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Third Session

REPORT

OF THE

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

ENTITLED

“REVIEW OF OMBUDSMAN AND PIC REPORTS:
LAW ENFORCEMENT (CONTROLLED OPERATIONS)
ACT 1997; ANNUAL REPORT BY THE OMBUDSMAN;
RISK ASSESSMENT OF POLICE OFFICERS
(OCTOBER 1998); AND OPERATION JADE,
REGARDING THE FORMER TASK FORCE BAX OF
THE NEW SOUTH WALES POLICE SERVICE
(OCTOBER 1998)”

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REVIEW OF OMBUDSMAN & PIC REPORTS

**Report of the Committee on the Office of the
Ombudsman & the Police Integrity Commission**

November 1998

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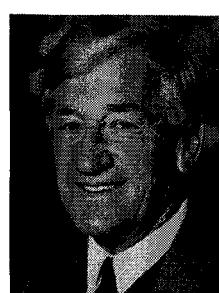
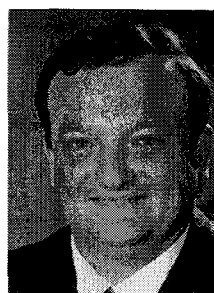
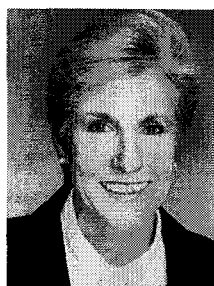
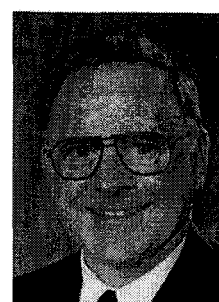
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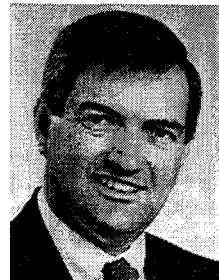


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MP, Paul Lynch MP, Jim Small MP, Anthony Stewart MP, The Hon Michael Gallacher MLC, The Hon
Elaine Nile MLC, The Hon Anthony Kelly MLC

FUNCTIONS OF THE COMMITTEE

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

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

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

Section 31B (2) of the *Ombudsman Act 1974* specifies that the Committee is not authorised:

- ◆ to investigate a matter relating to particular conduct; or
- ◆ to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- ◆ to exercise any function referred to in subsection (1) in relation to any report under section 27; or

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- ◆ to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or
- ◆ to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the Telecommunications (Interception) (New South Wales) Act 1987.

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

- ◆ to monitor and review the exercise by the Commission and the Inspector of their functions;
- ◆ to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- ◆ to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report;
- ◆ to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and
- ◆ to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

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

- ◆ to investigate a matter relating to particular conduct; or
- ◆ to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular

conduct; or

- ◆ to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.

The *Statutory Appointments (Parliamentary Veto) Amendment Act 1992*, assented to on 19 May 1992, amended the *Ombudsman Act 1974* by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended to provide the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of the PIC. Section 31BA of the *Ombudsman Act 1974* provides:

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

Functions of the Committee

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

CHAIRMAN'S FOREWORD

This report provides a compilation of issues arising from recent reports made to Parliament by the Ombudsman and Commissioner of the Police Integrity Commission.

In accordance with its statutory functions, the Committee examined each of these reports and resolved to report to Parliament on a number of issues which it considered to be particularly important. In addition, the Committee intends to pursue these matters with the Ombudsman and PIC Commissioner during the next series of General Meetings.

I would like to thank the Members of the Committee for their contributions to the report, and also the staff of the Secretariat for their assistance in preparing the report for tabling in Parliament.

A handwritten signature in black ink, reading "Bryce Gaudry". The signature is written in a cursive style with a large, sweeping flourish at the end.

Bryce Gaudry MP
Chairman

EXECUTIVE SUMMARY

Under section 31B(1)(c) of the *Ombudsman Act 1974* the Committee has a function to “examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.” Section 95(1)(c) of the *Police Integrity Commission Act 1996* provides for a parallel function with respect to reports of the Police Integrity Commission and the PIC Inspector.

To date, the Committee has examined significant matters arising from such reports in a program of public hearings and reports to Parliament on key issues. Recently, both the Ombudsman and the Commissioner of the Police Integrity Commission tabled reports to Parliament which, on examination, are considered by the Committee to raise important issues relating to the functions of each officer.

