Further research and the establishment of an Early Warning System (EWS) is recommended to highlight at risk officers.
- The promotion of positive reduction in corruption or complaints is recommended to increase morale and decrease the continuing negative impact the media and investigations may have on current employees.
- Further research be conducted to further explore the findings evident in the study. Some future research may involve an examination of the assault complaints, further analysis of location and transfer issues and exploration into the mid age anomaly.

8. Has SCIA taken up the Police Integrity Commission’s recommendation arising from Project Oracle concerning identification and ongoing monitoring of officers with multiple assault complaints (Project Oracle, p vi)?

NSW Police accepted the recommendations contained within the PIC report on Project Oracle. SCIA initiated the Corruption Identification and Management Process (CIMP) which addressed many of the recommendations contained within the Oracle Project.

The Strategic Projects Team within SCIA, conducted research into the identification and management of officers at risk of inappropriate conduct. This research incorporated the exploration of those officers at risk of engaging in assaults. The research process involved examining officers with sustained criminal allegations across a variety of demographics and variables to elicit those officers whose behavioural indiscretions deviate substantially from the normative police officer population. Such examination generated demographic descriptors of those officers with a higher propensity to engage in certain types of offences.

Generally, the findings of this research revealed that a high-risk officer may be identified in terms of the number of previous criminal allegations, previous adverse findings and number of complaints they have received throughout their career. Additionally, the age, length of service and duty type provide specific indicators on an officers' susceptibility to various complaint categories. This process, essentially utilises typologies, in conjunction with risk management methodology to enable the identification of officers with a high propensity for specific inappropriate behaviour.

The Corruption Identification and Management Process provides a holistic approach to assault concerns within the NSW Police Service. The process identifies assault issues at their earliest possible point and then sets in motion an appropriate mechanism for management and intervention. Follow-up procedures provide a method of ensuring program effectiveness and completion.

9. The second project mentioned in the 2000 – 2001 Annual Report involves increasing knowledge about complaint receivers. How is this project progressing? Have any conclusions been drawn about how internal complaints are received and reported?

The second project, titled 'Corruption Indicators' – Preliminary Findings of Exploratory Research within the Normative Police Service Population, was completed in June 2001. Its purpose was to identify the contemporary issues, which require intervention in the corruption minimisation process. It did not examine how internal complaints are received and reported. In instigating this study, exploratory analysis within the normative population was necessary. The study found *inter alia*:

- Most police officers are likely to receive a complaint throughout the course of their employment (79%).
- If a female receives a complaint, it is more likely to be regarding a general misdemeanour.
- An officer who receives an adverse finding and/or criminal allegation is more likely to receive further complaints than an officer who has not received such complaints.
- Complaint and adverse findings may be incorporated into the Early Warning System (EWS) to improve efficiency. Also, an EWS numerical reference point must be established which is meaningful to the individuals requiring attention in order to eliminate many 'false positive' investigations.
- Basic analysis conducted on Age, Duty, and Rank found an equal propensity to receive complaints across these areas. 'Internal' factors (e.g. issues such as ethical standards) may influence inappropriate behaviour.
- Regions appear to vary substantially in the amount of complaints obtained between and within them. Within regions, particular Local Area Commands (LACs) can be identified as having substantially greater complaint problems.
- Tenure based changes should be dependent upon dynamics of an individual LAC, rather than a blanket designated rotation time frame. Changing the dynamics of LACs, which appear to operate appropriately, may be counter-productive. However, areas, which stand out as being particularly problematic may benefit from a change of staff.

10. Has there been any impact on complaints from the enactment of new legislation concerning vexatious complainants? Has any action been taken against people deemed to be vexatious complainants, and if so, what has been the result of this action?

Legislation concerning false complaints is provided within s167A of the *Police Act 1990*. This section makes it an offence for a person to make a false complaint about the conduct of a police officer, or the giving false information during the course of an investigation of a complaint. It is to be noted that not all vexatious complainants are intentionally false.

In relation to actions taken under s167A, there have been two prosecutions this year. The first prosecution was of a person, who at the time of the complaint was a correctional centre inmate. This person alleged that a police officer had sold drugs to another person. The subsequent investigation exonerated the officer, and the complainant admitted that the allegation was false and was charged in August 2002. The prosecution has yet to be finalised.

The second prosecution involved an allegation that an officer had assaulted the complainant while he was being removed from his girlfriend's flat following her request for police to remove him. In an interview, the girlfriend initially supported the allegation but later stated that the complainant had forced her to support the complainant. The complainant was subsequently charged and convicted. He was sentenced to 3 month custodial sentence commencing 21 August 2002.

At this time no formal review has been conducted into the effectiveness of the legislation, however anecdotal evidence, including the active support of the Police Association, indicate positive police perceptions of the legislation.

Section 167A of the Police Act was introduced to address gaps in the public mischief offence provisions of s547B of the Crimes Act, however, a number of prosecutions have also been conducted under that section when the circumstances were appropriate.

SECTION 181D 'COMMISSIONER'S CONFIDENCE' PROVISIONS

11. Has the introduction s181D 'Commissioner's Confidence' provisions allowed for the timely removal of police officers who are not performing satisfactorily?

12. Has the number of officers removed under s181D changed significantly since its introduction? What has been the annual number of officers removed? Is the number rising, falling or stable? How long does the process take? Could the process be improved?

The introduction of the Commissioner's Confidence provisions has allowed greater scope for the removal of police officers who are not performing satisfactorily. Historically NSW Police has not consistently applied appropriate strategies to addressing poor performance at a standard that satisfies industrial law and procedural fairness requirements. However, improved awareness, skills and diligence by commanders in effectively responding and documenting their actions have significantly improved outcomes in this area.

The length of time taken for the process to reach finality is affected by a number of factors including:

- awaiting court outcomes
- awaiting applications for medical discharge
- legal advice
- resignation

- type of offence.

The number of officers nominated has reduced significantly since the initial implementation of the Commissioner's Confidence provisions. The implementation of s181D occurred during the course of the Wood Royal Commission, resulting in a considerable number of officers being nominated. This was followed by a period in which departmental charges were abolished and the only scope for 'penalty' was through s181D. Matters that were being considered for departmental charges defaulted to s181D consideration and this further inflated the numbers. However, since the introduction of s173 reviewable actions and a greater awareness and familiarity with the s181D process, the large initial number of nominations has reduced to a steady level.

It should be noted that not all officers nominated under the provisions of s181D will be removed. Other outcomes of the s181D process include resignation by the nominated officer, as well as other remedial and managerial action. The following table represents the total annual figures for those nominations that have been finalised since its introduction in March 1997.

Finalised S181D Nominations

Period	Removed	Medical Discharge	Resigned	Other	Total
01/03/97 – 30/6/98	14	19	55	168	256
1/7/98 – 30/6/99	15	11	17	140	183
1/7/99 - 30/6/00	12	7	7	67	93
1/7/00 – 30/6/01	15	8	20	78	121
1/7/01 - 30/6/02	9	12	14	60	95
1/7/02 – current (13/9/02)	4	9	3	11	27
TOTAL	69	66	116	524	775

The s181D 'Loss of Commissioner's Confidence' process was introduced in January 1997 while legislation providing for s173 Reviewable and Non-Reviewable Action was introduced subsequently and did not commence until 8 March 1999. As a consequence of this historical sequence the processes of managing police officers' *'competence, integrity, performance or conduct'* (s181D) and *'misconduct or unsatisfactory performance'* (s173), have become misaligned. Commanders considering s173(2) reviewable action are required to consult with the Internal Review Panel (IRP) for expert advice and guidance in their decision making, however, commanders nominating officers for s181D removal are not required to consult with this panel.

The Commissioner requested that a review of the 181D process be undertaken. As a result of the review there has been the opportunity to align the s181D and s173 processes. The review is in its final stages of stakeholder consultation and it is expected that if the recommendations are implemented, there will be an improvement in the timeliness and fairness of the s181D process.

13. What are the main reasons/offences that officers are removed for under s181D?

The main reasons by category and their percentages against the total number of s181D removals are as follows:

Reason/ offences	Number	Percentage
Drug/ firearm related	16	23.2%
Neglect, performance, incompetence, conduct	12	17.4%
Theft, fraud, untruthfulness, integrity	12	17.4%
Criminal association, other criminal	10	14.5%
Inappropriate computer use	7	10.1%
Sexual assault/ harassment	7	10.1%
Assault related	5	7.3%
TOTAL	69	100

TARGETED INTEGRITY TESTING

14. How many integrity tests have been conducted since their inception? Have the number of officers who have failed integrity tests increased, decreased, or remained stable? What have the main forms of action taken against officers who have failed integrity tests been? What have been the main offences that officers who have failed integrity tests have committed? Is there any utility in introducing random integrity tests?

Commander SCIA requests that due to the sensitivity of this issue, that for operational reasons, questions relating to integrity testing should be addressed in an in camera session of the Parliamentary Committee on 20 September 2002.

COMPLAINT STATISTICS TAKEN FROM THE POLICE ANNUAL REPORT 2000–2001

15. Internal complaints concerning conduct and departmental matters spiked during 1999 – 2000 at 1124, one quarter more than the public complaints about the same matter. Is there any reason for this spike?

Note: The statistics quote in the Annual Report were obtained from the Police Complaint Information System (CIS). In CIS complaints and categories are recorded. When a person makes a complaint, there is generally only one complaint recorded. This one complaint can involve more than one officer, which can involve more than one category. The nature of the complaint that is reported (Such as Conduct/Departmental Complaints) is the category. There were 1,124 categories, not 1,124 complaints. There will always be more categories than complaints. The complaint count can be seen on page 6 of the annual report.

During the period in question 380 complaints were initiated for Operation Providence, the SCIA Investigation into misuse of the Police Memo system. This resulted in a spike of 458 categories, which if deducted from the 1124 Conduct/Departmental categories leaves 666 IPC categories of this type, comparable with 2000- 2001.

Year	2000-2001	1999-2000	1998-1999	1997-1998	1996-1997
Categories	667	1,124 (*666)	798	940	1,059

* remainder after Providence categories removed

16. There appears to have been a general decline in the over[all] number of internal and public complaints against police from 11911 in 1996 – 1997 to 8087 in 2000 – 2001. What could be the reasons for this decline? Have reporting/recording systems changed during this time?

As mentioned in the response to the earlier question (15), these figures quote categories, not complaints. Whilst categorical reasons for the decline cannot be determined, the following is put forward as likely reasons for the decline:

- NSWSP no longer record all police that were on the roster as involved in a complaint, which was likely the case in 1996-1997.
- Less complaints equals less categories of complaint.
- The introduction of Employee Management resulted in many such complaints being dealt with locally and not appropriate for recording on CIS. EM complaints are recorded off line resultant in less categories of complaint.
- The revised 'class and kind agreement' led to additional conduct and customer service issues being dealt with under EM. Again, EM Complaints are recorded off line, resulting in fewer categories.
- Improved professionalism and supervision.
- Improved training.
- Introduction of Grievance handling procedures.

17. Categories of complaints used in the reporting tables in the category "Criminal allegations". What categories of behaviours would fit here? Is this where assault complaints are recorded? If not, where are they recorded?

Assault complaints are recorded under the category of criminal allegations. The categories for assault include:

- assault (physical injury)
- assault (no injury)
- sexual assault
- indecent assault
- assault domestic violence.

A listing of CIS categories, including criminal allegations, is provided at tab A.

18. What does your organisation expect from the new informant management system?

The new informant management system has been developed and will be managed within the Operational Information Agency. The following information has been provided by that command.

The new electronic system will integrate all aspects of managing a source of information. This encompasses: recruitment, retention, tasking, evaluation, protection and the rewarding of confidential sources, (whether with monetary or other considerations). All interactions with people defined, as 'sources' will be recorded within the system. The system will include the necessary work practices and policies required to identify and manage risks to the organisation, the police officer and the source themselves.

The new system will replace the Informant Management System, which focuses on compliance and processes for accountability and control of contact. That system is predominantly paper-based with a range of Region and Command informant

registers that are supported by a rudimentary stand-alone PC based central register managed by Operational Information Agency.

NSWP expectations of the new system are identified in the following priority objectives:

- Further strengthening of corruption resistance and the continual improvement in the safety of both officers and sources
- Capability to support pro-active policing and intelligence gathering
- Effective and efficient end-to-end tracking strategies and intelligence gathering
- Value management - the evaluation of the cost of managing a Source against the outcomes of the information provided (arrests, seizures, crime prevention)
- Performance Management, involving a review of the number and use of informants at each Command level
- Appraisal summaries to provide a source's consolidated history, which assists police to make an informed decision on the sources reliability based on past experience and what risks need to be addressed if accepted.

Whilst the information provided by a source during a contact will be recorded in the system, the intelligence provided will continue to be disseminated via other operational and intelligence systems.

Recent revelations from the PIC enquiry, 'Florida' reference, have reinforced the need for a more accountable and transparent informant management system. Whilst no system is infallible the new system will provide extra layers of defence against corrupt activity and allow greater performance management of this valuable police resource.

19. Have there been any changes in internal reporting of corrupt behaviour and misconduct? Are the levels of reporting of internal complaints rising, falling or remaining stable? What could be the cause of this?

As stated in question 16, there has been a decrease in the number of internal complaints, excepting a slight increase in year 1999-2000 and the possible causes for the decrease remain consistent with the earlier response to question 16.

20. How has the new structure of the Service affected the Professional Standards Managers positions?

The workload of the Region based Professional Standards Managers, (PSM's) has increased in volume, proportionate with the change from the former 11 Region, to the revised 5 Region model.

The liaison role between PSMs and the respective Local Area Command based Complaint Management Teams remains largely unchanged. However, the Complaints Management Unit (CMU) within SCIA will take responsibility from PSMs for the quality review of all Category One complaints. The CMU will also provide a consultancy to assist in investigations, the central identification of, and response to systems issues, while liaising with the field and Education Services to develop and deliver complaints based training. The CMU will regularly communicate with PSMs in forums, such as the Professional Standards Managers Forums and Professional Standards Review Panels, to ensure consistency of approach between the field and SCIA.

REVIEWABLE AND NON-REVIEWABLE MANAGEMENT ACTION**21. Is there evidence that reviewable penalties under s173 are providing adequate responses to instances of misconduct, as well as safeguarding against recidivism?**

The authority to apply sanctions under section 173(2) of the *Police Act* has been delegated by the Commissioner of Police to Commanders. Before Commander's impose such a sanction, they are obliged to consult with the Internal Review Panel (IRP). The IRP provides advice to Commanders who seek to take 'reviewable' action under section 173(2). This includes legal advice as to what action is defensible at the Industrial Relations Commission. By utilising a central advisory body like the IRP, it is possible to 'benchmark' such actions across NSW Police. This is on the basis that similar actions (by officers) will receive similar sanctions.

The Internal Review Panel meets on a needs basis. The first IRP meeting took place on 23 June 2000 and the most recent meeting was on the 26 August 2002. During that time the panel has met on 36 occasions and dealt with 159 matters. In 48 of those matters there was a recommendation for reviewable action. Only one officer has appeared for two separate matters, indicating a recidivism rate of 0.6%.

Not all matters that appear before the IRP result in the recommendation of reviewable action.

IMPLEMENTATION OF EMPLOYEE MANAGEMENT**22. Has the implementation of the Command Management Framework been completed? Is it proving to be an effective management tool and is it improving the way in which complaints about misconduct are dealt with?**

The Command Management Framework (CMF) is a risk based, self-assessment audit process that ensures commands have ownership of the risk assessment process. Subsequently, commands can develop and implement appropriate internal controls to improve all areas of risk management.

The CMF was trialled in 2000, implemented across the organisation in 2001-2002 and in August 2002 was endorsed by the Commissioner as the self-assessment audit system for all Commands, replacing the previous P80 system. In early 2002 the proposal to integrate the Corruption Resistance planning process into the CMF was endorsed by the Commander of SCIA and the Commissioners Executive Team (CET). The Commander of SCIA approved the proposal for commands to use the CMF as the active monitoring tool, but was concerned that there should always be a separate Corruption Resistance planning component within commands. This component will be contained in a separate 'self assessment' document within the CMF to ensure that Corruption Resistance planning remains a top priority and provides an effective tool to continually improve the management of corruption resistance activities and complaints handling procedures.

There has been overwhelming support for the CMF from operational and specialist commands. However, problems have been encountered in implementation in some areas due to the paper-based nature of the system. In response to this, in late 2001, the Commissioner endorsed the development of the 'iCMF', an interactive intranet web version of the CMF. The iCMF will provide an on line system for all commands which will be transparent to all levels of accountability within the organisation. It is anticipated that the iCMF will be at trial stage before the end of September this year.

Once trials of the system are completed, implementation will commence by placing all commands (both operational and specialist) on line as soon as November 2002.

The CMF is proving to be an effective management tool as it has forced commands to focus on portfolio management and accountability. The inspection and reporting habits of staff within commands have improved and the CMF is at this stage an adequate tool to manage and control areas of risk. Further to this, improvements in audit results and an obvious increase in commitment shown by commanders and managers towards evaluating staff accountability have also occurred.

Risk areas within portfolios, whether they are non-compliance or corruption opportunities are well covered by what the CMF provides. This is an improvement over the previous situation where P80 inspection reports and Corruption Plan activities reports were not addressing risk sufficiently. The CMF is about ensuring systems compliance, which overseas studies suggest reduces opportunities for corruption. Once compliance is improved, there is an identifiable impact on complaints generated from systems failure or neglect. The CMF will also prove to be a useful monitoring tool for ensuring Complaints Management Teams (CMTs) are regularly focussing on complaints handling.

Although the formal evaluation of the CMF has not commenced due to its conversion to the iCMF, the Audit Group continually monitors the implementation of the CMF in commands by follow up audits and surveys. The Commissioner's Executive Team (CET) has recently included the subject of compliance in Operational Crime Reviews (OCRs) using Audit results available in commands emanating from CMF implementation. CMF is contained within training modules in courses such as the Duty Officers course, Education Officers course, Middle Managers Course and the Sergeants course, which is expected to commence in October 2002.

23. How will EM operate in the new Region structure of the Service [NSW Police]?

Employee Management is a concept; it is able to operate regardless of structural changes. The Employee Management (EM) policy outlines the concepts of EM, which include:

- Valuing all staff
- Being fair to all staff
- Maintaining a high level of ethical standards throughout the organisation
- Acknowledging good work practice
- Responding to a mistake in proportion to the mistake made
- Identifying poor work practice to reduce the chance of it happening again.

EM asks Commanders, Managers, Supervisors and indeed all staff, to employ appropriate standards of conduct and management styles suited to individual circumstances. The management style of 'Command and Control' is an appropriate style in certain circumstances, yet not in others. The challenge for NSW Police is to have a range of management styles that it can apply across a range of different circumstances.

The EMB continues to develop policy and 'tools' for Commanders based on the concepts outlined above. These 'tools' or 'methods' include:

- Mentoring
- Training and development

- Coaching
- Counselling
- Performance Agreements
- Personal Development.

The Commissioner (through his commanders and managers) has broad powers to take action in cases where officers engage in misconduct, or regularly under perform. Without limiting the scope of managerial action that may be taken, Employee Management may involve any of the practices outlined above or:

- Remedial Performance Programs
- Changes of shift
- Increased supervision in the workplace
- Reprimands
- Restricted duties
- Recording of adverse findings
- Warnings.

In more serious cases involving police officers, Employee Management can involve reducing the rank or grade of an employee, reducing seniority or deferring an increment as outlined under s173 of the *Police Act*.

In cases of criminal conduct, very serious misconduct, and continued unsatisfactory performance Employee Management can involve being removed from the NSW Police under s181D of the *Police Act* or s66 of the *Public Sector Management Act*.

TARGETED DRUG TESTING

24. The 2000 – 2001 Annual Report for the NSW Police Service notes on page 56 that of the mandatory drug and alcohol testing carried out during the year, 4 officers tested positive to drugs. What action has been taken in regard to this? What outcomes have been achieved through targeted drug testing?

All officers who test positive to a drug test, whether it is targeted, mandatory or random, are nominated for consideration under section 181D of the *Police Act*.

Of the four officers who failed mandatory drug tests during the 2000/2001 financial year:

- 1 officer resigned
- 1 officer was the subject of a s181D nomination
- 1 officer was allowed to return to duty, but is now subject to follow up drug testing for the next five years
- No further action was taken against an officer when follow-up testing of the sample by Westmead Hospital proved inconclusive.

When measuring the outcomes of the targeted drug-testing program, it is important that the program not be considered in isolation. Rather, it needs to be viewed as just one (important) part of the organisation's overall strategy in providing a workplace that is substantially free of drug and alcohol abuse.

The primary purpose of all of the organisation's drug and alcohol testing programs is to act as a deterrent to police from engaging in inappropriate behaviour. The testing

programs are, in fact, designed to compliment the extensive rehabilitation and education services that are also offered under the Drug and Alcohol Policy.

The counselling and support arms of the Drug and Alcohol Policy have seen a wide range of professional support services offered to employees who experience dependency problems. In addition, an extensive statewide education program on drug and alcohol matters has been conducted since the introduction of the Policy in 1997. Each year, some 2,500 officers participate in this education program.

As a result of the introduction of the Policy, and the emphasis that has been placed on providing a balanced approach to both testing and rehabilitation, the following notable outcomes have been achieved:

- Independent research suggests the number of officers who drink to harmful or hazardous levels has substantially reduced since the introduction of the Drug and Alcohol Policy. (In 1995/96, one year prior to the introduction of the Policy, St. Vincent's Hospital found that 48% of police drank at harmful levels. In 1997/98, one year after the introduction of the Policy, research conducted by Westmead Hospital saw this figure reduced to 27%.)
- There has been a relatively low incidence of officers returning positive readings in our testing programs. (This is considered a direct result of the comprehensive approach taken by the organisation in not only conducting workplace drug and alcohol testing, but also offering extensive education and counselling services.)

A clear indication of the acceptance of the Drug and Alcohol Policy among police is the fact that 80% of officers surveyed as part of an independent research study into the extent of illicit drug use within the organisation stated that a random drug testing program would be either useful or very useful.

RANDOM ALCOHOL TESTING

25. How many tests have been conducted since this initiative was introduced? How many officers have not passed these tests? What are the consequences of not passing? Have the numbers not passing risen, fallen or remained stable? What could account for this trend?

Random alcohol testing was introduced in September 1997. However, an extensive six-month education program in which all police were formally advised of the organisation's new expectations preceded the testing program. This was accomplished by requiring all police to participate in a mandatory workshop on the Policy as part of the Mandatory Continuing Police Education Scheme (MCPES). As a result of the education program, members of the organisation were given an opportunity to modify their behaviour, if such was required, before the introduction of the actual testing regime.

Between the period September 1997 and July 2002, NSW Police conducted 34,958 random and targeted alcohol tests. Relevant statistics for each financial year are set out below:

Financial Year	No. of Alcohol Tests	Positive Readings
01/09/97 – 30/06/98	6,967	13
01/07/98 – 30/06/99	5,473	13
01/07/99 – 30/06/00	7,141	6
01/07/00 – 30/06/01	6,408	11
01/07/01 – 30/06/02	8,560	8
01/07/02 – 31/07/02	409	1
TOTALS	34,958	52

In view of the relatively small number of positive readings, a detailed analysis of the testing trends from year to year would not produce meaningful data. However, it is encouraging to note that the majority of officers who have tested positive to alcohol have had relatively minor readings. Most have been as a result of officers returning to duty too soon after consuming alcohol while off duty, rather than as a result of them actually drinking on duty.

In accordance with the provisions of the Drug and Alcohol Policy, officers who test positive to alcohol (provided they have not acted inappropriately while intoxicated) are given an option of either participating in a rehabilitation program or having their result dealt with as a disciplinary matter. To date, all but one officer has opted for rehabilitation. While undergoing rehabilitation, officers are closely monitored and are required to comply with the advice given to them by the organisation's Drug and Alcohol Counsellors. They are also subject to follow up testing for three years. If an officer fails to comply with counselling advice, the matter reverts to disciplinary action.

MEDICAL DISCHARGE

26. The Police Service Annual report for 2000 – 2001 says that during the reporting year 264 officers nominated under Section 181D were medically discharged. Some assert that medical discharge allows officers to escape from disciplinary action and retain their service entitlements. Does your organisation think there is any basis to this?

Page 54 of the *2000 – 2001 Annual Report* ('the Report') appears to be poorly worded in relation to the link between medical discharges and section 181D nominations. Contrary to the impression that may be gained from a cursory reading of the Report, there were not 264 officers medically discharged while under consideration for a section 181D nomination. Rather, there were a total of 264 medical discharges and a total of 322 resignations for all reasons from NSW Police that year. This is reinforced by the "separations" table at the bottom of page 53 of the Report.

Of the 264 officers who were medically discharged during the reporting period in question, only 8 officers had 181D nominations pending.

It should be noted that section 181D (8) of the Police Act states:

"For the purposes of this Act, removal of a police officer from NSW Police under this section has the same effect as if the police officer had resigned (or,

in the case of a police officer who is of or above the age of 55 years, had retired) from NSW Police.”

Subject to certain notification provisions of section 10B(2) of the *Police Regulation (Superannuation) Act*, an officer who resigns or retires is still entitled to apply for a certificate of incapacity and is therefore still eligible for the granting of HOD superannuation entitlements. Accordingly, removal of an officer from the organisation under section 181D has no direct impact on that officer's superannuation/HOD entitlements.

The Health Services Directorate's standing procedures require a clearance to be obtained from SCIA on every medical discharge application, before any action is taken to actually discharge the officer.

PROACTIVE MEASURES

27. Are there any proactive measures (eg psychological testing of recruits) that may be useful to manage the risks arising from these new forms of corruption or corruption generally?

Although police applicants undergo pre-employment psychological screening, the process is only linked to the applicant's personality and any clinical factors that may impact on their ability to perform police duties. These clinical factors include conditions such as major depression, PTSD, etc.

In late 2001, the Graduate School of Management (UNSW) was awarded a grant to undertake research into the effectiveness of the psychological testing of students. However, this research is longitudinal and will take several years to complete. The research will assist in determining the predictive validity of tests used in the process and assist with determining if tests should continue and/or what traits to look for in students.

It is considered unlikely that it will be possible in the foreseeable future for any psychological tests to reliably predict or identify potentially corrupt individuals.

Notwithstanding the above, the Police Recruitment Branch undertakes extensive pre-employment background checks on all applicants. These checks include:

- fingerprints
- criminal records (local, interstate and overseas)
- traffic
- previous employer
- current employer
- work address check through COPS
- child commission checks under legislation
- previous police applicant
- previous military service
- medical review
- intelligence checks through State Crime Command (Australia wide)
- financial solvency
- previous adverse recruitment checks
- previous name checks
- proof of name change
- residential location checks through COPS

- personal references
- telephone interview with the applicant.

If there any warning signals/signs with any of the checks above, NSW Police have the option to refer the applicant to a review panel, convened by a Local Area Commander (Superintendent), which probes into all aspects of the application.

CIS CATEGORY CODES

CRIMINAL ALLEGATIONS

CA.01	Assault (Physical Injury)
CA.02	Assault (No Injury)
CA.03	Sexual Assault
CA.04	Solicit/Accept Bride
CA.05	Theft
CA.06	Break Enter and Steal
CA.07	Receiving
CA.08	Goods in Custody
CA.09	Possess Drugs
CA.10	Supply Drugs
CA.11	Cultivate Drugs
CA.12	Smoke/Use Drugs
CA.13	Manufacture Drugs
CA.14	Other – Drug Offences
CA.15	False Pretences
CA.16	Embezzlement
CA.17	Obtain Benefit by Deception
CA.18	Forgery
CA.19	Utter
CA.20	Other – Fraud Offences
CA.21	Firearm Offences
CA.22	Conspiracy/Pervert Course of Justice
CA.23	Other – Conspiracy Offences
CA.24	Wilful and Obscene Exposure
CA.25	Illegal Use of Motor Vehicle
CA.26	Other – Criminal Allegations
CA.27	Indecent Assault
CA.28	Murder/Attempted Murder
CA.29	Escape Lawful Custody (Police)
CA.30	Assault – Domestic Violence

CUSTODY

CD.01	Escapes/Attempted Escapes
CD.02	Deaths/Suicides
CD.03	Attempted Suic/Inju in Cust. Not Assaults
CD.04	Prisoner's Conditions/Facilities/Rights
CD.05	Improper Search
CD.06	Loss/Damage to Personal Property
CD.07	Bails
CD.08	Procedures eg Fingerprinting
CD.09	Other – Custody

CONDUCT/DEPARTMENTAL MATTERS

CM.01	Under Influence of Liquor whilst on Duty
CM.02	Provide Unauthorised Information
CM.03	Wilful/False Entry/Statement
CM.04	Indebtedness
CM.05	Touting
CM.06	Loss/Damage to Departmental Property
CM.07	Improper use of Facilities/Equipment
CM.08	Improper use of Police Vehicles
CM.09	Engage in Unauthorised Secondary Employment
CM.10	Refuse/Disobey Direction
CM.11	Improper Behaviour not Customer Service Related
CM.12	Absent from Duty
CM.13	Fail to Perform Rostered Duty
CM.14	Improper Association
CM.15	Fail to Exercise Proper Supervision
CM.16	Sick Report Matters
CM.17	Untruthfulness
CM.18	Misuse of Office
CM.19	Uniform
CM.20	Wrong Procedure with Warrants
CM.21	Promotion
CM.22	Other – Conduct/Departmental Matters
CM.23	Failure to Inform Crime Commission
CM.24	Fail to Supply Brief to DPP
CM.25	Misuse of Computer System
CM.26	Fail to Complete Record/s
CM.27	Fail to Carry Revolver/Appointments
CM.28	Fail to Secure Revolver/Appointments
CM.29	Drug Testing – Targeted
CM.30	Drug Testing – Mandatory

CUSTOMER SERVICES

CS.01	Rudeness
CS.02	Fail to Supply Particulars of Office
CS.03	Fail to Wear Identification Number
CS.04	Provide False Information to Public
CS.05	Fail to Provide Information to Public
CS.06	Other – Customer Service
CS.07	Victim Support
CS.08	Victim Support – Domestic Violence
CS.09	Offensive Language

COURTS

CT.01	Poor Preparation/Presentation
CT.02	Multiple Charges
CT.03	Fail to Supp.Brief to Prosec/Papercommnt
CT.04	Fail to Warn Witnesses
CT.05	Fail to Attend

CT.06	Supply False Antecedents
CT.07	Supply False Facts
CT.08	Fabricate Evidence
CT.09	Pervert
CT.10	perjury
CT.11	Other - Courts

EXHIBITS

EX.01	Retention
EX.02	Procedures
EX.03	Loss/Theft
EX.04	Other – Exhibits

HARASSMENT

HS.01	Harassment
HS.02	Victimisation
HS.03	Sexual Harassment
HS.04	Discrimination (Racial etc)
HS.05	Threats
HS.06	Stalking

INTERVIEWS

IN.01	Incorrect Procedures
IN.02	Refuse Legal Assistance
IN.03	Confessions
IN.04	Fail to Supply Copy of Statement/R.O.I
IN.05	Other – Interviews

INVESTIGATIONS

IV.01	Fail to Take Report of Incident
IV.02	Slow Response
IV.03	Fail to Take Necessary/Appropriate Action
IV.04	Fail to Properly Investigate
IV.05	Not Follow Procedures eg Identifications
IV.06	Cause Damage to Property
IV.07	Other – Investigations
IV.08	Fail to Submit Report/s

LOST/FOUND PROPERTY

LP.01	Not Recorded
LP.02	Insufficient Inquiries Re: Ownership
LP.03	Return/Disposal

MEDIA

MD.01	Complaint Re: Media Presence
MD.02	Incorrect Release

MISUSE OF POWERS

MP.01	Obtain Warrant by False Information
MP.02	Search Premises Without Warrant
MP.03	Fail to Produce /Provide Warrant/Document
MP.04	Exceed Terms of Warrant
MP.05	Stop, Search
MP.06	Improper Use of Batons (Not Assault)
MP.07	Improper Use of Handcuffs
MP.08	Improper Use of Firearms (No Discharge)
MP.09	Improper Use of Police Dogs
MP.10	Other – Misuse of Powers
MP.11	Unlawful Arrest
MP.12	Improper/Unlawful Entry

RECEIPT OF SUMMONS/ORDERS/SUBPOENA'S

RS.01	Domestic Violence Order
RS.02	Domestic Violence Order Weapon Rem
RS.03	Apprehended Violence Order
RS.04	Apprehended Violence Order Weapon
RS.05	Breach of Domestic Violence Order
RS.06	Breach of Apprehended Violence Order
RS.07	Summons
RS.08	Other – Processes

SHOOTING INCIDENTS

SI.01	Causing death
SI.02	Causing Injury
SI.03	Discharge Only
SI.04	Death or Injury to an Animal

APPENDIX 2

TRANSCRIPT OF PUBLIC HEARING, THURSDAY 5th SEPTEMBER 2002

REPORT OF PROCEEDINGS BEFORE

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

INQUIRY INTO TRENDS IN POLICE CORRUPTION

—

At Sydney on Thursday 5 September 2002

—

The Committee met at 9.30 a.m.

—

PRESENT

Mr Paul Lynch (Chair)

Legislative Council
The Hon. Peter Breen
The Hon. Richard Colless
The Hon. John Hatzistergos

Legislative Assembly
Mrs Deirdre Grusovin (Vice-Chair)
Mr Malcolm Kerr
Mr Wayne Smith

Transcript provided by Legal Transcripts Pty Limited

BRUCE ALEXANDER BARBOUR, New South Wales Ombudsman, 580 George Street, Sydney, affirmed and examined:

STEPHEN JOHN KINMOND, Assistant Ombudsman, 580 George Street, Sydney, sworn and examined:

CHAIR: You have received a summons issued under my hand?

Mr BARBOUR: Yes, I have.

CHAIR: Did you receive a summons issued under my hand to attend to attend the Committee?

Mr KINMOND: Yes, I did.

CHAIR: Thank you. Mr Barbour, we received a submission from you, in the form of answers to questions on notice. I take it that you wish that submission to be included as part of your sworn evidence?

Mr BARBOUR: Yes, thank you, Mr Chairman.

CHAIR: Thank you. Do you wish to make an opening address?

Mr BARBOUR: No, I do not think there is anything that I would like to raise in opening, but certainly happy to answer any questions the Committee has.

CHAIR: Thank you. Granted that this is a research project into trends of police corruption and whilst I understand that the PIC is at the pointy end of this, your office still has a role, so I am wondering whether your office has noted any changes in trends of corruption, any things that have changed within that field over the last several years.

Mr BARBOUR: I would have to say, Chairman, that we have not noticed any particular change in issues. Much of the subject matter of the complaints which are made to our Office, are largely similar to those that have been made in previous years. I think the focus of our Office, as previously reported to the Committee, has changed over the last few years to focus much more on systemic issues and problems that have arisen, and our sophistication in dealing with material from complaints has allowed us to develop an extensive audit programme which allows us to better target particular areas. I do not think, apart from that aspect, that there has been any significant change worthy of reporting.

CHAIR: One of the impressions I have from the material I received from the Police Integrity Commission, is that there is an increasing concern about the level of drug use, licit and illicit, by serving officers. Is that something your office is in a position to make a comment about? Is that a trend you have noticed?

Mr BARBOUR: It is not a trend we have noticed. Certainly, drug taking and/or drug supplying or sale are matters that come under the complaints and corruption banners, but there does not appear to be any trend that is demonstrated. I am certainly not in a position to say that there is, our figures do not demonstrate that.

CHAIR: As I say, from my point of view, it was an impression rather than anything I had a statistical basis to talk about. One of the things that is often said, arising out of the Royal Commission process, is that the hope is for there to be a lot of younger officers, who have not been exposed to entrenched corruption and systemic corruption. On the face of it, that seems a perfectly reasonable position, I guess, but in the material your office has seen, the cases you have dealt with, is there a degree of corruption perceived amongst younger officers? Is that common sense thing about younger officers not being affected by systemic corruption, has that been borne out in the reality of what you see?

Mr BARBOUR: I do not think we have done any analysis which would suggest, on an age basis, or on a newness to Service basis, that there is any particular corruption indicators or significant indicators in terms of complaint activity. Certainly, one of the things that we deal with comprehensively with New South Wales Police, is the need for appropriate training at all levels, within the Service, including, of course, new recruits. Certainly, the level of training that they have at the Academy, and in their first years as serving officers, is increasingly important in terms of ensuring that they are resistant not only to corruption, but that they understand effectively the complaint system, the way it works, and what it means in terms of their practical policing operations.

CHAIR: In the light of that, what is your view about the way that ethics are taught or not taught at the Academy?

Mr BARBOUR: I think ethics are an essential ingredient to effective policing, whether they are taught at the Academy, or whether they are learned from experience within the Service, they are certainly an important ingredient to effective and proper policing.

CHAIR: Any other questions?

Mr KERR: Have you looked at the courses in relation to ethics?

Mr BARBOUR: No, we have not.

Mr KERR: Do you think it would be a good idea if it could be a part of some courses?

Mr BARBOUR: Possibly. The nature of the curriculum at the Academy is something that we have not directly looked at. Certainly matters that relate to the Academy, which are the subject of complaints, would be things that we would look at. If there was any evidence that we determined, which suggested that as a result of changes in courses at the Academy, there was an increase in complaints or a particular type of conduct arising, then I think certainly, the connection should be drawn, and we would look at that.

