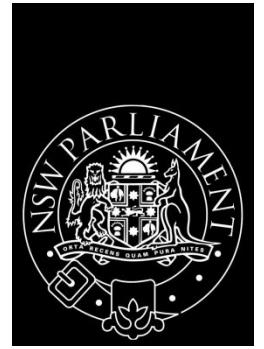


PARLIAMENT OF NEW SOUTH WALES



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

Report on an inquiry into improper associations
in the NSW Police Force

Together with the transcript of proceedings and minutes of meetings

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Terms of reference

That, in accordance with its statutory functions under section 95 of the *Police Integrity Commission Act 1996*, the Committee on the Office of the Ombudsman and the Police Integrity Commission to:

- a) consult key stakeholders on the level of risk associated with improper associations and the level of compliance in the NSW Police Force;
- b) consider the utility of the NSW Police Force implementing the recommendations made by the Police Integrity Commission in its research paper;
- c) consider what further assistance the Police Integrity Commission may be able to provide with the identification and management of this risk; and
- d) report to both Houses of Parliament on the inquiry.

Chair's foreword

I am pleased to table this report of the Committee's inquiry into improper associations in the NSW Police Force. This inquiry examined the level of risk associated with improper associations in the NSW Police Force and the level of awareness and compliance of officers to the *Conflicts of Interest (Improper Associations) Policy and Guidelines*.

The impetus for the inquiry was a research paper produced by the Police Integrity Commission in May 2010 into compliance of the NSW Police Force *Conflicts of Interest (Improper Associations) Policy and Guidelines*. The Police Integrity Commission made a number of recommendations to assist the NSW Police Force to increase the effectiveness of the Policy and Guidelines.

The Committee has since learned that the NSW Police Force has commenced its scheduled review of the Policy and Guidelines and will seek guidance from both the Police Integrity Commission and the NSW Ombudsman with this review.

This report is related to the Committee's recent inquiry into early intervention systems. Like early intervention systems the Conflicts of Interest and Improper Associations policies are risk management tools for the early identification and prevention of corruption and misconduct.

As with the anticipated implementation of an early intervention system, the NSW Police Force is dedicated to finding ways to limit the risk of corruption within the Force. This commitment to improving processes will enhance accountability procedures and strengthen the integrity of the organisation.

On behalf of the Committee, I would like to thank the NSW Police Force, the Police Integrity Commission, the NSW Ombudsman and the Police Association of NSW for their submissions and evidence, which have informed this Report. I would also like to thank the Victorian Police Force for providing insights into how such conflicts of interest are managed in that State.

Finally, I would like to thank my fellow Committee Members for their interest and efforts with this inquiry and the Committee Secretariat for their endeavours in preparing this Report.



The Hon Kerry Hickey MP
Chair

List of recommendations

Recommendation 1: That the NSWPF utilise the PIC capabilities in assisting with the policy review in any way they can to ensure the best outcomes for officers and the organisation.	25
Recommendation 2: As part of the review of the Policy and Guidelines the NSWPF consider as a matter of highest priority to replace the use of the word 'improper' to 'declarable' to reflect better the intent of the policy.	25
Recommendation 3: That the NSWPF look to other jurisdictions for policy comparison during the review, especially the Victorian Police Declarable Associations Policy and Guidelines for guidance.	25
Recommendation 4: That the NSWPF develop guidance to supervisors and officers on declaring and managing 'improper' associations.....	27
Recommendation 5: That the NSWPF centralise the written declarations of improper associations by officers to store at a corporate level (as per PIC recommendation 8) and that protocols be established to limit access to these records to minimise the risk of this information being used to the detriment of an officer's reputation or career and that the information is compliant with relevant privacy legislation.	29
Recommendation 6: That the NSWPF proceed with plans of instituting an EIS as recommended in the Committee's 2009 report.	31
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Chapter One - Introduction

- 1.1 This report contains the findings and recommendations of the Committee on the Office of the Ombudsman and the Police Integrity Commission's Inquiry into Improper Associations in the NSW Police Force (NSWPF).

Background

- 1.2 The inquiry was established on the 20 May 2010 to inquire into the level of risk associated with improper associations in the NSWPF and the level of awareness and compliance of officers to the *Conflicts of Interest (Improper Associations) Policy and Guidelines* (the Policy and Guidelines).
- 1.3 The Police Integrity Commission (PIC) published a research and issues paper (the Research Paper) in May 2010.¹ The PIC's study was conducted to determine the extent to which NSW police officers are complying with the Policy.
- 1.4 The Research Paper looked at how improper associations could hinder officers in performing their duties with integrity even if any misconduct was merely a matter of perception rather than actual. The Research Paper examined what type of associations could compromise an officer's work and how the NSWPF dealt with complaints.
- 1.5 The PIC also investigated the awareness of the Policy by police officers and found that very few officers with a known improper association had made a written declaration. The PIC made a number of recommendations to the NSWPF (see chapter 2). The NSWPF is currently undertaking a review of the Policy.

Catalyst for the Inquiry

- 1.6 In 2009, the Committee conducted an inquiry into Early Intervention Systems (EIS) in the NSW Police Force. The Committee identified that EIS can be utilised to identify officers who indicate a need for intervention, prior to any misconduct occurring.² Risk factors of improper associations were considered relevant indicators of high risk behaviour as part of developing the EIS.³ Therefore, a policy that assists officers and their supervisors to identify and manage improper associations is compatible with an EIS should it be introduced into the NSWPF.

Inquiry terms of reference

- 1.7 On 20 May the Committee adopted the following terms of reference for the inquiry into:
- a) consult key stakeholders on the level of risk associated with improper associations and the level of compliance in the NSW Police Force;
 - b) consider the utility of the NSW Police Force implementing the recommendations made by the Police Integrity Commission in its research paper;

¹People, J., Kirsch, N. and Barnett, P. *Improper Associations in the NSW Police Force: A review of compliance with policies and guidelines*, NSW Police Integrity Commission, Research and Issues Paper number 5, May 2010.

²Committee on the Office of the Ombudsman and Police Integrity Commission *Report on an inquiry into early intervention systems in the NSW Police Force: together with study tour report. Transcript of proceedings and minutes of meetings*, Report No. 5/54 NSW Parliament, March 2009.

³*Ibid.*, pp. 48-49.

- c) consider what further assistance the Police Integrity Commission may be able to provide with the identification and management of this risk; and
- d) report to both Houses of Parliament on the inquiry.

Methodology

- 1.8 In June 2010 the Committee invited submissions from a number of agencies in NSW and other jurisdictions. Submissions were received from:
 - NSW Police Association
 - NSW Ombudsman
 - Police Integrity Commission
 - NSW Police Force
- 1.9 On 10 August 2010 the Committee held a public hearing to hear evidence from:
 - NSW Police Force
 - NSW Police Association
 - Police Integrity Commission
- 1.10 A list of witnesses and the Transcript of the Hearing is at Appendix 2.
- 1.11 Additional research was undertaken by the Committee to compare and contrast how other jurisdictions define and monitor improper associations.
- 1.12 Although the *Conflicts of Interest (Improper Associations) Policy and Guidelines* applies to both sworn and unsworn employees of the NSW Police Force, the inquiry has followed the example of the Research Paper and focussed primarily on improper associations and police officers.

Chapter Two - Background

2.1 This chapter outlines the NSW Police policy for managing conflicts of interest that might arise from officers having improper associations. It then discusses the findings of the Research Paper.

NSW Police Force Policy and Guidelines

2.2 In 2006, the NSW Police Force introduced the *Conflicts of Interest (Improper Associations) Policy and Guidelines* (the Policy and Guidelines). The Policy and Guidelines applies to all NSW Police Force employees (sworn and un-sworn), police volunteers and employees and officers on leave or suspended. This policy was created to assist in the identification and management of improper associations.

2.3 Assistant Commissioner Paul Carey told the Committee in evidence:

New South Wales Police Force employees, as with all other public official employees, have a range of associations outside of work, including family, social and community associations, most of which are not improper but some must still be declared. It also emphasises the fact that having a declarable association does not automatically mean that the officer is engaging in misconduct and it is only misconduct when not properly managed.⁴

What is an association?

2.4 According to the Policy and Guidelines an association is a person or group of people that NSW Police Force employees interact with for non-professional reasons, such as:

- members of the employee's family
- employee's friends and close personal acquaintances
- people an employee meet regularly, or irregularly, outside of work – even if the interaction is casual (eg. a friend of a friend or a team mate)
- clubs, societies and other organisations an employee is formally involved in (eg. a club they are a member of or a second employer)
- any club, society or other organisation in which the employee participates even if they are not a member.⁵

Determining improper associations

2.5 An association is defined as 'improper' where it is in conflict with the professional role of a Police Force employee. The Policy and Guidelines document states that improper associations include, but are not limited to:

- relationships and activities with known criminals or people suspected to be engaged in criminal activity, including “social” drug use
- regular or organised activity with people closely affiliated with or related to known criminals
- involvement with members of groups or organisations known to be involved in unlawful activity
- membership of groups or organisations that might be perceived to be involved in unlawful activity by a reasonable person

⁴ *Ibid.* pp. 2-3.

⁵ NSW Police Force *Conflicts of Interest (Improper Associations) Policy and Guidelines*, 2006. p.5

Background

- participation in the activities of groups or organisations known, or perceived, to be involved in unlawful activity.⁶
- 2.6 An improper association can occur when police engage with known or suspected criminals through personal friendships, family associations, while off-duty or for business purposes.⁷ This also includes relationships with informants for officers assigned to the task of informant management.
- 2.7 Unplanned and unexpected contact that is unlikely to be repeated is not generally considered as having an improper association. Yet one-off contact that could have been avoided with a person or group that could be considered improper should be avoided by an officer.⁸
- 2.8 An association, which could be deemed improper, is not in itself a breach of the Policy or a sign of any misconduct or corrupt practice. However, a failure to declare an association is a breach, as is refusal to cooperate in the management of an improper association.⁹

Conflicts of Interest (Improper Associations) Policy and Guidelines

- 2.9 An officer or NSW Police Force employee can be engaged in an improper association in a number of ways. Improper associations can affect an officer's ability to undertake their duties with fairness, impartiality and without personal gain. Improper associations can be damaging not only to police operations but also to the public perception of officers as upholders of the law.¹⁰
- 2.10 The NSW Police Force *Conflicts of Interest Policy and Guidelines* is the broader policy that the NSW Police Force employs to address and guide any conflict of interest that employees may have. This policy defines a conflict of interest being:
- ...when the private interests of a NSW Police Force employee interferes with or influences, or appears to interfere or influence their official duties and responsibilities. A conflict or interest can involve gaining personal advantage as well as avoiding or minimising personal disadvantage.¹¹
- 2.11 NSW Police Force employees have two categories of interests: public and private. The public refers to the employee's duty to always put the public interests above their own. The private interest is anything in the employee's life that impacts personally on them and is relevant to their position only if it has any impact on their official duties.¹²
- 2.12 There are two types of conflicts of interest that can occur: pecuniary and non-pecuniary. A pecuniary interest is one where an employee can potentially benefit financially if they interfere or influence a situation during their official duties. The gain does not have to be monetary but can refer to property or shares that are owned by the employee or someone close to the employee.¹³

⁶ *Ibid.* p.6.

⁷ People, J., et. al. *op. cit.* p.4.

⁸ NSW Police Force, *op. cit. Improper Associations* p. 6.

⁹ *Ibid.* p.6.

¹⁰ *Ibid.* p.5.

¹¹ NSW Police Force *Conflicts of Interests Policy and Guidelines* 2006, p. 8.

¹² *Ibid.* p.8.

¹³ *Ibid.* p.9.

- 2.13 The second type of conflict of interest is non-pecuniary, that is not having any financial benefit to the employee. A non-pecuniary interest can involve personal relationships, political, social or religious activities that could influence or be seen to influence how an employee undertakes their position within the NSW Police Force.¹⁴
- 2.14 NSW Police Force employees are still entitled to their own political, social and religious opinions but they must ensure that these views do not interfere or influence their official duties. The policy states that NSW Police Force employees have:
...the same right to freedom of political expression and association as other members of the community.¹⁵
- 2.15 However, officers often have difficulty in identifying conflicts of interest or distinguishing between public and private interests. As Mr Greg Chilvers from the NSW Police Association discussed with the Committee about his involvement investigating drug and alcohol abuse by officers:
there was this question about improper associations and the inability of people, from the very time they entered the organisation, to distinguish between what might be called their private life and their professional life. They saw a clear line of distinction there; they could not see the problem or issue about engaging in these sorts of activities while at the same time being a sworn police officer.¹⁶
- 2.16 All NSWPF employees (sworn and unsworn officers) are required to report in writing to their commanders, managers or supervisors if they have formed an association which may be deemed improper. Once declared, the association should be managed, if necessary.¹⁷
- 2.17 Conflicts of interest present a risk to police work as they can be seen to be a precursor to more serious activities of misconduct or corruption by officers.

Police Integrity Commission's Research and Issues Paper

- 2.18 In May 2010, the PIC published a research and issues paper regarding the awareness and compliance of the *Conflicts of Interest (Improper Associations) Policy and Guidelines* (the Policy).¹⁸
- 2.19 The Research Paper examined the level of compliance and awareness of the Policy by NSWPF employees, especially police officers.
- 2.20 Many improper associations are reported by other police officers or members of the public. The PIC regularly assesses these types of allegations to the extent that in the 2008-2009 period it assessed more of these types of allegations than any other form of misconduct.¹⁹
- 2.21 The potential consequences of improper associations can compromise investigations; allow criminals to avoid detection and prosecution; damage the credibility and reputation of the NSWPF; and put the safety of police officers and others at risk.
- 2.22 The PIC study also looked at some of the characteristics of improper associations and their investigation by the NSWPF, including awareness of the Policy by police

¹⁴ *Ibid.* p.9.

¹⁵ *Ibid.* p. 10.

¹⁶ Evidence of Assistant Commissioner Paul Carey, NSW Police Force, Transcript of public hearing, 10 August 2010, p17.

¹⁷ People, J., et. al. op. cit. p. 2.

¹⁸ *Ibid.* p.2.

¹⁹ *Ibid.* pp.1-2.

Background

officers, the relationships between the police officers and their alleged associates, and the action taken once an improper association became known to the NSWPF.

Findings of the PIC study

2.23 The Research Paper found:

- Improper associations often arise from family or friendship connections.
- Where an improper association had been investigated by the NSWPF:
 - Investigators often failed to report on whether the officers were aware of the Policy and its requirements; and
 - Police officers were not required to make a declaration about their improper associations in the wake of a sustained complaint.
- Where complaints of improper association were investigated and substantiated, none of the subject officers had previously submitted declarations of improper association.
- Almost all sustained complaints about improper associations resulted in management action.
- There is currently no centralised recording of declarations of improper associations.
- One command had no expectation for officers to declare improper associations prior to such an association being reported via a complaint.²⁰

Conclusions from the study

2.24 The Research Paper concluded:

- There is a poor level of compliance with the requirements of the Policy and Guidelines regarding the making of declarations of improper associations, possibly due to:
 - poor awareness and understanding of the Policy;
 - a belief that a declaration of improper association implies the police officer is engaged in misconduct or corruption.
- Failing to make a written declaration of improper association after an improper association complaint has been substantiated could result in a loss of information over time and a consequent failure to manage risk, particularly if the officer transfers to a different command.
- The complaints process is one method of identifying improper associations, but should not replace the process of making and recording declarations.
- Keeping information about improper associations at individual commands does not allow for this information to be readily available at a corporate level, creating difficulties for auditing or quality control. The information could also be misplaced or lost.
- The Policy and Guidelines are not specific about the kind of information that should be included in declarations of improper associations.²¹

²⁰ *Ibid.* pp.12-13.

²¹ *Ibid.* pp.13-17

PIC Recommendations

2.25 The PIC recommended that the NSWPF should:

1. raise awareness of the existence of the *Conflicts of Interest (Improper Associations) Policy and Guidelines*, its requirements and of the consequences of failing to comply with it;
2. provide balanced and consistent messages to all NSWPF employees about the risks that can arise from improper associations on the one hand and a recognition on the other that they are inevitable and can, in most circumstances, be managed;
3. improve compliance with the Policy and Guidelines by ensuring supervisors (including commanders) are aware of their obligations in managing this risk for the NSWPF;
4. discourage the use of the complaints process as the sole means for dealing with and managing improper associations;
5. consider amending the title of the *Conflicts of Interest (Improper Associations) Police and Guidelines* and the 'improper associations' declarations to remove the negative connotations;
6. consider providing additional guidance to officers about the information to be included in improper association declarations;
7. modify the Policy and Guidelines to ensure it is clear that any declarations of improper associations that are held at local area commands are transferred with the relevant police officer if the police officer transfers to another command; and
8. record information regarding improper associations at a corporate level rather than only at individual commands.²²

NSW Police Force Response

2.26 The Committee was advised that as a response to the PIC study, the Professional Standards Command of the NSWPF is reviewing the Policy and Guidelines with a view to implementing the recommendations in the Research Paper.²³ The PIC is involved in this review.²⁴ The Committee was also told that the NSWPF are conducting research for the Australian and New Zealand Policing Advisory Agency on declarable associations with the ultimate aim of developing a national standard on the matter.²⁵

²² *Ibid.* p18.

²³ Evidence of Assistant Commissioner Paul Carey, *op. cit.* p. 2

²⁴ Evidence of Mr John Pritchard, Commissioner, Police Integrity Commission, Transcript of public hearing, 10 August 2010, p. 30.

²⁵ Evidence of Assistant Commissioner Paul Carey, *op. cit.*

Chapter Three - Risk Factors and other jurisdictions

3.1 This Chapter examines the types of risks arising from improper associations and discusses how they are managed and enforced in other jurisdictions.

Risks posed by Improper Associations

3.2 The Committee notes that improper associations are taken seriously by the NSWPF as they pose great risk to the integrity and efficiency of the organisation. As discussed in chapter 2, making a declaration is not a sign of misconduct but not doing so is considered a serious breach of policy.

3.3 In evidence before the Committee the NSW Police Force Assistant Commissioner Paul Carey observed that:

In 2004-2009 allegations of improper associations as a percentage of complaints received by the New South Wales Police Force remains consistently low and remains at between 1.5 to 2 per cent of all complaints received against sworn police officers. Nevertheless, in recognition that the potential consequences of improper associations are high considerable steps have been taken to improve the mitigation of those risks in recent years in order to ensure that the likelihood is kept low and is even further reduced.²⁶

3.4 Improper associations when not declared and managed appropriately can not only cause damage to the officer's credibility and the organisation's reputation but affects the organisation's operational ability. The risks posed by improper associations can be broken up into three categories: potential, actual and perceived.²⁷

3.5 Improper associations pose a potential risk to officers and the organisation as they can expose the officer to potential conflicts of interest whilst undertaking their sworn duties. By associating with people who are engaged or thought to be engaged in criminal activity officers may compromise themselves or the work of the police force. Even though an officer may have no intention of engaging in misconduct the level of risk of them doing so increases with every improper association.²⁸

3.6 Actual harm caused by misconduct through inappropriate associations can take a number of forms, for example influencing investigations, releasing confidential information or not interrupting criminal activities. These actions cause as much harm to the officer and the organisation as other more overt forms of corruption such as bribery or drug trafficking. Yet the PIC have found in previous investigations that officers with deliberately undeclared improper associations are often involved in more serious forms of corruption.²⁹

3.7 Perceived harm may seem the least important threat but it can still present risk to an officer and the organisation. Perceived harm often occurs when an officer has an improper association that they have not declared. Damage happens when these associations are not transparent as frequently officers are perceived to be engaged in conduct that is corrupt.³⁰

3.8 If public perception is that officers are engaged in corrupt behaviour that is condoned by their supervisors and colleagues, the respect the public has in the police force can

²⁶ Evidence of Assistant Commissioner Paul Carey, *op. cit.* pp. 1 - 2.

²⁷ People, J., *et. al. op. cit.* p. 2.

²⁸ Police Integrity Commission, submission 3, 2010 p. 2.

²⁹ *Ibid.* p. 3.

³⁰ Evidence of Mr Alan Kearney, Police Integrity Commission, Transcript of public hearing, 10 August 2010, p. 24.

diminish.³¹ Perceived wrongdoing can also harm the relationships between the officer and their colleagues. Some of whom may lose trust in the officer as they may feel they have not made a declaration because they are engaged in some form of misconduct.

- 3.9 Although complaints arising from improper associations remain comparatively low, the repercussions from these associations can be quite harmful to the officers and the organisation.
- 3.10 Mr Alan Kearney of the Police Integrity Commission told the Committee:
The risks associated with an improper association are significant for the officers and for the NSW Police Force. Major corruption investigations by the PIC and by the NSW Police Force have arisen from an allegation or evidence of an improper association.³²
- 3.11 These risks increase if the officer does not make a declaration so that this association can be managed and monitored by their supervisors. The types of situations that can expose officers to improper associations are discussed later in the chapter.

