

**ROYAL COMMISSION
INTO THE
NEW SOUTH WALES POLICE SERVICE**

Interim Report

Commissioner: The Hon Justice JRT Wood

February 1996

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ROYAL COMMISSION INTO THE NSW POLICE SERVICE

5 February 1996

The Hon RJ Carr MP
Premier of New South Wales
Governor Macquarie Tower
1 Farrar Place
SYDNEY NSW 2000

My Dear Premier

Pursuant to Letters Patent issued to me by the Government of the State of New South Wales on 13 May 1994, 30 November 1994, 21 December 1994, and 16 May 1995, I now have the honour to present to you the Interim Report of my Inquiry into the New South Wales Police Service.

Yours sincerely



The Hon Justice JRT Wood
Royal Commissioner

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ABBREVIATIONS USED IN THIS REPORT

AFP	Australian Federal Police
ALRC	Australian Law Reform Commission
CAPS	Career Advancement Planning System
CAU	Customer Assistance Unit
CCPC	Commission to Combat Police Corruption (New York)
CCRB	Civilian Complaint Review Board (New York)
CIS	Complaints Information System
CJC	Criminal Justice Commission (Queensland)
COPS	Computerised Operational Policing System
CPOA	Commissioned Police Officers Association of NSW
DEA	Drug Enforcement Agency
DPP	Office of the Director of Public Prosecutions
DPP (Cth)	Office of the Director of Public Prosecutions (Commonwealth)
EEO	Equal Employment Opportunity
GREAT	Government and Related Employees Appeal Tribunal
HMI	Her Majesty's Inspectors of Constabulary
HRM	Human Resources Management
IA	Internal Affairs Branch or Office, NSW Police Service
IAB	Internal Affairs Bureau (NYPD)
ICAC	Independent Commission Against Corruption (New South Wales)
JTF	Joint Commonwealth-State Task Force on Drug Trafficking
NCA	National Crime Authority
NSWCC	New South Wales Crime Commission
NUCS	National Uniform Crime Statistics Program
NYPD	New York Police Department
NZPCA	New Zealand Police Complaints Authority
OCCOPS	Ontario Civilian Commission on Police Services
OMD	Official Misconduct Division (CJC)
OPR	Office of Professional Responsibility
ORC	Operations Review Committee (ICAC)

PACE Act	Police and Criminal Evidence Act (UK)
PCA	Police Complaints Authority (UK)
PCC	Police Corruption Commission
PCC	Police Complaints Commissioner (Toronto, Ontario)
PIB	Professional Integrity Branch
PJC	Parliamentary Joint Committee
PRAM Act	Police Regulation (Allegations of Misconduct) Act
PSES	Police Service Senior Executive Service
RCPS	Royal Commission into the New South Wales Police Service
RCRU	Royal Commission Response Unit
RCT	Royal Commission Transcript
SA PCA	South Australia Police Complaints Authority
SCAT	State Commanders Action Team
SEG	State Executive Group
SIG	Special Investigative Group
SPG	Strategic Planning Group
TIMS	Task Force Investigation Management System

The amalgamation of the New South Wales Police Force (operations) and the New South Wales Police Department (policy and administrative support) into a single entity known as the New South Wales Police Service, commenced in June 1987. This was formalised by the *Police Service Act 1990* (NSW) which came into effect on 1 July 1990. Throughout this Report, the organisation is generally referred to as 'the Service' or 'the Police Service'.

In March 1995 the New South Wales Police Service replaced the term 'internal informer' with 'internal witness' and the Internal Informers Program and Internal Informers Support Policy became Internal Witness Support Program and Internal Witness Support Policy, respectively.

INTRODUCTION

On 13 May 1994 Letters Patent were granted to me to inquire into, and report by 30 June 1996 on, the several matters concerning the NSW Police Service (the Police Service) specified in that instrument. The terms of my reference were enlarged, by further Letters Patent dated 21 December 1994, and on 16 May 1995 the time for reporting was extended to 31 December 1996. The consolidated terms of reference are set out in Annexure A to this Report.

Key terms of my reference concern:

- the nature and extent of corruption within the Police Service, particularly of an entrenched or systemic kind; and
- the capacity of the Professional Responsibility Command, and the civilian oversight agencies, to investigate and deal with corruption and with complaints of serious misconduct.

It was acknowledged, when my terms of reference were amended in May 1995, that these key terms should be the subject of an Interim Report, so that, if necessary, an early advice could be tendered for any necessary restructuring of the existing Internal Affairs mechanisms. This was in recognition of the fact that if a serious state of corruption was found to exist, and the current arrangements were shown to be inadequate, then restructuring should not await delivery of the Final Report.

Within a short time of commencing its inquiries, the Royal Commission came into possession of intelligence suggesting that there were significant groups of serving police acting in ways which were corrupt, as defined in Chapter 2 of this Report, or which were otherwise unlawful. Further, there was intelligence to suggest that the practices and conduct in question were long-standing, having been inherited or copied over many years, and having over that time involved both serving and former members of the Police Service.

By reason of the potentially serious consequences of that intelligence, if it were true, a decision was made to concentrate the resources of the Royal Commission on testing it, and to defer, for later consideration, the remaining terms of reference. The areas for investigation were marked out and assigned to the several teams assembled for the purpose, each being comprised of counsel, solicitors, investigators drawn from police services other than the NSW Police Service, intelligence and financial analysts, and support staff.

What was undertaken was a review and re-opening of certain previously closed investigations, inquiry into a significant number of current matters, and detailed financial analysis of persons of interest.

A comprehensive picture is now available for presentation, although by the time of this Interim Report, portion only of the evidence collected has been received in public hearings.

For a proper understanding of the type of corruption which was suspected, and of the manner in which it came to exist, the decision was made to examine one area of policing in depth. The area chosen was Kings Cross, and the activities selected were the policing, over an extensive period, of drugs, vice, licensing and gaming, in and about the clubs, strip shows and similar establishments which traditionally have attracted the criminal milieu to this inner city area. The region was of further interest because detectives and uniformed police attached to specialist squads or stations other than Kings Cross had an involvement in its policing.

The co-operation and undercover assistance of two experienced but corrupt detectives who had worked in this area, followed by the successive rollover of other members of the NSW Police Service, and of the Australian Federal Police, has shown, at least on a prima facie basis, the existence of widespread corruption and criminal conduct, as well as falsification of evidence and perjury. This phase of the Inquiry also took the Royal Commission beyond the Kings Cross region, into the activities of the Joint Drug Task Force.

As summarised later in this Report, significant patterns emerged in the evidence led in this phase of the Inquiry, suggestive of corrupt behaviour, and of the existence of a culture or attitude inimical to the prevention and detection of corruption. Although it is not the purpose of this Interim Report to express any conclusion concerning individual police, the evidence received cannot be dismissed as lacking in substance, or as confined to opportunistic corruption on the part of individuals, or even on the part of isolated groups of police.

Contemporaneously with this microscopic examination of Kings Cross policing, work has been undertaken on other selected policing regions and a review made of specialist squads, and of internal investigations of certain matters which had been of concern in the Northern Rivers and Central Coast Regions. A considerable body of evidence, which is yet to be presented publicly, has been collected as the result of these inquiries. Enough has emerged, however, to suggest that the kind of corruption, serious misconduct, and unacceptable police culture, of which evidence has been led in relation to Kings Cross and the Joint Drug Task Force, is not confined to those areas.

The situation uncovered has been universally regarded as serious, and justified the amnesty offered on 29 November 1995 to those police who tender their resignation, provide full disclosure of the corruption of which they are aware, and agree to co-operate with the Royal Commission and the authorities in relation to the prosecution of police and others not eligible for the amnesty.

The determination of the full extent of corruption and serious misconduct within the Police Service must await the conclusion of the evidence, and the receipt of submissions from individual members of the police and public who have come under interest. That will be the subject of the Final Report. However, for the reasons later mentioned in Chapter 2, sufficient is now known for the conclusion that a serious state of corruption exists, which has not been prevented by existing anti-corruption plans, and which has not been

effectively detected or investigated by the Professional Responsibility Command, or the other agencies having civilian oversight of the Police Service.

It is a matter of serious concern that senior management appear to have been unaware of the extent of the problem or, if aware, have failed adequately to respond to it. Whether that has been the result of oversight, an inadequate anti-corruption plan, a failure to regard the problem with sufficient seriousness, a false sense of security following earlier anti-corruption campaigns, or the adoption of a deliberate policy to suppress the disclosure of matters harmful to the Police Service, must await the completion of the evidence, and the presentation of the Final Report. It is, however, appropriate to recall that Commissioner Lauer, and the Assistant Commissioners who gave evidence at the commencement of the public hearings, were each confident that there was no systemic corruption within the Police Service. Contrary to the experience of many members who were later called, and admitted their awareness of corrupt or other serious misconduct during much of their service, they had made no such observations, other than of a quite trivial kind.

A provisional conclusion is open on the evidence led so far, that management both at senior command and supervisory levels, has seriously failed the Police Service in this area, and that a much stronger message must go out, from the top, which needs to be reinforced by commanders at all levels, as to the degree of integrity and honesty required. That must be accompanied by greater individual and command accountability, the development of more stringent anti-corruption measures, particularly in those areas of operation where the potential for corruption is high, the development of a more intensive and practical integrity module in police training, and the introduction of a structure for the detection, investigation and control of corrupt and serious misconduct, which leaves no room for doubt that those who offend will be caught.

It is the latter component upon which this Interim Report will concentrate, along with the aspect of accountability. That does not mean that the remaining matters do not need to be addressed urgently, as the existence of a system for the detection, investigation and punishment of corrupt and serious misconduct, whether identified as the consequence of public or internal complaints, or found in the course of audit, is only a backstop. What must be in place are strategies which inhibit corruption, and promote both professionalism and a police culture which tolerates neither its existence nor concealment.

During the remainder of the term of this Royal Commission, the Police Service should be encouraged to develop and implement the management and cultural change required for a structure in which systemic corruption cannot survive. The extent to which it has done so will be reviewed in the Final Report. At that time, after further consultation and expert evidence, such recommendations as are considered appropriate, will be made.

CHAPTER 1

THE EXISTING SYSTEM

1.1 In the existing system, responsibility for investigating police misconduct and corruption is shared between the NSW Police Service, the Office of the Ombudsman, and the Independent Commission Against Corruption (the ICAC). Other bodies with limited involvement include the:

- Ministry for Police;
- New South Wales Crime Commission (NSWCC);
- Police Board of NSW;
- Auditor-General;
- former Inspector General;
- State Coroner;
- Police Tribunal; and
- Government and Related Employees Appeal Tribunal (GREAT).

1.2 There are reporting and notification obligations between the three principal agencies, but no formalised relationship exists which is aimed at a comprehensive approach to, and attack on, police misconduct and corruption. Further, the number of 'watchdog' agencies involved presents immediate cause for concern, in terms of effective use of resources, fragmentation of supervision and direction, and an increased risk of sensitive information being leaked.

A. THE COMPLAINTS PROCESS - POLICE SERVICE ACT

MANAGEMENT OF COMPLAINTS

1.3 Complaints about police misconduct are governed by Part 8A of the *Police Service Act 1990* (Police Service Act).¹ They may be made to the Police Service or to the Ombudsman.²

1.4 Police officers must report to a senior officer the conduct of another officer which they believe constitutes a 'criminal offence or other misconduct'³ and those reports are treated as complaints.⁴ Failure to comply with this mandatory reporting requirement is a disciplinary offence.

1.5 Copies of complaints received by the Police Service must be sent to the Ombudsman, with certain exceptions.⁵ One such exception is a complaint of a 'class or kind' agreed by

the Ombudsman and the Commissioner of Police to concern the 'internal management' of the Police Service.⁶ At present these include matters such as failure to attend court or notify witnesses; absence from duty; debts; loss of firearms in certain circumstances; and promotional and recruitment complaints, except those which allege corruption or misconduct.⁷

1.6 The Ombudsman must determine whether a complaint should be declined, conciliated, made the subject of preliminary inquiries or of a full investigation (by the Police Service or the Ombudsman). The Ombudsman may also decide whether any investigation should be deferred or discontinued. The Police Service must report to the Ombudsman on any conciliation or investigation.⁸

1.7 An officer interviewed during an internal investigation which is proceeding on the basis that it may involve a departmental charge is advised accordingly and can be directed to answer questions. The failure to do so attracts disciplinary action.⁹ An officer may exercise the right to silence on the other hand if an investigation into a criminal matter is being conducted.