Mr KERR: Yes, but it would be good to have people graduating who were not subjected to complaints because of their ethical behaviour and therefore it would be ideal, would it not, to look at how they are being educated in the ethics field.

Mr BARBOUR: I think certainly it is an area that is open to us to look at. I think that the ethics training at the Academy is one ingredient which is important in

terms of measuring police officers' effectiveness and application in terms of their operation. If we do see evidence in the nature of complaints linking training issues, or academic issues, at the Academy, then we would certainly look.

CHAIR: Yes.

The Hon. PETER BREEN: Could I just ask a question about the numbers of complaints. I think the number of complaints was down on complaints from last year, I think 5,000 roughly was the number last year. It was down to about 3,800, but in addition, you said that something like 3,000 minor complaints are now directed to Local Commands, without involving the Ombudsman or the Police Integrity Commission. It seems surprising that the number of complaints are down, particularly when we are living in an increasingly complaining consumer environment. Is it likely that the number of complaints are in fact the same, or increased, but they have just been spread out, put into different classes?

Mr BARBOUR: The number of complaints issue is a complicated one, and certainly, as a result of the introduction recently, of changes to our class and kind agreements, there has been a marked decrease in the number of matters notified to our office, but we anticipated that, and we expected that, and to ensure that there is no inappropriate handling of those matters, we intend to, and are, conducting regular audits to ensure that they are being properly handled. The numbers of complaints will fluctuate from year to year, and depending on particular matters, large-scale investigations, for example, the investigations into e-mail misuse can cause spikes in the number of complaints in one particular year, and for example, with the e-mail matters that I suggested, that particular year there was an increase of over 400 complaints due, solely, to that particular investigation. If there is a continuing trend downwards, in terms of the number of complaints, we will certainly be looking at what we believe to be the reasons behind that, but there is not sufficient evidence, at this stage, that it is going to be a continuing trend, but certainly, from year to year, there are ups and downs in relation to the number of complaints.

The Hon. PETER BREEN: Do your figures include PIC figures, so in other words do you monitor how many complaints they are getting, as opposed to how many you are getting?

Mr BARBOUR: All complaints that are made, whether they are category 1 or category 2 complaints, are covered within our figures, so the category 1 matters which would be notified to the Police Integrity Commission are also covered in these figures.

The Hon. PETER BREEN: That 3,800?

Mr BARBOUR: That is right.

The Hon. PETER BREEN: Mr Chairman, could I just ask another question completely unrelated to this, and it may not be possible even to answer the question because it goes back to the period when the police used to take records of interview from witnesses and from offenders, and it may be that since you have been the Ombudsman, the ERISP system has been in place, but I am wondering if there are any figures that compare the number of complaints from witnesses and offenders about police, before and after the introduction of the ERISP system, and if there are

such figures whether they indicate that complaints about police interviews have gone down as a result of using electronic video means of interviewing people?

Mr BARBOUR: I am unaware of any figures that have actually contrasted before and after, as a consequence of the introduction of the new procedures as you say. Certainly, the changes in the legislation several years ago, have resulted in a different categorisation of complaints and so there are larger numbers now, which are recorded as being investigated which previously were not formally investigated, but which were subject to informal inquires and processes, so those numbers have changed. But in terms of the specifics that you are addressing, I am unaware of any figures that would be able to be provided to the Committee.

The Hon. PETER BREEN: Am I correct in saying that in the time that you have been Ombudsman, there has always been the ERISP system in place?

Mr BARBOUR: That is correct, and certainly the procedures are that if particular complaints are made during the course of those sorts of activities, then they would be recorded and they would become part of the system.

CHAIR: Yes, thank you, Mr Colless.

The Hon. RICHARD COLLESS: Thank you, Mr Chairman. Mr Barbour, what are the normal procedures, normal handling procedures when you get a complaint? Do you interview the government department and the complainant, or do you interview the government department first and then determine whether or not there is a complaint?

Mr BARBOUR: Are we talking non-police here?

The Hon. RICHARD COLLESS: Across the board generally, I guess. I have had this concern raised with me about police -

Mr BARBOUR: It is just that our functions now vary depending on the area in which we are operating. In the police and child protection areas, our responsibilities are not in direct receipt of, and handling of complaints. They are more in the course of oversight and scrutiny of complaint systems that are in process within the agencies themselves. In relation to our general area of operations, which covers government departments and local councils, we are in the business of direct complaint handling and we have various procedures that are in place. When complaints come in, they are assessed as to whether or not firstly, they are within jurisdiction, whether they can be resolved, if they are within jurisdiction, very expeditiously, by way of a phone call or some sort of contact with the agency or the individual concerned, and then subject to what comes through after that process, we then have a range of criteria that we apply as to whether or not we will take the matter up for formal investigation.

Because of the vast number of matters that we get and our limited resources, we have to have particular strategies in place to minimise the number of matters that we actually directly get involved with, because that is very resource intensive, and so we look for things like, whether or not systemic issues are raised, whether or not there is a serious abuse of power, whether a matter is in the public interest and should be pursued. Each investigation and each process varies from case to case

and there is no standard operation that I could indicate in answer to your question which would say, yes, we interview the complainant first, or the government agency first. It very much depends on the amount of information we have available to us, the type of complaint that it is, and what the most appropriate course would be in trying to either resolve the matter or investigate it.

The Hon. RICHARD COLLESS: Just following on from that then. You mention police and child protection are handled in the same manner, does DOCS come under the Child Protection portfolio or does that fall outside it.

Mr BARBOUR: DOCS comes under both areas of operation within the Office, well, in fact, all areas of operation. In relation to child protection our role is to receive notifications of allegations in relation to child abuse by employees in over 7,000 agencies that deal with children services throughout the State. DOCS is obviously one of those agencies, and so if any of its employees are the subject of allegations of child abuse or convictions of child abuse, they must, under the legislation, notify us, and we monitor the adequacy of the investigation that is undertaken in relation to those allegations. In our general area of operations, we have coverage of the administrative conduct of the agency itself, and in the police area, we occasionally have reports which relate to particular conduct against people within the care of DOCS, which require a response team, a JIRT team to attend which comprises DOCS officers and also police officers, and so occasionally there are aspects of complaints which cover police in relation to DOCS as well.

As you are aware, we anticipate proclamation of legislation that was recently introduced, to merge the Community Services Commission into the Office of the Ombudsman to become a statutory division of my office. When that merger takes place, we will have a greater coverage of DOCS to the extent of pretty much every aspect of its operations in relation to children in the State.

The Hon. RICHARD COLLESS: Thank you, thanks Mr Chair.

CHAIR: Mr Smith.

Mr SMITH: Mr Barbour, can I ask you to expand on a statement you have made in one of your answers. You have said:

A substantial number of matters which should be notified by New South Wales Police to the Ombudsman, are not being notified.

Can I ask you, what sorts of matters do you think should be brought to your attention, and perhaps why they are not being brought to your attention, and perhaps also, what you might be able to do about that?

Mr BARBOUR: We are in the process of auditing those matters which would, prior to the amendments in our class and kind agreements, have been notified to the Office, but which now are not required to be notified. I think with any change in a system like this, there is likely to be some problem in terms of clearly identifying matters that should or should not continue to be notified to the Office, there are grey areas, they are areas that are not clearly ones that should be notified to the Office. Some of our findings suggest that there are a large number of matters, not necessarily uniformly spread across Commands, but in some Commands, which

were interpreted to fit within the new class and kind categories, as minor matters, and which did not require to be notified to the Office and we disagree with that position. We are not in a position, at this stage, to say in any detail how many of those matters there are, but certainly our preliminary view is that there is a substantial number of them. As to the specific types of matters that we are talking about, Mr Kinmond, do you want to answer that?

Mr KINMOND: The two major areas relate to court proceedings where there has been a failure in relation to court proceedings and that can range from a minor failing through to quite a significant failing relating to the dismissal of proceedings. The other area that we have concern about, relates to the inappropriate or improper use by police officers of their own COPS system - their own information system and so we anticipate that it will be necessary for us to talk specifically to the Police Service, the New South Wales Police about these matters, and seek to make clear our views, concerning the sorts of matters that should be made known. What I hasten to add though, is that this process of review is going to be an ongoing process so it is not simply going to be a matter that, once in a while, we will have a look at the Service's compliance with the agreement. That is a matter that we will continue to be following.

Mr KERR: In relation to the term, court failures, I was just wondering what was the meaning of that term?

Mr KINMOND: It can range from a situation where there is a failure, for example, for a witness to attend on a given day, through to the failure of an informant to turn up to court on a particular day. There might be a failure in relation to the evidence that is presented to the court, that leads to the prosecution of a matter not being successful. So there is a range of court matters where things can go wrong. I think the key then lies with going through a number of these different types of scenarios with the Police Service and getting a clear understanding about the sorts of matters that should be regarded as errors of judgement, minor errors of judgement, and of course, the significant number of matters of this type that should be regarded more seriously.

CHAIR: In your answer to question 4, you give figures of officers who have been the subject of review of management actions. For 1999 to 2000, there were two officers. For the last year, it was 20. There is quite an interesting difference between those two sets of figures. What do you think has been the reason for what would seem to be an apparent under-utilisation of those powers in the first of those two figures?

Mr BARBOUR: I think, because this was a relatively new process and because procedures were never really clearly developed around how the reviewable sanctions process was going to work, there may well have been some reluctance on the part of Commanders to use what is essentially a very serious management action against officers. Of course, in its very name, it sets out the fact that it is reviewable, it means it can be challenged by an officer, and if there is any scope for that to be challenged effectively because of a failure to do a particular process in a particular way or handle an investigation in an appropriate manner, there was obviously going to be a reluctance to put that forward. I think, as a result of an enormous amount of work that has been done by various parts of New South Wales Police and also input from our Office in terms of how those procedures could be

more clearly set out, and could be more consistently applied, there is a greater use that is emerging in relation to those sanctions. Certainly, we think they are important and they ought to be used where it is appropriate to use them.

CHAIR: Does it follow from that, that there is still potentially an under-utilisation of the powers, that people might not be utilising them at the moment, when perhaps they ought to be?

Mr BARBOUR: I think that is an accurate statement and I think many of the matters that might mandatorily be reported for s.181D, Commissioner confidence matters, might more appropriately be handled by way of reviewable action, and that may well be one of the consequences of improving that process as well. There might be a lowering down in terms of the scale of these particular actions and management practices.

CHAIR: Apart from, perhaps changing the s.181D mechanisms to achieve that effect, are there any other things that can be done or should be done to try and increase the utilisation of reviewable powers?

Mr BARBOUR: I think a better education of Commanders in relation to why these ought to be used, and in what circumstances they ought to be used, and also clearer and more consistently developed practices will allow for that to happen, and I think there is a lot of work being done to that end.

CHAIR: In relation to s.181D, you have noted in your answers, and I think, implicitly in what you have just said, that one of the weaknesses is that those who are not removed are not considered for reviewable management action. Up until now, has that perhaps affected a large number of officers?

Mr BARBOUR: I would not say a large number of officers, but certainly there is a lot of officers that are nominated for s.181D action through the process, and those do not, in fact, get off the ground, and they are not removed from the Service, and there has been difficulty in dealing with those, after that process has come to a conclusion, because the legal advice that New South Wales Police has is that once that action has been taken, it should not be revisited, if further information or better particulars come to light.

CHAIR: Apart from the new procedures that are being developed in consultation with your Office, were there any other attempts to try and deal with that problem?

Mr BARBOUR: The Industrial Relations Commission has tried in part.

Mr KINMOND: It is an issue that we are alive to, the introduction of reviewable sanctions. We made it very clear to the Service early on that with devolution of decision-making to Local Area Commanders, there was a need to make it very clear to the Service, to those Commanders, what the standard should be with regard to the types of management action, actions that should be employed in particular circumstances. It was an issue that took the Police Service some time to pick up. We were pleased when the Police Service developed then, a decision-making framework for management decisions. That was done in consultation with our Office and with the Police Association. That has had a positive impact. The

introduction of the Internal Review Panel as a body that can provide advice to Commanders on appropriate management decisions, has also been a bonus. And so, it is an area where I think it is fair to say it took the Service a while to respond, but we have seen a positive development by the Service, particularly in the last 12 months, in terms of recognising the need to give very clear directions to Commanders concerning the types of management actions that should be employed in a whole range of circumstances.

Mr BARBOUR: If I can just add to that. There is an inherent tension in a system which devolves responsibility for certain conduct, and ensuring consistency in application of that conduct and really, what needs to go hand in hand with the very sensible basis for devolving those responsibilities is very clear assistance and guidelines and processes to ensure that there is a consistency of application across the board. It does not remove the discretionary capabilities of Commanders to view particular matters in particular ways, but it gives them greater guidance and opportunity to make sure that they are applying what are essentially very serious sanctions, in a very fair, transparent, open way, and that they are going to be less likely to be overturned on review.

CHAIR: In relation to s.181D, I notice that Commissioner Moroney recently announced a review of those provisions, in particular, the ability to sack, or to dispense with the services of officers with proven allegations of corruption within three months of their nomination under s.181D. Does that sound like an achievable timeframe, granted what seemed to be the endemic delays in the system already and the obvious and appropriate requirements for due process?

Mr BARBOUR: I think it is achievable if the input to that process is better determined and fixed. One of the concerns that we have is that there are a lot of matters which, after investigation, are mandatorily put forward for that particular process to be undertaken, with really an unrealistic expectation that it is going to lead to a result. I think if there are fewer matters and more appropriate matters going into the process and the process itself, as we have identified in the past, is improved, then I think it is a reasonable expectation that there will be a considerable shortening of the time-line taken to deal with these matters and more success in terms of their outcome.

CHAIR: And the matters then would not be going to s.181D - that course, they would be, what, perhaps subject to reviewable actions?

Mr BARBOUR: They could well be subject to reviewable sanctions, yes.

CHAIR: Any questions?

Mr KERR: Yes, thank you. You mentioned the Industrial Relations Commission before. What was the role of the Industrial Relations Commission?

Mr BARBOUR: There have been a number of challenges to decisions made under s.181D by the Commissioner in relation to dismissal taken to the Industrial Relations Commission and I think the Commission has observed that for those to stand, the processes have to be very clear, the Commissioner has to reach particular views and they have provided judgments which are now guiding the Commissioner in the development of these new processes.

Mr KERR: Has the Industrial Relations Commission been critical of anybody in the hearings or judgments?

Mr BARBOUR: I do not think they have been critical of individuals. I think my view of their decisions has been more to assist in demonstrating where there might have been weaknesses or unfairnesses apparent in terms of the process that was employed in particular cases.

Mr KERR: Have they been critical of offices? When I say offices, I mean the Office of Ombudsman or the Office of the Commissioner?

Mr BARBOUR: They have certainly not been critical of my Office. But I think, really, as I said, they have been more critical of the process itself which has allowed for matters in their view to not have been dealt with fairly or reasonably. One of those issues is, for example, delay. Some of these matters have taken a considerable amount of time to get to the point where a decision has been made and the Industrial Relations Commission has not surprisingly thought that that was unreasonable or unfair to the officer who was the subject of the action.

Mr KERR: And you would be in agreement with that criticism, I take it?

Mr BARBOUR: I think delay in relation to any of these matters is most unfair to police officers. Our Office has very strongly argued for a very long period of time that if officers are the subject of action of this kind, whether it be reviewable sanctions or s.181D matters, that they should be dealt with as quickly and as efficiently as they possibly can. These sorts of matters hanging over officers' heads is not conducive to them working effectively. It is not conducive to good morale within the Police Service and it is unfair to everybody involved in the process.

Mr KERR: What are the obstacles to the expedition of these matters?

Mr BARBOUR: I think in part, as I mentioned earlier, there are too many matters at the moment go into the process and that is something that needs to be looked at, and I think also, the process involved in preparing the materials and the need for this to be a matter the Commissioner actually determines personally creates some difficulties. We have got an ongoing project, looking at those sorts of issues. I know that New South Wales Police and the Commissioner are very keen to improve this process as well.

CHAIR: Mr Colless.

The Hon. RICHARD COLLESS: Thanks, Mr Chairman. Mr Barbour, you make the point in one of your answers here that in 1999/2000 the police had only notified you of two officers who were subject to the reviewable action but that increased to 20 last year.

Mr BARBOUR: That is right, yes.

The Hon. RICHARD COLLESS: Is there some sort of foolproof system within the Police Service, or is it up to the senior management of those officers as to whether or not they are reported to you?

Mr BARBOUR: No, we would be made aware of any reviewable sanctions that were taken against officers and they would be taken normally as a result of the complaints which we would also be notified about. There is no suggestion in these figures that we have not been reported with the accurate number. The reason for the figures is to demonstrate that there is now an increasing use of these particular provisions relating to reviewable sanctions, and for the reasons I mentioned earlier, we believe that there are obvious reasons why there has been an increase.

The Hon. RICHARD COLLESS: So the decision to apply those reviewable actions though is still up to the senior police management. There is no strict guidelines or system in place in the Police Service that automatically refers them to you?

Mr BARBOUR: We are told when a reviewable action is being taken. If a matter is investigated and a decision taken that we believe is inappropriate in the circumstances, we have the capacity to reply to the police to recommend that they review the matter or they look at an alternative outcome. These figures do not relate to that particular issue though.

The Hon. RICHARD COLLESS: Sure. Okay, thank you.

CHAIR: Mr Breen.

The Hon. PETER BREEN: Mr Barbour, forensic analysis of DNA material is presently conducted by the Government Laboratories which are at Lidcombe. I understand a large proportion of the funding of the Government Laboratories is provided by the Police Service. Can you say whether complaints have been received about the independence of the Government Forensic Laboratories so far as the integrity of DNA evidence is concerned?

Mr BARBOUR: I am unaware of any complaints of that kind being made. Indeed, during the course of our review of the DNA testing legislation, which we have to report to Parliament in due course, we have received very few complaints in relation to either the laboratory or indeed the manner in which the samples have been taken. So in short, I am unaware of any specific complaints of that kind. I do not believe any have been made to our Office, and in general, the issue of DNA testing has not been the subject of high numbers of complaints at all.

The Hon. PETER BREEN: Am I correct in my assumption that a large proportion of the funding is provided by the Police Service to the DNA Laboratories?

Mr BARBOUR: I have to say I honestly do not know.

The Hon. PETER BREEN: Would you see any advantage or benefits in establishing an independent State institute of forensic laboratories?

Mr BARBOUR: That may be an issue which would bear consideration if there was evidence to suggest that there was any impropriety or any inappropriate conduct in relation to the existing procedures. But I am unaware of any and I would not be in a position to comment either way.

The Hon. PETER BREEN: If the assumption I made is correct about the funding, there could be a perception of conflict and in that event it would be desirable, do you think, to have an independent laboratory conducting DNA analysis?

Mr BARBOUR: I am not sure that there would necessarily be a perception of conflict. As I say, before I came to a view about that I would want to see some demonstrable evidence to suggest that there was a problem. I believe that, in relation to funding of institutions such as this, there can often be safeguards put in place which remove those sorts of perceptions from arising. In relation to this particular case, as I say, we have not had any complaints and it is not an area that I have looked at.

The Hon. PETER BREEN: What about a hypothetical case of the analysis of evidence in a trial that has already been concluded? I mean, the police keep the evidence, presumably they keep it down at Goulburn Street; the police have the custody of it, the police would look after the transfer of it to the laboratory. The laboratory, on my information is largely funded by the police and the police in effect are conducting the analysis of the material. Do you not agree with me that there could be a perception of lack of independence and a lack of integrity of the results of the analysis?

Mr BARBOUR: Some people might hold that perception. I honestly cannot say. It is not one that I would hold from what you have suggested. Certainly, some of those areas that you have just put forward are matters that we are observing and will comment upon in our report to the Parliament on the implementation of the DNA testing of various felons. To date we believe that the maintenance of appropriate procedures and standards and controls have not demonstrated that there is anything to worry about in relation to those particular issues.

The Hon. PETER BREEN: If I can just -

CHAIR: I am reluctant to intervene, as you know generally, Mr Breen.

The Hon. PETER BREEN: Yes, as I know. That is right. You are so helpful.

CHAIR: Fascinating as this may be, I am struggling a little to see how it is relevant to our inquiry. It may well be a fascinating topic, it may well be the subject of an inquiry at another time and another place.

The Hon. PETER BREEN: Mr Chairman, I would be the last person to want to see you struggling, so I am happy to terminate the -

CHAIR: It very rarely occurs, Mr Breen and I am determined to make sure it will not happen again while you are questioning. Are there any further questions that might perhaps be vaguely relevant to the inquiry, just tangentially even?

In your response to question 6, Mr Barbour, you indicated that your office's examination of the effectiveness of the operation of the Command Management Framework is an audit tool focusing on speeding fines and police promotion matters. Is your audit of the police promotions matters working into the broader current review of the police promotions system?

Mr KINMOND: At the moment we are looking at the promotion system in the context of a whole range of matters. We are not actually looking at the police promotions matters, though, in the context of the Command Management Framework. From our perspective, with the significant matters relating to the promotions issues that we are looking at, we are looking at not only the individual cases but whether in fact there are some systems issues that need to be addressed.

Mr BARBOUR: I think also, in our answer to the question what we were suggesting was that the leaders of the particular projects that we will be working with are currently occupied in those two areas and that is in some way impacting on our further development of application audits and checks. It was not actually intended, if it has intended, to suggest that they were the areas that we were actually focusing on.

CHAIR: Any further questions?

Mrs GRUSOVIN: Yes, I would just like to pursue the question of the Command Management Framework and your inquiries in relation to the promotions system. It seems from my involvement and observations, I have really grave concerns about what I still believe to be a certain cultural climate that continues very strongly in some Commands in relation to the way the system is worked. I would go so far as to say that there still remains a climate of the boys club at times and it seems to me that in dealing with the Service you are really dealing with a quasi military-type situation where nobody can talk to anybody and, you know, it is very difficult for, for example, a Local Member of Parliament to be aware of some matters but one cannot really go anywhere. It just seems to me there really needs to be a - and I know that people are looking at the promotion system and there have been some changes made, but it seems to me we have got a long way to go. Would you like to make any comment?

Mr BARBOUR: Only to the extent that certainly police promotions is an area that has been under considerable scrutiny by not just our Office in the past but also currently by the Police Integrity Commission and the Minister for Police has announced that Mr Schuberg will be conducting an independent inquiry on behalf of the Minister in relation to matters relating to promotions as well. Because of the involvement of the Police Integrity Commission in this particular issue and also that inquiry, I have taken the view that it would be unnecessary and a duplication of resources for our Office to get too involved in a general sense in the issue of promotions. We will continue, however, if issues are raised, on a complaint basis, to deal with those as appropriate.

Mrs GRUSOVIN: Thank you.

CHAIR: Further questions arising out of that? In your report *Improving the management of complaints assessing police performance and complaints management*, one of the points made in your report is that under the new streamlined complaints procedure, minor workplace harassment and discrimination issues can be dealt with quickly and informally. What would you classify as minor harassment and discrimination, what sort of activities and actions are meant by that phrase?

Mr BARBOUR: It would cover a range of matters, for example, maybe the use of sexist language or inappropriate language to another officer. It might relate to unintended discrimination-type issues in relation to decisions about temporary acting up, or putting people into particular positions or responsibilities within a Command, offensive comments, inappropriate humour, telling rather bawdy jokes which could potentially be offensive, those sorts of things. They were matters that would previously have been notified and we took the view that really they are, as in most organisations, matters that are appropriately dealt with internally. It would only be in cases where there was a greater concern registered that we might take an interest in those particular matters.

CHAIR: Further questions?

Mr BARBOUR: Can I just make the point in relation to that as well, that in all of those cases, the complainant retains the right, if they are unhappy with those particular matters being dealt with locally, they can of course have the matter notified to us.

Mr KINMOND: It is also part of the agreement that if there has been a previous complaint about the police officer of a similar type, then the matter is notifiable as well.

The Hon. PETER BREEN: Can I just ask, perhaps it just follows up the question that Deirdre Grusovin was asking, what level of secrecy is involved in investigating complaints about police officers? I mean, is it an offence anywhere to disclose that a police officer has been investigated?

Mr BARBOUR: Do you mean internally, to police, or externally?

The Hon. PETER BREEN: Look, I am thinking of the analogy with, for example, the investigation of a lawyer by the Law Society. I mean, there are strict laws that prevent investigators from talking to people outside the investigation about what they are investigating, you know, who the people are, what the issues are and so forth. I just wonder if there are similar restrictions involved in people investigating complaints about police officers. I mean, that would be one reason why we are hamstrung, if you like, in the way we deal with complaints from constituents about police officers.

Mr KINMOND: There are requirements in relation to not disclosing the details of the complainant. There are also standard practices in relation to the interview of police officers to advise the officer not to discuss the fact that they have been interviewed with any other officer. So there are a range of procedures that seek to protect the integrity of the investigation process and the parties involved in the investigation. But beyond that there is nothing more I have got to add.

Mr BARBOUR: Certainly in relation to our legislation of course, there are secrecy provisions in terms of what we are able to disclose and information coming to us in relation to these matters is not able to be disclosed publicly.

The Hon. PETER BREEN: Thanks very much.

CHAIR: Further questions.

Mr BARBOUR: I have just been reminded by my very able solicitor that there is of course a general police regulation which requires police to keep confidential matters relating to police business and not to disclose it except for official purposes. So presumably, that would also cover the sorts of circumstances you are talking about.

Mrs GRUSOVIN: It can make it very difficult.

The Hon. PETER BREEN: It can be difficult, but I think the point is that there are legitimate reasons why it is difficult. It is not for me to answer the question, of course, but you have to protect the integrity -

Mrs GRUSOVIN: It depends which side you are on.

The Hon. PETER BREEN: I've asked the question and now I've answered it.

Mr KINMOND: It is interesting. There is another side to the coin because the investigation of a complaint can have significant implications at the Command level. There can be a whole range of morale issues that can arise as a result of a complaint. So I think there needs to be an element of commonsense and sensitivity applied to these things. On occasions it is perfectly appropriate for an officer, for example, who has been interviewed to talk to someone else, by way of that person providing support, about the fact that they have been interviewed. And so, there are exceptions to the rule. I think it is important to understand that complaints can have a very significant impact on a Command, and therefore, in terms of managing the complaint that needs to be recognised.

CHAIR: Further questions? If there are no further questions I would thank, Mr Barbour and Mr Kinmond for their attendance.

Mr BARBOUR: Thanks, Chairman.

CHAIR: Can I make a general announcement for those that have not caught up with it yet, we were to have the Police Integrity Commissioner in this morning as well. He is unfortunately ill so he will not be with us today, he will be with us on a subsequent occasion. So that concludes the open session of this Committee's deliberations this morning.

(The witnesses withdrew)

(The Committee adjourned at 10.30 a.m.)

TRANSCRIPT OF PUBLIC HEARING, FRIDAY 20th SEPTEMBER 2002

REPORT OF PROCEEDINGS BEFORE

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

TRENDS IN POLICE CORRUPTION

At Sydney on Friday, 20 September 2002

The Committee met at 10 a.m.

PRESENT

Mr P. G. Lynch (Chair)

Legislative Council

The Hon. P. J. Breen
The Hon. J. Hatzistergos
The Hon. R. H. Colless

Legislative Assembly

Mr M. J. Kerr

Transcript provided by CAT Reporting Services Pty Limited

PETER GALLAGHER, Commander, Employee Management, NSW Police Service, Randwick Police Station, 197 Alison Road, Randwick;

GARY NEIL JACKEL, Director, Health Services, NSW Police Service, Level 2, 66 Wentworth Avenue, Surry Hills, and

BRIAN JOHN REITH, Commander, Special Crime and Internal Affairs Branch, NSW Police Service, 45 Clarence Street, Sydney, sworn and examined:

CHAIR: Did you receive a summons issued under my hand to attend before this Committee?

Commander GALLAGHER: I did, sir.

Mr JACKEL: Yes, I did.

Commander REITH: Yes, I did.

CHAIR: The Committee has received written answers to questions that we submitted to the police. I take it that it is your wish that those answers be taken in evidence before the Committee?

Commander GALLAGHER: Yes, sir.

CHAIR: In the police response that the Committee received, the overview of the employee management branch outlined the responsibilities of the branch, including complaints management training and the development of grievance procedures. I wonder if you could tell us who receives complaints management training and what issues does that training cover?

Commander GALLAGHER: The employee management branch has developed a number of complaints management training areas. Most specifically we address training for complaints management teams. Traditionally, complaints management has centred on investigation. With the advent of the employee management branch and employee management branch principles and the significant improvements to the system, that is investigation is only one part of managing a complaint, we have recommended that each local area command set up complaints management teams, normally chaired by the commander. We provide training to those complaints management teams in relation to the tools that they can use, the tools that have been developed by the organisation, legislation and interaction very specifically with the office of the Ombudsman.

Who receives that training? The complaints management team training is delivered generally at professional standards reviews or days when groups of commanders come along for region meetings. However, we have embarked on more specific training specifically directed at commanders and executive officers. So far we have trained about 30 commands and we have just been asked to, in the next three months, capture those remaining commands that have not been trained in those complaints management tools right across the service, so we are more specifically targeting complaints management team training.

CHAIR: So the training effectively then is of the commanders and the executive officers?

Commander GALLAGHER: Yes, sir, but we also offer it to anyone else that might sit on a complaints management team. The training is fairly intensive and it is fairly specific. For instance, the last course we ran was last week at Goulburn and we were fortunate enough to have members of the Ombudsman's office come along and undertake the training as well, and members of the police association, so in preparing the training we did do a lot of consultation with other groups, including the Ombudsman and the association, so we feel fairly confident that the training we are now providing has unilateral support.

Other training is provided by education services that is targeted at investigators. That training is completely aligned to the management training we provide and there is also a mandatory continuing education package that has been prepared by education services with a view to delivering that training in relation to complaints management and the responsibility of police right across the State and out in the field. We do feel that there is an area that we have not moved into that we feel we should and that is at the recruit level. We feel that the employee management branch should actually be doing some more work at the recruit level, specifically in relation to telling people when they first enter the organisation what it is that they can expect if they are the subject of a complaint and try and remove that fear and understanding of the system that is there to deal with the matter.

CHAIR: The branch also states as one of its responsibilities the development of grievance procedures. What sort of grievance procedures have been developed?

Commander GALLAGHER: At the moment we have developed harassment and discrimination procedures. We are in the process of finalising our grievance procedures and our alternate dispute resolution training. What it is focused at is: Workplace conflict we see as the greatest detriment to the service at the moment. I am sitting on an inquiry at the moment in relation to long-term sick and what we are looking at there is that workplace conflict is really contributing towards absences from the New South Wales police, so grievance handling, alternate dispute management and harassment/discrimination and the training we provide is how to deal with that at the local level within the workplace environment. The procedures really relate to concentrating on what it is that the complainant is trying to achieve in the process, to resolve it at that level. We teach that there are some formal procedures to go through in relation to reporting matters. For example, in relation to an allegation of harassment or discrimination, one of the criteria is that we do not deal with it at the local level in the first instance if an officer, the subject of the complaint, has more than one complaint. So they are the sorts of technical procedural issues that we also provide the training to.

CHAIR: Questions 11 and 12 concern the section 181D "Commissioner's Confidence" provision. There is a table provided. I think it is on page 9 of the responses for the finalised s.181D nominations, that table includes a category called "Other", which is the largest single category. I would be interested to know what actually that means, what are the "Other" outcomes?

Commander REITH: Our process at the moment involves mandatory nominations. So there are matters that will be nominated for the 181D process which

are quite clearly never going to end up with a person being separated from the organisation. That category are those matters which are deemed to be inappropriate for being dealt with under 181D. An example of that is low range PCA convictions. The former commissioner and the current commissioners do not believe that they are matters where they lose confidence in officers where it is a first offence and the officer has acknowledged that there is a problem with drink driving and has undertaken some sort of remedial action, and those matters are dealt with in other ways rather than exiting the officer from the organisation.

CHAIR: So whilst there is no necessary outcome of the 181D process, there are other outcomes and other things that will happen to people in those categories?

Commander REITH: That is correct.

CHAIR: The material in the answers about 181D also discusses the commissioner's review of 181D. How have 181D and 173(2) been re-aligned? When will it be finalised and implemented and when will the backlog of 181D cases be dealt with?

Commander REITH: The finalisation of the alignment program, we are hoping to get out into the field for training and to roll out at the end of this month or during next month. How has that been aligned? Under the 173(2) process, if a commander has been contemplating reviewable action against an officer, they were required to place that before an internal review panel. That internal review panel is made up of people reasonably senior in the organisation who can provide advice and benchmark the type of reviewable action that is taken across the service, so that we do not get anomalies in actions against officers who are being dealt with for reasonably similar offences or similar misdemeanours. The 181D process under Commissioner Ryan was dealt with separately from that. There were mandatory nominations. It was dealt with by a group of officers in my command and they were progressed to the commissioner separately from providing any advice from a reasonably senior committee of police officers and administrative officers.

What we have done now is to align those processes. So that internal review panel, when it is dealing with a matter that they consider should end up going before the commissioner for him to exercise his discretion in relation to his confidence, is dealt with by the commissioner's advisory panel, which has some founding in the legislation under 181DH. So it is really inputting all of the nominations for reviewable action, because both are reviewable at the Industrial Relations Commission, and allowing a senior committee to provide advice to the commissioner in relation to the conduct that is being brought under notice either by way of a criminal charge or by way of an adverse finding in a departmental inquiry.

Commander GALLAGHER: Just in relation to the consultation process, where we are at the moment in the consultation process is we have presented the plan to the Police Association, to the Ombudsman and to the Police Integrity Commission. We are awaiting those responses. There is a local area commanders' forum I am on today and this afternoon we will be given the opportunity to meet to do a session with local area commanders. 34 commanders have volunteered to participate in that session and that will be the consultation in the field. We are going to present the idea to them and ask them to critique it and we will report all those responses back to Mr Reith.

CHAIR: And the backlog?

Commander REITH: When they start that process they will be starting with a green field. They will not be taking the backlog. We will be handling the backlog under the old process at our command. I am informed that that backlog is now quite small compared with what it was eight or nine months ago and we are hoping that that can be dealt with by the end of this year.

The Hon. PETER BREEN: Commander Reith, I take it that the number of matters that the commissioner is now dealing with under 181D is less than when it was first introduced. Are there any cases of officers who might have been dealt with harshly previously being re-admitted to the force as a result of the different attitude to 181D?

Commander REITH: It is a difficult question for me to answer because that is certainly an area for the commissioner's discretion alone. I do believe there have been some officers who have made that approach, but I cannot tell you with any accuracy where that stands at the moment with the commissioner's discretion. I do not know of any specific matters. Certainly, a lot of police who have been moved from the organisation have taken their appeal rights to the Industrial Relations Commission. Some have been returned as a result of that process, either by way of conciliation or by way of a full hearing, but I cannot inform you of any specific instances where the commissioner has been asked to review a previous commissioner's decision.

The Hon. PETER BREEN: There were a few cases, I cannot remember them offhand, but there were a few cases where police did not qualify for legal aid or the legal assistance you need to go to the Industrial Relations Commission, and so those people argued at the time that they did not ever really get a fair hearing. I am just wondering whether any of them might have come back into the system with the new approach to 181D?

Commander REITH: I cannot answer that with any accuracy but I will take it on notice and provide that advice.

The Hon. PETER BREEN: If it is not inconvenient, thank you.

CHAIR: The response to question 21 concerning reviewable and non-reviewable management action notes that not all matters that appear before the internal review panel for consideration for reviewable management action actually result in management action. Can the internal review panel refer these cases for non-reviewable management action or other kinds of management action?

Commander GALLAGHER: Yes, sir, the option is available for the internal review panel. The internal review panel specifically sits to provide advice in relation to 173(2) matters, reviewable matters. In relation to the time, there have been 159 matters come before the internal review panel for consideration of 173(2) action. As a result of that, 29 have resulted in recommendations for 173(2) action, 19 have been recommended to progress to 181D and have been forwarded to the 181D unit and one of those resulted in a recommendation that the probationary constable be removed under the provisions of 173(3). The vast majority of those matters that do

not proceed to 173(2) are referred back to the commander to use their delegation to deal with them under 173(1).

CHAIR: Question 26 discusses medical discharge of police officers and hurt on duty entitlements. Is there any loss of entitlement should an officer be removed from the police under the 181D provisions?

Commander REITH: No, there is not. It is dealt with in exactly the same way as a resignation.

CHAIR: Could an officer be removed under 181D and still receive hurt on duty entitlements?

Commander REITH: I might refer to Mr Jackel for that, but the short answer is yes.

Mr JACKEL: That is correct. The 181D section indicates that a removal under that section is equivalent to a retirement or resignation and subject to certain notification requirements of the Act. For instance, an officer has to nominate an injury before they leave the organisation and within six months of receiving that injury. Providing those notification procedures have been followed, there is no difference in the benefits available to them.

CHAIR: But they cannot do it after the 181D?

Mr JACKEL: They cannot do it after they have left the organisation.

Commander REITH: They cannot notify the injury after they have left the organisation; they must do it whilst they are employed.

CHAIR: So it is the common sense position that if someone is hurt or injured, totally unrelated to any other issues, they are entitled to whatever they are entitled to?

Commander REITH: That is correct.

CHAIR: Could you briefly describe the decision-making framework for the Committee?