Secondary Employment

- 3.12 Secondary employment undertaken by police officers can provide an opportunity for officers to form improper associations even if unwittingly.
- 3.13 However, secondary employment can put an officer at risk of forming or being exposed to improper associations. This can include situations where an officer may leak confidential information or exercises police powers when working in a private capacity.³³
- 3.14 The main issue lies in an officer facing a conflict of interest as a direct result of having more than one employer. The secondary employment they undertake must not interfere with the main purpose of their primary employment, as upholders of the law. Conflicts of interest can arise when secondary employment forces an officer to breach policy and ethics by using their position within the police for the benefit of another organisation.
- 3.15 In most developed countries, officers undertaking employment outside of the police force is flagged as a risk assessment issue. For countries such as the United States of America, Canada, and the UK, as well as in Australia, the public perception of police officers must be above reproach, whether on or off duty.³⁴ Police departments are responsible for monitoring secondary employment and ensuring that officers are undertaking work that is both appropriate and is not likely to lead to misconduct.
- 3.16 Personal finance and personnel administration such as on-duty rostering are factors contributing to officers seeking secondary employment. UK police claim officers felt a push factor effect during the Global Financial Crisis that resulted in their seeking secondary income in order to avoid bankruptcy.³⁵

³¹ People, J., *et. al. op. cit.*

³² Evidence of Mr Alan Kearney, *op. cit.* p.24.

³³ Prenzler, T., *Police corruption: Preventing misconduct and maintaining integrity* Boca Raton FL CRC Press-Taylor and Francis, 2009.p. 45.

³⁴ Committee on the Office of the Ombudsman and the Police Integrity Commission *Research Report on Trends in Police Corruption*, NSW Parliament 2002, p. 14.

³⁵ Wardrop, M., "Tory MP demands ban on police moonlighting" *Telegraph.co.uk*, 15 January 2009

Risk Factors and other jurisdictions

- 3.17 As for personnel administration, the New South Wales Police Force introduced flexible rostering practices in 1995 with the aim of deploying officers in accordance with the times of greatest need. Under this model, shift length can vary between six and 12 hours and shifts can start and finish at different times. Flexible rosters can also provide more days off duty. This can help officers overcome the stresses of policing if they rest on their days off or undertake secondary employment.
- 3.18 In 2007, the Auditor-General noted that the majority of general duties police work predominantly 12-hour shifts in blocks of four, followed by at least four days off.³⁶ The Auditor-General noted that one in ten police officers has approval to work a second job but that others may also work without approval.³⁷
- 3.19 Past abuse by police officers using secondary employment to partake in corrupt activities has often turned public opinion against this as a viable option for officers. In Australia, public opinion has been influenced by bad examples such as Detective Bill Duff's importation of drugs in the 1980s under the cover of his seafood business.³⁸
- 3.20 In 1994, the ICAC reported that NSW police officers were abusing sick leave entitlements to engage in secondary employment.³⁹ Despite current legitimate means for secondary employment this practice continues to be of concern.
- 3.21 Secondary employment also presents the risk of exposing police officers to conflicts of interest and improper associations. These conflicts of interest can be problematic to ascertain due to the lack of monitoring or control of secondary employment choices.
- 3.22 In 1991, there was public controversy over officers who undertook security positions at Sydney Airport. A security company was owned and managed by a serving police officer who in turn employed other police officers. Not only did these officers not have approval from NSWPF to undertake this secondary employment they also did not have the requisite licences.⁴⁰
- 3.23 At the time complaints were received regarding officers taking secondary jobs in liquor or security industries; industries for which police had regulating and licensing responsibilities. The Police Commissioner issued a circular in May 1991 prohibiting secondary employment in the security and liquor industries from 30 June that year.
- 3.24 Officers were allowed to seek an extension of such employment until 31 December 1991 if ceasing this employment would cause hardship. This was then amended so that each secondary employment application for these industries would be assessed individually instead of subject to an absolute ban.⁴¹
- 3.25 These matters continued to be a problem. In 2006, as part of its report on Operation Sandvalley, the PIC investigated compliance with secondary employment policies in the Water Police Command following a finding that a particular officer had not sought approval for his employment in a role involving the liquor industry prior to a complaint

[<http://www.telegraph.co.uk/news/uknews/law-and-order/4248683/Tory-MP-demands-ban-on-police-moonlighting.html>]

³⁶ Auditor-General of NSW *Police Rostering: Performance Audit Report 173*, 2007, pp.2-3

³⁷ *Ibid.* p. 6.

³⁸ Girling Butcher, T. *Sin City: crime and corruption in 20th century Sydney*, Historic Houses Trust, 2010 p. 78.

³⁹ Independent Commission Against Corruption *Corruption Prevention Project: Secondary Employment of NSW Police Officers*, 1992, p.13.

⁴⁰ *Ibid.* p.9.

⁴¹ *Ibid.* p.9.

being made. When he did apply he was approved without further inquiry in conflict with the regulations. The PIC found that within this command only four of the 84 officers were recorded as having a current secondary employment approval despite other evidence indicating widespread secondary employment and the belief that more officers were engaging in second jobs than not.⁴² The Police Force addressed this finding by instituting six-monthly audits of compliance with the policy.⁴³

- 3.26 Other jurisdictions such as in Canada's Quebec province, secondary employment is currently being examined after a scandal over the management of police conflicts of interest. Quebec's Security Minister expressed concerns over the Montreal municipal Deputy Police Chief who is also the President of a multi-million dollar construction company. The company is currently under investigation over corruption and it is unclear as to whether the Deputy Police Chief's long term service and support from the police force have impeded any thorough investigation of the company's practices. Support for the Government decreased over its refusal to conduct a Committee inquiry into this allegation.⁴⁴
- 3.27 However, some jurisdictions have approached secondary employment in a more positive way. In the United States, North Carolina and Detroit have endorsed secondary employment by police officers seeing it as a way to increase police presence. These jurisdictions recently examined the option of forming a centralised agency to help administer and oversight secondary employment.
- 3.28 In North Carolina, some police departments control all aspects of the process, including setting pay rates, limiting off-duty hours, and withholding taxes from off-duty wages.⁴⁵ In Detroit, a city run program was established to allow off-duty officers to work an extra 30 hours in uniform at the normal pay rate plus a \$2 per hour fee to cover program costs.⁴⁶ Departments endorsed the activity as a means to increase police presence to curb neighbourhood violence.

Personal relationships

- 3.29 Personal relationships present the greatest risk of improper associations, with the majority of complaints resulting from officers engaged in social, romantic or familial relationships with known or suspected criminals. As the Research Paper indicates, social and romantic relationships make up approximately three-quarters of all complaints about improper associations.⁴⁷ These relationships include acquaintances, current friendships, old school contacts, sexual relationships and marriages.
- 3.30 As such, much ongoing discussion oscillates between the need to curb improper associations by personal relationships and the protection of officers' right to freely form relationship.

⁴² Police Integrity Commission *Report to Parliament: Operation Sandvalley* February 2006, pp59-60

⁴³ Clenell, A. "Exposed: police moonlighting in a job near you" *Sydney Morning Herald*, 25 January 2007

⁴⁴ "Quebec slams police moonlighting" CBC News, May 6, 2010.

[<http://www.cbc.ca/canada/montreal/story/2010/05/06/quebec-police-second-job.html>]

⁴⁵ Brunet, J. "Blurring the line between public and private sectors: the case of police officers' off-duty employment" *Public Personnel Management*, Summer, 2008.

[http://www.entrepreneur.com/tradejournals/article/180402411_3.html]

⁴⁶ Oosting, J. "In wake of violence, Detroit debates: can uniformed police moonlighting curb crime?" *MLive.com*, May 14, 2010 [http://www.mlive.com/news/detroit/index.ssf/2010/05/in_wake_of_violence_detroit_de.html]

⁴⁷ People, J., *et. al. op. cit.* p. 11.

Risk Factors and other jurisdictions

- 3.31 Despite the ICAC "Milloo" investigation in 1994,⁴⁸ the Wood Royal Commission in 1997⁴⁹ and various projects on early intervention systems during the last decade, the Committee could not identify any research on whether policies regulating improper associations have impacted dramatically on the number of improper associations formed by personal relationships.
- 3.32 Whilst the NSWPF recognises that officers are entitled to a certain degree of freedom of association, this must be tempered by their sworn duty to uphold the law.⁵⁰
- 3.33 Adhering to this policy can sometimes present difficulties for officers if the improper associations are with family members. The confusion starts as the Policy and Guidelines states that an officer must cease any improper association; this is not always possible or even desirable if the person concerned is a family member.⁵¹
- 3.34 An example of this in New South Wales is the case of Owen and Roger Rogerson. Mr Owen Rogerson, who had served as a police officer for 26 years, claimed he was a victim of discrimination by the Police department due to his high-profile brother, the infamous former Detective Roger Rogerson.⁵² Roger Rogerson was eventually found guilty of perverting the course of justice and lying to the Police Integrity Commission.
- 3.35 Mr Owen Rogerson claimed his brother's disgrace and infamy affected his entire family, including his brother's children. He maintained the scandal involving his brother forced him to retire from the police force and had affected his future employment prospects.⁵³ After initially successfully suing the NSW Police Force for breaching their duty of care by not preventing discrimination against him due to his brother, his case was overturned on appeal in 2007.⁵⁴
- 3.36 The NSW Police Association used the Rogersons as an example of how improper associations were managed prior to the introduction of the Policy and Guidelines. Whilst not commenting on Mr Rogerson's case, Mr Chilvers did explain how Owen Rogerson was directed to cut off all association with his brother. Mr Chilvers explained that had this situation occurred now and been managed properly, then the need for family members to cease contact with each other would not have been necessary. Despite how it is phrased in the Policy and Guidelines, in theory, as long as the officer's superiors are aware of the circumstances and have a management plan in place then family contact could continue.⁵⁵

⁴⁸ Independent Commission Against Corruption *Investigation into the Relationship Between Police and Criminals: First Report*. ICAC February 1994 p.1.

⁴⁹ J R T Wood, *Final report. Royal Commission into the New South Wales Police Service*, 1997

⁵⁰ Evidence of Assistant Commissioner Paul Carey, *op. cit.* p. 1.

⁵¹ NSW Ombudsman, submission number 2, 2010, p. 5.

⁵² "The honest cop who pays for the sins of his brother", *Sydney Morning Herald*, February 21, 2005

[<http://www.smh.com.au/news/National/The-honest-cop-who-pays-for-the-sins-of-his-brother/2005/02/20/1108834662064.html>]

⁵³ Jacobsen , G."Officer tells guilt by relation" *Sydney Morning Herald* 31 August 2005

[<http://www.smh.com.au/news/national/officer-tells-of-guilt-by-relation/2005/08/30/1125302566143.html?from=moreStories>]

⁵⁴ "Roger Rogerson's brother loses payout" *The Australian* 18 December 2007

[<http://www.theaustralian.com.au/news/roger-rogerons-brother-loses-payout/story-e6frg6o6-111115141368>]

⁵⁵ Evidence of Mr Gregory Chilvers, *op. cit.* pp. 15-16.

Informant relationships

- 3.37 Police officers who form improper associations with informants are unique in that they have formed these associations whilst undertaking their official duties. The Research Paper showed that 12% of reported improper associations related to relationships with informants.⁵⁶ However, this differs from associations through secondary employment or personal and family relationships since these relationships are initiated by the Force on the basis of obtaining information to fulfil a police objective. A 1994 ICAC investigation report noted that conflicts of interests arise as police are instructed to work closely with informants and often to informally contact or socialise with some who are known or suspected criminals.⁵⁷
- 3.38 Issues may arise when officers have difficulty staying strictly professional when socialising, leading to misconduct or corruption. ICAC found that control is a key component for police management of informant relationships and in the prevention of ethical entanglements.⁵⁸
- 3.39 Officers who are required to utilise informants often have difficulty complying with conflicts of interest policies. The main conflict is between officers' duty to uphold the Policy and Guidelines and Code of Conduct requirements that ban them from associating with known or suspected criminals and their duty to socialise with informants for the purpose of gaining information.⁵⁹
- 3.40 Research by the Victorian Office of Police Integrity shows that although officers with informants are classified in the 'high risk' group for misconduct and corruption, management often does not indicate whether or not they are addressing this issue. Management makes the assumption that professional officers would be able to draw the line between unethical conduct in an informer relationship and undertaking their duties.⁶⁰
- 3.41 An extract from the Policy and Guidelines states:
- Maintaining a relationship that is in conflict with your role as a NSW Police Force employee can also compromise your ability to act ethically by exposing you to situations that may undermine your integrity.⁶¹
- 3.42 The document does not acknowledge that police may be exposed to such relationships in order to maintain informant contacts.
- 3.43 Officers instructed to 'develop' informants have been shown to have issues in maintaining a strictly professional relationship with the informant and have shown signs of ethical fatigue. The Victorian Office of Police Integrity 2007 report indicated that whilst there is no conclusive evidence regarding the level or intensity of the day-to-day ethical challenges faced by these officers, officers can lose good ethical judgment the longer they are exposed to the work of developing informants:
- The use of informers is often an effective and sometimes an indispensable tool of investigation, the practice is fraught with potential for corruption. In the nature of things, most informers are criminals. They are often rewarded for their information by police

⁵⁶ People, J., *et. al. op. cit.* p.11.

⁵⁷ ICAC 1994 *op. cit.* p.1.

⁵⁸ *Ibid.* p.1.

⁵⁹ Office of Police Integrity Victoria *Past Patterns- Future Directions: Victoria Police and the problem of corruption and serious misconduct* February 2007 p.9

⁶⁰ *Ibid.* p.9.

⁶¹ NSW Police Force, *op. cit. Improper Associations* p.5.

Risk Factors and other jurisdictions

'going easy' on their own crimes. The relationships between detectives and informers can readily descend into wholly corrupt partnerships in which the proceeds of crime are shared on a regular basis.⁶²

- 3.44 Police can experience difficulty in managing informants and ensuring that they exercise control assists officers to maintain power in the police/informant relationship. In Queensland, Operation Capri in 2003-2004 demonstrated the damaging consequences where police lost control over an informant. An informant prisoner Lee Owen Henderson was given time with family and permission to wear an ARU police motif outside of the detention facility in exchange for insider information.⁶³ The police had not taken into consideration that this particular informant had been found by the Fitzgerald Inquiry in 1989 to be providing false and misleading information. Subsequently, the information the informant gave the police cost the department over \$2 million during a six month period. The informant relationship resulted in no returns of real evidence in which to pursue other related investigations.⁶⁴
- 3.45 There are no recent public documents that demonstrate progress since the 1994 'Milloo' Report that described a strategy for better management. For example, the strategy in the 'Informant Management Plan' jointly initiated by the ICAC and Police Service included greater transparency of individual officers' control mechanisms, their responsibility over the informers, assessment of informants' motivation and quality of supervision.⁶⁵ There is currently no indication that this strategy is being evaluated.
- 3.46 The PIC submission to the inquiry considered that informant relationships presented a high level of risk, both because the relationship has to be sustained over a long period of time and also because the officer considers the relationship to be a legitimate part of their duties. In a recent review of PIC investigations the Commission discovered examples of such misconduct occurring due to the relationships that had been developed between informants and officers. The submission notes:
- One of the major risks in managing human sources, particularly in long-standing relationships, is of officers developing inappropriate relationships with their sources. Officers in this situation are at risk of, among other things, being manipulated by the sources they are managing.⁶⁶

Other jurisdictions

- 3.47 The above examples show the complexity and difficulty that can occur for officers when negotiating improper associations. Personal relationships cannot be easily terminated simply because a policy dictates that the association should end.
- 3.48 Other jurisdictions have also found themselves in the predicament of how to tackle the improper associations of officers. In the United States, law enforcement agencies are faced with the difficulty of preventing corruption but not infringing upon civil rights. The US First Amendment to the Bills of Rights protects freedom of association and as such leniency is sometimes given especially in regards to improper associations through familial ties.

⁶² Office of Police Integrity, *op. cit.* p.10.

⁶³ Crime and Misconduct Commission Queensland *Dangerous Liaisons: A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)* July 2009, pp.32-33.

⁶⁴ *Ibid.* p. 118.

⁶⁵ Independent Commission Against Corruption *Investigation into the Relationship Between Police and Criminals, Second Report* April 1994, p. 17.

⁶⁶ Police Integrity Commission, submission number 3, page 3.

- 3.49 An example of the protection of family values is the case of *Roberts vs Jaycess* in 1984, which stated that 'family relationships and marriage should be afforded greater protection from government interference than merely social ones'.⁶⁷
- 3.50 Another case in 1984 also reflected this lenient approach where the Supreme Court found an officer was wrongly terminated for dating the daughter of a crime figure and was awarded \$234,429 in compensation.⁶⁸ This attitude was further evidenced almost a decade later in 1995, when a Pennsylvanian arbitrator did not excuse the conduct but set aside the discharge of a correctional officer for violating a work rule prohibiting the forming of a romantic relationship with a prisoner since their relationship started 14 years prior to his incarceration.⁶⁹
- 3.51 Cases where a law enforcement officer could have avoided romantic involvement, however, have been viewed differently. In 1997, an Illinois appellate court sustained the termination of a state police officer who married a convicted felon.⁷⁰ More recently in 2010, the Federal appeal panel upheld the termination of a 20-year veteran Customs and Border patrol officer who married an illegal resident.⁷¹
- 3.52 Other cases of officers having improper associations outside of familial or romantic ties have faced punitive measures and are not offered protection under the First Amendment. In Connecticut, the Federal Court refused to grant injunctive relief to corrections officers facing disciplinary action for their membership in the Outlaws motorcycle gang. Another example was in New York, where an appellate court sustained the termination of an officer who associated with a person engaged in criminal activities.⁷²
- 3.53 Victoria has faced similar opposition since it enacted the *Charter of Human Rights and Responsibilities Act 2006* and as such, upholds the concept of freedom of association. When Victoria was undertaking review of the *Police Regulation Amendment Bill 2008*. The Victorian Police Association was especially critical of the need to uphold an officer's right to freedom of association. Although the submission was in response to a piece of proposed legislation that would give the Police Commissioner greater powers over officers, they emphasised the importance of preserving freedom of association, stating that police are 'singularly, of all occupations in Victoria, excluded from the right to freedom of association'.⁷³
- 3.54 The Victorian Declarable Associations Policy that came into effect in December 2008 was heavily criticised by the Police Association of Victoria. The Police Association claimed that although they supported strategies to minimise police improper associations, there were already rules in the Police Regulation Act to address this and the new policy was 'a sledgehammer to crack a walnut'.⁷⁴

⁶⁷ Americans for Effective Law Enforcement (AELE), "Association with known criminals" *AELE Monthly Law Journal*, *AELE Mo. L.J 201 Employment Law Section*, April 2007, 205. [<http://www.aele.org/law/2007FPAPR/2007-04MLJ201.pdf>]

⁶⁸ *Ibid.* 205.

⁶⁹ *Ibid.* 206.

⁷⁰ *Ibid.* 206.

⁷¹ Americans for Effective Law Enforcement (AELE) "Associating with known criminals" *AELE Law Library of Case Summaries: Employment and Labor Law for Public Safety Agencies*, 2010.

[<http://www.aele.org/law/Digests/empl14.html>].

⁷² *Ibid.* 2007, 204.

⁷³ Davies, G. Police Associations Victoria Submission to the Review of the Police Regulation Amendment Bill 2008. 30 October 2008, pp. 1-18.

⁷⁴ Buttler, M. "Cops told to choose sides" *Herald Sun*, 22 June 2009

[<http://www.heraldsun.com.au/news/cops-told-to-choose-sides/story-e6frf7jo-1225738965694>]

Risk Factors and other jurisdictions

- 3.55 The Victorian Assistant Commissioner of Police Luke Cornelius defended the policy as a means of assisting police officers to negotiate these difficult relationships, saying:
- If someone feels that passionately about maintaining a relationship - and I want to be clear here, we're talking about avoidable relationships, we're not in the business of busting up families - it comes down to a choice.⁷⁵
- 3.56 The Assistant Commissioner commented that it was essential for officers to inform their superiors so that these associations, if they cannot be avoided, are managed properly. However he stressed that 'If you value your friendship more highly than your profession, you need to choose between your profession or that relationship'.⁷⁶
- 3.57 The Queensland Crime and Misconduct Commission's Operation Tesco which commenced in 2009 has uncovered the alleged misconduct and corruption police officers of the Gold Coast's Surfers Paradise Police Station. Amongst the charges are: drug use, improper associations, releasing confidential information and accepting gratuities.⁷⁷ The improper associations between officers and people engaged in criminal activities appear to be related to the officers engaging in inappropriate and often criminal behaviour. Although some of the behaviour such as accepting free drinks may seem minor, these actions put officers in a precarious situation with regards to negotiating relationships with people who may have questionable motives. What may have seemed to the officers as a minor transgression might have been the beginning of manipulation by those engaging in criminal activities.
- 3.58 One of the issues that has been brought to light is the off duty behaviour by the officers who are frequenting clubs that they regularly patrol whilst on duty. The monitoring of the off duty behaviour of the officers was not done adequately by management.⁷⁸ Barrister for the CMC, John Allen, commented that deficiencies in management and supervision of the Surfers Paradise Police Station led to a number of officers forming improper associations with club owners and staff, saying:
- The frequenting of these clubs by both uniformed and plain-clothed officers has provided an environment for potential conflicts of interest that in some cases have developed into actual conflicts of interest, resulting in misconduct, including offences. Operation Tesco has also identified instances where inappropriate associations have led to the improper access to, use and disclosure of confidential information, the compromise of police operations, the tolerance of or actual use of illicit drugs by police officers and the misuse of office and police assets.⁷⁹
- 3.59 Ten people including one former officer and one current officer are facing criminal charges due to the investigation and a further six officers are facing further disciplinary action over their conduct.⁸⁰ The CMC is currently conducting hearings to

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ "CMC welcomes new policing strategies on the Gold Coast" QLD Crime and Misconduct Commission, 21 September 2010 [<http://www.cmc.qld.gov.au/asp/index.asp?pgid=10814&cid=5201&id=1303>]

⁷⁸ Glennie, C. "10 charged with police misconduct on the Gold Coast" *PM with Mark Colvin*, 20 September 2010 [<http://www.abc.net.au/pm/content/2010/s3016910.htm>]

⁷⁹ Glennie, C. "Gold Coast police in misconduct hearing" *The World Today*, 20 September 2010 [<http://www.abc.net.au/worldtoday/content/2010/s3016390.htm>]

⁸⁰ Glennie, C. *op. cit.* *PM with Mark Colvin*

address the systemic issues that were highlighted during the Operation Tesco investigation.⁸¹

Conclusion

- 3.60 The experience of other jurisdictions illustrate that the difficulty of negotiating and managing improper associations is endemic to all police forces. There are many challenges in managing these associations such as the complexity of the relationship or the lack of monitoring of off duty behaviour. Operation Tesco highlights the increased likelihood of impropriety officers face when engaging in certain activities.
- 3.61 The Committee is of the view that implementing the recommendations outlined in the Research Paper would assist in eliminating some of the risks and confusion officers currently have over identifying and avoiding improper associations.