1.8 Sustained matters are sent to the Office of Professional Responsibility (OPR) for decisions on disciplinary action.¹⁰ Matters which are concluded by the investigating officer to be not sustained are reviewed by a reviewing officer.¹¹ If there appears to be sufficient evidence for a criminal prosecution, proceedings are to be instituted, if approved by the Commissioner or the Assistant Commissioner, Professional Responsibility who has delegated responsibility.¹²

Conciliation

1.9 A complaint may be conciliated by the Police Service or the Ombudsman.¹³ Some complaints of an agreed 'class or kind' must be conciliated, others may be, and still others are specifically excluded from conciliation.¹⁴ The Ombudsman conducts random audits of complaints, written and oral, which have been conciliated by the Police Service in order to ensure that conciliation is not being abused.¹⁵

1.10 After consultation between the Police Service, the Ombudsman and the Police Association of NSW, new conciliation procedures were introduced on 5 June 1995 in an 'effort to improve and facilitate the conciliation process'.¹⁶ There is consensus between the Ombudsman, the Police Service and the ICAC that a greater proportion of complaints should be resolved through the use of this grievance procedure.¹⁷ This Commission does not dissent from that view, subject to consistent monitoring of the conciliation system to ensure that it is not abused.

B. NSW POLICE SERVICE - INTERNAL INVESTIGATION STRUCTURE

1.11 Investigation by the Police Service of complaints and corruption has changed considerably since the late 1970s. That history will not be canvassed in this Report. The system now in operation is briefly outlined.

OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR)

1.12 The OPR is responsible for the investigation of complaints and police corruption. It reports directly to the Commissioner of Police. As at 19 January 1996, the authorised strength of the OPR was 171.¹⁸

1.13 The Assistant Commissioner, Professional Responsibility has been delegated authority to perform certain functions and duties imposed on the Commissioner by the Police Service Act in respect of the complaints and disciplinary system.¹⁹ Certain powers have also been delegated to each Region Commander, but these are not as extensive as those delegated to the Commander of the OPR.²⁰

1.14 The OPR Command is constituted by the Professional Integrity Branch (PIB) and the Office of Internal Affairs (Central IA), supported by Command Administration. The functions of these areas have changed as a result of a restructure which took place in March 1995. These changes are noted below.

COMPLAINTS

1.15 Complaints have been managed variously through:

- Central IA (as part of the OPR);
- Regional Internal Affairs (Regional IA); or
- by reference to Line Command (within the Region).

1.16 Central IA has been responsible for initiating formal complaints by entry on the Complaints Information System (CIS), and for allocating them for investigation either centrally, through Regional IA Units, or by way of reference to Line Commands within Regions. The less serious complaints have been managed by Line Command investigations. Corruption matters arising by way of complaint have been referred to the PIB.

1.17 Regionalisation of Internal Affairs commenced in 1988, and was completed by August 1993. Each of the four geographic police regions has a small IA staff who report to the Region Commander, rather than to the Assistant Commissioner, Professional Responsibility. Staff employed in Regional IA units are a regional resource and not part of the staff of OPR. The number of IA staff employed in each Region varies slightly; it is approximately 12 to 15 staff.²¹ Regional IA units are located at Regional Headquarters.

1.18 Matters concerning the Fifth Region, which is made up of agencies not attached to a specific geographic region (for example the Drug Enforcement Agency and Central Branches, such as the Human Resources Command) and which deals with matters unable to be investigated at a regional level, had previously been investigated by the Special Investigative Group (SIG). SIG reported to the Commander, Office of Internal Affairs. As a result of the restructure, SIG no longer exists and its functions are now performed by the PIB.²²

1.19 The investigations carried out by Line Command, and by Regional and Central IA, have largely been reactive to complaints. That direction had been maintained until the 1995 reconstruction of the OPR. Under the reconstruction, Central IA will:

- complete current investigations but will not undertake fresh investigations, which are now being assigned to Regional IA Units or to Line Command for investigation;
- provide administrative services, including initiation and assessment of complaints and notification to the Ombudsman;
- staff and run the Customer Assistance Unit (CAU) with responsibility for managing and conciliating oral complaints of police misconduct, and for dealing with customer service matters;
- staff and run the Corruption Prevention Unit with responsibility for
 - enhancing the ‘collection and analysis of intelligence’ to identify and target high-risk corruption types, locations and individuals,
 - establishing a strategic analysis section to assess complaints and carry out audits,
 - cultivating informants, and
 - introducing other corruption fighting measures;
- staff and run the Policy and Research Unit with responsibility for
 - carrying out research,
 - evaluating corruption trends, and initiatives adopted by other police services, and
 - formulating corruption management policies and procedures.

1.20 It has been suggested that the reconstructed Office of Internal Affairs be re-named the Internal Services Branch. This is yet to receive approval from the Police Board.

CORRUPTION

1.21 The responsibility for investigating corruption has rested with the PIB and, under the reconstruction, that position has been maintained. Subject to Police Board approval, it is to be renamed the Internal Investigations Branch.

1.22 In the past the PIB has mainly carried out reactive investigations. In the future, it is to be more proactive. Rather than waiting for complaints,²³ it is to seek out intelligence and information which may reveal areas or individuals involved in corrupt activities.

1.23 The PIB will retain the surveillance unit and an intelligence unit. As part of its reorganisation the PIB has moved from a task force to a team approach, in order to provide for greater flexibility in the allocation of staff to individual investigations.²⁴

AUDIT FUNCTION

1.24 One of the aims of the new Corruption Prevention Unit is to liaise more closely with both the Comprehensive Audit Section and the Operational Readiness Audit Section, in order to enhance the capacity of the Police Service to identify problem areas, duty types and individuals.²⁵

1.25 The Quality and Review Branch of the Strategy and Review Command of the NSW Police Service has two audit sections:

- The *Comprehensive Audit Section* which conducts 'historical' audits of the financial and operational system of the Police Service to ensure 'control, compliance, accountability, integrity, efficiency and effectiveness'.²⁶
- The *Operational Readiness Audit Section* (established in mid-1993) which audits key competencies (including anti-corruption plans) in four categories (scenarios, equipment, planning and deployment). It reports on the operational readiness of the Police Service. Audit reports, detailing strengths and areas for improvement, are provided to the relevant commander, who is required to respond within three months with a plan of action. Copies are also provided to the Commissioner and the Deputy Commissioner.²⁷

1.26 Audits of drug exhibits are conducted by the PIB and a number of self audits are conducted at Command levels and by Regional Internal Affairs (random audits).²⁸ The Audit and Review Committee of the Service, chaired by the Commissioner of Police, acts as a co-ordinator determining the function, capacity and direction of auditing in the Police Service.

C. OFFICE OF THE OMBUDSMAN, NSW

FUNCTIONS AND POWERS

1.27 The NSW Ombudsman is appointed under the *Ombudsman Act 1974* as an independent statutory officer to investigate citizens complaints about public authorities.²⁹ The *Police Regulation (Allegations of Misconduct) Act 1978* (PRAM Act) and amendments made in 1983 conferred powers on the Ombudsman in relation to complaints against police. These provisions are now contained in Part 8A of the Police Service Act. The

Ombudsman's role is to ensure that the police investigation and management of day-to-day complaints is efficient, thorough, and responsive.³⁰

1.28 The Ombudsman has reported that the number of complaints received has progressively increased each year. It has doubled since 1987.³¹ Most complaints concern the use of excessive force, unreasonable use of arrest and detention, use of abusive language, harassment, failure to take action and breach of police procedures.³²

1.29 The Office of the Ombudsman allocates nearly 50% of its resources to supervising police complaints (utilising \$2 million of its total budget of \$4.4 million and 21 of its total investigative staff of 39).³³

1.30 The Ombudsman's powers and responsibilities are considerable, and include power to:

- direct the Commissioner to investigate a police complaint;³⁴
- conciliate a complaint;³⁵
- make agreements with the Commissioner about the 'class or kind' of matters which are considered to be internal management matters and the 'class or kind' of matters for which conciliation must be attempted;³⁶
- consent to the deferral or discontinuance of an investigation on application from the Commissioner;³⁷
- grant an extension of time for the completion of an investigation;³⁸
- monitor the progress of an investigation;³⁹
- assess the adequacy of an investigation;⁴⁰
- direct a further investigation of the complaint;⁴¹
- conduct a direct investigation into a complaint;⁴²
- determine whether a complaint has been sustained or not sustained;⁴³ and
- review the action which is proposed to be taken, and that which has been taken, by the Commissioner on a sustained complaint.⁴⁴

1.31 The Ombudsman considers the power to monitor an investigation to be important as it provides the Office with an opportunity to be involved in the investigative process and to reassure the complainant. The ability to exercise this power depends on the availability of resources, and the Office must prioritise matters accordingly.⁴⁵

1.32 The Ombudsman's powers to conduct a direct investigation and to conduct a reinvestigation of a matter investigated by the Police Service have been used on few occasions as a consequence of lack of resources.⁴⁶

1.33 The Ombudsman does not have an 'own motion' power to initiate investigations except in the limited sphere of police conduct which concerns 'matters of administration'. Such a power does exist for non-police matters.⁴⁷

1.34 The Ombudsman's report on any investigation is provided to the Minister, the Commissioner, and the police officer concerned. It may also be provided to the complainant.⁴⁸ Recommendations made by the Ombudsman are not enforceable.

1.35 The Commissioner of Police (or the Assistant Commissioner, Professional Responsibility as delegate) must decide what action is to be taken against the officer, and inform the Ombudsman of the action proposed to be taken and that which is taken.⁴⁹ It is possible for the Ombudsman and the Commissioner to request the Police Tribunal to determine the matter if they disagree on the proposed action and are unable to reach a resolution. The Tribunal is, however, restricted in that it may only direct the Commissioner to consider 'taking action of the nature' specified by the Ombudsman.⁵⁰ This provision has never been used, the Ombudsman preferring to report any dissatisfaction to Parliament.⁵¹

ACCOUNTABILITY OF THE OMBUDSMAN

1.36 The Ombudsman is accountable to a Parliamentary Joint Committee. The functions of the Committee are to:

- monitor and review the exercise of the Ombudsman's functions;
- examine annual and other reports made by the Ombudsman;
- report to Parliament on any matter pertaining to the Ombudsman or the exercise of the Ombudsman's functions;
- report to Parliament on any change which it considers desirable to the functions, structures and procedures of the Office of the Ombudsman; and
- inquire into any matter, connected to its functions, which is referred to it by both Houses of Parliament.⁵²

D. INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

FUNCTIONS AND POWERS

1.37 The ICAC is a statutory body created by the *Independent Commission Against Corruption Act 1988* (ICAC Act), whose role is to expose and minimise corruption within the NSW public sector.⁵³ Its principal functions are to:

- investigate and report on allegations or complaints relating to 'corrupt conduct';⁵⁴
- investigate matters referred by Parliament;
- examine public sector laws, practices and procedures and secure revision as necessary;

- instruct, advise and assist on corruption prevention; and
- educate and disseminate information to the public sector and the community, about corruption and its prevention.⁵⁵

1.38 The function of disseminating evidence for criminal prosecutions where appropriate is not included in the ICAC Act as a 'principal function', but as an 'other' function of the ICAC.⁵⁶

1.39 ICAC's structures and programs are built around three areas:

- investigation;
- corruption prevention; and
- education.

1.40 Corruption within the Police Service is but one of many areas which the ICAC is required to address.

1.41 The ICAC has a budget of approximately \$15.5 million per annum and at 30 June 1995 the total number of staff was 129.⁵⁷ It has not established a specific division with responsibility for police corruption.

