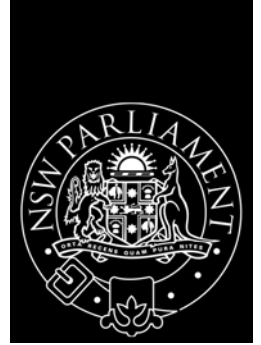


PARLIAMENT OF NEW SOUTH WALES



Committee on the Office of the Ombudsman and the Police Integrity Commission

REPORT ON THE TENTH GENERAL MEETING WITH THE POLICE INTEGRITY COMMISSION

Together with Questions on Notice,
Transcript of Proceedings and Minutes

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Functions of the Committee

The Committee on the Office of the Ombudsman and the Police Integrity Commission is constituted under Part 4A of the *Ombudsman Act 1974*. The functions of the Committee under the Ombudsman Act are set out in s.31B(1) as follows:

- to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;
- to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

These functions may be exercised in respect of matters occurring before or after the commencement of this section of the Act.

Section 31B(2) of the Ombudsman Act specifies that the Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- to exercise any function referred to in subsection (1) in relation to any report under section 27; or
- to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or
- to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the *Telecommunications (Interception) (New South Wales) Act 1987*.

The Committee also has the following functions under the *Police Integrity Commission Act 1996*:

- to monitor and review the exercise by the Commission and the Inspector of their functions;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the

Functions of the Committee

exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;
- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and
- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The Act further specifies that the Joint Committee is not authorised:

- to investigate a matter relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or
- to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The Statutory Appointments (Parliamentary Veto) Amendment Act, assented to on 19 May 1992, amended the Ombudsman Act by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the Ombudsman Act provides:

- The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- A referral or notification under this section is to be in writing.
- In this section, a reference to the Minister is;
 - in the context of an appointment of Ombudsman, a reference to the Minister administering section 6A of this Act;
 - in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the *Director of Public Prosecutions Act 1986*; and

in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*.

Chair's Foreword

This report on the Tenth General Meeting with the Police Integrity Commission was the first opportunity for the Committee to exercise its oversight role since the commencement of the 54th Parliament. The General Meetings are a valuable tool for the Committee to perform its work of monitoring and reviewing the functions of the Police Integrity Commission. As the General Meetings are public hearings, this adds to the accountability and transparency of the oversight work conducted by the Committee.

A number of issues arose from the General Meeting, in particular the ability of the Commission to oversight police investigations and early intervention systems for police officers at risk of corruption.

During the course of the Inspector's Eighth General Meeting with the Committee on 8 November 2007, the Inspector raised the issue of the Commission's ability to oversight police investigations under sections 13(4) and 13(5) of the *Police Integrity Commission Act 1996*. The Committee takes very seriously any suggestion that the Commission's powers are not adequate for its functions and this matter was raised with the PIC Commissioner at the Tenth General Meeting. The Committee was pleased to learn that the Commissioner considers the powers currently available under the Act are sufficient and that the Commission's self-referral powers would be an appropriate way to correct any potential deficiencies in the Commission's oversight powers.

In 2002 the then Committee recommended as part of its *Trends in Police Corruption* report, that the NSW Ombudsman, the PIC and the then NSW Police consider developing a system that would identify officers vulnerable to corruption. This matter has been in development since this time. During the Tenth General Meeting, the Commissioner discussed the role of the Commission in assisting NSW Police Force (NSWPF) to develop an early intervention system, but particularly noted that NSWPF must demonstrate their commitment to such a project by taking ownership of it.

The Committee endorses the position of the Commission in relation to this matter. If NSWPF are to develop, implement and maintain a meaningful early intervention system, they must embrace the initiative. A number of other Australian law enforcement agencies have implemented or are beginning to design early intervention systems and early intervention systems are also a reasonably common feature of a number of American and Canadian police agencies. The Committee has resolved to undertake a comparative study of such systems in order to identify the key features that would be most appropriate for NSWPF.

Finally I would like to thank the Members of the Committee for their participation in the General Meeting and their contribution to the reporting process. The Committee's report is a consensus document which represents the bipartisan and constructive approach taken by Members of the Committee to the exercise of its oversight role.



Angela D'Amore
Chair

Chapter One - Commentary

- 1.1 On 18 March 2008, the Committee conducted the Tenth General Meeting with the Commissioner of the Police Integrity Commission and his executive officers. This meeting was the first meeting between the Committee and the Commissioner for the 54th Parliament following both the March 2007 election.
- 1.2 As part of the process of preparing for the General Meeting, the Committee sent questions on notice to the Commissioner about matters raised in the Commission's most recent Annual Report as well as the Annual Report for the year ending 2005-2006. The responses to the questions on notice can be found at Chapter Three of this report.
- 1.3 Evidence was taken from the Commissioner and his officers on the afternoon of 18 March 2008 in relation to the Annual Report for 2006 – 2007, as well as the Annual Report for 2005-2006. The Committee's examination also included questions about current issues relevant to the Commission's jurisdiction. The commentary that follows focuses on a number of issues discussed with the Commissioner and his executive officers at the General Meeting, in particular the ability of the Commission to oversight police investigations, monitoring the execution of search warrants, early intervention systems for police officers at risk of corruption and policing at APEC.

JURISDICTIONAL ISSUES RAISED BY THE PIC INSPECTOR DURING THE EIGHTH GENERAL MEETING

- 1.4 During the course of the Inspector's Eighth General Meeting with the Committee on 8 November 2007, the Inspector raised the issue of the Commission's ability to oversight police investigations under sections 13(4) and 13(5) of the *Police Integrity Commission Act 1996*. Section 13(4) defines 'overseeing' as 'a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it.' Section 13(5) states that 'In managing or overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such management or oversight is to be achieved by agreement. However, it is the duty of members of the NSW Police Force to co-operate with the Commission in the exercise of its management and oversight functions and any other functions of the Commission.'
- 1.5 The Inspector gave evidence that he was of the opinion that current ability of the Police Integrity Commission to oversight police investigations was 'somewhat limited'¹. The Inspector stated:

...in my opinion the power of the Police Integrity Commission to oversight a relevant police investigation is unduly limited by the terms of the relevant section and certainly cannot be compared to the extent of the powers in that regard that the Ombudsman has under Part 8A of the Police Act.²

¹ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Eighth General Meeting with the Inspector of the Police Integrity Commission*, 8 November 2007, p 25.

² Committee on the Office of the Ombudsman and the Police Integrity Commission, *Eighth General Meeting with the Inspector of the Police Integrity Commission*, 8 November 2007, p 26.

Commentary

- 1.6 However the Inspector also stated that his opinion was formed on the basis of one complaint overlooked by the Commission. The complainant in that particular case complained to the Inspector about the time taken to complete the investigation into his complaint. The Inspector concluded that there was no substance to the complaint and that the outcome of the investigation was correct. The Inspector gave evidence that he had not discussed the limitations on the Commission's oversight capacity with the Police Integrity Commissioner, but that during correspondence regarding this particular complaint, the Commissioner did not seem to view it as a problem.
- 1.7 The Committee takes very seriously any suggestion that the Commission's powers are not adequate for its functions. As the Inspector brought this serious matter to the attention of the Committee, the Committee considered that it should be raised with the PIC Commissioner at the Tenth General Meeting. The Commissioner gave evidence in relation to the Inspector's comments and stated that:
- ...the Commission is more than satisfied that its powers in the area of oversight are sufficient. We oversee a very small number of complaints in any event and the Ombudsman has a more onerous or, I suppose, a greater breadth of powers in that area. That is reflective of the Ombudsman's role, in that he oversees most of the complaints that are actually investigated by the police and, unlike the Commission, does not really have a capacity to take on the investigation itself.
- 1.8 Further, the Commissioner gave evidence that if the Commission was not satisfied with the progress of a matter undertaken by NSW Police that they were overlooking, the Commission has the power to step in and take over the investigation.
- 1.9 The Committee views the self-referral powers of the Commission to be an appropriate means to address any potential deficiencies in their oversight powers. However should the Commission raise any concerns with the Committee regarding their ability to oversee police complaints, the Committee will act to ensure that the Commission's powers are appropriate for their functions.

MONITORING THE FLORIDA WARRANTS ISSUE

- 1.10 Two of the recommendations arising from the Commission's Operation Florida covered the use of cameras during the execution of search warrants and raising the level of supervision by Local Area Commanders occasionally accompanying officers executing search warrants. In their response to questions on notice, the Commission advised that despite requests, NSWPF has not proposed alternative strategies as to how the outcomes envisaged by these recommendations might be achieved. The response then noted that the Commission proposed no further action in relation to either recommendation.
- 1.11 During the General Meeting, in response to a question about this matter, the Commissioner and the Director of Intelligence and Executive Services noted how NSWPF had failed to engage broadly on the issues addressed by the recommendations regarding the execution of search warrants. Evidence was given that the recommendations got caught up in internal reviews and examinations of the duty inspector's obligations in local area commands. It became a lengthy and involved process, and the Commission did not make the progress it felt could have been achieved in this area. The Commissioner and the Director of Intelligence and Executive Services gave evidence that while it was decided not to take further action to progress these two recommendations, the execution of search warrants is still considered an area for misconduct risk. One way the Commission proposes to do

further work in this area is to conduct project work examining compliance by police with their own search warrant policies and procedures.