⁸¹ QLD Crime and Misconduct Commission [<http://www.cmc.qld.gov.au/asp/index.asp?pgid=10910>]

Chapter Four - Compliance and Awareness

4.1 This chapter provides an outline of the PIC's findings in relation to compliance with awareness of the Policy and Guidelines and suggestions for improving these.

Compliance with Policy and Guidelines

4.2 The Research Paper uncovered a poor level of compliance with the Policy and Guidelines. The PIC used 100 randomly selected complaints regarding improper associations as their sample study. Of these complaints 85 had been investigated by NSWPF and 24 were in breach of the Policy and Guidelines. There had been no written declarations made in any of the 24 cases prior to complaint. Management action arose in 21 of the cases including: counselling, warning notices, criminal charges and notice's considering the removal of the officers from the police force.⁸² Only 10 investigations included whether or not the officer was aware of the Policy and Guidelines.⁸³

4.3 Within the 100 cases chosen only 38 detailed what type of improper association occurred. Of the 38 cases the relationships varied but the majority were friendship based associations.⁸⁴

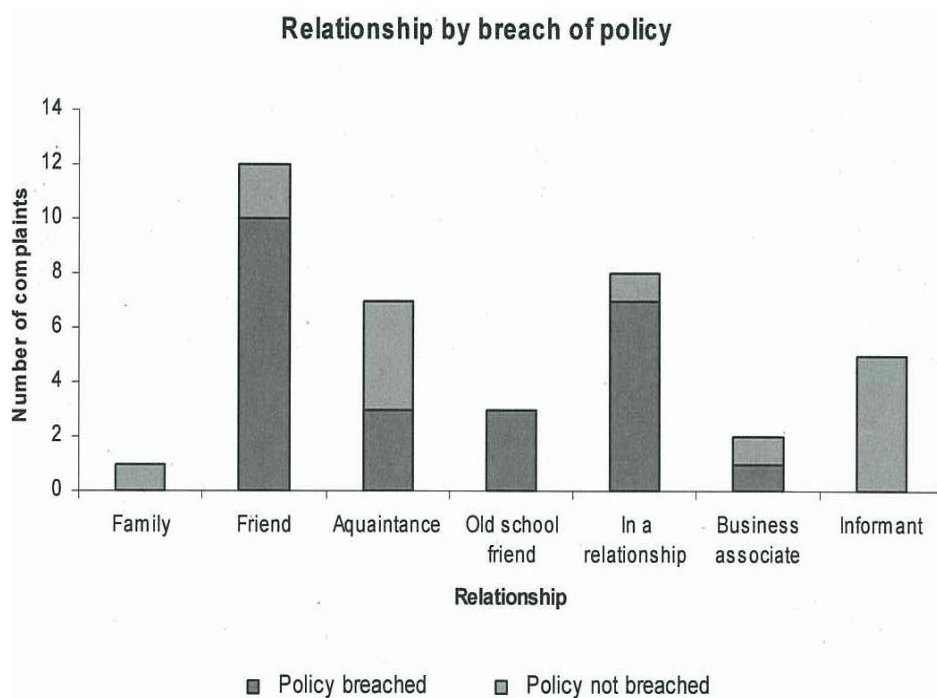


Figure 1 Types of relationships described in complaints between the subject officers and their alleged associate(s) by whether or not the Conflicts of Interest (Improper Associations) Policy and Guidelines were breached.⁸⁵

⁸² People, J., *et. al. op. cit.* pp.9-10.

⁸³ *Ibid.* p.12.

⁸⁴ *Ibid.* p.11.

- 4.4 A submission to this inquiry from the NSW Ombudsman identified two problems for officers in complying with the Policy. Firstly, it was suggested that the Policy contains mixed messages that can be confusing and worrying to an officer in that the declaring an association might make an officer feel as if the association is under too much scrutiny.⁸⁶
- 4.5 Another example is the Policy and Guidelines requirement that the officer should relinquish the association altogether as this is often not practicable if the association is with a family member. This requirement might also seem redundant for an officer to declare an association if they are required to surrender it anyway. The Ombudsman considered that the Policy and Guidelines was not clear enough in recognising complex circumstances of associations and contained mixed guidelines on how to manage them.⁸⁷
- 4.6 As Mr Alan Kearney from the PIC informed the Committee:
One of the responses highlighted in the policy is relinquishment of the association. Now that is not going to be practical in many circumstances. It is not going to be ethically right in many circumstances. I think there needs to be further development around the policy itself in order to elaborate what is meant, what is intended, but it needs to follow on in the messages that are communicated.⁸⁸
- 4.7 The Committee notes that the above breakdown (Figure 1) illustrates that family members are the smallest number of improper associations that were in breach of the Policy and Guidelines and that friends and romantic relationships appear more often in the sample.
- 4.8 When asked on notice as to why the Assistant Commissioner thought there were such low compliance rates, he replied in correspondence to the Committee (see Appendix 4):
As mentioned during the hearing, officers that are wilfully involved in improper associations are not likely to declare them. However, these officers represent a very small proportion of NSWPF officers. It is most likely that other officers with undeclared improper associations are not doing so for systemic reasons. The most likely reasons for non-compliance are that staff:
- Are unclear about what constitutes an 'improper association', especially when family members are concerned.
 - Are unsure about how their declaration will be managed and may have concerns about being subjected to punitive measures in response to making a declaration.
 - Are unsure about the practicalities of making a declaration and supervisors may also be unclear about these processes.⁸⁹

Awareness of the Policy and Guidelines and Training

- 4.9 Apart from more complex reasons officers do not comply with the Policy and Guidelines, a major issue appears to be a basic lack of awareness of the policy and how it may be applicable to an officer's own relationships.
- 4.10 When the original *Conflicts of Interests* and *Conflicts of Interests (Improper Associations) Policy and Guidelines* were introduced in 2006, awareness was

⁸⁵ *Ibid.* p.11.

⁸⁶ NSW Ombudsman, *op. cit.* p. 8.

⁸⁷ *Ibid.* p.8.

⁸⁸ Evidence of Mr Alan Kearney, *op. cit.* p. 28.

⁸⁹ Correspondence to the Committee from Assistant Commissioner Paul Carey, dated 27 September 2010.

promoted by mandatory training, staff acknowledgment of the training, emails to staff and a full edition of the *Police Weekly*. Subsequent editions of the *Police Weekly* detailed case studies on improper associations and the development of six minute intensive training exercises.⁹⁰

4.11 The NSW Police Association's submission suggested that the Policy and Guidelines did not allow for the complexities of different types of associations and in some cases officers may be under the impression that as they are not engaging in any misconduct the Policy and Guidelines does not apply to them.⁹¹

4.12 The Police Association also considered that officers only received cursory training in conflicts of interest and thus were often left without a clear idea of exactly what an improper association was or what harm such association could do.⁹² As Mr Chilvers from the Association explained to the Committee:

Certainly the training question is significant. I think the submission makes the point that conflict of interest is not an easy, natural thing to be understood by everyone. In fact, often it is more about perception, particularly for the honest police officer. A police officer who is engaged in improper activities—I stress that word 'improper'—is highly unlikely to bring it to the attention of his or her superiors.⁹³

4.13 The Research Paper also identified that the training received in improper associations was not comprehensive enough and the non-compliance bore out a basic lack of awareness of the Policy and Guidelines.⁹⁴

4.14 Assistant Commissioner Carey told the Committee:

We acknowledge there need to be improvements made in awareness training in terms of the need to report and manage improper associations.... The training is therefore being revised to ensure further clarity and also to include the new recording system and terminology.... Training tailored to commanders and managers is also being developed in recognition of their pivotal role in the management of improper associations.⁹⁵

4.15 Although officers are required to sign a statement saying that they have received Code of Conduct training, this is part of a wider range of training and does not specifically relate to improper associations. Victoria Police requires officers to complete a separate form regarding any declarable associations. The guidelines on improper associations states:

All employees must complete a Declarable Associations Instruction Acknowledgement Form. This form requires employees to acknowledge that they have read or have had read to them. And they understand the obligations contained within [the Victorian Police manual and guidelines]. This acknowledgement will be fulfilled when the employee signs and submits this form to their Personnel Unit for attachment to their personnel file. The completed form remains on the personnel file.⁹⁶

4.16 This requirement not only ensures that the officer is aware of the policy but makes clear their obligations under the policy. It explains what the statement will be used for and how it will be stored: is kept as permanent part of the of the officer's employment

⁹⁰ *Ibid* P. Carey p.2.

⁹¹ NSW Police Association, submission number 1, 2010 p.1.

⁹² *Ibid*. p.1.

⁹³ Evidence of Mr Greg Chilvers *op. cit.* p.20.

⁹⁴ *Ibid*. A. Kearney p.31.

⁹⁵ *Ibid* P. Carey p.3.

⁹⁶ Victorian Police, *Victoria Police Manual – Procedures and Guidelines*, p.2.

record. This clarification is vital as it means an officer cannot claim that they were not aware of the policy or their obligations regarding any conflict of interest.

- 4.17 The Victorian Police have a 98% compliance with the policy. It is expected to reach 100% compliance once all employees who are currently not in the work place due to leave are processed.⁹⁷
- 4.18 A similar requirement in the NSWPF would assist in raising policy awareness and compliance and also provide an opportunity to discuss with their supervisors if any difficulty they may be having in understanding their responsibilities under the Policy and Guidelines.

Written declarations

- 4.19 When an officer reports an improper association, supervisors can then manage and monitor the officer's behaviour. Declarations of improper associations can also be utilised for intelligence purposes that may prove useful for police operations.
- 4.20 Making a written declaration of an improper association may be daunting to an officer for a number of reasons. The negative connotation of 'improper' in the policy name is suggestive of impropriety without the officer having done anything other than associate with this person or group of people. Whilst that may later be deemed inadvisable for an officer to have associations with a person or persons engaged or thought to be engaged in criminal behaviour. As previously discussed breaking these relationships can present difficulties in the officer's personal life.
- 4.21 The Committee heard from the Assistant Commissioner that new recruits may find navigating relationships after they become officers to be more difficult than they thought. Although they may be committed to their sworn duties, many might not have realised the far reaching implications of being a sworn officer. Their conduct on and off duty must be conducted without 'fear or favour'. However difficult this may seem at the time, when a person decides to become a police officer they must learn to adapt to the expectation that they will conduct themselves appropriately on or off duty.⁹⁸
- 4.22 As the Assistant Commissioner Paul Carey explained to the Committee:
- When an individual decides to become a police officer they have to consider a range of matters... It has that potential—that is, you will be isolated from those people you may have gone to school with and it may not be the preferred choice of your family. They are choices that individuals have to make.⁹⁹
- 4.23 Having a made written declaration in a NSWPF employee may also feel that having such a declaration in their personnel file might harm their career prospects and hinder future promotional opportunities.
- 4.24 As such, it might be advisable for the Policy and Guidelines to clearly state what the information contained within the declaration will be used for. If the Policy and Guidelines sets out what will happen with the declaration both for management and intelligence purposes more officers might be encouraged to comply. It also must be made clear that making a declaration is not an admission of misconduct but a way of limiting risk and instituting a management plan. Clarifying the term 'improper' in the

⁹⁷ Correspondence to the Committee from Sir Ken Jones QPM, Deputy Commissioner of Victoria Police, dated 28 September 2010.

⁹⁸ Evidence of Assistant Commissioner Paul Carey *op. cit.* p.1.

⁹⁹ *Ibid.* p.9.

context of the Policy and Guidelines would eliminate some of the confusion and apprehension amongst officers (See Chapter 5 for further discussion about negative terminology).

- 4.25 The police are obliged to use what information they receive about criminal activities through improper associations declarations. Because of this, an officer making a declaration knows the information they provide about an improper association can be used against that associate. The consequences of the use of this information should be discussed by the officer's supervisor and it should be clear that unless proved otherwise the officer is not thought to be involved in any criminal activity. However, whatever criminal activity and behaviour that is disclosed by the officer will be subject to further investigation by the police and the officer must come to terms with their role to uphold the law even in their personal relationships.
- 4.26 Although making a declaration of an improper association has to be in writing, the Policy and Guidelines do not specify what the officer must include within that declaration. The PIC considers that because of this deficiency in the Policy and Guidelines, officers may unintentionally be leaving out vital information. This is concerning as not only could this be viewed as an attempt by the officer to conceal their true involvement with an improper association but it also makes the complying to the Policy and Guidelines irrelevant if the information provided is not enough to minimise risk for the officer and the organisation.¹⁰⁰
- 4.27 In his submission to the inquiry, the NSW Ombudsman suggested the use of a template to assist officers in writing declarations. This template would assist by giving an example of what type of content is needed in a declaration. A more uniform approach might also assist in creating a consistency amongst declarations that would stream line auditing and investigation.¹⁰¹
- 4.28 When asked in the public hearing whether a template would be considered Assistant Commissioner Carey told the Committee that NSWPF would be listening to both the Ombudsman and the PIC during the Policy and Guidelines review for ideas that would improve processes and compliance.¹⁰²
- 4.29 In contrast, the NSW Police Association witnesses were concerned that a template could lead to further problems if the officer felt that their situation did not fit what the template example showed. They also considered that it could lead to less vigilant management practices as supervisors would see a template as a way of noting associations without offering proper management plans. Mr Chilvers stated:
- The officer makes the declaration, his or her manager or supervisor engages them and helps them to work through how to manage this. That is not a tick and flick thing. It is good human resource management, which is something that we are struggling within the organisation.¹⁰³
- 4.30 The PIC also expressed concern that a template would force officer declarations into a 'one size fits all' approach that would be detrimental to the intent of the Policy and Guidelines. However, the Commissioner noted:
- The last thing would be to suggest there is a one-size-fits-all, but at the same time there are some criteria that are common to situations where it might alert someone to declare

¹⁰⁰ People, J., *et. al. op. cit.* p.16.

¹⁰¹ NSW Ombudsman, *op. cit.* p.7.

¹⁰² Evidence of Assistant Commissioner Paul Carey *op. cit.* p.6.

¹⁰³ *Ibid.* G, Chilvers, p.22.

or suggest they are in the area of an improper association. In the absence of seeing specifically what form a template would take it is difficult to answer. There is no doubt that for ease of compliance that would go a long way to encouraging people because the first question would be, 'How do I do it?' The answer is, 'Here is a form', so there is some sort of appeal in that.¹⁰⁴

Conclusion

- 4.31 The Committee notes that low compliance with the policy may arise from a lack of awareness of the policy and adequate training, confusion over what constitutes an improper association and unclear instructions regarding written declarations. These factors are in all probability contributors to the low compliance rate rather than a deliberate action by officers to hide criminal activities and corruption.

¹⁰⁴ *Ibid.* J. Pritchard, p.39.

Chapter Five - Policy Management and Review

- 5.1 This chapter discusses the PIC recommendations for changes to the improper associations policy and notes that these will be considered in the context of the Police Force's review of the Policy and Guidelines.

Negative terminology and language employed within the policy

- 5.2 Recommendation 5 of the Research Paper suggests a change in terminology from "improper" to "declarable" to remove the negative connotations from the policy.¹⁰⁵ The Committee heard evidence at its hearing and in submissions that a change in terminology from "improper" to "declarable" could improve compliance rates.
- 5.3 The NSW Ombudsman suggested in its submission that that the use of the word improper could dissuade officers from making declarations as the term itself is suggestive of misconduct.¹⁰⁶
- 5.4 This is especially the case when the association may be with family, spouses or children where an officer may not believe the association to be improper. The NSW Police Association told the Committee:
- ...that the name of the policy is awkward. It assumes that any association is improper, and impropriety assumes wrongdoing, certainly for the police officer. If a police officer does not believe he or she is doing anything wrong, they are not likely to bring it to anyone's notice.¹⁰⁷
- 5.5 The NSW Police Association is highly critical of the punitive language it perceives the policy employs in describing improper associations and their management. The submission states:
- ...the formal policy regarding improper associations is unnecessarily punitive in its language and approach to the issue... The definition is far too broad. It does not make any distinctions regarding mere association and involvement with a person, group or organisation. It does not address the officer's activities vis-à-vis the association. Nor does the policy clarify in any meaningful way what could constitute an activity that is incompatible with the NSW Police Force's role to uphold the law.¹⁰⁸
- 5.6 Assistant Commissioner Carey told the Committee that the NSWPF supports a change in terminology and this is being considered during their review of the policy:
- It is envisaged that the new terminology will take away some of the stigma of having a declarable association outside of work and encourage more employees to make declarations.¹⁰⁹

Victorian Guidelines

- 5.7 The Victorian Police have already amended their policy to remove the negative connotations of 'improper'. In the Victorian policy, associations that should be brought to the attention of the VIC Police are called 'declarable'.¹¹⁰ There is a distinction made between those and "improper" associations. 'Improper association' refers not only to the association but how the association is being managed.

¹⁰⁵ People, J., *et. al. op. cit.* p.18.

¹⁰⁶ NSW Ombudsman, *op. cit.* p.7.

¹⁰⁷ Evidence of Mr Greg Chilvers, *op. cit.* p.14.

¹⁰⁸ NSW Police Association, *op. cit.* p.2.

¹⁰⁹ Evidence of Assistant Commissioner Paul Carey *op. cit.* p.3.

¹¹⁰ Victorian Police, *op. cit.* p.2.

- 5.8 The emphasis is not that the association is the improper behaviour but rather the management or non management creates the impropriety. A declarable association is deemed improper if the officer has not reported the association, if the association has been reported but continued by the officer despite a direction to discontinue it, or if an officer is not managing a reported association according to an agreed management plan.
- 5.9 Moreover, the Victorian policy is more solution based rather than disciplinary. Although consequences of non-compliance are stated the overall theme of the policy is to clarify the process and offer management support strategies for supervisors and officers. The Victorian Police have 2.8% of the workforce have an active management plan in place.¹¹¹
- 5.10 The Committee encourages the NSWPF to implement this change as part of its review. The Committee notes that the a NSW Police Force have responded to the PIC study by reviewing their Policy and Guidelines document with a view to implementing the recommendations in the Research Paper where appropriate. As part of this inquiry the Committee considered what further assistance the PIC could provide with the identification and management of risks arising from improper associations. It notes the Police Force's advice that the Professional Standards Command shares a collaborative relationship with the PIC on a number of projects to implement best practice. It also notes the commitment of the Police Force to implementing recommendations of the PIC 'where practical and appropriate'.¹¹² The Committee was advised that the PIC is involved in the Police Force's review of the Policy and Guidelines and considers this of benefit to the review.

Recommendation 1: That the NSWPF utilise the PIC capabilities in assisting with the policy review in any way they can to ensure the best outcomes for officers and the organisation.

Recommendation 2: As part of the review of the Policy and Guidelines the NSWPF consider as a matter of highest priority to replace the use of the word 'improper' to 'declarable' to reflect better the intent of the policy.

Recommendation 3: That the NSWPF look to other jurisdictions for policy comparison during the review, especially the Victorian Police Declarable Associations Policy and Guidelines for guidance.