In accordance with the Committee’s statutory functions, the resolution was made to examine the reports by the Ombudsman on controlled operations and risk assessment of Police Officers, and the report of the Police Integrity Commission on Task Force Bax. The Committee further resolved to report to Parliament on particular areas of concern arising from these reports and will pursue these issues in public hearings with the Ombudsman and the Commissioner of the Police Integrity Commission during the next series of General Meetings.

Law Enforcement Controlled Operations - On 29 October 1998, the Ombudsman tabled her first Annual Report to Parliament in accordance with section 23(1) of the *Law Enforcement (Controlled Operations) Act 1997*. The Committee has examined the report and noted its findings, and resolved to report to Parliament on its concerns about the incidence of breaches of the Act by the four prescribed agencies, that is, the New South Wales Police Service, the Independent Commission Against Corruption, the New South Wales Crime Commission, and the Police Integrity Commission.

The first section of this report details the Ombudsman’s audit functions under the Act and outlines the findings made as a result of the inspections conducted by officers of the Ombudsman. It is the view of the Committee that the findings made by the Ombudsman clearly demonstrate the value of continuing oversight by the Ombudsman of controlled operations.

Risk Assessment of Police Officers - The second section of the Committee’s report deals with the findings of the Ombudsman in her report dealing with risk assessment of police officers. The Committee considers the absence of risk assessment policies to be a matter of concern, and supports the Ombudsman’s findings and recommendations to improve the Police Service’s policies relating to risk minimisation.

Operation Jade regarding the Former Task Force Bax of the New South Wales Police Service - The second special report to Parliament by the Police Integrity Commission was made in accordance with section 96(2) of the *Police Integrity Commission Act 1996* which requires the Commission to report on a matter on which it has conducted a public hearing. Operation Jade focused on the conduct of members of Task Force Bax, which was set up to investigate crime in Kings Cross. The PIC's Report highlights continued management deficiencies and a failure to implement corruption minimisation policies recommended by the Police Royal Commission, with a result that corruption was able to persist in Task Force Bax. The Committee has endorsed the recommendations of the Commission contained in its report on Operation Jade.

1. CONTROLLED OPERATIONS

Ombudsman's First Annual Report

1.1 BACKGROUND

Part 2 of the Law Enforcement (Controlled Operations) Act 1997 permits an officer or employee of four prescribed law enforcement agencies, that is the PIC, the ICAC, the Police Service and the Crime Commission, to apply to the Chief Executive Officer of their agency for an authority to conduct a controlled operation on behalf of the agency¹. Controlled operations are conducted for the purpose of:

- arresting any person involved in criminal activity or corrupt conduct, or
- obtaining evidence of criminal activity or corrupt conduct, or
- frustrating criminal activity or corrupt conduct. (s.3)

They involve activities which would be considered unlawful had they not been undertaken for the purposes of the Act and in accordance with its provisions. The requirements to be met when applying for an authority are outlined in section 5 of the Act.

Under the legislation, an application for an authority to conduct controlled operations must:

- be in writing;
- be accompanied by a plan of the proposed operation;
- identify the nature of the criminal activity or corrupt conduct on respect of which the proposed operation is to be conducted;
- identify the nature of the controlled activity in respect of which the authority is sought; and,
- specify whether there has been an earlier application concerning the same criminal activity or corrupt conduct and, if so, whether it was successful.²

1.2 FUNCTIONS OF THE OMBUDSMAN

In accordance with Part 4 of the Law Enforcement (Controlled Operations) Act 1997, the Ombudsman performs a monitoring function which involves inspecting records held by the Police Service, the ICAC, the NSW Crime Commission and the PIC for the purpose of ascertaining whether or not each of these law enforcement agencies has complied with the requirements of the Act.

Part 4 requires that a Chief Executive Officer must notify the Ombudsman within 21 days after granting an authority, variation of authority or authority renewal, to conduct a controlled operation. The Chief Executive Officer also must notify the Ombudsman within 21 days after receiving a report on the conduct of an authorised operation. The

¹ The legislation specifies the relevant Chief Executive Officers to be: the Commissioner of the Police Service; the ICAC Commissioner; the Commissioner of the Crime Commission; and the PIC Commissioner.

² NSW Ombudsman, *Annual Report on Controlled Operations*, p.3.

Act empowers the Ombudsman to obtain information from the Officer in order to consider such notifications and reports (s.21).