Commander GALLAGHER: The decision-making framework was a document prepared by the employees management branch. It is available to all commanders on an intranet site. It is a guide to say that the more serious an adverse finding against an officer, then the more serious action you should consider. It asks a number of questions and there are a number of questions in relation to seriousness and a number of questions that we ask in relation to determining the appropriate action. It tries to encourage commanders, by answering those questions, to justify their action or inaction, to provide a framework in which they can - for instance, a commander might be deciding what action they should take in relation to an unlawful access on a computer that has not resulted in a criminal charge. What we would suggest then is that the minimum they should be looking at is a 173(2) action. We ask them to ask a number of questions about that officer and about the situation, for example: was contrition shown; did the officer assist in the investigation; was there a

conscious disregard for the standard and should we take into account the officer's seniority as a factor; a person with a lot of experience in a supervisory position, should we look at those officers more seriously than we do if a probationary constable did the same thing. It is very beneficial that when those answers are recorded, they provide the framework for the decision-making of the commander as to what action they should take.

What we do teach the complaints management team in training is that an investigation file should tell the whole story. It should not only tell our oversight bodies what it is we have done but why we have done it and the decision-making framework, by commanders answering the questions, assists in that recording of why they have done a certain thing. I do have a copy of the questions which I can copy and provide to the Committee.

CHAIR: That would be appreciated. Could you also describe the role and the purpose of the conduct management plans?

Commander GALLAGHER: Yes, sir. There are a number of management plans that we assist commanders to prepare. There is a management plan and a management plan is simply a plan to manage an officer in the workplace and it does not necessarily relate to the officer having done anything wrong. For example, it could be a plan you put in to place to bring officers back into the organisation if they have been on sick leave for two years or 12 months and the plan might have things like, well, I am going to send them to the academy for training; I am going to provide them with a mentor; I am going to monitor their work. A conduct management plan seeks to remedy and monitor the conduct. It is generally related to integrity issues and generally conduct management plans result from an issue of misconduct. We sometimes see the areas of conduct management plans being mixed up with the areas of performance management plans. A conduct management plan is something that can go straight to the heart of a matter and set restrictions in relation to the way an officer is to behave within the work environment. The conduct management plans set out a number of strategies and linked to those strategies are objectives. We generally have a constant monitoring of a conduct management plan in the workplace and review periods. I hope that explains it: It is in relation to monitoring and managing an officer's conduct when they remain in the workplace as distinct from a performance management plan which is designed to assist an officer develop. A performance management plan is more along the lines of training and development, to assist them to achieve the required standard of performance, whereas conduct relates more to misconduct and issues of integrity.

CHAIR: Does the employee management branch communicate the outcomes of the more serious reviewable managements to the SCIA?

Commander REITH: I might answer that. We form part of that committee, so the results and the resultant action are nearly always as a result of a complaint filed, so those results are recorded within that complaint file, so the answer is yes, they do. I might just expand a little bit: Under the new process of recording under the c@ts.i process, that will all be captured in that database as well.

CHAIR: We have been told by a number of people over a period of time that c@ts.i is seen as the greatest thing since sliced bread. Is that a fair perception from your point of view?

Commander REITH: Sorry for my mirth, I am the sponsor of it, so I had better say yes. It is a computer system; it is a database; it has a lot of tools in it to assist people in the management of complaints and also the management of investigations. Personally I feel that it is one of the best tools I have seen in a long time, but the CIS system was the best tool we had seen 11 years ago and that obviously became very redundant quite quickly, so electronic data systems have a shelf life and I am hoping that this one has a lot longer shelf life than the complaints information system did, but it is a very useful tool for management, very useful tool for investigators and a very useful tool for the oversight bodies because we are all singing from the one song sheet.

CHAIR: I must say that, as the sponsor, you will be gratified to hear that that is certainly what the oversight bodies have been telling us about it. If I could turn to something that arose from some things that the Ombudsman said when he was last with us. In his response to some questions, the Ombudsman noted that in 1999-2000 two officers were considered for reviewable management action and in 2001 this figure had risen to 20 officers. Does that now accurately reflect the number of officers you think require reviewable management or action or does the figure reflect something else, perhaps a growing confidence in how to use that sort of strategy?

Commander GALLAGHER: In answer to the first question, sir, I am not sure that we could confidently say that all officers that require 173(2) action are necessarily caught in that net - and I use that as a very loose term, I mean coming to attention. Generally, they come to attention of the internal review panel and are referred to the internal review panel as a result of a complaint and the vast majority of matters that we see at the internal review panel are the finalisation and the benchmarking of action in relation to the result of an investigation where an adverse finding has been established.

I think the increase in the use of the internal review panel really does reflect upon commanders trusting in the system. I cannot think of an incident where a commander has ever said to me that the internal review panel did not assist them. It is the same principle as the complaints management team, you have a body of knowledge providing advice, and that body of knowledge at the internal review panel provides specialist advice from special crime and internal affairs, HR advice and, very, very importantly, a legal officer always sits on it and tells us, after they have reviewed the file, what is the defensible position in relation to this matter at the Industrial Relations Commission. So it is getting more and more use; it is being more widely accepted and the confidence in the system is very, very encouraging.

We invite commanders to come down and sit as independent members of the committee or indeed to send their officers down and sit in as observers, and we are literally getting snowed under with the requests from commanders who want to come down and be part of that decision making framework and inspectors who want to come down and sit in as observers of the system. We sell the internal review panel through the leadership development program. We have constantly had members of the leadership development program, officers aspiring to be commanders, come down and work with Ian and I think, without exception, they find the opportunity to sit in and listen to commanders deciding in a fair, equitable and transparent manner on what action they are going to take very rewarding.

Commander REITH: I might just add to that: I have been a client of that internal review panel with a matter that I took to it and the discussion and the debate is very vibrant, very dynamic, and it does give you a number of views and a number of pieces of advice upon which you can make your decisions.

CHAIR: We might have touched on this earlier, but I might, for the purpose of clarity, put it to you again: One of the Ombudsman's responses indicated a significant weakness with the current 181D arrangement in that officers who have been nominated under 181D but remain within the police are not then considered for reviewable management action. Has that been addressed in the review of 181D?

Commander REITH: Most certainly. That was the one criticism that we saw from the previous process and it was either removal from the organisation or a commissioner's warning notice. It was either the maximum or a very, very minor sanction, and that is where we saw the greatest anomaly with the old system and that is why the realignment process has been taken. We ask the commissioner to make one decision: Whether he has lost confidence in an officer. If he has not, then it is moved back to the internal review panel to determine what other appropriate management action should be taken.

Commander GALLAGHER: The greatest benefit I see out of the alignment is this: When a matter comes before the internal review panel at the present stage it is generally the end of the process. There has been an investigation, interviews conducted, it can take quite a considerable period of time, an adverse finding has been made and it comes before the panel. There is no guarantee that the officer has properly been managed in the workplace during that period of time. Under the new system we require mandatory notifications to the process unit and, as soon as we receive a notification, a consultant from EM will be asked to contact the commander to prepare a suitable management plan for the officer whilst the process is in place to make sure that the officer is properly managed in the workplace throughout that whole process and singly, I think, that is the greatest benefit, sir, in relation to the new process.

The Hon. PETER BREEN: Commander Gallagher, you mentioned that members of the Ombudsman's Office attended a complaints management training program at Goulburn.

Commander GALLAGHER: Yes, sir.

The Hon. PETER BREEN: Can you give us some information about the relationship generally with the Ombudsman's Office? For example, the Ombudsman indicated that the number of complaints that he has dealt with has been reduced from around 5,000 a year to something just over 3,000. It suggests that you are handling more internal complaints.

Commander GALLAGHER: Yes, sir.

The Hon. PETER BREEN: Is the relationship with the Ombudsman satisfactory or would you like to see some changes to it?

Commander GALLAGHER: Sir, I think that the relationship we have with the Ombudsman is excellent. They provide, in I think very much equal portions, a strong

pressure mechanism. In relation to the Ombudsman overseeing individual complaints in the complaints management system as a whole, they are absolutely not backwards in providing that pressure, which is very much appreciated, but at the same time they do provide an enormous amount of support and guidance.

If I could give you a quick example: Fundamentally in relation to investigations, where I believe we had difficulties is we were dealing with allegations of a minor nature and allegations of a major criminal nature in exactly the same way. We were conducting investigations and pouring resources into those investigations. The Ombudsman provided advice and guidance some time ago saying, look, you really have to differentiate between the two and one of the tools for that is decide what the likely outcome would be. If the matter is proven to be correct, what is the worst that is going to happen? Of course, if it is a criminal matter and it is proven to be correct, the worst that is going to happen is that the officer will end up formally charged and before a court, so for those matters be evidence-based, stick to the rules of evidence, prepare your inquiry as if it is going to be later analysed in formal proceedings, and they say for these other matters where it is never going to get to that, where even if it is proven to be true you are looking at 173(1) action or below, be outcome-focused and get there as quickly as possible. So they provided all that advice and guidance and assisted us in actually providing that training on occasion, so that is an example of support, but of course the pressure mechanism comes along from that to say, well, okay, now that you have been trained in that, why are you doing unnecessary and lengthy investigations or why are you not being evidence based for those formal matters? So they do provide that equal area of pressure and support and I think the relationship, sir, is formal and excellent.

The Hon. PETER BREEN: Can I just ask another question about that, and you may not want to answer this question: There is an action in the Supreme Court at the moment by the Ombudsman to require a senior policeman to provide rosters under the freedom of information laws. The response of the police association to that action is to suggest that the Police Integrity Commission and not the Ombudsman should be responsible for investigating allegations of police misconduct. The attitude of the police association would suggest, to me anyway, that they would rather see police investigating police than the Ombudsman. Do you have a view about that or would you prefer not to express a view?

Commander GALLAGHER: In relation to that particular matter, sir, I would actually prefer not to express a view because I am really unaware of that circumstance, and I perhaps could defer to Mr Reith.

CHAIR: Could I interrupt and say that it is probably also sub judice in terms of the particular issue.

The Hon. PETER BREEN: What about the general question, though, of the Police Integrity Commission? I mean at the moment the Police Integrity Commission deals with category 1 offences, as I understand it, or category 1 allegations, and the Ombudsman deals with lesser allegations. Is there a case for the Ombudsman's work to be divided between your unit and the Police Integrity Commission?

Commander GALLAGHER: I might defer to Mr Reith on that question.

Commander REITH: It would only be a personal point of view. To me the process is working quite adequately at the moment. Each have their own responsibilities to the Parliament and each have their own responsibilities to the public and they do their work in a slightly different way. As I say, it would only be a personal point of view. My personal point of view is that the system is working okay and does not need to be changed. The view of the police association changes on this issue quite considerably, but I do not know what their deliberations are and why they would make those statements.

The Hon. PETER BREEN: Is your feeling from the police point of view that they are quite happy with the situation at the moment; they do not see the Ombudsman as too intrusive?

Commander REITH: I do not know whether I could speak for all police officers, that would be a bit presumptuous of me. Certainly there is some concern by police officers, but a lot of that is because of their lack of knowledge of the process and we are trying to improve that knowledge so that people do not jump at shadows, they know that what is happening is because of legislative requirements, and get them to be as well-versed in the legislation dealing with complaints as they are in relation to the criminal law. A lot of it is to do with their lack of knowledge of the processes because you do not often get involved in them. The greater majority of police will only ever be involved in a complaint against them very few times in their career, so it is a bit about the unknown.

CHAIR: Just on that point, I guess the danger with going down the path of removing the Ombudsman and giving some work to the PIC is that, the PIC's focus as an agency investigating serious offences in real detail and running a proper investigation, there is a chance of that focus being lost if they are swamped with a whole lot of other material.

Commander REITH: I would not disagree with that position.

CHAIR: Does the employees management branch manage the psychological testing of officers in high risk or specialist areas?

Commander REITH: No, sir, they do not.

CHAIR: Perhaps this question might in fact be to Mr Jackel. Then again, it might not of course. The PIC in their response to us said this about drug testing processes:

However, the Commission has also received evidence of the susceptibility of testing processes to manipulation by employment of police. There is evidence of police warning other police away when testing is occurring; there is evidence of police being aware that some drugs either leave the body quickly or are broken down into components which might just as easily have originated from cold and flu tablets and in planning to take drugs at the end of their rostered shift.

I am wondering whether you would share the view that there is some susceptibility to tampering in drug testing processes and what safeguards do you have to try and maximise the integrity of the process?

Mr JACKEL: That is always possible of course. However, we follow very strict guidelines in our testing processes. There is an Australian workplace drug testing standard which we adhere to very strictly and that minimises the opportunities for police to manipulate the process or tamper with the sample themselves. That is a very formal process. We make no apologies for the formal manner in which we conduct the drug testing. But there are very strict guidelines set up with the collection process itself. There are very strict guidelines required of officers to minimise the opportunity for them to introduce foreign substances or contaminate the sample. There is a very strict chain of custody which is followed in the delivery of the sample from the testing place to the laboratory and there are also very strict processes in place for the analytical processing of the sample.

The Hon. PETER BREEN: Would the response of the police be the same in relation to recreational drugs as it was in the answer given earlier about low level use of alcohol?

Mr JACKEL: I think that our experience since our drug testing program commenced has been that compared to community usage we have a very healthy environment. Police officers are much, much lower than the general community. I believe the risk to us is in the recreational use of drugs rather than drug dependent officers and there is certainly evidence of small numbers of officers who do use drugs recreationally in their days off and take the risk in coming back to work and being subjected to testing.

The Hon. PETER BREEN: If one of those officers were tested and found to be using recreational drugs, would they be treated in the same way as a low level PCA? Commander Reith said earlier that they would be given appropriate reprimands but not excluded from the force. Would that be the case with recreational drugs?

Mr JACKEL: No, it is not. There are two different approaches taken. Every officer who tests positive to a drug test is automatically nominated for the 181D process. It does not necessarily mean that they will be removed from the organisation but there is that formal process in place for officers who test positive to drugs, whereas with an alcohol test, there is a process in place where an officer has an election where they can either accept the disciplinary process or avail themselves of rehabilitation.

The Hon. PETER BREEN: If there is an increase in the use of recreational drugs, is there an argument that might be made to suggest that people using recreational drugs should be treated in the same way as people using small amounts of alcohol when caught?

Mr JACKEL: My personal view is that illicit drug use and policing is a strict conflict of interest and it is inappropriate, and I believe it is appropriate to have different mechanisms in place to deal with those as compared to alcohol.

CHAIR: Is that because perhaps the process of obtaining a recreational drug is itself an illegal activity and brings you into contact with criminals?

Commander REITH: Yes, it brings you into the darker side of the community.

The Hon. PETER BREEN: I am thinking of marijuana use. I personally do not support the use of marijuana in any circumstances but there are people who have a different view about that and use marijuana on a recreational basis and some would argue that it is not really a criminal activity and, if it costs the police officer his or her job, that may well be an unfair outcome.

Mr KERR: It is self-evident, nobody could argue it is not a criminal activity. It is a breach of the criminal law.

CHAIR: Perhaps let Mr Jackel answer the question and he may well adopt what you have just said but it is perhaps better to come from him than from Committee members.

Mr JACKEL: My view is that it is illegal, it is an illegal activity. Police take an oath of office to uphold the law when they join the organisation. There are a couple of issues involved: first of all, their use of the drug itself; secondly, where did they obtain it, did they purchase it; and there are issues, of course, if they come across illegal activity in the street, what are they going to do if they are a user, do they arrest the person or do they buy something off them. So I think it is just inappropriate. There is a conflict there.

The Hon. PETER BREEN: I would like to pursue it further but I do not think I can.

CHAIR: Commander Reith, did you want to make any comment about Mr Breen's comments about what you said?

Commander REITH: Certainly, my understanding of the view of the commissioner is that the involvement of people in the use of illicit drugs is certainly more severe than the low level usage of alcohol, and I did preface that in relation to the offence of PCA. Quite obviously, the ingestion of alcohol is not an unlawful activity itself. It is the misjudgment about driving after that is where they come into conflict with the law. So there is a slight variance of views. I must admit that has caused in the past a lot more public danger, drink driving, and I think we have addressed that, both in the general public itself and in the police specifically, but I do think that the commissioner does take a much stronger view about the use of illicit drugs.

Mr KERR: Mr Jackel, you mentioned recreational drugs and marijuana has been mentioned. What other drugs are you aware of that have been used by police officers?

Mr JACKEL: The majority of officers who have tested positive to a drug test have tested positive to cannabis. That is because cannabis stays in the system a lot longer than other drugs. However, we have had officers also test positive to speed, ecstasy, cocaine and amphetamines.

Mr KERR: Is it still the case that police officers are on duty 24 hours a day, in the sense that they could be called up on their days off?

Mr JACKEL: Yes.

CHAIR: In the response to questions 1, 2 and 3 there is a reference to the behaviour of off duty police in recreational drug taking. There is a comment there that states:

NSW Police strategies take into consideration the community and environmental factors that contribute to these behaviours.

Could you give some examples of the police strategies that do this?

Commander REITH: I might answer that question. I suppose it is based upon a little bit of the intelligence gathering processes that you switch onto when you are working with people. If I might just tell you my experience when I was the local area commander at the Kings Cross police station, there were some concerns in relation to the general demeanour and appearance of an officer there under my command and that was addressed in the normal performance management ways but that did not have much effect. So the method of resolving that issue was to pass some information on to another area of the organisation and it was found that that officer was involved in the use of ecstasy and amphetamines and was subsequently dealt with criminally at a public event.

I do not want to expose too much of our methodology, otherwise it is not much use later on. It certainly is about the appropriate use of intelligence, the appropriate use of information passed on by other employees, the use of Mr Jackel's area should those suspicions be raised to a level where we believe that a drug test might be appropriate.

CHAIR: The response to question 24 mentions that officers who have returned a negative drug or alcohol test enter into a rehabilitation program and undergo follow-up testing. Is that follow-up testing random or regular?

Mr JACKEL: Regularly random. Following a positive alcohol test, an officer is subjected to follow-up testing for three years. If they are allowed to remain in the service following a positive drug test, that regime is in place for five years, and at any time during that period we are required by the legislation to follow up at least once a year, but that might be two or three times during the year.

Commander REITH: It would be better described as being targeted on the officer but random in time.

The Hon. PETER BREEN: Mr Chairman, I was interested to hear Mr Jackel say that there are cases where officers do remain in the force after taking drugs in certain circumstances. Are you able to say what those circumstances might be?

Mr JACKEL: No, I cannot actually. They are really matters for the commissioner and internal affairs. I am aware of one or two officers who have been allowed to remain in. They obviously put compelling cases to the commissioner.

Commander GALLAGHER: Can I just answer that? In relation to what environmental or human factors are taken into account when considering a person in relation to criminal proceedings, they might be termed in some cases mitigating factors. Under our structure, if there exists a prima facie case to prosecute an officer for a particular offence, the Crown Solicitor's advice interpreting section 184 of the

Act is that at a local area command level we have no choice, the officer must be prosecuted. The only time mitigating factors can be taken into account and a decision made not to proceed with a criminal charge is at the assistant commissioner level. So in relation to prima facie cases, criminal offences, whatever they be, at the local decision-making level we do not have the authority to not charge. So there is that mechanism in relation to it. It is not that at a local level we can take anything into account. For instance, "Well, this is a drug matter and everyone is smoking marijuana", or something like that, we do not have that ability in that structure, which I think is very important to point out. There is a formal basis for taking those other matters into account.

Commander REITH: And the exercise of that discretion is in line with the advice from the Director of Public Prosecutions about the exercise of the discretion, what the likely outcome is at the court, the penalty of the court, whether it is in the public interest to pursue. There are specified guidelines set down by the Director of Public Prosecutions.

The Hon. PETER BREEN: Is it about guilt and innocence, though?

Commander REITH: No.

The Hon. PETER BREEN: Or is it about mitigating circumstances?

Commander REITH: We always talk in terms of "prima facie". We do not try and second guess the courts. If there is a prima facie case, you then have to determine - and it is a delegated authority from the commissioner - whether or not the commissioner's discretion should be exercised in line with the guidelines set down by the Director of Public Prosecutions. For instance, whether or not a person has a good record, and we would hope that all of our police officers have a good record, but of course the likely outcome, whether or not that officer would be entitled to the provisions of a recognisance or a bond, that type of thing, but there are specified guidelines by the Director of Public Prosecutions.

The Hon. PETER BREEN: So a good officer with an exemplary record would not necessarily lose his or her position as a result of a drug offence?

Commander REITH: Well, we are talking about criminal charges now. That still might go before the commissioner for him to exercise his discretion about 181D, but that is a personal decision for the commissioner to make.

The Hon. PETER BREEN: So, even if a court matter were to proceed, conviction would not necessarily mean that the officer would be excluded from the force, or would it?

Commander REITH: Well, it is not mandated that they are. The commissioner still has to exercise his discretion under 181D, still has to make a determination under that section.

The Hon. PETER BREEN: So although you could not join the police force with a criminal record, you could actually get a criminal record whilst you were a serving officer and not be dismissed?

Commander REITH: Well, that has happened and, of course, the Industrial Relations Commission has returned people under those circumstances, so yes, that is the case.

CHAIR: The response to question 24 also notes that in 1995-96 an estimated 48 percent of officers drank at harmful levels. In 1997-98, one year after the introduction of the drug and alcohol policy, this dropped to 27 percent. Is there any hypothesis as to why there was that reduction; if it was the policy, what aspects of the policy caused the reduction?

Mr JACKEL: We believe it was the single biggest cause for the reduction and I think it is important to note that our drug and alcohol policy does not simply focus on testing. We also have a very strong emphasis on counselling, on rehabilitation and encouraging officers to come forward for assistance. We have a formal mechanism in place where they can do that confidentially. We also have a very formal education program in place where over 2,500 police officers every year engage in education packages conducted by my unit. When the policy was introduced in 1997 we embarked on a service-wide education program. The policy came in March 1997. We did not actually commence our testing program until September and we allowed that six month window there for an education program in which it became mandatory for every police officer in the organisation to undergo a workshop on the policy which set out the new expectations and requirements of police officers. We also engaged in a counselling program. We widely publicised our amnesty provisions which were available for police and it was not until we saturated the organisation with our new requirements that the testing program actually commenced in September of that year. I believe that all three facets of the program - testing, counselling and education - are just as important as one another and that it is a comprehensive program. One year before the policy St Vincent's Hospital found that 48 percent of police drank to harmful levels and Westmead Hospital, one year later, saw that reduced to 27.

The Hon. RICHARD COLLESS: What was the defining limit of a harmful level?

Mr JACKEL: It is the World Health Organisation recommendation and that is up to four standard drinks a day for males, up to two standard drinks a day for females, and I think a total of 28 standard drinks a week for males, 14 a week for females, with two alcohol-free days during that period.

(Short adjournment)

CHAIR: In response to question 24 it is noted that there are four officers who failed mandatory drug testing. What are the circumstances under which that mandatory drug testing occurs?

Mr JACKEL: Mandatory drug testing occurs following a critical incident.

CHAIR: And those four who failed had followed that mandatory testing?

Mr JACKEL: Yes. Any police shooting, any police pursuit, either of which involves a death or a serious injury, or a death in custody, there is an automatic procedure for drug and alcohol testing to be conducted.

CHAIR: One of those four was nominated for consideration under section 181D. Do you know what happened in that process?

Mr JACKEL: I am not sure of the outcome, I am sorry.

CHAIR: The response to question 26 notes that the health services directorate requires a clearance from SCIA on every medical discharge application before any action is taken to discharge the officer. Does that mean that an adverse report from SCIA can result in an officer being refused a medical discharge?

Mr JACKEL: It may well mean that the commissioner may decline or hold up a discharge pending the outcome of an inquiry.

The Hon. RICHARD COLLESS: Officers who have a charge against them under any one of those sections, is there any evidence, irrespective of the outcome, that that charge itself can lead to stress and do officers go on leave as a result of stress from some of those charges, particularly if they are subsequently found to be not guilty of that particular charge? It must be a stressful thing.

Commander REITH: I would agree with that but we have found that if officers are correctly managed through it and are given the right type of advice and support and that sort of thing, that that diminishes the stress, and also knowing the process, getting to know what the various milestones throughout the process are, and that is where Peter's branch has done a lot of work.

Commander GALLAGHER: Mr Reith is quite right. The issue of people going off with stress, the mismanagement of the complaint adds to their level of stress. At the present time, for instance, in relation to our reports to the Ombudsman, following an investigation, we are required under section 150 of the Act to interact with the complainant and report on complainant satisfaction. Nowhere are we required to report as commanders on the involved officer's satisfaction with the process.

As a step to try and decrease that level of stress or lack of morale that relates to absences, we have created some new questions for the investigator to answer. The first one is: Has the involved officer, that is the person the subject of the complaint, been informed of this complaint, and, if not, why not? Is the involved officer satisfied with the manner in which the matter was dealt with? If not, why not? We suggest that if they indicate that they are not satisfied, that is where management should intervene, and for the command to be asking the commander to answer the question: What have you done as a commander to ensure this officer's continued welfare and value to the organisation?

Just recently we have settled on some corporate performance measures in relation to complaints management, and one of the corporate performance measures is involved officers' satisfaction. What we are saying now is in the management of these issues involved officers' satisfaction is as important as complainants' satisfaction. So that is where we are trying to shift that and reduce the stress of the whole process, as Mr Reith mentioned.

The Hon. PETER BREEN: Is there a direct connection between complaints and absenteeism?

Commander GALLAGHER: We believe that anecdotally we can say that mismanagement of complaints in the complaint system adds to a decrease in the level of morale in the workplace. There is quite some evidence from studies done by the University of Melbourne to indicate that absences are caused not through stress, that is coming across a serious incident, seeing someone die, dealing with deceased persons, not through the job itself, but through workplace conflict. Absences are caused in the main, we believe, by lack of morale, not necessarily by stress, and the studies that have been done, at the University of Melbourne, in England, and a study done in America, all say the same thing, that it is the morale in the workplace that causes the absences and that mismanagement of complaints has the potential to absolutely demoralise the workplace, not only the officer himself, but if an officer is demoralised through the mishandling of the complaints management process, that then will affect all those around him as well.

The Hon. PETER BREEN: It is quite likely that police officers are the subject of more complaints than other professions and therefore there is lower morale in police forces. Is that part of the logic involved?

Commander GALLAGHER: Yes, sir, I think that is right. We have got to recognise the risk. One of the things we teach is that police officers, by the very nature of their work, are going to attract more complaints than other members of the public, and we use the example that in most incidences in the face of aggression members of the public are expected to retreat, not in all incidences, but, of course, it is completely the opposite with the police. In the face of aggression, police officers are expected to intervene. So we are going to attract more complaints.

If we do not have a complaints management system that is understood by officers, that deals with them in a fair and transparent manner and involves them in the process, then yes, sir, it does follow that complaints can have a dramatic effect in relation to morale within the organisation.

The Hon. PETER BREEN: Is it part of police training that they learn that they are likely to be the subject of complaints because of the kind of work they do?

Commander REITH: No, not at this stage. That is one of the moves that we are trying to do, the understanding of the complaints management process. If we could get every police officer conversant with this part of the legislation, I think we would go a big step towards the transparency of the process because they will know that what we are doing is required by law.

Commander GALLAGHER: As I mentioned before, the EM branch has identified that we really do need to get in at the ground floor and go and talk to recruits and say, "You will be the subject to complaints, even though you act ethically and fairly. Here is the process by which it will be dealt with. Here is how you can expect to feel, being subject to a complaint and going through the process". We need to educate at that first level.

The Hon. RICHARD COLLESS: What about complaints going the other way, junior officers making complaints about misconduct of a senior officer, how are they managed? What sort of support would the junior officer get in that situation?

Commander GALLAGHER: There are basically two types of complaints that are generated internally. One we refer to as police internal complaints and that is complaints that police officers have to make in the course of their duty under regulation 20 of the regulations. For example, a complaint under the Act has to be in writing. However, regulation 20 says if you receive a certain complaint about another member of the service, you must report that, and it could be that a complaint comes in that an officer is dealing in drugs. Well, the person who receives that complaint, even though they are not a witness or they are not the instigator of the complaint, is required to report it. So we refer to those as police internal complaints, done in the normal course of their duty, as distinct from internal police complainants, where an officer is the instigator.

In relation to internal police complainants, there is a mandatory obligation to notify those matters to the internal witness support unit, and they do a significant amount of work in relation to assisting those officers deal with their feelings in relation to being witnesses. It is a very, very difficult task. I can speak from personal experience of managing an officer who was an internal police complainant, a witness in a prosecution, a very popular officer. It is a hard job, it is a very difficult job, but we do assist, we do have that internal support unit where those internal police complainants are allocated case officers to help them deal with their issues.

The Hon. RICHARD COLLESS: In those situations there must be potential, at least, for undue pressure to be brought on a junior officer by his superiors? I am looking at a scenario where a senior officer is accused of misconduct, a junior officer has taken it on board to report him. There must be potential there for that senior officer to put undue pressure on that junior officer to know what is going on?

Commander GALLAGHER: There certainly is the potential, but what I can say from experience is that the organisation, if they identify that, absolutely do not back off in relation to investigating and dealing with that senior officer.

Commander REITH: That is the whole purpose of the internal witness support unit, to provide support, to provide a case officer, a mentor in the field for that officer.

Commander GALLAGHER: One of the problems, of course, with internal police complainants is the way they feel in themselves, and quite often you see that they themselves perceive things to be as a result of things that are done ethically in the normal course of administering and managing police officers, they can sometimes see those things as retribution in relation to them being an internal police complainant. It takes a very, very skilled commander to be able to differentiate that and say, "Look, you have really got to differentiate between something that is genuinely pressure being brought to bear upon you or you are seeing something that is normal as pressure being brought to bear on you." It is very, very difficult.

CHAIR: Are those sorts of complaints captured by the protected disclosures regime?

Commander REITH: A lot of them are, yes.

The Hon. PETER BREEN: What is the relationship, in terms of numbers, between internal complaints about police officers from their own ranks as opposed to complaints from the public?

Commander REITH: I would have to take that on notice. I do not have those figures with me directly. If I can just refer to my tables, I might have some indication of that, but I am not sure.

Commander GALLAGHER: I cannot give the exact percentage in relation to what percentage of complaints are internal overall. However, one thing that is seemingly apparent is an investigation that is generated from an internal complaint is significantly statistically higher to likely result in an adverse finding than one from a member of the public.

CHAIR: Because obviously the informants are police officers who are used to giving evidence and compiling evidence and those sorts of things?

Commander GALLAGHER: Yes, sir. I do not know any anecdotal evidence about that, but I do not believe the motivation in most internal complaints is self-motivation. I think the motivation is right. The internal complainant sees something wrong when they come forward. I cannot think of an example, but there might be an odd example where an internal complainant is making the complaint for their own benefit or it might be a reprisal complaint or whatever, but I think the vast majority of people that we deal with, they honestly come forward for the right reasons.

CHAIR: And for all the reasons you just said about how difficult it is to do it, I guess they would have to be motivated by wanting to do the right thing, otherwise it would not work out as a calculus for them in terms of benefit and downside.

Commander GALLAGHER: That is right, sir.

The Hon. RICHARD COLLESS: In the situation where that internal complaint is subsequently found to be not correct, what sort of support is given to the person who made it in the first place because he must then feel a certain amount of guilt himself if he has brought an issue forward and it is disproved.

Commander REITH: With investigations it is not to say that every one that is not proven is found not to have occurred. You get that area in the middle where there may well be some justification for making the complaint, but what was complained of perhaps has been misconstrued or something like that. The internal witness support unit, at the end of the investigation, does not just drop their clients, they are maintained for a period of time until the need is no longer there. Very rarely do you get an investigation which says, no, it did not happen, as opposed to, yes, it did happen. There is quite a wide range in the middle where there is insufficient evidence to say that it did happen, but that does not mean that it did not happen. That might sound a bit convoluted.

CHAIR: Commander Gallagher outlined the notification process that flows from the complaint being made. What happens when that complaint then triggers a covert investigation? What happens to that process then?

Commander GALLAGHER: I might defer to Mr Reith.

Commander REITH: The reason complaints are made covert is so that our outmoded complaints information system which is available across the State is not used as a trigger to let people who may be involved or who are suspected of being corrupt know of the range of inquiries. Covert investigations are generally handled by my branch alone or in cooperation with the Police Integrity Commission, so the matter is managed within a few people that need to know about it. At some stage it becomes overt, people are told of the allegations or interviewed and/or matters become subject to public hearings at the Police Integrity Commission. There is a whole range of support mechanisms that are put into place for the officers; there is a whole range of notifications that are made, but when it gets to that stage, of course, there is generally considerable evidence which would indicate that police have acted in a less than satisfactory way and the process is to either put them before courts or to have them separated from the organisation under the 181B process, so at the overt stage all of the normal processes are put into place.

Mr KERR: Going back to mandatory drug testing, when did that commence?

Mr JACKEL: On 1 July 1998.

Mr KERR: Who was the police commissioner at the time, do you recall?

Mr JACKEL: Mr Ryan.

Mr KERR: He was the one who brought it in, was he?

Mr JACKEL: The drug and alcohol program came in as a result of a Wood Royal Commission recommendation and mandatory testing came in as a result of a coroner's recommendation following the Roni Levi inquest.

Mr KERR: I think Mr Ryan in his memoirs says that he brought it in over the opposition of the police association. Is that your recollection?

Mr JACKEL: The police association and the labour movement generally are opposed to workplace drug testing, yes. I must say that the association over a period of time did enter into negotiations with us and agreed to the introduction of it.

Mr KERR: Do they still maintain their opposition in principle?

Mr JACKEL: We have had very good cooperation with the association. It might have to be a matter to address to them, but we have had very good cooperation from them.

CHAIR: How many random drug tests were carried out in the last reporting year?

Mr JACKEL: Random drug testing was introduced on 1 September last year.

CHAIR: How many were carried out in the last 11 months?

Mr JACKEL: I can give you the 12 months, if you like. We indicated at the time when random drug testing was introduced that we would aim to do 500 tests in the first 12 months. At the end of that 12 months or at the end of August there were 511 random drug tests conducted.

CHAIR: How many officers failed the test?

Mr JACKEL: There are two encouraging things that have come out of the random drug testing regime. First of all, we have not had a single officer test positive. I would caution that it takes about three weeks for the results to come through the laboratory and there might be one or two outstanding, so I would hate them to blot our copy book, but at this stage all officers who were randomly tested have screened negative. The encouraging thing for us is that in that same period we have had, on average, one officer per month put their hand up for assistance under our amnesty program.

CHAIR: How many targeted tests have been carried out in the last year or the last reporting period?

Mr JACKEL: I understand there were 24 targeted tests carried out in that period, that is in the last financial year.

CHAIR: What was the success or failure rate?

Mr JACKEL: Five officers tested positive.

CHAIR: How do those sets of figures compare with random alcohol testing?

Mr JACKEL: Fairly similar. We have done a lot of alcohol testing, obviously do more alcohol testing than drug testing. We have done a total of just on 35,000 alcohol tests and we have had I think 52 officers test positive.

CHAIR: Do New South Wales police know whether other police services around Australia consider recreational drug use amongst their officers to be a problem? How does that compare with New South Wales?

Mr JACKEL: All of my interstate counterparts have had contact with me. Apart from the AFP, which introduced a very similar program to us last year, we are the only policing organisation in Australasia which does drug and alcohol testing. All of my interstate counterparts have had discussions with me and sought guidance in introducing their own programs. I understand that they are all introducing them along a similar line to what we have.

The Hon. PETER BREEN: Is there much resistance in the force to the idea of random testing?

Mr JACKEL: I would suggest that for both random alcohol and drug testing the vast majority of police are professional enough to accept it for what it is and in fact our drug and alcohol policy has provided police officers with something that they have never had before and that is a formal mechanism where they can either seek help or refer people to help without the fear of the officers facing disciplinary action or the sack. Previously it was driven underground. Since the introduction of our

policy we have very clear guidelines, it is legislated in our regulations, our drug and alcohol counsellors have specific responsibilities and accountabilities in the regulations and it gives them a little bit of authority to act in the best interests of these officers and to ensure that confidentiality provisions apply, and I believe that we have given officers an opportunity for the first time, a formal mechanism, to come forward and seek constructive and professional help.

Commander GALLAGHER: Could I just support that. On Wednesday I was at Tamworth and Gunnedah where they were conducting random drug testing and did not see any resistance to it whatsoever. I think it really has, to the credit of the organisation, become accepted in the field as the norm and there is no difficulty.

CHAIR: Are those figures we have just talked about widely available or widely known?

Mr JACKEL: We do publish them from time to time in our annual report and in other places, yes.

CHAIR: Anecdotally, I am pleasantly surprised by those figures and I suspect other people might react in the same way, which is why I was interested in the level of publicity given to them.

The Hon. PETER BREEN: Could I also make the observation that the reaction of the public to random drug testing is pretty negative, by and large - I am thinking of the sniffer dog legislation, for example - whereas what you are suggesting is that in the police force the officers generally do not have an adverse reaction to it.

Mr JACKEL: That is correct. I mentioned earlier the Westmead Hospital study which indicated that our levels of drinking had dropped substantially. One of the questions asked in that survey of police officers was whether or not they believed that a drug testing program would be useful or very useful. Surprising to me was that 80 percent of police officers surveyed indicated that a drug testing program in the organisation would be useful or very useful and those 80 percent of officers were actually officers who had just gone through the indignity of providing a sample for drug testing purposes so, of those who have been through the process, 80 percent said it would be a useful or very useful process.

Commander REITH: And, just as an aside from a former operational police officer, it would give me a great amount of confidence to know that my offsideer could and would be tested randomly. When you are in an operational situation, I am sure everybody would like to know that the people around them have all of their faculties about them.