EARLY INTERVENTION SYSTEMS

- 1.12 In 2002 the Committee on the Office of the Ombudsman and Police Integrity Commission recommended as part of its *Trends in Police Corruption* report, that the NSW Ombudsman, the PIC and NSW Police consider developing a system that would identify officers vulnerable to corruption.
- 1.13 The report noted early intervention or warning systems as a particular initiative being developed by a number of policing organisations around the world. Early warning systems have evolved from the theory that corruption is a 'slippery slope' that begins as a series of small acts which then escalate. Evidence from the Royal Commission into NSW Police as well as numerous PIC inquiries supports this theory. If officers committing these small acts can be identified, then it should be possible to assist them before any escalation occurs.
- 1.14 In 2003 the Ombudsman, PIC and NSW Police began developing an early intervention system to be used by NSW Police. This built on work already undertaken by the Ombudsman in their report *Improving the management of complaints: identifying and managing officers with complaint histories of significance*, the PIC in their research project *Project Oracle* and NSWPF in a series of research projects into complaints outcomes and officers at risk.
- 1.15 However by 2004-2005, NSWPF had deferred the development of an early intervention system in favour of a process known as an Officer Risk Assessment (ORA). The PIC reported on this in their 2004-2005 Annual Report and noted that there was a fundamental difference between an early intervention system and an officer risk assessment. Early intervention systems seek to identify potential officers of interest through a combination of observations from managers and 'warning flags' generated through a computer system. The ORA was intended as a risk management tool relying entirely on the observations of managers.
- 1.16 Following a trial of the ORA, and ongoing discussions over a lengthy period between the PIC, the Ombudsman, the Police Association and the NSWPF concerning the efficacy of the ORA as an early intervention system, NSWPF advised the PIC in April 2007 that the ORA would be discontinued in favour of the development of a new model.
- 1.17 In July 2007, a multi-agency forum made up of the NSWPF, the Police Association, the PIC and the Ombudsman was convened to discuss issues relating to establishing an early intervention system. The intended outcome of the forum was to inform any future decision-making within the NSWPF on the next stage in the development of an early intervention system. The PIC had prepared a paper detailing the purpose and underlying assumptions of an early intervention system and the process by which such a system might be developed, evaluated and monitored.
- 1.18 The basic idea of an early intervention system is that law enforcement agencies use data on officers with problematic performance, mainly identified through their complaints histories, as a management tool to address bad performance before it worsens. An early intervention system should not be solely confined to a data base of complaints; rather it should be a holistic management system whereby an officer identified by the early intervention system has their particular situation assessed and

Commentary

the issues arising addressed by the organisation. An early intervention system is designed to prevent misconduct and assist officers rather than punish or discipline them. It is built around a series of indicators, such as the number of complaints and the amount of sick leave taken, rather than using personality traits in an attempt to assess an officer's likelihood of becoming corrupt.

- 1.19 During the Tenth General Meeting, the Commissioner discussed the role of the Commission in assisting NSWPF to develop an early intervention system. The Commissioner noted that while the Commission has been developing expertise in this area, NSWPF must demonstrate their commitment to such a project by taking ownership of it.
- 1.20 The Committee endorses the position of the Commission in relation to this matter. If NSWPF are to develop, implement and maintain a meaningful early intervention system, they must embrace the initiative. A number of other Australian law enforcement agencies including Western Australian Police, South Australian Police and Victoria Police have implemented or are beginning to design early intervention systems. Early intervention systems are also a reasonably common feature of a number of American and Canadian police agencies. The Committee has resolved to undertake a comparative study of such systems in order to identify the key features that would be most appropriate for NSWPF. It is intended that public hearings will be held later in 2008 to gather further information on early intervention systems.

APEC AND POLICING

- 1.21 Evidence was also taken into allegations of police misconduct during APEC in 2007, specifically that police removed their identification badges. While noting that this was the type of issue the Ombudsman would deal with, the Commissioner gave evidence that they had received no complaints in relation to policing during APEC. Further, the Commissioner stated that there is nothing in the APEC powers that would inhibit or prevent the Commission from investigating a complaint or allegation that may involve the abuse of those powers.

Chapter Two - Questions on Notice

POLICE INTEGRITY COMMISSION ANNUAL REPORT 2005-2006

Matters arising from the Report on the Ninth General Meeting with the Police Integrity Commission

Assistant Commissioner

The previous Committee raised a number of concerns with the previous PIC Commissioner regarding the position of Assistant Commissioner. The previous Commissioner described the ongoing status of the vacant Assistant Commissioner position as a matter for the next Commissioner. What is the opinion of the new Commissioner regarding the position of Assistant Commissioner?

Early Warning System

The previous Committee had noted the Commission's advice that work on the Early Warning System for identifying and assisting vulnerable police officers was awaiting NSW Police's decision regarding its preferred risk assessment model. Has work on the Early Warning System resumed and what risk assessment model did NSW Police decide was most appropriate for their needs?

Matters arising from the Commission's Annual Report 2005-2006

Drug testing

The Annual Report noted that \$1million had been allocated to NSW Police to implement the recommendations arising from Operation Abelia concerning increased drug testing. Has NSW Police implemented the recommendation to increase drug testing? How much more testing does NSW Police now do compared to its previous level of testing?

Corporate Objective and Performance Measurement Framework

Has the Commission completed the Corporate Plan and Performance Measurement Framework for the period 2007-2010?

Have the measures changed since the previous Plan?

Are there linkages between this document and other planning documents such as the Commissioner's Results and Services Plan?

Performance Overview 2005 – 2006

Exposure Outcomes (p6)

In the section of the Annual Report called Exposure Outcomes, the Commission noted that public hearings were conducted for one out of 21 major investigations that were open during the reporting year. The Output Measure: Number of public hearing days for this section was a target of 40 days. The Result was 3 days of public hearings. Has the Commission ever

Questions on Notice

had 40 days of public hearings in one reporting period? Has the Commission thought to reconsider this target figure?

Addressing Serious Police Misconduct Outcomes (p8)

This section of the Annual Report discusses action NSW Police has taken against officers following Commission recommendations for removal or managerial action.

The Outcome Measure: The proportion of recommendations relating to managerial action that are accepted by NSW Police has a target of 80% and a result rate of 100%. What does the term 'accepted' mean here and does an accepted recommendation always translate into the action recommended by the Commission?

Is the Commission aware of any instances where police officers recommended for removal under s181D following a Commission investigation have in fact been retained by NSW Police and/or subsequently promoted?

Corporate matters

Code of Conduct

Has the new code of conduct been adopted?

Summary Review of Operations

Operation Cassava (p18)

Have the strategies to clarify and strengthen the NSW Police secondary employment policy provided by the Commission been taken up by NSW Police in their new secondary employment policy?

Operation Vail (p21)

What was the result of the Commission's evaluation of the training and education proposed by NSW Police regarding systems for the control and management of interception material and the disclosure of telecommunications interception material?

Tracking the Commission's Recommendations

Operation Abelia

Have NSW Police discontinued the amnesty for police who disclose drug problems (p26)? What policy is NSW Police now pursuing in relation to drug use by police?

The Annual Report notes that NSW Police aimed to increase the number of random drug tests from between 500 – 600 each year to 2250 tests in the year 2006-2007 (p 27). Has this occurred? What number of officers failed the test? What has happened to these officers?

Operation Whistler

Has Recommendation 4 regarding the definition of serious injury been finalised (p30)?

Has any clarification of NSW Police training regarding note-taking and statement preparation, as outlined in Recommendation 7 (p30), been forthcoming?

Operation Florida

In relation to the use of cameras during the execution of search warrants (p31) and raising the level of supervision by Local Area Commanders occasionally accompanying officers executing search warrants (p31), has any further advice been received from NSW Police on their actions in relation to these recommendations?

Initiatives/other activities

Early Intervention Processes

What is the status of the Officer Risk Assessment process?

POLICE INTEGRITY COMMISSION ANNUAL REPORT 2006-2007

Exposure Outcomes

The PIC's exposure outcomes are detailed on page 11 of the Annual Report. The Output Measure Target is 40 days and the Result is 4 days. Is there any particular reason as to why public hearings days fell from 40 during 2005-2006 to 4 during this reporting period? Is it proposed to adjust the target for Exposure Outcomes as a result?

Plans for 2007-2008

Has the Commission finalised its strategic directions and published its Corporate Plan and Performance Measurement Framework for 2007-2011?