1.42 The ICAC may receive complaints about possible 'corrupt conduct'.⁵⁸ The Ombudsman, the Commissioner of Police and specified officers of Public Authorities have a statutory duty to report suspected corrupt conduct to the ICAC.⁵⁹ For the year to 30 June 1994, approximately 30% of the complaints to ICAC from members of the public concerned police.⁶⁰ The Police Service, pursuant to its reporting obligation, notified ICAC of approximately 5,500 matters, by far the largest number of matters reported by any public authority.⁶¹

INVESTIGATIONS

1.43 The ICAC may investigate matters which, in its opinion:

- amount to corrupt conduct;
- may result in corrupt conduct taking place; or
- constitute conduct connected with corrupt conduct;

and which have taken place, are currently taking place or may be about to take place.⁶²

1.44 Matters referred by Parliament must be fully investigated.⁶³ In all other instances the ICAC has a discretion whether to investigate, subject to consultation with the Operations Review Committee (ORC).⁶⁴

1.45 The ICAC possesses comprehensive investigative powers, including powers to obtain information and documents, to enter premises, to obtain listening device warrants

and to issue and execute search warrants.⁶⁵ In 1990 the ICAC was given telephone intercept powers but has not exercised these to any great extent.⁶⁶ The Commonwealth legislation has recently been amended to include official corruption as an offence for which an intercept may be obtained.⁶⁷

1.46 The ICAC may summon witnesses and take evidence at public or private hearings for the 'purposes of an investigation'.⁶⁸ Witnesses are required to answer all questions but may take a general objection with the result that their evidence cannot be used against them in civil, criminal or disciplinary proceedings.⁶⁹ It is, however, an indictable offence for a person to provide false or misleading evidence to the ICAC.⁷⁰ The ICAC may recommend to the Attorney General that a person be granted an indemnity from prosecution, or that an undertaking be given that particular evidence will not be used against them.⁷¹ It may provide witnesses with protection as required.⁷²

1.47 The ICAC must report on any matters referred to it by both Houses of Parliament and on any matters in which it has conducted public hearings. It may also report on other matters.⁷³ The High Court has confirmed that the ICAC is 'primarily an investigative body and not a body the purpose of which is to make determinations'.⁷⁴

1.48 The ICAC is able to refer a matter to any 'person or body considered ... appropriate in the circumstances' for investigation or any other action. It may require that a report be furnished on the outcome of the action or investigation. It is able to inform the person or body that it is not satisfied with the outcome and, if that dissatisfaction is not resolved, it may make the matter the subject of a report to Parliament.⁷⁵

Investigations of the Police Service

1.49 The ICAC investigations regarding the Police Service which have led to reports include:

- the raid on Frank Hakim's office;
- harassing telephone calls made to Edgar Azzopardi;
- Sutherland Licensing Police;
- police and truck repairers;
- the use of informers;
- the relationship between police and criminals;
- the police and confidential information; and
- police and paedophiles.⁷⁶

1.50 Other investigations have been made, which are not necessarily the subject of reports.

EDUCATION

1.51 The functions of educating public authorities, public officials and the community on strategies to combat corrupt conduct, and of educating and disseminating information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration, are specified as 'principal functions' of the ICAC.⁷⁷

CORRUPTION PREVENTION

1.52 Since its establishment the ICAC has conducted a number of corruption awareness projects.⁷⁸ It aims to improve 'public sector integrity' by assisting public sector agencies to develop and implement corruption prevention strategies, researching the perception of corruption by public servants, conducting projects on various areas of public sector corruption, assisting individual agencies to improve public sector integrity, and by co-operating with central policy units of government.⁷⁹

1.53 For example, the ICAC has conducted a corruption prevention project on secondary employment of police officers and on the management of criminal investigations.⁸⁰

ACCOUNTABILITY OF ICAC

1.54 The ICAC is formally accountable to the ORC, the Parliamentary Joint Committee on the ICAC (PJC), and to Parliament and the public through its annual report.

1.55 The ORC is tasked to provide the ICAC Commissioner with advice concerning complaints and such other matters as the Commissioner may from time to time refer to the Committee. The ICAC Commissioner is required to consult with the ORC on a regular basis, and at least once every three months.⁸¹

1.56 The ORC is comprised of eight members, three of whom are specified in the legislation, these being the Commissioner and Assistant Commissioner of the ICAC and the Commissioner of Police. One other member is a representative of the Attorney General and there are four community representatives.⁸²

1.57 A member of the ORC must disclose his or her interest in any matter before the Committee and is not to be present at the deliberations on that matter, or exercise any function in regard to it, unless the ORC or the Minister determines otherwise.⁸³ In relation to the Commissioner of Police, this declaration is only made when the interest is 'personal' to the Commissioner, and does not apply in respect of police related matters generally.⁸⁴

1.58 The PJC is established to:

- monitor and review the ICAC's exercise of its functions;
- examine the reports and annual reports of the ICAC;
- examine trends and changes in corruption;

- report to both Houses of Parliament on any matter pertaining to the ICAC;
- report on any change it thinks desirable to the functions, structures and procedures of the ICAC; and
- inquire into any question, which is connected with its functions, referred to it by both Houses of Parliament.⁸⁵

1.59 The PJC has no role in operational matters.⁸⁶

E. OTHER BODIES

MINISTRY FOR POLICE

1.60 The Ministry for Police (formerly the Ministry for Police and Emergency Services) provides policy advice to the Minister and support services to the Police Board of NSW. During the past eighteen months, the Ministry has produced discussion papers on the police complaints and disciplinary systems which have suggested major restructuring of these areas.⁸⁷ It has an important role to play in identifying and analysing major issues for reform.

NEW SOUTH WALES CRIME COMMISSION (NSWCC)

1.61 The NSWCC is constituted under the *NSW Crime Commission Act 1985* (NSWCC Act).⁸⁸ It also possesses functions under the *Drug Trafficking (Civil Proceedings) Act 1990*, 'to conduct investigations and litigation with a view to confiscating assets derived from drug trafficking'.⁸⁹

1.62 The principal functions of the NSWCC are to:

- investigate matters referred to it by the NSWCC Management Committee;
- assemble admissible evidence and provide it to the Office of the Director of Public Prosecutions (DPP);
- 'review a police inquiry into matters relating to any criminal activity', which has been referred to it by its Management Committee, and to furnish its findings to the Committee with any recommendation as to action it considers should be taken in relation to those findings';
- furnish reports relating to 'illegal drug trafficking and organised and other crime', (if appropriate these reports are to contain 'recommendations for changes in the law of the State'); and to
- 'disseminate investigatory, technological and analytical expertise to such persons or bodies' as the NSWCC 'thinks fit'.⁹⁰

1.63 The NSWCC has stated that its principal objective is to 'reduce the incidence of illegal drug trafficking', and that a second objective is to 'reduce the incidence of organised and other crime'.⁹¹ It has extensive coercive and investigative powers for its criminal investigation functions.

1.64 The NSWCC rarely exercises its function to review police investigations. It does not exercise its coercive powers on such a review.⁹²

1.65 The NSWCC employs police task forces to conduct investigations. Police involved in these task forces are subject to the control and direction of the Commissioner of Police, rather than the NSWCC.⁹³

1.66 The NSWCC does not consider that part of its role is to investigate police corruption 'except where it arises incidentally in the course of a criminal investigation'.⁹⁴ There are good reasons for that approach:

- the Management Committee of the NSWCC includes the Commissioner of Police;⁹⁵
- there is a conflict in the NSWCC combining a corruption investigation function with a role which requires it to work in partnership with police on criminal investigations.

1.67 Where the NSWCC does come across an instance of police misconduct or corruption it reports the matter to the OPR. The NSWCC has worked on joint projects with the PIB and the ICAC to produce evidence of corruption arising from criminal investigations,⁹⁶ and on occasions provides additional investigative and technical resources.⁹⁷

POLICE BOARD OF NSW

1.68 The Police Board, which was originally constituted under the *Police Board Act 1983*, derived from a recommendation contained in the 1981 Lusher Report.⁹⁸ The applicable legislation has been amended several times over the last decade, most significantly in 1993 when the functions of the Board were altered and the Commissioner of Police lost the right to vote.⁹⁹ It now has less power than at its inception, and its role is generally limited to the Police Service Senior Executive Service (PSES), promotions, police training, and career development.¹⁰⁰

1.69 While the Police Board does not have any formal role in the existing police complaints system, it may undertake 'reviews it considers appropriate of the procedures of the Police Service, designed to safeguard the integrity of the Police Service'.¹⁰¹ To this end, the Police Board has initiated two task forces relevant to the complaints system:

- a Task Force on the Internal Affairs Branch during 1986-1987; and
- a Task Force reviewing complaints against police in 1987-1988.

1.70 The Board receives reports detailing the nature of complaints against police.¹⁰²

THE AUDITOR-GENERAL

1.71 The Auditor-General oversees the finances and performance of the Police Service, undertaking an annual audit as well as special audits. Division 2A of Part 3 of the *Public Finance and Audit Act 1983* provides for a Special Audit function, which may focus on a single issue or system within an agency, or be more broadly based and encompass a number of related agencies, or focus on particular matters on a service-wide basis.¹⁰³ While the Office of the Auditor-General cannot be considered an integral part of the police complaints system, it may have a role to play in policy development as well as in unearthing financial corruption.

THE INSPECTOR GENERAL

1.72 The position of Inspector General in the Police Service was created in 1991 as an employee of the Police Board of NSW.¹⁰⁴ Mr Donald K Wilson held the position from its inception until late 1993, when he resigned. The Inspector General's role was primarily an audit role to oversee the management practices, objectives and functions of the NSW Police Service.

1.73 Although the Inspector General was not given a direct role in investigating police misconduct, Mr Wilson completed three reports on the operations of the OPR, the PIB and the Internal Affairs Branch.¹⁰⁵ He identified weaknesses which in his opinion had left this area of administration vulnerable in many respects, not the least of which involved its general credibility.¹⁰⁶

1.74 An evaluation of the position was conducted after Mr Wilson's resignation. Mr Terry Griffiths, then Minister for Police, commented in his statement to the Royal Commission that 'the position was not filled due to lack of justification for continuing the appointment'.¹⁰⁷ The reasons for that decision are not apparent. The position no longer exists.

THE STATE CORONER

1.75 The State Coroner plays a small but significant role in the oversight of the Police Service. A former Coroner has suggested that when a death arises from actions of a member of the Police Service, there is a perception that investigating police might 'cover up' for the member involved in the death.¹⁰⁸ It is the Coroner's responsibility to ensure that the investigations into such deaths are fair and thorough. This role may be particularly important if a death in police custody occurs, and Coronial inquiries have, in the past, made criticisms of police officers in this regard.

F. THE DISCIPLINARY SYSTEM

1.76 The police disciplinary system is provided for in Part 9 of the Police Service Act and Division 4 of Part 3 of the Police Service Regulation. An officer may be subject to this system as a result of:

- a complaint which has been sustained;
- an investigation by another agency which has been disseminated to the Police Service;
- a breach of the conditions of service contained in the Police Service Regulation;¹⁰⁹ or
- a breach of the Commissioner's Instructions.

1.77 Most matters which are dealt with in the disciplinary system, however, arise out of complaints.¹¹⁰

1.78 In the disciplinary system, the responsibility for imposing penalty, and the avenues of appeal available vary according to whether the officer is:

- a non-Commissioned Officer;
- a Commissioned non-PSES Officer;¹¹¹ or
- a Commissioned PSES Officer.¹¹²

1.79 The differences reflect the manner in which those classes of police officers are appointed, promoted, and allowed to resign or retire.¹¹³ The rank held is relevant to each stage of the disciplinary process.

APPOINTMENTS

1.80 One of the Royal Commission's terms of reference is to examine the system of promotion in the NSW Police Service. There has been considerable change in that system over the years, and a degree of dissatisfaction expressed regarding its operation. The Career Advancement Planning System (CAPS), which is currently being implemented, and other issues concerning promotions, will be discussed in the Final Report. However, the manner in which the various categories of officers are appointed and promoted is briefly outlined, to assist in understanding the application of the disciplinary system.

Non-Commissioned Officers

1.81 The Commissioner of Police is responsible for the appointment, promotion and transfer, of non-Commissioned Officers.¹¹⁴ In the case of promotions, the Commissioner has the assistance of a selection committee which culls applications, interviews short-listed

applicants, and provides a recommendation. The selection committee is usually comprised of two members of the Service and one independent member.¹¹⁵

Commissioned Non-PSES Officers

1.82 Commissioned non-PSES officers are appointed by the Governor on the recommendation of the Police Board. Again, a selection committee is convened to process applications and select an officer, whom they then recommend to the Police Board. For all Superintendent positions, and for some randomly selected Chief Inspector positions, a member of the Police Board sits on the selection committee.¹¹⁶

1.83 The Board is required to consider an 'integrity report', and select the applicant who is of the 'greatest merit'. It must also 'have regard to the advice' provided by the Commissioner of Police.¹¹⁷

1.84 The Commissioner may transfer commissioned non-PSES officers. For officers of the rank of Superintendent, approval for a transfer is required from the Police Board.¹¹⁸

PSES Officers

1.85 PSES positions are those specified in Schedule 2 of the Police Service Act and may only be held by officers of or above the rank of Superintendent.¹¹⁹ The Police Board has responsibility for promotions at this level, and recommends the appointment of PSES officers to the Governor.¹²⁰ Again, the Board is required to obtain and consider an integrity report and select the applicant who is of the 'greatest merit'.¹²¹

1.86 PSES officers are employed on contracts made with the Police Board.¹²² The work performance of PSES officers is assessed, at least yearly, against performance criteria agreed to in the contract of employment.¹²³

1.87 The transfer of PSES officers, from one executive position to another, is the function of the Police Board. Such transfers are made 'in the interests of the service'.¹²⁴

RESIGNATION AND RETIREMENT

1.88 The procedures for resignation and retirement from the Police Service differ as follows:

- non-commissioned officers and commissioned non-PSES officers may resign by notifying the Commissioner in writing. Resignation or retirement does not take effect until either the Commissioner accepts the notification or the required four weeks notice has expired;¹²⁵
- PSES officers may resign by notifying the Police Board in writing. Resignation or retirement does not take effect until either the Police Board accepts the notification or the required four weeks notice has expired.¹²⁶

1.89 It is possible for an officer to be allowed to resign or retire whilst subject to the disciplinary system. This is decided on an individual basis, having regard to such factors as:

- the public interest;
- the nature of the offence;
- the seriousness of the offence; and any
- listing before the Police Tribunal.¹²⁷

1.90 The Police Service views the acceptance of an officer's notification to resign or retire whilst disciplinary proceedings are on foot, as a pragmatic solution to a difficult situation:

...the resignation of an officer who is [the] subject of serious departmental proceedings or investigation is seen as a "win" in terms of improving the integrity of the Service.¹²⁸

THE DISCIPLINARY STRUCTURE

1.91 The disciplinary structure is complex and convoluted and can involve the:

- Commissioner of Police;
- Police Tribunal;
- Police Board;
- Government and Related Employees Appeal Tribunal (GREAT);
- Minister for Police;
- Governor;
- Director of Public Prosecutions; and
- courts.