The Hon. PETER BREEN: Is there something in the Roni Levi case that has contributed to that attitude, do you think?

Commander REITH: I think we all learn by our mistakes and I think that is a very good point.

Mr JACKEL: I would say, following on from that, when critical incidents occur, police are very keen for these tests to be conducted because it removes one

element of doubt and one opportunity for people to lodge unwarranted complaints against them.

CHAIR: Can I turn to SCIA? In the response to the questions we received the overview of SCIA includes as part of its core business to promote professional standards and complaint investigation management. I am interested in how SCIA actually does that, what that actually means?

Commander REITH: That came about as a result of me taking over leadership of SCIA in February. We had a meeting of the senior staff there to formulate our direction and it was seen that the greatest amount of criticism that we received was in relation to the investigation of serious complaints and we formulated the complaints management unit as being an area where we could provide investigative expertise, complaint management expertise, using our new c@ts.i process because we can monitor now live every complaint across the State whereas previously they were not monitored in an ongoing sense by any central agency, they were reviewed at the end of the day in a paper-based file. Using the c@ts.i process, you actually scan documents or you save electronically information to a database which can be viewed on a need to know basis by people who have the right security levels and you can see, moments after documents have been completed, those documents live and they can be read centrally not only by SCIA but also by the office of the Ombudsman or the office of the Police Integrity Commission. That will enable us to provide advice to the field doing category 1 investigations with fresh strategies, should they be required, whether or not the use of covert evidence gathering techniques could be utilised during the course of those investigations. We would be able to provide at the finalisation of our recruitment process investigators to go to the field to give hands on advice and assistance to investigators in the field. That is what I describe as a professional complaint and investigation management of complaints, providing a body of knowledge that is at the one location to people that may be investigating a category 1 complaint for the first time in their career.

CHAIR: Has SCIA been involved in providing corruption prevention advice during the establishment of the new specialist squads?

Commander REITH: No, we have not. That is one of the areas where I have suggested to the commissioner that we may be able to provide some advice when their restructure has been finalised, but we most certainly also encourage commanders of those areas to seek advice from the Independent Commission Against Corruption. They have a very good corruption prevention area which can provide advice in relation to that.

CHAIR: Do you know if the transfer and tenure policy will apply to officers serving in the specialist squads?

Commander REITH: No, I do not. I would imagine there would be a minimum tenure to those locations, but the senior positions, of course, are gained on merit and, unless those officers do not perform, they could be there for any length of time.

CHAIR: The response to questions 1, 2 and 3 mentions that SCIA initiatives aim to identify and work with officers in the field in response to workplace issues. I am just wondering if you could give some examples of those initiatives?

Commander REITH: I would not like to tell you about specifics, if you are happy about that, but, for example, we are often approached about methods of identifying or gathering evidence that perhaps is not exactly aligned to a complaint issue but a suspicion of a commander or a group of people in a local area command and we would sit down with those people and help provide a strategy to conduct an investigation, either covertly or in their area, using all the evidence gathering techniques that are available to the police service. We would obviously, depending on the level of the problem, refer them to Mr Gallagher's area. Lots of issues can be dealt with by way of alternate dispute resolution and do not then necessarily escalate into complaints of alleged corruption. People use that term very widely, of course, in the workplace, especially if they are adversely affected by a management decision, so it is using all of the techniques available to us across the gamut of criminal investigation, and I do not make the differentiation between internal complaints and criminal investigation. Generally speaking, when you do an evidence based investigation, you should do it to the level that you are expecting to place the material before a court so that you do not get caught short on the evidentiary requirements. But we will provide advice, guidance and on the ground assistance should that be required.

CHAIR: You effectively then refused to make a distinction between criminal matters and internal matters. Is that because the matters you tend to deal with are the more serious matters?

Commander REITH: At the upper end of the scale, yes. We do get the matters that can be dealt with by way of an outcome focussed investigation, but I like my staff to identify those quickly and get those matters resolved. Sometimes it is not possible because they are inextricably linked with a more serious part of the investigation, but our approach with Peter's branch is that if there are issues which can be excised from an inquiry which would not compromise the more serious part of the investigation, we would attempt to do that, get those resolved, get those issues out of the way and let us focus on the corruption issues.

CHAIR: The response to question 6 discusses c@ts.i as a potential tool for risk management as well as having a greater analytical capacity. Are the business advisory panel or the New South Wales Police in general planning to undertake any specialised research about areas of risk, at risk officers or trends in corruption and misconduct?

Commander REITH: We have done that, using unfortunately data which is not that accurate from a complaints information system, but we are confident that the c@ts.i system will give us a much more accurate set of figures and data to work from. We are currently in a position of having to recruit some extra people - well, not extra people, but new people because of the leaving of some of our key staff to better paid jobs, unfortunately, and our expertise in that area has been diminished slightly in the last two or three months. The National Crime Authority and ICAC have done some head hunting and we have lost some very key people, but we hope to regain that expertise in the short-term. Certainly, the basis of the material that is captured on c@ts.i will give us a lot more confidence that the data we are working from is accurate.

CHAIR: Question 7 deals with SCIA research projects, particularly the analysis of sustained criminal allegations 1999-2001. Have any of the outcomes of

that project been implemented or used by the police? Is any consideration being given to the establishment of an early warning system?

Commander REITH: The outcomes of that research paper are currently the subject of some negotiations with our investigation area. Because of the promotions problem last year, we have been unable to recruit actively in the period of time since October up until now for those positions. So we are down quite considerably on our numbers. We are having 23 officers join us very shortly from the field, which will give us the capacity to implement some of those recommendations, but at the moment, I am afraid, we have been unable to do that, because a number of operational activities have diverted our resources from that type of work.

CHAIR: If you get those resources, is one of the things you might want to pursue the suggested examination of assaults complaints jointly with the PIC as a follow-up to Project Oracle?

Commander REITH: I have got staff who have done some work on that and are intending to continue that work, yes.

CHAIR: Question 8 mentions the corruption identification and management process. Who is responsible for that process? What kinds of events trigger the process? Who do the follow-up procedures involve and who is responsible for those?

Commander REITH: Who is responsible? The people who have left me recently were responsible for that. I expect the area is actively trying to recruit some people who have those skills. The way that that was triggered initially was to take a region and then do the research into a region, and we did the old Macquarie region, which is the area Parramatta through to the Blue Mountains, and then to do a regional research project and then a local area command research project in relation to high risk officers, look at the behavioural patterns that could be associated with the types of complaints that those officers were attracting, and that staff were trained in psychology, and then to make some recommendations about some interventions.

We have gone down the path of actually identifying high risk officers, talking to the previous commander of Macquarie region about that, and those LACs still exist of course, and we are currently working on a process to actually encourage those commanders to put in place the interventions which perhaps are appropriate to the types of behaviour that have been identified. We have been working from complaint data rather than sustained complaints, which is a little bit more abstract than perhaps the positive. So there are some industrial ramifications involved in working off the input side of it rather than the output side of it.

CHAIR: One of the great problems in this entire area that I always worry about is the natural justice aspect, but you cannot simply rely just on the outcomes.

Commander REITH: Well, you cannot close your eyes to the problems that the public are bringing to your attention.

CHAIR: Question 9 concerns another SCIA research project called corruption indicators. That mentions in passing that internal factors, such as an officer's ethical standards, may influence inappropriate behaviour. Are there any policies, programs or initiatives that are aimed at strengthening those internal factors?

Commander REITH: Again, all this research was done by this one group of people that I am afraid has suddenly disappeared from my control and we are battling with those aspects at the moment but, certainly, as soon as we get staff on board, we will attempt to put forward those projects into some action.

CHAIR: Question 9 also briefly discusses one of the findings that tenure changes should be dependent on the dynamics of the local area command. Has that been considered by New South Wales Police? If so, how would this tenure policy deal with local area commands that cover areas that have traditionally been considered to be high risk areas for corruption? Would such a policy also apply to the specialist squads?

Commander REITH: There are a number of views about tenure. It is easy to move a problem but it does not necessarily address a problem. If an officer or a group of officers have a problem in one local area command, we would encourage the commander to deal with the issues rather than move the officers. I accept that the movement of officers occasionally is the only strategy that can be employed.

My view is that there should not be a specific tenure attached across the whole of the organisation. There are some places that it takes a considerable period of time to get the expertise to deal with the community and it would be silly to put a specific period of time on that. But I do understand that the movement of officers is an essential part of keeping an organisation refreshed, and certainly there are generally tenures at the moment that deal with minimum tenures for the city. You have all of the ramifications of moving families and children that are at schools and all that sort of stuff to deal with, and, again, unless there is a specific problem that cannot be dealt with by the command structure that is in place, then I would personally be averse to a blanket tenure policy.

CHAIR: Has SCIA been involved in advising about corruption prevention mechanisms for the specialist squads?

Commander REITH: You mentioned that before. We have not been, no, not at this stage.

(Commander Gallagher and Mr Jackel withdrew)

(Evidence continued in camera)

(Public hearing resumed)

(Luncheon adjournment)

IAN ANDREW BALL, President, New South Wales Police Association, 154 Elizabeth Street, Sydney, and

GREGORY THOMAS CHILVERS, Director of Research, New South Wales Police Association, 154 Elizabeth Street, Sydney, sworn and examined:

CHAIR: Did you receive a summons issued under my hand to attend before the Committee?

Mr BALL: I did.

CHAIR: Did you receive a summons issued under my hand to attend before the Committee?

Mr CHILVERS: I did.

CHAIR: We sent some questions to you. We would be delighted to hear your answers to those and if you have got any other general comments we would be delighted to hear those as well.

Mr CHILVERS: Yes, we received six questions. I believe the first one has been dealt with already in relation to the total of 264 officers having been discharged medically unfit.

CHAIR: We certainly had some evidence about that, yes.

Mr CHILVERS: So I will move straight to question 2. Can I just open by saying that the issue of prevention and corruption minimisation is not a matter that is dealt with easily by simple measures, and I realise that the five remaining questions relate to particular measures, but we would like to see them more in terms of the total package.

To that extent, in terms of psychometric testing, this has been a process that has been used in some jurisdictions, I believe Victoria has been doing it for a number of years, but they are never done in isolation to other types of procedures and there is a danger that psychometric testing itself be used as a means to exclude some people from the profession.

I remember there was a study done by a psychologist, Cary Cooper, in the 1970s of bomb disposal workers in Northern Ireland and the results of his study, which was quite famous, concluded that in fact successful bomb disposal people, that is those who were able to cope without going off the deep end and those who did not blow themselves and other people up in the process, usually exhibited signs of psychosis at a major level. I guess the inference there is that if you want successful bomb disposal people, you employed psychotics. So I guess it is a matter of horses for courses.

It is really a matter of understanding clearly what it is that you are looking for in police officers, and not so much excluding members of the community from applying from police positions, but in fact using the psychometric and other sorts of

testing, yes, to identify where problem areas may be and to develop appropriate supervision and support mechanisms perhaps in those circumstances.

I would like to table a document which is a proposal from a study done by Professor James Fyfe in the United States. This is a study of involuntary separations from the New York Police Department over a period of 22 years. Close to 2000 officers were studied. What Professor Fyfe has done is looked at all sorts of similar things to psychometric testing. He looked at the sorts of things that might predict misbehaviour or corrupt behaviour by police officers in the future, by looking at histories of officers and all sorts of things like that. It is a good, interesting study I think. Although it was done on the New York Police Department, I think it may be very helpful as a start to something that could be done in New South Wales. Something like this I do not think has ever been done, a decent study of separations in all the circumstances over a period of time.

CHAIR: We would be delighted if that be tabled, yes.

Document tabled.

The Hon. PETER BREEN: Can I just ask a question about section 181D. The Committee has heard evidence that the ambit of that provision has been narrowed so that less police officers are now being subjected to that provision. Are there any police officers that you are aware of who might have been dismissed earlier when the provision first came into force and who might now be wanting to get back in or, indeed, have got back into the force since the provision has been narrowed?

Mr CHILVERS: I do not think it has been narrowed in that sense. This is under the new proposed alterations to the process that you are talking about?

The Hon. PETER BREEN: Yes, and also the fact that the commissioner is now looking at fewer issues than he was before.

Mr BALL: Are you talking about 181D, D for delta or B for bravo?

The Hon. PETER BREEN: No, D I was referring to. My information is that the commissioner once considered a whole wide range of issues, but as a result of the implementation of the provision and the benefit of history, the issues are now narrower and therefore less police are coming under the umbrella of 181D.

Mr BALL: No.

The Hon. PETER BREEN: That is not true?

Mr BALL: No. What was happening under a previous administration, for example, if someone was detected for drink driving, there was an automatic notification to a 181D. Every individual police officer who might have had some sort of minor problem, there was an automatic requirement that they were nominated for a 181D, and of course what happened, for lengthy periods of time people sat there with this big black cloud over them, they were restricted in their duties and, eventually, in the vast majority of cases, no action was taken.

What has now happened, Mr Chilvers can probably run through in far more detail the new system and how that process works, but the reality was about five percent of those nominated were being removed, and yet there was this big wide-ranging net that people were all being scooped into as a nomination. It was an absurd situation. With the new process, that is not the case.

The Hon. RICHARD COLLESS: Is that while they are on duty?

Mr CHILVERS: No, it was mandatory nominations for anyone, for example, who had a low range PCA. This is silly stuff. There were a number of areas where this mandatory notification had gone overboard. For example, even with the Police Integrity Commissioner, there is the mandatory notification to the Police Integrity Commissioner of any complaint against a superintendent or above, any complaint, even a complaint of rudeness can go to the Police Integrity Commissioner. We are trying to look at that as well. That just clogs up the Police Integrity Commission from doing valuable work. Likewise, a mandatory nomination, given that a nomination under 181D requires the thing to be progressed to a certain degree to come before the commissioner, it was just clogging up the system with stuff that really should not have been dealt with there. What you want a 181D nomination to be dealing with is when there is a genuine risk to the organisation and a genuine concern that this person may not be suitable to remain as a police officer. You do not want those sort of things being mandatorily nominated.

The Hon. PETER BREEN: I think you were going to give us some information about how you expect the new provision to operate.

Mr CHILVERS: I am wondering whether in fact the proposed new provisions have been explained to you by Superintendent Gallagher?

CHAIR: We have certainly heard some evidence both this morning and on an earlier occasion about it.

Mr CHILVERS: Yes, well, there is a document that I presume has been tabled?

CHAIR: No, we have not seen a document.

Mr CHILVERS: Well, it is the department's document, but can I say that it is a document that we have been fully briefed on and it is still out in terms of consultations going to the Police Integrity Commission and the Ombudsman, and my understanding is that they are very happy with it and we are certainly very happy. My understanding also is that there is going to be continual review and a formal review in 12 months' time to ensure that in fact this has improved the situation. We have had this relatively new process that has been tested on a few occasions at the Industrial Relations Commission. There have been a lot of problems with the procedures in terms of fairness and equity that the commission has criticised and it is in our interests, as well as the police service's and the community's interests, to get this right so that people do not escape who should not escape and, at the same time, people are not subjected to a process when they should not be subjected to it.

The Hon. PETER BREEN: My original question actually was thinking about some officers who were dismissed perhaps peremptorily and, with the benefit of

proper legal advice and an opportunity to go to the Industrial Relations Commission which they have never had, they might now be able to come back into the force.

Mr BALL: I suspect you might be referring to a specific matter, and I will go back to your original question. There was the application of section 181B in one particular case and it was in a period of time when we did not have appeal rights at all. It was applied to a particular individual, we would contend in a constructive dismissal sense, and in fact we have been pursuing for some years now some remedy for that individual - I might add very unsuccessfully - but certainly 181B is the matter that I am thinking of. It is a member called Walpole, who was mentioned in a royal commission brief, and it has to be said that it is our view that he was constructively dismissed. It is quite curious because his offside in that same brief not only fought in the Industrial Relations Commission but won, and has since been promoted several times.

The Hon. PETER BREEN: I have had police officers approach me too in fact who have been dismissed under 181D and never got as far as legal aid, and so never had the opportunity to properly canvass their side of the story, so I am just wondering whether the operation of the new provision, if it is indeed narrower, might allow those people either the opportunity to come back in to the force or at least have their side of the argument properly heard.

Mr BALL: In terms of 181D, it is no secret that the police association funds appeals. Our process, however, is based on obtaining legal advice as to the merits of the appeal and so there would be some people who we would not fund.

Mr CHILVERS: But on every occasion, let me say, every officer who has been served with a 181D has a statutory period of time within which they have the opportunity to present a show cause to the commissioner, effectively to argue their case, and in those circumstances, if they are a member of our association - and 99 percent of them are - they will come to us and we will always fund a solicitor to assist them in presenting show cause, not the appeal, but I find it hard to understand, unless they were dismissed or removed under section 181B during a period of time when there were no appeal rights, if they went at that stage, there was absolutely no mechanism for them to exercise an appeal right. There was a very small number in that period, but, after that, everyone certainly has had the opportunity to present a show cause argument to the commissioner and, if unsuccessful, at least theoretically to have an appeal right to the Industrial Relations Commission.

The Hon. PETER BREEN: You are not going to table that document that you referred to, I take it?

Mr CHILVERS: It is not my document.

CHAIR: I am sure that, if we wanted it, we could get it.

The Hon. PETER BREEN: Yes. Could we have the name of the document?

Mr CHILVERS: Yes, it is a 181D review on realignment prepared by the commissioner's working party into the 181D process chaired by Mr Michael Holmes.

Mr BALL: I am just thinking about some people who may have been subjected to removal under 181D who have had their show cause but still been removed. Some do not get funded and, of course, that leaves them in a position where, if they wish to pursue an appeal, they have to do so on their own.

The Hon. PETER BREEN: Yes. The two cases I am thinking of, one of them initially was funded by the association and then the association got other advice and withdrew its funding, and in the second case the association would not fund them at all. Thinking out loud, their opportunity for getting back in is probably very limited.

Mr BALL: Well, we took a decision and it is not for me to justify how we run our legal assistance scheme, but we took a decision. It has to be said that we wanted 181D. The old process of getting rid of people out of the cops was the most disgraceful thing you have ever seen. I have been in this game for 25 years and what was going on was just horrendous. The idea of 181D was to offer the Commissioner of Police, as an employer, the opportunity of saying to people "This is not good enough" and, in the worst of cases, saying "This is so bad that I want you out of here". I have to say that, over the years, it has not been applied that way. We have had this big all-pervading net, scooping everybody in, and of course the bureaucracy then got so smothered with self-nominations that it just did not work. I think that the reality is that no one wants to work with the crooks. That is the reality. I am sure some people would consider themselves aggrieved, but we take legal advice in terms of what we are going to spend our members' money on and, if the advice is that the appeal has no merits, then we do not fund them. That has been the situation for the best part of three years. I am happy to take any representations from you on behalf of these two members--

The Hon. PETER BREEN: I have no brief with these cases, I just happen to know about them and I wondered if the process changed under the new system, but I guess time will tell.

Mr BALL: Well, the particular case of 181B was just disgraceful, and there is very little we can do about it, unfortunately.

The Hon. JOHN HATZISTERGOS: What is your success rate?

Mr BALL: I do not know how many we have had, to be honest.

Mr CHILVERS: Not that many.

Mr BALL: We have not contested that many. Many members get a 181D. There was one notable case, just before Christmas last year, where he was handed the 181D which he took in his left hand and out of his right hand came a resignation.

The Hon. RICHARD COLLESS: He must have known something.

Mr BALL: Well, a lot of people - and I do not know the statistics - would prefer a resignation. I actually think the employer would prefer a resignation.

The Hon. JOHN HATZISTERGOS: We have some statistics from the police about that. Some of them actually go out on a medical discharge.

Mr BALL: That is question 1, which we were told to ignore, but I do not know.

Mr CHILVERS: Question 1 has incorrect information. The first question which says that there were 264 officers medically discharged is incorrect. The information is wrong. There was a misreading of the annual report. In fact there were very few. There were 264 officers medically discharged across the service, it had nothing to do with 181D. Unfortunately, it was printed in the annual report and it was ambiguous. It was just incorrect.

The Hon. JOHN HATZISTERGOS: The percentage in 2000-2002 was 12.6 percent.

Mr CHILVERS: I am surprised it is that large actually. Does it include those people who were nominated for a low-range PCA, keeping in mind that alcohol problems are often indicative of stress-related injuries and stuff like that. I mean those figures are rocky.

Mr BALL: In the financial year 1997-98, of 256 people, there were 14 removed.

The Hon. JOHN HATZISTERGOS: Where do you find that?

Mr BALL: In the table I was just given by one of your officers. That demonstrates to me the farcical nature of everyone being nominated. If you enter the judicial system for anything it is a nomination.

The Hon. RICHARD COLLESS: What it says here is that of the 264 officers who were medically discharged, only eight officers had 181D nominations pending.

Mr BALL: Which is quite different from question 1.

Mr CHILVERS: That is fine, yes, it sounds sensible.

Mr BALL: I will give you a very interesting case study of a young man with a medical condition that was so poorly handled by the police service he ended up with a 181D nomination and we were able to negotiate a medical exit for him. This was a young man of about 20 years' service. He would be in his late 30s - in fact he may have turned 40. His diabetes was at such a level - he had an alcohol problem and he had a domestic problem, and so the solution was to dismiss him using 181D instead of someone saying, well, hang on a minute, he has whatever the worst case of diabetes is - and I am not a medical person - and he had had that for some years. He had an alcohol problem which we had known for some years and that manifested itself in a domestic situation. Instead of someone back here dealing with the alcohol problem, we let it drag on to the point where we used 181D. What we ended up doing with that fellow was talking to the service and we were able to negotiate a discharge for him. He was sick.

CHAIR: We had some evidence earlier today that the level of heavy drinking amongst officers has reduced dramatically.

Mr BALL: Indeed.

CHAIR: And that seems to have occurred at the same time as the policy issues were adopted. Are those sorts of things going to deal with that type of case, do you think?

Mr BALL: I actually think that the drinking culture of the cops has changed.

CHAIR: They gave us some figures of random alcohol testing which showed, to my mind, an extraordinarily small amount.

Mr BALL: Let me tell you, the easiest way to tell if there has been a cultural change is to go to a police send-off. These days the average send-off finishes at midnight. If they are working the next day, if they are on day shift the next day, they will have been gone for hours. There is no drinking at work any more. Years ago, when I first started in the cops, drinking at work was common, it was quite common, as Wood found, and it is a bit hard to say that it was not, but the reality today is that it would not happen. That is why the vast majority of the cops are so supportive of alcohol testing. They do not want to work with drunks. Fact of life.

CHAIR: That was very much the impression we were given today by the senior people who were here and some of us were a bit sceptical, but that is clearly what they were saying.

Mr CHILVERS: Perhaps I should outline very briefly to you the history of that because during the commission when this started to emerge as an issue the legislation was changed to allow for both random drug and alcohol testing and we became involved almost immediately. Our concern, of course, was that, given at that time the history of the police service, this testing would have been used in a punitive fashion, particularly given the state of the disciplinary procedures at the time to remove people, and we should know that this is just not going to go anywhere unless we start to address it from the point of view of a health issue, which it very clearly was.

We had significant evidence to say that we had a major problem. There was the Resnik report in the early 1980s; there was a report by Alex Wodak in the 1990s suggesting these very high levels of drinking. I can remember the TV show Cop It Sweet. The most disturbing thing in that for me was that, at the end of the shift, everyone went to the pub - at 6 o'clock in the morning. That was the way that people debriefed. Police commanders often debriefed people for a job well done by putting on a keg. That was part of the culture. So we knew that there was a problem and we wanted to address it from the point of view of a health issue and we actually had a committee that the minister established and there was us, there was HR command, internal affairs, the health department, there was the Labor Council, there were a number of bodies like that, people who had expertise, and we moved down the path of treating it as a health issue, identifying and helping people who had problems, having counselling and education. That was the way it went and we were very supportive of it, and I think it has been an outstanding success, as Ian said.

Could I move to question 5 and talk about drug testing because, at the same time that we were moving down this path, very supportive of alcohol testing, there was a move to introduce random drug testing, and I said, "Hang on, there are a number of differences here". For a start, it is not a matter of "Blow into this piece, thank you. Off you go". It is, "Take this bottle, empty your pockets out, come into this

closed cubicle, and close to us, we want to hear you widdle in it", frankly. That is a very, very, very invasive procedure. It is also a very expensive procedure, much more expensive than random alcohol testing.

So the query was: Let's make sure we have a justification for going down this path. If we can see that there is a significant problem with police, then we need to think about the need to have random drug testing. From our point of view, we suggested let's do a study, let's see if there is a problem. There is no evidence at this stage, apart from some anecdotal stuff, that there is a major problem in terms of illicit drug abuse in the Police Service, so let's do a study.

That was agreed and some money was set aside and a tender was put out. I do not know if you are aware of this study, "An independent research study of prohibited drug use in the New South Wales Police Service, Western Sydney University, Westmead". I am quite happy to table that. That is a public document. That study was undertaken. There were a number of processes established. First of all, there was a six months amnesty period where police were told, "If you have got a problem, you come forward and we will give you counselling and assistance and put you through rehabilitation programs".

At the same time, there was an independent study, a completely confidential, anonymous study, so any results would not go back to the Police Service, and a random testing program would be done throughout the State over a period of about six months. 1036 officers were tested. There were four positive results, all for cannabis. Tests were made for various illicit substances. I put it to you, and I put it to the Committee at the time, given the demographics of the police organisation, the vast majority of our people are under the age of 35. If you compare the demographics of that group with the demographics of New South Wales and the drug usage, and I am talking about casual drug usage in New South Wales, that is not what I would call a problem.

So how do we approach this? There is an issue there perhaps. How do we approach it? Obviously rather than putting people through this random drug testing program, which, as I said, is invasive, expensive, not a very pleasant experience at all, is it not more appropriate to target test? In other words, in areas where you have a specific concern, where it has come to your notice there may be a problem, there are suspicions that someone is a user, target them, use that as a process, as an investigative tool to identify the issue. Hopefully, up until this stage that has been the vast majority of the approach taken.

This issue is further complicated by a misunderstanding about what it is that we are actually testing for, and this has come out through a number of decisions of the coroner and I suggest from reports by the Police Integrity Commissioner that basically misunderstood what it is that we are trying to test for. There are two reasons to test for drugs. One of them is to test for impairment, or potential impairment, and that is largely the sort of testing that we use in alcohol testing, because we know a certain level of alcohol is a pretty good indication somebody is going to be impaired and it is an issue of occupational health and safety. The other one that is more pertinent to policing, of course, is an issue of integrity.

We cannot confuse these two. We have got to be very clear about what it is we are testing for, because I can tell you now there is no test for impairment with

drugs. You will not get a medical expert that will stand up before you in any jurisdiction and say there is a test for impairment. It does not exist. People react very differently to drugs. Illicit drugs stay in the blood stream, in the hair and all that sort of thing, for a lot longer without necessarily having an impairment. In fact, observation is a much better means of showing impairment than testing of any form.

That is why it amuses us that there is this subsequent push by the Police Integrity Commission to introduce blood testing. We are violently opposed to blood testing. There is absolutely no medical evidence, no scientific evidence whatsoever to suggest that blood testing is going to give you any more information than is available already by urine testing. It will not show impairment levels, and we must be very clear on that. It is a much more invasive procedure. With any procedure where a foreign body is introduced into the blood stream, there is an element of risk as well. At law, theoretically it is an assault, and it is something that we are not prepared to allow for our members in any way, shape or form, certainly not in the circumstances where people are arguing that it can show levels of impairment. It just cannot.

Mr BALL: Having said that, of course, the targeted testing, we have not got any difficulty with that, absolutely none. If there is something there, and let us be clear about it, I suspect a lot of the targeted testing, and I do not know, I am not privy to this sort of information, but I suspect that the vast majority of those - and I notice there was a number of 181D matters in the papers that we received here today for drug offences, I have absolutely no doubt they would have been targeted tests, absolutely no doubt at all.

CHAIR: We had some evidence given to us this morning in open session that there have been 500 random tests in the last 12 months with no failures and 25 target tests with I think five failures out of 25.

Mr BALL: I think everyone needs to understand, no-one has got a difficulty with targeted testing. If there is some suggestion that people are on the drugs, you cannot let them off.

The Hon. PETER BREEN: There was also interesting evidence this morning from the police that even where people are found to be using drugs in a particular situation, and I think the evidence was restricted to cannabis use, that it is not an automatic dismissal. If there are extenuating circumstances and someone argues their case well enough, if it is properly represented, they will not necessarily be dismissed, even if they are using cannabis, even though that is an illegal activity, as opposed to alcohol which is not an illegal activity.

Mr BALL: I guess that goes back to that very initial and sensible approach taken when this was first brought on. It is about rehabilitation. I find it a little curious that we are prepared to rehabilitate alcoholics, but if you have got a little bit of smoko in you --

The Hon. RICHARD COLLESS: Is not the difference there that alcohol is a legally obtainable substance whereas marijuana is not?

Mr BALL: I suppose if I was in another jurisdiction, I could probably say that that is not an issue.

The Hon. RICHARD COLLESS: Do you not see a conflict of interest there for police if they are dealing with an illegal substance?

Mr BALL: Of course there is, and I suppose we could all use that sort of an example, but let us be frank about it, I have absolutely no doubt that one of my children has experimented, I have absolutely no doubt about it, and I do not think young cops are going to be any different.

CHAIR: It depends upon the context of the situation and different cases will be different.

Mr BALL: I think the initial approach taken by the then director of human services was a very sensible approach. If you put your hand up, and this was the best part, if you put your hand up and said, "Listen, I have been on the ganja", bang, straight into rehab, no one knew about it and they were dealt with and looked after. If you failed, see you later, no mucking about. That approach has been a far more sensible approach.

The interesting part from my perspective is what you do with the individual who has retained a sense of privacy and is medicating on prescription for other illnesses that they do not want the rest of the world to know about? The day is going to come when that happens through random testing and all of a sudden the organisation is going to have a problem.

Mr CHILVERS: I think what is also interesting in this study that was done a few years ago, they also did a survey of all the people who were tested and I think it shows a very strong anti-drug culture among police. Police deal with the results of this stuff every day; they deliver the death messages when there is an overdose; they pull the kids off the street; they deal with the crime that results. There is a very strong anti-drug culture amongst police.

CHAIR: Which is really interesting too in the sense that a lot of the new recruits must be coming from a culture which has a fairly high degree of tolerance for use of cannabis, in particular, and perhaps ecstasy and a few other things.

Mr BALL: I think that is right. I would despair if I was a young kid today. I think the young people of today have got so many difficulties confronting them. As I said before, I am sure my kids have experimented and I am sure others in the community will experiment all the time. When I was 19 years of age you did not have half the problems these young people face today and you did not have 90 percent of the crooks running around selling gear to them. You did not have half the problems that kids confront today. My young boy has just started high school this year and I just think it would be very hard today. Young people are coming to us from that environment. I do not know what the average age of the last group was, but I am sure it would be in the early 20s.

Mr CHILVERS: I was down there a couple of weeks ago, I thought it was all of about 14.

The Hon. PETER BREEN: Can I also make the observation that the reaction of the police to random drug testing is not dissimilar to the reaction of the rest of the community. For example, the sniffer dogs, there is a feeling that this is intrusive, it is

invasive and that there are better ways, such as targeting, to use the technology or expertise and get much better results.

Mr BALL: If I could make a simple observation to that, the use of the sniffer dogs, whilst it is not for me to defend the deployment tactics of the police force, but as a police officer, you deploy where you know, where intelligence is.

The Hon. PETER BREEN: So it is targeting, is it?

Mr BALL: You do not just walk along with a dog and hope you get a hit.

The Hon. PETER BREEN: They do at Central.

Mr BALL: I might make a casual observation that a kilo of amphetamine is a very lucky casual hit.

Mr CHILVERS: Can I also make a comment that another issue in question 5, apart from random drug and alcohol testing, is random integrity testing in general. This is an interesting issue which has been around for some time and it was really brought out to Australia by Professor Larry Sherman in 1995. At the time that this was raised in 1995, which was during the commission, myself and the then president, Phil Tunchon, went to New York where this process is alleged to have started and actually accompanied Geoff Schuberg and then Commissioner Tony Lauer. We looked at what was happening over there. An interesting process was going on there and I actually had the opportunity to talk to Charlie Campisi, who was the chief of internal affairs in NYPD in 1997, some couple of years after that. Can I summarise it by saying that when we were over there someone said to us very clearly, "I don't know whether it is integrity testing. It is probably more like conformity testing", because in fact what happened was that the PBA, the police union over there, instructed their members to treat every first response call-out as a potential integrity test and that is what happened. Charlie Campisi told me two years later that in fact they were not relying heavily on random integrity testing at that stage, they were in fact using targeted integrity testing and they found that to be much more effective. Again, those sorts of things need to be treated with a grain of salt, I think. Random integrity tests in general I think are probably not worth all the effort. Good use of good solid supervision, intelligence gathering and that sort of thing to target those areas is probably the better way to go if you are going to go down that path.

Mr BALL: I was just thinking about the sniffer dogs and there does not seem to be the same furore when the sniffer dogs get put through our locker rooms.

The Hon. PETER BREEN: I have not had the benefit of being in the locker rooms, so I will have to take your word for that.

Mr BALL: I trust with some you don't. I wish I hadn't said that. It is interesting: Random integrity testing. The presumption is, because you are a police officer, you must be a crook.

The Hon. PETER BREEN: I think that presumption is one that has changed. I personally do not think that and the new police culture we have I think generates a lot of respect for the police.

Mr BALL: Indeed, and this is the interesting part: With the average member of the public, that is exactly right, but those that would seek random integrity testing, I just wonder why. Again it goes back to that whole notion - and we used this some years ago. The vast majority of the coppers are not bent, they are not dealing in drugs, they are not verballing people. They are actually going out and picking up the dead kid who has overdosed on heroin, who was mentally ill and who did not get any support from anyone else, yet we continue to believe that random testing will actually prove something. It will prove nothing. Good intelligence targeted testing for drug misuse or for criminal behaviour - no one has a drama with that.

CHAIR: Could I go back to the random drug testing and the point you made about picking up people with medical conditions. Do either of you know what the drug testing currently is, that is what is it testing for? Is it substance specific or does it cover a whole range of both legal and illegal substances?

Mr CHILVERS: It is a hell of a lot that it tests for, but it will pick up things like codeine and stuff like that that you can get in panadeine, but there is a certain way - it has been explained to me and Gary Jackel would be better to explain it to you - that it appears in the analysis so that they can say whether this was in fact something that has come from paracetamol, a prescription drug, or something like that, but it ranges across a whole range of illegal substances and also some that are available in across the counter medicines as well.

CHAIR: Going back to the discussion about the group from whom the recruits come, I mean the younger people, there are two conflicting views that have been put to us - not strongly, but comments made in passing. One is that there is a fear that the whole Wood Royal Commission experience might have passed over some of the younger recruits, they might not have got the full message of that. On the other hand, people would argue that the standard of recruits is now a lot higher and they are far more likely to have high levels of integrity. I am wondering whether you gentlemen would have a view on either of those propositions?

Mr BALL: I was thinking about a Royal Commission witness, and it is interesting to think about, a fellow who comes to the cops in his mid-20s. He actually came from what we call the perfect demographic, in his mid-20s, married, a couple of kids, a mortgage, tradesman, obviously never been in strife, a moderate drinker, a good solid family background, family relationships, both parents alive - all those good things, or what we call "good" - and within four years of being in the cops he was running the pickpockets on Rose Hill racecourse and he was an alcoholic who had a girlfriend on the side. I sort of wondered to myself: What is in the cops that created that? How is a person, who came to us with what we considered you need as a good operational street copper, turned into that monster? I suspect that that poor individual will never quite comprehend it.

I do not know that the people that we are getting as recruits are any better or any worse. I have a view on the training program. It is a lengthy program. I have difficulty with the fact that these people have to pay HECS fees and they have to suffer quite difficult situations, particularly from that group that you really want, you know, with life experience, maybe married with some kiddies, the people who have been around a bit. Wood was very clear on this: He wanted people with life experience, and we promptly went off and created a university recruiting program. If

anyone wants to tell me that life is reflected on the campus of any university in this country--

CHAIR: No more than on the floor of Parliament.

Mr BALL: Well, I didn't want to talk about question time, but I just find that extraordinary. The people we are getting I do not think Wood has washed over at all. In fact quite the reverse. I was a bit pleased to have a discussion with someone this morning who advised me that the vast majority of complaints - I will use the word "complaints" and I will leave it there - come from inside the cops on a particular issue. I do not want to elaborate on that, but, as he said, a lot of blues come from inside the cops. They are not prepared to wear this, and I am pretty pleased about that.

CHAIR: That is really the indication of whether a reform process is working.

Mr BALL: Well, I think the real indication will be when the day comes that a supervisor points to someone and says, "Get here, this is not on", and goes from there and institutes a process, when that is considered across the organisation as a positive thing. It is not necessarily a positive thing today, or certainly five years ago it was not, but I think when that comes that will tell us a bit about us. I sit back and think that the biggest problem inside the cops has got nothing to do with recruiting standards or education standards or training standards or drug testing or any of that. You know what it all comes down to? It comes down to personality. It comes down to internal conflict. The employer assistance provider gave us a report quite recently. The vast majority of their work relates to a couple of people having a blue amongst themselves. I find that extraordinary.

The Hon. PETER BREEN: The police said that this morning. They said workplace conflict is the greatest source of problems in the police service causing absenteeism.