Management of improper associations

- 5.11 Despite evidence that improper associations present a risk of misconduct and corruption to officers they are not themselves indicators of corruption. However, one of the key themes to come out of the inquiry is that improper associations are less of a risk factor if they are managed appropriately and if the punitive consequences are removed.
- 5.12 The primary tool to prevent misconduct through improper association is an officer's written declaration. After a declaration is made a supervisor must then work out a strategy for managing the improper association. Supervisors can monitor and review

¹¹¹ Correspondence from the Deputy Commissioner Victorian Police, *op. cit.*

¹¹² NSW Police Force, submission number 4, 2010 p.2.

the circumstances of the association or remove the officer from risk of contact with the association if the association is through.¹¹³

- 5.13 The Research Paper notes that without written declarations of improper associations there is little reason for supervisors to monitor or evaluate the risk that may be posed by the association, and that often supervisors respond to a known improper association only after a complaint has been made about the officer.¹¹⁴
- 5.14 However, there is a lack of standardised practice for the management of improper associations which results in each command and each supervisor managing every situation differently. Although different solutions may be required for different circumstances there should still be some uniform management and monitoring strategies that can be applied.
- 5.15 Management of these associations often present difficulties to supervisors as officers are engaging in this behaviour outside of work hours and duties. Supervisors must seek to reinforce the principles of the policy and encourage written declarations so they can ensure compliance by officers in off duty hours.
- 5.16 The PIC findings supported this, Mr Kearney telling the Committee:
There is also little indication of consistent management of risk in a significant proportion of cases-84 per cent – where sustained findings have arisen in a complaint investigation.¹¹⁵
- 5.17 In their submission the NSW Police Association considered that proper management strategies by supervisors would minimise the risk of officers engaging in misconduct. It would also remove the punitive consequences for the officer who is not engaged in misconduct but who makes a declaration. The submission states:
The focus of the policy should, we maintain, be on risk assessment and risk management, particularly where those associations that are of concern are to continue. The focus of the policy should also be on protecting and assisting officers who are not engaged in inappropriate behaviour to report and manage any association that is of concern... The policy should therefore have a preventative focus in the context of early intervention and risk analysis.¹¹⁶
- 5.18 Conversely, in Victoria, if managers become aware of a questionable association of an officer they are advised to discuss it with the officer first. If the supervisor determines that the association is not declarable they are required to make a note of the discussion and details of the association in their diary. This is to be officially noted by the officer.¹¹⁷
- 5.19 The Victorian policy also offers supervisors guidance in how to respond to declarations and what to consider when formulating management plans. Again, the theme of the policy is to guide officers and supervisors as to how to appropriately manage associations rather than to detail the consequences of non compliance.¹¹⁸

¹¹³ Police Integrity Commission, *op. cit.* p.1.

¹¹⁴ People, J., *et. al. op. cit.* p.17.

¹¹⁵ Evidence of Mr Alan Kearney, *op. cit.* p.24.

¹¹⁶ NSW Police Association, *op. cit.* p.2.

¹¹⁷ Victoria Police *op. cit.* p.5.

¹¹⁸ *Ibid.* pp.6-7.

Recommendation 4: That the NSWPF develop guidance to supervisors and officers on declaring and managing 'improper' associations.

Storage of declarations

- 5.20 The *Conflict of Interest Policy and Guidelines* specify that where a conflict cannot not avoided it must be reported in writing. Records of these declared conflicts remain part of an employee's employment record and must be taken into consideration and advised to a new command or branch upon the movement, relocation or promotion of an employee.¹¹⁹
- 5.21 The improper associations Policy and Guidelines were introduced to complement the broader conflict of interest policy.¹²⁰ It does not state that improper associations declarations should be transferred with employee files. The Research Paper identified several administrative issues with the storage and transfer of hard copy improper associations declarations and recommended that the policy be amended to clarify that any declarations of improper associations that are held at local area commands are transferred with the relevant officer if the officer is transferred to another command.¹²¹
- 5.22 Another recommendation by the PIC is that a centralised database of officers who have made a declaration of an improper association be created. As such, the Research Paper suggests that declarations should be stored at a corporate level. Storing declarations in a centralised database also allows for proper auditing and quality control of the declarations to ensure that the aim of the Policy and Guidelines is being met.¹²²
- 5.23 Recommendation 8 of the Research Paper recommends keeping declarations at a corporate level not just at the Local Area Commands. In their submission to the inquiry they elaborated stating:
- ...the Commission is of the view that the NSWPF should consider utilising a central repository of information regarding known associations and declared conflicts of interest in the NSW Police Force... insofar as it will improve the ability of the NSWPF to detect potentially suspicious associations.¹²³
- 5.24 Assistant Commissioner Carey informed the Committee that the Professional Standards Command had already commenced working with their information technology department to create a centralised register of declared improper associations. This register would be accessed through the SAP human resources database and would allow for not only monitoring and management of associations but also analysis of the data provided.¹²⁴
- 5.25 However, the NSW Police Association disagreed with this approach. The Association seemed to agree that the declarations a police officer makes should be retained with their personnel file and follow the officer to wherever they were based as opposed to a centralised system.¹²⁵

¹¹⁹ NSW Police Force, *op. cit. Improper Associations* p.4.

¹²⁰ *Ibid.* p.4.

¹²¹ People, J., *et. al. op. cit.* pp. 17-18.

¹²² *Ibid.* p.16.

¹²³ Police Integrity Commission, *op. cit.* p.6.

¹²⁴ Evidence of Assistant Commissioner Paul Carey *op. cit.* p.3.

¹²⁵ Evidence of G. Chilvers, pp.19-20.

5.26 The Association considered that declarations should be a 'living' document. Mr Chilvers expressed his doubt as to whether collecting and storing this information actually achieved anything, telling the Committee:

You have people who have extensive complaint records, nothing sustained. They have just been very, very active police officers and people know how to use the system and make complaints. You have others that have one or two and they have been sustained and they are a much greater risk to the organisation. If someone declares a whole lot of things and they manage them well, that is very positive rather than an indication of risk. It means that they are very aware of what they are doing.¹²⁶

5.27 Mr Chilvers also did not believe that there needed to be follow up declarations by the officer stating that the association had ended therefore removing the necessity of the declaration on their personnel file. Mr Chilvers explained that if an association was declared and was being managed appropriately then there was nothing to remove:

If it [the association] changes in the future, expunging something implies that there is something bad there that you are going to expunge. This should not be a bad thing. It is just a declaration.¹²⁷

Privacy

5.28 The Committee also considered the risk of an officer's privacy of centralising records as the Victorian policy has a requirement to maintain confidentiality of information as far as possible.¹²⁸

5.29 Privacy was one of the issues that the Victorian Police faced when instituting their policy. The Police developed a range of strategies to ensure safe storage and distribution of declarations. Declarations are provided electronically to the officer's direct supervisor, the PSA manager and to the Chair of their Command's of the Professional Development Committee.¹²⁹

5.30 Professional Development Committees are set up to provide guidance to supervisors regarding management plans. Each committee is advised to conduct a review of active management plans every 6 months to ensure that the plan is being adhered to and remains relevant. Committee Chairs maintains a Register of Associations that includes the Association Assessment form and signed copies of the regions Declarable Associations Instruction Acknowledgement Form.¹³⁰

5.31 If a centralised storage of improper associations declarations is held then it is essential that a formal protocol is created to ensure who has access to this information. Officers would be less likely to comply with a requirement to declare an association if they are uncertain as to how many people can access them and how they will be used.

¹²⁶ *Ibid.* p.20.

¹²⁷ *Ibid.* p.21.

¹²⁸ Victoria Police *op. cit.* p.4.

¹²⁹ *Ibid.* p.5.

¹³⁰ *Ibid.* p.8.

Recommendation 5: That the NSWPF centralise the written declarations of improper associations by officers to store at a corporate level (as per PIC recommendation 8) and that protocols be established to limit access to these records to minimise the risk of this information being used to the detriment of an officer's reputation or career and that the information is compliant with relevant privacy legislation.

Early Intervention Systems

- 5.32 Adequate education and appropriate management of improper associations have been flagged in all of the submissions to the inquiry, and at the public hearing, as assisting with the minimising of risk of corruption and misconduct.
- 5.33 The management of improper associations amongst officers is to minimise the likelihood that those officers will engage in misconduct through these associations. However, the management of improper associations should be seen as a part of a much broader early intervention system (EIS) as discussed in the Committee's report of March 2009.
- 5.34 An EIS is an integrated data system that provides a snapshot of whether an officer is at risk of misconduct or corruption. An EIS is the centralisation of officer's information based on indicators such as arrest patterns, leave patterns, types of complaints and improper associations.¹³¹ The main purpose of an EIS is to analyse the information according to these indicators and identify a pattern of behaviour.¹³² The officer's supervisor still has the authority to individually assess the information and consider other factors such as differences in the work environment and peer group averages to determine its accuracy.
- 5.35 The PIC Commissioner concurs with compliance to the improper association policy as a way of limiting risk because many of their investigations into misconduct had undeclared improper associations as a common theme.¹³³ The PIC agreed that there were common elements to risk assessment and management between an EIS and compliance to an improper associations policy:
- The whole idea is that if an interest is declared then nine times out of 10 there will not be an issue—because the whole idea is to declare the association so that it can then be properly managed. To that extent there is a sense of a similar theme with the EIS, which is designed to identify problematic behaviour before it turns into a complaint.¹³⁴
- 5.36 Whilst not favouring a centralised database of officer declarations, the Police Association was keen to have a standardised EIS in place. Currently Local Area Commands operate their own model of management and this can lead to inconsistent results.
- 5.37 The Association informed the Committee that:
- We have been pushing for a long time to have an appropriate early intervention system which is non-punitive... that is, identifying risks to the officer and the organisation and having a plan so that people can work through and manage those risks. We have been

¹³¹ Committee on the Office of the Ombudsman and the Police Integrity Commission *Report on an inquiry into Early Intervention Systems in the NSW Police Force* Report No. 5/54 NSW Parliament March 2009, p.48.

¹³² *Ibid.* p.16.

¹³³ Evidence of J. Pritchard *op. cit.* p.27

¹³⁴ *Ibid.* p.27.

extremely critical of the original early attempts to do that which were poorly thought through and punitive in their approach for the most.¹³⁵

5.38 The 'ad hoc' approach to the gathering and record keeping of declarations has led to this information not being used as an effective risk management and early intervention strategy. A standardised management model would give supervisors clear guidance on how to manage and monitor inappropriate associations. As Mr Chilvers told the Committee:

What we want is a system that is going to identify risks, is going to help officers to work through and develop strategies to be able to manage those risks.¹³⁶

5.39 Compliance with Policy and Guidelines on improper associations in the NSW Police Force would be enhanced by an EIS. As discussed in the Committee's report on the inquiry into EIS improper associations can be an early indicator of misconduct.¹³⁷ For the effective management of improper associations the emphasis on improper associations as a performance issue and not a disciplinary issue needs to be established.

5.40 Supervisors also need to consider their approach to handling cases of improper associations and not take a punitive approach an officer's making a declaration. The Committee's EIS report stated that supervisors are responsible for the welfare of their officers and it is their duty to be the first to approach the officer as part of the intervention. Any actions against the officer are addressed as a performance issue and not a disciplinary issue.¹³⁸

5.41 The 2009 EIS inquiry report suggested that true employee 'buy-in' resonates with informing of the risks of improper associations to an officer's long-term career development.¹³⁹ Removing the punitive tone from Policy and Guidelines, as the Police Association suggests, is a step towards this. Encouraging officers to comply with policy as a means of career achievement, can be a more effective way of managing improper associations.

5.42 During the public hearing 10 August 2010, the PIC advised the Committee that they had been informed by the Commissioner of Police that there was a delay in funding for the EIS. The Commissioner informed them that whilst capital funds were available at this stage recurrent funding for the EIS could not be made available. The PIC has requested further advice from the NSWPF regarding their intentions with the EIS in light of the funding issues.¹⁴⁰

5.43 On 9 November 2010 the Committee received correspondence from Assistant Commissioner Paul Carey with an update on the status of the EIS. The letter stated that due to the high costs associated with the system the NSW Police Force's budget allocation during the previous financial year could not meet the recurrent costs of implementation.¹⁴¹

¹³⁵ Evidence of G. Chilvers *op. cit.* p.22.

¹³⁶ *Ibid.* p.22.

¹³⁷ Committee on the Office of the Ombudsman and the Police Integrity Commission *op. cit.* pp.48-49.

¹³⁸ *Ibid.* p.31.

¹³⁹ *Ibid.* p. 101.

¹⁴⁰ Evidence of J. Pritchard, *op. cit.* pp. 38-39.

¹⁴¹ Correspondence to the Committee from Assistant Commissioner Carey, 9 November 2010.

- 5.44 The Professional Standards Command have been working to amend the business case and are examining ways in which to utilise already existing platforms to link with an EIS. The NSW Police Force has revised the EIS business case and placed the project on the forward estimates for the current financial year.

Recommendation 6: That the NSWPF proceed with plans of instituting an EIS as recommended in the Committee's 2009 report.

Recommendation 7: That after the completion of the policy review the NSWPF integrates the new Policy and Guidelines into an EIS.

Conclusion

- 5.45 The Committee is of the view that the terminology contained in the Policy and Guidelines has negative connotations and discourages discussion between supervisors and officers, even if there is no wrongdoing on the part of the officer. The Committee notes that the NSWPF is considering changing the language, as recommended by the Research Paper, in the review they are currently conducting of the Policy.

Chapter Six - Conclusion

- 6.1 The Research Paper has shown that although the current Policy and Guidelines addresses the issues relating to officers and improper associations, it has not been successful in curbing these associations or enforcing compliance.¹⁴²
- 6.2 Improved education and training is required to ensure that officers understand the full meaning of the improper associations policy. Even officers who were aware of the Policy and Guidelines often thought it did not relate to their specific situation as they were not engaging in any form of misconduct through their associations.¹⁴³
- 6.3 The recommendations that were put forth in the Research Paper should be considered by the NSWPF in their current review of the Policy and Guidelines. Most importantly, the removal of the punitive and negative terminology could remove any stigma or fear officers currently feel in regards to making written declarations.
- 6.4 The Committee considers that a centralised database of declarations should be utilised as part of an EIS and that the implementation of an EIS by the NSWPF will make a significant contribution to the early detection and prevention of corruption.
- 6.5 The Committee encourages the NSWPF to utilise the PIC's research findings.

¹⁴² People, J., *et. al. op. cit.* p. 17.

¹⁴³ NSW Police Association, *op. cit.* p. 1.

Appendix 1 - List of Submissions

Submission no.	Organisation
1	Police Association of NSW
2	NSW Ombudsman
3	NSW Police Integrity Commission
4	NSW Police Force

Appendix 2 - List of Witnesses

Public hearing held on Tuesday 10 August 2010	Witnesses	Organisation
	Mr John Pritchard, Commissioner Mr Alan Kearney, Director Prevention and Information	NSW Police Integrity Commission
	Gregory Chilvers, Director of Research and Resource Centre Philip Tunchon, Assistant Secretary Legal,	Police Association of NSW
	Assistant Commissioner Paul Carey	NSW Police Force

Appendix 3 - Transcript of Proceedings

NOTE: The proceedings took place on Tuesday 10 August 2010 at Parliament House, Macquarie Street, Sydney.

CHAIR: Assistant Commissioner, thank you for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission today for our inquiry into improper associations in the New South Wales Police Force. The Committee will be pleased to hear evidence.

PAUL ANTHONY CAREY, Assistant Commissioner of Police, Commander, Professional Standards Command, sworn and examined:

CHAIR: Please state your occupation and in what capacity you are appearing before the Committee?

Mr CAREY: I am Assistant Commissioner of Police and I head up the Professional Standards Command on behalf of the commissioner.

CHAIR: We have received the New South Wales Police Force submission into the inquiry. Do you want that submission to form part of your formal evidence?

Mr CAREY: Yes.

CHAIR: Would you like to make an opening statement?

Mr CAREY: Yes, thank you. Firstly, thank you for inviting me to the parliamentary joint committee inquiry into improper associations in the New South Wales Police Force and I welcome the opportunity to speak to the Committee in relation to New South Wales Police Force developments in this area. In that respect I would like to point out our position and highlight the work that the New South Wales Police Force has done in order to address this area of risk. Improper associations are a particular type of conflict of interest, which have the potential to negatively impact on the New South Wales Police Force in many ways, especially given that effective policing relies on good reputation in the New South Wales Police Force and good relations with the community. As a local area commander for 10 years I am well and truly aware of that role.

Improper associations where not properly addressed have the potential to compromise the reputation of individual officers, the integrity of the New South Wales Police Force and the public perception of the New South Wales Police Force, which, in turn, may have a negative effect on public cooperation with the day-to-day work of the New South Wales Police Force. The obligation to avoid improper associations has always been a requirement of a police officer, and in fact the oath or affirmation says 'uphold the law without fear or favour'. The New South Wales Police Force Code of Conduct and Ethics explicitly addresses this issue by requiring officers to take reasonable steps to avoid conflicts of interest, report those that cannot be avoided and cooperate in their management.

In practice, although the risk of harm relating to improper associations is high the prevalence of allegations is low. In 2004-2009 allegations of improper associations as a percentage of complaints received by the New South Wales Police Force remains consistently low and remains at between 1.5 to 2 per cent of all complaints received against sworn police officers. Nevertheless, in recognition that the potential consequences of improper associations are high, considerable steps have been taken to improve the mitigation of those risks in recent years in order to ensure that the likelihood is kept low and is even further reduced. In 2006 the obligation in the code of conduct to avoid or manage improper associations was made more explicit by the production of the Conflicts of

Interest (Improper Associations) Policy and Guidelines, and I can table a copy of that policy for the information of the Committee.

Document tabled.

That policy was produced alongside a more generic conflict of interest policy and guidelines in an updated code of conduct and statement of values. Those new policies are bolstered by a series of awareness-raising measures, including mandatory training in the code of conduct; a requirement for all staff to acknowledge that they attended that training and were aware of the requirements of the code of conduct by signing a formal statement; training for commanders on the requirements of the new policies; an email to all staff to ensure awareness of the new policies; dedication of the full edition of the New South Wales *Police Weekly*—being an internal publication for all staff; case studies in subsequent *Police Weekly* editions on improper associations; the development of six-minute intensive training exercises, or SMITS, on the topic of improper associations and other promotional material.

Four years on from that not inconsiderable undertaking, the New South Wales Police Force is still continuing to take action to ensure that improper associations are managed effectively in the New South Wales Police Force and that compliance with the policy is enhanced. The recent review by the Police Integrity Commission of compliance within the New South Wales Police Force with improper association policies and guidelines, being the catalyst for this inquiry, has made several recommendations, which the New South Wales Police Force has favourably considered and is in the process of implementing. My command, being the Professional Standards Command, has been carrying out proactive research into the issue of improper associations in order to gain a more accurate understanding of the issues in the field.

The following tasks have been undertaken to this end: workplace reviews in commands; assistance in commands with the corruption resistance planning; and ANZPA research. The New South Wales Police Force is currently engaged in this research—ANZPA being the Australia and New Zealand Policing Advisory Agency, which is literally the secretariat to the commissioner's conference. I am a member of the Australian ANZPA Integrity Forum, which is a meeting of my peers—assistant commissioners or directors in charge of professional standards or ethical standards. Out of that forum New South Wales is charged with undertaking research in relation to declarable associations to ultimately develop a national standard that might be put into place across a range of law enforcement agencies. That research will be presented to the ANZPA Integrity Forum later this year.

As recommended by the PIC report and as supported by our own research, the New South Wales Police Force is considering changing the terminology from the current 'improper associations' to 'declarable associations'. The reasoning behind the first is acknowledging that New South Wales Police Force employees, as with all other public official employees, have a range of associations outside of work, including family, social and community associations, most of which are not improper but some must still be declared. It also emphasises the fact that having a declarable association does not automatically mean that the officer is engaging in misconduct and it is only misconduct when not properly managed. For instance, in the case of family associations, declaring a conflict of interest may avoid the association being improper. In such cases the risk of such associations are able to be managed if properly declared. It is envisaged that the new terminology will take away some of the stigma of having a declarable association outside of work and encourage more employees to make declarations.

A further recommendation of the PIC report was that records were not kept centrally. The Professional Standards Command has worked with our BTS—business and technology—to develop a declared interest register, which will sit within the electronic human resources database, which is known as SAP. A register has been added to SAP and a user guide developed. That register is currently at the testing phase. This will allow for all declarable interests to be centrally recorded. The

system will also allow for analysis of trends and issues over time and comparison between different geographical areas, duty types and demographics in the New South Wales Police Force.

We acknowledge there need to be improvements made in awareness training in terms of the need to report and manage improper associations. The research mentioned above has also shown that officers are still unclear about when to declare a certain association, for example, family associations. The training is therefore being revised to ensure further clarity and also to include the new recording system and terminology that I just spoke about in relation to SAP. Training tailored to commanders and managers is also being developed in recognition of their pivotal role in the management of improper associations. My command has set up a help desk, which is a telephone service for commanders and managers in the field, to be able to make professional standards-related inquiries including inquiries on how to properly manage improper associations.

As a result of the considerable research and review undertaken in this area and in recognition of the recommendations of the PIC report, Professional Standards Command is also undertaking an additional review of the conflicts of interest policy and guidelines and the Conflicts of Interest (Improper Associations) Policy and Guidelines to ensure their increasing relevance and effectiveness. Thank you.

CHAIR: Could you tell the Committee what types of risks are posed by police officers having an improper association?

Mr CAREY: The risk can be categorised into three areas: actual risks, perceived risks. We use the ICAC definition in relation to what a conflict of interest is, and that is where the public official has private interests which could improperly influence their performance of their official duties. So the risk is in that area in relation to the performance of their duties.

CHAIR: You did say three. You said actual and perceived. What is the third?

Mr CAREY: I will just refer to my notes. Perceived, actual and potential.

Mr PAUL PEARCE: Mr Chair, could I ask a question? It might be jumping around a little. You talked about the terminology and the declarable association. What is the actual nature of the declaration that the officer would be expected to make? Is it simply identifying person X, be it a family member, a friend or an associate, at that point or does it go the next step as to the nature of the activity that they believe this person is involved in which therefore makes them a declarable associate? If so, how do the police then respond? You cite examples one and two that relate to, essentially, social drug use. Does that declaration then provide grounds for the police to pursue the said declared associate?