1.92 The summary which follows is a very brief description of the system, and does not enter into precise detail of the inconsistencies, ambiguities and other problems which arise in its implementation. They will be addressed in the Final Report.¹²⁹

1.93 Some features of the disciplinary system apply to all officers. For example, it is the function of the Commissioner of Police to decide whether to admonish an officer, prefer a departmental charge, or to institute criminal proceedings.¹³⁰ This function may be delegated.¹³¹

1.94 The Commissioner of Police may suspend an officer where it is believed that the officer has been involved in conduct which justifies 'disciplinary action or the institution of criminal proceedings...pending further investigation and decision as to the action to be taken'.¹³² Suspension may be with or without pay.¹³³

The Hearing of the Charge

1.95 All officers may elect to have a departmental charge determined either by the Police Tribunal or by the Commissioner. To assist an officer to make this election, the Police Service has instituted a penalty indication scheme. Under this scheme an officer who receives a charge is provided with an indication of the penalty which would be imposed if the charge were admitted. The officer is able to admit the charge and accept the indication at any time before the Tribunal hearing commences. If the officer admits the charge, an opportunity is provided to make a submission in mitigation of penalty.¹³⁴

1.96 The Tribunal, in its original jurisdiction, hears departmental charges for all classes of officers. If the charge is found proven, the Tribunal provides an assessment of appropriate penalty (if any) in all cases.¹³⁵ This assessment is a recommendation only.

Penalty and Non-Commissioned Officers

1.97 The disciplinary options for a non-commissioned officer against whom a disciplinary, or criminal charge, has been made out include:

- counselling;
- reprimand;
- imposition of a fine;
- loss of seniority;
- reduction in salary;
- demotion to a lower rank or grade; or
- dismissal.¹³⁶

1.98 The penalty is determined by the Commissioner of Police, who must consider any recommendation made by the Police Tribunal.¹³⁷

1.99 Where a criminal charge has been proven, the Commissioner of Police is able to impose a penalty, without pursuing a departmental charge.¹³⁸

1.100 An appeal on the finding (but not on the penalty recommendation) of the Police Tribunal in its original jurisdiction, lies to the Review Division of the Tribunal. An appeal may be made on the basis that:

- the officer is not guilty;
- the evidence did not disclose an offence;
- the determination is bad and contrary to law; or
- the determination is 'against the evidence and the weight of evidence'.¹³⁹

1.101 An appeal on the penalty determination made by the Commissioner, lies to GREAT¹⁴⁰ in respect of:

- a fine;
- reduction in salary;
- demotion to a lower rank or grade ; or
- suspension, dismissal, discharge or transfer.¹⁴¹

1.102 GREAT may substitute its own determination of penalty for that of the Commissioner. An appeal lies from GREAT to the Supreme Court of NSW on a point of law.¹⁴²

Penalty and Commissioned Officers

1.103 The disciplinary options for commissioned officers (PSSES and non-PSSES) are narrower than for non-commissioned officers. Penalties which can be imposed by the Commissioner of Police include:

- counselling;
- reprimand; or
- imposition of a fine.

1.104 The Commissioner may also make a recommendation to the Minister that the officer should be demoted or dismissed.¹⁴³

1.105 If the departmental charge was heard by the Police Tribunal, then the Commissioner, in determining penalty, is required to consider the recommendation on penalty made by the Tribunal.¹⁴⁴

1.106 A recommendation of dismissal or demotion, by the Police Tribunal or the Commissioner, is made to the Minister.¹⁴⁵ The Minister must consider these recommendations and provide the officer concerned with an opportunity to make a submission.¹⁴⁶ If the Minister decides that the officer should be demoted or dismissed then a recommendation to this effect is made to the Governor.¹⁴⁷ If the Minister decides against this action, then it is open to the Commissioner to discipline the officer within the limited range of penalties available.

1.107 An appeal on the finding (but not on the penalty recommendation) of the Police Tribunal in its original jurisdiction similarly lies to the Review Division of the Police Tribunal, in the case of commissioned non-PSSES officers.

1.108 Commissioned non-PSSES officers may also appeal to GREAT on the imposition of a fine, suspension or transfer but are not able to appeal against dismissal, demotion or reduction in salary.¹⁴⁸ GREAT may substitute its own decision for that of the Commissioner.

1.109 PSSES officers, however, are unable to appeal to the Review Division of the Police Tribunal on the finding, or to GREAT in respect of penalty.¹⁴⁹

1.110 The diagram following this chapter illustrates the above differences.

PROCEEDINGS IN THE POLICE TRIBUNAL

1.111 The Tribunal was established in 1978 by the PRAM Act. Apart from a 1983 amendment, requiring it to assess an appropriate penalty in a given case, the law relating to the Tribunal has changed little since 1978.¹⁵⁰ Provisions relating to its constitution and functions are now contained in Part 9 and 9A of the Police Service Act.

1.112 The Tribunal is constituted by a President, a Deputy President and Members. The President and Deputy President must be either a Judge of the Supreme Court, a Judge of the District Court, or the Senior Chairperson of GREAT. All District Court Judges are members of the Tribunal.¹⁵¹

1.113 In performing its functions, whether in its original jurisdiction, Review Division, or when conducting inquiries on the request of the Minister, the Tribunal has the 'powers, authorities, protections and immunities' of a Royal Commissioner (with some exceptions).¹⁵²

1.114 The Commissioner of Police and the police officer charged are entitled to legal representation before the Tribunal in its original jurisdiction and on appeal to the Review Division. That right is usually exercised, and the proceedings tend to be legalistic and protracted. Where the departmental charge has arisen out of a complaint, the complainant is not a party to the proceedings. As a general rule hearings are held in public.¹⁵³

Original Jurisdiction of Tribunal

1.115 In its original jurisdiction, in disciplinary matters, the Tribunal is constituted by a single member, usually a District Court Judge.¹⁵⁴ A departmental charge is heard by the Tribunal where it is denied and concerns a complaint made under Division 4, Part 8A of the Police Service Act, or where the charge does not concern such a complaint but the officer elects to have it heard by the Tribunal.¹⁵⁵ Most officers elect to have their matter heard by the Tribunal.¹⁵⁶

1.116 The Tribunal is not bound by rules of evidence or 'strict legal precedent' in determining whether a charge has been proved against an officer on the balance of probabilities.¹⁵⁷ The balance is on a sliding scale having regard to the seriousness of the misconduct and the magnitude of the likely penalty to be imposed.¹⁵⁸

1.117 In addition to the Tribunal's function to hear charges against individual officers, the Minister may require it to inquire into and report on matters relating to the discipline of

police officers, the exercise of their functions, or related matters.¹⁵⁹ This power has rarely been exercised.¹⁶⁰

Review Division of the Tribunal

1.118 The Review Division is constituted by the President and two Members sitting together. An appeal to the Review Division is 'in the nature of a review' of the matter as presented to the Tribunal in its original jurisdiction.¹⁶¹

PROCEEDINGS IN THE GOVERNMENT AND RELATED EMPLOYEES APPEAL TRIBUNAL

1.119 GREAT was established under the *Government and Related Employees Appeal Tribunal Act 1980* and has jurisdiction across public sector employment. In relation to the Police Service, it has appellate jurisdiction for certain areas of discipline, promotions and 'hurt on duty' matters.

1.120 GREAT is constituted by three members:

- the Senior Chairperson (who must be either a Judge of the Supreme Court or a Judge of the Industrial Commission of NSW)¹⁶² or a Chairperson (normally a Magistrate) selected by the Senior Chairperson;
- an employer's representative; and
- an employee's representative.¹⁶³

1.121 For the purposes of both disciplinary and promotions appeals, a police officer is considered to be an employee. In respect of disciplinary appeals, the Commissioner of Police is taken to be the employer. For promotional appeals, the Commissioner is regarded as the employer in appeals concerning promotions to Senior Constable, and promotion to Sergeant and Senior Sergeant; and the Police Board is regarded as the employer for appeals concerning promotions to Inspector and Chief Inspector.¹⁶⁴

1.122 Disciplinary appeals heard by GREAT are conducted in a formal manner.¹⁶⁵

1.123 An officer who is unsuccessful in an application for promotion (ranks from Senior Constable to Chief Inspector) may appeal to GREAT, on the basis of being:

- 'more entitled' and 'qualified' (for promotion to Senior Constable) for the position than the successful officer;¹⁶⁶ or
- of 'greater merit' than the successful applicant (for promotion to Sergeant and Senior Sergeant¹⁶⁷ and to Chief Inspector).¹⁶⁸

1.124 Unlike disciplinary appeals, promotions appeals to GREAT are informal.¹⁶⁹

THE ROLE OF THE POLICE BOARD

1.125 The role of the Police Board in relation to the disciplinary system is ambiguous. Although it has no direct role, its functions of reviewing work performance, determining contract renewals, and recommending appointments and promotions all have an impact on the disciplinary and complaints system.

1.126 A useful illustration is the role which the Police Board has in assessing the work performance of PSSS officers pursuant to their contracts. If the Police Board were to assess the performance as poor then it could vary the terms of the contract, for example, by declining to award an increment.¹⁷⁰ This is not a disciplinary sanction. Performance assessment by the Board may in this way overlap with disciplinary sanctions taken by the Commissioner or the Governor, in respect of the same conduct.¹⁷¹

1.127 The Police Board may also make a recommendation to the Governor, at any time, that a PSSS officer should be removed from his or her position.¹⁷² In this situation, an opportunity to show cause to the contrary is given.

1.128 The Police Board also makes recommendations on the renewal of PSSS contracts.¹⁷³ There is a presumption that the position will be advertised and open to competition. However, the Board can in certain circumstances, renew the contract of the incumbent without advertising the position. In this event, the process must be 'capable of withstanding external scrutiny'.¹⁷⁴

G. CRIMINAL CHARGES

1.129 As the result of a complaint, it may emerge that a criminal charge should be laid against the police officer concerned. If this occurs during the course of an investigation, consent is required from the Commissioner of Police, or the Assistant Commissioner, Professional Responsibility (as delegate), for such action.¹⁷⁵ In practice, the Police Service seeks advice from the DPP on whether a criminal charge should be laid.¹⁷⁶

1.130 If a charge is laid, the police officer is dealt with in the court system.

1.131 It is possible for departmental charges and criminal charges to be considered simultaneously. In practice, if the criminal charge and the departmental charge are based on the same facts, the pursuit of the departmental charge is postponed until resolution of the criminal charge.

1.132 If the DPP advises that there is insufficient evidence to support a criminal prosecution then it is still possible for the Police Service to pursue departmental charges. It appears that the Police Service sometimes allows such matters to lapse.¹⁷⁷

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

1.133 The DPP commenced operations on 13 July 1987 under the *Director of Public Prosecutions Act 1986*.¹⁷⁸ The principle functions of the DPP are to prosecute criminal cases before the Supreme Court and District Court on behalf of the Crown. The Director has complete independence in decision making. This is said to be a safeguard against 'corruption and interference in the criminal justice system'.¹⁷⁹ The Office is accountable to Parliament through the Attorney General but effectively functions as a separate decision making authority.¹⁸⁰

1.134 The Special Crime Unit in the DPP is responsible for the prosecution of all matters involving charges against police, the provision of advice to the Police Service about possible criminal charges, and the prosecution of matters referred from the ICAC and the NSWCC. It receives the initial instructions and briefs from the Professional Responsibility Command.

1.135 The decision to prosecute depends on whether there is sufficient evidence to 'justify the institution or continuation of a prosecution'.¹⁸¹ Sufficient evidence is that which is admissible, substantial and reliable.