Mr BALL: That is right. It comes down to leadership. In the Australian Police Journal recently McKinnon wrote a piece on the Olympic command arrangement. There are two paragraphs in that whole article. What was needed in terms of leadership was one paragraph and the second paragraph said it was not so common on the ground, and I think that that sums it up for me.

Mr CHILVERS: And I think we have come to the stage where our education programs are looking very good, we have a very well-resourced and fairly effective SCIA, internal affairs procedure, but what is going to pull it all together is management, management of our people, and that has always been a problem area for police. It is a thing that consistently comes up and it is what is going to make the whole area of employee management generally operate. That is where more effort needs to be put and that is our biggest problem, as Ian says: Leadership and management. I mean that young fellow who comes through at mid-20s and ends up with the alcohol problem and running the pickpockets and all that sort of thing - where was the leadership? Where was the supervision? Where were the standards that were established? Where was the problem solving at local level? We are only just now starting to come to grips with complaints management, to be able to distinguish between what are very, very serious issues that smack of corruption or criminality or serious misconduct and what you might call everyday, normal, average

management issues, which a local manager needs to deal with quickly and efficiently and get them out of the way. We had enormous problems with that area. People could not distinguish between them and so minor matters would drag on for months or years, and you know the old joke that if there was a murder you would get a senior constable come out to investigate it, but if there was a complaint about rudeness you would get a chief inspector. That was true.

Mr BALL: That is what happened.

Mr CHILVERS: Hopefully we are now turning that around a lot.

The Hon. PETER BREEN: There is an interesting court case going on at the moment. The Supreme Court has been asked by the Ombudsman to stop a senior policeman from providing information about rosters. I was interested to hear the response of the police association to the effect that the Police Integrity Commission and not the Ombudsman should be responsible for investigating allegations of police misconduct. Given that I think about 3,000 complaints a year are dealt with by the Ombudsman, does the association think that the Police Integrity Commission ought to take over all the complaints?

Mr BALL: We have had a discussion about this quite recently. Our conference in May made a recommendation that the Ombudsman be the primary oversight body as distinct from an investigative body. My personal view is that I would like to see a single body charged with overseeing and investigating policing. I have to say that is my personal view. The reaction to this matter in the Supreme Court - I do not know that the premise upon which you put it is in fact the premise of the action in the Supreme Court.

The Hon. PETER BREEN: No, I might have got it wrong.

Mr CHILVERS: In fact it really is a very different issue, it has nothing to do with the rosters, it is all about the jurisdiction of the ADT. It really is very different.

The Hon. PETER BREEN: The roster is the means by which they have conducted the case.

Mr BALL: Sort of. It is a different sort of action.

CHAIR: There are Supreme Court proceedings now about the jurisdiction of the ADT and, whilst getting in to the ADT was about the rosters, the step beyond that, as I understand it, was the jurisdictional point.

Mr CHILVERS: Yes, that is right.

Mr BALL: While we are on the subject, and I know it has probably got nothing to do with it - I will be quite blunt about it - the fact is that we are absolutely opposed to anybody having access to our daily rosters, absolutely and fundamentally opposed to it for sensible operation and occupational health and safety reasons. I just wanted to get that out very clearly to everybody.

The Hon. PETER BREEN: It is a very sensible argument.

CHAIR: It is not an argument we are going to resolve.

The Hon. JOHN HATZISTERGOS: Is that any rosters?

Mr BALL: Any rosters.

The Hon. JOHN HATZISTERGOS: You said you are opposed to rosters being accessed?

Mr BALL: Yes.

The Hon. JOHN HATZISTERGOS: Are you talking about rosters which are active or--

Mr BALL: I said daily rosters, any daily rosters. I was absolutely mortified to find out that the police service has been handing daily rosters to members of Parliament.

CHAIR: They did not give them to me. That says something I suppose.

Mr BALL: I am absolutely mortified by that. It is absolutely disgraceful, and I will tell you why: All our deployment practices are contained on that. I want you to think about two young police down in Victoria who were executed some years ago because if I was a good crook who wanted to square some cops up - because this is what happened. These two policemen in Victoria were not known to their killers. They happened to wear a police uniform. Well, I can tell you, if I was a good crook who wanted to square it up, I would just look at the daily rosters because they will tell me how many cops are working, and we know why they are working at that time of night, we know why there are so many or so few, we understand that, that is why we negotiate first response agreements. I am absolutely appalled to think that we have been handing those rosters out to people. Absolutely disgraceful.

The Hon. PETER BREEN: Has your position changed in relation to the Ombudsman since that court case?

Mr BALL: No, not really. I have had this view for some time. I do not know how policing can take its next step. To be very clear about this, there must be, in any democratic society, external oversight of policing, there has to be, and I do not mean that in anything other than a real and meaningful sense. It is pointless having just a couple of the old coppers' mates overlooking policing, that is silly. You have to have a vigorous oversight body. You have to have an oversight body that vigorously pursues complaints. If you did not have that you would end up having James Wood more regularly than we currently have. I have always believed that there should be, and it has been our policy for 20 years, a single oversight body. That has been my view for many, many years. I believe that it is the Police Integrity Commission because the Police Integrity Commission was set up to deal with police and police only, and I actually think that that is a good thing. A point of view has been put to us that it is very difficult to have an investigative body joined with a body that is doing the Ombudsman's type of role and having them working together. There is a view that that is very difficult and we have actually been alerted to something that we probably need to do in terms of some research and we will certainly be doing that in the very near future.

Mr CHILVERS: I do not think there is a final position in terms of the association on that.

CHAIR: Can I perhaps take you back to the last question on our list, which is about vexatious complainants and vexatious complaints. Do you have any comments to make in response to that last question?

Mr BALL: My understanding is there have been some actions taken. I do not think there have been a lot, but I will be quite blunt about it, I would like to see a lot more of it. If people make vexatious complaints about a cop, and let's be clear about something, we can go to court and I will tell you now, a decent criminal trial will always have a complaint about the actions of a cop in it. It is a tactic because then you can run the red herrings if you make complaints about the cops. I will be quite frank about it; lawyers who do that as part of their tactical gain, if we could ever get a brief on them, I would love to see it happen.

Mr CHILVERS: The Ombudsman is already, I think, working as well with the Police Service in terms of developing further policies about vexatious complaints. They are known generally and it is not always a matter of charging them, but it is also a matter of the way you treat the complaint initially when it is received. But in certain circumstances I think it is appropriate that the legislation be used and people be proceeded against.

The other thing, Mr Chairman, question 4 deals with reviewable and non-reviewable action. I do not know whether you want to touch on that briefly.

CHAIR: Yes.

Mr CHILVERS: I have said for a long time the legislation as it stands at the moment I think is fine. I think we have got the structure in the legislation. That is not the problem. The problem is the way it is managed in the Police Service. What we need to do is skill people up. I think there is a real danger in legislating too much so that it becomes so prescriptive that people cannot move out of the square. We need good, well trained managers, to be able to think laterally, to be able to identify the issues and the problems and deal with them, rather than have what we used to have in the past, "You have done this, this is your penalty". That is crazy stuff; that takes us back again. What we are trying to do is develop a good management culture within the organisation so that 173 reviewable and non-reviewable orders are simply potential tools in perhaps one area of management of people that you might have available to you, nothing more, nothing less.

Document tabled.

(The witnesses withdrew)

(Short adjournment)

GEOFFREY ERNEST SAGE, Assistant Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney,

TERENCE PETER GRIFFIN, Commissioner, Police Integrity Commission, 111 Elizabeth Street, Sydney, and

PETER JAMES BARNETT, Manager, Assessments and Reports, Police Integrity Commission, 111 Elizabeth Street, Sydney, sworn and examined, and

ALLAN JEFFREY KEARNEY, Manager, Intelligence, Police Integrity Commission, 111 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: Did you receive a summons issued under my hand to attend before this Committee?

Mr SAGE: I did.

CHAIR: Did you receive a summons issued under my hand to attend before this Committee?

Mr GRIFFIN: I did.

CHAIR: Did you receive a summons issued under my hand to attend before this Committee?

Mr KEARNEY: I did.

CHAIR: Did you receive a summons issued under my hand to attend before this Committee?

Mr BARNETT: I did.

CHAIR: Mr Commissioner, we have received some written answers to questions that we sent to the commission. I take it is your wish that your answers be recorded as part of your evidence?

Mr GRIFFIN: Yes, Mr Chairman.

CHAIR: Do you wish to make an opening statement?

Mr GRIFFIN: No, sir.

CHAIR: Can I take you to one of the comments in the answers: It is possible that the impact of the Royal Commission may not have been felt amongst some younger officers. One of the things that was put to us today was in fact that a lot of the younger officers have higher qualifications, are better trained and are likely to have higher levels of integrity than in the past. I am wondering what your view might be about that bearing in mind the comments you made in the answers?

Mr GRIFFIN: Sir, did you say that they are likely to have higher levels of integrity?

CHAIR: Yes.

Mr GRIFFIN: That being linked to the educational qualifications?

CHAIR: I am not sure that it was put to us necessarily as a causal connection, but those two things were said to us.

Mr GRIFFIN: I can comment most effectively probably from my personal perception of that and that is that most individuals probably have settled their ethics by the time that they are 18 or 21 or at least 20, I would think, their personal ethics, and education seems to me to play a very slight role in that process. I would be surprised if ethics had been related in any research to education, but we have done nothing on that issue and I do not know of any work in the area.

The matter of concern about the younger officers in the work force, the police work force, not being aware of the commission I think stems more from the publicity at the time and the targeting at the time. There were predominantly older officers who belonged to networks of older officers and there seems, at least anecdotally, to be a difference between the groups. Having said that, it is also the experience of Florida that, whilst the Royal Commission was going on, things were happening in Manly and younger officers were involved there but so were older officers. I do not think that we have seen anything at the commission that would allow the police to draw out that particular observation, but there is a generational gap, I suspect, between the very young officers and the older ones, just as there are probably in any work force. I might ask Mr Kearney if he has anything to add to that.

Mr KEARNEY: No, I do not think I can add much further to that at all. I think it needs to be taken in the context of the response that we were making at the time. We were making some comments about things that we had noted in specific investigations and the kinds of evidence that we were receiving during those investigations. It is in the context of recreational drug taking, officers saying that if they are taking drugs outside hours, well, they are not hurting anybody and they do not see much wrong with it.

CHAIR: On that point, granted the pool from which newer recruits are coming in terms of how their contemporaries behave and how many of their contemporaries have a fairly relaxed attitude towards recreational drug use, do you think there is a danger that some of the younger recruits to the service might develop a culture of using recreational drugs in the same way perhaps as there was a culture of taking alcohol? Is there that sort of danger, do you think?

Mr GRIFFIN: I think that that is the danger we identify as a possibility, that the previous drinking and, I suppose, associating with each other and criminals in public places, public houses, is paralleled to some extent by the nightclub, using ecstasy type activity that we see happening. It is important I think - and we have stressed it in the document - that we cannot draw any conclusions from what we have seen because a lot of it will come from our targeting. We are targeting people using drugs, so it is not surprising that we find them, and we are finding them in sufficient quantities to be alarming, but how that can be used to draw conclusions across the State or across the New South Wales police would be a very difficult thing to do at this stage, but yes, we think there is a danger. It seems that, if you are buying or using ecstasy at a nightclub on Saturday night, it is very difficult if, some day when

you are in uniform, you see the person you bought it from selling pills to someone on the street. There is a problem, it seems. Now that is probably putting it at its highest, but there must be room for community concern about that and we see a need at least to be aware of the possibility.

CHAIR: As a result of the Wood Royal Commission the corruption that had been located in specific agencies, such as the various squads, has been fragmented in the sense that the agencies and the squads have been dispersed or broken down. Has that had any knock-on effects in terms of corruption, that is, has the corruption moved to other places in any organisational sense from those networks?

Mr GRIFFIN: I will make an attempt at this--

CHAIR: My question is thoroughly unfair.

Mr GRIFFIN: I will attempt it anyway, sir. The squads seem to have the capacity, firstly, to allow for people to be recruited, like to like, and there seems to be again anecdotal evidence - we have seen some of it in hearings we have done - that people were sought out because of their particular qualities and in some cases they were qualities to do things without any great guidance and without asking too many questions. Once they were together I suppose the perhaps inherent discipline you might get if you had a diverse group would disappear, so that you would imagine there is an environment whereby, if it was particularly upright, it would stay that way; if it was particularly crook, it would stay that way. There is, I suppose, a perception that that could breed. The squads have been broken up and probably many of the officers involved in those squads have departed, but there must be some still left. It seems likely - and again we do not have reliable information on any of this because, I think we have explained in the documents, it is not very forthcoming - that the capacity to reach across the area, and maybe not even just across the one law enforcement agency, but to like-minded people, would remain. It seems unreasonable to expect it to have disappeared entirely and I think that is a problem. We do see in some matters some evidence of that capacity to reach across. The fact that there are no longer squads does not seem to matter. If you need information from a particular area it seems to be possible. Given that the New South Wales police in some of our matters, or at least one in particular, had associations with Western Australian Police, you would have to think that those connections are still there and it is only a phone call, but again we are relying on very small information.

CHAIR: Presumably, in a sense, getting rid of the squads has made it harder to target the corruption.

Mr GRIFFIN: I think that is true, but thankfully because I assume you have reduced the capacity. The other thing it ought do: If the influx of newer, more educated people is in fact a corruption-resistant process, then theoretically it will make people more careful, but you are right, if they are more careful they are harder to find.

CHAIR: Has the commission offered advice to New South Wales police on corruption prevention mechanisms in relation to the newly re-established squads?

Mr GRIFFIN: Could I hand this to Mr Kearney, who is some sort of expert on this.

Mr KEARNEY: And who has only had marginal involvement in this particular review. We have raised two issues with the police concerning their review of the merger of crime agencies and the intelligence and information centre. There was a concern about risks associated with the squads getting back together. That was the first concern. The other was to do with the independence of the intelligence capacity which was said to be going to be merged with the investigation units. Now the service's immediate response in regard to the risk of corruption was to say that they were intending to rotate officers quite regularly through the squads, so across squads, within sections within squads - and I am using the term "squads", but I do not think they are actually called that, there is some other term for it. Rotation seems like a sensible idea. Whether they can deliver that, we do not know, and I think what we have done in our correspondence with the police since is highlight these as issues they need to be aware of constantly in this process and as part of any subsequent reviews they undertake to check to see whether they have it right. They have yet to come back to us with a final position.

CHAIR: Has the commission been consulted in relation to the proposed changes to the section 181D process? If you have, what is your view on the proposed changes?

Mr GRIFFIN: We have had exposure to what they planned, to the extent that we were presented with a display of the process quite recently - in fact it was this week I think, was it not?

Mr KEARNEY: Tuesday.

Mr GRIFFIN: That meeting had the advantage, I think, of the PIC being able to point out a couple of areas where we thought that what they had proposed could be marginally improved. Primarily the proposal was that commanders could deal with people in their own squads. That presented some problems for us and in particular we thought that the SCIA commander ought to be able to go outside his squad in relation to nominations and there were some areas where we thought perhaps the PIC might be able to have a process whereby we could put forward people who ought be looked at rather than have to go back to their commanders, because it might be in a process where we were looking at a command or the commander as well, and both those things were taken on board and my understanding is, although I was not at the meeting, that they were gratefully received and something would be done about them, but I think Allan was at the meeting.

Mr KEARNEY: The main concerns that we had I think were consistent with the service. The employee management branch is doing the review and the concerns were timeliness, the propensity for officers to appear to drop off the 181D list for no apparent reason and where the commissioner had decided that he had not in fact lost confidence in an individual there seemed to be an inconsistent application of other disciplinary processes. The draft material we have seen and the presentation that has been given to us does seem to address each of these issues and, as the commissioner has indicated, the issues that we raised are being addressed.

In the presentation we also noticed a quite detailed consideration of training and implementation issues. They had also outlined briefly some formal evaluation processes that they might undertake. The process to us seems promising based on

what we have seen so far, but I think, more importantly, the effort that has gone into the training, implementation and evaluation gives us an indication that it has a good chance of success.

CHAIR: While we are on 181D, some of the material raises the possibility that police nominated under that process can escape penalty by seeking hurt on duty (HOD) discharge. Do you have any views on how that might be guarded against and how real the possibility is?

Mr GRIFFIN: I think we did answer that in our document to some extent.

Mr KEARNEY: I think it was pointed out probably earlier in the session just beforehand that some of the figures that we have been talking about in the correspondence, there is an issue there. Although, I think of the 264, our figures are nine, rather than seven, I think nine were originally quoted, who were or had been considered for 181D.

New South Wales Police regards 181D dismissal, and this is the advice we are receiving from them, in the same manner that - sorry, when they are considering an HOD in the same way as they would a resignation. Any officer may have resigned or been dismissed, but it does not necessarily deny them the opportunity to seek compensation for injuries or illnesses sustained in the workplace. They may be eligible for medical discharge regardless of the existence of an investigation or 181D action or not. So it may be inaccurate to portray them as evading disciplinary action through the process. A fraudulent claim, however, and collusion with others to make fraudulent claims are other matters entirely.

The Hon. JOHN HATZISTERGOS: What sort of claims?

Mr KEARNEY: Manufacturing illnesses and manufacturing evidence of illnesses with others.

CHAIR: Slipping on a milkshake or something.

The Hon. JOHN HATZISTERGOS: A workers compensation claim?

Mr KEARNEY: In order to make a claim, yes. We are keeping an eye out for those kind of things at the moment. I probably would not want to say too much more on that. It might prejudice future investigations if we go down that way.

CHAIR: If I could just turn to the qualitative and strategic review of the reform process known as QSARP. QSARP ends this year. Is it your view that there needs to be a regular auditing of the reform process? If that is your view, how does that get achieved?

Mr GRIFFIN: I will come back to Allan again because it is one area where he has expertise. The three year process, and looking back, without being party to it for two of those years, seems to have been a bit of a roller coaster ride, both for the police and the people conducting the review, and there have been various levels of acceptance and disappointment I think on both sides about what has happened, but a common thread seems to be disagreement about where they are going and what they are achieving.

The last report that has been published I think shows signs of encouragement for everybody. Everyone was saying we have identified things. Firstly, there was not much movement, nobody seemed to accept the problem. This year things have improved. We do not have yet the final report for the third year. We hope to have that rolled out fairly quickly. By the end of this year that should happen and it will be in your hands and publicly available.

If there is a lesson it is that there probably needs to be some assistance given to the police, probably by us, to keep focus on judging their reform. We are in a position where we can do it because it has been pursued that way for the last three years. There is no doubt that there is commitment, at various levels across the service, to reform and there have been some considerable steps taken. The impression I had from reading the QSARP roller coaster sort of report is that it is left entirely to the service, that all sorts of other things might just slow the process and take the process off, because there are a lot of other things to do. The concept of some oversight body or some external body, an independent body, having interest in assisting the police with that process I think is a very good one.

Mr Sage has got some things he would like to add to that.

Mr SAGE: You may know that the service has engaged an external consultant to develop a reform plan for the Police Service. The latest on that is that it is being discussed within the Executive of the Service, but the audit of that plan or the assessment of the effectiveness of the implementation of that plan is something that has not been considered. Maybe it has been considered - the Police Service, of course, will speak for themselves - but I suspect that they are not in favour of a continuing audit similar to that that we have seen through the QSARP process.

I do not know whether you questioned the association's representatives on their view on the continuing audit of the reform process, but it may be that they hold a view that there does need to be some continuing review. That is a matter for them, of course, but there is some debate, not formal debate, about whether there is a need for a continuing audit. It is certainly not a function that the PIC, in my opinion, should perform. The management of the audit is something that, yes, the PIC could, as it has done with QSARP, continue to manage.

The Royal Commission recognised the reform of the Service was going to take a long time and we have seen some progress. The current audit has shown that, but I think they will conclude that there is a long way to go. I have continued to represent the Police Integrity Commission on what is known as the Appendix 31 Committee that Commissioner Moroney chairs and I have seen the development of the draft plan for the reform to the point where it is having its final consideration. It is a very comprehensive plan, but in my opinion it needs to be properly audited to not only see the effectiveness of the implementation, but to ensure that it is implemented across the service.

CHAIR: Mr Kearney, did you want to comment?

Mr KEARNEY: I can only reiterate those comments. I think the reform plan that the police are coming up with is a good, quality plan. More importantly, it is their plan and we are getting some quite clear signals from Commissioner Moroney that he is committed to the plan. He is in the process of setting up a unit made up of

program project managers who are able to manage the process. Following on from that, once we get QSARP 3, the sort of thing we will be doing is consulting with the QSARP auditors and police and coming up with the best possible solution and recommendations for a solution in how best to support the police in implementing the reform.

Mr GRIFFIN: I did not think that that should be taken in any way to suggest that the police cannot actually conduct the audit themselves. They have the skills, they have apparent commitment. It just seems that we, or some agency like us, might be able to add some value from looking outside, and we might even be useful to them in pushing forward that sort of thing through the process. Sometimes it is handy to say, "Well, we have put forward a plan and we would like to go this way but PIC is all over us". That could be useful for them as a device to push through to some of the areas where there is resistance, if there is any, but it would be wrong to say, I think, that we are suggesting that they cannot do the nuts and bolts work themselves. They can and, if they are committed to it, that would be the best possible solution, but maybe there is room for us, or some other agency, to evaluate how that process is going and lend some muscle to it where it is needed.

CHAIR: One of the things that QSARP found was that officers receive inadequate supervision training and can be promoted without adequate supervisory experience or meeting the core competency of leadership. I am wondering whether you are aware of any steps that have been taken by the New South Wales Police to try and remedy that?

Mr KEARNEY: A lot of the reported inadequacies that were reported in the QSARP are being addressed by individual projects that are caught up within the reform plan that is being finalised at the moment. There is some quite detailed work on leadership for example, performance management, and a whole range of areas.

Mr KERR: Have the witnesses read Mr Ryan's biography?

Mr GRIFFIN: I have read parts of it. I think Mr Barnett read it from cover to cover, and Mr Kearney - I could not get it to read it, because he had one of our two copies for some time.

Mr SAGE: Have not read it. I have been too busy with more important things.

Mr KERR: When is Malta likely to be reported on?

Mr GRIFFIN: I think the most likely date will be some time in November. It is important, I think, to understand that there may be processes that will stop us reporting because there is some toing and froing, but, if we are left to our own devices, late October November. It will be this year and sooner rather than later.

Mr KERR: Judge Urquhart has resumed duties on the District Court.

Mr GRIFFIN: That is true.

Mr KERR: Is he writing the report or is Mr Donovan writing the report?

Mr GRIFFIN: The report will be the commission's report and it is being combined by the processes of draft submissions and replies and responses. The commission report will be prepared within the commission and Judge Urquhart is not writing it and may have little to do with the actual construction of the report, although obviously he will have something to do with the content.

Mr KERR: Who in the commission is responsible for it now?

Mr GRIFFIN: I am.

Mr KERR: Will you be writing the report?

Mr GRIFFIN: No, but I will be signing the final copy when I am convinced that it is what the commission wants to put out.

Mr SAGE: The judge has been involved and his appointment is until the report is published and he is involved in a number of workshops, in settling submissions that come within the report, and that is no different to what has happened with any report that has been written in the Commission.

Mr GRIFFIN: We see it as a Commission report, not Judge Urquhart's report or Mr Sage's report or my report, the same as the rest of the reports.

Mr KERR: But it is important, of course, that the person who writes it has to be qualified to write it and normally with a judgment it would be the presiding officer that would write such a report.

Mr GRIFFIN: Yes. The royal commission reports, though, traditionally are written by report writers and joint efforts, both counsel assisting and the presiding officers. This will follow that form. Brian Donovan will and has already contributed largely to the process. Judge Urquhart has controlled and delineated the report as he sees fit. All I am trying to do is say that the final responsibility for the report, if it is to be vilified or approved, will be mine, but we see it as a Commission report and it will be done as a joint effort.

Mr KERR: In terms of the Royal Commission, because that has been important in terms of police trends in corruption, the former police commissioner had this to say--

Mr GRIFFIN: I must say I did not expect to hear Mr Ryan's book quoted this afternoon; that would be good.

Mr KERR: Chapter 16 begins:

What good was the Royal Commission? Over the past few weeks Peter Ryan pored over the 174 recommendations of the Royal Commission trying to work out how they could be implemented. There is little doubt they were drawn up for all the right reasons, but the more he examined them the more they appeared to be too vague to offer any firm direction, often were completely at odds with the current legislative and union framework and sometimes were simply unworkable.

I was just wondering have you read the recommendations of the Wood Royal Commission?

Mr GRIFFIN: I have.

Mr KERR: What is your assessment of their practicality?

Mr GRIFFIN: I think they were a very useful guide to Commissioner Ryan if he had wanted to use them at the time. I think they have been. I mean the Royal Commission was some time ago. There have been some environmental changes; the service of New South Wales police has changed under Commissioner Moroney a lot. Things have moved on. Some of the PJC's focuses of that time I think have changed, but the Royal Commission, as a body of work, remains I believe a very good reference point for all of us, this Committee and for us.

Mr KERR: Apart from the practicality of the recommendations he did identify a roadblock being current legislative framework. Are you aware of any legislation that would stand in the way of the implementation of the Royal Commission's recommendations at the present time?

Mr GRIFFIN: I do not know what he was referring to and, no, I do not.

Mr KERR: Have you had any conversations with Mr Ryan since he left office?

Mr GRIFFIN: No, sir, and not a lot before, and then only relatively informal and certainly not in relation to these issues.

Mr KERR: Do you think as somebody who was in charge of the reform of the police service, or police force now I think--

Mr GRIFFIN: Just police I think.

Mr KERR: Well, let's say "police", that is diplomatic. Do you think it would be of assistance if you had a conversation with him in relation to his experiences and knowledge that he brought and acquired during that period?

Mr GRIFFIN: I would be happy to talk to anybody who thought that they could contribute to these things. In fact we spend some time attempting to speak to people. I saw Mr Ball here today and I had not had a chance to talk to him and I said I would like the chance to have a cup of coffee and talk to him. We are doing similar but different things. If Mr Ryan was around and available I would be happy to talk to him. However, I do not think that he would be particularly inclined to offer his views to the PIC.

Mr KERR: What do you base that judgment on?

Mr GRIFFIN: Only on the conversations I have had with him before when he seemed to be more concerned with outlining the problems he saw with the PIC than attempting to provide us with assistance for reform.

Mr KERR: What were the problems?

Mr GRIFFIN: They were mostly Malta based, sir, and there is probably no advantage in going to them and I would not wish to do that in public hearing in any event.

Mr KERR: There is one matter that appears in his book which is quite serious. At page 282 he speaks about the early period, speaking about the PIC and his office as commissioner:

Despite the apparently complementary roles with the PIC investigating corruption in the service and providing checks and balances, Ryan continuing his reforms, they frequently clashed and Ryan felt they were often straying into his territory and hampering his investigations. A lengthy inquiry he had been running into a notorious underworld figure, for example, had to be aborted just a few days before its conclusion when a PIC investigation was crossed-over. Ryan had been unimpressed and his senior legal officer, Michael Holmes, advised him to lodge an official complaint. When the target walked it made them the laughing stock of the underworld, says Ryan.

Apparently he was absolutely furious at the time. Are you aware of that incident?

Mr GRIFFIN: No, I am not, sir, and I might ask Mr Sage, who will no doubt recall it in some detail, but could I say that my view of the PIC and the New South Wales police is that they ought to be doing the same sort of thing, that we are in the same business and we ought to be able to assist them and they ought to be able to assist us, and if the entire New South Wales Police Service were doing the same sort of things as we were empowered to do we could stop work, but nevertheless the aim of the agencies is the same, at least in that area of corruption, and I do not think there is any dispute between Commissioner Moroney and myself or any of our officers about that.

Mr KERR: No, and philosophically you do not have any dispute with Mr Ryan because he, according to his book, acknowledges that they should be complementary roles.

Mr GRIFFIN: That might be going too far, but in relation to that particular aspect I do not. Mr Sage may be able to deal with the issue.

Mr SAGE: I cannot. I do not know what Commissioner Ryan was referring to there. There was every opportunity, we had a formal weekly liaison meeting which I chaired with the New South Wales police internal affairs in the early days and then it became the special crime and internal affairs command. Commander Brammer was there in those days and there was an exchange at that meeting. There were matters at times that could not be discussed, but I am not aware of what Commissioner Ryan is referring to there and I cannot recall any complaint ever being made, not that he says there was a formal complaint.

Mr KERR: No, he actually does not say that there was a formal complaint, simply that he was advised by Mr Michael Holmes at the time who he said was his senior legal officer. Do you know Mr Michael Holmes?

Mr SAGE: I know Michael Holmes well. I have employed Michael Holmes in the DPP office and in the National Crime Authority and I have known Michael Holmes for approximately 15 years.

Mr KERR: What are his whereabouts now professionally?

Mr SAGE: He is still in charge of the courts and legal branch, whatever his title is, as senior lawyer in the New South Wales police courts and legal services branch.

Mr KERR: Would you be able to make some inquiries from him as to what this incident involved?

Mr SAGE: Well, I can.

Mr GRIFFIN: Would it not be more appropriate if, with respect, the Committee made those of the police service? None of the people here know any of this and it is most extraordinary, given that these officers were there at the time and living with the process, that they do not. We could ask Mr Holmes, but by the time it gets back to you it is then third hand.

Mr KERR: I appreciate that.

Mr GRIFFIN: I am happy to do it if it will help you but--

Mr KERR: No, I understand. You can understand the public problem. Here is a serious allegation that we do not know anything about. I mean I know less than you do in relation to it, but on the face of it is very serious. It is something that you would not want to recur and the only way we can be confident that it will not occur again is if we know what happened in the first place.

Mr GRIFFIN: Certainly, sir, but I do not think that the PIC would at this stage accept that it happened at all.

Mr KERR: No, that is why I am happy if we could adopt a mutually convenient procedure in relation to dealing with the matter.

Mr GRIFFIN: Can we make some efforts to find out and, if our solution is not adequate to you, perhaps the Committee can take it up with Mr Holmes, who is a serving police person.

CHAIR: If the Committee wants something to be done it would need to discuss it. My own view would be that, if it has come out in a book in that fashion, I would have some doubts about its accuracy. I mean if he wanted to pursue it, he should have pursued it. That is perhaps something we should discuss in a deliberative meeting.

Mr KERR: Not necessarily. I mean the question has been answered and I would be happy to accept that as the answer to the question, that undertaking.

Mr SAGE: The investigation may well be something that I am aware of, but I have not searched in that context recently or since the book to establish any information on it.

Mr KERR: And you do not have any independent recollection?

Mr SAGE: No, I have no recollection, but I can say this: Commissioner Ryan had a regular meeting with Judge Urquhart. When I say "regular", in the early days it was regular, but then it did not happen for a number of reasons, but of course Commissioner Ryan at times phoned the judge about matters and I would have expected, if he had a problem with the PIC, he would have phoned the judge, but I cannot recall the judge ever mentioning that Commissioner Ryan was upset about the PIC embarrassing the police service by crossing over in investigation, but, saying all that, it is possible that this will happen at times because the police service might be conducting a very, very covert investigation and, for whatever reason, not inform the PIC, and likewise the PIC might be in a similar situation as regards the police service, but wherever possible we attempt to keep the channels of communication open at a relatively senior level so that we can protect investigations, and I must also say that with Commissioner Moroney now being in the position, prior to him being appointed he was regularly attending the liaison meetings and he continues to come to our meetings on about a monthly basis, wherever he can fit it into his diary, so at that level between the two commissioners there is a very, very open and constant liaison.

Mr KERR: In terms of phoning Commissioner Ryan, Mr Ryan would phone Judge Urquhart, but there was an occasion when Judge Urquhart phoned the commissioner in relation to a reference to a chook raffle. Are you aware of that telephone conversation?

Mr SAGE: I am aware that the conversation took place, yes.

Mr KERR: Were meetings less frequent after that telephone conversation?

Mr SAGE: I cannot remember in point of time. In point of time I cannot say if they were less frequent from that point on or not. In the last 12 months of Judge Urquhart's term, I would be surprised if there were any regular meetings, arranged meetings.

Mr KERR: I know, Mr Sage, you have not read the book because you say you had more important things to do. I think in making that comparison you would not have been aware of the paragraph in that book in relation to Malta that says this, at page 290:

The damage Ryan felt had been done ever since that "chook raffle" comment. "I think there had been certain elements within the PIC, not Judge Urquhart, I never thought he was involved, but other people there who had been out to get me", he says. "This Malta inquiry is a pay-back. Even if it wasn't revenge, it certainly had that effect".

I just wonder if you would like to respond to that paragraph?

Mr SAGE: I will respond in this way: I have been made aware of that comment in Peter Ryan's book. If that is a view that Peter Ryan holds - and I am one of the first persons under Judge Urquhart - then it is untrue in relation to me. Others can speak for themselves. During my time with the PIC and my experience with Commissioner Ryan - this is self-serving - I have done nothing but support the man and attempt to assist him in whatever he was doing in relation to his job of managing and running the New South Wales Police Service and the situation in relation to Malta is that when certain officers went public Commissioner Ryan went public and almost demanded - in fact "demanded" might be the correct term - that the PIC conduct a public inquiry into the allegations, and that is the background to Malta and I had no involvement at that time in what Commissioner Ryan said and what transpired afterwards. I can only assume that his comment may refer to me and to others, but it is not something that I intend to take any further. No doubt he said a lot of things in the book and we could spend a lot of time determining whether there is any truth or substance or whatever in the book, but I do not see any advantage to be gained by that.

Mr KERR: Whilst it has not been completed, it did require a great deal of public money so that the report will be a credible inquiry and the result will be credible and the result will be in the public interest. It certainly will not be in the public interest if it was in fact a clear view from the bench or had that effect. That is the importance of the matter that I raise.

Mr GRIFFIN: I think that when the report is published, it can be judged against Mr Ryan's book by anyone who reads it. There will be no issue left, I do not think when that is done. Can I say that I came to the commission when Malta was well down the track and I met, and now know, all the people who are involved in it. I find the suggestion ludicrous. There was no hint of that coming objectively and without any background on it and no history into how Malta was being run at the PIC. That is not a suggestion that is tenable if Mr Ryan had access to the fly on the wall position in the PIC. It is just a nonsense. It may be his view.

The Hon. JOHN HATZISTERGOS: Why do you think he might hold that view?

Mr GRIFFIN: When I first met him in the capacity of the commissioner, there was obviously tension between his office and the PIC and I do not know what generated it. I suspect that when he sought to have the matter heard publicly, he had expectations that there would be a swift resolution that would support the position that he had adopted. That did not happen. That may have caused him some concerns, but I do not know. I do not know the man well enough to know how he got to the conclusions he did.

There has certainly been, and there remain, issues between the PIC and the police legal service, and they will need to be resolved, are yet to be resolved, but how Commissioner Ryan got to the views that he has expressed in the book is not clear to me. A chook raffle could not have helped. I would imagine that that would not have been a particularly great start but it should not have generated the sort of excitement it has.

Mr KERR: If there are issues between the PIC and the legal service of the police office that need to be resolved, what are those issues?

Mr GRIFFIN: I wonder if that is something that might be dealt with in camera rather than in public hearing. It goes to legal issues that arise and my understanding is that there may or may not be current investigations. I would be a little uncomfortable about going to them in detail. I am happy to deal with them in camera.

Mr KERR: I appreciate that.

CHAIR: We will deal with that in camera.

Mr GRIFFIN: Before we move on, do I need a ruling from the Committee to respond to the previous request for information from Michael Holmes? Is that something I should await a ruling from the Committee on or have I now obligations to do that?

CHAIR: No, you are not under obligations to the Committee. You can only have obligations to the Committee if the Committee as a whole entity adopts a resolution.

Mr GRIFFIN: So the Committee will seek information if it is required in relation to the Holmes matter?

CHAIR: We will confirm it in a letter when we get the transcript.

Mr GRIFFIN: I do not want to offend either the Committee or any member.

Mr KERR: At page 289 Mr Ryan was quoted as saying:

The PIC wants a high profile scalp. In all this time they haven't had one and they have to prove they haven't been a waste of time and money. Now they want my scalp. The oddbods in the PIC and their oversighting of the police needs a complete review. They haven't come up with any corrupt officer of any significance. The only police that will go to gaol my police have arrested and I have handed them to the PIC.

I will continue:

At the end of June 2001 Urquhart had his term of office extended to finish the Malta inquiry.

Is it a fact that the PIC wants or has ever wanted a high profile scalp?

Mr GRIFFIN: Could I defer that to Mr Sage because he was there at the time. I am not unhappy to deal with it, but it is ex post facto, unless you do not want to?

Mr SAGE: No, I do not have a problem answering the question. To my knowledge, no, the PIC has been about performing its functions and investigating serious police misconduct or corruption at any level in the Police Service and there was not any decision to go for any level of police officer or to try and get a big scalp. That is Mr Ryan's terminology. I think for my part any officer that is found to be corrupt is a serious problem, both for the Police Service and the State.

Mr KERR: And his comment that they have not come up with any corrupt officer of any significance, what is your response to that?

Mr SAGE: Well, interpreting "significance", there have been a number of corrupt officers who have been investigated and dealt with and charged criminally or resigned while investigations have been on foot.

Mr KERR: What is the most senior officer who has been dealt with?

Mr SAGE: Probably a chief superintendent. That is the one that I am talking about, Operation Algiers, David Care.

Mr KERR: What was the offence?

Mr SAGE: That information I do not have. I can get it for you.

Mr KERR: Is anybody able to provide that information?