Under Section 22 of the Act the Ombudsman must inspect the records of each law enforcement agency named in the Act at least once every twelve months, and may inspect the records of any of the agencies at any time. The inspection reports are provided to the Chief Executive Officer of the agency to which the report relates and to the Minister responsible for that agency. The Ombudsman also may make a special report to Parliament with respect to any inspection conducted under section 22.

1.2.1 Reporting Provisions

The Ombudsman must prepare an annual report to Parliament on the Office's work and activities under this Act and the matters to be included in the annual report are listed at section 23(2) as follows:

- a) the number of authorities granted, varied, renewed or refused by each Chief Executive Officer during the period to which the report relates;
- b) the nature of the criminal activity or corrupt conduct against which the controlled operations were directed;
- c) the number of law enforcement and civilian participants involved in the controlled operations;
- d) the nature of the controlled activities engaged in for the purposes of controlled operations; and
- e) the number of law enforcement and civilian participants who have engaged in controlled activities for the purposes of controlled operations.

Reports by the Ombudsman must not include any information that could reasonably be expected to:

- i) endanger the health or safety of any person;
- ii) disclose the methodology used in any investigation that is being, has been or is proposed to be conducted by any law enforcement agency;
- iii) prejudice any current or proposed investigation conducted by a law enforcement agency;
- iv) prejudice any legal proceedings arising from any such investigation³.

1.3 FIRST ANNUAL REPORT

The Ombudsman's report covers the period from the commencement of the legislation on 1 March 1998 until 30 June 1998. It gives background information on the introduction and purpose of the legislation and highlights key provisions. The Ombudsman emphasises that many of the controlled operations referred to in the report

³ Ibid. p.5

remain ongoing and their success at this stage is unpredictable. The report also identifies "teething troubles" associated with the implementation of the Act⁴.

The major findings contained in the report may be summarised as follows:

- ❑ 47 controlled operations were authorised for the reporting period: a number falling far short of expectations
- ❑ some of the authorised agencies were reluctant to accept the breadth of the Ombudsman's role under the legislation
- ❑ there is a need to develop standard formats for documents such as applications and authorities
- ❑ the original Act did not permit an application for an authority to be made by facsimile (subsequently overcome by amending legislation)
- ❑ all arrests by the Police Service resulting from controlled operations involved drug-related matters
- ❑ police operatives advised the Office that the requirements of the Act have frustrated potential operations
- ❑ the Police Service obtained legal advice that the legislation cannot be used to authorise controlled operations for the purpose of integrity testing police officers suspected of drug-related offences

Action has been taken in some of these areas. For instance, consultation is currently taking place on the development and production of standardised key documents, based upon those developed by the Police Service, for use by the prescribed agencies. Following legislative amendments to the *Law Enforcement (Controlled Operations) Amendment Act 1998*, assented to on 2 October 1998, it is now possible to make an application for an authority by facsimile.

Problem areas outlined in the report include:

- ❑ the possibility that the wording of section 27 is inadequate to ensure that the evidentiary certificate issued by a Chief Executive Officer is conclusive evidence of that which it states;
- ❑ concerns that the Act precludes controlled operations for integrity testing of police involving drugs;
- ❑ that the Act does not extend to cover Commonwealth law enforcement operatives involved in controlled operations under the Commonwealth Act, who may be obliged to commit offences under State as well as Commonwealth laws⁵.

⁴ Ibid. p.5-6

⁵ Ibid. pp.7-8

The Ombudsman has referred a number of matters to Internal Affairs recommending integrity testing and supports legislative amendment if necessary to facilitate such testing. According to the Ombudsman, legislative amendments to the State Act to cover National Crime Authority and Australian Federal Police officers in such circumstances would have funding implications for the Office if it is to monitor these bodies. The report further suggests that consideration should be given to the different areas of investigation covered by the Commonwealth and State legislation⁶.

1.4 AGENCY PERFORMANCE

Data relating to each controlled operation for the prescribed agencies is given in tabulated form at the end of the Ombudsman's report. The results of the Ombudsman's audits have been collated in tables at Appendix 1. The major findings in relation to each prescribed agency are summarised below.