Notes

- ¹ For discussion of legislative history see NSW Ombudsman, Submission to RCPS for Interim Report, 23/11/95, Doc. 1761209-19.
- ² Complaints to the Ombudsman may have originally been lodged at a Local Court or referred to the Ombudsman by the Minister or by ICAC. A complaint may also be made on behalf of a complainant by a member of Parliament: *Police Service Act 1990*, ss. 125(3)(c)-(d) & 125(4).
- ³ *Police Service Regulation 1990*, cl. 30. The senior officer is to forward the report to the Commissioner of Police or his or her nominee: cl. 31.
- ⁴ See *Ombudsman v Commissioner of Police* (1987) 11 NSWLR 386.
- ⁵ *Police Service Act 1990*, s. 127. Section 124 deals with excepted matters, including matters which are or have already been the subject of an investigation. However, investigations conducted by ICAC and the NSWCC are not excluded: s. 124(2).
- ⁶ *Police Service Act 1990*, s. 124(1). During the 1994/95 financial year 511 (9.2%) written complaints were dealt with as internal management matters: NSW Police Service, *Annual Report 1994-1995*, Sydney, 1995, p. 68.
- ⁷ A complete list of internal management matters is included in NSW Ombudsman, op cit, 23/11/95, Doc. 1761222.
- ⁸ *Police Service Act 1990*, ss. 136(1) & 147. See discussion of Ombudsman in paras. 1.27-1.36.
- ⁹ Pursuant to the obligation to 'promptly obey all lawful orders': *Police Service Regulation 1990*, cl. 9(1).
- ¹⁰ L.A. Scott, RCT, 13/4/95, p. 5604.
- ¹¹ If the investigation was conducted at a regional level, the review is still conducted within the region.
- ¹² *Police Service Act 1990*, s. 145 & *Police Service Regulation 1990*, cl. 43.
- ¹³ *Police Service Act 1990*, s. 135.
- ¹⁴ *Police Service Act 1990*, ss. 132-134. See NSW Police Service, *Complaint Conciliation Manual*, IA Training Unit, Version 1, March 1995. Statements made by an officer during conciliation are not admissible in disciplinary proceedings relating to the matter: s. 137.
- ¹⁵ *Police Service Act 1990*, s. 138. See NSW Ombudsman, *Annual Report 1994-95: For fairness, integrity & improved public administration: 20 years*, Sydney, 1995, p. 22, expresses concern about the conduct of conciliation by the police in some cases. The Police Service reported that 1,226 (22.1%) of finalised written complaints were conciliated during 1994/95: NSW Police Service, 1995, op cit, p. 68, however, the Ombudsman reported that 1,185 (24.9%) of determined police complaints were conciliated: NSW Ombudsman, 1995, op cit, p. 23.
- ¹⁶ NSW Police Service, Submission to RCPS for Interim Report, 16/11/95, Doc. 1554163.
- ¹⁷ See comments in NSW Police Service, 16/11/95, op cit, Doc. 1554163; NSW Ombudsman, *19th Annual Report 1993-1994*, Sydney, 1994, p. 33; ICAC, *Investigation into the Relationship Between Police and Criminals*, Second Report, April 1994, p. 67.
- ¹⁸ Figures provided by OPR on 19/1/96. There are three measures of staff: authorised, actual and available.
- ¹⁹ The Instruments of Delegation are reproduced in J.T. Jarratt, Statement to RCPS, 25/10/94, Attachment E, Doc. 155163-65. See Annexure Z, Premier's Department, 'Suspension of Public Employees from Duty', Memorandum No. 94-21, Doc. 155812-13 and J.T. Jarratt, Supplementary Statement to RCPS, 6/12/94, Attachment, Premier's Department, 'Suspension of Public Employees from Duty', Memorandum No. 94-35, Doc. 129689.
- ²⁰ Region Commanders have been delegated the 'powers, duties, authorities and functions' of the Commissioner under Part 8A of the *Police Service Act 1990* with the exception of those contained in ss. 142 & 145(3).
- ²¹ J.T. Jarratt, RCT, 28/11/95, p. 16448 stated that the average number was 14-15 however, G.E. Schuberg, RCT, 2/2/95, p. 1392 stated that 12 investigators were attached to each region.
- ²² P. Gallagher, RCT, 5/4/95, p. 5071.
- ²³ Which has been described as a 'powerful programmed response': J.T. Jarratt, RCT, 28/11/95, p. 16473.
- ²⁴ See reasons provided for adopting a team approach offered by G.E. Schuberg, RCT, 2/2/95, pp. 1413-14.
- ²⁵ NSW Police Service, 16/11/95, op cit, Doc. 1554152.
- ²⁶ Superintendent G. Doolan, Commander Operational Readiness Unit, Presentation to RCPS on Audit, 30/9/94, Doc. 196010. This section was part of OPR until 1993.
- ²⁷ N. Bridge, Statement to RCPS, 18/10/94, Doc. 128644.
- ²⁸ eg. commanders conduct a self audit every three months, district commanders conduct an audit yearly or may conduct a contingency audit as needed and further audits are conducted by the Region Inspection Teams.
- ²⁹ NSW Ombudsman, *Report of the Ombudsman of New South Wales for the year ended 30 June 1984*, Government Printer, Sydney, 1984, p. 2.
- ³⁰ See discussion of role in NSW Ombudsman, 23/11/95, op cit, Doc. 1761221.
- ³¹ NSW Ombudsman, 1995, op cit, p. 20.
- ³² NSW Ombudsman, 23/11/95, op cit, Doc. 1761221.
- ³³ NSW Ombudsman, 1995, op cit, p. 5; NSW Ombudsman, 23/11/95, op cit, Doc. 1761242. During the 1994-95 financial year the Ombudsman received 5,056 written complaints about police (2,391 oral complaints about police were also received). During the same period 4,759 complaints were determined. Of the total number of complaints determined 650 (13.7%) were subject to full investigation, of which 89 (13.7%) were unable to be determined, 278 (42.8%) were not sustained and 283 (43.5%) were sustained. Of the 4,109 matters not fully investigated 1,687 (41.1%) were declined at the outset, 1,010 (24.6%) were the subject of preliminary inquiries, 1,185 (28.8%) were conciliated and 227 (5.5%) were discontinued before Ombudsman investigation: NSW Ombudsman, 1995, op cit, pp. 20-21 & 23.
- ³⁴ *Police Service Act 1990*, s. 141(1).
- ³⁵ *Police Service Act 1990*, s. 135(2).
- ³⁶ *Police Service Act 1990*, ss. 124(1) & 132.
- ³⁷ *Police Service Act 1990*, s. 143.
- ³⁸ *Police Service Act 1990*, s. 149.
- ³⁹ *Police Service Act 1990*, s. 144.
- ⁴⁰ *Police Service Act 1990*, ss. 147(2) & 151.
- ⁴¹ *Police Service Act 1990*, s. 151.

- ⁴² *Police Service Act 1990*, ss. 148, 152 & 153. These investigations are to be conducted as if the complaint had been made under the *Ombudsman Act 1974*. It has been unclear whether the Ombudsman is able to compel police officers to answer questions, in these direct investigations, which might incriminate them even in relation to disciplinary matters. The Ombudsman sought advice on this question, and was informed that she can compel answers, although it was recognised that it is a complex and difficult area: NSW Ombudsman, Supplementary Submission to RCPS for Interim Report, 22/12/95, Doc. 1665579.
- ⁴³ *Police Service Act 1990*, ss. 155-156.
- ⁴⁴ *Police Service Act 1990*, ss. 158-159.
- ⁴⁵ Priority is currently given to complaints by young people and people from non-English speaking backgrounds: NSW Ombudsman, 1995, op cit, p. 26.
- ⁴⁶ NSW Ombudsman, 23/11/95, op cit, Doc. 1761237.
- ⁴⁷ *Ombudsman Act 1974*, s. 13(1).
- ⁴⁸ *Police Service Act 1990*, ss. 157(2)-(3).
- ⁴⁹ *Police Service Act 1990*, ss. 158(1) & 159(1). The report outlining proposed action is not to include penalty but the final report must detail penalty: ss. 158(2) & 159(2).
- ⁵⁰ *Police Service Act 1990*, s. 158.
- ⁵¹ The Ombudsman may, at any time, make a report to Parliament, and may make a 'special report' concerning serious misconduct of a police officer which warrants dismissal or punishment: *Police Service Act 1990*, ss. 161-162. See discussion of this power to request the Tribunal to determine the matter and reasons why it is not used in G. Masterman, 'External review: the New South Wales experience' in eds I. Freckelton & H. Selby, *Police in Our Society*, Butterworths, Sydney, 1988, p. 222.
- ⁵² *Ombudsman Act 1974*, s. 31B(1).
- ⁵³ ICAC, *Annual Report 1993*, Sydney, 1993, p. iii.
- ⁵⁴ See *Independent Commission Against Corruption Act 1988*, (ICAC Act), ss. 7-9.
- ⁵⁵ ICAC Act, s. 13.
- ⁵⁶ ICAC Act, ss. 14(1). The 'other functions' are set out in s. 14.
- ⁵⁷ See ICAC, *Annual Report 1994-5*, Sydney, 1995, p. 37 & Appendix 8, p. 71.
- ⁵⁸ ICAC Act, s. 10.
- ⁵⁹ ICAC Act, s. 11. Less serious matters may be reported by way of schedule: ICAC, *Annual Report 1994*, Sydney, 1994, Appendix 5, pp. 44-46. The Ombudsman advised that 20% of matters received by it are referred to the ICAC. Few of these involve allegations of serious corruption: NSW Ombudsman, 23/11/95, op cit, Doc. 1761250.
- ⁶⁰ This was the second largest category after complaints concerning local government which represented approximately 34%: ICAC, 1994, op cit, p. 13.
- ⁶¹ *ibid*, p. 14.
- ⁶² ICAC Act, s. 13(1)(a).
- ⁶³ ICAC Act, s. 73(2).
- ⁶⁴ ICAC Act, s. 20.
- ⁶⁵ See ICAC Act, ss. 21-23 & 40-48. These powers are not employed in preliminary inquiries: ICAC, *Annual Report 1992*, Sydney, 1992, p. 18.
- ⁶⁶ Power granted by amendments to the *Telecommunications (Interception) Act 1979* (Cth) and the *Telecommunications (Interception) (New South Wales) Act 1987* (NSW). In 1993-94 the ICAC obtained only one warrant for telecommunications interception: ICAC, 1994, op cit, p. 11.
- ⁶⁷ *Telecommunications (Interception) Amendment Act 1995* (Cth).
- ⁶⁸ ICAC Act, ss. 30, 31 & 35. Investigations need not have a hearings component.
- ⁶⁹ ICAC Act, s. 38.
- ⁷⁰ ICAC Act, s. 87.
- ⁷¹ ICAC Act, s. 49.
- ⁷² ICAC Act, s. 50.
- ⁷³ ICAC Act, s. 74. Specification of report content is provided in ss. 74A-B.
- ⁷⁴ *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625 at 633. See discussion in H. Reed, 'The 'permanent' commissions of inquiry - A comparison with ad hoc commissions: Part 1', *Australian Journal of Administrative Law*, vol. 2, 1995, p. 89.
- ⁷⁵ ICAC Act, ss. 53-55. See also ss. 56-57.
- ⁷⁶ See ICAC, *Report on Investigation Relating to the Raid on Frank Hakim's Office*, Dec. 1989; ICAC, *Report on Investigation into Harassing Telephone Calls made to Edgar Azzopardi*, 1990; ICAC, *Report on Investigation into Sutherland Licensing Police*, Feb. 1991; ICAC, *Report on Investigation into Police and Truck Repairers*, May 1991; ICAC, *Report on Investigation into the Use of Informers*, Vol. 1 & Vol. 2, Jan. 1993; ICAC, *Report on Investigation into the Relationship between Police and Criminals*, First Report, Feb. 1994 (Milloo 1); ICAC, *Report on Investigation into the Relationship between Police and Criminals*, Second Report, April 1994 (Milloo 2); ICAC, *Report on Investigation into Matters Relating to the Police and Confidential Information*, June 1994; ICAC, *Police and Paedophiles - Interim Report on Investigation into Alleged Police Protection of Paedophiles*, Sept. 1994.
- ⁷⁷ ICAC Act, ss. 13(1)(h)-(k). In evidence before the ICAC PJ on 15/9/95 at p. 3, Commissioner O'Keefe stated that under his direction, greater attention will be given to this function. To support this approach, Mr O'Keefe referred to the Second Reading Speech made by then Premier Mr Greiner on the ICAC Bill 1988. See NSW, Legislative Assembly, *Parliamentary Debates*, vol. 201, 26/5/88, p. 674.
- ⁷⁸ Including publications, film, video, competitions, field days, public engagements and so on. See ICAC, 1994, op cit, pp. 1-3.
- ⁷⁹ See discussion of corruption prevention projects in ICAC, 1995, op cit, pp. 6-10.
- ⁸⁰ ICAC, *Secondary Employment of NSW Police Officers*, Corruption Prevention Project, Aug. 1992; ICAC, *A High Risk Area: The Management of Criminal Investigations*, Discussion Paper, Oct. 1993. See also ICAC, Submission to RCPS for Interim Report, 8/12/95, Annexure 4, Doc. 1640586-88.
- ⁸¹ ICAC Act, ss. 58-59.
- ⁸² ICAC Act, s. 60(1).
- ⁸³ ICAC Act, s. 62.