Mr CAREY: In relation to gathered intelligence yes it does. It is about the commander and the manager with the officer declaring what that association is, developing what the depth of that association is, and I can give you some examples that I have had with officers who have members of their family who are criminals or who are members of outlaw motorcycle gangs and they will give you a great amount of detail in relation to the history of those people. In my experience the officers that I have dealt with absolutely limit the contact with those people.

Mr PAUL PEARCE: That is on the more serious end of the scale. The examples you give here from the public perception would be on the less serious end of the scale.

Mr CAREY: Yes.

Mr PAUL PEARCE: How does that sit in terms of the officer making the declared association the nature of the offence which is being committed by the declared associate? How does it then

translate? Do the police at that point have an obligation to pursue the individual so named for the offence that has been identified?

Mr CAREY: We do have an obligation. I think it would depend on the detail that is provided and where that activity might be taking place and what evidence might be able to be gathered in relation to that particular offence. One of those examples is about an officer seeing a drug deal take place.

Mr PAUL PEARCE: I think that would be in a different category—the knowledge of someone consuming a certain drug.

Mr CAREY: That they have an associate who may be a drug taker and he or she becomes aware of that. Certainly there is an obligation in relation to that illegal activity to pursue that based on the information that is provided by the officer, but that would be gathered as information.

Mr PAUL PEARCE: What sort of counselling would be involved with the individual officers, because essentially what is being put upon the member of the Police Force at that stage is a very high standard that probably would not be applicable elsewhere in the community, notwithstanding common law offences in relation to misprision of felony, et cetera? What count would be involved in that, because that is essentially putting an onus in most cases upon a young man or young woman—some of them in their early twenties—to essentially declare something against a family member or possibly a school friend for many years?

Mr CAREY: It is a dilemma that those people will face. It is not an ethical dilemma because if they have taken the oath of office by way of oath or affirmation on the parade ground—which people will do in about two weeks time—then they are obliged to report that matter.

Mr PAUL PEARCE: I am aware of the legal obligation. What I am talking about is the counselling associated with that. People can be aware of their legal obligation but still have an issue in terms of exactly how they deal with it in an emotional sense.

Mr CAREY: I think that advice starts when they are a student in the college, from my knowledge of the training that goes on in the college, certainly in relation to ethics. In week 14 I speak to the students in a fairly large gathering—in fact, I speak to them on Thursday morning—and talk about the role, function and oath of the office of constable and the duties they are about to undertake. It poses lots of questions in relation to the way they will conduct themselves and their lives, and points out it will have an effect on them, their families and friends. But if they take that public oath of office they are obliged to put that above their personal interests.

CHAIR: If an officer declares certain issues is counselling provided if the officer so chooses?

Mr CAREY: Not counselling in the true sense, but that declaration is made to the commander or the command management team. It might be made to another person but come to the attention of the commander. It is the responsibility of the commander and the officer's managers to provide further guidance about how they might manage that conflict once it has been declared.

Ms SYLVIA HALE: I would like to pursue that further. If, for example, a police officer has a relative or friend who is taking drugs and the officer reports it on the first occasion but the drug taking continues, are they obliged to continue to report it or, having done it once, is that the end of the matter?

Mr CAREY: If they come by information which indicates there is criminal activity or a breach of the law they are obliged to continue. If they have continuing contact or information about that sort of conduct, they are obliged to continue to report that. They have declared the association but if they are aware there is continuing criminal conduct they should provide that information.

Ms SYLVIA HALE: Are you aware that that happens?

Mr CAREY: I am not aware that that has particularly happened. I cannot give that evidence; I do not know, but that would be expected.

CHAIR: The New South Wales Ombudsman also suggested that additional guidance in regard to written declarations and the provision of a template to assist these declarations could encourage officers to make written declarations. In its review, the New South Wales Police Force is looking at practical ways in which to assist officers in making declarations outside mere compliance issues. What is your view of that? The Ombudsman is saying there needs to be some guidance in regard to written declarations and the provision of templates to assist those making written submissions in regard to conflicts of interest. In its review the New South Wales Police Force is looking at particular ways in which to assist officers in making these declarations outside mere compliance issues. That is directly from the Ombudsman. What is your view on that?

Mr CAREY: Both the conflicts of interest policy and the conflicts of interest improper association policy—improper association is a conflict of interest but we thought it was so important that there are two policies—are being reviewed based on both the PIC recommendations and recommendations from the Ombudsman. If we can achieve better compliance by listening to and learning from both the Ombudsman and the PIC then that is what we will do. If there is an issue in relation to compliance and written declarations and there are improvements that can be made to both of those policies, that is what we will do. Both of those policies are up for review as is the training, and that is what we are doing at the moment.

CHAIR: Why does the New South Wales Police Force have these guidelines, how long have these guidelines been in place and how successful are they?

Mr CAREY: The specific guidelines have been in place since 2006. They were reviewed in 2008 and will be reviewed again. They are there because we see that improper associations, if not properly managed, are a high risk to the organisation. It is important that that policy stand alone and separately and it indicates to people that we recognise in the first instance there will be these associations and they need to declare them to us so that we can properly manage any conflict of interest. It is important; we have regularly reviewed and trained people over the last five years. We recognise that commanders and managers move on and that we recruit large numbers of new people each year and the training needs to be continuous. We are probably 60 per cent through some mandatory training in relation to improper associations. We have received some feedback about that training and we are going to review it. The training will continue and we will probably review it again next year and implement a new program.

CHAIR: How successful do you think the guidelines are?

Mr CAREY: We receive on average just over 100 complaints in relation to improper association. I note the data that is in the PIC report in relation to the allegations that they received.

CHAIR: It is 139, isn't it?

Mr CAREY: The average is just over 100 out of an average of about 5,000 to 5,500 complaints a year. The number of complaints received in the past financial year dropped again. Complaints about improper association are a very small percentage of that—about 1.5 to 2 per cent. It dropped below 1.5 per cent and has just bounced above 2 per cent in one year. The PIC report for the purpose of their research looked at 100 complaints across two years that have been received by the New South Wales police in relation to improper association. Fifteen of those complaints were not investigated; in other words they were declined, so that was the end of them. Of the 85 matters that were investigated, only 24 were sustained. In fact, the commissioner removed four of those people.

But 24 sustained matters out of 5,500 complaints is about half of 1 per cent. We understand the risk is very high but the number of allegations that come to our attention is very low.

Ms SYLVIA HALE: Have you read the PIC submission?

Mr CAREY: Yes.

Ms SYLVIA HALE: It makes the point on page 3 that the number of complaints received may bear very little relationship to the seriousness of those complaints. In the third paragraph on that page it says that given that the commission focuses on serious police misconduct it is possible that the complaints received and assessed by the commission are of a more serious nature than the overall sample of complaints referred to by the New South Wales Police Force. The submission then goes on to say that the commission is of the view that care needs to be taken when attempting to equate the number of complaints received with the prevalence or extent of an issue and that relying solely on complaints data is unlikely to provide a comprehensive understanding of a particular issue. What is your comment on that observation?

Mr CAREY: The data that PIC holds in relation to seriousness of complaints is not demonstrated in this report. They rely on complaints data and it may very well be that the data held by PIC are about very serious matters. I am not sure what happened to the 199 matters that PIC received and that are referred to in this report. We have a good working relationship with PIC that is separate and distinct, but it may very well be that some of those matters came to us and could have formed part of the 100 complaints we actually investigated. PIC is right, they are very serious matters and the consequences in terms of risk are high, which is why we have a separate policy, mandatory training and regular reviews of that particular policy.

It is also why I took the responsibility in relation to the national research. I think it is very important across all law enforcement agencies. There are two States that do not have improper association and declarable association policies in their law enforcement. They are under consideration. There are two States that have declarable association policies, which is what we are looking at, so I think it is very important. We do not rely solely on the low level of allegations or the low level of sustained findings, so I think we treat it very seriously.

Ms SYLVIA HALE: One of your earlier statements when you were giving evidence this morning referred to the low prevalence of allegations. Again, the issue is not the prevalence but the serious nature of the allegations. I can understand that from a media point of view to talk about the low prevalence of allegations is very useful because the implication is that all is well, but I think the point made by PIC is that it is not the number but the quality of the allegations. What do you do in order to determine which are the more serious and less serious allegations and how specifically do you follow up serious allegations of misconduct or conflicts of interest?

Mr CAREY: Are you talking about the receipt of a complaint?

Ms SYLVIA HALE: Yes.

Mr CAREY: All complaints are assessed by the command or the unit where those complaints are received and if the matter is assessed as a complaint it is placed on our central system—CATSI—and we can keep an eye on them in relation to their seriousness. The complaint is assessed in relation to part 8A and there is a way of dealing with a particular complaint and how we might investigate it. The allocation of resources to a particular complaint would depend on the nature and type of allegation and the information available. I would say that while there were only a low number of allegations, mostly managerial action was taken in relation to the 23 or 24 sustained matters relating to improper associations. In four of those cases the commissioner actually dismissed an officer, so those matters were treated very seriously. I do not know the full details of those briefs but I suspect that more than likely they were criminal briefs and we pursued those officers in relation to

those activities and the improper association. They are very serious outcomes. If the allegation is made and the evidence is available we will pursue those matters very seriously.

Ms SYLVIA HALE: Are these allegations always pursued in-house or is there ever any independent assessment of those allegations and the investigation of them?

CHAIR: That is the PIC's role. Assistant Commissioner, you spoke about reviewing the guidelines. Can you tell the Committee what the terms of reference are, what is the timetable of the review and whether you are consulting outside bodies in regard to that review?

Mr CAREY: I cannot tell you what the terms of reference are. We certainly have used the PIC research paper, which was provided to us in draft form in September last year, as a basis for reviewing both the conflicts of interest policy and the improper association policy. They will be reviewed in that context and in light of the findings of this Committee. The consultation is wide and includes the Ombudsman, the Police Association and the PIC. That would be the parameter in relation to reviewing those guidelines. Both policies have been reviewed once since they were put in place.

CHAIR: Can we get a copy of the terms of reference of the review?

Mr CAREY: Under normal circumstances we would not develop terms of reference. We would review the policy based on what we had found or what PIC has found or what the Ombudsman might recommend. They should be reviewed annually. We can certainly provide you with information about how we are going to go about reviewing both those policies.

Mr PAUL PEARCE: Going back to the declarable associations, there is a risk with the oath that officers take, the nature of the declarations and the nature of the declarable associations, that police officers could face a level of social isolation vis-a-vis the broader community, particular when you are talking about family members or long-term friends. In your review of the impact of the policy and the appropriateness of aspects of the policy will you be looking at whether that potential for social isolation translates into a culture of closeness within the Police Force that could in fact be as counterproductive as improper associations? By way of background, we have had several matters raised by the PIC of allegations that officers, because of the nature of their relationships, have turned a blind eye. I see that as a potential risk.

Mr CAREY: As part of the review we would consult the Police Association and those sorts of matters would be considered. When an individual decides to become a police officer they have to consider a range of matters. I know as a commander that through the college and in their first year as a probationary constable that is one of the issues that is raised with an officer in relation to their choice of career. It has that potential—that is, you will be isolated from those people you may have gone to school with and it may not be the preferred choice of your family. They are choices that individuals have to make. Along the way through their student days and certainly with their probationary Constable days there is an opportunity for them to think, 'Is this the career for me?' That is very clear to those people very early in her career whether it is or is not.

Ms SYLVIA HALE: Early in your career it would be easy to say, 'Of course I will behave appropriately and not associate with people' but as your career progresses it is less easy to do that. Do you find many people resign from the Police Force because of that realisation of a conflict of interest that they cannot reasonably result?

Mr CAREY: I can give this evidence. For the first 12 months of a police officer's career they are on probation and that is about completing both operational requirements and academic requirements. They are the more formal requirements. At the same time the organisation is looking at that individual in relation to their suitability to being in the organisation and commanders are talking to young people, mostly young people, about what the job means, what the oath of office and

what it means in relation to their life. It is public interest first and private interest second. Certainly, there is that opportunity for people to leave the Police Force because they might feel that they become socially isolated. My experience also is that people will resign. I have had people resign from the Police Force because they have formed relationships with people. Most often because they have formed a relationship where they fall in love with someone and then they have disengaged from the Police Force because they cannot live that relationship. So, they make that choice.

Ms SYLVIA HALE: Other than that initial probationary period or when they join the police, later in their career in any individual discussion with any officers about their need to avoid conflicts of interest or improper associations is there ever any one-to-one engagements with police officers by you or other people in the branch about appropriate behaviour just as a matter of course rather than because someone has come to your specific notice?

Mr CAREY: Obviously, there is the formal training, the formal engagement and the expectations in relation to their role that is ongoing. I can only speak for myself and I would expect that other commanders would do it, yes, there is ongoing engagement with individuals about their career and what they are doing.

Mr MALCOLM KERR: I take you to example two on page 7 of the Conflict of Interest: 'Constable A has a friend who decides to buy drugs from a dealer. It is a small quantity of drugs and the constable is off duty, so the transaction is ignored by the constable. Constable A warns the friend not to buy drugs in their presence again. A few months later the dealer contacts Constable A and asks for some confidential police information. He threatens to expose the constable for ignoring the previous drug deal if the information is not supplied. The constable was interested in maintaining a friendship despite the illegal activity of a friend. However, the association itself was improper and put Constable A in a compromising position.' Is there any problem in that example in Constable A ignoring the drug transaction while he was off duty?

Mr CAREY: Yes there is.

Mr MALCOLM KERR: What would happen if those statements were found to be correct in relation to Constable A?

Mr CAREY: If he brought it forward? If he came forward with the fact that he had seen it take place?

Mr MALCOLM KERR: It was established in some way that everything said in that example was true?

Mr CAREY: That matter would have been investigated based on the circumstances that came forward if there was a real incident in relation to that particular deal that had taken place and the constable had ignored his duties. That would be investigated as a complaint and the outcomes would be determined based on the evidence that was available about that particular incident.

Mr MALCOLM KERR: On page 4 in the same document under 'Failure to Comply'. It states, 'Failure to comply with this policy and related guidelines may be a breach of New South Wales Police Force code of conduct and ethics.' Because the word 'may' is used I take it that there would be occasions when there is a failure to comply with the policy and guidelines and it would not be considered a breach or acted upon as a breach?

Mr CAREY: Again, if there was a matter that came to our attention and it was investigated in relation to not declaring an improper association, it may be considered a breach. Again, it would depend on the circumstances: The officer's knowledge, the association. It would depend what the complaint found. It may very well be in the circumstances of that particular complaint, I do not know, that we may not take action against that officer for not declaring that association.

Mr MALCOLM KERR: I take it that improper associations always have been a problem in the Police Force?

Mr CAREY: Improper associations have been part of our history, I think will stop we have made a raft of changes in relation to the way we police and the way we practice and the way we manage. For example, the management of informants or sources has been a significant change and improvement in relation to the engagement of police officers with sources. That came out of the royal commission. There is a whole raft of checks and balances, if you like, in relation to those relationships.

Mr MALCOLM KERR: Prior to 2006 did something occur that brought about changes over the past four years?

Mr CAREY: I would have to take that question on notice. That precedes my time in relation to this particular field.

Mr MALCOLM KERR: You mentioned that two States do not have a mechanism for dealing with improper associations, is that correct?

Mr CAREY: Yes. I think it is Tasmania, just off the top of my head—someone will correct me if I am wrong—and the AFP both have policies in draft form.

Mr MALCOLM KERR: How does the situation in Victoria differ from New South Wales in dealing with the problems?

Mr CAREY: Their policy talks about the declarable associations. So, the terminology is different. How it works practically, I do not know at this stage.

Mr MALCOLM KERR: You have not discussed that with your counterpart in Victoria?

Mr CAREY: I have not. The head of the Ethical Standards Department has just changed in recent times. The new appointee Assistant Commissioner Emmett Dunne, who has visited half and spoken to us. I have had lots of conversations with him about professional standards and practices, but we have not yet got to improper associations or declarable associations.

CHAIR: The submissions the Committee has received all point out that the word 'improper' brings a negative terms suggesting misconduct and therefore discouraging officers from making these declarations. It has been suggested that the word 'declarable' be substituted for 'improper'. Have you considered this?

Mr CAREY: Yes, and that certainly forms the basis of the review of our own policies. I have undertaken and my research team, some of whom are in the back of the room, are doing that work nationally for ANZPA and it is about declarable associations will stop as I said, two States use that term. We do not. We think 'declarable' is a much more positive term because people clearly make the distinction that the association I have with my brother, sister or father is not improper. But if they have a criminal record or are involved in criminal conduct, it is an association we need to know about, so they need to declare it.

Mr MALCOLM KERR: You mentioned that you meet with your counterparts in relation to professional standards from other States?

Mr CAREY: Yes.

Mr MALCOLM KERR: How often does that occur?

Mr CAREY: It occurs 2 to 3 times a year. It comes under the auspices of ANZPA. It is the Australian Integrity Forum. The assistant commissioners or their equivalents meet as the Australian Integrity Forum. We met late last year, once early this year. Mr Dunn has just taken the chair of that forum. It sits in Victoria. We will meet again before the end of the year. It is two or three times a year.

Mr MALCOLM KERR: I take it that the problem of improper associations is universal. Is there any reason why they could not be a consistent national approach to the problem?

Mr CAREY: There is not. We are looking at providing information to ANZPA generically. Each State has different laws and different police Acts, and different complaints processes. Having a standard policy in detail would be difficult, but there certainly are generic statements that could be made in relation to a declarable association, which is the research we are looking at so we set a standard for all of the law enforcement agencies.

Ms SYLVIA HALE: Do the Australia Federal Police participate in ANZPA?

Mr CAREY: Yes.

CHAIR: The PIC research paper uncovered that 80 police officers was known improper associations have not made written declarations. What do you believe were the reasons for this non-compliance?

Mr CAREY: I would have to take that question on notice. I do not know. I note that in the report. I do not know why those individuals have not declared their associations. I would offer this in evidence, that the four officers the Commissioner dismissed were clearly involved in improper associations and were not going to declare them.

The Hon. LUKE FOLEY: Do you think some officers fail to declare improper associations because they feel unable to sever all contact with those associates, an obvious example being family members? In that situation, does that automatically mean in the force's view that the officer is behaving inappropriately by failing to declare the association?

Mr CAREY: As it stands at the moment, that is right. I think certainly in relation to the way the policy is framed in relation to declaring improper associations there are those negative punitive sort of connotations about that language. We feel there are officers who are not declaring associations that are not improper but need to be declared so that the command can manage and provide advice to that officer about how they might avoid the conflict. The evidence is in this research paper that people are probably not declaring because of that label that it is an improper association.

CHAIR: Commissioner, Thank you for attending today.

(The witness withdrew)

GREGORY THOMAS CHILVERS, Director of Research and Resource Centre, Police Association of New South Wales, Level 4/154 Elizabeth Street, Sydney, and

PHILIP THOMAS TUNCHON, Assistant Secretary Legal, Police Association of New South Wales, Level 4/154 Elizabeth Street, Sydney, sworn and examined:

CHAIR: Thank you for appearing before the Committee on the Office of the Ombudsman and the Police Integrity Commission today for our inquiry into improper associations in the New South Wales Police Force. The Committee has received the association's submission to the inquiry. Do you want to make that submission part of your formal evidence?

Mr CHILVERS: Yes.

CHAIR: Would you like to make an opening statement?

Mr CHILVERS: No, we rely on the submission as presented.

CHAIR: The association's submission mentions that often police officers cannot gauge the damage that some of their actions can cause, and that they only receive cursory training in identifying conflicts of interest. Do you believe that more in-depth training needs to be given to police officers in this matter, and if so how would that training best be conducted?

Mr CHILVERS: First of all, I think we have three recommendations at the end of the submission, encompassing a number of issues. Certainly the training question is significant. I think the submission makes the point that conflict of interest is not an easy, natural thing to be understood by everyone. In fact, often it is more about perception, particularly for the honest police officer. A police officer who is engaged in improper activities—I stress that word 'improper'—is highly unlikely to bring it to the attention of his or her superiors. That is why we have the Police Integrity Commission. So we are talking fundamentally about perception, and about early intervention, for want of a better word. Can I flag early intervention and put it to one side, because I would like to raise that issue again at some stage.

We are talking about giving a police officer hints or skills to be able to identify what potentially might be causing them a problem in the future in their relationships and associations, or what may lessen the public's perception of police reputation, if you like. Sometimes this is not easy. Every occupation faces this problem. Indeed, members of the New South Wales Parliament have the same issues. So it is something that needs a fair bit of investigation, a fair bit of education and a fair bit of discussion. We really believe that this is significant, that it needs to be placed in its proper context.

Part of the problem is—as I think I heard Assistant Commissioner Carey mention already—that the name of the policy is awkward. It assumes that any association is improper, and impropriety assumes wrongdoing, certainly for the police officer. If a police officer does not believe he or she is doing anything wrong, they are not likely to bring it to anyone's notice. We are talking about perception, we are talking about early intervention, and we are talking about giving police officers the ability to see that some associations may in fact cause them problems at some stage or cause members of the public to lose faith in the integrity of the police service. That is what we are really talking about.

We see the problem as encompassing three things. We think that the policy should be completely rewritten to take that into account, that the education program should be revamped and made more extensive, to give people the opportunity to discuss the real, underlying issues and the cause and reasons for the policy, and also that the name should be changed so that it is not threatening. It should be removed completely from having this disciplinary connotation, so that people can understand what the purpose is.