1.4.1 NSW Police Service

Two inspections of Police Service records were carried out by the Ombudsman, on 22 April and 18 June 1998. The first inspection revealed the following non-compliance matters:

- failure to record the urgency of circumstances requiring a variation to an authority to be made by facsimile rather than in writing - required by clause 5 of the Law Enforcement (Controlled Operations) Regulation 1998.
- lack of any apparent protocol for recording authority refusals by the Deputy Commissioner - indicating a need for a clearer system of recording refusals.
- authority applications did not always address whether the CEO was satisfied that civilians participating in operations had appropriate skills. The report states that this issue needs to be more specifically addressed to ensure compliance is demonstrable.
- inability to produce written records of civilian undertakings in accordance with clause 3(c) of the Regulations.
- some applications received by facsimile were authorised whereas the Act requires original signed documents to be submitted.

Police Service records had been streamlined by the second inspection to ensure that they fully complied with the requirements of the Act⁷.

⁶ Ibid. p.8

⁷ Ibid. pp.9-10

1.4.2 NSW Crime Commission

Two inspections were conducted on 29 April and 29 June 1998, and the Ombudsman made the following comments in relation to the first inspection:

- some initial resistance was encountered when the Ombudsman's officers tried to view sensitive material on certain files.
- applications and authorities conveyed virtually no information about the controlled operations. All such information was contained in the operational plan referred to in the applications and authorities, although the operational plan material was later deemed sufficient to satisfy requirements for authorisations.
- Ombudsman officers were requested to refrain from inspecting particularly sensitive material. It was later agreed that such material would be reviewed by the Assistant Ombudsman alone.

As a result of the first inspection, the Commission planned to adopt a new format for applications and authorisations, which was introduced by the second inspection.

Breaches of the Act highlighted by the Ombudsman include:

- that authorities did not state whether any law enforcement participant authorised to engage in controlled activities had done so under an assumed name.
- the dates for which one authority was to be in force were incorrect.
- that written undertakings by civilian participants were unable to be produced at the time of the inspection⁸.

Mistakes also occurred with regard to the numbering of notifications for authorities issued and no notifications existed for receipt of reports by Chief Executive Officers in relation to two controlled operations⁹.

1.4.3 Independent Commission Against Corruption

The Ombudsman conducted one inspection of the Commission's records on 18 June 1998.

The following non-compliance matters were noted in the report:

- the proforma used by the ICAC for its authorities did not identify operations by reference to the relevant operational plan. The proforma has since been amended.

⁸ Ibid. p.12

⁹ Ibid. p.13

- the Commission was unable to produce a written record of the reasons for which the Chief Executive Officer is satisfied about the matters referred to in s.6(3)(a) of the Act relating to the justification for the controlled operation.
- one application failed to completely address the matters set out in s.6(4)(a) and (b) of the Act relating to the likelihood of the success of the operation compared with other law enforcement strategies and the reliability of the information about the nature and extent of the suspected criminal activity or corrupt conduct. The Ombudsman recommended these issues be addressed in all applications.
- it was unclear in relation to one operation as to what controlled activities were being authorised for the law enforcement officers of the ICAC.
- an authority appeared to have been used to authorise the participation in controlled activities of a law enforcement officer of another agency, not the ICAC. This incident involved the possible misclassification of the participant as a law enforcement officer rather than a civilian.
- the Commission failed at the time of inspection to produce a written record of each undertaking required to be given by civilian participants. These records were subsequently identified.
- Commission records failed to adequately address whether an authorised person may operate under an assumed name¹⁰.

The ICAC also suggested that the Ombudsman's officers should not audit the records of more sensitive matters until the operations had been finalised. The Ombudsman, and the officers conducting the audits, disagreed on the grounds that scrutiny of records would then happen only after such operations had occurred and such an arrangement was impracticable under the reporting requirements of the Act.

An agreement was reached that the Assistant Ombudsman would audit the particularly sensitive matters¹¹.

1.4.4 Police Integrity Commission

The inspection of the Police Integrity Commission records was conducted on 18 June 1998. The non-compliance matters noted by the Ombudsman were:

- the absence of a reference in the authorities to the relevant operational plan. The proformas and related files subsequently were amended.