The third of the plans for 2007-2008 is "Objective criteria will be used to select new investigations consistent with the Commission's strategic direction." Has the Commission formulated a set of criteria and what standards were used to determine their objectiveness?

Summary of Operations

In both Operations Oxide and Rustin officers central to the Commission's investigations who were being considered for dismissal from NSW Police under s181D of the Police Act 1990 were medically discharged.

The previous Committee noted that of the 27 former and serving officers the Commission recommended for dismissal or referred to the DPP for prosecution arising from Operation Florida, 11 had received medical discharges. Of these 11 officers, 8 received medical discharges after the Commission had commenced their investigation.

Does the Commission consider this to be a trend?

Development of an Early Intervention System

Does the Commission have any further developments to report in terms of the options presented by NSW Police to the Police Commissioner's Executive Team with regard to early intervention systems?

Key developments during 2006-2007

Has increased random drug testing by NSW Police resulted in a larger number of officers being found to be using drugs (page 36)?

Has drug testing of students at the NSW Police College resulted in any positive tests?

Start made during the year

Has the brochure NSW Police Force: A Lifestyle Change been printed and disseminated to applicants wishing to join NSW Police (page 37)?

Oversight from beyond the Command

Has the Commission received the plan for the inspection and audit of the Anti-Terrorism and Security Group (formerly the Counter Terrorism Coordination Command) (page 40)?

Has the Deputy Commissioner, Specialists Operations conducted their first inspection and audit of the Anti-Terrorism and Security Group? If not, when is this inspection and audit likely to occur?

Will ongoing copies of the audit reports be provided to both the Minister for Police and the Commission?

Operation Cassava

Has NSWSP finalised its secondary employment policy (page 41)?

How did NSWSP determine applications for secondary employment while the current policy was being developed?

Have the Commission's suggestions regarding the policy in relation to the application process, the approvals process, recording keeping of decisions and the definition of high risk employment been incorporated into the policy?

Operation Florida

Did NSWSP give any reasons for not implementing the recommendations arising from Operation Florida in relation to improving the cameras with which the execution of search warrants is filmed, and increasing the level of supervision while search warrants are conducted (page 41)?

Complaints activity

How does the Commission identify reports into police investigation of complaints for review (page 43)?

Code of conduct

Has the Commission's new code of conduct been distributed? Could the Commission provide the Committee with a copy (page 53)?

Matters arising from previous Committee Inquiries

Ten Year Review of the Police Oversight System

Recommendation 11 of this inquiry stated that the PIC and the Ombudsman should be able, for the purposes of carrying out their functions, to access records relating to local management issues raised about police officers. Is the Commission able to do so?

The Committee recommended that the PIC consider making greater use of its statutory functions at s 13(1)(a) and s 14(a), (c) and (d) of the Police Integrity Commission Act 1996 for the purpose of drawing attention to areas of police conduct and operations that would benefit from corruption resistance strategies and specific corruption prevention initiatives (Recommendation 12). Has the Commission considered this recommendation?

At Recommendation 13, the Committee recommended that the PIC consult with the Independent Commission Against Corruption in regard to corruption prevention and education programs that may be of particular relevance to NSW Police and explore the potential for cooperative efforts between the PIC and the ICAC in this area. Have any discussions between the Commission and the ICAC occurred in this regard?

Recommendation 14 of the inquiry dealt with the issue of funding and resourcing for anti-corruption programs. Has the Commission sought supplementary funding for any such activities?

Matters arising from the Committee's Eighth General Meeting with the Inspector of the Police Integrity Commission

During the Committee's Eighth General Meeting, the Inspector of the Police Integrity Commission questioned the Commission's legislative powers to oversight the investigation of complaints and contrasted those powers with the powers provided to the Ombudsman under Part 8A of the Police Act 1990. Specifically the Inspector said:

...in my opinion the power of the Police Integrity Commission to oversight a relevant police investigation is unduly limited by the terms of the relevant section and certainly cannot be compared to the extent of the powers in that regard that the Ombudsman has under Part 8A of the Police Act.

What is the Commission's opinion of this assessment? Does the Commission consider legislative amendment necessary?

The Inspector also observed that the Commission:

...is at least ten years old and a lot has happened in those last ten years, as we all know, so possibly at some stage it would be useful for the function and the role of the Police Integrity Commission to be looked at.

What is the Commission's opinion of this observation?

Chapter Three - Answers to Questions on Notice

POLICE INTEGRITY COMMISSION ANNUAL REPORT 2005-2006

Matters arising from the Report on the Ninth General Meeting with the Police Integrity Commission

Assistant Commissioner

The previous Committee raised a number of concerns with the previous PIC Commissioner regarding the position of Assistant Commissioner. The previous Commissioner described the ongoing status of the vacant Assistant Commissioner position as a matter for the next Commissioner. What is the opinion of the new Commissioner regarding the position of Assistant Commissioner?

By way of clarification it is assumed that the question refers to the internal staff position of Assistant Commissioner left vacant since early 2004.

Based on observations and experience to date, while it has not been formally disestablished, it is not anticipated that this position will be filled in the foreseeable future.

Pursuant to section 8 of the PIC Act the former Commissioner appointed Mr Andy Nattress, the Director, Operations as an Assistant Commissioner and pursuant to section 11 delegated certain functions and powers to him in that capacity. That appointment and associated delegation continues in order to assist with the discharge of the Commission's functions and exercise of powers. Mr Nattress does not however occupy or hold the internal position titled as Assistant Commissioner.

Early Warning System

The previous Committee had noted the Commission's advice that work on the Early Warning System for identifying and assisting vulnerable police officers was awaiting NSW Police's decision regarding its preferred risk assessment model. Has work on the Early Warning System resumed and what risk assessment model did NSW Police decide was most appropriate for their needs?

The Commission's advice to the previous Committee in 2006 indicated that the NSW Police Force had deferred the development of an Early Warning System (now commonly referred to as an Early Intervention System, in line with current research and practice) in favour of a separate process, the Officer Risk Assessment process (ORA).

Since this advice was provided to the Committee, the NSWPF engaged with the Commission, the NSW Ombudsman and the Police Association of NSW in ongoing discussions regarding the efficacy of the ORA as an early intervention system. As a result of these discussions, the NSWPF advised the Commission in April 2007 that the ORA process would be 'retired' in favour of a new model.

Following this decision, work has resumed on developing an Early Intervention System. In July 2007, a multi-agency forum involving the agencies mentioned above was convened to discuss foundational issues and to assist the NSWPF in any future decision making relating to developing and implementing an early intervention system. Subsequent to this forum, the Professional Standards Command (PSC) produced a position paper on officer risk management ultimately intended for the consideration of the Commissioner's Executive Team (CET).

At the time of writing, the Commission was involved in discussions with the NSWPF and the other stakeholders about the advice and recommendations to be provided to the CET. The Commission remains of the view that the adoption of an Early Intervention System by NSWPF would represent a valuable contribution to the prevention of police misconduct.

A more updated position on the EIS is set out in response to questions on notice as part of the review of the 2006-2007 Annual Report.

Matters arising from the Commission's Annual Report 2005-2006

Drug testing

The Annual Report noted that \$1million had been allocated to NSW Police to implement the recommendations arising from Operation Abelia concerning increased drug testing. Has NSW Police implemented the recommendation to increase drug testing? How much more testing does NSW Police now do compared to its previous level of testing?

Yes. The NSWPF has increased its random drug testing. Recall to duty targeted drug testing and targeted non-prescribed steroid testing have yet to commence. These two additional forms of targeted drug testing are incorporated in the new Drug and Alcohol Policy and are scheduled to be available for use following training.

Please see the responses to the questions regarding Operation Abelia for further information.

Corporate Objective and Performance Measurement Framework

Has the Commission completed the Corporate Plan and Performance Measurement Framework for the period 2007-2010?

The Commission has completed its Corporate Plan for 2007-2011³ and it was released to the public in December 2007. A copy of the plan is attached for your information.

The Corporate Plan is the performance measurement framework for the Commission.

³ Can be downloaded from <www.pic.nsw.gov.au/CorporatePlan.aspx?Culture=en-AU>

Have the measures changed since the previous Plan?

Yes. The measures in the Corporate Plan have changed, which was necessary because it contains new objectives. The new measures will allow the Commission to effectively measure its progress in relation to meeting the new objectives.

The Commission intends to report on the measures in future annual reports.

Are there linkages between this document and other planning documents such as the Commissioner's Results and Services Plan?

Yes. There are a number of linkages between the Corporate Plan and the draft Results and Services Plan for the period of 2008-2009 (RSP). The linkages include:

- The Commission's vision of "public confidence in the Integrity of the NSW Police Force" is a planned result in the RSP.
- Key Goals 1 and 2 of the Corporate Plan are planned results in the RSP.
- The objectives identified in Key Goals 1 and 2 of the Corporate Plan are identified as intermediate results in the RSP.
- A number of indicators in Key Goals 1 and 2, or slight variations of, are identified as result indicators in "Table B: Results Indicators Table" of the RSP.