In one of the earlier questions I heard Mr Foley say that perhaps one of the reasons why people are not notifying these associations is that they do not want to cut off. I do not think it is an issue of cutting off, certainly not with familial relationships; it is an issue of managing them. They are the sorts of skills that people need to have. People need to be able to notify what might cause a problem, and then be given the skills and abilities to be able to manage them appropriately, not necessarily cut them off. If your brother is an improper association, can we realistically expect anyone to cut the relationship off? No; they need to manage it.

Ms SYLVIA HALE: When you say they need to manage it, what do you mean by 'manage' in that context?

Mr TUNCHON: Roger Rogerson is a classic example. He had a brother in the job who was directed not to associate with his brother. In fact, he was told, 'If you are to visit your mother, make sure that he is not there.' In a practical working sense, you just cannot do that.

Mr CHILVERS: But he might have had a talk with his superior, with his supervisor, and said, 'I am in a situation. I am in the Rogerson family. My brother is known. We are having Christmas dinner with the family. How do I manage that? I have told you about this relationship. I have told you I am going to Christmas dinner. What sort of things should I be conscious of? How do I manage it? How do we face the media?', and all those sorts of issues.

The Hon. LUKE FOLEY: Going back to the word change that you recommend, from improper association to declarable association, if the force were to make that change how much of an impact do you think that change, in itself, would have on the level of compliance by officers with the policy?

Mr CHILVERS: Associated with an appropriate training package, and engaging people to talk about it, I think it would have a big impact. 'Improper' has this punitive connection. Anyone who is engaged in improper activities automatically is down the disciplinary path; that is what the assumption is. It could be said, 'This is an improper association.' The reply would be, 'No, no, it is one that I had to declare, but I am quite innocent in this, I am managing it, everything is above board, everyone knows about it, everything is fine.' it is not improper; it is declarable.

Mr MALCOLM KERR: You mentioned the example of Roger Rogerson's brother. When did that occur, do you recall?

Mr TUNCHON: It is quite dated now. It would be in the last 10 years, I suppose.

Mr MALCOLM KERR: If it had occurred recently, given your understanding of the present policy, would that directive still be given?

Mr TUNCHON: I believe it would be, yes.

Ms SYLVIA HALE: In your submission you say on the second page, 'There should be no punitive consequences for any officer who merely reports an association of concern.' Are you aware of instances where people have suffered repercussions as a result of reporting improper associations?

Mr CHILVERS: I cannot quote exact ones now, but there would be a number of instances where people who have reported these associations have been given directions that could be interpreted as being punitive, and how to manage them—in other words, 'Don't do this and don't do that'—instead of sitting down with someone and saying, 'you have given us this declaration about the fact that you have associated with this person. What are the implications, what are the dangers, how are we going to manage this, should you in fact continue this relationship?' It is not a discussion—and that is what needs to happen in the organisation. People need to be engaged, they need to be brought into it to understand the implication of these associations, to understand what might happen and what might not happen.

Ms SYLVIA HALE: Assuming someone had been brought in and had the discussion, but they still continued with the contacts, what do you think the next stage should be for that person?

Mr CHILVERS: It would depend on what the continuation of that contact was and what the circumstances were. If it became an improper association, maybe it does need to be progressed further. But the mere reporting of it, in itself, should not be construed to be an improper association.

Ms SYLVIA HALE: But the mere reporting of it require that there be a surveillance of that relationship? Is the fact that one merely declares it the end of the matter? Or do you wait until such time as there seems to be evidence of something resulting from that association?

Mr CHILVERS: If you look at these sorts of things in the context of early intervention, an appropriate early intervention program, of which this should be logically a part, would involve sitting down with your supervisor or your manager and developing a plan to be able to, if you like, list the risks involved in that sort of relationship or whatever. Good management and good supervision means that an ongoing relationship has developed between the officer and his or her manager or supervisor, so that there would be regular updates or regular meetings. Early intervention, which is an area of interest to this Committee, is not a matter of a 'tick and flick'; it is a matter of developing good human resource management practices to lessen the risks to both the individual and the organisation through a management plan. That is the sort of thing I am talking about.

CHAIR: Mr Chilvers, you spoke about a training package. What sort of package does the association believe is needed to give to the officers so that we can train them in a more specific manner?

Mr CHILVERS: I think it should start right at the beginning, when people are brought into the Police Academy.

CHAIR: Assistant Commissioner Carey said earlier he is to talk to the recruits this Thursday, so they are starting at that level. What package do you believe they need to provide to ensure that you see the outcome that you need to see?

Mr CHILVERS: Both Phil and I have had the advantage of a long history in this organisation, and we were present during the Police Integrity Commission investigation into Operation Abelia. Some of you may recall that; it was in relation to the use of illicit drugs and the abuse of legal drugs amongst police officers. One of the things that came through very clearly there was this question about improper associations and the inability of people, from the very time they entered the organisation, to distinguish between what might be called their private life and their professional life. They saw a clear line of distinction there; they could not see the problem or issue about engaging in these sorts of activities while at the same time being a sworn police officer.

So, right at the very beginning—it is not just a matter of having an hour's lecture—it really needs to be a fairly deep and ongoing discussion about conflicts of interest, and what the impact is, not only on the officer and the organisation but on the rule of law itself. When conflicts are significant conflicts of interest, it impacts on the independence and integrity of a police officer and his or her ability to carry out their functions as a sworn police officer and to carry out their duty to the law. So, right from the very beginning it should be part of their ongoing training. It should be a package that is very clearly within the area of management training, so that managers and supervisors—that is, sergeant and above—should have training in this so they are able to recognise in their junior officers where there are potential conflicts of interest and be taught how to work with their officers to be able to manage these conflicts.

It should be part of the ongoing training. I would suggest it should be part of the training that the training officers in the local area command should be able to do on a regular basis to keep it bubbling to the surface so that people are not scared about it and they do not see it as a threat. They just see it as part of the way they have to think when they work on a daily basis when they interact with people. This sort of question should be at the back of their head all the time. It should be second nature.

Mr TUNCHON: There are some elements of that training which fall into that category that is called the MCPE, mandatory continuing police education. This is one of those topics that functionally should sit in that category.

CHAIR: It should go hand in glove with the EIS program.

Mr TUNCHON: Absolutely, yes.

Mr CHILVERS: Do you want to talk about that?

CHAIR: We will get to that. I have noted it.

Mr PAUL PEARCE: I raised with the Assistant Commissioner the risk from these declarable associations, as they are currently termed, or improper associations of the social isolation of police officers, particularly younger police officers aged 19, 20, 21 who are just out of school and are told they have to declare an association possibly with a family member who is a bit dodgy or friends they went to school with. I think you have answered to some extent about the ongoing education side of it. How would that then relate to an internal police culture—because the only people they can safely associate with are other officers who are in a similar situation—and the potential problems that arise there? There have been several PIC matters where that has come up. Do you feel there may be a reluctance to make written declarations because of a concern the information may have a detrimental impact on an officer's future career? They are doing the right thing declaring an association with a family member or friends of longstanding. Is there a risk that may impact on their career, for example, in the police intelligence area? Has this been discussed by the association? What is the association's view on those aspects?

Mr CHILVERS: This issue about social isolation came up with the Abelia operation, particularly amongst young people who are living in an environment where their friends are probably experimenting with drugs and whatever. They are turning up at parties and suddenly realising, 'I can't turn up to these parties anymore, otherwise I will have to arrest everyone', which makes it somewhat difficult. So it is a significant issue. I do not have the answers for that but it is something that people need to talk about and develop strategies for their own comfort. You put someone in a uniform and give them all these powers and people automatically think that it is easy. These people have very, very difficult lives. They have conflicts all the time. They have this absolute independence of the office of constable and they have to exercise it within the context of maintaining integrity and their responsibilities to the law and balancing all these different and competing interests in a very complex society. We cannot assume that it is an easy profession. It ain't.

CHAIR: A few people in this room would agree with you.

Mr PAUL PEARCE: You are dealing with relatively young people who have just reached adult maturity.

Mr TUNCHON: It is broader than that. When you get out into the more countrified areas, the rural areas of the State, police officers mix and mingle and assimilate into the community. Sometimes they are single-person stations and they have to interact with the community. They build friendships. Again, this is an issue that is confronting them regularly—how they deal with what might be an improper conflict, if you like.

Mr CHILVERS: What was the second part?

Mr PAUL PEARCE: The second part related to a concern or reluctance amongst officers to make a written declaration because it may have a detrimental impact on their future career?

Mr CHILVERS: That really is an issue where the policy needs to be tightened up significantly. If you remove the idea of 'improper association' to a 'declarable association', I would have thought that people who had a number of declarable associations and a very clearly well-defined management plan would be a positive rather than a negative and it should be seen as such. A

constable or sergeant has declared these things, this is the management plan he is operating on and everything has worked well. He would be a person I would be trusting in a position.

Mr MALCOLM KERR: In relation to the replacement of 'improper association' with 'declarable association', as it is in Victoria, are you aware of the approach or policies in Victoria?

Mr CHILVERS: I have seen them. I have not got them with me, I must admit. My understanding is that they have a fair amount of support from the association.

Mr MALCOLM KERR: How does the Victorian approach differ in other respects from that in New South Wales?

Mr CHILVERS: My understanding is that the policy is much more along the lines of what we are recommending, that is, that it is about effectively managing risks to the organisation and the individual rather than what I would call a punitive approach.

Mr MALCOLM KERR: Do you have a copy of the Victorian approach?

Mr CHILVERS: I could get it for you. I will take that on notice.

Ms SYLVIA HALE: The PIC in its submission says:

The Commission is of the view that the New South Wales Police Force should consider utilising a central repository of information regarding known associations and declared conflicts of interest for its officers.

Do you agree that would be a good idea? It seems to me it is endorsed by the Ombudsman. If such a central repository is created should people be able to have those declarations removed—for example, if the contact dies, moves interstate or overseas—or do you think that the public interest requires that those contacts be retained because it might be indicative of a subsequent trend in behaviour.

Mr TUNCHON: I do not see it as being necessary at all. If you go to those recommendations made by the PIC, they seem to cover themselves quite well. Recommendation 7 talks about a living, breathing document held at a local level that follows the officer if they are transferred. What is the point in having it duplicated somewhere else?

Mr CHILVERS: I have to admit, I am not greatly convinced. There are lies, damn lies and statistics. You can collect bunches of information on people. I am not entirely convinced that unless it is really carefully analysed and looked at that it can indicate anything apart from the fact that you have information on someone. You have people who have extensive complaint records, nothing sustained. They have just been very, very active police officers and people know how to use the system and make complaints. You have others that have one or two and they have been sustained and they are a much greater risk to the organisation. If someone declares a whole lot of things and they manage them well, that is very positive rather than an indication of risk. It means that they are very aware of what they are doing. What I am saying is that I am not necessarily convinced that just having piles of information is a good thing.

Mr MALCOLM KERR: Have you read the PIC's submission to this Committee?

Mr CHILVERS: Yes.

Mr MALCOLM KERR: Are there any areas of disagreement?

Mr CHILVERS: Probably Recommendation 8, I think, as Phil has already pointed out, is not necessary if you have got the living document following the police officer. That is probably sufficient.

Mr MALCOLM KERR: Did you hear Mr Carey's evidence?

Mr CHILVERS: No, only the last five minutes.

Mr MALCOLM KERR: Nothing to disagree with there, I take it?

Mr PAUL PEARCE: With this type of declaration and the balance that has to be struck between the fact that a police officer is a member of the broader community and has taken certain oaths to be a police officer, how does that sit with concepts such as community policing, which requires the police officer to integrate within a community? As a matter of course, if you are mixing with Joe Public you are going to be mixing with people who potentially have committed an offence or are likely to. That is a reality.

Mr CHILVERS: I would be disappointed if the policy said that every time you bumped into someone who is a known offender you have to declare it. I think that is a bit unrealistic. If it is more than a passing 'hello' and you form some sort of relationship with someone who has that sort of background, then certainly it needs to be declared and you need to know that you are conscious of the risks and you have a plan to be able to manage it and, if necessary, pull out of it when it becomes unmanageable. That is what we are talking about, I would have thought.

Ms SYLVIA HALE: If an officer does make a declaration, do you believe it is appropriate to be able to expunge that declaration in the event of circumstances changing?

Mr CHILVERS: I have not thought about it but I guess you make a declaration about what is happening at this point in time. 'At this point in time I am in this relationship. I have this ongoing relationship with organisation X. This is how it is going to be managed. I have spoken about it with my supervisor and everyone is comfortable with it.' Amen. If it changes in the future, expunging something implies that there is something bad there that you are going to expunge. This should not be a bad thing. It is just a declaration. If you declare that you have shares in X company on your parliamentary register, when you no longer have those shares is it expunged?

Ms SYLVIA HALE: I think in subsequent declarations you declare that you have sold them or that you no longer possess them. It is implicit that it has come to an end, whereas in this case you may have a declaration that is going to follow an officer throughout his entire career. I do have not a view one way or the other. I am just curious.

Mr CHILVERS: Maybe people can put, 'I no longer see this person'.

The Hon. LUKE FOLEY: In your correspondence to our Committee you state there should be no punitive consequences for any officer who merely reports an association of concern. Are you suggesting that currently there are punitive consequences for officers who simply report an association?

Mr CHILVERS: I think the mere fact that someone's record says that this person is involved in an improper association is by itself punitive.

The Hon. LUKE FOLEY: Do you think that changing the term from 'improper association' to 'declarable association' will overcome that problem?

Mr CHILVERS: Partly and by removing the recording of it from anything to do with any disciplinary procedures. Any disciplinary procedures that flow from anything in the organisation

should be after something has occurred which changes the relationship from a declarable one to an improper one.

The Hon. LUKE FOLEY: The Ombudsman's submission to us contains a suggestion that officers could be assisted by the creation of a template to assist them in complying with the policy to declare associations. Does the association have a view on that suggestion?

Mr CHILVERS: What is the template?

The Hon. LUKE FOLEY: He suggests to us in passing that one way of providing additional guidance to officers would be for the Police Force to provide a template. His suggestion is that would lead to greater compliance or would help officers comply. Do you think that is a significant issue?

Mr TUNCHON: What if the circumstances do not fit the box?

Mr PAUL PEARCE: It could finish up a tick and flick.

Mr CHILVERS: That is right. That has always been part of our problem in the past to a certain extent and it was part of the problem identified as far back as the royal commission, that is, the organisation is often—not so much now but it has in the past—operated on a tick and flick model. 'Once all the boxes are crossed it is no longer part of my responsibility.' What we are saying is that along with the EIS and this sort of policy it is a two-way street. The officer makes the declaration, his or her manager or supervisor engages them and helps them to work through how to manage this. That is not a tick and flick thing. It is good human resource management, which is something that we are struggling within the organisation.

CHAIR: That brings us to our favourite subject, the EIS.

Mr CHILVERS: Unfortunately, Mr Chair, the last time this Committee met I was overseas on holidays. Phil gave evidence. Phil can probably talk about one of the significant issues that emerged.

Mr TUNCHON: I think I emphasised on that occasion that moving towards an acceptable EIS was the need for it to be independently funded. Well it should be no surprise to this Committee that that has not happened and there has been no progress on the matter at all.

Mr CHILVERS: We see that as significant. We have been pushing for a long time to have an appropriate early intervention system which is non-punitive, which is actually part of what I am talking about, that is, identifying risks to the officer and the organisation and having a plan so that people can work through and manage those risks. We have been extremely critical of the original early attempts to do that which were poorly thought through and punitive in their approach for the most. It strikes us that we are no closer to getting an appropriate system at this point of time, of which the subject that we are talking about today should be part, and we would certainly bring that to the notice of the Committee.

Mr PAUL PEARCE: Could I just follow up on that? What you are suggesting here is that information is being gathered, declarations are being made and associations being noted but they do not all feed into a common management model?

Mr CHILVERS: There is no management model. Local area commands and commands in general have to operate on an ad hoc basis on their own systems. It is not appropriate. Some are good and some are so terrible. And it is punitive. What we want is a system that is going to identify risks, is going to help officers to work through and develop strategies to be able to manage those risks—

CHAIR: And be part of the training package?

Mr CHILVERS: Absolutely.

Mr MALCOLM KERR: Have you been able to identify any obstacles to achieving that?

Mr CHILVERS: My understanding is that funding was put aside at some stage to achieve it but you might have to ask that question of senior management but up until this point in time I believe that funding has been directed elsewhere.

Mr MALCOLM KERR: Do you know where?

Mr CHILVERS: No, I do not.

Mr TUNCHON: It is certainly not on an EIS.

Mr MALCOLM KERR: That is one suspect eliminated.

Mr PAUL PEARCE: There is a crime problem in your seat.

Mr MALCOLM KERR: I have not noticed it, nor have the criminals.

CHAIR: I will take that matter on notice and will raise it with the appropriate bodies and see what answers we can get for you.

(The witnesses withdrew)

JOHN WILLIAM PRITCHARD, Commissioner, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, and

ALAN GEOFFREY KEARNEY, Director, Prevention and Information, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: In what capacity do you appear before the Committee?

Mr PRITCHARD: I appear in the capacity of Commissioner of the Police Integrity Commission.

Mr KEARNEY: I appear in the capacity of Director, Prevention and Information, of the Police Integrity Commission.

CHAIR: The Committee has received the commission's submission into the inquiry. Do you want that submission to form part of your formal evidence?

Mr PRITCHARD: Yes, thank you.

CHAIR: Do you want to make an opening statement?

Mr PRITCHARD: I do not personally but Mr Kearney who is the director of the area that did the research would just like to emphasise some key points that come out of the submission and the paper that it relates to.

Mr KEARNEY: Perhaps if I could just touch on some of the key messages and issues that arose from the research.

It is important to keep in mind that having an 'improper association', as it is currently defined by the NSW Police Force, is not in and of itself an act of misconduct. However, failing to declare such an association can be considered an act of misconduct. The risks associated with an improper association are significant for the officers and for the NSW Police Force. Major corruption investigations by the PIC and by the NSW Police Force have arisen from an allegation or evidence of an improper association. The NSW Police Force policy on improper associations is reasonable and appropriate—its emphasis on identification and its non-punitive nature, in particular.

There does, however, appear to be a low level of compliance with the policy. This may be due to a lack of awareness of the policy and its implications, that is, that it is not intended to be punitive, and that there may not necessarily be any adverse consequences of making a declaration. There is also little indication of consistent management of risk in a significant proportion of cases—84 per cent—where sustained findings of improper associations have arisen in a complaint investigation.

While important in identifying and managing officers who have failed to declare an improper association, or who refuse to cooperate in the management of the risk, the complaint process should not be the sole means for dealing with and managing improper associations. Compliance with the policy ought to also be actively encouraged. In addition, a further process should follow on from sustained findings of undeclared improper associations. This needs to be done in order that the risks associated with these relationships can be properly managed.

We therefore encourage the NSW Police Force to raise awareness, to provide balanced and consistent messages, to make changes to remove the potentially negative connotations of the policy and to manage the risk beyond the complaints process.

Initial assessment of the NSW Police Force response to PIC recommendations indicates a shared understanding of the importance of managing improper associations. The NSW Police Force appears to be in the process of either implementing or considering ways to implement all of the PIC recommendations.

I will talk a little further on the complaints system, about which our comments in the paper have led to considerable discussion between ourselves, the Ombudsman and the NSW Police Force. We suggest that it ought not be the sole means for dealing with and managing improper associations for a number of reasons, including to encourage a higher compliance rate with the policy and therefore reduce the need for investigations associated with non-compliance, and to ensure that the risks connected with these investigations are managed properly.

Where an improper association is declared in accordance with the policy then, absent an allegation of evidence of other misconduct, the matter is dealt with outside of the complaints process. It is a risk management issue for line management. In the event that a complaint is made about a declared and a managed association, while it would be registered as a complaint, in our view, again absent any allegations or evidence of other misconduct, that it can be declined on the basis that a breach of the policy has not occurred, and in recognition that the risk is being managed.

Broad awareness of the non-punitive handling of these matters, following a declaration, and sensitive and appropriate management of the risk, should support improved compliance.

If an improper association is not declared then the breach of the policy must be dealt with within the complaints process. However, it is our view that this cannot be the only means by which the improper association is dealt with. As I have noted, declarations following a complaint investigation in which evidence of an improper association has been found are rare—less than 16 per cent—which suggests the risks may therefore go unmanaged. There must be a further process ensuring declaration and management of the risk by line management.

Finally, the PIC believes there are several ingredients of a successful management strategy with regards to improper associations. One, policy—a strong policy which effectively communicates the NSW Police Force position and also encourages officers to make declarations. Two, communication—raising awareness of the relevant risks through training and education programs.

Three, accountability measures—senior officers tasked with managing improper associations must be accountable for their decisions in this regard. Four, record keeping—strong information control through a central repository of information regarding associations et cetera is required to ensure there is consistency in management and effective identification of possible misconduct risks. Five, complaints—a robust complaints system is essential to assist in identifying existing and possible future trends. It is also needed to identify previously undeclared associations and be a step in a process towards adequate management of the risk associated with those relationships. Six, external oversight—involving the Police Integrity Commission and the Ombudsman in overseeing management practices is important to ensure that the systems in place are appropriate and effective from an independent perspective.

CHAIR: What were the circumstances and why did the Police Integrity Commission decide to research compliance with the conflicts of interest policy and guidelines?