¹⁰ Ibid. pp.13-14

¹¹ Ibid. p.14

- ❑ written records did not appear to record the Chief Executive Officer's reasons for being satisfied about the matters outlined in s.6(3)(a) concerning the justification for the operation. The relevant files subsequently noted the reasons to be the same as those advanced in the relevant applications. A new proforma was devised to record the reasons in full.
- ❑ one authority did not fully comply with s.8(1)(e) which requires a statement as to whether or not each participant may operate under an assumed name. This information was later noted on the file and the pro forma amended.
- ❑ one authority variation purported to vary the authority in several ways, including the use of assumed names, apparently to remedy an earlier omission in contravention. This form of variation is not permitted by the Act and the authority was cancelled.

1.5 COMMITTEE COMMENT

The first Annual Report by the Ombudsman on the performance of her functions in relation to controlled operations outlines significant breaches by the prescribed agencies of the record-keeping requirements of the Act.

The results of the Ombudsman's audits have led to improvements in record keeping and proformas, and also prompted discussions between the prescribed agencies on the development of standard forms. The Committee has noted these developments but remains particularly concerned about the incidence of breaches of the Act and the level of non-compliance with its provisions. All four prescribed law enforcement agencies were reported to have failed to comply with various legislative requirements which included significant matters. For instance, deficiencies were noted in relation to records concerning the role of civilian participants in controlled operations, with the Ombudsman recording the absence of information specifically demonstrating compliance with the requirement that a civilian must not be authorised to participate in a controlled operation unless the CEO is satisfied the person has the skills necessary to do so. Repeated references were made by the Ombudsman to failure by the same agencies to make a written record of each undertaking given by civilian participants. The Committee also noted that on one occasion a variation to an authority was made apparently to correct an earlier omission by an agency. Another non-compliance matter recorded on a number of occasions was the failure of agencies to produce a written record in relation to the matters set out in s.6(3)(a) which deal with the justification for an operation.

The Committee considers that these instances of non-compliance are matters which should be addressed by the prescribed agencies before the Ombudsman's next annual audit of controlled operations records, and the Committee intends to obtain advice from the Ombudsman at the next General Meeting on the progress made towards remedying the problems identified as a result of the Office's audits. It is highly desirable that the improvements suggested by the Ombudsman should be made, and standard procedures introduced, before the Act is more fully utilised by the prescribed agencies.

Other significant issues in the report include the implementation of the Ombudsman's audit role and the agreements made with agencies that the records of sensitive operations will only be accessed by the Assistant Ombudsman. This arrangement was made in response to concerns expressed by the Independent Commission Against Corruption and the NSW Crime Commission about granting access to operationally sensitive records. While the Committee appreciates the degree of confidentiality and security which should be afforded to material of this nature, it believes that regard also should be had to the scope for such limitations to result in administrative inefficiencies for the operation of the Office of the Ombudsman.

The impact on the resources of the Office has to be assessed in light of the fact that the only officer agreed upon to review sensitive records relating to controlled operations is one of the Office's four statutory officers. Auditing of controlled operation records is a highly resource intensive exercise and the agreement concerning the inspection of sensitive records may limit more flexible options available to the Ombudsman to assign this work to other officers. Alternatively, it may lead to the controlled operations auditing role being performed less thoroughly than would otherwise be the case. The impact of the inspection responsibilities of the Assistant Ombudsman on the resources and management of the Office will be discussed with the Ombudsman at the next General Meeting.

The Committee also has noted the Ombudsman's comments in the report that the Independent Commission Against Corruption suggested that it would be preferable operationally, for the audit of more sensitive matters to occur after the completion of the relevant operations. The Committee agrees with the position taken by the Ombudsman that deferring the scrutiny of controlled operation records in this way would be both impractical and contrary to the intention of the Act. The Ombudsman's functions as provided for by legislation involves a full auditing role which would enable the Office to produce comprehensive reports on the extent to which the prescribed agencies meet their record-keeping obligations under the Act. Provision is made for record inspection by the Ombudsman at any time and the Ombudsman may make a special report to Parliament with respect to any inspection conducted.

The only limitations placed upon the information to be disclosed by the Ombudsman are specified within the legislation and exclude information that could "reasonably be expected to prejudice any current or proposed investigation conducted by a law enforcement agency." The Committee has dealt with this concern in an earlier report in which it concluded:

Controlled operations involve significant resources and given the extraordinary powers provided to the law enforcement agencies defined in the Act, there is an obvious need for an independent, external accountability body such as the Office of the Ombudsman. In the view of the Committee, the monitoring of controlled operations by the Office is essential to ensure that the activities permitted by the legislation are conducted properly and for the strict purposes intended. . . . Ultimately, it is a matter for the Ombudsman to determine the way in which the Office will perform its statutory audit functions within the legislative framework

*created by the Law Enforcement (Controlled Operations) Act 1997.*¹²

The Committee adheres to this position.