- 84 The appropriateness of the composition of the ORC was considered in ICAC, *Issues Paper: Composition of the Operations Review Committee; Reporting by the Committee on its Activities*, prepared by V. Jadresko, Secretary, ORC, 31/8/93, para. 3.5. However, more recently the ICAC has suggested that changes may be necessary to the composition of the ORC or perhaps even a separate ORC established for police matters: ICAC, 8/12/95, op cit, Doc. 1640567.
- 85 ICAC Act, s. 64(1).
- 86 ICAC Act, s. 64(2).
- 87 Ministry for Police, July 1995, op cit.; Ministry for Police & Emergency Services, May 1995, op cit.
- 88 Previously the *State Drug Crime Commission Act 1985*.
- 89 NSWCC, Submission to RCPS for Interim Report, 15/11/95, Doc. 1555283.
- 90 *New South Wales Crime Commission Act 1985*, (NSWCC Act), s. 6(1).
- 91 NSWCC, *Annual Report 1993-94*, Sydney, 1994, p. 11.
- 92 NSWCC, 15/11/95, op cit, Doc. 1555283.
- 93 NSWCC Act, s. 27A. Subject Management Committee directions and guidelines to the NSWCC and to the Commissioner of Police.
- 94 NSWCC, 15/11/95, op cit, Doc. 1555283.
- 95 NSWCC Act, s. 24(1)(b).
- 96 NSWCC, 15/11/95, op cit, Doc. 1555284.
- 97 NSWCC, 15/11/95, op cit, Doc. 1555284.
- 98 Justice E. A. Lusher, *Report of the Commission to Inquire into New South Wales Police Administration*, 1981, Ch 34, pp. 788-93.
- 99 *Police Service (Management) Amendment Act 1993*. Now constituted under Part 3 of the *Police Service Act 1990*.
- 100 Police Board of NSW, *Twelfth Annual Report 1994-1995*, Sydney, 1995, p. 12.
- 101 *Police Service Act 1990*, s. 19(c).
- 102 At present these are quarterly reports from OPR which analyse complaints in terms of conduct and location for each Region: Police Board of NSW, 1995, op cit, p. 46.
- 103 Auditor-General of NSW, *Special Audit: Training and Development for the State's Disciplined Services: Stream 1: Training Facilities*, 24/9/92, p. 73.
- 104 *Police Service (Inspector General) Act 1991*. The Act commenced operation on 13/12/91, however Mr Wilson had assumed the position on 29/7/91. The legislation did not provide any special office nor powers of the position. On 12/7/93, the position was transferred from the Police Board to the Ministry for Police & Emergency Services.
- 105 *Report on the Inspector General's Inspection of Professional Responsibility Command*, 25/2/95, Doc. 608025; *Report of the Inspector General's Inspection of the Professional Integrity Branch*, 24/2/93, Doc. 608019; *Inspector General's Interim Report on his Inspection of the Internal Affairs Branch*, 15/1/93, Doc. 607991; *Report on the Inspector General's Inspection of Internal Affairs Branch*, 15/2/93, Doc. 607999.
- 106 *Report on the Inspector General's Inspection of Internal Affairs Branch*, 15/2/93, Doc. 607999. The Inspector General also reported on many patrol districts throughout NSW, as part of his brief to 'assess the quality of command at the District level': *Brief received from Chairman BR Thorley vis-a-vis duties, responsibilities and priorities of Inspector General*, 29/7/91, Doc. 425986.
- 107 T. Griffiths, Statement to RCPS, 26/4/95, Doc. 854972.
- 108 K. Waller, *Coronial Law and Practice in New South Wales*, Butterworths, Sydney, 1994, p. 7.
- 109 *Police Service Regulation 1990*, cl. 9.
- 110 Ministry for Police, July 1995, op cit, para. 3.8.
- 111 Officers of or above the rank of Inspector not part of the PSSES: *Police Service Act 1990*, s. 3.
- 112 PSSES positions are listed in Schedule 2 and must be held by an officer of or above the rank of Superintendent: *Police Service Act 1990*, s. 35(3).
- 113 See discussion in Ministry for Police, July 1995, op cit, para. 3.5.
- 114 *Police Service Act 1990*, s. 64(1)(b). 'Appointment' of non-executive officers is defined as 'promotion, transfer or otherwise': s. 63. 'Appointment' is not defined for PSSES officers.
- 115 A fourth member may be enlisted when technical expertise is required.
- 116 Police Board of NSW, 1995, op cit, p. 28.
- 117 *Police Service Act 1990*, ss. 70-71. An 'integrity report' is a section 94A report.
- 118 *Police Service Act 1990*, s. 67.
- 119 *Police Service Act 1990*, s. 35.
- 120 *Police Service Act 1990*, s. 36.
- 121 *Police Service Act 1990*, s. 39.
- 122 *Police Service Act 1990*, s. 41.
- 123 *Police Service Act 1990*, s. 43. The standard contract states that to assess performance, the Police Board may inform itself as it sees fit and may use information from 'official reports, and judicial or quasi judicial proceedings': Ministry for Police, July 1995, op cit, para. 3.31.
- 124 *Police Service Act 1990*, s. 60.
- 125 *Police Service Act 1990*, s. 82. An officer may retire on or after turning 55 years of age or may be retired by the Commissioner at any time after reaching 60 years of age: s. 83(1).
- 126 *Police Service Act 1990*, s. 49. PSSES officers may retire on or after turning 55 years of age or may be retired by the Governor at any time after reaching 60 years of age: s. 50.
- 127 Jarratt J.T. 25/10/94, op cit, Doc. 0155066. If a matter has been listed before the Tribunal more 'critical evaluation' is given to whether the resignation or retirement will be accepted.
- 128 *ibid*.
- 129 See also issues raised in Chapter 6 of this report.
- 130 *Police Service Act 1990*, s. 173. Admonishment is the disciplinary action which is taken against an officer when the conduct in question, although 'not satisfactory' does not 'justify' the preferment of a departmental charge. Prior to 1993 the term 'counselling' was used in this context. Since 1993 'counselling' has been included as a penalty to be imposed after a

- departmental charge has been proved (rather than as an alternative to a departmental charge). This change in terminology has created some confusion in the Police Service and they now tend to avoid using counselling as a penalty option - preferring to rely on admonishment as a pre-penalty action and a reprimand as a penalty action.
- 131 *Police Service Act 1990*, s. 31.
- 132 *Police Service Regulation 1990*, cl. 40. There is a lack of clarity associated with the power of the Commissioner of Police to suspend all officers. The effect of suspending PSES officers is unclear as they are appointed by the Governor and hold a contract of employment with the Police Board: see discussion in Ministry for Police, July 1995, op cit, paras. 5.35-5.36.
- 133 J.T. Jarratt, Supplementary Statement to RCPS, 6/12/94, Doc. 129689.
- 134 *Police Service Regulation 1990*, cl. 38(1).
- 135 *Police Service Act 1990*, s. 175.
- 136 *Police Service Act 1990*, ss. 179(1)-(2).
- 137 *Police Service Act 1990*, s. 175(3)(b).
- 138 *Police Service Act 1990*, s. 179(1).
- 139 *Police Service Act 1990*, s. 176(2).
- 140 Ministry for Police, July 1995, op cit, para. 3.18. The *Police Service Act 1990*, s. 182(2) specifies that if the charge was heard by the Police Tribunal, then GREAT is restricted to hear appeals on severity of penalty only, no provision is made for those charges which are determined by the Commissioner. Doubt therefore exists whether an appeal to GREAT in these circumstances would include the determination of the charge as well as penalty. The Ministry states that the inference is that it would.
- 141 *Police Service Act 1990*, s. 182(1).
- 142 *Government and Related Employees Appeal Tribunal Act 1980*, (GREAT Act), s. 54.
- 143 *Police Service Act 1990*, s. 179(2).
- 144 *Police Service Act 1990*, s. 175(3).
- 145 *Police Service Act 1990*, ss. 175(3) & 179(2)(f)-(g).
- 146 *Police Service Act 1990*, s. 180(3).
- 147 *Police Service Act 1990*, s. 180(1).
- 148 The Commissioner does not have the power to impose dismissal, demotion or a reduction in salary: *Police Service Act 1990*, ss. 179(2)(e)-(g).
- 149 See *Police Service Act 1990*, ss. 44(1)(b), 44(6) & 182(1). However, in appropriate circumstances, an appeal on administrative law grounds would lie to the Supreme Court, as this is not specifically excluded by s. 44: as discussed in Police Board of NSW, Submission to RCPS for Interim Report, 24/11/94, Doc. 1745824, p. 17.
- 150 *Police Regulation (Allegations of Misconduct) Amendment Act 1983*. Amendments affecting the Police Tribunal were also made by *Police Regulation (Allegations of Misconduct) Amendment Act 1990*.
- 151 *Police Service Act 1990*, ss. 188(2), 189(4) & 190.
- 152 *Police Service Act 1990*, s. 192.
- 153 *Police Service Act 1990*, ss. 177(1)(a)-(c).
- 154 *Police Service Act 1990*, s. 174(2).
- 155 *Police Service Act 1990*, s. 174(1).
- 156 See comments in J.K. Avery, RCT, 6/12/94, p. 99; J.K. Avery, Statement to RCPS, 1/12/94, p. 15.
- 157 *Police Service Act 1990*, s. 177(1)(d).
- 158 *Briginshaw v Briginshaw* (1938) 60 CLR 336, at 361-362.
- 159 *Police Service Act 1990*, s. 197.
- 160 eg Police Tribunal of NSW, *Report of the Tribunal to the Minister for Police pursuant to an inquiry under section 45 of the Police Regulation (Allegations of Misconduct) Act 1978 into certain matters relating to discipline in the Police Force and Mr WAR Allen*, 1982; Police Tribunal of NSW, *Report of the Police Tribunal of New South Wales to the Minister for Police and Emergency Services pursuant to a Inquiry under section 45 of the Police Regulation (Allegations of Misconduct) Act 1978 into certain matters relating to discipline in the Police Force ('Brennan TRG Inquiry') before His Honour Judge JH Staunton CBE QC* President. 1991.
- 161 *Police Service Act 1990*, s. 176(3). New evidence will only be admitted if the Review Division considers that it was not 'reasonably available' at the time of the original proceedings: s. 176(4).
- 162 At present Mr J.L. Lynn (who is a Magistrate) is the Acting Senior Chairperson of GREAT. The qualifications to be Acting Senior Chairperson are more expansive than those required to be the Senior Chairperson in that they include the qualifications necessary to be a Chairperson of GREAT.
- 163 GREAT Act, s. 13. The qualifications of the Senior Chairperson is contained in s. 7. Chairpersons are appointed by the Governor and must either have the same qualifications as the Senior Chairperson, or in the opinion of the Governor, possess 'suitable qualifications': GREAT Act, s. 10.
- 164 *Police Service Act 1990*, ss. 81E & 183(2).
- 165 GREAT Act 1980, s. 36. For the conduct of formal hearings see s. 38.
- 166 *Police Service Act 1990*, s. 81A.
- 167 See *Police Service Act 1990*, ss. 78 & 81B.
- 168 *Police Service Act 1990*, ss. 71-72 & 81C.
- 169 *Police Service Act 1990*, s. 81D.
- 170 Ministry for Police, July 1995, op cit, para. 3.31.
- 171 *ibid*, para. 3.34. See also A.R. Lauer, Statement to RCPS, Nov. 1994, Doc. 0162034-35.
- 172 *Police Service Act 1990*, s. 51. Depending upon the nature of this recommendation the PSES officer may become an unattached executive officer or may cease to be an executive officer. This provision does not obviate other methods of removal exercisable by the Governor.
- 173 See guidelines: Premier's Department, NSW, Circular No. 94/15 'Mechanism for renewal CES/SES contracts'.
- 174 *ibid*.
- 175 *Police Service Act 1990*, s. 145(3).
- 176 J. T. Jarratt, RCT, 15/12/94, p. 794.
- 177 J. T. Jarratt, RCT, 28/11/95, p. 16457.

¹⁷⁸ Director of Public Prosecutions, *Office of the Director of Public Prosecutions New South Wales: Annual Report 1990-91*, Sydney, 1991, p. 9.