Mr KEARNEY: What was the exact nature of the offence?

Mr SAGE: He was a licensing officer, had been a licensing officer.

Mr KERR: He was retired?

Mr SAGE: He may have been a licensing officer at the time.

CHAIR: It is a publicly released report.

Mr KERR: Is he the most senior officer?

Mr SAGE: To my knowledge, yes.

Mr KEARNEY: We can provide further details if you like.

Mr KERR: Of who was the most senior.

The Hon. JOHN HATZISTERGOS: It is not the way you judge your effectiveness.

Mr SAGE: No, it is not.

The Hon. JOHN HATZISTERGOS: It is not the way you judge your effectiveness to have exposed a high profile scalp. There is a lot more to it than that.

Mr SAGE: Absolutely not, but within the functions, if any rank of police officer is suspected of being involved in corrupt activity, then we would conduct an investigation.

Mr KERR: Yes, but the more senior an officer is, the more likely the corruption is to be more damaging. A deputy commissioner has got a greater capacity for corruption than a constable.

Mr SAGE: We would be at one on that, but if they are not corrupt, you are investigating for the rest of your life and it is a waste of money. If Commissioner Ryan was not corrupt, and I do not believe he was, then what would be the purpose of conducting an investigation into him? There would have to be some suspicion, information, intelligence that would cause you to mount an investigation at that level. In targeting any level, the criteria is no different. You have to have some suspicion, otherwise you are swearing false affidavits to get listening devices and telephone interceptions and all of that and we become the corrupt.

Mr KERR: That is certainly right. Nobody would dispute that. In fact, at page 326 he does provide the criteria:

The paranoia and distrust surrounding the service" (meaning the police) "that the newly established Police Integrity Commission seemed to feel obliged to investigate every suspicion.

Mr SAGE: That is just not true.

CHAIR: I am also wondering whether we are straying a little away from the purpose of the inquiry. You have been largely within the inquiry terms so far, but I am just wondering whether that particular question is likely getting a bit too far away. I notice you have been very careful and that is why I have not intervened until now.

Mr KERR: Has there been to your knowledge a range of allegations made against senior officers?

Mr GRIFFIN: During the time that I have been there, there has been a range of allegations against senior officers.

Mr SAGE: Likewise.

Mr KERR: What steps are then taken to investigate those allegations?

Mr GRIFFIN: It all depends on the nature of the allegation. The Commission attempts to apply fairly strict procedures to its assessments, and, whilst I accept that, if all else is equal, a very senior officer is a better target than a junior officer, that will not necessarily be the case depending on other factors, all of which you could imagine.

Mr KERR: No, let's not leave it to my imagination. In terms of what makes one target better than another?

Mr GRIFFIN: I would like, if I can, to keep it to example rather than give you the chapter and verse, because that is something I think we need to have. If we had a constable who was involved with organised crime in serious green lighting or information providing or exposing undercover officers' current operations, and that is a perfectly reasonable hypothesis, that is extraordinarily serious corruption. It could be much more important for us to investigate that and try and stop it than it would be if a commissioner or an assistant commissioner was doing something much less serious in relation to a man he played golf with. These are not examples and you should not be drawing any conclusions from them, but that is just one of the criteria. There are a basketful. We apply them as effectively as we can.

One of the things that can bring this commission, ICAC, the Ombudsman, the police to their knees if it is out of control is the capacity for people to make mischievous or disingenuous complaints clothed as legitimate complaints and we are obliged, for whatever reason, to deal with it. We need to have a capacity to make decisions about what we are dealing with and we have a structure and it is done quite effectively and efficiently, I believe, without fear or favour about rank or position.

Mr KERR: I think probably one person whom you do not feel an obligation to act on any suspicion would be Mr Clive Small, because I think as I mentioned he had the misfortune where there was a dossier that made the front page of the Herald and he referred it himself to the PIC and the PIC declined to investigate the matter. Is that a correct summation of events?

Mr GRIFFIN: Well, again, it is not something I would want to deal with in public.

Mr KERR: I only mention what was on the public record.

Mr GRIFFIN: Yes, but you are asking me to go further.

CHAIR: I am not sure that is within our Committee inquiry.

The Hon. PETER BREEN: Clive Small has given evidence about that to other committees.

Mr KERR: In terms of trends in corruption, I take it it would be of interest to know how the PIC was viewed within the ranks of the police? Would I be correct in making that assumption?

Mr GRIFFIN: In relation to trends in corruption?

Mr KERR: Sorry, in relation to trends in corruption, and I should put a full stop there. It would be important to know how the PIC was viewed in the police ranks. I mean obviously if people in police ranks see it as a fairdinkum organisation, one that is effective, one that is likely to find out if you perform corrupt action, you will be caught, that would have an effect?

Mr GRIFFIN: I think that is a fair statement.

Mr KERR: Does the PIC make any attempt to establish how it is viewed within the ranks of the police?

Mr GRIFFIN: We have not conducted any, at least in my time, formal analysis or research projects into that. Are there any others in previous times? I am sorry, I am struggling because I have a short period of involvement.

Mr SAGE: There has not been any survey done, but informally we go out and speak to groups of police. Both the commissioner and I have been doing that and will continue to do it. We speak to local area commands, we speak to seminar training groups at the college in Goulburn, we speak to regional commands, and we get some feedback from talking informally with those groups.

Mr KERR: That would only be anecdotal. Would it be helpful to find out officially, to have a more scientific approach to establishing your standing?

Mr GRIFFIN: It may be, but whether the cake would be worth the candle would be a more difficult question because, to do it properly, we do some research stuff, and I am sure you would understand it is timely and expensive work to do the sort of data gathering and analysis that you would need to make sensible conclusions and, if it turned out that the police did not like us much, I do not think it would change our approach particularly. If it turned out that they did not think we were competent, we might attempt to address it, but it is not an issue that I would think was of primary importance to us at this stage. So yes, it would be handy if I could just pull that answer out of a hat and I knew it was right and we could do something about it, it would be useful, but I doubt it would be worth - we are a very small agency and we have a fairly direct charter to deal with serious police misconduct. I do not think that would be the most effective use of our resources, to seek that information, and I doubt that taking it from Mr Ryan's book or some other unqualified view would be much help to us.

Mr KERR: Some other unqualified view?

Mr GRIFFIN: Well, you are suggesting, I think, that our speaking to regional commanders and the college and talking to senior officers as best we can is anecdotal evidence of our impact. I suggest Mr Ryan's personal view would be the same.

Mr KERR: Mr Ryan has considerable qualifications.

Mr GRIFFIN: Mr Moroney has considerable qualifications. We speak to Mr Moroney, we speak to the commanders, most of the senior officers, as many junior officers and taxi drivers as we can. I mean we do the anecdotal stuff. I do not think Mr Ryan's view takes us any further than their views, with respect.

Mr KERR: I was only suggesting what would in fact be the perceived wisdom within the police.

Mr GRIFFIN: I do not think Mr Ryan's view would be perceived as the police wisdom in any event, sir, at the moment.

The Hon. PETER BREEN: Could I ask you a question about the view that the police have of the PIC. I think you were in the room earlier when I asked a question of Mr Ball about the police association suggesting that the PIC and not the Ombudsman should be responsible for investigating allegations of police misconduct. That would suggest to me that the police in fact have a positive view of the PIC, but I just wondered whether--

The Hon. JOHN HATZISTERGOS: More positive than the Ombudsman.

Mr GRIFFIN: Well, that is a start, perhaps.

The Hon. PETER BREEN: Before you answer, if I could just read something from the report of the Ombudsman that was published in August about improving the management of complaints, assessing police performance, it says on page 9 of that

report that the Police Integrity Commission reviews all category 1 complaints and decides whether it will be involved. Then it says that, in practice, the Commission involves itself in only a small number of complaints and of the 628 category 1 complaints last year the commission investigated only 10 and audited another 11. It seems to me from those figures that the PIC does not have a big involvement in terms of numbers, but from the police association's point of view it would like to see the PIC more involved and the Ombudsman less involved. Do you have a view about that?

Mr GRIFFIN: Yes, I do. The conversations we have with senior officers - and we speak to a lot of them, Mr Sage was last night addressing a mob of them up at Glenbrook and we have been out to various places talking - are predominantly positive. There are concerns expressed about Florida having gone on too long, for example. They say, look, Florida was good, we did not know it was happening, but gee, it is hurting morale, you are still bringing out these villains about the same things, can you not move on? Now there are all sorts of reasons about why we are where we are at with Florida and people roll over and tell us more things and we have to deal with some of them, but that is a commonly held view, if not universal view. It is good to have this out, it is a pity that it has gone on so long because it is hurting our morale, but so will the next one hurt our morale if you bring it out. There is a great deal of support for the PJC. There is not so much support about the people that are called as witnesses, and I mean some of the unflattering things that are said about the Police Integrity Commission over telephones would probably even tempt the tough hides of politicians - they are not very nice about it if we are calling them - but the support from Moroney down and across the local area commands, and that is a lot of senior officers, is strong.

The Ombudsman is right to move to the next point. We do a very small number of the inquiries. We have 100 people all up. A decent inquiry, which could be expansive, could use all of them - we could absorb them in moments - and that gets back to the earlier comments I was making about how we have to be really selective about the work we do, but the support of the police association I think reflects a little bit the view that is held if people are not posturing and that is that we are doing useful work without fear or favour and across the board. I think that is probably a relatively common view in law enforcement. There has been some price. Malta is not a matter that has done the PIC any good at all in the perception of, I suspect, the press, if they are important, because it has gone on a long time; Commissioner Ryan, if he is important, because he thought he was being targeted, and other people that fell out along the way. Nevertheless, if it cropped up tomorrow where there was a complaint of that nature against the commissioner, we would probably have the same obligation to deal with it that we had then. I probably have not answered any of your question.

The Hon. PETER BREEN: The question of the Police Integrity Commission completely taking over the role of investigating police is not a position that the police internal review unit supports. They thought that having an outside body to oversee it was a much better arrangement than having police doing all the investigating, but there is a view around the place - certainly I have heard it in Parliament - that it would be a good idea just to have one body looking after police complaints. Do you support that?

Mr GRIFFIN: I understand that from the police point of view it must be difficult having different agencies dealing with their oversight. If I was the commissioner I would be thinking, well, how many people do I have to turn to? I appreciate the thrust of that. Against that, the process as it happens seems to work tolerably well. The Ombudsman deals with a number of things. SCIA, in my view, as currently structured, works very effectively with us. We sometimes run operations, they take stuff from us, they give us stuff, we help and work together well and it is working, and I think effectively. Having said that, the issue of us doing all of it, or anyone else doing all of it for that matter, is really only a matter of management and resources. We could not, with our 100 people, conduct much more than the 10 or so that we do at a time. If we had the resources to do more they could be managed more, they are management problems, but there is, I believe, some advantage in having the little high end of that stuff done in a discrete and boutique way, if you like, the same difference there might be between a boutique practitioner in the law or medicine dealing with small numbers of very esoteric things. I think there are some advantages in that.

CHAIR: There must be a risk of the focus being diluted if you are being swamped with everything rather than just having to deal with the very serious end of the spectrum?

Mr GRIFFIN: I accept that that is right, although theoretically it should just be management, but I think that is easy to say and very hard to do.

CHAIR: Yes, especially bearing in mind the historical context of the Royal Commission.

Mr GRIFFIN: And police forces all around the world. I mean it seems to be the experience that the all in one basket thing has that problem of focus, if nothing else.

Mr KERR: Did I understand you to say that, if the circumstances that gave rise to Malta were to occur again today, you would commence the inquiry and proceed along the same lines?

Mr GRIFFIN: Well, I think I qualified it a bit more than that. If there was an allegation of the nature that was put forward in Malta about a senior officer, I think we would have an obligation to look at it and I think that remains. The original - although, if you ask me, I cannot tell you what it was - allegations in that matter were of substance against a very senior officer involving senior management of the police service, as it was then, I think, or force, at the highest level. It needed to be looked at. It probably could not be done internally because who is going to ask questions of the commissioner? There were some issues.

Mr KERR: With all the benefits of hindsight, which is 20/20 vision, could it have been done quicker?

Mr GRIFFIN: Yes, it could have.

Mr KERR: How could it have been done quicker?

Mr GRIFFIN: Well, the most obvious thing would have been to prevent the representation that turned up and was accepted in the early days of the hearing from

being done in that way. If individual officers who were to give evidence and perhaps likely to draw some comment from the commission had separate representation it would have saved a lot of time. That is the most obvious one.

Mr KERR: I think you said you have about 100 that can conduct investigations?

Mr GRIFFIN: No, the whole staff is 100, give or take. What is it today?

Mr SAGE: 108.

Mr KEARNEY: Only about 70 percent of those would be oriented towards investigations, but that includes support people as well.

Mr KERR: How many of those are investigators?

Mr GRIFFIN: I think our current list is 14.

Mr KERR: And where are those investigators drawn from?

Mr GRIFFIN: Everywhere except New South Wales really. We have South Australians, people from the United Kingdom, Tasmania. I do not know the States of all of them. Queensland, I think, a current recruit, and the AFP.

Mr KEARNEY: Could I clarify that: We are talking about investigators with a former police background or a current police background?

Mr KERR: Yes.

Mr GRIFFIN: I made an assumption and I should not have. It turned out to be right, which is good.

Mr KERR: So people with a New South Wales policing background are excluded?

Mr GRIFFIN: They are excluded by the legislation, yes.

Mr KERR: Is that a good thing or a bad thing?

Mr GRIFFIN: By recommendation of this Committee, which I, with respect, think is wrong.

Mr KERR: Is wrong?

Mr GRIFFIN: That is my view and I have expressed it before and I am happy to do it again if it makes any difference.

Mr KERR: I would like you to do it again and the basis for saying that.

Mr GRIFFIN: All right. The New South Wales police senior appointments go through a vetting process, if I can use that in loose terms, with the PIC. In fact it is not vetting as in we pick them, but we check and examine any prior conduct. It

seems to me that we ought be able to go through that same process for people within New South Wales and establish whether they are sufficient for our tasks and I believe that there are benefits in having people who have experience in the New South Wales law enforcement environment. It is a personal belief, it is not shared by even all the people in the commission, but I think if we could choose a handful or even have the capacity to choose some ex-New South Wales police officers it would be a benefit and I believe there is a flow-on benefit that it would not just be gratuitously offensive to all the decent honest coppers that are working in New South Wales that are precluded because there must be an assumption that they are corrupt. I understand the reasoning against it, but I do not agree with it.

The Hon. JOHN HATZISTERGOS: Is that a Royal Commission recommendation?

Mr GRIFFIN: I believe it is and I believe that nothing has changed except time. I think there has been a passage of time. We, I believe, could identify it.

The Hon. JOHN HATZISTERGOS: There was an incident, was there not, involving infiltration or someone being tipped off about -

Mr GRIFFIN: I do not know of such an incident.

Mr SAGE: That was the ICAC.

The Hon. JOHN HATZISTERGOS: That was when ICAC had the responsibility?

Mr GRIFFIN: There was an ICAC problem.

The Hon. JOHN HATZISTERGOS: And the inspector remarked on the wisdom of Justice Wood's original recommendation, your inspector.

Mr GRIFFIN: There is always a fear of that. It probably doesn't warrant your time, but it seems to me that "the club", if there is such a thing, goes outside New South Wales borders and we choose officers carefully from other States and internationally, but we do not know beyond doubt that those people will not fall into the same trap as the ICAC people. There is no foolproof system I do not believe. Given that, I just err perhaps on the side of acceptance. There are clear arguments the other way and I accept the Committee's decision that it was not to be.

Mr KERR: You spoke earlier about allegations against senior officers. Of course, the reasoning of the royal commission was the association of police knowing police, but we live in a global village. If they are drawn from other States or even internationally, police still have associations and senior police officers do deal with police, they have knowledge. When you are investigating senior officers, are there any steps that are required to ensure that the investigation is going to be impartial and not compromised by former associations, which are inevitable in this day and age?

Mr GRIFFIN: I really believe I just dealt with that by saying there are no guarantees. We have considerable information available to us and we search across that information to make judgments based on what we can find out. We will not

always get it right. We are in the position where we can pass that information on to relevant people if it is in the interests of the community, and of course it would be in circumstances, but I cannot guarantee, I doubt any law enforcement agency could ever guarantee that we will make perfect judgments.

Mr KERR: No, I do not expect you to make guarantees, but what we have to do is ensure there are safeguards to ensure at least we get optimal results as far as the commission is concerned, that is all. Earlier Mr Sage mentioned the Goulburn Police Academy. In terms of trends in corruption, that has got a pivotal role. That is where recruits are introduced to the police culture. It does to some extent set the standards in relation to what they learn there. There was some investigation, which I was reading about, some time ago into the police academy. Are you aware of those investigations, Mr Sage?

Mr SAGE: Yes, I have heard of the investigations.

Mr KERR: Are they ongoing or what is the situation?

Mr SAGE: I do not know about ongoing investigations but I think the one you are referring to may have concluded.

Mr KERR: Is it possible to say what the outcome was of those investigations?

Mr GRIFFIN: Which ones are you referring to? I do not know.

Mr SAGE: Off the top of my head, I cannot tell you the outcomes, other than they were all concluded by the service. Some were monitored by the Police Integrity Commission.

Mr KERR: Perhaps I could put that question on notice. I just wanted to know the ones that attracted public comment and if it is possible to put on public record what the outcomes were.

Mr SAGE: Do you have any detail of the names of the investigations?

Mr KERR: I will get that detail to you.

CHAIR: In relation to Goulburn, while we are back to the mainstream of the meeting, what is the state of play with the ethics course? I understand the PIC was to be invited to be part of the curriculum review panel or curriculum review team. What has happened with that? Is it meeting? Has it progressed the issue?

Mr GRIFFIN: That is the case. You are no doubt aware that the ethics component was removed as an entity. We sought some advice from the New South Wales Police. Their response was that, yes, the actual session has been removed but they inculcated the ethics thing right through and permeated the process, and there was some argument that that was better. I am not an educator, but their argument was that that was a better way to educate people than to have one session that you could miss or go to sleep in and it just becomes part of the whole process. I must say, there was some logic in that to me, although I do not understand their education process clearly.

Because of our interest, we were invited to join the curriculum committee. Mr Slater is the executive officer of the commission who will attend that, but there has been one meeting which we did not get to, and I believe only one, and the next one is in a month or two and we will attend that and continue.

Our view would be that as long as the components that deal with ethics are within the curriculum, it does not need to be a separate topic and we will try and get some advice on that before it happens. You would appreciate there are some highly qualified educators in the process, both from the university and the college, that seem to understand the best way to deal with ethics.

The other thing is I would like to reiterate that by the time they are 21, or whatever age these people are, the ethics are established. What we need to teach them, I think, is, "Look, these are examples of things you can't do. We call them unethical, whether or not you did in your past, they are now and this is what happens if you do." We would like to also add, "And we, the PIC, are going to be looking over your shoulder." That is part of it, just a bit of stick. But that process is happening and we have some hope for it I must say.

Mr KEARNEY: Can I just add, the process is ongoing and the first major report is due in January 2003. We probably will be in a position to report more fully at the next annual general meeting.

CHAIR: One other outstanding question I had: Question 5 lists a number of briefs for charges that have been prepared against police officers. I am just wondering which, if any, of those could be said to be the most common, the most frequent, what is the most likely?

Mr GRIFFIN: These are figures Mr Kearney has put together so he better produce them, but they are quite interesting.

Mr KEARNEY: We have referred a total of 192 charges over the last few years to the DPP for consideration for prosecutions. I can provide these details. It might be best if I write them out afresh. This document is not appropriate. By far and away at 131 counts, perverting the course of justice is at the top. That includes things like perjury, tampering with evidence and fabricating evidence. You then drop down to 18 for assault; further to 10 soliciting or accepting a bribe; involvement in the manufacture, cultivation, distribution or use of a prohibited drug, 10. They then get much smaller after that. I am not sure whether that is to do with the way we are clumping them together, but I think we have been fairly accurate in the way we have done that there. The perjury matters seem to just stand right out there.

CHAIR: I wonder if that is because it is the charge of giving false evidence to the PIC. Is that the reason why that is so high?

Mr KEARNEY: They are certainly included but they are quite a small percentage. We are talking about falsification of evidence, statements.

CHAIR: So there is a real focus then on the institution of provision of justice and that being perverted?

Mr KEARNEY: Yes. We can break that down further if you like.

CHAIR: No, in terms of what I am interested in that is probably enough.

Mr KERR: In terms of the integrity of the conferral of promotions within the police, it is obviously important, and there is a police sergeant Mark Fenley or Fenton, who made complaints to the PIC. There had not been any action taken in relation to his complaint. Are you aware of that?

Mr GRIFFIN: Yes, I am. I assume it is Fenlon.

Mr KERR: Yes, Mark Fenlon.

Mr GRIFFIN: He was in contact with the Commission. He raised issues which I think are legitimate and important. He complained about us delaying it and that complaint is before the inspector of our commission, and we will hear about it sooner rather than later I suspect, and I know he is actually dealing with it. There are issues arising about how it happened and you would appreciate that Mr Fenlon went public about it I think.

Mr KERR: He did.

Mr GRIFFIN: In any event, there is a current investigation into it by our inspector.

Mr KERR: Also on that matter, Minister Costa had a ministerial inquiry into promotion which is ongoing.

Mr GRIFFIN: I believe it is, yes.

Mr KERR: Is there any evidence between that ministerial inquiry and the PIC?

Mr GRIFFIN: Not at this moment that I know of. So far as I am aware, they are making their own inquiries.

Mr KERR: But they would certainly touch on matters of concern to you?

Mr GRIFFIN: I have no idea what they are doing.

Mr KERR: Was Operation Jetz involved with promotions?

Mr GRIFFIN: To the extent that it was very narrowly dealing with issues that had promotion involved. There is a common misconception I think that Jetz was about the promotion system and that is not the case.

Mr KERR: Are you at liberty to say what it was about?

Mr GRIFFIN: It was about specific complaints about individuals.

Mr SAGE: It was about one selection process. It was a position or number of positions for which at the time there was no selection process. We narrowed it down. Rather than investigating all the complaints about promotions, it was to a specific area of corruption in the promotion system and the remainder of complaints have

been investigated by the Police Service or are being investigated by the Police Service with oversight from the Ombudsman.

Mr KERR: When is that likely to be completed?

Mr KEARNEY: Jetz?

Mr KERR: Yes.

Mr KEARNEY: November also.

Mr KERR: November is likely to be a big month.

Mr KEARNEY: Yes, expensive in terms of printing.

(Evidence continued in camera)

(The witnesses withdrew)

(The Committee adjourned at 5.03 p.m.)

APPENDIX 3

NSW POLICE RESPONSE TO QUESTIONS TAKEN ON NOTICE

Introduction

On 20 September 2002, the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission (the Committee) held hearings as part of its 'Trends in Police Corruption Inquiry'. Representatives from NSW Police (the Commanders, Special Crime and Internal Affairs and Employee Management Branch and the Director Health Services Directorate) appeared before the Committee and gave evidence, which included answering a number of questions without notice. In order to provide an accurate response to the Committee, representatives chose to answer a number of the Committee's questions on notice.

In addition, the Commander, Employee Management Branch also made a commitment to provide the Committee with a copy of the 'Decision Making Framework, which is attached at Tab A.

Questions Taken on Notice

1. The Hon. Peter Breen:

... there were a few cases where police did not qualify for legal aid or the legal assistance you need to go to the Industrial Relations Commission, and so those people argued at the time that they did not ever really get a fair hearing. I am wondering whether any of them might have come back into the system with the new approach to 181D?

NSWP Response:

Since the introduction of s181D, sixty-nine officers have been removed under the provisions and fifty-five have appealed. Four officers have been re-instated by the Industrial Relations Commission.

2. The Hon. Peter Breen:

What is the relationship, in terms of numbers, between internal complaints about police officers from their own ranks as opposed to complaints from the public?

NSWP Response:

A copy of the relevant complaints statistics from the NSW Police 2000/2001 Annual Report is attached at Tab B.

3. CHAIR (Mr P. G. Lynch):

One of those four [officers who failed a mandatory post critical incident drug test and] was nominated for consideration under section 181D [as mentioned in the 2000/2001 NSW Police Annual Report]. Do you know what happened in that process?

NSWP Response:

The Commissioner has signed a warning notice regarding this officer's failure of a post critical incident drug test. The officer is currently subject to monitored random drug tests. His matter has also been heard before the corporate Internal Review Panel to determine ongoing management action. They have recently recommended the following action be taken:

- ❑ Officer's current suspension will be lifted
- ❑ Officer will be directed to take accumulated annual leave
- ❑ Officer will be required to fulfil mandatory and operational refresher course before returning to full operational duties
- ❑ As a result of risk analysis, the officer will be transferred from his current position to a lower risk environment.
- ❑ The Officer's new Commander will be fully briefed on the officer's s181D nomination
- ❑ Officer will receive drug and alcohol counselling by the Healthy Lifestyles
- ❑ Officer will be subject to targeted drug testing for the next five years as per the NSW Police Drug and Alcohol policy
- ❑ A mentor will be assigned to the Officer at the new location for a period of 12 months. The mentor will monitor the conduct, performance and wellbeing of the officer and provide monthly reports on these matters to the Commander

4. CHAIR (Mr P. G. Lynch):

Do you know if the transfer and tenure policy will apply to officers serving in the specialist squads?

NSWP Response:

It is taken that 'specialist squads' refers to the new 'Crime Teams' recently established under the State Crime Command (SCC).

Crime Teams have been established which target the areas of:

- ❑ Robbery and Serious Crime
- ❑ Drugs
- ❑ Gangs
- ❑ Motor Vehicle Theft/ Rebirthing and Property Crime
- ❑ Child Protection and the Child Protection Register
- ❑ Homicide
- ❑ Fraud
- ❑ Firearms and Regulated Industries
- ❑ South East Asian Crime

The Transfer and Tenure Policy applies to each of these Crime Teams. A copy of the policy is attached at Tab C.

TAB A

TAB B



Interim Transfer & Tenure Policy and Procedures - July 2002

Draft Transfer & Tenure Policy and Procedures

Introduction

The Police Service deploys its police officers to specific duties and locations, in line with strategies that are established to ensure service delivery is provided fairly and equitably and in keeping with the priorities enunciated in the Corporate Plan.

These deployment strategies take account of the need for particular skills and levels of experience across all duty types and within all locations. They also take account of the occupational health and safety of officers and recognise that individuals seek to follow different career paths within the Service and have differing preferences for work locations, duty types and hours of duty, that will be consistent with their family, carer and general lifestyle needs.

The Service aims to balance all of these needs while retaining, as its highest priority, the delivery of an efficient and effective policing service to the people of New South Wales. The Commissioner exercises statutory powers to deploy officers across the Service to achieve this goal. Officers must recognise that their own preferences, while taken into account, may not always be achievable and the Service needs will be given priority.

This policy and procedures document addresses transfers, associated removal costs, and general tenure requirements. It takes account of Service policy for the concepts of workforce planning and also conditions of employment outlined in Awards, Agreements, Flexible Working Practices Guidelines and endorsed performance and employee management processes. The policy and procedures apply to non-executive commissioned and non-commissioned police officers.

Guiding Principles

In keeping with its deployment policy, the Service will take into account the following factors when considering the transfer of employees:

- Service interests including effective and efficient service delivery within individual commands.
- A balance of experience levels within individual commands.
- Maximising the utilisation of skills of individuals.
- The interests and preferences of individuals, including their family, carer and lifestyle needs.
- Provision of opportunities for employees to follow career paths within desirable locations and sought after duty types.
- The nature of the duties performed by the employee.
- The welfare needs of employees, particularly those who are exposed to:
 - potentially high risk (danger/corruption) duties
 - potentially highly stressful work environments
 - areas of limited career development/opportunity
 - duties at isolated and Special Remote Locations

Employees, when considering their own deployment options, need to consider:

- The need to enhance their skills and experience by facing new challenges
- The career opportunities and benefits available in various locations and phases of duty
- Their preferred career paths, family, carer and lifestyle needs.

General Conditions of Tenure

Officers are reminded that their employment carries an undertaking to serve anywhere in the state.

Officers are expected to serve at a location for three years before seeking a transfer. Exemptions to this are for members seeking a transfer to a Special Remote Location or other hard to fill location. After five years service at a location an officer may be required to transfer to a new location.

Officers re-joining the Police Service are subject to the normal provisions surrounding tenure and will be required to perform a minimum of three years at a location prior to being considered for a transfer.

Officers will usually be required to perform general duty for a minimum of two years following attestation before specialising.

Officers seeking a review of transfer decisions can submit an appeal to the Executive Director, Human Resource Services.

Officers appointed under merit based promotion commence tenure from the date of appointment to the position, regardless of any prior service in that workplace.

Normal tenure periods may not apply to work locations that potentially expose officers to higher than usual levels of stress or danger.

Authority to Approve Transfers

The power to authorise transfers is vested in the Commissioner under the provisions of section 67 of the Police Service Act. Transfers within the Service are authorised under delegation as follows:

Costs

In all cases where a transfer results in costs being available to the transferred officer, under the provisions of the Crown Employees (Transferred Officer Compensation) Award, herein after referred to as the Award, the authority to approve of those costs rests with the Manager, Transfers Unit.

Intra Local Area Command / Command / Branch Transfers

Local Area Commander / Commander / Branch Commander/ Manager

Intra Region / Specialist Command Transfers

Region Human Resources Manager (or equivalent)

Inter Region / Specialist Command Transfers

Receiving Region Human Resources Manager (or equivalent) conditional upon the agreement of the current Region Human Resources Manager (or equivalent).

In cases where respective commands do not reach agreement, the matter will be considered and determined by the Transfers Review Committee (Appendix 5), on behalf of the Executive Director, Human Resource Services.

Transfer Processing Procedures

The processes/authority for initiation, advertising, review, approving, system processing and publication of all transfers are summarised at Appendix 1.

Intra LAC/Command/Branch transfers are processed at the Command/Branch, with external authority (ie. Transfers Unit, Workforce and Careers Directorate) only being required when costs under the Award are involved.

All requests either by application or nomination, are to be submitted on Transfer Form (P447). Unless otherwise specified in an advertisement, applications should be forwarded through the chain of command.

When a transfer is nominated, full documentation is required and a pre-transfer interview must be conducted by the respective commander/manager. Nominated transferees, who wish to lodge an objection to the transfer, may submit a separate report setting out the reasons for their objection and it should accompany the Transfer Form.

Advertising of Lateral Transfers (Excluding 'Desirable' Locations)

In circumstances where commander/managers seek to fill vacant positions by way of statewide advertising for lateral transfer applicants, requests are to be forwarded to the respective Region Human Resources Manager (or equivalent) in the first instance. Human Resources Managers will, in turn, satisfy themselves that requests are consistent with the current Region/Command strength position and other prevailing deployment strategies, and that advertisement action is warranted. After review action, Human Resources Managers will forward supported requests for advertising action to the Advertising Clerk, Promotions and Selections Unit, Workforce and Careers Directorate. On a monthly basis the Advertising Clerk will submit all lateral transfers advertisement requests for consideration by the Transfers Review Committee (Appendix 6). The Transfers Review Committee will review and consider requests on the basis of the prevailing policy and strategies in place at the time and final approval / rejection decisions will be made by the relevant CET member.

Any action to advertise lateral vacancies, other than by compliance with this process, will only be taken with the approval of the Commissioner or relevant CET member.

The Advertising Clerk will provide advice on approvals and rejections to respective Human Resource Managers (or equivalent) and Transfers Unit.

Applications for an advertised lateral vacancy are to be forwarded through the chain of command for comment regarding suitability, integrity, tenure and other relevant issues. The application is then to be forwarded as directed in the advertisement. Commander/managers should provide copies of their comments to the applicants.

A selection committee is convened by the Local Area/Branch where the vacancy exists in consultation with the Region Human Resources Manager (or equivalent).

The following matters are taken into account by the Selection Committee:

- The merits of the applicants
- The desirability of an officer completing a minimum period of general duty before specialising.
- The officer's tenure at the current location.
- The officer's recent training in specific skills.
- Other relevant identified issues.

A priority list of successful applicants is to be prepared by the Selection Committee. Successful applicants are **not to be informed** that they have been selected for the position or transfer until the negotiated release is finalised.

Upon completion of the selection process the Convenor of the Selection Committee is to arrange for all unsuccessful applicants to be advised in writing of the decision.

Full details of the selection process outcome are to be forwarded to the Manager, Transfers Unit, for inclusion in the Transfers Schedule and for publication where transfer costs are awarded.

Special Circumstances Transfers

The Police Service seeks to support families/partners/carers as much as possible, and efforts are made to accommodate officers requesting transfers for identified special circumstances. Special circumstances will generally only apply when they relate to the individual officer or their immediate family (eg spouse, partner, children, parents or others for whom they have carer responsibility). Special circumstance transfers will also generally only be approved to requested locations if vacancies exist at the location. Provision can be made for temporary transfers in extreme circumstances. Applicants should be aware that a transfer that is approved under special circumstance provisions

generally applies only for the period during which those circumstances prevail. The case will be subject to review and, particularly when the transfer is to an identified 'desirable' location, arrangements will be made to relocate the officer to their former location as soon as circumstances permit. A written agreement in this regard may be required.

Officers are reminded that the relocation of their spouse or partner due to employment circumstances does not automatically guarantee them a transfer. Before committing themselves to move with their spouse or partner, officers should seek advice from their Region Human Resources Manager (or equivalent), regarding the likelihood of gaining a transfer.

The following circumstances are generally not considered within the parameters of special circumstance transfers:

- Unsubstantiated medical applications.
- Separation from spouse or partner without additional hardship grounds.
- Voluntary residential re-location.
- Distance of travel to and from place of attachment.

All special circumstance applications must be submitted with full details and reasons. The type of information that will be necessary includes:

- Details of family members in the location sought and relationship to applicant.
- Medical certificates/documentation if the transfer is on medical grounds.
- Name, address and phone number of medical practitioners for transfers on medical grounds. Also indicate approval for the medical practitioner to be contacted regarding the application.
- Verified copy of the applicant's leave record.
- An indication as to whether the problem is short term or long term.
- Alternatives, which have been investigated, and the outcome of those investigations.

Upon receipt of an application, commanders/managers are to provide appropriate comment surrounding the merits and validity of the application.

If there is a disagreement with the decision regarding Special Circumstances Transfers, requests for review should be referred to the Director, Workforce and Careers.

Desirable, Commuter and Commuter Transition Locations

Desirable Locations

Desirable Locations are those where demand for placements exceeds the available positions to accommodate them. They are as listed in [Appendix 3](#).

When vacancies occur within the above Regions, they will generally be advertised so that all interested officers can compete on merit. In these cases, the recruitment/selection processes will take into account tenure, work performance, work ethic and special circumstances. Requests to advertise these positions will be considered by the Transfers Review Committee, which in its deliberations will take into account the current overall strength positions of the relevant Command/Region.

It should be noted that officers are not permitted to arrange swaps to desirable locations, but need to apply for an advertised vacancy.

The Region Commander (or equivalent) in consultation with the Transfer Review Committee may exempt the advertisement requirement to facilitate the movement of staff to meet the operational management needs of a particular command and/or where welfare or support grounds require. However, a vacancy may be filled by a current serving officer attached to a Special Remote Location, subject to completion of tenure and satisfactory performance as assessed by the performance management system whilst at the Special Remote Location.

Applications for approved vacant positions in Desirable Locations are submitted to the Human Resource Manager in the respective Region. All applications are presented to a Selection Committee consisting of:

- a. The Human Resource Manager of the respective Region;
- b. A Local Area Commander of the respective Region; and
- c. An Executive member of the Police Association.

The committee must include members of each gender.

When a vacancy is advertised an eligibility list may be created for other similar jobs at the same Rank. The eligibility list to remain current for a period of 6 months from the date it was created.

Commuter Locations

Commuter Locations are those desirable locations where large numbers of police reside but there are insufficient places to accommodate them, requiring long distance travel to work. They are as listed in [Appendix 3](#).

When vacancies (at Constable level) occur within the above LACs they will be filled in the following manner:

- a. Up to fifty percent of vacant Constable positions will be allocated to Probationary Constables attached to that LAC on application (see next paragraph). This can only be achieved where an adequate number of Field Teaching Officers are available; and
- b. The remaining positions, will be filled by commuter applicants (evidence of commuting will be required). In these cases the positions will generally be advertised so that all interested officers can compete on merit. The recruitment/selection processes will take into account tenure, work performance, work ethic, commuter status (evidence required) and special circumstances. Requests to advertise these positions will be considered by the Transfers Review Committee, which in its deliberations will take into account the current overall strength positions of the relevant Command/Region.

Probationary Constables attached to a Commuter Location on leaving the NSW Police College will be transferred to other locations at the completion of their probation period. Such locations are likely to be in the metropolitan area. Probationary Constables may remain at their current location, subject to the following conditions:

- a. At least fifty percent of vacant Constable positions will be filled by commuting applicants, excluding those Probationary Constables already attached to the Commuter Location (see above paragraph); and
- b. If there are more Probationers desirous of staying than positions available those to remain will be selected on the basis of an application reviewed by the respective LAC Commander or LAC HR Committee.

Trainees who are desirous of being attached to Tuggerah Lakes or Lake Illawarra LAC's during their probation, will have to submit a request for such a posting prior to attestation. They should be made aware that on the completion of their Probationary period they will be moved from that location. As the Probationary posting was in accordance with a nominated location by the trainee, for their benefit, they will not be provided with any costs under NSW Police Service Circular 89/38 as amended, incurred in their subsequent transfer to a metropolitan location. This provision is to be made known to the trainee in advance of their nomination(s).