Mr PRITCHARD: In short it has been an area we have had a particular interest in for some time. Anecdotally, from those investigations that the Commission takes on, we noticed that there appeared to be an element of some improper association in one form or another between a police officer and, in the most serious of cases, someone known to be involved in criminal activity. It also usually has been associated with some other categories of complaints such as release of confidential information, which is a type of allegation that has some prevalence. It was just part of a program that we have in areas where we would like to look at specific areas of misconduct risks within the Police, and that culmination of events meant that we had the appropriate skill sets, in terms of researchers, in order to do particular research in question. Those events coalesced and we had the opportunity to do it and we undertook the research.

CHAIR: Would it be fair to say that Police Integrity Commission was aware that non-compliance was such an issue before conducting the research?

Mr PRITCHARD: I do not know whether we would go as far as saying that. We saw enough, I suppose, from the investigation side to prick our interest. I would not go as far as saying we started the research knowing what the result would be. We had a fair idea—there were some themes too that were emerging that, I suppose, are familiar and we have seen. Obviously there is a strong commitment on behalf of the organisation as a whole at the executive level to address improper associations but, again, going to the next level where there is communication of that program or a campaign of awareness of a policy, that is where we felt there was a sense of déjà vu here, if you like, in relation to some of the aspects of the Police policies that are directed to misconduct risk. We thought it was worth having a look at that just to see whether those similar sorts of themes might emerge. No, I do not think we started with any preconceived idea that we were going to find a large level of non-compliance.

CHAIR: Did the research bring to light anything that Police Integrity Commission was not expecting?

Mr KEARNEY: I do not think so. Our interest in this area has been ongoing for quite some time. As I mentioned in opening, improper association features in substantial investigations conducted by the Police Integrity Commission and the New South Wales Police, often in association with other offences or misconduct. It is a feature of the criteria that we use to sift through complaints, an improper association will draw our attention to a particular complaint and perhaps lead us to make further inquiries. It has been of interest for some time. It is of principle interest to my area

because of the responsibility for prevention. What can we do in the prevention area that will reduce the need to undertake these more significant investigations? Are there earlier steps we can be taking in the process or in the system?

CHAIR: Do you see this working hand in glove with the EIS program, which should alleviate a lot of these problems?

Mr KEARNEY: There are some common elements; they are both focused on prevention. They are both focused on coming in early in the system, as it were, in order to prevent more serious matters arising in future.

Mr PRITCHARD: I think what Mr Kearney says is right. The whole idea is that if an interest is declared then nine times out of 10 there will not be an issue—because the whole idea is to declare the association so that it can then be properly managed. To that extent there is a sense of a similar theme with the EIS, which is designed to identify problematic behaviour before it turns into a complaint. So, yes, there are some correlations I suppose in that sense.

Mr KEARNEY: Absent significant research in the area—which had been planned—it would be difficult to say whether something like improper association and our reliance on it in our own target-selection process might equally apply within an EIS system.

CHAIR: What is your view between improper association and declared interest?

Mr PRITCHARD: I suppose improper association has that connotation. Immediately you start with a negative connotation because it has that word 'improper' associated with it, which is want to frighten people. I suppose an improper association is a form of declared interest but that is not a term or a concept that is used or familiar at least in New South Wales Police language. I think we mentioned in the submission that the Victorian's have a reference to a 'declarable' association, which is obviously meant to take away the sort of pejorative connotations that are carried. To that extent they are probably one way of labelling the same sort of activity but in a less threatening way.

Mr PAUL PEARCE: You mentioned, if I understood you correctly, when matters come to the attention of the Police Integrity Commission that, amongst other things, you would be looking at any declarations or inappropriate declarations et cetera. Am I correct in understanding that? Also, does that not by its nature cause a problem for a very junior officer in making that declaration for the fear that it may have an impact on their future career?

Mr KEARNEY: No, perhaps I did not express myself clearly. It is not so much a declaration of an improper association—the terminology is a bit problematic—that mightn't draw our attention, in fact it probably will not draw our attention—it is a complaint of someone involved in a relationship with a person that might be inappropriate which would draw our attention.

Mr PAUL PEARCE: In terms of an improper association or a declarable association, whatever terminology may be used—I agree there is a certain concern about the nature of improper association terminology—do you see a risk of a certain degree of social isolation amongst police officers in that case? You are talking about relatively young people being involved, be it school friends, be it family members, who may be subject to that declaration, is there a risk of social isolation? And is there, flowing from that, a risk of a development in police culture that could see really their only associations being within the police force? Is there—as we saw from a couple of the reports from the Police Integrity Commission with the whistleblowers et cetera—a risk of officers then identifying with each other in that sort of culture? Are we creating potentially a bigger risk than the risk that may exist because of family members or school friends?

Mr KEARNEY: In so far as the policy might dissuade officers from coming forward and declaring their associations, it is our position that we should be moving away from that and we

should be removing those negative connotations. It should be quite clear to officers that if they do come forward that it is going to be managed as a risk, that it will be managed sensitively and appropriately, and that they will not be punished for doing so.

Mr PAUL PEARCE: That is punished both in terms of promotion and career prospects?

Mr KEARNEY: Indeed. One of the responses highlighted in the policy is relinquishment of the association. Now that is not going to be practical in many circumstances. It is not going to be ethically right in many circumstances. I think there needs to be further development around the policy itself in order to elaborate what is meant, what is intended, but it needs to follow on in the messages that are communicated. The non-punitive aspect of the policy needs to be well and truly communicated to the officers concerned. It needs to be communicated to the officers who supervise and manage the process to ensure that it does not arise.

Mr PAUL PEARCE: The reason I raise that is because this particular document that you are familiar with—Conflicts of Interest (Improper Associations Policy and Guidelines)—is a fairly slim document and it is fairly prescriptive in its nature. I draw attention to the three examples on pages six and seven or pages seven and eight. You are in an area where I suspect there may be a real difficulty in terms of where you draw the line in a lot of this. If you add to that the positive aspects of community policing that require officers essentially to be involved in the community—the Police Association identified the circumstances of a one-officer station in a rural area who by their very nature are dealing with the community—how do you go about drawing a line between what is an improper declarable association and the possible consequences that would flow from that, not for the police officer but the person to whom they declared the association?

Mr KEARNEY: An element of common sense has got to come into this and context is going to be important. It will depend on the nature of the relationship. If it is a member of your family it is an unavoidable relationship. If it is a member of the community and the relationship is purely business it is a completely different kind of relationship and it does not necessarily have to be declarable.

Mr PRITCHARD: I think one of the features Mr Kearney referred to in setting out the six ingredients that we look at is the transparency aspect. That comes back to the idea that sometimes it will be a family member. You can pick your friends; you can't pick your relatives, as we always say. That does not necessarily mean that merely because someone might have a problematic family member that that means if at an initial vetting situation, as it were, when someone was joining the police force it has not presented a problem that means that the officer is not to have any contact at all. The whole idea of declaring it is that it is out there in the open and everybody knows—it is transparent—and it can be managed on the basis that it is information that is out there to be seen.

I take your point, Mr Pearce, about being too sort of cloistered as a life as a police officer. I am not sure what the research shows but I think the nature of policing is such that shift work and shared experiences probably means that police officers tend to associate with their own kind, as it were, outside of work in most respects anyway. You are right, I think there is a concern to be had that you cannot be suggesting that police are not to have contact with anybody whose moral compass might be slightly askew if only for the very reason that we know that from informants, for example, and running human sources, that they tend to be people who are involved in the criminal area and that is why they are good sources of information. It is similar, therefore, to the policy in relation to informant handling, contact reports, having a process of accountability and transparency.

Mr PAUL PEARCE: I was going to ask whether in fact there was a relationship between the two models.

Mr PRITCHARD: I think there are some themes; there are some similar sorts of concerns. The flipside of one means that a pro on one side could be a con on the other. Again, it is a balance, but I think that is probably why, again, the 'improper' word is probably worth considering abandoning

because it suggests that merely declaring it means 'I am admitting that I am doing something wrong' when, in fact, the message to get out is, in fact, 'No, it is the opposite: it is the thing you should be doing'. But it does carry that badge of 'improper', which, particularly for young officers who think as soon as they start they got off to a wrong start because they are seen to be hanging out with the wrong crowd. So anything that can be done to get the message out that it is not improper to declare it—in fact, if anything, it is improper not to declare it. There is a certain conundrum in that if you declare it then you refer to an improper association when if you had not declared it no-one would have known.

Mr PAUL PEARCE: Do you have any comment on the association's concern that currently you have got, if you like, a bit of a mixed bag as to how it is managed from command to command, and should there be a more centralised method of controlling it so that it goes with the officer as they move from command to command?

Mr KEARNEY: That is the thrust of our recommendations, essentially, or rather one of the underpinning features. We would be looking for some further elaboration in the policy and in the training that then flows from the further development of the policy; and a centralisation of the reporting requirement documentation: the records might be held centrally in a secure manner—constrained access and the like.

Mr PRITCHARD: And that came out in the Manta review we did about the misconduct risks with individual commands, that it was quite apparent that there were different approaches taken by different commanders within particular local area commands to what they perceived to be the risks and how they handled them. So inconsistency is always referred to as the badge of unfairness. There is an element of some attractiveness, as Mr Kearney said, as one of the other ingredients is a central repository of this information so that when an officer moves from one command to another, to some extent, that the experience or the information does not get left behind.

Mr PAUL PEARCE: Would that not be more a case of consistency in management of the circumstances rather than consistency of the nature of the recommendations or the declarations, et cetera—a consistency in management from command to command?

Mr PRITCHARD: Yes.

Mr PAUL PEARCE: Which is not necessarily achieved by simply having a centralised records system?

Mr PRITCHARD: No.

Mr KEARNEY: Hence the training and education, communication of messages aspect to the recommendations. From our perspective I would like to see an officer declare an association early in the piece, sit down with their supervisor, talk through what the risks might be and have an opportunity to think about how they would react if the risk should eventuate and their family member, their friend, come to them for some inappropriate assistance at a time. Perhaps even set some boundaries within the relationship. You could conceive of having opportunities to have those kinds of discussions with the member of your family or the friend before the risk arises so they know where you stand.

The Hon. LUKE FOLEY: Assistant Commissioner Carey this morning told us that the policy and guidelines are currently under review. Has the PIC been included in that review process or been consulted with at all?

Mr PRITCHARD: I think the short answer is yes. As part of the response to the research paper the police indicated they were reviewing the policy. Mr Kearney may have more details about the program but we would play our normal role in relation to input into that policy and it is a

collaborative arrangement so the police made us aware of that and we are currently engaged with them in reviewing policy.

Mr KEARNEY: We had a formal response to the paper on 27 July. That highlights the fact that a review is underway and they expect that it will be completed by the end of this calendar year. We would be involved in that process and engage with police during the further development of the policy and communication of messages and the like.

The Hon. LUKE FOLEY: We have also heard from the Police Association today and they assert that in their opinion police officers only receive cursory training, as they put it, in identifying conflicts of interest. Given your research, would you like to comment on that assertion?

Mr PRITCHARD: It is probably correct. I say that not with any sense of greatly informed opinion but I think it is probably a reflection of what we often see in these matters where there is no doubt that there is a strong commitment from the executive on behalf of the organisation for a particular message to be got out, if I can put it that way; improper associations is one of them. But from the limited research and the results that we saw from that there does appear to be a suggestion that there is a breakdown in communicating that in such a way that it results in awareness and compliance, but I would not be able to put any sort of firm view on that front other than to say that based on the research we saw there is probably something in that.

Mr KEARNEY: We have not examined the training program in any detail at all. I am aware that conflict of interest is a feature of some training but I am not sure of the extent of it. So there could be an issue there. It could be that officers do not know about the policy, and, in fact, during the research some officers did indicate they were not aware of the policy; some were not aware of the detail of the policy. I expect that there will be an element of the Police Force that does not believe that they will not be singled out and/or punished in some way for declaring an association. So you get some resistance there as well. It could be any or all of these issues which impact on compliance with the policy.

Mr MALCOLM KERR: Improper associations is a universal problem in terms of law enforcement agencies. Has the commission looked at ways of dealing with it in overseas jurisdictions and jurisdictions in other States?

Mr KEARNEY: As part of this research we have not canvassed very widely. I think we have one or two policies locally but have not canvassed any further. It was envisaged that we may look further afield as part of the engagement with NSW Police.

Mr MALCOLM KERR: In giving evidence the Police Association mentioned that the brother of Roger Rogerson, who was at the time a serving police officer, was directed not to associate with Roger Rogerson, and that direction would still be given under the present policy. I think you said, Commissioner, that you can pick your friends but you cannot pick your family. I am just wondering how you would envisage dealing with that situation where you have somebody who is well known and a serving police officer and close family.

Mr PRITCHARD: I am only familiar with that sort of situation from reading the media. In fact, I think Mr Rogerson was prevented from undertaking certain employment in the liquor industry or the security industry as a result of that association. I suppose that would have to be regarded as an extreme last resort, that to suggest that one cannot associate with family members is extreme. But there may be circumstances where that may be appropriate. One would think, though, that as a way of managing a situation like that if it is out there in the open and it is declared and the full details of it are declared there is no doubt it must impose an obligation on the particular officer in question to manage themselves in such a way—I mean, this is not unique to policing. There are many aspects of conflicts of interest that we all have that mean that we have to be careful in the way we conduct

affairs and so on. But, again, I tend to think that that may be a special case, as it were. I do not know if Mr Kearney has any comments to make.

Mr KEARNEY: I think you have canvassed the area. I will just point out that the policy probably, to some extent, leaves it open. The interpretation you can place on it is that the employer, the New South Wales Police Force, thinks that the best option for managing an improper association is for the employee to relinquish the association. But I think context is going to be critical. A member of the family is someone you cannot relinquish an association with or it is inappropriate for you to do so. I think some elaboration around that whole area would be very helpful.

Mr MALCOLM KERR: It would be possible for somebody to marry somebody who is later convicted of a crime and the marriage to be sustained.

Mr KEARNEY: Or that you do not know had a previous conviction. A police officer cannot go and do a criminal history check on their proposed partner; it would be an inappropriate use of the system.

Mr PRITCHARD: I must say on the commission's own part we have had to decline to employ people because of their associations with family members. It might sound unfair but unfortunately there are some associations on that front which mandate that sort of response.

Mr MALCOLM KERR: A police officer could find themselves sleeping with the enemy.

Mr PAUL PEARCE: Does that not reinforce the view of some officers that by making this declaration in the first place it may adversely affect their career progress?

Mr PRITCHARD: Again I would probably suggest that that is a perception, which is half the battle, I accept, as opposed to assessing it in any substantive way other than arising because of a family relationship. But there is no doubt there is a perception associated with it that you are tarred because of guilt by association, for a shorthand sort of term. That is part of the reason why the language is very important. If you move away from that side of it then that could be a start.

CHAIR: It is a bit more than a perception if the officer wants to be the Commissioner of the Police Integrity Commission.

Mr PRITCHARD: I have found that in this industry it pays to lead a boring life, and I qualify very successfully on that front.

Mr KEARNEY: There is a balance there. These officers are choosing to take a risk of being caught for not declaring rather than risk the perceived adverse consequence of declaring. We would like to encourage them to declare.

Ms SYLVIA HALE: In many instances elected officials are required to make formal declarations of pecuniary interests, and also non-pecuniary interests in particular circumstances. I assume the onus is merely on a police officer to make a declaration once they become aware of a potentially improper association. Do you believe there should be a requirement for police officers to be asked at regular intervals as to whether they are aware of any improper associations and, if so, do you believe it is appropriate that if the declaration has been made there should be a provision that if the improper association no longer exists because, say, one person has died, for that declaration to be removed from the record?

Mr PRITCHARD: In relation to your first issue I am not sure whether the police have a rolling program of regular vetting checks. I understand that where an officer might move to a particular command, depending on the nature of the command—such as a counterterrorism command—in a lot of the commands or agencies within the State Crime Command dealing with drugs and organised

crime and so on, there are further levels of a declaration that an officer must go through. But, as I said, a rolling program of checking every officer, I am not sure about that. We would have to check that.

Mr KEARNEY: I do not know if there is.

Mr PRITCHARD: No, I do not think there is.

Ms SYLVIA HALE: Do you think there should be?

Mr KEARNEY: I think it is one of those issues you would have to consider with police in developing the policy further. I think the reliance at the moment is on the existence of the policy and on local commanders-supervisors translating that policy into some sort of action. How you might develop that further, I am really not sure at this stage. We would need to engage further.

Mr PRITCHARD: There probably are some practical consequences too for an agency of some 15,000 to 16,000. It is not difficult to imagine that there would be quite an exercise involved in doing that, depending on how regular you wished to do it, and then I can only speak on behalf of the commission. We are an agency of just under 100 and we have a program of rolling regular checks to update necessary associations and so on. That in itself is a bit of an exercise.

Mr KEARNEY: I think our starting position would be that the message needs to be communicated. How that occurs would need to be determined. In our view, it is a message that would need to be communicated regularly.

Mr PRITCHARD: The nature of any conflict-of-interest situation is that you cannot escape that the onus is on the person with the interest because they are seized of the particular knowledge to know whether it is or not. The onus is on them to make the declaration. To a large extent I do not think you can escape that. As Mr Kearney said, the whole idea is to ensure that if they do that there is encouragement and the message is that that is the right thing to do. That is a positive message that the organisation can help to bring out those declarations. Your second issue was?

Ms SYLVIA HALE: Whether there should be a facility to remove a declaration if it is no longer valid?

Mr PRITCHARD: Again I think the onus would be back on the person to bring that to attention: family member dies or something like that. I would have thought that would probably follow, particularly if someone was keen to make it known that that association no longer existed.

Ms SYLVIA HALE: The Police Association seems to regard the centralisation of information and declarations as a needless duplication of effort, but in your issues paper you make a very strong case in support of it. If an officer moves from one local area command to another, if that information were centralised I assume that the supervisor or whomever was the commander at the second command would be able, and expected, to look at those declarations of declarable interest?

Mr KEARNEY: That assumes that they go there. At the moment they are a hard copy record and, as I understand it, they tend to remain within the command. They are part of the command's records. That is not to say that some do not go or copies do not go. There is no established process for ensuring that they go with officers.

Ms SYLVIA HALE: There must be an awful lot of paper floating around with so many members of the Police Force?

Mr KEARNEY: There are only 81-odd declarations that we are aware of.

Ms SYLVIA HALE: Only 81 out of how many employees?

Mr PRITCHARD: That was across the commands we mentioned, which was about 80 per cent of the total.

Mr KEARNEY: About 12,000.

CHAIR: The Assistant Commissioner of Police said that it was less than half a per cent.

Ms SYLVIA HALE: It is surprisingly small.

CHAIR: That is what the assistant police commissioner was trying to point out.

Mr KEARNEY: That is probably a misconception around the nature of the research and misunderstands the nature of the sample. It was a sample. In 100-odd complaints that we looked at, 85 per cent were investigated and 24 per cent indicated that an improper association existed. Out of that 24 per cent, only 16 per cent went on to actually declare the association, which leaves a gaping great hole in the management of the risks associated with those relationships.

Mr PAUL PEARCE: It strikes me that that would indicate a lack of understanding by individual officers as to what is an improper association? That document does not make it precisely clear what is and is not an improper association. Examples are given of where there may be the nature of an improper association, but given that the overall majority of police officers are not in the process of trying to disguise something that may be detrimental to their policing role, that would indicate that there may be a definition problem in that we do not see it as an improper association?

Mr KEARNEY: I think it gets back to the fact that we do not really know. There could be a whole range of factors that could be coming into play here: lack of clarity around the definition, lack of clarity around the messages delivered, a lack of belief that there will be no punitive aspects associated with this process once they declare. I think without further research we are probably just speculating.

CHAIR: The first recommendation of the PIC research paper is that the New South Wales Police Force should raise awareness of the policy, its requirements and the consequences for not following it. Does the PIC have any strategies on how this may be accomplished? That probably would educate the officers much better. How do you see that actually being pushed out to these officers?

Mr KEARNEY: We have not really engaged with police on the recommendations yet. They have a review underway. We are going to engage in that process. We are aware of certain things that came out of the findings around knowledge about the policy, about the messages that are communicated, concerns about the potential punitive nature, or the perception of the punitive nature of the policy. We have to work further with police and flesh some of those things out.

CHAIR: We were discussing how it is not half a per cent of the Police Force; it is bigger than that. Here we are saying that we need to push it out there and educate the force better. Surely the PIC has some role in educating officers?

Mr KEARNEY: I see what you mean. I misunderstood. Certainly. We participate in a range of training programs with New South Wales police. I have an officer who features regularly in training sessions with detectives undergoing complaint investigation training. It is certainly an area in which we can participate further. All manner of things come to mind: participation on constables' training courses, highlighting the fact that their lives have now changed, that their relationships can impact on their jobs, the way they do their jobs. We can have those kinds of roles, certainly.

Mr PRITCHARD: We also can take it even I suppose to a ground level because I know from my own experience when officers have been in the witness box we have taken the opportunity to specifically ask them where the complaint or allegation may relate around an improper association, releasing confidential information, something of that kind, 'Are you aware of the policy?' Nine times out of 10 the answer is yes, but that is about as far as it goes. That is a start because, as Mr Kearney said, the idea is to disseminate a message in such a way that people start thinking about the concept.

CHAIR: Like the message before they get into the witness box?