¹² Committee on the Office of the Ombudsman and the Police Integrity Commission, *Matters Arising from General Meetings*, August 1998, p 38.

2. RISK ASSESSMENT OF POLICE OFFICERS

2.1 BACKGROUND

The *Police Service Act 1990* and the *Ombudsman Act 1974* provide the Ombudsman with an important role in overseeing the resolution of complaints against police. Under the police complaints system, complaints alleging misconduct by police, or failures in customer service, are dealt with by police under the supervision of the Ombudsman. The Ombudsman has the power to conduct audits of conciliations, and can monitor police investigations, with the discretion to take over an unsatisfactory investigation. Complaints of serious misconduct are investigated by the Police Integrity Commission.

The *Ombudsman Act* makes provision for the Ombudsman to make a special report to Parliament at any time on any matter arising from his or her discharge of his or her functions (s.31). Concern about the Police Service's response to a number of cases prompted the Ombudsman to launch an investigation into the procedures and practices for using the police complaints system to manage police officers and assess their suitability for continued employment. Pursuant to section 31, the Ombudsman recently tabled her report on *Risk Assessment of Police Officers*.

The Ombudsman considers risk assessment to be an important corruption prevention technique. This view is supported by the Royal Commission into the NSW Police Service, which criticised the Service's practice of examining each complaint in isolation, rather than evaluating patterns of misconduct and alleged misconduct. The Royal Commission noted that where the Service is considering disciplinary action on a matter on which an officer has been acquitted in a criminal trial, a 'not guilty' verdict could arise from unavailability of witnesses, exclusion of critical evidence and so on. It concluded that such factors should not be the basis for a decision not to take disciplinary action. Rather, as the Ombudsman notes, the issue "may not necessarily be guilt or innocence according to strict legal proof, but rather the suitability of an officer to continue to hold a particular position in the Police Service".¹³

2.2 REPORT ON RISK ASSESSMENT OF POLICE OFFICERS: SUMMARY

The Ombudsman presented cases illustrating what she described as an inadequate response by the Police Service with regard to risk assessment. These included:

- An officer with a history of complaints about sexual misconduct against children. He went to trial on three counts, was acquitted on two and the jury failed to reach a verdict on the third. No action was taken against the officer. In 1997, another similar complaint about the officer was received.
- An officer who was charged with 5 counts of sexual assault upon a child under the age of 10 years. The jury was unable to reach a verdict, resulting in a re-trial

¹³ *Risk Assessment of Police Officers*, p 1.

for which the jury also failed to reach a verdict. No action was taken against the officer.

- A police officer in a supervisory position whose wife alleged that he had assaulted her, as well as other professional misconduct such as unlawful access to police records. His previous wife had previously made similar complaints about him. Neither complaint was sustained. The Ombudsman recommended that the officer be removed from his supervisory position because of his inappropriate conduct and his previous complaints history. The Service responded that the previous complaints were not relevant to the complaints about professional misconduct.

The Police Service, in its submission to the Ombudsman's investigation, conceded that it lacked a coherent policy concerning risk minimisation, and that it did not possess "any formalised or consistent mechanisms" to enable assessment of conduct and associated evidence.¹⁴

2.2.1 Police Service actions on risk assessment

The Service has a number of initiatives underway to improve its policy in the area of risk minimisation. A Strategic Assessments and Security Centre was established to provide predictive, intelligence-based services to Internal Affairs. Internal Affairs also intends developing corruption risk management practices and guidelines.

With regard to reviewing evidence at court, officers found guilty will generally be dismissed. In cases of acquittal, the practice will be to seek a report from the DPP as to the reasons for the failed prosecution, and consideration will be given to the available evidence, before determining whether to invoke Commissioner's confidence provisions. Other managerial sanctions are to be considered if Commissioner's confidence is inappropriate.

The Service reported that risk minimisation methodologies are now applied in the assessment process. Internal Affairs currently is examining its procedures in this regard, and implementing training on risk standards.

2.2.2 Ombudsman's Findings

The Ombudsman commended the Service for "frankly acknowledging" its deficiencies in relation to risk assessment and management.