Performance Overview 2005 – 2006*Exposure Outcomes (p6)*

In the section of the Annual Report called Exposure Outcomes, the Commission noted that public hearings were conducted for one out of 21 major investigations that were open during the reporting year. The Output Measure: Number of public hearing days for this section was a target of 40 days. The Result was 3 days of public hearings. Has the Commission ever had 40 days of public hearings in one reporting period? Has the Commission thought to reconsider this target figure?

Details of the Commission's private and public hearing days since the Commission's establishment are set out below.

Financial Year	Number of Private Hearing Days	Number of Public Hearing Days	Total Hearing Days
July 1, 2006 – June 30, 2007	38	4	42
July 1, 2005 – June 30, 2006	40	3	43
July 1, 2004 – June 30, 2005	34	26	60
July 1, 2003 – June 30, 2004	35	17	52
July 1, 2002 – June 30, 2003	55	28	83
July 1, 2001 – June 30, 2002	35	105	140
July 1, 2000 – June 30, 2001	72	46	118
July 1, 1999 – June 30, 2000	52	24	76
July 1, 1998 – June 30, 1999	33	61	94
July 1, 1997 – June 30, 1998	30	28	58

The Commission's recently adopted corporate plan for 2007-2011 does not use a target of public hearing days as a measure of performance.

Addressing Serious Police Misconduct Outcomes (p8).

This section of the Annual Report discusses action NSW Police has taken against officers following Commission recommendations for removal or managerial action.

The Outcome Measure: The proportion of recommendations relating to managerial action that are accepted by NSW Police has a target of 80% and a result rate of 100%. What does the term 'accepted' mean here and does an accepted recommendation always translate into the action recommended by the Commission?

Where the Commission conducts a public hearing it is required to include in a s96(2) report, amongst other things, a statement as to whether or not consideration should be given to the taking of action under s181D (loss of confidence) or s173 (reviewable and non-reviewable action) of the *Police Act 1990* in regard to each "affected person" who is a police officer. This action can be broadly categorised as 'managerial action'.

Managerial action also arises from Commission investigations other than on the basis of a recommendation contained in a s96 (2) report. For example, action may be taken on the basis of information disseminated to NSWPF following Commission investigations where no public hearings have been conducted. Action may also be taken prior to the completion of a Commission investigation in the face of strong evidence and/or admissions in public hearings.

Based on advice from the Committee Manager, it is understood that the Committee is principally interested here in the outcome of Commission recommendations that consideration be given to action under s181D that have been made in s96(2) reports, as distinct from: managerial action more broadly; and, s181D action arising from a Commission investigation where no public hearing has occurred.

Turning to the question, the term 'accepted', in this context, means that the Commissioner of NSWPF has agreed to induct the officer, who is the subject of the recommendation, into the s181D NSWPF processes with a view to making a decision about subsequent action.

The extent to which accepted recommendations for s181D "*translate into the action recommended*" is somewhat complicated as the Commission often makes multiple recommendations in regard to a single officer for the same alleged misconduct. For example, the Commission might recommend consideration be given to s181D action and, should this action not be taken, then consideration be given to s173 action. Alternatively, the Commission might simply recommend that consideration be given to both s181 and s173 action in a single recommendation. The following table therefore details: the number of officers who have been the subject of a recommendation in a s96 (2) report that consideration be given to the taking of s181D action; the number of those officers that were also the subject of the alternative s173 recommendation; the number of those officers for whom managerial action has been finalised; and, the number dismissed from, or no longer in NSWPF.

Recommendation to consider 181D action	Recommendation to consider 173 action	Action finalised	Dismissed/No longer in NSWPF
18	12	16	11

Without additional research it is not possible to identify whether alternative action was taken in respect of those officers who remained in NSWPF. Nor can the Commission advise whether the officers remained on the basis of a decision made by the NSWPF, or, following legal intervention during or after a s181D process. Similarly, without further research, it is not possible to differentiate between officers the subject of a s181D recommendation that were dismissed, resigned or were medically discharged from NSWPF during the 181D process.

Is the Commission aware of any instances where police officers recommended for removal under s181D following a Commission investigation have in fact been retained by NSW Police and/or subsequently promoted?

Please see the table above.

The s181D process can be quite lengthy and complex and involves further investigation, assessment, the obtaining of legal advice and, potentially, legal action. The Commissioner is required in the process to give consideration to the full circumstances of the matter in the context of the history of the officer. The Commissioner must also give detailed consideration to any submissions made by the officer. The Commission, however, only considers the evidence of misconduct available when making a recommendation concerning s181D action. Given the variables involved in the subsequent consideration by the Commissioner of NSWPF, the options available, and the absence of a simple formula which can be applied in all circumstances, it is not surprising some officers who have been the subject of a recommendation concerning s181D action have remained in NSWPF.

As can be seen in the table above, five (5) officers who were the subject of a Commission recommendation concerning s181D action which has been finalised remain in NSWPF. One of these officers has since been promoted⁴. In February 2003 the Commission was advised that s181D action was not taken in respect of this officer on the basis of the age of the matters (the misconduct occurred in 1998), the nature of the supporting evidence, legal advice and the officer's otherwise demonstrated professionalism. This officer was subsequently promoted in mid-2007 to the rank of Sergeant.

Corporate matters

Code of Conduct

Has the new code of conduct been adopted?

Yes. A new Code of Conduct (Code) has been adopted and was released publicly in November 2007. Commission staff also participated in training related to the Code on 26 November 2007. A copy of the Code is attached for your information.

⁴ Does not include officers 'promoted' within the grade of constable.

Summary Review of Operations

Operation Cassava (p18)

Have the strategies to clarify and strengthen the NSW Police secondary employment policy provided by the Commission been taken up by NSW Police in their new secondary employment policy?

On the basis of its inquiries, in March 2006 the Commission suggested a number of strategies to clarify and strengthen the NSW Police Force's secondary employment policy in respect of: the application process, the approvals process, record keeping of decisions and the definition of high risk employment.

Subsequently, the Commission was informed by the NSWPF that the secondary employment policy was under review. At the time of writing, the policy remains to be finalised and a formal response to the Commission's proposed strategies is yet to be provided.

The Commission has provided comments and input to each iteration of the draft policy. Liaison with the NSWPF on this matter is ongoing.

Operation Vail (p21)

What was the result of the Commission's evaluation of the training and education proposed by NSW Police regarding systems for the control and management of interception material and the disclosure of telecommunications interception material?

In August 2006 the Commissioner of Police advised that a training and education package comprising face to face workshops and presentations on the use, disclosure and legal obligations in respect of telephone intercept material had been provided to Commanders and above, and various other NSWPF personnel. In addition, a state-wide telephone interception information package was developed and published in the Policing Issues and Practice Journal. The Commission is satisfied with the response by NSWPF.

Tracking the Commission's Recommendations

Operation Abelia

Have NSW Police discontinued the amnesty for police who disclose drug problems (p26)? What policy is NSW Police now pursuing in relation to drug use by police?

Yes, the NSWPF amnesty ceased on the 30 September 2007. The NSWPF is pursuing a 'zero tolerance' policy towards police drug use.

The Annual Report notes that NSW Police aimed to increase the number of random drug tests from between 500 – 600 each year to 2250 tests in the year 2006-2007 (p 27). Has this occurred? What number of officers failed the test? What has happened to these officers?

During 2006-2007, 2267 drug tests were conducted on randomly selected officers. This is a sizeable increase on the approximately 500-600 tests that had been conducted in previous years and consistent with the Commission's recommendation that testing be increased to 15% of total police officers and students.

While it is important to note that random drug testing is a technique to deter, rather than to detect illegal drug use, one officer did provide a positive random drug test. The Commission has not been informed what has happened to this officer.

Operation Whistler

Has Recommendation 4 regarding the definition of serious injury been finalised (p30)?

The definition of serious injury was finalised and been included in the NSWPF Critical Incident Guidelines released on 1 September 2006. The definition includes:

- life threatening injuries;
- an injury that would normally require emergency admission to a hospital and significant medical treatment
- an injury likely to result in permanent impairment or long term rehabilitation
- an injury that would constitute grievous bodily harm

Guidance is also provided to officers concerning the ongoing monitor and review of injuries, recording decisions about classifying an injury as 'serious', the basis on which such a decision was made, and reassessment of the incident should an injury subsequently not be 'serious'.

Has any clarification of NSW Police training regarding note-taking and statement preparation, as outlined in Recommendation 7 (p30), been forthcoming?

Yes, in August 2006 NSWPF provided the Commission with detailed references to relevant training material, guidelines and policies regarding note-taking and statement preparation. It is not presently proposed that this detailed material be reviewed at this time.

Operation Florida

In relation to the use of cameras during the execution of search warrants (p31) and raising the level of supervision by Local Area Commanders occasionally accompanying officers executing search warrants (p31), has any further advice been received from NSW Police on their actions in relation to these recommendations?