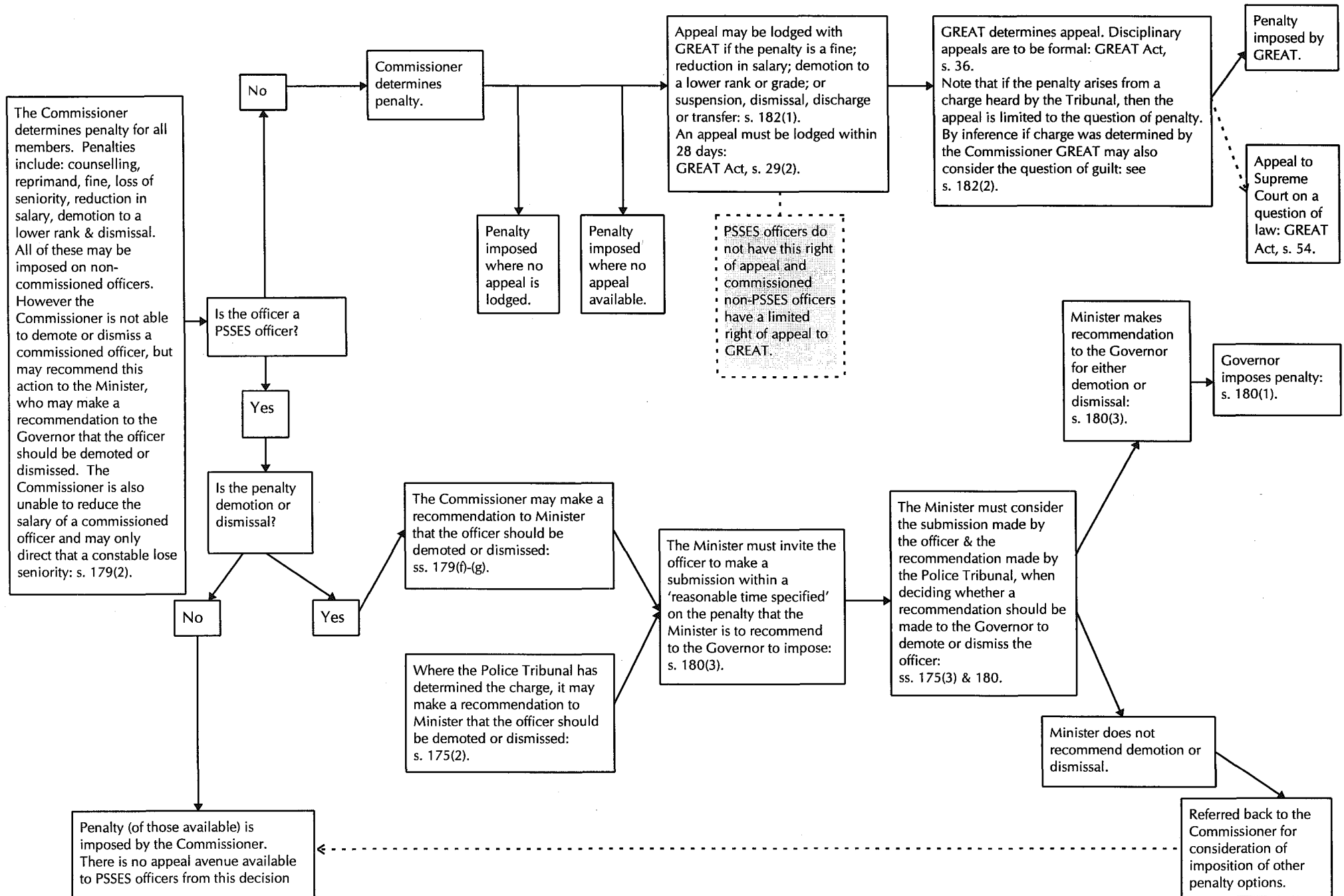
¹⁷⁹ Director of Public Prosecutions, *Office of the Director of Public Prosecutions New South Wales: Annual Report 1993-94*, Sydney, 1991, p. 14.

¹⁸⁰ Director of Public Prosecutions, 1993, *op cit*, p. 14.

¹⁸¹ Director of Public Prosecutions NSW, *Prosecution Policy and Guidelines*, Sydney, March 1993, p. 3.

IMPOSITION OF PENALTY

All references to sections are to the Police Service Act 1990 unless otherwise indicated.



CHAPTER 2

THE INQUIRY SO FAR (I)

CORRUPTION WITHIN THE NEW SOUTH WALES POLICE SERVICE

2.1 A central term of reference for the Royal Commission has been to examine 'the nature and extent of corruption within the Police Service, particularly of an entrenched or systemic kind'. That inquiry is far from complete and further investigations and hearings will be conducted before any final assessment is made. It is, however, appropriate that the Commission state in this chapter its understanding of that term of reference and, in a summary way, report on the progress of this aspect of its Inquiry.

A. CORRUPTION OF AN ENTRENCHED OR SYSTEMIC KIND

Corruption

2.2 'Corruption' is notoriously difficult to define, and its reach may vary depending upon whether it is defined according to deviation from legal, public interest, or public opinion norms. Even within one of those possible sets of criteria it may change, from setting to setting, and from time to time, according to variations in community standards and expectations. Any attempt at a universal and precise definition is, in fact, likely to present more problems than it would resolve.¹

2.3 For the purposes of this Inquiry, which is concerned only with policing, corruption has been taken to be deliberate unlawful conduct (whether by act or omission) on the part of a member of the Police Service, utilising his or her position, whether on or off duty, regardless of its motivation.

2.4 It includes participation by a member of the Police Service in any arrangement, or course of conduct, as an incident of which that member, or any other member:

- is expected or encouraged to neglect his or her duty, or to be improperly influenced in the exercise of his or her functions; fabricates or plants evidence; gives false evidence; or applies trickery, excessive force or threats, or other improper tactics to procure a confession or conviction; or improperly interferes with or subverts the prosecution process;
- conceals any form of misconduct by another member of the Police Service, or assists that member to escape internal or criminal investigation; or
- engages himself or herself, as a principal or accessory, in serious criminal behaviour.

In each case, the relevant conduct is considered to be corrupt, whether motivated by an expectation of financial or personal benefit or not, and whether successful or not.

2.5 Without being exhaustive, this approach embraces well-known forms of corruption such as the receipt of bribes; green-lighting, franchising, protecting or running interference for organised crime; releasing confidential information and warning of pending police activity; gutting or pulling prosecutions; providing favours in respect of bail or sentencing; extortion; contract killings; stealing; supplying drugs; and other forms of direct participation in serious criminal activity, the commission of which is facilitated by virtue of the office held.

2.6 In addition to these activities which are directly inimical to the suppression and prosecution of crime, the approach taken by the Commission embraces those forms of conduct sometimes referred to as 'noble cause corruption', but better categorised as 'process corruption', in which police powers are abused, evidence is fabricated or tampered with, or confessions are obtained by improper means in order to procure the conviction of persons suspected of criminal or anti-social conduct, and others.

Entrenched or Systemic

2.7 While dictionary definitions provide some assistance, the expressions 'entrenched' and 'systemic', when linked to corruption in the present context, tend to become terms of art. They are to a degree interchangeable, or at least are closely related, since in their operation one may provide the environment for the other to spawn and develop.

2.8 At one stage of the public debate, it was asserted that 'systemic' corruption does not exist, within an organisation such as the Police Service, unless it affects 'the entire organism'.² That is a meaning more appropriate to measurement in physiological science, than to the judgment of the effectiveness and integrity of a Police Service. Moreover, it is one which overlooks the serious state of affairs presented by significant lateral corruption at any level of the Police Service, and as such is not appropriate for adoption.

2.9 The definition of 'entrenched' as 'established firmly in a defensible position' is closer to the mark, but again requires elaboration.

2.10 The view which has been taken is that a purposive meaning should be applied to these terms, in which 'entrenched' corruption should be equated to the presence of corruption of such a nature, and to such an extent, that it is firmly established within the Police Service, and capable of being defended by its adherents or of resisting efforts for its eradication. 'Systemic' corruption is taken to be the form of corruption which has become accepted as part of the way of life or ethos of the Police Service, and which a significant portion of its membership either pursue, or tolerate, at some stage of their police careers.

2.11 Appreciating the dynamic relationship between these two terms, the Inquiry has chosen to focus on:

- identifying incidents and patterns of corruption, particularly in areas considered likely hot spots;
- examining their nature, and how they came to occur and be perpetuated (where that was the case);
- exploring whether they were isolated events, or events which were replicated, at different times, and in different areas of the Police Service;
- identifying the motivation for their occurrence, and the manner in which they are regarded by participants and others within the Police Service;
- judging the extent to which culture, practices and traditions have helped corruption to flower, or have hindered anti-corruption strategies.

2.12 By the time of the Final Report, a better picture will be available of the nature and extent of corruption within the Police Service, and an answer given as to whether it constitutes entrenched or systemic corruption within the purposive meaning adopted. In that regard, an affirmative answer will be given if the evidence supports the view that within the NSW Police Service there has been long-standing, significant and firmly established corruption which is capable of being defended against internal anti-corruption strategies and policies, or which has become accepted as part of the way of life, or ethos of the Police Service, such that a significant body of its members either practice it, or tolerate its existence.

2.13 It appears to be generally accepted that the Royal Commission has, in the course of its inquiries to date, unearthed significant corruption of the kind which could answer the test adopted of 'entrenched or systemic corruption'. If there were not prima facie evidence of circumstances giving rise to concern it would not be necessary to recommend significant changes to the existing system. It is appropriate briefly to state some provisional findings in that regard, based on the public hearings. These findings can be broadly categorised as relevant to:

- the forms of corruption seen or currently the subject of serious suspicion and ongoing inquiry;
- the existence and impact of inimical aspects of the police culture.

B. PUBLIC HEARINGS

2.14 The Commission has conducted public hearings so far into the following areas:

- Operation Cornish;
- Kings Cross;
- The Joint Commonwealth-State Task Force on Drug Trafficking;
- The Gosford Drug Unit; as well as

- some specific incidents in respect of which brief, but incomplete evidence has been received. They will be only shortly mentioned in this Report. The other inquiries are summarised in a little more detail.

OPERATION CORNISH

2.15 The Commission conducted public hearings concerning this matter commencing on 6 February 1995, and concluding on 18 April 1995. A total of 51 witnesses gave evidence. The purpose of this segment of the Inquiry was to examine the manner in which the Internal Affairs Command, and the management of the Police Service, had dealt with a long-standing history of allegations of corruption and misconduct within the Northern Rivers and Peel Districts.

2.16 Criminal charges have now been preferred against several officers and proceedings are still pending. The Internal Affairs Cornish investigation has not yet been completed some 16 months after it was initiated and the final report is still not complete. Further criminal and departmental charges may follow.

Investigation

2.17 The evidence taken, and material tendered, related to specific incidents involving a number of officers, extending over a period of 12 years, and spanning allegations of assault, bribery, theft, perjury, perverting the course of justice, drug dealing, drug cultivation and protection of drug dealers and sexual offenders. The Commission's interest was attracted by the fact that an Internal Affairs investigation into these allegations had been revived, during the life of the Commission, following various complaints affecting Tenterfield Patrol.

2.18 It is not the purpose of this Interim Report to make specific findings in respect of such incidents or the officers concerned. The remarks which follow are based upon a distillation of the overall picture which emerged.

Police Culture and Payback

2.19 The Cornish hearings demonstrated a negative aspect of the police culture which discouraged police from reporting incidents of misconduct, or corruption, and encouraged persecution of those who broke the wall of silence. Several witnesses gave evidence of having been ostracised, and treated as pariahs, by their fellow and superior officers when their assistance to the Commission or to Internal Affairs investigators became known or suspected. Two of the central witnesses gave evidence of having received anonymous notes, threatening the safety of their families and themselves.

2.20 Other witnesses gave evidence indicating that ostracism, alienation and retribution were common and accepted practices, and that 'whistleblowers' could expect to receive such treatment despite the existence of the Internal Witness Support Program.³ Their impression was that those in management generally demonstrated little, if any, commitment

to the policy. Others gave evidence of having been disadvantaged in relation to their service, particularly concerning promotion and transfer.

2.21 Some of the witnesses were visibly affected while giving evidence of misconduct on the part of other police, and the stress of the decision to do so was obvious, particularly in the case of those who acknowledged having given untrue evidence to the Commission when first called. They expressed concern as to their future. Some asserted that they were still being ostracised and subjected to demeaning remarks and incidents. These sequelae are under investigation and will be the subject of further evidence. The possibility of institutional retribution cannot at this stage be discounted.

2.22 The mentality which supports this aspect of the police culture has presented as the Commission's greatest obstacle throughout the course of the Inquiry so far. It is significant that it emerged so vividly in the course of the first segment of its public hearings.

The Police Service Investigation

2.23 The Cornish hearings demonstrated deficiencies in the Internal Affairs investigations of the serious allegations of corruption and misconduct which had been made over a number of years. Some of those investigations had been conducted in a superficial manner, others had been conducted in a way which had the effect of concealing evidence. On the occasions when allegations were sustained, the disciplinary response instituted seemed either inappropriate, or unjustifiably lenient. A particularly important deficiency was the lack of co-ordination between two very significant investigations which had commenced in 1987. Had there been any effective communication, it might have been expected that a much more far-reaching and satisfactory investigation would have occurred.

2.24 Without the interest of the Royal Commission, and the announcement of its intention to conduct public hearings at Lismore, it is unlikely that the Internal Affairs inquiry would have grown in the way it did. After the Commission's interest became apparent, the Police Service allocated increased resources to the inquiry, thereby showing a capacity within the Office of Professional Responsibility (OPR) to investigate allegations concerning managerial and disciplinary failings more fully when so motivated.