Recognition is given to the Service for its initiatives in this area, but the Office remained disturbed as to the length of time taken by the Service to identify the problem, and looks forward to the implementation of the proposals within the next six to twelve months.

The Ombudsman notes the need for the Police Service to determine what level of risk is considered acceptable, and suggests that community input may be necessary.

¹⁴ Ibid, p 3.

2.2.3 Ombudsman's recommendations

The Ombudsman recommends that the Police Service:

- (1) *Develop and implement the initiatives outlined in the report within the next six to twelve months, reporting to this Office at the end of six months, and then as agreed.*
- (2) *As part of the development of a risk minimisation policy, consider the managerial sanctions attached to various levels of risk, and report to this Office the results of that consideration no later than six months from the date of this report.*

The Service accepted the content and general direction of the Ombudsman's report, and is committed to implementing its recommendations. On this issue, Chief Superintendent Brammer observed that there were some differences in interpretation of the application of risk management principles, and has requested a meeting for clarification purposes.

2.3 COMMITTEE COMMENT

The Committee shares the Ombudsman's concern that, despite the Royal Commission findings and recommendations, the Police Service failed to implement a coherent policy for risk minimisation until the preparation of the report by the Office. However, the Committee is encouraged by the willingness the Police Service has shown in acknowledging its deficiencies and developing initiatives in response to the Ombudsman's criticisms. The development of a sophisticated management approach to dealing with misconduct is an essential component of the reform process, and the Committee has examined with interest the steps taken by the Police Service since the commencement of the Police Royal Commission. Comments by the Ombudsman that the Police Service should be responsible for the development and application of risk management strategies have been recognised by the Committee.

The Committee supports the recommendations made by the Ombudsman in the Report on Risk Assessment of Police Officers, and notes that the Police Service is to report to the Ombudsman on the implementation of their initiatives after six months, and has been requested to consider managerial sanctions attached to various levels of risk. The Committee intends discussing this matter further with the Ombudsman at the next General Meeting, and will examine the Service's response to the Ombudsman's recommendations with interest.

3. POLICE INTEGRITY COMMISSION REPORT ON OPERATION JADE

3.1 Background

In response to recommendations in the Interim Report of the Royal Commission into the NSW Police Service, the Parliament passed legislation to establish the Police Integrity Commission. The Commission's principal functions under s.13(1) of the *Police Integrity Commission Act 1996* are:

- (a) to prevent serious police misconduct and other police misconduct,
- (b) to detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct,
- (c) to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit,
- (d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigation or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act.

As a result of information received from the NSW Crime Commission, the Police Integrity Commission (PIC) commenced an investigation into Task Force Bax, a special unit established by the Police Service as a result of revelations of the Police Royal Commission about the relationship between organised crime and some police officers in Kings Cross. The Commission gave the investigation the code-name Operation Jade, and a task force was formed with the Crime Commission for the purpose of information sharing.

3.2 SUMMARY OF REPORT ON OPERATION JADE

Evidence received by the Commission indicated although there was nothing to suggest pervasive corruption of officers within Task Force Bax, individual officers had acted corruptly, and management procedures were inadequate.

In particular, the following evidence emerged in the course of the investigation:

- A detective sergeant of Bax had a close personal association with a convicted heroin dealer, and leaked sensitive police information to him. Information included the identity of individuals under investigation by Bax, and the existence and placement of a covert Bax informant. As a result, an investigation was compromised.

- Another detective sergeant arranged for the destruction of fingerprint evidence which incriminated the same dealer.
- The existence of a network of corrupt officers in NSW is suggested by recorded references to a newly corrupt officer now “playing first grade”, and being protected by a “family”.

The management shortcomings related in the report included:

- The Commander of Task Force Bax failed to recognise and respond to a clear indicator of corruption - the relationship between the detective sergeant and a criminal. The Commander claims to have unaware of the exact nature of the criminal’s conviction, despite having signed a report detailing the criminal’s record.
- The Commander relied on the “discredited management practice” of “blind trust” in staff integrity. The Commander felt that his officer’s relationship with the criminal was a matter for the officer to deal with personally.
- Failure to effectively communicate the Task Force’s corruption prevention plan.
- Failure to institute corruption prevention and detection strategies to accompany the Commander’s policy of allowing all staff to access operational information.
- Lack of security for highly sensitive documents
- Failure to ensure all staff had read and understood the *Informant Management Manual*.