Neither recommendation was implemented during the 2006-2007 reporting year. Despite requests, NSWPF has not proposed alternative strategies as to how the outcomes envisaged by these recommendations might be achieved. The Commission proposes no further action in relation to either recommendation.

Initiatives/other activities

Early Intervention Processes

What is the status of the Officer Risk Assessment process?

Please see the response above concerning the Early Warning System.

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Exposure Outcomes

The PIC's exposure outcomes are detailed on page 11 of the Annual Report. The Output Measure Target is 40 days and the Result is 4 days. Is there any particular reason as to why public hearing days fell from 40 during 2005-2006 to 4 during the reporting period? Is it proposed to adjust the target for Exposure Outcomes as a result?

The reference in the question to the Commission holding 40 days of public hearing in 2005-2006 is an error. In its 2005-06 Annual report (at p6) the Commission identified a target of 40 public hearing days for that year in the context of evaluating its overall performance noting that it held 3 public hearing days during this period.

The Commission held 4 days of public hearing in 2006-07.

The Commission's recently adopted corporate plan for 2007-2011 does not use a target of public hearing days as a measure or evaluation of performance.

Plans for 2007-2008

Has the Commission finalised its strategic directions and published its Corporate Plan and Performance Measurement Framework for 2007-2011?

Yes. A copy of the Commission's Corporate plan for 2007-2011 is attached for your information.

The Corporate Plan is the performance measurement framework for the Commission.

The third of the plans for 2007-2008 is "Objective criteria will be used to select new investigations consistent with the Commission's strategic direction." Has the Commission formulated a set of criteria and what standards were used to determine their objectiveness?

In exercising its discretion as to whether or not to investigate a complaint or take some other action in relation to it such as overlooking or monitoring the complaint, the Commission assesses the complaint and the information in support against a set of criteria or factors including such matters as the nature of the conduct alleged, the currency or age of the alleged conduct and the relative seriousness of the alleged conduct. These criteria or factors, referred to as "priority setting criteria", are designed, as far as possible, to reduce the influence of individual or subjective opinions in order to support consistent and objective decision-making.

The investigation selection process usually comprises the following steps:

- A complaint is received or information is obtained which suggests serious police misconduct.

Answers to Questions on Notice

- Some level of research is generally conducted to assist in making a decision whether or not to investigate or oversight the matter.
- The complaint and the results of the research, information and intelligence, is considered and discussed by a 'complaints assessment team' in the context of the priority setting criteria referred to above. The team makes a recommendation to the Commissioner's delegate and/or the Commissioner.
- The delegate reviews the recommendation and makes a decision, also in the context of the priority setting criteria.
- Recommendations to undertake an investigation are normally referred for consideration by the Commission's Operations Advisory Group which makes a decision, again in the context of the priority setting criteria, but also taking into account the nature of other investigations already underway and available resources and capacity.

This process is constantly under review so as to ensure that appropriate matters are selected for investigation consistent with overall legislative functions and corporate objectives.

The Commission is not aware of any recognised "industry" standards against which these criteria may be assessed. The criteria and their use and application is however consistent with the approach taken by similar oversight agencies.

Summary of Operations

In both Operations Oxide and Rustin officers central to the Commission's investigations who were being considered for dismissal from NSW Police under s181D of the Police Act 1990 were medically discharged. The previous Committee noted that of the 27 former and serving officers the Commission recommended for dismissal or referred to the DPP for prosecution arising from Operation Florida, 11 had received medical discharges. Of these 11 officers, 8 received medical discharges after the Commission had commenced their investigation. Does the Commission consider this to be a trend?

The numbers noted are too few as to allow any informed conclusions or point to any clear trend. More importantly, there is insufficient information to determine whether or not there is any relationship between the Commission's investigation and the subsequent medical discharge. Specifically, the Commission is not aware whether the condition that consequently resulted in the medical discharge, commenced prior to or subsequent to the officer becoming aware of any Commission or NSWPF investigation into their conduct.

While the Commission maintains a database of prosecutions arising from Commission investigations, it does not maintain a database of other outcomes (such as resignation, medical discharge) for officers that come to the Commission's attention.

When considering the number of officers subject to a Commission investigation who are subsequently medically discharged it is important to note that, from the information supplied in recent NSWPF annual reports, it is clear that 'medically unfit' is by far the most common type or category of separation from the NSWPF for all former officers. In 2006-2007, for example, of the 780 police separations that occurred that year:

- 445 were categorised as 'medically unfit'
- 263 were resignations
- 24 were retirements
- 17 were dismissals
- 13 were transfers
- 10 were deaths
- 8 were s.181D removals (NSWPF Annual Report 2006-2007, p. 132).

'Medically unfit' has consistently been a common form of separation, averaging at 54.8% of separations, over the past six financial years.

Development of an Early Intervention System

Does the Commission have any further developments to report in terms of the options presented by NSW Police to the Police Commissioner's Executive Team with regard to early intervention systems?

On 27 November 2007 the Commission received correspondence from the Commissioner of Police advising that the Police Commissioner's Executive Team (CET) met on 6 November 2007 to consider a position paper on Early Intervention System (EIS) presented by the Professional Standards Command. The Commissioner advised that the development and implementation of an EIS had been endorsed as an organisational priority to support corruption resistance within the NSWPF. The Commissioner approved the establishment of a dedicated project to develop an EIS and formally invited the Commission to assist.

The Commission is currently liaising with NSWPF to establish arrangements for the participation of the Commission in the project, and in regard to the development of a project plan to be considered by the NSW Police Force Executive.

Key developments during 2006-2007

Has increased random drug testing by NSW Police resulted in a larger number of officers being found to be using drugs (page 36)? Has drug testing of students at the NSW Police College resulted in any positive tests?

It is important to note that random drug testing is directed to *detering* rather than to *detecting* drug use.

One important consequence of random drug testing being a deterrent rather than a detection tool is that its effectiveness cannot be assessed in terms of the number of drug users detected. The research suggests that the key to effective deterrence is that individuals need to believe that they might be caught, or in the case of drug testing that they might be tested, at any time. The effectiveness of random drug testing as a deterrent depends on the extent to which officers who might consider using illegal drugs perceive that their chance of detection is too great for them to take the risk of using illegal drugs. For this

reason, Operation Abelia Recommendation RDT 9, proposed that the NSWPF evaluates the effectiveness of its random drug testing program through surveys of a sample of officers to determine the extent to which officers are aware that the NSWPF conducts random drug testing, whether they believe that they are likely to be drug tested and whether they believe that any officers using illegal drugs would be detected through this testing.

While work towards this evaluation has commenced, more needs to be done. The NSWPF has prepared the information collection sheets and collected some information on these questions. The majority of the information collection is to occur prior to the Mandatory Continuing Police Education program which is proposed to be held in the first half of 2008.

In relation to the results of the random drug tests undertaken during 2006-2007, of the 2267 drug tests conducted on randomly selected officers, one test result was positive. There were no positive results to the drug tests conducted on students at the Police College during 2006-2007.

Start made during the year

Has the brochure NSW Police Force: A Lifestyle Change been printed and disseminated to applicants wishing to join NSW Police (page 37)?

The NSWPF has advised the Commission that 25,000 copies of the brochure were printed in July 2007. Of these, 10,000 have been sent to Charles Sturt University to be distributed with the Admissions information packages and the remaining 15,000 are to be used by NSWPF Recruitment to promote the lifestyles issues to potential recruits.

Oversight from beyond the Command

Has the Commission received the plan for the inspection and audit of the Anti-Terrorism and Security Group (formerly the Counter Terrorism Coordination Command) (page 40)? Has the Deputy Commissioner, Specialists Operations conducted their first inspection and audit of the Anti-Terrorism and Security Group? If not, when is this inspection and audit likely to occur? Will ongoing copies of the audit reports be provided to both the Minister for Police and the Commission?

The Commission received a copy of the plan for the review of the Anti-terrorism and Security Group (AT&SG) from the NSWPF on 12 December 2007. At this time the NSWPF advised that the Organisational Review & Support (ORS) had largely completed its field component of the review and had commenced drafting the report.

Operation Cassava

Has NSWP finalised its secondary employment policy (page 41)?

No. At this stage, the NSWPF has not finalised its secondary employment policy. The Commission understands that the NSWPF is in the process of finalising and liaising with key stakeholders to refine the policy. The Commission is currently liaising with the NSWPF in this regard and the matter is ongoing.

How did NSWPF determine applications for secondary employment while the current policy was being developed?

As far as the Commission is aware, the new secondary employment policy is not yet in force. The current policy, according to the NSWPF intranet as at 4 December 2007, states that:

- The general authority to approve secondary employment is delegated to Local Area Commanders.
- In cases where the application has extraordinary features, the authority to determine is delegated to the Region Commander (or equivalent commander/manager).
- The delegated authority to approve all applications which involve secondary employment within designated high risk industries (e.g., security, liquor, commercial and private inquiry agents, gaming and racing, and transport industries) rests with the Executive Director, Human Resource Services.