Mr PRITCHARD: That is right. They may not necessarily know, and it comes back to the definition in point, 'Well, what is it?' but at least they are thinking about it. The idea is to at least get it front and centre in their minds to think 'Is this an improper association?' The nature of conflicts of interest, certainly from my experience not only here but from my previous experience at the ICAC, is that when these things actually are occurring we look back with hindsight, but as they are actually unfolding the people involved do not see it, yet they are the ones possessed with the information at the time. If anyone is to think that maybe this gives pause for thought, it is the very person involved. It is a message again about getting awareness out. It is a stop and think sort of situation: did you ever stop and think about someone you knew from school, who you knew had drifted off into a life of crime but nonetheless with whom you are associating, which on reflection seems pretty obvious one would have thought. You can see why some people see it in a different context because it is a longstanding relationship that friends et cetera see differently. But then the penny drops and they do see it in that way. Even at that level there is a way of trying to get the message out. You might not be able to define it all the time, but at least it is something about which you might stop and think, is this an association that might fall into that category. At least they might stop and think about it.

Mr PAUL PEARCE: This comes back to giving it a certain prominence in the training of officers.

Mr PRITCHARD: Yes. It is definitely part of the curriculum an officer cadet goes through. I think it is one of the basic things because it comes up in the vetting to get in. There is an initial obligation to declare associations, family and so on, which often can mean an officer not passing that vetting check, as I have referred to. It is there front and centre from the outset.

Mr PAUL PEARCE: One of the research paper's recommendations is that the New South Wales Police Force should discourage the use of the complaints process as the sole means of dealing with and managing improper associations. Do you think this is done consciously or are improper associations only being discovered after a complaint is made?

Mr KEARNEY: I am sorry, I do not quite understand the question?

Mr PAUL PEARCE: Earlier you quoted a series of percentages of complaints and flowing from those complaints identified that a certain percentage were improper associations?

Mr KEARNEY: Yes.

Mr PAUL PEARCE: Do you think there has to be a different mechanism to trigger this or are you only seeing the identification of improper associations as a consequence of a complaint? In other words, you are coming in at the tail of the process rather than at the front?

Mr KEARNEY: That is right. We would like these declarations to happen much earlier. Instead of using the complaint process solely as a means of identification, have other preventative strategies much earlier in the process encouraging officers to come forward and declare their associations and deal with the risks appropriately. The other aspect concerns the back-end of the complaint process. Once the complaint investigation is concluded, there needs to be another process that actually leads to the management of the risk. As I mentioned, of the 85 investigations

we have reviewed, 24 showed evidence and lead to sustained findings that an improper association existed. The individuals of five of those were either sacked or subsequently left the police. Of the remainder, about 19, only three subsequently declared the association. There needs to be some process that picks up this other 84-odd per cent and then encourages the declaration to follow and then the risk managed.

Mr PAUL PEARCE: Do you think the change of terminology may assist?

Mr KEARNEY: Absolutely.

Mr PAUL PEARCE: You remove the implication that there is something severely wrong and move towards declarable association rather than improper association?

Mr KEARNEY: Yes. Accompanied with the right messages and the other strategies we have mentioned, absolutely. Yes.

CHAIR: This question needs to be posed. If I were an officer and made a declaration of improper association with Paul Pearce, would that not be listed on the EIS as well? If I wanted that improper association that I declared some five years ago expunged from my record, it would still show up on my EIS because I may then have formed an improper relationship with Sylvia Hale. That is starting to show a pattern of behaviour? I believe the EIS goes hand in glove with improper disclosures because they work together. That is why we need those programs to work together. I agree with you on centralisation, but if they are hard copies and not being generated on a computer and not being stored in a central location, it leaves it open to all sorts of issues. I am concerned about that. Maybe I have a conspiracy theory going on in my head, but I can see this happening.

Mr KEARNEY: I think it presupposes that improper associations would be picked up as an issue to be addressed or as a criteria that might be used within an EIS. My gut feeling is it would feature in some way.

CHAIR: There is an elephant in this room that we are not talking about.

Mr KEARNEY: Absent the research I cannot say categorically that improper association should feature in some way in the EIS. Gut feel, yes.

CHAIR: If I have been in the force for 20 years and I have had 15 inappropriate associations with certain elements in the community it shows a very clear issue.

Mr KEARNEY: I think you have probably overstepped the mark. I would need to do something about that.

Mr PRITCHARD: That would be relevant to the indicators that an EIS calls on.

CHAIR: Which then stops me from declaring those interests. I am not going to tell you I have an improper association with Malcolm Kerr.

Mr PRITCHARD: No, I agree, but that comes back to—I am not saying that is an improper association!

Mr KEARNEY: Context is everything.

Mr PRITCHARD: It comes back to the issue that Ms Hale raised that there is a certain onus on the person to raise the issue, which you are not really going to be able to escape in any conflict of interest policy. Short of a rigorous daily update of personal circumstances you are going to have to rely on an element of self-regulation, if I can put it that way, in that the person comes forward with it.

In the example you give, yes, but again it is an indicator and the EIS again has the same sort of theory behind it: It is not punitive, it is not meant as punishment, it is just meant to identify something before it might turn into something worse. Again, there is a similar theme there so the idea would be to say, 'Don't feel you can't come forward and declare it because it will be used against you in an EIS, because that is not what an EIS is about.' That would be part of the message of getting that out, in terms of being positive.

CHAIR: Which leads me to my next question: Where is the EIS up to and what do you understand are the funding implications for the EIS?

Mr PRITCHARD: I have a sense you are asking a question you know the answer to.

CHAIR: Maybe.

Mr PRITCHARD: I just noted you had Mr Carey here this morning. The commissioner has recently written to advise that there are some funding problems with the police program with the EIS. The money that they have requested from Treasury in order to undertake the necessary IT arrangements has not been forthcoming. There was a breakdown in what was required between capital and recurrent. The capital funding was approved but the recurrent, the ongoing funding, was not approved at the levels that were required. In short, at the moment 'parked' is probably the best way to describe it.

CHAIR: Idling.

Mr PRITCHARD: Idling, yes.

Mr KEARNEY: We have sought further information from police about their intentions. They indicate that the EIS remains something they view has value and should the budget situation improve, they will review.

Ms SYLVIA HALE: I think the Ombudsman suggested—I stand to be corrected—that a template might be developed to enable officers to identify adequately and declare improper associations. The response to that has been it might merely be a return to a culture of tick and flick. Do you have a position in relation to such a proposal?

Mr PRITCHARD: The concern you indicated about tick and flick is a legitimate one. Again, it would depend on the template. The last thing would be to suggest there is a one-size-fits-all, but at the same time there are some criteria that are common to situations where it might alert someone to declare or suggest they are in the area of an improper association. In the absence of seeing specifically what form a template would take it is difficult to answer. There is no doubt that for ease of compliance that would go a long way to encouraging people because the first question would be, 'How do I do it?' The answer is, 'Here is a form', so there is some sort of appeal in that. The concern you raise is a legitimate one.

CHAIR: Thank you, Commissioner.

(The witnesses withdrew)

(The Committee adjourned at 12.49 p.m.)

Appendix 4 – Responses to Questions on Notice



NSW Police Force
www.police.nsw.gov.au

TRIM: D/2010/158553

Ms Vicki Buchbach
Committee Manager
Committee on the Office of the Ombudsman
and the Police Integrity Commission
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

27 September 2010

Dear Ms Buchbach

I am writing to respond to questions taken on notice at the recent hearing held by the Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission into improper associations in the New South Wales Police Force (NSWPF).

There were three questions which I took on notice at the hearing, the answers to which I have provided below.

Question 1:

Question one relates to the NSWPF's plan to review the *Conflicts of Interests (Improper Associations) Policy and Guidelines*. In order to respond to this question, I have attached a 'Project Initiation Sheet' for the Policy and Guidelines review, which provides the Committee with an overview of the steps which will be taken in the review process (please see Attachment 1). As the Committee will note, the review is due to commence by the end of this month.

Question 2:

Question two relates to developments in the area of professional standards in the NSWPF prior to 2006.

In 2004, the NSWPF's Special Crime and Internal Affairs (SCIA) unit became the Professional Standards Command (PSC). This change was made in order to bring the NSWPF in line with other Australian police jurisdictions. With this change came a shift in focus from conducting reactive investigations to a having proactive focus on prevention and to promoting the ongoing professionalisation of the NSWPF.

Professional Standards Command

NSWPF Professional Standards Command (PSC)

NSWPF Professional Standards Command (PSC) | Telephone: 02 9356 8200 | Facsimile: 02 9356 8211 | Email: 48209@police.nsw.gov.au | PO Box 46211 | Sydney NSW 1585 | www.police.nsw.gov.au

In 2006, the then incumbent Police Commissioner transferred the function of promoting professional standards throughout the NSWPF from Human Resources to PSC. In the same year, the responsibility for non-sworn officer discipline was also transferred from Human Resources to PSC.

In response to this move, the Commissioner tasked PSC with modernising the NSWPF *Code of Conduct and Ethics*. The document was simplified and reduced from a 23 page document to a one page document and a considerable amount of promotional material was produced to inform staff of the new *Code of Conduct and Ethics*, which I described at the hearing and which has been transcribed on page two of the report of proceedings. The new *Code of Conduct and Ethics* acts as an overarching statement which informs all of PSC's policies and practices.

Question 3:

Question three relates to possible reasons for the non-compliance detected in the Police Integrity Commission (PIC) report.

As I mentioned during the hearing, officers that are wilfully involved in improper associations are not likely to declare them. However, these officers represent a very small proportion of NSWPF officers. It is most likely that other officers with undeclared improper associations are not doing so for systemic reasons.

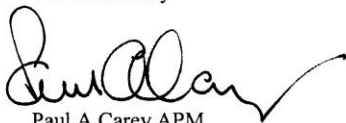
The most likely reasons for non-compliance are that staff:

- are unclear about what constitutes an 'improper association', especially when family members are concerned
- are unsure about how their declaration will be managed and may have concerns about being subjected to punitive measures in response to making a declaration
- are unsure about the practicalities of making a declaration and supervisors may also be unclear about these processes.

These systemic issues will be addressed as part of the review outlined in the attached 'Project Initiation Sheet' under question one.

I trust that this letter satisfies the Committee's requirement for further information on this topic. However, if you require any additional information, please don't hesitate to contact Ms Lakmali Casinader, Manager, Corporate Advice, Policy and Projects on 02 9355 8215.

Yours sincerely



Paul A Carey APM
Assistant Commissioner
Professional Standards

Attachment 1: Project Initiation Sheet, *Conflicts of Interest (Improper Associations) Policy and Guidelines* review.

<p>How this review fits into organisational programs/strategies</p>	<p>NSW Police Force Corporate Plan Systems</p> <ul style="list-style-type: none"> • Improved organisational capability to deliver our services: <ul style="list-style-type: none"> ○ Streamline procedures and legislation (cutting red tape) ○ Improve usefulness, reliability, accessibility, integrity and value of our information, communication and technologies ○ Enhance internal controls ○ Promote good practice. <p>PSC Business Plan 2009-2010 Services</p> <ul style="list-style-type: none"> • Develop, deliver and manage a range of professional standards products and processes • Provide a range of quality records management services to our internal and external customers.
<p>Links and integration with other projects, activities, commands</p>	<p>ANZPAA report. PIC report.</p>
<p>Constraints</p>	<p>Competing priorities.</p>
<p>Project risks</p>	<p>1. Project Sponsor fails to execute role / responsibilities Likelihood: Rare Consequence: Major Risk: Significant Treatment: Regular briefings with Project Sponsor</p> <p>2. Project Management fails Likelihood: Unlikely Consequence: Major Risk: Significant Treatment: Regular briefings with Project Sponsor</p> <p>3. Project staffing (resignation and/or transfer) Likelihood: Unlikely Consequence: Minor Risk: Low Treatment: Staffing levels monitored</p>



**PROJECT INITIATION SHEET
CONFLICTS OF INTEREST (IMPROPER ASSOCIATIONS)
POLICY AND GUIDELINES REVIEW**

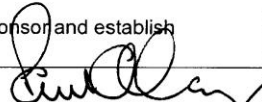


Strategic Analysis & Planning

Project name	<i>Conflicts of Interest (Improper Associations) Policy and Guidelines Review.</i>
Broad project aim	To review the current <i>Conflicts of Interest (Improper Associations) Policy and Guidelines</i> (to be referred to as 'the Policy and Guidelines' in this document) and update them as required. The review is to ensure that the new Policy and Guidelines incorporate recent Police Integrity Commission (PIC) recommendations and the findings of current New South Wales Police Force (NSWPF) research.
Specific project objectives	<ol style="list-style-type: none"> 1. To revise and update the Policy and Guidelines, incorporating PIC recommendations and recent NSWPF research recommendations. 2. To develop a communication strategy to inform NSWPF employees of the reviewed Policy and Guidelines. 3. To revise training and systems in order to increase compliance with the Policy and Guidelines.
Project duration	Six months.
Project start and end dates	September 2010 to March 2011.
Key deliverables	<ol style="list-style-type: none"> 1. Review current Policy and Guidelines. 2. Incorporate PIC recommendations, as agreed in correspondence sent to PIC on 20 July 2010. 3. Incorporate recommendations from the Strategic Analysis and Planning team's research on declarable associations, due to be completed by November 2010 for the Australia New Zealand Policing Advisory Agency (ANZPAA). 4. Redraft the Police and Guidelines in accordance with corporate standards. 5. Stakeholder consultation (PIC, NSW Ombudsman, PANSW, Professional Standards Managers (PSMs), Professional Standards Duty Officers (PSDOs), and Executive Officers (EXOs)). 6. Review training package (separate to this project). 7. Launch the electronic <i>Declared Interest Register</i> on the electronic human resources database SAP and set up a research project (separate to this project) to monitor rates of declarations for the following year. 8. Develop and implement a communication strategy, which will include instructions on how to use the new <i>Declared Interest Register</i>.
Inclusions	n/a

Exclusions	<ul style="list-style-type: none"> • Declarable associations training package review. • Research on declarations made on the new <i>Declared Interest Register</i>
Key skills required by project team	<p>Project management.</p> <p>Experience in developing policy and guidelines.</p> <p>Negotiation and liaison skills.</p> <p>Task management and coordination.</p>
Project Sponsor	<p>Assistant Commissioner Paul Carey</p> <p>Responsibilities: Oversee the project; chair meetings as required.</p>
Project Manager	<p>Insp Carlene Mahoney, Manager, Strategic Analysis and Planning</p> <p>Responsibilities: Project management, completion of action items and allocation of tasks to staff.</p>
Project Support	<p>Ms Christine Rakvin, Strategic Analysis and Planning</p> <p>Responsibilities: Complete tasks as required.</p>
Command responsible for project	<p>Strategic Analysis and Planning Unit, Corporate Advice and Response, Professional Standards Command.</p>
Project background	<p>The <i>Conflicts of Interest (Improper Associations) Policy and Guidelines</i> were released in 2006 as part of a project to modernise the NSWPF <i>Code of Conduct and Ethics</i>. Given that the policy was released four years ago, it is now due for review.</p> <p>In 2009, the Professional Standards Command (PSC) was given a mandate by ANZPAA to conduct best practice research on declarable associations and to present the results to ANZPAA in late 2010. This research is currently nearing completion.</p> <p>In May 2010, PIC published the results of a research project into improper associations in the NSWPF, entitled <i>Improper Associations in the NSW Police Force: A Review of Compliance with Policies and Guidelines</i>. The report concluded with eight recommendations relating to improving NSWPF practice in this area. The NSWPF has agreed to implement all eight recommendations.</p> <p>On 20 May 2010, the PJC established an inquiry into the level of risk associated with improper associations in the NSWPF. The NSWPF, PIC, NSW Ombudsman and the PANSW provided submissions to the inquiry. On 10 August 2010, representatives from the NSWPF, PIC and PANSW gave evidence at the inquiry hearing.</p> <p>Given that:</p> <ul style="list-style-type: none"> • the Policy and Guidelines are due for review • PSC has been conducting best practice research on the topic of declarable associations • PIC has conducted research and made recommendations relating to improper associations in the NSWPF; and

	<ul style="list-style-type: none"> The PJC has conducted an inquiry into improper associations in the NSWPF <p>it is therefore timely that the Policy and Guidelines, along with the related training package, be reviewed.</p>		
Key Stakeholders	Stakeholder	Likely issues	Management
	PIC	PIC has an interest in overseeing the implementation of the recommendations in their report.	Maintain regular communication and provide progress reports.
	NSW Ombudsman	The NSW Ombudsman's office will have an interest in reviewing the new Policy and Guidelines and related training.	Consult and maintain regular communication.
	Police Association of NSW	The PANSW will have an interest in reviewing the new Policy and Guidelines and related training.	Consult and maintain regular communication.
	PSC	A number of units within PSC will have some level of involvement.	Regular discussions with staff involved in various aspects of the review. Regular briefings with the project sponsor.
	Education and Training	A training package will be developed using best practice principles for adult learning.	Consultation with Education, Innovation and Quality.
	PSDOs/PSMs/EXOs	Users of the Policy and Guidelines.	Consultation with region and specialist PSDOs, PSMs and EXOs.

	<p>4. Timeframes: Slippage and/or blowout Likelihood: Moderate Consequence: Minor Risk: Medium Treatment: Regular briefings with Project Sponsor</p> <p>5. The project may overlap with other issues which extend beyond the initial project aim (scope creep) Likelihood: Moderate Consequence: Minor Risk: Medium Treatment: Refer issues to Project Sponsor and establish separate project/s.</p>
<p>Project approved by</p>	<p>Assistant Commissioner Paul Carey </p>
<p>Date of approval</p>	<p>27.9.10</p>

Appendix 5 - Committee Minutes

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 26)

10.30 am Thursday 20 May 2010
Room 1102, Parliament House

Members Present

Mr Draper MP	Ms Hale MLC	Mr Hickey MP
Mr Kerr MP	Mr Pearce MP	Ms Voltz MLC

Apologies

Mr Lynn MLC

Also Present

Vicki Buchbach, Jonathan Elliott, Lisa Kitvitee, Hilary Parker, Emma Wood

The meeting commenced at 10.35am.

...

3. Potential future work programme

Resolved on the motion of Ms Hale, seconded by Mr Kerr:

...

- ii. That, in accordance with its statutory functions under section 95 of the *Police Integrity Commission Act 1996*, the Committee conduct an inquiry into improper associations in the NSW Police Force with the following terms of reference:
 - a. consult key stakeholders on the level of risk associated with improper associations and the level of compliance in the NSW Police Force;
 - b. consider the utility of the NSW Police Force implementing the recommendations made by Police Integrity Commission in its research paper;
 - c. consider what further assistance the PIC may be able to provide with the identification and management of this risk; and
 - d. report to both Houses of Parliament on the inquiry.
- iii. That, as part of the inquiry the Committee invite submissions from the NSW Police Force, the Police Integrity Commission, the NSW Ombudsman, the Police Association of NSW, the NSW Ministry of Police and Professor Tim Prenzler and
- iv. That the Committee hold hearings for the inquiry in August.

Minutes of Proceedings of the Committee on the Office of the Ombudsman and the Police Integrity Commission (No. 27)

10.15 am Tuesday 10 August 2010
Waratah Room, Parliament House

Members Present

Mr Foley MLC Ms Hale MLC Mr Hickey MP
Mr Kerr MP Mr Pearce MP

Apologies

Mr Draper MP, Mr Lynn MLC

Also Present

Vicki Buchbach, Lisa Kitvitee, Hilary Parker, Kylie Rudd, Rohan Tyler

DELIBERATIVE MEETING

The meeting commenced at 10.15am.

...

8. Submissions to the Inquiry into improper associations

Resolved on the motion of Mr Pearce, seconded by Ms Hale, that the Committee:

- i) accept and publish on the committee website submissions 1 to 4 to its inquiry; and
- ii) publish the corrected transcript of the hearing on the committee website.

...

The deliberative meeting concluded at 10:30am.

PUBLIC HEARING: Inquiry into improper associations in the NSW Police Force

The public hearing commenced at 10:30am.

Assistant Commissioner Paul Carey, Commander, Professional Standards Command, NSW Police Force, took the oath.

Assistant Commissioner Carey made an opening statement and tabled a copy of the NSW Police Force's *Conflicts of Interest (Improper Associations) Policy and Guidelines*.

The Chair questioned the witness, followed by other members of the Committee. Assistant Commissioner Carey undertook to provide further information in response to certain questions. Questioning concluded, the witness withdrew.

Mr Gregory Chilvers, Director, Research and Resource Centre, and Mr Philip Tunchon, Assistant Secretary Legal, Police Association of New South Wales, Level 4/154 Elizabeth Street, Sydney, took the oath.

The Chair questioned the witnesses followed by other members of the Committee. Mr Chilvers undertook to provide further information in response to a question. Evidence concluded, the witnesses withdrew.

Deliberation

During a brief adjournment the committee deliberated on the evidence of Mr Chilvers and Mr Tunchon about the status of the Early Intervention System. Resolved on the motion of Mr Pearce, seconded by Ms Hale, to seek further information on the progress of the Early Intervention System by asking the Police Integrity Commission about the matter in the hearing and by writing to the NSW Police Commissioner.

Hearing

The hearing resumed.

Mr John Pritchard, Commissioner, and Mr Allan Kearney, Director, Prevention and Information, Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, affirmed.

Mr Kearney made an opening statement. The Chair then questioned the witnesses followed by other members of the Committee. Evidence concluded, the witnesses withdrew.

The committee adjourned at 12:49pm.