The Region Commander (or equivalent) in consultation with the Transfer Review Committee may exempt the advertisement requirement to facilitate the movement of staff to meet the operational management needs of a particular command and/or where welfare or support grounds require. The exception to this is when the process described in the next paragraph is applied.

Applications for vacant positions in Commuter Locations are submitted to the Human Resource Manager in the respective Region. All applications are presented to a Selection Committee consisting of:

- a. The Local Area Commander with the LAC vacancy.
- b. Human Resource Manager of the respective Region; and
- c. An executive member of the Police Association.

The committee must include members of each gender.

When a vacancy is advertised an eligibility list may be created for other similar jobs at the same Rank. The eligibility list to remain current for a period of 6 months from the date it was created.

Commuter Transition Locations

Commuter Transition Locations are those which are readily accessible to commuting officers, allowing them to minimise commuting time. They are as listed in [Appendix 3](#).

At least fifty percent of approved Constable vacancies at these locations are retained for commuting applicants.

When vacancies (at Constable level) occur within the above LACs, they will be filled by way of merit, taking into account tenure, work performance, work ethic, commuter status and special circumstances. Vacancies will be filled in the following manner:

- a. At least fifty percent of vacant Constable positions will be filled by commuting applicants.
- b. The remaining vacant Constable positions will be filled in the normal manner.

Tenure at potential high risk (corruption and/or stress) locations

The NSW Police Service recognises that it needs a well articulated policy on tenure and transfer for officers exposed to potentially higher than normal levels of stress, danger or corruption as a result of their duty type or work location. The Service has an obligation to manage the welfare of staff and ensure the integrity of the organisation.

This policy is designed to bring equity to tenure transfers and be standardised across the Service. It also provides for evaluation and appeals. It is based on the principles of local risk assessment and commands self nominating to be governed by the policy. This policy does not intend to forcibly transfer officers from the country to the city or the city to the country. The career paths and aspirations of individual officers is to be considered when commands are formulating their local policy. See [Appendix 7](#), for the full details on the Tenure and Transfer, Potential High Risk Stress/Corruption locations policy.

Local level arrangements

Local level arrangements are to be developed in full consultation with your Police Association Branch officials consistent with the arrangements contained in this Policy and Procedures. Facility exist for any local level arrangements to be included at [Appendix 8](#) so they can be accessed not only by current officers in the areas, but by officers seeking to move into those areas.

Tenure at Special Remote Locations

Tenure at Special Remote Locations does not include absences due to extended leave or leave without pay, with the exception of approved maternity, paternity and adoption leave.

Transfer from a Special Remote Location at the end of tenure is subject to satisfactory performance. The list of approved special remote locations and the minimum tenure at each is listed at [Appendix 3](#). On completion of tenure, a transfer to a location where subsidised rent is available is not guaranteed. Constables and Senior Constables may seek through expression of interest to transfer to vacant authorised positions within three preferred Local Area Commands. Placement will be governed by existing vacancies at that time.

Lump Sum Retention Incentive

From 1 July 2002 lump sum retention incentive is available to Officers in Special Remote Locations. A \$5,000 lump sum each year for up to five years will be paid to Officers who remain in Special Remote Locations beyond the minimum service requirement for Constables and above. It should be noted that his payment is subject to review in accordance with the Performance Management Scheme.

Officers Not Requesting To Extend Minimum Tenure

Constables who do not wish to extend their minimum tenure must six months prior to completion of their minimum tenure submit an expression of interest to their supervisor nominating three LACs to which they request transfer. Please refer to *Special remote Transfer & Tenure Policy Business Rules – [Appendix 9](#)*.

Officers approved for an extension of minimum tenure will be required to enter into a *Special Remote Location Performance Agreement – [Appendix 10](#)*.

Withdrawal Of Extension Of Tenure

Should the Commander withdraw the extension of tenure or the Officer be denied the opportunity to extend his tenure then a review may be called for the Constable. Refer to *Extension Of Minimum Tenure Review Process Not Approved And Cancellation Of Extension Guidelines – Appendix 11*. The Commander will provide the Constable whose extension of tenure is withdrawn with a report outlining the reasons for the decision. In cases where personal circumstances exist for the withdrawal of extension of tenure the receiving Commander should be informed of any issues which will affect the operational effectiveness of that Officer. Officers who have been subject to a sustained complaint or are subject to action under Section 173 or 181D of the Police Service Act 1990 shall have a copy of the reasons provided upon and request to transfer.

Staffing of the Child Protection Enforcement Agency - Joint Investigation Response Teams

The Child Protection Enforcement Agency will make selections to fill vacancies in the Joint Investigation Response Teams (JIRTs) in accordance with the Transfer and Tenure Procedures. When officers are selected to transfer to vacancies occurring at JIRTs, they will be released to take up duty as soon as practicable and in any case within 30 days of their Command being advised of such selection.

If a LAC Commander considers that extraordinary circumstances exist, the matter may be referred to the Region Commander for negotiation. If not resolved, it can be forwarded to the Deputy Commissioner for resolution but shall be determined having regard to the needs of both Commands concerned.

The onus of justifying any departure from the expected expeditious transfer shall rest with the Commander requesting the same.

Officers requiring to be transferred from a JIRTs in accordance with the Transfer and Tenure Procedures will be accepted at a location suitable to the Police Service and the officer into an authorized position. Any need for an overstrength position would need to be endorsed by the CET member.

In the case of staff selected to fill vacancies under the promotion process, as far as practicable, the above principles will apply and staff will be released pending the nomination and appeal processes being completed. However, in any cases where transfer costs are associated with such promotions, moves will not normally proceed until all selection processes are finalised unless the officer concerned makes arrangements which do not incur costs.

In either transfer or promotion moves where costs are to be awarded, the Transfers Unit is to be consulted.

Temporary Transfer

Responsibility for fostering, discipline, conduct, and attendance is the responsibility of the temporary place of attachment. Payment of overtime, shifts, penalties, and any costs arising from the deployment of the officer is the responsibility of the temporary place of attachment unless other local arrangements are made. Officers on temporary transfer are entitled to the travelling time provisions of the Industrial Agreement for the first journey to, and the last journey from, the new place of attachment. If the proposed period is of sufficient duration and the officer meets the qualifying criteria, there may be entitlement to the relevant benefits of the Award. Where the Award benefits apply, there is no entitlement to either travelling time or travelling allowances, (except for the express provisions contained within the Award). The Manager, Transfers Unit, must approve all applications for the benefits of the Award.

Procedures for the processing of temporary transfers are published under Human Resources Policies on the Intranet.

Section 66 Appointees

Section 66(1A) appointees (preferred applicants) will be awarded entitlements under the NSW Police Service Circular 89/38 as amended as follows:

1. Officers temporarily appointed without a right of return to their former location receive full entitlements.
 2. Officers temporarily appointed with a right of return to their former location who are accompanied by dependents and who are not required to maintain two households can access all entitlements but
-

not conveyancing until appointment is confirmed.

3. Officers temporarily appointed who do not have dependents with them until transfer is fully finalised are entitled to access Clause 4 of Circular 89/38 "Cost of Temporary Accommodation".

4. Officers temporarily appointed who have no dependents and a right of return and not maintaining two households can access all entitlements but not conveyancing until appointment is confirmed."

In respect of point 2, 3 and 4 above the payment of Depreciation Allowance will not occur at this stage. As removal costs will generally only be paid once officers should wait until confirmation of their appointment to move their family and/or household effects and claim costs."

Secondments to External Agencies

Generally this document does not apply to secondment to external agencies, interstate/overseas exchange postings, or individual postings. In these cases, the conditions are those agreed between the Commissioner and external agency, or specified in applicable Acts, Regulations or inter-agency agreements.

Management Transfers

Situations may occur where officers are transferred as a result of concern about conduct or work performance. This is not a normal circumstance and most minor misconduct and poor work performance issues must be resolved at the originating location under the provisions of the Service's endorsed Performance Management Schemes and/or Remedial Performance Program.

Commander/managers are expected to be able to manage these areas of concern and a transfer in these circumstances is only ever used when other options are considered inappropriate and transfer is the logical solution.

The above includes an officer who is subject to an internal investigation. In these circumstances, a transfer application either by the officer or management will not in ordinary circumstances be considered until such inquiry has been completed, again unless there are exceptional circumstances. Should exceptional circumstances exist that require the movement of an officer against their will, approval must be obtained, in the case of an 'Inter Region' movement in consultation with The Director, Workforce & Careers. In cases involving an 'Intra Region' movement, approval must be obtained from the Region Commander, in consultation with the Director, Workforce & Careers to a substantive vacant position. In the case of an 'Inter Region' transfer, full documentation must be supplied to the Director, Workforce & Careers, setting out the circumstances including the reasons for the movement of the officer, in particular why other management options are not viable.

In initiating transfers under these circumstances, commander/managers are to ensure that appropriate support services are available to the officer concerned.

Any decision to direct the transfer of an officer for disciplinary reasons must be actioned under the provisions of Section 173 of the Police Service Act, 1990. Such action is deemed to be reviewable (ie. subject to appeal to the Industrial Relations Commission) and must be referred to the Corporate Internal Review Panel that is convened by the Commander, Employee Management Branch, for review prior to giving effect to the order.

Before formal action is taken to relocate an officer for inability to meet job requirements, the Transfers Unit will advise the Executive Director, Human Resource Services.

Officers who are participating in a Personal Enhancement Program or the Remedial Performance Program cannot be transferred without the approval of the Executive Director, Human Resource Services.

Costs

The following points apply to transfers that occur within the scope of the Crown Employees (Transferred Officers Compensation) Award.

Officers are eligible for the payment of costs in the following circumstances:

- Costs as per the Award will be paid after five (5) years at a location, or in the case of special remote locations, after the minimum tenure prescribed for these locations. However, where officers have performed less than the required minimum tenures, approval may be given in exceptional circumstances, to the payment of removal costs only, by the Region Commander or the Manager, Transfers Unit.

- Officers who are nominated for transfer are eligible for the payment of costs as prescribed in the Award.
- Transferring officers arising directly from the advertisement of a vacant position shall be entitled to payment of costs as prescribed in the Award.
- Where officers move from or into Police Service official residences, including moves within the same town, they shall be eligible for payment of removal costs only, unless entitled to costs under another clause of this policy or the Award.
- Officers who are transferred for disciplinary reasons under the provisions of Section 173 of the Police Service Act, 1990, shall not be entitled to payment of costs.
- Where costs are awarded for a transfer, the Transfers Unit informs the government contractor to make arrangements for the officer. All arrangements for removal become the responsibility of that contractor. The contractor sends information to the officer stating removalist policy and details of any items that will not be carried by the removalist. Transferring officers are not to make their own arrangements in this regard.
- When costs are awarded, the officer's current location pays for expenses relating to the seeking of accommodation at the new location. Separate guidelines are published by the Transfers Unit in regard to the processing and recovery of payments for all other transfer related costs.
- Where a spouse is also employed in the NSW Police Service or the NSW Public Service and is also the subject of a transfer, assistance payable under the Award provisions is paid to one person only. Where applicable however, both partners may claim the leave concessions under Clause (3) of the Crown Employees (Transferred Officer Compensation) Award.

Commissioned Police Officers Transfers

The Commissioner retains the right under Section 67 of the Police Service Act to direct/approve the transfer of Commissioned Officers.

The Executive Director, Human Resource Services has delegated authority to approve the relocation of non-executive commissioned officers.

Officers performing duties at a location at the rank of Inspect or/Chief Inspector/Superintendent for a period of five years can expect to be considered for transfer to a new location/position of equal rank. Guidelines for the submission and processing of applications to transfer Commissioned Officers are attached at Appendix 4.

Glossary of Terms

- **Intra Command / Branch Transfer**
A transfer that is effected from within the same Local Area Command, Specialist Unit or Branch.
- **Intra Region / Specialist Command Transfer**
A transfer that is effected from within the same Region or Specialist Command.
- **Inter Region / Specialist Command Transfer**
A transfer that is effected and involves more than one Region or Specialist Command.
- **Location/s**
Is defined within the Metropolitan Area as duty at a Local Area Command or duty in a working environment under the auspices of a Region Commander, or a Branch, Squad, Directorate or Bureau. In the case of a Country Location, means duty at a Police Station within a Local Area Command. (However, with respect to tenure surrounding the awarding of costs for Metropolitan members, such tenure can be accumulated at different locations in the Metropolitan Area.)
- **Management Transfer**
A transfer arising as a result of concern about the conduct or work performance of an officer. Management Transfers as limited to exceptional circumstances and may be given effect under the provisions of Section 173 of the Police Service Act.
- **Nominated Transfer**
A transfer that is initiated by the Service to address particular skills and/or staffing level needs at an identified location. Nominated transfers are not initiated to address the conduct or work performance concerns of an individual.

- **Over-Strength position**

A position that is created in certain circumstances, on a temporary basis, with the approval of the Commissioner's delegate, to facilitate the placement of an officer at a specific location, when there is no vacant authorised position at that location in which to place the officer.

- **Special Remote Location**

A location that is:

- remote in terms of its proximity to the rest of the population, and remote from a major centre where specialist medical and/or dental treatment is available, and
- remote from a major centre where a reasonable assortment of goods and/or services are normally obtainable, and likely to demand special policing sensitivities involving an awareness of Aboriginal culture, and a special requirement for commitment to, and capacity for, addressing the community's needs.

- **Transfers Unit**

The Unit within Workforce and Careers Directorate, Human Resource Services, with responsibility for co-ordinating, scheduling and publishing transfers on a state-wide basis. This Unit also has responsibility for managing the Service's budget allocation for transfer related costs.

- **Transfers Review Committee**

The Committee selected to represent the Executive Director, Human Resource Services, in monitoring and recommending the advertising of transfers. The Committee also considers and recommends action in relation to transfer related disputes involving more than one Region/Specialist Command.

- **Transfer**

A change in an officer's place of attachment where the officer is transferred to an authorised or an over-strength position.

- **Secondment or On Loan**

These arrangements are treated as temporary transfers.

- **Temporary Transfer**

Temporary change in an officer's place of attachment, including secondment and placement on loan. This can arise from:

- An officer's own request
- A direction from an authorised senior officer to meet operational needs.

The awarding of costs for temporary transfer will not be granted unless specifically approved by the Director, Workforce & Careers.

- **Workplace**

See definition of 'Location'

Appendices

Appendix 1 - Processing Police Officer Transfers

ACTION	INTRA REGION	INTRA REGION	INTER REGION
INITIATION	a) Commander initiated b) Application by Officer	a) Commander initiated b) Application by Officer	a) Commander initiated b) Application
ADVERTISING	Locally at Commander discretion	Across Region at Commander discretion	Across Service approved by Transfers Review Committee
REVIEW	Commander nominee	Region HR Manager (or equivalent)	Current Region HR Manager (or equivalent) Receiving Region HR Manager (or equivalent)
APPROVAL	Commander	Region Commander (or	1. Receiving Region

		equivalent)	Commander (or equivalent) only with support of current Region Commander (or equivalent) Or 2. Transfer Review Committee when Region Commander agreement is absent
SYSTEM PROCESSING	SAO at Local Command	SAO at Receiving Command	Transfers Unit
TRANSFER UNIT ACTION	Approval for costs when TOCA applies	Approval for costs when TOCA applies	1. System processing 2. TOCA costs approval 3. Publication when TOCA applies 4. Database Maintenance
PUBLICATION	Published when TOCA applies	Published when TOCA applies	Published when TOCA applies

Appendix 2 - Procedures for Processing Temporary Transfers.

There are three categories of Temporary Transfer:

Category 1: up to and including one month (4 weeks).

Category 2: exceeding 1 month and no longer than 3 calendar months.

Category 3: exceeding 3 calendar months.

If temporary transfer exceeds or is expected to exceed the initial category, the procedures for the new category are adopted immediately.

Category 1 (up to and including 1 month)

Record temporary transfer in Service Register only.

Service Register is kept at substantive place of attachment.

Category 2 (1-3 months)

P447 sent to Transfers Unit with supporting documentation. Transfers Unit updates SAP records.

Record temporary transfer in Service Register.

Service Register is kept at substantive place of attachment.

Category 3 (+ 3 months)

These transfers are processed the same as normal transfers under Transfer and Tenure Policy guidelines.

Service Register is sent to temporary place of attachment.

General Conditions of Temporary Transfer.

The Manager, Transfers Unit, may approve a temporary transfer to an authorised position. Approval for temporary transfers involving the creation of an over-strength position rests with the Director, Workforce & Careers Directorate.

- a. Up to 12 months in an over-strength position means the officer's substantive position is flagged not vacant pending their return.
- b. Up to 12 months in an authorised position allows the officer's substantive position to be filled. If no authorised positions exist at the officer's former location at the end of the transfer, the officer is placed in a negotiated position.
- c. Transfers over 12 months vacate an officer's substantive position regardless of whether the temporary position is over-strength or authorised. The officer is placed in a negotiated position at the conclusion of transfer.

- d. Officers under temporary transfer can be placed under further temporary transfer to other duty types and/or place/s of attachment.
Rostering of temporary transfer.

Categories 1 and 2 (up to and including 3 months)

the substantive workplace roster is endorsed "on temporary transfer to x (Location) from ... /... /... (date) to ... /... /... (date)". the temporary workplace roster is endorsed "on temporary transfer from (Location) and records roster times and duty.

Category 3 (+ 3 months)

Temporary transfer to an authorised position that is not over-strength.

Original workplace roster no longer records the transferred officer.

Temporary workplace roster shows the officer in the authorised position.

Temporary transfer to an over-strength position up to and not exceeding 12 months.

Original workplace roster says "on temporary transfer to x (Location) from ... /... (date) to ... /... (date)".

Temporary workplace roster says "on temporary transfer from x (Location)" and record roster times and duty.

Effects on Tenure

A temporary transfer counts towards tenure at the officer's substantive workplace.

Appendix 3 - Desirable Locations and Special Remote Locations

(These include Specialist Commands with Units located in the locations outlined below)

Desirable Locations

Hunter Region (Except Hunter Valley LAC)

Northern Region (Except New England LAC, Tabulam, and Nimbin)

South Eastern Region

Commuter Locations below

Commuter Locations

Brisbane Water

Tuggerah Lakes

Wollongong

Lake Illawarra

Commuter Transition Locations

Kuring Gai

North Shore

Eastwood

Sutherland

Hurstville

Miranda

Kogarah

Special Remote Locations

Location	Minimum Tenure
Lightning Ridge	4 years
Cobar	4 years
Bourke	3 years
Walgett	3 years
Brewarrina	3 years
Carinda	3 years
Wanaaring	3 years
Boggabilla	3 years
Mungindi	3 years
Wee Waa	3 years
Burren Junction	3 years
Pilliga	3 years

Menindee	3 years
Gwabegar	3 years
Boomi	3 years
Nymagee	3 years
Lake Cargelligo	3 years
Collarenebri	3 years
Tibooburra	2 ½ years
Ivanhoe	2 ½ years
Engonnia	2 ½ years
Goodooga	2 ½ years
Wilcannia	2 years

Appendix 4 - Procedures for processing requests for Lateral Transfer of Non-Executive Commissioned Officers Effective January 2001

The following procedures are to be adopted within Regions, Specialist Commands and Human Resource Services, when it is proposed to initiate transfer action for non-executive commissioned police officers, under the provisions of section 67 of the Police Service Act 1990.

Intra Region Transfers

1. The Region HR Manager (or equivalent in Specialist Command) will prepare a manuscript report setting out the reasons for, and the circumstances surrounding, the proposed transfer. This report will include the following details:
 - a. Full name, Rank and Registered No. of the officer to be transferred.
 - b. Current position and location (including SAP position code no.) of the officer.
 - c. Position and location (including SAP position code no.) into which the officer is to be transferred.
 - d. Proposed effective date of the transfer.
2. The Region HR Manager (or equivalent) will obtain the Region Commander's (or equivalent) support for the proposed transfer on the manuscript report and then forward it to the Transfers Unit, Workforce and Careers Directorate, for necessary processing action.
3. Upon receipt of the manuscript report the Transfers Unit will confirm:
 - i. Position is vacant.
 - ii. Position is not subject to any other current action (eg. advertisement, disestablishment).
 - iii. Substantive rank and level of the officer and subject vacant position.
 - iv. Region Commander (or equivalent) support for proposed transfer.
4. The Transfers Unit will prepare a covering submission and forward the transfer request through the Director, Workforce and Careers, to the Executive Director, Human Resource Services, for consideration and approval under delegation.
5. Following approval or otherwise by the Executive Director, Human Resources Services, the documentation will be returned to the Transfers Unit, Workforce and Careers Directorate, for action to:
 - o Inform the Region HR Manager (or Equivalent) of the outcome including entitlements under Crown Employees (Transferred Officers Compensation) Award.
 - o Update the SAP system.
6. The Transfers Unit will forward the documentation to the relevant Local Area (or other) Command for attachment to the officer's Personal File.

Inter Region Transfers

1. The Region HR Manager (or equivalent in Specialist Command) will prepare a manuscript report setting out the reasons and the circumstances surrounding the proposed transfer. This report will include the following details:
 - a. Full name, Rank and Registered No. of the officer to be transferred.
 - b. Current position and location (including SAP position code no.) of the officer.
 - c. Position and location (including SAP position code no.) into which the officer is to be transferred.
 - d. Proposed effective date of the transfer.
2. The Region HR Manager (or equivalent) will obtain the Region Commander's (or equivalent) support for the proposed transfer on the manuscript report and then forward it to the proposed receiving Region (or Specialist Command) for endorsement by the relevant Region Commander (or equivalent) before forwarding it to the Transfers Unit, Workforce and Careers Directorate, for necessary processing action.

Alternatively, the initiating Region (or equivalent) may obtain a document of support from the proposed receiving Region Commander (or equivalent) and attach it to the manuscript report which is then to be forwarded direct to the Transfers Unit.

3. Upon receipt of the manuscript report the Transfers Unit will confirm:
 - i. Position is vacant.
 - ii. Position is not subject to any other current action (eg. advertisement, disestablishment).
 - iii. Substantive rank and level of the officer and subject vacant position.
 - iv. Both Region Commanders (or equivalent) support for proposed transfer.
4. The Transfers Unit will prepare a covering submission and forward the transfer request through the Director, Workforce and Careers, to the Executive Director, Human Resource Services, for consideration and approval under delegation.
5. Following approval or otherwise by the Executive Director, Human Resource Services, the documentation will be returned to the Transfers Unit, Workforce and Careers Directorate, for action to:
 - o Inform both Region HR Managers (or equivalent) of the outcome including entitlements under the Crown Employees (Transferred Officers Compensation) Award.
 - o Update the SAP system.
6. The Transfers Unit will forward the documentation to the relevant Local Area (or other) command for attachment to the officer's Personal File.

NB: The Director, Workforce and Careers Directorate, may refer requests for transfers to the respective Deputy Commissioner for special consideration prior to referral to the Executive Director, Human Resource Services. This applies to both intra and inter region transfer requests which may not necessarily form part of the normal policy and procedures.

Appendix 5 - Transfers Review Committee Transfers In Dispute

1. When Regions fail to reach agreement on a transfer or transfer date the relevant HR Manager may refer the issue to the Manager, Transfers Unit, where efforts will be made to resolve the issue and if still unsuccessful, for referral to the Transfer Review Committee (TRC) for determination.
 2. Both affected HR Managers are invited to provide relevant information to support their position.
 3. Disputed transfer is scheduled for next available TRC.
 4. The Transfers Unit generates strength reports for both regions involved and tenure report for officer.
 5. The TRC schedule is compiled and circulated electronically to all TRC members and the relevant HR Managers.
-

6. Where the transfer in dispute involves an advertised position the relevant HR Manager must provide details of the PSW advertisement, the number of applications received, and reasons for selection of officer.
7. The TRC will consist of:
 - o HR Manager, Office of the Deputy Commissioners
 - o HR Manager, country region*
 - o HR Manager, metropolitan region*
 - o HR Manager, non-region area*
 - o Manager, Transfers Unit (*appointed by the HR Managers' Forum) One HR Manager is the convenor and this is decided by the TRC.
8. The TRC individually assesses each dispute taking into account:
 - o Provisions of the Transfer & Tenure Policy and Procedures.
 - o Comparative strengths of the Sectors/Units, LACs and Regions.
 - o Comparative experience levels of the sectors/units, LACs and Regions.
 - o Forecasted transfers and promotions in/out of Region/LAC.
 - o Deployment of probationary constables.
 - o Deployment of rejoinees.
 - o Tenure of officer.
 - o Any relevant specialist skills held by the officer eg cultural, language, specialist training etc.
 - o Corporate needs which includes political climate, special remote locations etc.
9. Where necessary additional information is obtained from the relevant HR Manager during the meeting.
10. The TRC then determines whether the transfer will be declined or approved and transfer date identified.
11. Manager, Transfers Unit, advises the HR Managers of the decision.

**Appendix 6- Transfers Review Committee
Determine Lateral Vacancies for Advertisement**

1. HR Managers consider requests from Commanders/Managers in line with strength position and other prevailing deployments/strategies.
2. HR Managers forward supported requests to Advertising Officer, Promotions Unit.
3. Advertising Officer confirms with Transfers Unit position is vacant.
4. Advertising Officer places particulars on a monthly schedule for referral to Transfer Review Committee.
5. Advertising Officer and transfers officer compile strength reports for TRC meeting.
6. TRC reviews requests in line with current strengths and prevailing deployment strategies and determines approval/rejection of request to advertise.
7. Advertising Officer updates schedule.
8. Advertising Officer places advertisements and forwards copy of final schedule to HR Managers and Manager, Transfers Unit.

**Appendix 7 - Tenure And Transfer Potential High Risk Stress/Corruption
Policy document
Introduction**

The NSW Police Service recognises that it needs a well articulated policy on tenure and transfer for officers exposed to potentially higher than normal levels of stress, danger or corruption as a result of their duty type or work location. The Service has an obligation to manage the welfare of staff and ensure the integrity of the organisation.

This policy is designed to bring equity to tenure transfers and be standardised across the Service. It also provides for evaluation and appeals. It is based on the principles of local risk assessment and commands self nominating to be governed by the policy. This policy does not intend to forcibly transfer officers from the country to the city or the city to the country. The career paths and aspirations of individual officers is to be considered when commands are formulating their local policy.

Accountability

Local Area Commanders or equivalent

Responsible for implementing the risk assessment for Stress, Danger and Corruption potential for their command. This includes all sectors and duty types, ranks and grades, including Leading Senior Constable. This is to be based on the following criteria:

Potential Stress/Danger Review Criteria

- Self assessment risk analysis under the Command Management Framework's "Occupational Health, Welfare and Safety" audit component,
- Environmental scan which should include a staff survey,
- Sick Leave review taking into account absences for HOD Stress, (or other types of sicknesses that may indicate stress, eg frequent headaches), frequency and length of sickness, or injuries relating to dangerous police jobs,
- Staffing problems experienced such as number of requests for transfers out of the command, no requests to transfer in and disproportionate number of resignations,
- COPS workload analysis and type of work predominantly undertaken,
- Performance Management Scheme outcomes. Reports of staff having difficulty in managing workloads or the nature of the work,
- Customer Service Complaints which may indicate a high workload and exposure to difficult people or policing situations,
- Other internal complaints that indicate stress,
- Consultation with staff and union representatives throughout the process and canvassing of their views and experiences,
- Psychological review of staff that reflects the operational environment in which they work and protects their privacy, and
- Exit interviews of persons transferring out of command or NSW Police Employment.

Corruption Review Criteria

- Conduct a self assessment risk analysis under the Command Management Framework's "Standards and Behaviours" audit component.
- Environmental scan which should include a staff survey and consideration of policing context for that command. (NB refer to the model developed by Special Crime and Internal Affairs.)
- Consultation with staff and union representatives throughout the process and canvassing of their views and experiences.
- Complaint history review.

If the risk assessment process results in a command nominating themselves for governance under this policy, the following will occur:

Take into account all relevant legislation, policies and industrial awards, for example transfer entitlements and Occupational Health and Safety.

In consultation with Region Human Resources Manager set a maximum tenure period that includes consideration of the nature of the work, training required to be completed and time required to obtain expertise in the field.

Ensure that a "Statement of Tenure" is provided to all officers affected by this policy at the beginning of tenure. This document will outline in writing the tenure policy and how it relates to their command. Newly established Commands, or those going through a significant restructure, should, at the time of formation, undertake the risk assessment process under this policy. This should be incorporated into their original Strategic and Business Plan.

Region Human Resource Manager

Monitor implementation and management of the local commands risk assessment.

Ensure regional consistency in the application of the policy to nominated commands and duty types.

Notify Human Resource Services of those commands nominated for or removed from the policy.

Provide for transfer outcomes of officers transferred under this policy by assisting in the identification of suitable vacancies. The following options could be used by commands when a person's tenure is completed:

- change of duties within the LAC

- change of location within the region
- change of duties within the region
- change of location across regions
- change of duties into a specialist area
- change of duties into other regions

Human Resource Services

The Executive Director, Human Resource Services is responsible for the monitoring and application of the policy.

Ensure corporate consistency in the application of the policy to nominated commands and duty types. Ensure there is transparency to the risk assessment process and decision making.

Conduct regular evaluation of the policy and its effectiveness.

Procedure

Risk assessment and local policy designed.

Conduct risk assessment.

If this policy is considered not to apply notify results of risk assessment to Region for review and approval by Region Commander. The usual provisions of the Transfer and Tenure policy will continue to apply.

If local commands nominate themselves to operate under this policy they should formulate timeframes for maximum tenure for the varying locations and duty types within the Command.

Indicate possible location and duty types the outgoing officers will be placed in. Also account for the period of time to pass before an officer can apply to return to similar location or duty type under this policy. Consider if psychological testing of new and existing staff is required as part of the local policy.

Local policy reviewed.

Notify Region for independent review by Managers, Human Resources and Professional Standards to ensure consistency.

Region notifies Human Resource Services.

Enactment of local policy

Upon nomination for the first time set a date for commencement which allows for reasonable leadtime.

Design a "Statement of Intent" and serve on staff who will fall under the application of this policy.

Local Area Commanders to plan for future transfers as part of the yearly business planning process.

Consider timeframes for advertising vacancies and ensure that the issue of tenure is included in the advertised positions, construction of waiting lists, allocation of probationary constables and rejoinees.

Establish a system of review of individual officers for exposure to the potential of stress, danger and corruption. Implement this system on a regular basis before tenure expires.

Promotion

Any officers promoted during their tenure under this policy will have their tenure recommence. A psychological review may occur at this point. If, during this review period, it is determined that an officer is suffering from stress, then the manager of that person must manage the situation. This may include the use of a "rehabilitation and return to work" plan.

Tenure Review Process

If any officer wishes decisions by manager about their tenure reviewed apply the "Tenure Review Process" as follows:

For non commissioned officers a written request to:

- Region HR Manager, (if no resolution is made),
- Transfers Unit; then
- Executive, Director Human Resource Services.

For Commissioned Officers

- Region Commander, (if no resolution is made),
- Executive Directive Human Resource Services; then
- Deputy Commissioner.

Transfer of officers to new location or duty within planned timeframes.

Every three years from Service wide commencement of policy, conduct risk assessment and policy implementation again.

Appendix 8 - Local level arrangements

Special Services Group

The following guidelines apply to specialist areas (covert) and the police working in those areas:

- Prior to entering on duty officers are required to undertake relevant psychometric testing, as well as Branch specific testing, to ensure that they are suitable for this work;
- There is a one year recognised period of development for officers;
- A guarantee of three (3) years service in this area for officers;
- At the end of the four year period the Branch Commander can extend this time for a further two years if the officer is performing well in their work and they wish to remain in the Branch;
- At the end of the two (2) year extension (now six (6) years in the Branch) the Group Commander may make a decision on any further extended period of service in the Branch. The period of any further extension should be decided by the Group Commander having regard to the long period of training and capabilities of these key officers requiring their continued service in the Branch. Generally it is expected that most police will be required to transfer after six (6) years.

Special provisions relate to undercover operatives (not the supervisors) in the Undercover Branch as follows:

- they undertake relevant psychological testing every six (6) months during their tenure period as well as on concluding their tenure period and six (6) months after they integrate into the new work location;
- a strict three (3) year tenure period i.e. 2.5 years is dedicated to the operative performing undercover operations with the final 6 months dedicated to a re-integration program;
- after leaving the Branch they cannot be re-engaged in any undercover operations for a period of two (2) years. At the end of the two (2) years the expressed consent of the Undercover Branch Commander is required should their re-engagement be permitted.

The six (6) month reintegration program involves:

- The operative not being involved in any major operations as an undercover officer;
- The operative's involvement in operations is utilised in a more supervisory role;
- A new work location is confirmed;
- A meeting is conducted with the operative, Commander and the Education Development Officer of the new work location; and
- The operative gaining the relevant skills and development to integrate into the new work location.

Appendix 9 - Special Remote Transfer And Tenure Policy Business Rules

In accordance with the proposed Special Remote Location Transfer and Tenure Policy the following protocols are to be implemented.

Transfers At The Completion Of Minimum Tenure

Constables who do not wish to extend their minimum tenure will six (6) months prior to completion of their minimum tenure provide through their chain of Command an expression of interest of not more than two pages containing the following information:

- The period of tenure served and completion date.
- A short summary of their service history, together with any internal or external courses undertaken.
- Information regarding their duties performed whilst in the Special Remote Location and any benefit they can provide to their new requested location.
- The nomination of three LACs to which they request transfer.
- All expressions of interest will have attached their performance benchmarked results.

Applications

- The Local Area Commander will forward all applications to the Regional Human Resources Manager to which their expressions of interest are directed. The Human Resource Manager will distribute the expression of interest to each of the LACs nominated.
- At each of the nominated Commands the Local Area Commander will consider each request. The Regional Human Resource Manager will liaise with those Commanders regarding selection and where possible the next available authorised vacant position within one of those Commands will be offered to the applicant.
- Three months prior to completion of tenure the applicant will complete and forward to the Command nominated a P447 Transfer Application form.
- The Commander at the applicant's Special Remote Location will negotiate a release date with the receiving Commander.

Request to Extend Minimum Tenure - Payment of Extension Benefit

A Constable who wishes to extend their minimum tenure at any Special Remote Location will six months prior to the completion of their minimum tenure submit to their Local Area Commander a report requesting an extension of their minimum tenure and payment of benefit. Officers should complete the Expression of Interest In Extension Of Minimum Tenure – Special Remote Location proforma.

This proforma contains the following information:

- The period of tenure served by the officer and completion date.
- A short summary of their service history.
- The period of extension requested in blocks of 12 month periods for up to 5 years.
- All applications will have attached the benchmarking reports.

Applications

The Local Area Commander and his Management Team will consider each report received. A response will be provided to each applicant regarding whether the application is successful/unsuccessful. Each applicant will receive a copy of their expression of interest outlining the decision of the Commander and a copy retained upon the applicant's personnel file. Applications.

The Local Area Commander and his Management Team will consider each report received. A response will be provided to each applicant regarding whether the application is successful/unsuccessful. Each applicant will receive a copy of their expression of interest outlining the decision of the Commander and a copy retained upon the applicant's personnel file.

Payment of Benefit

In accordance with the Special Remote Location, Transfer and Tenure Policy, each person accepted for extension of tenure is awarded a payment of \$5000.00 per year.

- Payment of the benefit is made at the completion of the officers minimum tenure and the commencement of the extension of tenure. The benefit is taxed at the marginal tax rate applying to the officer's salary.
- The payment is subject to review in accordance with the Performance Management Scheme.
- It is a requirement for all officers who undertake an approved extended period of tenure to complete the whole period of extended tenure approved upon the application form by the Commander. Should the Commander of the Officer withdraw the extension of tenure at any time then the benefit paid will be reimbursed on a pro rata basis upon cessation of the extended tenure.
- At each review a report is to be submitted by the Reviewing Officer to a nominated Duty Officer.
- The Commander may upon written advice withdraw the request for extension of minimum tenure.
- Should the Commander withdraw the extension of tenure or the Officer be denied the opportunity to extend his tenure then a review may be called for the Constable. Refer to *Extension Of Minimum Tenure Review Process Not Approved And Cancellation Of Extension Guidelines*.
- The Commander will provide any Constable whose extension of tenure is withdrawn with a report outlining the reasons for the decision. In cases where personal circumstances exist

for the withdrawal of extension of tenure the receiving Commander should be informed of any issues which will affect the operational effectiveness of that Officer. Officers who have been subject to a sustained complaint or are subject to action under Section 173 or 181D of the Police Service Act 1990 shall have a copy of the reasons provided upon any request to transfer.