Have the Commission's suggestions regarding the policy in relation to the application process, the approvals process, recording keeping of decisions and the definition of high risk employment been incorporated into the policy?

Recent correspondence received from the Director Corporate Human Resources (NSWPF), indicates that the Commission's suggestions in relation to the definition of high risk employment, record keeping of decisions, and the application and approvals processes have been incorporated into the draft policy. One proposal by the PIC the NSWPF decided not to adopt was a recent suggestion to give responsibility for the appeals process to one senior executive. The Commission is satisfied with the reasons given by NSWPF in its recent correspondence for not implementing this suggestion.

Operation Florida

Did NSWPF give any reasons for not implementing the recommendations arising from Operation Florida in relation to improving the cameras with which the execution of search warrants is filmed, and increasing the level of supervision while search warrants are conducted (page 41)?

Florida recommendation 1a) is as follows:

NSW Police give priority to improving the technology resources related to Search Warrants, for example, the provision of smaller more efficient cameras for use during the execution of search warrants.

In its initial correspondence with the Commission, the NSWPF indicated its support for this recommendation. However, the terms of its support were narrower than the Commission had intended insofar as the NSWPF response focused only on improving its camera technology, rather than on the broader issue of improving technology resources related to the execution of search warrants. The reasons provided by the NSWPF in late 2005 for

adopting this narrow approach to Florida recommendation 1a) included that NSWPF was unaware of any technology that would improve its performance with regard to the execution of search warrants and that it reviewed its technology on an ongoing basis. The Commission has decided to take no further action in relation to this recommendation.

Florida recommendation 1b) is as follows:

...from time to time Local Area Commanders accompany police during the execution of search warrants, and check and/or watch videos taken during the execution of search warrants, to raise the level of supervision in this area.

In its response, NSWPF indicated that it did not support this recommendation. Its reasons were that an internal working group examining this issue had concluded that it was not practical or efficient for Commanders to be compelled to attend the execution of search warrants. The Commission provided advice to the NSWPF to the effect that it remained open to alternatives, but believed that the underlying issue of the level of supervision associated with the execution of search warrants needed to be addressed. The Commission has decided to take no further action in relation to this recommendation.

Complaints activity

How does the Commission identify reports into police investigation of complaints for review (page 43)?

Complaint investigations by NSWPF are generally selected for review (or oversight) by the Commission following an assessment in the context of common priority setting criteria. The same criteria are used to select investigations and concern the nature of the activity, whether the activity is current and ongoing, and, relative seriousness. The criteria also take into account the public interest and the potential for organisational wide outcomes – such as improvements in systems or in deterrence.

Other factors may also influence the Commission's decision to oversight a matter or not, irrespective of the assessment against the criteria. For example, the Commission may select to oversight a NSWPF complaint investigation because the officer is also under investigation by the Commission for other matters. The Commission may bring a unique understanding to the oversight, the development of which would require some duplication of effort by the Ombudsman, were they to oversight. By overlooking, the Commission is also in a better position to act promptly to prevent interference with the Commission's own investigation.

Code of conduct

Has the Commission's new code of conduct been distributed? Could the Commission provide the Committee with a copy (page 53)?

Yes. A new Code of Conduct (Code) was posted on the Commission's website and distributed to Commission staff in November 2007. Commission staff also participated in training related to the Code on 26 November 2007. A copy of the Code is attached for your information.

Matters arising from previous Committee Inquiries

Ten Year Review of the Police Oversight System

Recommendation 11 of this inquiry stated that the PIC and the Ombudsman should be able, for the purposes of carrying out their functions, to access records relating to local management issues raised about police officers. Is the Commission able to do so?

The Commission is able to access records relating to all 'local management issues' that are lodged on the Customer Assistance Tracking System (the NSWPF complaints management system), c@ts.i.

The Committee recommended that the PIC consider making greater use of its statutory functions at s 13(1)(a) and s 14(a), (c) and (d) of the Police Integrity Commission Act 1996 for the purpose of drawing attention to areas of police conduct and operations that would benefit from corruption resistance strategies and specific corruption prevention initiatives (Recommendation 12). Has the Commission considered this recommendation?

Yes, the Commission has considered this recommendation. The Commission recognises the long term positive benefits of an emphasis on prevention as distinct from a purely reactive approach to serious police misconduct. The Commission considers the development of effective prevention strategies, underpinned by research, to be a priority. The Commission has therefore devoted more effort and resources to its research program over the last few years and is currently undertaking significant research in four areas:

1. Project Odin – the management of high risk officers
2. Project Manta – the identification and management of misconduct risks by individual Commands
3. Early Intervention Systems ('EIS') – research to support advice to Police in the development of an EIS
4. Project Marrella – research into the impact of class size on the number of complaints attracted by Probationary Constables

Other minor projects are also underway considering timeliness and decision making in respect of complaints in an individual Command.

In addition, effort continues to be devoted to providing advice in respect of outstanding recommendations arising from the Assessment of the Management of Misconduct Risk in the CTCC, Operation Cassava, in particular, Operation Abelia, and in tracking implementation of recommendations.

At Recommendation 13, the Committee recommended that the PIC consult with the Independent Commission Against Corruption in regard to corruption prevention and education programs that may be of particular relevance to NSW Police and explore the potential for cooperative efforts between the PIC and the ICAC in this area. Have any discussions between the Commission and the ICAC occurred in this regard?

The Commission is keen to forge closer links with the ICAC and draw on its knowledge and experience in the area of corruption prevention and education programs.

To this end, during 2007 the Commission has worked with the ICAC on three major prevention and education initiatives.

The Commission funded two scholarships specifically for NSW police officers to attend the Australian National University (ANU) / ICAC corruption and anti-corruption executive program. This program provides information to participants on the causes of corruption and effective corruption prevention strategies. During the course participants study a range of theoretical approaches to corruption and its causes, as well as undertaking activities to help them develop effective, practical corruption prevention strategies relevant to their own workplace.

The Commission selected the scholarship recipients from amongst those NSW police officers who applied to undertake the course. Through the program the selected officers applied their knowledge by completing a corruption prevention project relevant to the NSW Police Force.

The Commission also played a major part in sponsoring the inaugural Australian Public Sector Anti-Corruption Conference (APSAC) held in Sydney in October 2007 which was a joint initiative between the ICAC, the QLD Crime & Misconduct Commission (CMC) and WA Corruption and Crime Commission (CCC). The conference, held over three days, had a number of topic streams including a police stream, which involved presentations and seminars on policing related corruption prevention issues from senior officers and practitioners in the field. The Commissioner participated as a session leader and as a panel member in the closing session with the Commissioners of the three joint hosts.

The Commissioner also participated in the ICAC's Rural and Regional Outreach Program (RAROP) on the mid North coast in June 2007 and again in November 2007 in the Hunter region. As part of this participation the Commissioner addressed a community breakfast organised for both visits on the role and functions of the Commission and for the North Coast program, visited police stations in Coffs Harbour and Port Macquarie to speak with police officers and discuss local policing related issues.

The Commission proposes to continue these initiatives in 2008. The Commissioner also regularly discusses with the ICAC Commissioner issues of mutual interest and relevance including identifying further opportunities for collaborative prevention and education initiatives.

Recommendation 14 of the inquiry dealt with the issue of funding and resourcing for anti-corruption programs. Has the Commission sought supplementary funding for any such activities?

The Commission has not sought any supplementary funding or resourcing for its prevention programs or any other aspect of its functions. The Commission considers that existing and future funding and budget allocations are sufficient for it to complete the initiatives and projects it plans to undertake in this area as part of its corporate objectives for 2007-11.

The Commission is also mindful that it is required to meet savings targets similar to those imposed on other Government agencies and which it has been able to meet through the introduction of efficiency measures.

Matters arising from the Committee's Eighth General Meeting with the Inspector of the Police Integrity Commission

During the Committee's Eighth General Meeting, the Inspector of the Police Integrity Commission questioned the Commission's legislative powers to oversight the investigation of complaints and contrasted those powers with the powers provided to the Ombudsman under Part 8A of the Police Act 1990. Specifically the Inspector said:

...in my opinion the power of the Police Integrity Commission to oversight a relevant police investigation is unduly limited by the terms of the relevant section and certainly cannot be compared to the extent of the powers in that regard that the Ombudsman has under Part 8A of the Police Act.

What is the Commission's opinion of this assessment? Does the Commission consider legislative amendment necessary?

The Commission does not consider that its powers to oversight the investigation of complaints is deficient or requires enhancement. The Commission generally overlooks a small number of complaints relative to the much larger number overlooked by the Ombudsman. That the Ombudsman has more extensive powers of oversight is a reflection of its greater involvement in this area and generally the differing functions between it and the Commission. The Commission may also elect to take over a particular investigation if it considers that overlooking it is inadequate or deficient.