Other procedural issues identified by the Police Integrity Commission during its investigation revealed the need for:

- procedural guidance on informant management for officers involved in investigations with other agencies (such as task forces).
- proactive efficiency audits in the Police Service to assess the effectiveness of procedures in both specialist and non-specialist areas.
- a procedure which would enable officers to request that managers run a criminal record check on COPS on individuals they are associated with who may have criminal records.

3.2.1 Commission’s recommendations

On the basis of the evidence obtained during Operation Jade the Commission made the following recommendations:

- that the Police Service consider developing a standardised corruption risk management methodology.
- that the Service clarify in the *Informant Management Manual* the relationship between Special Expenses Allowance and other informant management procedures.
- that the Service conduct audits of the efficiency and effectiveness of procedures in specialist and non-specialist areas.
- that managers be authorised to conduct COPS inquiries about possible criminal records of associates of police officers on the request of the officer.
- that the Service review the procedures it indicated it put in place to determine if they have adequately resolved the shortcomings identified in this report.
- that the Qualitative Strategic Audit of the Reform Process should encompass a review of the recruitment policy of the Crime Agencies.

3.2.2 Police Service Response

The Police Service response to the PIC report showed some willingness to acknowledge the problems identified by the Commission, and the Service has developed several strategies in response to the problems identified in this investigation.

In particular:

- procedures have been put in place in relation to recording and disseminating confidential fingerprint analysis.
- clearer terms of reference are to be provided to Strike Forces, in contrast to the imprecise terms of reference provided to Task Force Bax.
- policy for the recruitment of staff has been formalised, and includes advertisement, application and interview. The Service also intends introducing to the recruitment process integrity testing, a statement of financial assets, assets declarations and possible asset audits. Psychological testing will be conducted if appropriate.
- assets must be declared and asset audits may be introduced.

The PIC has noted the Police Service's response, and regards it as appropriate. The Commission recommends that the initiatives be reviewed in 12 months, and that the Commission be advised of the results.

3.3 COMMITTEE COMMENT

It is a matter of real concern to the Committee that the report reveals a failure by the Police Service to implement policies arising from the Police Royal Commission across the board, and to address procedural and management shortcomings within the Service. The Police Service's willingness to admit its deficiencies and to seek to rectify them is a hopeful sign of a change in police culture. The Committee notes the findings and supports the recommendations contained in the Report, and intends raising these issues for discussion at the next General Meeting with the Commissioner. In particular, the Committee will closely examine the recommended Police Service review of the initiatives proposed by the Service.

APPENDIX 1

Audit information	NSW Police Service	NSW Crime Commission	ICAC	PIC
No. of authorities granted	35	7	2	3
Authority variations	4 (1 varied twice)	0	0	1
Authority renewals	0	0	0	0
Matters relating to controlled operations	- supply of prohibited drugs (34) some including cultivation and conspiracy to import prohibited drugs, and possession of firearms and money-laundering.	- supplying prohibited drugs and 1 operation also dealt with the manufacturing of prohibited drugs	- activities relating to corrupt commissions or rewards	- paying and receiving payments of corrupt commissions or rewards and bribing, and bribing an conspiring to bribe police; 1 also involved perverting the course of justice; another related to the supply of prohibited drugs.
Participants authorised: law enforcement civilian	96 31	5 7	28 5	6 2
Types of controlled activities	negotiation of the supply and purchase of prohibited drugs	none engaged in to date	- purchase of prohibited drugs - use of false names and negotiating re corrupt commissions or rewards	- entering private premises and a private motor vehicle
Participants engaged in controlled operations: law enforcement civilian	21 7		2 4	2 0

Audit information	NSW Police Service	NSW Crime Commission	ICAC	PIC
Notifications: - authorities granted outside the period required by legislation s.15 CEO reports received outside 28 day statutory time limit clause 12 notifications ¹⁵ deficient	1 (1 day late) 5 failed to fully address clause 12(g)	failed to fully address clause 12(g)	failed to address clause 12(g)	failed to address clause 12(g)(l)

¹⁵ Clause 12 of the Regulations sets out details to be recorded in notifications re the reports on the conduct of authorised operations and clause 12(g) requires a statement as to whether the operation was conducted in accordance with the authority for the operation, in particular, whether any unlawful conduct was engaged in, whether that unlawful conduct was subject of a retrospective authority and whether such authority had been granted.