**Appendix 10 - SPECIAL REMOTE LOCATION
PERFORMANCE AGREEMENT**

1. I have applied for an extension of tenure at (Location of Special Remote) I fully understand the terms of the Special Remote Location Policy and issues affecting officers and their families within Special Remote Locations.
2. I agree that that in accordance with the Special Remote Policy that in seeking and accepting the extension of my minimum tenure I will be provided with a monetary benefit of \$ 5,000.00 per year together with other financial benefits applicable under the Special Remote Location.
3. I understand and agree that as part of my ongoing participation at the Special Remote Location of (Location Name) that my performance is subject to at least quarterly assessment by my Supervisors over time and that competent performance is required. Should my performance be unsatisfactory than action will be taken by the LAC Commander to cease my extension of minimum tenure at the Special Remote Location.
4. I further agree to perform the full range of front line policing activities within the Special Remote Location.
5. I also understand and agree that my probity, including my integrity and conduct both on and off duty will form part of the ongoing assessment of my performance and continued eligibility for the allocation of the Special Remote Location extension of minimum tenure benefit.
6. I also understand and agree that there will be an annual review of my performance, based on information derived from the quarterly reviews, undertaken by the LAC Commander at the time of the anniversary of my appointment.
7. I further understand and agree that all normal competency requirements for competency based incremental progression are also to be satisfied and are to continue to be satisfied on an annual basis, and that any necessity for me to be placed on a formal remedial program or to have incremental progression deferred may result in the cessation of Special Remote Location extension of minimum tenure benefits, as will the loss of my civilian driving licence, or my certification to drive police vehicles.
8. I acknowledge that frequent, short term absences and any extended absence of more than 3 months, (not being extended leave; or due to an injury or illness arising out of or in the course of my employment; or for the purpose of taking other statutory leave such as parental leave or State Carer's Leave), may have an impact on my availability to undertake my duties; may thus impact on my overall job performance and my extension of minimum tenure and further duties at the Special Remote Location will be open to review by the LAC Commander.
9. I understand that my supervisor or other senior officer may need to rely on general feedback from a variety of individuals over time, and on any exception reports that may be made in relation to my performance.
10. In the event that I am suspended from duty, whether with or without pay, I acknowledge that my extension of minimum tenure benefits may be withdrawn immediately, pending the outcome of any investigation and decision as to the action to be taken.

I understand that in the event that my extension of tenure is withdrawn or that I apply to withdraw my extension of tenure prior to its completion then I will repay those monies, on a pro-rata basis for the uncompleted time, to the New South Wales Police.

11. Should I experience any difficulties during my extension of minimum tenure, I will bring my concerns to the attention of my supervisor so that they may be resolved.

This agreement is to be signed, dated and placed on the officer's Personal File.

Name of Officer

Reg. No.....

Signature.....

Name of supervisor or other senior officer.....

Reg. No.....

Signature.....

Appendix 11 - Extension of Minimum Tenure Review Process Not Approved and Cancellation of Extension

Review Process

The reasons for a Commander not approving an application for Extension of Tenure will include:

The Officer has an unsatisfactory record of attendance report.

The unsatisfactory attendance record shall not include periods of Annual Leave, Extended Leave (where approval has been granted by the Commander), approved Hurt on Duty Sick leave and Other leave which is accordance with the Policy and Awards of the New South Wales Police.

The Officer has received an unsatisfactory performance report.

The officer will be provided with a copy of all performance reports, with attached information on actions taken or progress achieved.

An officers conduct or integrity has been called into question.

In circumstances where an officer has a series of/or trend in respect of complaints or the officer is subject to current inquiry or investigation the Commander may based upon the circumstances refuse to approve the application.

For issues of integrity which are not subject to current inquiry the Commander should provide a summary of the issues upon which the decision is made.

An officers relationship with the Community is considered to have broken down and his effective duties as a member of the NSW Police are unable to be fully conducted within the Community without adverse reflection upon his Command.

The classification criteria for Special Remote Locations includes the requirement for Aboriginal populations with social issues. In the case where an officer loses the confidence of the community in which he performs duties then further consideration of the officer remaining in the community should be at the discretion of the Local Area Commander. In this situation any decision made by the Commander to not approve the extension of tenure should be supported by evidence from the Community regarding the break down of a relationship with the Community.

In circumstances where application is made to the Local Area Commander for the extension of minimum tenure at a Special Remote Location and the Local Area Command does not support the application the Commander will advise in writing the reasons to the applicant officer.

In advising that officer he shall also provide documentary evidence to support his decision.

The applicant officer may upon receipt of the notification of the reasons for non-approval seek review of the decision in writing within 14 days of the notification.

The application for review should be forwarded through the chain of Command to the Human Resource Manager, Western Region, where a determination based upon the evidence provided will be made.

The review will be completed within 14 days of receipt at the Western Region.

Cancellation Of Extension

During the period of extended tenure the Commander at any time may rescind the extension of minimum tenure based upon the grounds outlined for non-approval.

In cases where the officer seeks to withdraw from the extension of minimum tenure then advice in written form shall be provided by the officer outlining the reasons for the request.

In cases where the nature of the request is a personal issue support services should be provided to the officer and where necessary his family prior to the Commander rescinding the extension of tenure. A copy of all request by officers to rescind the extension of minimum tenure should be provided to the Human Resource Manager, Western Region under confidential cover.

Appendix 12 - EXPRESSION OF INTEREST IN EXTENSION OF MINIMUM TENURE SPECIAL REMOTE LOCATION

I wish to express an interest in extending my minimum tenure at the Special Remote Location of (Name). Sector, (Name) Local Area Command.

Name

Registered Number

Substantive rank / grade

Current work location

Minimum Tenure – transfer date and completion date and period of extension sought

Contact address

Contact telephone number

Applicant's signature

Date

**INFORMATION IN SUPPORT OF THE APPLICATION FOR EXTENSION OF MINIMUM
TENURE**

Name

Registered Number

Current Position Number and Duty

Police Employment History

Service Approved Courses Undertaken

Special Skills

Other relevant information to support your application for the extension of minimum tenure

Applicant's signature:- _____

Print name:- _____

Date:- _____

Commander's Comments

Approved/ Not Approved

Local Area Commander
Date.

I acknowledge that I have received from the Commander (Location) Local Area Command a copy of the my expression of interest with comments

Signed

Commander

I acknowledge that the Commander (Location) Local Area Command has explained to me the terms and conditions of my extension of tenure.

I understand that I in accordance with the Transfer and Tenure Policy, Special Remote Locations, extension of tenure benefit , that payment of \$5,000 will be paid upon the completion of my minimum tenure in a single lump sum payment and that I am required to complete the whole period of the extended tenure specified in this approved application and that should I not complete the whole tenure that repayment of monies, on a pro-rata basis, will be made upon the withdrawal of this approval for extended tenure.

Signed

Commander

I acknowledge that the Commander (:Location) Local Area Command has explained to me the reasons for not approving my extension of tenure and has advised me of my right to apply within 14 days of this acknowledgement for a review of his decision.

Signed

Commander

APPENDIX 4

NSW OMBUDSMAN'S RESPONSE TO SUPPLEMENTARY QUESTIONS

- 1. This report mentions that under the new streamlined complaints procedures, minor workplace harassment and discrimination issues can be dealt with quickly and informally (p12). Could you give the Committee an example of the actions classified as minor harassment and discrimination?**

The NSW Police *Internal Grievance Procedures*, which were introduced at the time of the amendments to the class and kind agreements, defines grievances to include conduct issues such as harassment, competency issues, interpersonal issues (such as personality/work-style clashes), management issues (such as conflict with Supervisors/Managers) and discrimination. The policy provides detailed definitions for each of these matters.

The procedures correctly state that the majority of these day to day, less serious grievances can be dealt with by the involved parties themselves, with or without the assistance or supervision of managers. Recording of grievances, including notification of the Employee Management Branch, is provided for in the procedures. The class and kind agreement provides – and the procedures reflect - that harassment and discrimination matters must be notified to the Ombudsman in circumstances where:

- the complaint raises criminal issues or other serious misconduct.
- the officer the subject of the complaint has a previous history of harassment and discrimination complaints.
- the officer the subject of the alleged harassment or discrimination does not consent to the matter being dealt with as a local management issue.

The type of matters envisaged to be dealt with locally are one-off, less serious complaints. For example, minor sexist or other offensive comments, inappropriate humour, or unintended discrimination in relieving duties are matters that should be dealt with by NSW Police managers without the need to notify the Ombudsman. The complainant always retains the right to insist that the Ombudsman be notified. In addition, where the conduct is not an internal workplace issue, but concerns conduct towards members of the public, the class and kind agreement would not apply, and the Ombudsman must generally be notified of the complaint and its management by NSW Police.

- 2. What could be the reason behind the slump from 70.7% to 62.81% in 90 day clearance rates for complaints (p. 12)?**

At this time, the reasons for the decrease in the proportion of complaints finalised within 90 days is not clear. The Ombudsman has commenced a direct investigation into this matter. The investigation is focusing on the following issues:

- the appropriate benchmarks for completion of complaints within 90 days, including the reasons for these measures.

- whether NSW Police was aware of the decline in performance in timely completion of complaints.
- any reasons for the decrease in matters finalised within 90 days.
- any reasons for the large disparity in performance between regions.
- how local and region commanders are being made accountable for timely completion of complaint investigations.

The direct investigation is also exploring similar issues in respect of those matters not finalised within one year.

I note that NSW Police has advised that one of its proposed measures in complaint performance is timeliness. In my special report, *Improving the management of complaints – Assessing police performance in complaint management* (the special report), I recommend that NSW Police advise as to proposed methods to measure performance, and to hold investigators, commanders and senior managers to account for complaint management against these performance measures. I also recommend that NSW Police publish how it is performing in complaint management. A response is due from NSW Police in November 2002.

3. During 2001, 42% of complaint investigations resulted in adverse findings, and during 2002, 36% lead to adverse findings (p20). What could be the reasons for this?

There is commonly a variance, from year to year, in the number of matters that result in adverse outcomes (see table below):

Year	Adverse finding
1998/9	435 (45%)
1999/2000	649 (33%)

The reasons for variance can include one-off investigations with many involved officers – this was the case in 2000-2001, when hundreds of investigations from Operation Providence, concerning the misuse of email by police officers, were finalised, with adverse findings against police officers.

As I noted in my first response to questions on notice (Q 7), the outcome of each complaint that NSW Police is required to notify, is reviewed by my officers. If the outcome is unreasonable, we will recommend that it be reviewed, although the final say remains with NSW Police

4. What does your Office consider to be the main issues that need resolving in relation to s181D powers (p21)?

As indicated in my special report and in my previous response to questions on notice, significant issues arising from present procedures in relation Commissioner's confidence decisions include:

- the present mandatory nomination guidelines mean some police officers are nominated for removal when it is clear from the outset that the officers will not be removed.

- decisions not to proceed with some nominations are poorly documented.
- endemic delays in progressing nominations are not being addressed strategically.

Those matters are being progressed in discussions with NSW Police about proposals to revamp the s181D process.

In respect of the actual legislative provisions dealing with removal of police officers, the Ombudsman's role is limited to: keeping under scrutiny the relevant process; and reviewing those matters where officers are not removed from NSW Police. In respect of this last point, legal advice obtained by NSW Police suggests that there are only limited circumstances where decisions can be revisited once made – emphasising the need for rigorous procedures prior to a final decision by the Commissioner.

A particular concern of my office has been the failure to put in place comprehensive management plans for those officers who remain as police, for their own protection, and in the interests of the community and NSW Police. The new processes should provide for a further review where the Commissioner determines that an officer is not to be removed – this is a concrete first step to improving the management of these officers with significant complaint histories.

5. I understand that you have been providing some assistance to the auditor who is examining decision making by commanders in line with the implementation of a new decision making framework (p 21). Is this the Command Management Framework? Is the auditor external to NSW Police? Will the results of the audit be publicly available?

Decision making framework

The decision making framework is a tool to assist commanders in managing officers who have been found to have engaged in misconduct. It provides guidance as to the factors to consider when determining the seriousness of the misconduct (such as the expectations of the community, the workplace implications, the possibility of litigation and the seniority of the officer) and the appropriate management of the officer (including contrition, cooperation during the investigation, complaint history and mitigating circumstances). The decision making framework also suggests how these matters may be combined to determine the appropriate management outcome.

The auditor is Larry Marlow, who is external to NSW Police. NSW Police is best placed to advise as to whether the results of the audit will be made public.

Command Management Framework

The Command Management Framework (CMF) is a risk based, self assessment audit tool for NSW Police managers and supervisors, that provides a consistent framework for risk assessment and accountability. By utilising the CMF process, local managers will now have responsibility for conducting regular risk driven assessments, which should reduce the need for external audits by central NSW Police departments (eg, the Audit Group). Commands will also have greater responsibility for monitoring their own performance against key potential risks (for example, improper COPS accesses by police officers).

The CMF is divided into the three modules:

- *Crime management* includes issues such as: repeat offenders, crime hot spots, intelligence management, domestic violence, quality of briefs, young people and crime and Aboriginal issues.
- *People management (incorporating corruption resistance)* - includes issues such as: performance management, occupational health and safety, welfare (including sick-leave, absenteeism, peer support), employee management and education/training.
- *Systems management (internal records)* includes issues such as: drug exhibits, general exhibits, COPS information, arms and appointments, warrants and custody, charge, CCTV and ERISP records.

In a broad sense, CMF identifies key approaches to manage risks, including the recommended priority for implementation of those approaches. Local commanders will be required to account for CMF audits, including audit results and subsequent improvements to practice.

Local commanders are free to determine priorities based on local risk factors provided decisions are justified. For example, the nature and management of crime hot-spot issues in Cabramatta (including the use of knife search and move on powers) will in all likelihood differ from those employed at Roseville command.

CMF will make audits by external agencies (including the Ombudsman) of particular systems issues easier, as the auditing undertaken via CMF is recorded centrally and in a consistent format.

6. Where do you see the Ombudsman being positioned in terms of corruption prevention and the current complaints system?

The former Ombudsman noted, in her submission to the Royal Commission into the NSW Police Service:

There is a fundamental difference between complaint handling and corruption fighting. The police complaints system was not designed as a corruption fighting system. The Ombudsman's primary role is to oversee police handling of complaints about the use or misuse of police powers...

... a complaint-handling process, by its very nature, will never achieve the objective of weeding out serious corruption'.

I agree with her statement.

The distinction between complaint handling, on the one hand, and corruption prevention, on the other is reflected in the current legislation: the Police Integrity Commission investigates corruption and very serious misconduct at its discretion and the Ombudsman oversees the handling of complaints by NSW Police. 99 per cent of all complaints against police are oversighted by the Ombudsman.

Separating the roles of corruption prevention or corruption fighting and complaint handling means that both activities can be undertaken more effectively, with specialised focus in the distinct activities and business practices of each role.

Central to effective complaints management, is that the organisation that is complained about deal with the complaint. Complaints provide a one-off opportunity to improve practice, address poor conduct and right a wrong. My own organisation, many other statutory authorities and companies, and increasingly NSW Police, recognise the value of effective complaints management.

While complaints management is a distinct activity to corruption prevention, an effective complaints system reduces the opportunities for corruption. For example:

- internal witnesses and members of the public are more likely to report misconduct or corruption if complaint practices are acknowledged as effective.
- complaints are reliable indicators of officers who are going off the rails, so that appropriate management strategies can be put in place.
- complaints often identify systemic weaknesses within commands that provide opportunities for corruption.

Central to effective complaints management by NSW Police is effective oversight by the Ombudsman. In addition to a detailed review of each serious complaint, my office:

- audits particular policing practices, such as brief handling practices and police responses to complaints of domestic violence.
- audits the management of less serious complaints, including attendance at local commands to review local complaint handling practices and ensure more serious complaints are not being swept under the carpet.
- undertakes research into complaint issues, such as complaints by repeat offenders or complaints concerning email misuse.

These activities maximise the effective management of complaints by NSW Police. Complaints handling cannot alone manage police corruption – that much has been demonstrated on any number of occasions within NSW Police. However, effective complaints management is an integral strategy in minimising corruption within NSW Police.

NSW POLICE RESPONSE TO SUPPLEMENTARY QUESTIONS

Specialist Squads

1. What consultation has NSW Police undertaken with anti-corruption bodies while establishing the new specialist squads?

During the formation of Crime Agencies, NSW Police consulted the Independent Commission Against Corruption (ICAC) regarding the implementation of corruption resistance and prevention measures. In 2000, NSW Police gained permission from the ICAC for Crime Agencies to use its Ethical Culture Survey. A survey was conducted in that year and responses by Crime Agencies staff were extremely positive, demonstrating a robust ethical culture. The results of the survey were subsequently incorporated into the Crime Agencies Professional Excellence (Beyond Corruption Prevention) Business Plan for 2000-2001.

The new 'specialist squads' were formed as a result of the amalgamation of the former Information and Intelligence Centre (IIC) and Crime Agencies commands into what is now the State Crime Command (SCC). This amalgamation was undertaken as part of the recent statewide restructure of NSW Police.

NSW Police consulted with the Commissioner, NSW Crime Commission and senior representatives of the Police Integrity Commission (PIC) on corruption prevention issues. Both organisations were provided with proposed models for the new command, and as a result, the organisations provided written comments to NSW Police regarding the different models. In addition, Deputy Commissioner Madden chaired a face to face meeting with the two organisations.

The accepted model that has now been implemented includes a number of Squads categorised in relation to major areas of criminal activity, they are:

- *Child Protection Crime Squad*
Includes physical, sexual and emotional abuse of children, serial paedophile activity, child pornography and child prostitution
- *Drugs Squad*
Includes drug manufacture and production, trafficking, cannabis eradication and clandestine laboratories response team
- *Firearms and Regulated Industries Crime Squad*
Includes firearms trafficking, casino regulation and regulation of liquor, gaming and racing industries
- *Gangs Squad*
Includes outlaw motorcycle gangs and other forms of serious gang related activity
- *Homicide Squad*
Includes homicide and adult serial sexual assault
- *Motor Vehicle Theft/Rebirthing & Property Crime Squad*
Includes motor vehicle rebirthing, major property theft and arson
- *Robbery and Serious Crime Squad*
Includes robbery, extortion, bombing, kidnapping, product contamination and politically motivated violence
- *Fraud Squad*
Includes fraud, computer crime and assets confiscation

- *South East Asian Crime Squad*
Includes organised crime with South East Asian involvement and cultural expertise on South East Asian communities

Concerns raised by the PIC regarding the need for an independent intelligence component divorced from the new SCC (as both a corruption prevention measure and to allow for appropriate oversight) are addressed by the current model. The Squads include tactical and strategic analysts who report to the Squad Commander on current crime problems and the preparation of a strategic approach. However, a strategic intelligence component under the Intelligence Coordinator and separate from the Squads, reports directly to the Commander, SCC; allowing for appropriate oversight of the work carried out by the Squads.

2. Will the policy concerning length of tenure be applied to squad members?

As previously advised in the NSW Police response to questions taken on notice from the Committee's 20 September 2002 hearings, the NSW Police Interim Transfer and Tenure Policy will apply to SCC Squads. Officers are allowed to serve a maximum of two tenure periods at the SCC. This provides for an initial five year tenure, with a further three years upon review, after which a transfer out of the SCC is mandatory.

The Squads were designed to be flexible as far as workloads dictated and to allow for rotation and movement of staff between each of the squads. This prevents investigators remaining within one squad for an inordinate amount of time. These inherent flexibilities work as an anti-corruption measure while also spreading experience and injecting new vigour into different areas.

Crime Agencies developed an internal staff rotation policy in February 2002, which will soon be reworked to conform to the new SCC structure. The policy will apply to sworn officers of all ranks, and it is expected that the policy should provide improvements in corruption resistance, staff development, staff welfare, operational effectiveness, communication and a sense of common purpose.

By its nature, the SCC has significant movement and rotation of staff. The reasons for this include natural attrition (such as people resigning or retiring) and transfer and promotion of staff into and out of, the SCC. Because of this movement, few sworn officers remain in positions they occupied five years ago.

3. What anti-corruption measures will be implemented for the squads?

Significant anti-corruption measures formed the basis of the design and inception of Crime Agencies following the Wood Royal Commission. Since Crime Agencies' commencement, anti-corruption measures and processes have been continuously developed and redeveloped to ensure the highest standards of integrity in investigations. This has continued into the development of the SCC, which leads and drives the NSW Police response to crime at all levels.

Corruption prevention measures currently used in SCC Squads include:

- *Corruption Risk Management Plans*

Developed by each Squad these plans identify risks specific to the squad, together with clear risk management strategies, which include targets and performance measures.

- *Command Management Framework (CMF)*
All Squads have implemented the CMF. It is a risk based, self-assessment process, focusing on the audit function, with a section dedicated to people management, which includes corruption resistance checks.
 - *Compliance Review Unit*
A SCC group with an authorised strength of nine police, established in 2002 with a charter to:
 - Identify and prioritise through analysis and risk management all integrity risks to the SCC; and
 - To comprehensively review selected SCC operational activities and audit for levels of compliance and best practice against the CMF.
 - *Complaint Management Team (CMT)*
The CMT sits weekly with the Professional Standards Unit to oversight the management of complaints effecting SCC, it:
 - Ensures there are appropriate protocols in place to allow SCIA officers to investigate complaints against senior SCC officers and for SCC officers to investigate complaints against SCIA officers (as recommended by the PIC as a result of Project Dresden).
 - Assesses all complaints against SCC staff and allocates and oversees investigative resources
 - Monitors investigations utilising the c@ts.i database
 - Determines managerial or other action as appropriate including the transfer of officers from SCC
 - *Risk Assessment of all Staff*
All personnel who wish to transfer to SCC are subject to a risk assessment and a review of their complaints file in order to determine their suitability or otherwise to work at the SCC.
 - *100 Percent Annual Audit of all Sworn Officers*
The SCC Professional Standards Unit administers this audit of SCC personnel computer accesses.
 - *Strategic Decision Making in Investigation Selection and Resource Allocation*
The SCC employs corruption resistant systems to provide strategic decision making in Squad resource allocation, such as:
 - Two central SCC units oversight the squad's resource allocation. Investigation Services initially controls resource allocation, while Operations Co-ordination controls any significant expansion or redirection of existing investigations
 - Decision making is intelligence based
 - Scrutiny of resource allocation and investigation progress is reviewed at monthly Operational Leadership Meetings
 - The Audit team reviews decision-making processes on a needs basis
 - *Strategic Decision Making During Investigations*
Squads receive investigative guidance and monitoring through:
-

- An initial conference with lawyers from Operational Legal Support (OLS) identifies context and legal framework of an investigation. This culminates in a comprehensive document, called an Initial Consultation Report, which provides insight into what is anticipated at the commencement of investigation.
- An Initial Investigation Team meeting, to determine the scope of investigation and produce an investigation plan setting out terms of reference for the investigation
- Use of the e@gle.i investigation database, which is monitored by managers and supervisors who are able to audit the system's use through capturing material and viewing time logs, to prevent improper use of investigative material.
- Ongoing monthly review of investigations by Operations Co-ordination to inhibit improper manipulation of investigative direction
- Ongoing involvement of persons independent of the squad (OLS officers) to restrict capacity for improper manipulation of investigative direction
- Search warrants conducted in accordance with NSW Police Guidelines. Search warrants are video recorded to ensure the integrity of the search. Specific directives are handed to an independent officer at every search warrant from the Commander SCC, specifying the need for vigilance and the Commander's expectations of the search
- A number of investigations which are conducted in partnership with the NSW Crime Commission utilising their resources and subject to oversight by their Investigations Manager and other member of their senior management
- *Reporting*
SCC reporting requirements and mechanisms ensure the work of Squads is frequently and thoroughly monitored. Measures include:
 - Investigation co-ordinators and supervisors report to the manager of each Squad on a weekly or more frequent basis regarding investigation progress.
 - Direct fortnightly briefings regarding all investigations being carried out by five of the Squad Commanders, to the Commissioner of the NSW Crime Commission.
 - Operations Co-ordination conducts monthly reviews of all active investigations across the SCC. Squad Commanders are required to provide briefings on the progress of investigations and investigative direction, including reporting on corruption and employee management issues.
 - Squad Commanders provide monthly briefings on major investigations to the Commander SCC.
 - Squads submit situation reports to the Manager, Operations Co-ordination on all significant investigative developments.
 - Daily synopses of SCC operations are forwarded to the Deputy Commissioner Operations.
 - Completion of Post Operational Assessments by the Investigations Co-ordinator or Strike Force Commander at the completion of all SCC

investigations. Assessments include a full review of the investigation, identifying best practice, corruption risks and any difficulties encountered.

- *Informant Management*

Squad members use of informants is monitored through the following measures:

- NSW Police Informant Management Plan. All contact with informants is scrutinised by supervisors and subject to a quarterly review conducted by Operations Co-ordination.
- NSW Police Source Management system. This system will soon be accessible by all NSW Police officers via the NSW Police Intranet, including Squad members. The system will support and further strengthen NSW Police corruption prevention procedures for the management of informant relationships, including:
 - recruitment
 - retention
 - retirement
 - tasking
 - evaluation of relationship
 - assessment of information
 - benefits and expenses
 - source identity protection
 - relationship auditing

These changes will also provide the NSW Police with the opportunity to direct officer efforts towards sources with specific knowledge and who consistently provide reliable, good quality information that results in positive outcomes and improves the detection and reduction of crime.

- *Education and Training*

Business planning using the Australian Business Excellence Framework (ABEF) includes a number of education and training initiatives:

- Ethics is a major component of SCC business planning to continue the development of a strong ethical culture throughout the SCC.
- Strategies have been set for the research of ethics training programs. The design and implementation of a SCC specific program is part of this years business plan.
- Ethics is a theme underpinning SCC Leadership Development days, which are held monthly.
- Ethics, the Code of Conduct and expectations of SCC officers are reinforced to all new staff during induction training.

Education

Ethics and Accountability

4. Have the ethics courses removed from recruit education been integrated across the other subject studied during training?

5. What other subjects include ethics and accountability as part of their content?

As part of the DPP course restructure of early 2002, three subjects with ethics components were removed from the Diploma of Policing Practice (DPP): *'Ethics and Accountability'*, *'Police and Society'* and *'Intelligence – Crime Analysis and Information Technology'*. NSW Police Education Services is currently working to integrate some components of these units into other units.

Ethics is currently being taught to DPP students in the subject *'Ethical Dimensions of the Police Role'*. Students undertake this fourteen week subject in session one of recruit training. It introduces students to the ethics and morals involved in police work. It explores the principles, values and theories that underpin and shape effective, ethical policing. The subject modules include:

- Ethical Decision and Case study analysis
- Roles and Functions of police in a democracy
- Law, morality and Human Rights
- Authority and Power
- Coercive Force
- Discretion
- Corruption
- Ethical issues in Investigation
- Conflicts of Interest

Students are required to develop sound decision making skills as well as an understanding of the ethical and moral dilemmas they may encounter as a police officer. In addition to the above, the subject covers individual and organisational strategies that promote high levels of integrity and professionalism throughout NSW Police.

NSW Police is of the view that students should understand that ethical behaviour is integral to all aspects of police work. As such, ethics is an issue that is regularly discussed throughout the DPP curriculum and a number of skills based subjects incorporate material on ethics in policing, they are:

- *Society, Law and Practice*
This subject includes objectives such as demonstrating the use of appropriate and ethical police practices in investigating offences, managing crime scenes including exhibits in accordance with the law and police practice, critically evaluate evidence in criminal matters according to its relevance and admissibility in accordance with the *Evidence Act 1995* and part 10A of the *Crimes Act 1900*.
- *The Context of Policing*
This subject discusses the police culture and the professionalism required of police officers. Students are required to observe and reflect on practices in the police station and critically analyse those processes and procedures in light of their readings and studies. This subject is completed while the student is in their observation phase at Local Area Commands.

- *Communications in Policing 2*
To successfully complete this subject, students must demonstrate a sound understanding of the legal and ethical issues associated with the use of coercive force in operational situations. The subject also discusses the legal and ethical issues inherent in police interviewing of suspects.
- *Simulated Patrol Assessment Centres*
In this subject, students are assessed on their ability to perform the police role in a simulated exercise. Students must show that they can deal fairly and appropriately with victims of crime and offenders. Thus, ethical behaviour is a major consideration in these assessments.
- *Station, Field and Investigative Processes*
Learning outcomes of this subject include collecting and preserving evidence taking into account legal, ethical and practical considerations, as well as delivering services at the high standard required by NSW Police.
- *Critical Assessment of Investigative Practices*
In this subject, students are required to explain and demonstrate legal principles that apply to the admission of confessional evidence and examine the requirement to seek both inculpatory and exculpatory evidence; exploring the use of ethical practice in investigation and in informant management.
- *Police Practicum*
The two police practicum subjects require the probationary constable to engage in operational policing practice and apply theory to practice under supervision. They must demonstrate honesty and integrity in practice, show a positive attitude and demeanour to members of the public, communicate clearly (both verbally and in writing) and respond immediately to protect members of the community and colleagues.
- *Police Field Practicum*
This is the final police practicum subject and requires the probationary constable to demonstrate their performance in all the job stream responsibilities for a constable, including integrity. The probationary constable is required to reflect on practice and explain how they have acted with integrity throughout their undertaking of a full investigation.

Curriculum Review Team

- 6. Has the Curriculum Review Team met to ensure the integration of ethics and accountability subjects across the curriculum? If not, when will Curriculum Review Team (CRT) be meeting and what will its role be?**
- 7. The Police Integrity Commission gave evidence that the CRT was due to report the outcome of their review of this by 20 September to the Diploma of Policing Practice Course Committee. Has this happened? If not, when will this happen and who will receive this report?**

The Curriculum Review Teams (CRTs) have been suspended due to the nature of the holistic review of the entire DPP program. NSW Police and Charles Sturt

University commissioned a comprehensive review of the Constable Education Program (Diploma of Policing Practice) in August 2002. The purpose of the review is to:

- Examine whether the original intention of the DPP is still reflected in the current program
- Evaluate whether the program currently meets the needs of Local Area Commands of the NSW Police and other identified stakeholders
- Report on the outcomes of the review

The terms of reference and action plan of the review have been forwarded to the Deputy Commissioner, Support, the PIC, the NSW Ombudsman and SCIA. A meeting between the leaders of the NSW Police DPP review team, members of SCIA and the PIC was held at the PIC on 4 November 2002. Representatives of the Ombudsman's Office were invited but were unable to attend. At this meeting the review was discussed with reference to the study of ethics and the issues outlined in the attached papers. The PIC indicated that they would brief the Assistant Ombudsman (Police) and provide his office with copies of the papers discussed at the meeting.

The DPP review will make recommendations regarding the formation, roles and responsibilities of the CRTs in its final report. NSW Police Education Services will forward copies of the report to the PIC, the NSW Ombudsman and SCIA when available.

Shortened Recruit Training

8. Will the 31 week recruit training program be retained as the standard entry into NSW Police?

The 31 weeks of recruit training prior to attestation constitutes only part of the Constable Education Program. Following attestation, recruits continue structured on the job training as probationary constables and undertake other subjects by distance education for a further 12 months. Successful completion of the probationary year and all Constable Education Program subjects leads to confirmation of the rank of constable.

As part of the DPP review, a number of models and subsequent recommendations regarding the recruit training program are being developed for consideration by the course committee. The review is engaging educational experts to debate the merits of these models and provide advice to the review team.

APPENDIX 5

LIST OF JUDICIAL INQUIRIES AND OTHER REPORTS INTO POLICE MISCONDUCT AND POLICE CORRUPTION

Year	Title of Report
1867	Report of the Commissioners appointed to inquire into the State of Crime in the Braidwood District
1879	CIB formed
1892	Report of the Royal Commission on Alleged Chinese Gambling and Immorality and Charges of Bribery Against Members of the Police Force.
1918	Inquiry under the <i>Police Inquiry Act 1918</i> (into the conviction of the Industrial Workers of the World)
1920	Royal Commission of Inquiry into the Matter of the Trial and Conviction and Sentences Imposed on Charles Reeve and Others.
1936	Report of the Royal Commission of Inquiry into Allegations against the Police in connection with the Suppression of Illicit Betting
1937	– a further report of the above RC
1938	– another further report
1954	Report of the Royal Commission on Liquor Laws in NSW
1954	Report of the Royal Commission of Inquiry into certain matters relating to David Edward Studely-Ruxton
1973	Royal Commission into Allegations of Organised Crime on Clubs in NSW.
1977	Report on the Inquiry into the Legalising of Gambling Casinos in NSW
1978	NSW Ombudsman Investigation of Alleged police involvement in tow truck rackets
1979	Report of the Royal Commission into Drug Trafficking (Woodward)
1981	Report of Commission to Inquire into NSW Police Administration (Lusher)
1983	Royal Commission of Inquiry into Drug Trafficking (Stewart, 'Mr Asia Royal Commission')
1983	Royal Commission of Inquiry into Certain Committal Proceedings against KE Humpheries
1983	Report of the NSW Ombudsman concerning the affairs of the Parramatta Police Citizens Boys' Club
1986	Report of the Special Commission of Inquiry into the Police Investigation of the Death of Donald Bruce Mackay
1986	Royal Commission of Inquiry into Alleged Telephone Interceptions
1987	Ombudsman's Special Report to Parliament – The first three years of the NSW Police Complaints System
1989	NSW Ombudsman's Special Report to Parliament – Inadequate Training and procedures of the Special Weapons Operations Unit (shooting of David Gundy)
1989	– ICAC report on the investigation on the Raid on Frank Hakim's Office
1990	Royal Commission of Inquiry into the Arrest, Charging and Withdrawal of Charges against Harold James Blackburn and Matters Associated

1990	Ombudsman's Special Report to Parliament – Failure of the Commissioner of Police to take satisfactory action in relation to previous recommendations of the Ombudsman concerning a review of the Special Weapons and Operations squad procedures and instructions
1990	Report of the Police Tribunal of NSW into Certain Matters Relating to Discipline in the Police Force (shooting of David Brennan)
1990	ICAC report on investigation into harassing phone calls made to Edgar Azzopardi
1991	ICAC report into Sutherland Licensing Police
1991	ICAC report on investigation into police and truck repairers
1991	Ombudsman's Special Report to Parliament – Report on the role of the Ombudsman in the management of complaints against police
1992	ICAC - secondary employment of police officers
1992	NSW Police Service Internal Affairs Branch – Complaints against NSW Police: A discussion of the scale, nature and trends of allegations against NSW Police 1987-91.
1993	ICAC report on Investigation into the use of informers
1993	Ombudsman's Special Report to Parliament – Inquiry into the circumstances surrounding the injuries suffered by Angus Rigg in police custody and into the subsequent police investigations
1994	ICAC Milloo reports 1 & 2 released 'Investigation into the relationship between police and criminals
1994	Ombudsman Report on Improper Access and Use of Confidential Information by Police is released.
1994	ICAC Report on Investigation into matters relating to police and confidential information
1994	ICAC Interim report on investigation into Alleged Police Protection of Paedophiles
1994	Ombudsman's Special Report to Parliament – Police Conciliation: towards progress
1995	The Bennett Review of NSW Police Service Internal Informers Policy
1995	Ombudsman's Report – Police Internal Investigations: poor quality investigations into complaints of police misconduct
1995	Ombudsman's Report – Race relations and our police
1995	NSW Ombudsman Report – NSW Police Complaints System
1995	NSW Ombudsman's Report – Confidential Information and Police
1996	Royal Commission into the New South Wales Police Service Interim Report released (Wood Royal Commission)
1996	NSW Ombudsman's Special Report to Parliament Police Conciliation: an update
1996	NSW Ombudsman's Special Report to Parliament Police and Insurance Investigators
1996	ICAC report on the Charter of Aircraft by Police Air Wing
1997	NSW Ombudsman's Special Report to Parliament – Conflict of Interest

1997	NSW Ombudsman's Special Report to Parliament – Alison Lewis and Lithgow Police
1998	NSW Ombudsman's Special Report to Parliament – Police Adversely Mentioned at the Police Royal Commission
1998	NSW Ombudsman's Special Report to Parliament – Risk Assessment of Police Officers
1998	Police Integrity Commission Report to Parliament – Operation Jade
1998	Police Integrity Commission Report to Parliament – Regarding the former Special Branch of the NSW Police Service
1999	NSW Ombudsman's Special Report to Parliament – The Policing of Domestic Violence in NSW Report
1999	– NSW Ombudsman's Special Report to Parliament – Loss of Commissioner's Confidence
1999	– NSW Ombudsman's Special Report to Parliament – The Norford Report
1999	NSW Ombudsman's Special Report to Parliament – Officers Under Stress
1999	Police Integrity Commission Report to Parliament – Operation Warsaw
2000	Ombudsman's Special Report to Parliament – police and Improper Use of E-Mail
2000	Police Integrity Commission Report to Parliament – Project Dresden
2000	Police Integrity Commission Report to Parliament – Operation Glacier
2000	Police Integrity Commission Report to Parliament – Operation Belfast
2000	Police Integrity Commission Report to Parliament – Project Oracle
2000	Police Integrity Commission Report to Parliament – Operations Copper, Triton, Nickel
2000	Police Integrity Commission Report to Parliament – Operation Algiers
2001	Police Integrity Commission Report to Parliament – Operation Pelican
2001	Police Integrity Commission Report to Parliament – Operation Olso
2001	Police Integrity Commission Report to Parliament – Operation Saigon
2001	Qualitative and Strategic Audit of the Reform Process (QSARP) of the NSW Police Service – Year 1 (March 1999 – March 2000)
2002	NSW Ombudsman's Special Report to Parliament – Improving the management of complaints: Police complaints and repeat offenders.
2002	NSW Ombudsman's Special Report to Parliament – Improving the management of complaints: identifying and managing officers with complaint histories of significance
2002	NSW Ombudsman's Special Report to Parliament – Improving the management of complaints: assessing police performance in complaint management
2002	NSW Ombudsman's Special Report to Parliament – Speedometers and speeding fines: a review of police practice
2002	Qualitative and Strategic Audit of the Reform Process (QSARP) of the NSW Police Service – Year 2 (July 2000 – June 2001)

APPENDIX 6
FLOW CHART FROM NSW OMBUDSMAN'S ANNUAL REPORT 2001-2002