The Inspector also observed that the Commission

...is at least ten years old and a lot has happened in those last ten years, as we all know, so possibly at some stage it would be useful for the function and the role of the Police Integrity Commission to be looked at.

What is the Commission's opinion of this observation?

The function and role of the Commission has been the subject of a number of reviews since its creation in 1997.

Consistent with s.146(1) of the *Police Integrity Commission Act 1996* (the Act), a review was conducted by the Minister for Police to determine whether the policy objectives of the Act remained valid and whether the terms of the Act remained appropriate for securing those objectives. This review took place over an extended period of time and was marked by the release of a discussion paper in December 2002 and, following detailed consultations and the drafting of amendments, concluded in 2005 with the passage of the *Police Integrity Commission Amendment Act 2005* (the Amendment Act).

Section 146(2A) requires the Minister to undertake a further such review as soon as practicable after the period of five years from the date of assent to the Amendment Act, which occurred in March 2005.

A further review, although somewhat narrower in focus, was undertaken by the Inspector of the Police Integrity Commission at the request of the Minister for Police. This review primarily considered the timeliness, length and formality of the Commission's investigations and hearings. The Inspector's report was tabled in Parliament on 18 June 2003 and discussed in the Parliamentary Committee Report on the Fifth General Meeting with the Inspector.

There was also a review conducted by the Parliamentary Committee: *The Ten Year Review of the Police Oversight System in New South Wales*. This review considered the role and functions of the Commission in some detail – in the context of the NSWPF oversight framework – and concluded with the release of the Committee's report in November 2006.

In addition, there has been the Treasury *Review of the Impact of Red Tape upon NSW Government Agencies* to which the Commission made a submission in respect of areas in which there could be a perception of duplication of effort between the NSWPF, the Ombudsman and the Commission.

For a relatively new agency, its role and functions have already been examined in considerable detail since its establishment. In light of this, and, as a further review is to be undertaken by the Minister in March 2010, any additional review in the Commission's view is unnecessary.

Chapter Four - Transcript of Proceedings

NOTE: The Tenth General Meeting with the Police Integrity Commission was held at Parliament House, Macquarie Street, Sydney on 18 March 2008.

JOHN WILLIAM PRITCHARD, Commissioner, Police Integrity Commission,

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

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

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

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

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

Mr PRITCHARD: Yes, I do.

CHAIR: Would you like to make an opening statement?

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

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

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

MOTION MOVED BY MR PAUL PEARCE.

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

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

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

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

CHAIR: There is no specific time frame as yet?

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

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

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

Mr KEARNEY: Yes, indeed. There have been two, possibly three, meetings this year. There have been meetings on around a three-weekly basis. At the moment there is some very detailed discussion around the content of the project plan; some discussion around an early intervention system, the terminology and definitions, to ensure that there is a common understanding. There is often confusion around early intervention systems and just what they are. There is a view in some quarters that they are a database or a system which essentially gives you a list of names. In fact, an early intervention system is much more than that; it is a system of processes and responses, and management policies to deal with what occurs once that list of names is produced. It is a much more detailed thing. There are some issues that we are dealing with police, concerning the definitions and developing a common

understanding, but also around project management as we go forward. We think they are critical elements to secure agreement on, in order to secure a project's success.

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

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

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

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

Mr PRITCHARD: Yes, picking up on the prevention limb of the commission's functions. I think that is consistent with the role of agencies such as the Police Integrity Commission and similar to the ICAC, and the public sector generally. It is more of a cajoling or prompting, as Mr Kearney said, as opposed to dominating it. At the end of the day, it is supposed to apply to that agency. We are in a position to provide advice, assistance, research and expertise, but ultimately ownership of it must be taken up by the police themselves.

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

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

CHAIR: In terms of the Commission.

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

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

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

Mr KEARNEY: If I could add to that? I meet quite regularly with the Assistant Ombudsman responsible for policing, that is a monthly, a bi-monthly meeting, and quite informal. We used to, and still have the capacity to, have more formal meetings—in fact they used to be quite regular in the formative years of the Commission—dealing with areas where we might overlap and to reduce areas where there might be some duplication of effort. Over time the need for those meetings has waned considerably and we find there is a fairly well developed understanding about what we are doing, what the Ombudsman's office is doing and what the rules are. When in doubt, make a phone call. The relationship is very positive.

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

Mr KEARNEY: It is a difficult area as to what rate is the right rate. As you know, it is more of a deterrent technique than a detection technique. You have got to satisfy yourself when determining what the right number is, that people will feel that there is a genuine risk of being caught. So it has got to be sufficiently high to ensure visibility so that people see it happening. I think it is probably safe to say that police are more aware that these tests are being conducted. I think from that you can conclude that there is a deterrent effect of sort. You may recall as part of Operation Abelia where the original recommendation came from to

increase random drug testing, that there was also a recommendation that the program be evaluated, or the rate of testing be evaluated, over time. I am not quite sure where that evaluation is right now but I understand it is something that is on the agenda, for police to form a view as to whether it has been successful or not.

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

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

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

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

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

CHAIR: Would you give the reference please?

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

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

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

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

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

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

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

Mr PRITCHARD: The PIC inspector?

Mr MALCOLM KERR: Yes.

Mr PRITCHARD: Yes, I have.

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

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

We recommended to the police that it would be practically in their best interest to do that. The particular complainant could not unfairly be described, perhaps, as a querulous complainant and experience suggests if you give these people a few more reasons, a bit more of an explanation, you might avoid some trouble; the more information you give them can help them to see why a decision has been made. We suggested as a matter of good practise they might want to do that. The police, for reasons which they explained—which essentially rested on the fact that it related to legal advice that they had obtained internally as to why matters should not be investigated—took the view that that advice was privileged and did not think it was a matter that should be canvassed in a letter back to the complainant. That was essentially the issue that led to the inspector suggesting that perhaps our oversight powers were not as rigorous as they could be.

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

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

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

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

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

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

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

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

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

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

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

Mr PRITCHARD: Yes.

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

Mr PRITCHARD: I think when we are saying "without additional research" that may be a shorthand way of saying that we could if we had to or wanted to. I therefore assume that if not by ourselves and certainly the police on their own but a combination of the two of us would have information that would allow it to be tracked. Given the answer we provided there, we said that there is no hard or fast information available that allows you to draw any particular conclusions about people who may be the subject of investigation and then are subsequently medically discharged for whatever reason. I can say—this is an observation I have made from my position relative to my previous position at the ICAC—that it is much more, from my own point of view, and I am speaking only anecdotally to that extent, I have noticed it being a bit more prevalent in this position than previously from when I was at the ICAC in relation to public officials. It appears to crop up a little more in relation to investigation of police than what I notice certainly dealing with investigations of public officials. But what you draw from that, I do not know, and probably not much at all. It is simply an observation I made on my own behalf.

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

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

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

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

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

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

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

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

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

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

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

Mr PRITCHARD: Complainants generally have what we call a scatter gun approach, if I can put it that way, that you will be CCed in as part of a group or a list of particular agencies that the complaint is made to. Sometimes it is a complaint made specifically to us; sometimes it is part of a complaint made to the Ombudsman as well as others. Certainly, as I said, we did not receive any complaints about conduct of officers during the APEC matter. I am aware of the matter referred to in relation to the name badge. Again, even if that is a matter we would not take on ourselves to investigate, there are powers of oversight that we have as well as the Ombudsman to undertake. But there is no doubt that there are particular

risks there. The idea, as I said, similar to the CTCC situation is perhaps to identify them, bring them to the attention of the police and if necessary have them take or put in place measures to ensure that those risks are reduced as much as possible. Again, you can only be informed by what you see and what you are made aware of. If there was a sudden increase in—I mean, they are not powers that are called on a great deal of times in any event, the extension of the APEC powers, it will be interesting to see in what situations they will be used. There is nothing about them that would in any way inhibit or prevent the Commission from investigating a complaint or allegation that may involve abuse of those powers.

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

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

Mr PETER DRAPER: As a new member of the Committee, I am curious as to how you determine which complaint you investigate. Further, in recent times are there any trends or patterns emerging? Is there any commonality in the style of complaint or allegation coming through?

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

Mr KEARNEY: We get complaints and other information that may lead to investigations from a variety of sources—complaints straight from a member of the public who may have witnessed misconduct or heard of misconduct, complaints made to the Police

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

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

Mr PETER DRAPER: Are you satisfied with the timeliness of getting matters to the point where they are investigated? For example, an officer has come to me because he has been the subject of an inquiry that has now been ongoing for four months. He is saying if there is something there make it official and charge him or let him go back to work? Is that a usual amount of time?

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

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

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

beyond your control that change the nature of the investigation and require further inquiries to be done.

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

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

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

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

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

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

Mr PRITCHARD: This is in relation to APEC?

The Hon. LYNDA VOLTZ: Yes.

Mr PRITCHARD: Mr Kearney may correct me but, no, I am not aware of any complaints that the Commission received in relation to conduct associated with that. People who want to complain about that conduct might even understand that the complaint might be better directed to the Ombudsman, given that it does not raise a serious allegation or an

allegation of serious police misconduct in the sense of perverting the course of justice or things of that nature. But no complaints were received by the Commission in relation to conduct of that kind or even a suggestion that it was a decision made at a higher level as opposed to individual officers deciding to do so.

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

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

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

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

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

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

Mr PRITCHARD: It is difficult to answer in the abstract, I suppose. I would not say that any situation where there was a concerted, deliberate policy to frustrate or avoid or evade some sort of obligation that otherwise applied, that the Commission would not in any

circumstances see that as anything other than a policy organisational matter that did not raise issues of serious misconduct.

To the extent that the Commission, as I said, is doing a project to look at misconduct risks in particular commands, the abuse of powers where increased powers are given is obviously a misconduct risk. From that point of view the Commission has an interest, but to suggest that something like that conduct without more—I appreciate that you say there could be assaults and things of that nature—would require the attention of a body like the Commission with its powers—and bearing in mind the Act and what it is set up to do and given the availability of other options for that sort of conduct to be assessed and looked at—it is an area that I think the Commission would have to consider very seriously before it decided to make that the subject of some sort of investigation as opposed to identifying that it may be symptomatic of a risk within commands generally that we might want to look at from a prevention point of view or even an early intervention system point of view. I do not know. I tend to think that given what the Commission is designed and set up to do and its purpose and objectives, those sorts of issues are probably matters that can be addressed through other avenues.

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

The Hon. LYNDA VOLTZ: Is that a question?

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

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

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

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

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

Mr PRITCHARD: I do not want to suggest that we do not have any interest in the area at all. In fact, I know there were a couple of specific complaints that the police were investigating themselves in relation to the list that was issued by the police and the treatment of somebody during the days in question—a photographer, I think it was. We were aware, we monitored those complaints and the police investigation of them through a reporting process with the professional standards command, so we are familiar with, up to date and aware of the progress of their investigations into particular matters like that. As Ms O'Brien said, I do not want to suggest it is something we do not have an interest in at all. We

are obviously aware of it and alert to it but, as was indicated, there was not anything in particular that we saw that required us to come in with the full panoply of powers and connotations that come with the PIC getting involved in something, particularly where there were other avenues available for the issues to be addressed.

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

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

I would have to say in relation to your final comment that I think there has been a significant change in relation to the police being prepared to be more accountable, if only because the current Commissioner in particular has emphasised that as a credo throughout the Police Force as a whole. The current Commissioner has made it more than plain that integrity is a vital part of the Police Force now and I think accountability goes with that. It is I dare say practically in their own interests. The Police Commissioner is the last person who wants his force on the front page every day as a result of things that we or the Ombudsman may be doing.

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

that there are particular misconduct risks associated with those commands that have greater powers than others. It certainly raises misconduct risks.

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

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

The Hon. LYNDA VOLTZ: Occasionally accompany officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr PRITCHARD: By police, you mean?

Ms SYLVIA HALE: Yes, by the police.

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

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

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

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

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

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

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

Mr PRITCHARD: It is.

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

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

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

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

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

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

Ms O'BRIEN: Can I add something?

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

Mr PRITCHARD: By all means.

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

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

Mr PRITCHARD: In relation to disciplinary action?

Mr MALCOLM KERR: Yes.

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

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

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

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

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

Mr MALCOLM KERR: It is a real distinction.

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

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

Mr PRITCHARD: How much time do we have? A public hearing power, associated with not only the Police Integrity Commission but also from my experience with the ICAC as well, is one of if not the most controversial aspect of these agencies' powers. There is a school of thought that says whenever you get a complaint the first thing you should do is have a public hearing, whereas the other extreme says there is damage to reputation, there are a whole host of problems associated with having a public hearing when at the end of the day it is just an investigation and you cannot make any findings of guilt or anything of that nature. In the middle, the Commission has to strike a balance. That public hearing days have been reduced or in the past couple of years there have not been as many as opposed to previous years, there is very little you can draw from that. It simply means some matters lend themselves better to having a hearing.

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

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

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

(Evidence continued in camera)

Appendix 1 – Committee Minutes

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 1)

10 am Thursday 28 June 2007
Room 814, Parliament House

Members Present

Ms D'Amore MP Mr Draper MP Ms Hale MLC
Mr Kerr MP Mr Pearce MP

Apologies

Apologies were received from Mr Lynn MLC and Ms Voltz MLC

Also Present

Les Gönye, Glendora Magno, Samantha Ngui, Hilary Parker, Pru Sheaves

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General Business

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- The Chair advised committee members of the need to hold general meetings to consider the most recent annual reports of the NSW Ombudsman, the Police Integrity Commission and the Inspector of the Police Integrity Commission.

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The committee adjourned at 10.36 am until a date to be determined.

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 2)

10 am Thursday 27 September 2007
Room 1102, Parliament House

Members Present

Ms D'Amore MP Mr Draper MP Ms Hale MLC
Mr Kerr MP Mr Lynn MLC Mr Pearce MP
Ms Voltz MLC

Also Present

Samantha Ngui, Hilary Parker, Pru Sheaves

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3. General Meetings Program

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- Resolved on the motion of Mr Lynn that questions on notice for the Tenth General Meeting relating to the Police Integrity Commission Annual Report 2005-06 be sent to the Commissioner.
- The Secretariat were requested to circulate a calendar so that a day for both the Ombudsman and PIC General Meetings could be fixed for early December if possible.

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The committee adjourned at 10.15am until 15 October 2007.

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 4)

10 am Thursday 29 November 2007
Room 1254, Parliament House

Members Present

Ms D'Amore MP	Mr Draper MP	Ms Hale MLC
Mr Kerr MP	Mr Lynn MLC	Mr Pearce MP

Apologies

Ms Voltz MLC

Also Present

Nina Barrett, Jonathan Elliott, Samantha Ngui, Hilary Parker, Pru Sheaves

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3. General Meetings Program

The Chair confirmed that, following the circulation of calendars to members, public hearings for the statutory review of the Community Services (Complaints, Reviews and Monitoring) Act would be held on Tuesday 11 and Thursday 13 March 2008 and the General Meetings with the NSW Ombudsman and the Police Integrity Commissioner would be held on Tuesday 18 March 2008.

- Resolved on the motion of Mr Pearce that questions on notice for the Fourteenth General Meeting, relating to the NSW Ombudsman’s Annual Report 2006-07, be sent to Mr Barbour and questions on notice for the Tenth General Meeting, relating to the Police Integrity Commission’s Annual Report 2006-07, be sent to Mr Pritchard.

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The committee adjourned at 10.10am.

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 5)

10.30 am Thursday 28 February 2008
Room 1254, Parliament House

Members Present

Ms D’Amore MP	Mr Draper MP	Mr Kerr MP
Mr Pearce MP	Ms Voltz MLC	

Apologies

Ms Hale MLC, Mr Lynn MLC

Also Present

Nina Barrett, Samantha Ngui, Hilary Parker, Pru Sheaves

The meeting commenced at 10:44am

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5. Forthcoming public hearings

The Chair briefed the Committee on the schedules for public hearings:

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- on 18 March in relation to the General Meetings with the NSW Ombudsman and the Police Integrity Commission.

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The committee adjourned at 10.52am until Tuesday 11 March 2008.

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 8)

10.00 am Tuesday 18 March 2008
Jubilee Room, Parliament House

Members Present

Ms D'Amore MP	Mr Draper MP	Ms Hale MLC
Mr Kerr MP	Mr Lynn MLC	Mr Pearce MP
Ms Voltz MLC		

Also Present

Nina Barrett, Jonathan Elliott, Samantha Ngui, Pru Sheaves

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Tenth General Meeting with the Police Integrity Commission

Mr John Pritchard, Commissioner, Police Integrity Commission; Mr Andrew Nattress, Director, Operations, Police Integrity Commission; and Mr Allan Kearney, Director, Intelligence and Executive Services, Police Integrity Commission, affirmed. Ms Michelle O'Brien, Commission Solicitor and Manager, Legal Services Unit, Police Integrity Commission, took the oath.

The Commission's answers to questions on notice, dated 11 January 2008, relating to the Annual Reports for the years 2005-06 and 2006-07, were tabled as part of the sworn evidence. The Chair questioned the witnesses followed by other members of the committee.

In Camera Evidence

The Chair commenced the in camera hearing at 3.40pm for the purpose of clarifying matters raised by the PIC Inspector in correspondence to the committee concerning two reports by him on complaints against the Commission.

The Chair and Mr Kerr questioned the Commissioner.

Evidence concluded, the witnesses withdrew. The committee adjourned at 3.51pm.