KINGS CROSS

2.25 The Royal Commission's investigation of the Kings Cross Patrol revealed the existence of extensive corruption and serious abuse of police powers, which dated from the time of the formation of the patrol, and probably existed when the policing of the Kings Cross area fell within the responsibility of police stationed at Darlinghurst.

2.26 The Commission concentrated on Kings Cross as it was an area in which vice, gaming, and drug distribution had been centred for many years, and which had long attracted the criminal milieu. As it emerged, the profits from the unlawful activities were immense, and the risks of corruption high.

Forms of Corruption

2.27 There is compelling evidence of the existence of an interdependence between police on the one hand, and drug dealers and the proprietors or managers of strip shows, brothels, nightclubs, and 'shooting galleries' on the other.

2.28 The evidence showed that many police had abused their position and power in order to solicit corrupt payments. In some instances nothing was offered in return and the payments were made following the direct or indirect threat of inordinate police attention. For the most part, however, certain police accepted payments as part of an informal partnership with criminals and others, where payment did not so much secure positive police assistance as favourable apathy.

2.29 Such was the workload in the Patrol that police in authority were easily able to avoid targeting the enterprises of those who made corrupt payments, and to concentrate investigations in other areas. There was evidence which indicated that criminals used this feature of policing in Kings Cross to their advantage, and supplied information to their corrupt police associates about the activities of their competitors. The use of this information to effect arrests and drug seizures provided corrupt police with the means to maintain a high arrest rate and foster an illusion of their integrity and skill.

2.30 Those making corruption payments in Kings Cross were not always on the same teams. This led to the situation of police being allied to the group which was prepared to pay more for protection. Competing factions, whose strength was linked to the strength of the criminal milieu with which they associated, therefore developed within the Police Service.

2.31 There is also compelling evidence that the nature of the drug trade over recent years has changed in Kings Cross. There was a shift away from small unorganised one-person drug dealing operations. These were displaced by drug dealing entrepreneurs who, with the tacit assistance of those senior police prepared to accept regular corrupt payments, established significant drug dealing enterprises. This led to the evolution of a 'code of practice' whereby high levels of drug dealing were tolerated by police, in return for an acceptance by these entrepreneurs, of a code directed to ensuring a peaceful coexistence between police and drug dealers who abided by the code. The code eschewed gang warfare and violence which was a threat to the general public, but was permissive of large-scale drug dealing. Although providing a form of regulation of prohibited substances, the suppression of which was effectively impossible, its evolution was a distortion of policing. Other measures are required for the regulation of conduct or substances, where there is a market demand and a lack of uniform support for the laws dealing with them.

2.32 In some instances payments were offered in the hope that favourable treatment would be forthcoming from the police in times of need. These bribes or gratuities were accepted even though nothing of benefit, save perhaps for a sense of security in the mind of

the offeror, was received in return. The overt development of a relationship with police was, however, used by drug dealers and other criminals to enhance their own reputations, and to entrench their positions within the criminal milieu.

2.33 There was some evidence of opportunistic corruption, such as the division of spoils following arrests and searches. Most often this occurred in circumstances where it was not in the interests of the person searched or arrested to complain; for example, where police divided a proportion of money found which was suspected of being the proceeds of crime. In some instances the property stolen was drugs, which were then available for resale, supply to informers, or for use in loading suspects.

2.34 There was also some evidence of assault and robbery and other forms of stand-over tactics by certain police. It is apparent that officers known for this type of activity, particularly the 'shaking down' of drug users and street dealers, were ostracised by other corrupt police, not out of recognition of the gross criminality involved, but because of the practical difficulty this type of behaviour presented to what passed for 'policing'.

2.35 Other features of the corruption seen included the leaking of police intelligence to persons of interest to the Police Service, warnings of pending raids, assistance with the dilution of evidence, and assistance with the construction of false defences.

2.36 The corruption found was generally well-organised by both the participating police and the criminals involved. Money was collected and divided amongst those recognised as belonging to a particular group or 'club'. Qualification for membership depended upon both rank (Sergeant, or Acting Sergeant and above) and an understanding by those 'club' members that another was amenable to the terms of membership.

2.37 Inexperienced police transferred to Darlinghurst and later Kings Cross were quickly introduced to undesirable practices, and came to accept the provision of favours, for example, free drinks in licensed premises, as a matter of course. In this way they were tested and blooded.

2.38 The kind of criminality with which corrupt police became associated was of a serious kind, and was concentrated particularly on the licensed clubs and similar institutions which proliferated within the Kings Cross area. The unlawful practices which emerged, included:

- the establishment of shooting galleries at which drugs were readily available;
- the open sale of narcotics in the streets;
- shootings and violence between groups competing for control of the drug trade;
- the violent abuse of sex workers;
- assault and robbery of visitors and residents; and
- the ready availability of unclassified pornographic videos.

2.39 A feature of the environment and cynicism which developed was the degradation of individual police, including chronic abuse of alcohol, lowered morale, and destruction of job commitment and satisfaction.

2.40 The evidence concerning the existence of process corruption among police attached to Darlinghurst and Kings Cross was also compelling and was employed both to protect criminal associates, and to facilitate criminal investigations where direct evidence was lacking. Features such as the 'scrum down', fabrication and planting of evidence came to light as being routine in nature.

The Police Service Investigations

2.41 For some time prior to March 1989, the Police Service was aware of problems of corruption within the Kings Cross Patrol. This is evidenced by the investigation which led to the arrest and charging of some police in the Patrol in March of that year.

2.42 The formation of Task Force NIS in November 1991 was likewise evidence of an awareness of the possibility of high levels of organised crime and associated corruption in the Kings Cross area, yet the high levels of corruption which existed at the time of the inquiry were either not detected or were not effectively addressed. Task Force NIS was, on any view, an opportunity lost, and painted a misleading picture of what was actually occurring, in relation to the drug trade. It failed entirely to identify the incidence of corruption.

2.43 The Professional Integrity Branch (PIB) investigation of questionable police conduct centred upon Kings Cross was studded with inquiries which corrupt police were able to circumvent, not because of mala fides or lack of will on the part of those conducting the inquiries, but because of a failure to recognise the very specific features of police corruption, and to adopt appropriate investigative techniques.

2.44 While the PIB was developing an operation (code-named Moorabool), at the time the Royal Commission took it over, there was little in the way of progress beyond intelligence gathering and some limited surveillance. Without the covert tactics undertaken by this Commission, or success in rolling key witnesses such as Detective Sergeant Haken, it is unlikely that this operation would have progressed very far. Detective Sergeant Haken, and the other police who co-operated with the Commission following his rollover, made it clear that they would not have responded in the same way if confronted by Internal Affairs investigators from the Police Service.

2.45 There was in fact an abundance of evidence to suggest that a typical investigation by the PIB held no fear for those engaged in corrupt activity. Such investigations had in the past been successfully circumvented or nullified. Sometimes that had occurred with the deliberate assistance of criminals, and drug dealers, who stood to benefit by protecting corrupt police, thereby ensuring that they were not dismissed or transferred.

2.46 The PIB used the same investigative techniques which those being investigated had been trained to use. These traditional techniques could never succeed against an entrenched culture, where it was the accepted practice to tip-off investigations, and to stick together in the face of all. Those being investigated were well-versed in the practical difficulties of proving a case, where they were shielded by the right to silence. They often had to defend themselves only against weak circumstantial cases, or the uncorroborated testimony of persons with unsavoury backgrounds. They used this to their advantage, and to the consequent disadvantage of the Police Service and the community.

2.47 Corruption in Kings Cross thrived until exposed in the hearings of this Commission. This exposition was due very much to the covert work of Detective Sergeant Haken, and to the investigative techniques employed by the Commission. These techniques were innovative. They were, however, available to the Police Service and to the ICAC. They did not depend for their efficacy on the exercise of powers specially given to the Commission.

2.48 The success of the Commission's investigations of Kings Cross can also be attributed to the way in which the material was available for use in the hearing room; an inquisitorial power not available to the Police Service. It was the fear of being publicly exposed and humiliated by hard surveillance evidence, particularly through the use of video footage, as a liar, with the likely consequence of prison sentences, which led to many of the significant breakthroughs achieved in the hearing room.

2.49 Beyond this, the Commission has had the advantage of being able to take an overview of the Police Service at work in Kings Cross. This was not practicably available to PIB, driven as it was by investigations which were complaint based. Much of what was exposed by the Commission at Kings Cross would never have been the subject of a formal complaint against police. In the rare event of any such complaint, conventional investigation had little chance of success.

2.50 Complaints made by accused persons of fabricated evidence being provided against them are rarely, if at all, investigated beyond the limitations of the trial process. It must be recognised that the trial process is an inappropriate forum for such complaints to be determined. Often this is because it is perceived that it may not be in the best interest of an accused to complain, either formally, or during the course of the trial process. To do so may only paint that person in a worse light in the eyes of the tribunal of fact. Alternatively, if such an allegation is maintained, it is commonly discounted as the standard response of a guilty accused. The confidence so derived largely permitted the 'police verbal' and 'loading' of accused to become an art form within certain sections of the NSW Police Service.

THE JOINT TASK FORCE

2.51 The Joint Commonwealth-State Task Force on Drug Trafficking (JTF) was an initiative of both the Commonwealth and State authorities, to address the problem of high level drug trafficking. Located in NSW, the JTF was staffed by members of both the Australian Federal Police (AFP) and the NSW Police Service. The Leader of the JTF was a member of the NSW Police Service. He was assisted by two Deputies, one from the AFP, and the other from the NSW Police Service. An appointment to the JTF was regarded as a credit to one's career. The JTF had the best of available assistance in the form of resources and advice and the conviction rate was extremely high. Based on the evidence of the 19 witnesses who rolled over and assisted the Commission, however, it became a hotbed of corruption for both parent agencies.

2.52 The Commission's investigation of the JTF revealed the existence of corruption in various forms, including:

- bribery in exchange for an offer of favourable treatment;
- stings upon persons of interest, where offers of assistance were made, and money paid in exchange for assistance, but none was available or forthcoming;
- 'process' corruption in its many facets, where in more than one instance, people were convicted on the basis of evidence which was improperly obtained or fabricated;
- opportunistic larceny of money and property, located during the course of searches; and
- possible collusion, to thwart investigation by outside agencies, or to assist those under investigation.

2.53 The JTF was an elitist group isolated physically and psychologically from both parent police agencies. To some degree it was protected by its reputation as an 'A grade' agency. It was arrest/conviction rate driven and there was an expectation on the part of some members that the end justified the means, and that corruption was tolerated, if not expected.

2.54 Within the JTF informal groups developed based upon personalities and anticipated attitudes to corruption. These were such that without much time for contemplation or organisation, groups of officers within the JTF acting covertly, and without the knowledge of other members, could be relied upon to act corruptly in concert to fabricate evidence against one or more suspects, or to share in the proceeds of corrupt activity. Corruption was not confined to members of one parent agency, to the exclusion of the other, and the corrupt groups which formed on an ad hoc basis did not admit police from one agency to the exclusion of the other.

2.55 It was also apparent that in some cases corrupt relationships which were formed, or strengthened, between police whilst they worked side by side at the JTF subsisted long after

the JTF was disbanded and police returned to their parent agency. Again, these continuing relationships were not confined to members of the same agency.

2.56 Although the evidence was that not everyone in the JTF was regarded as being susceptible to corruption, and that certain members were thought of as being beyond temptation, the level and nature of admitted corruption within the JTF, the subsistence of close relationships between police who were members of the JTF long after it was disbanded, and the fact that some police who were corrupt whilst stationed at the JTF went on to achieve positions of greater authority in their parent agency, remains a matter of very great concern.

2.57 The Commission's investigations into the JTF are not complete, and these findings have been confined to those of its members who admitted their corruption. In relation to those members against whom serious allegations of corruption and abuse of police powers were made and denied, the position is reserved until the evidence is concluded and an opportunity for submissions provided.

GOSFORD DRUG UNIT

2.58 The Commission has not yet concluded its investigation of the Gosford Drug Unit, although it has heard evidence from a number of witnesses who claim to have made corrupt payments, and arrangements with police.

The Police Service Investigation

2.59 There have been rumours suggestive of corrupt practices by certain police attached to the Gosford Drug Unit, for a number of years. When Assistant Commissioner Jarratt was the District Commander, Gosford, he became aware of persistent rumours of this kind. He reported these to Assistant Commissioner Parsons, and to Superintendent Moeller, the then Commander of the North Region Crime Squad. They were discounted as lacking in substance, in the aftermath of the arrests of those involved in Operation Hurricane.

2.60 In the following years, complaints relating to the conduct of the Drug Unit continued to be made. Chief Inspector Matthews said that, when he was staff officer at the Internal Affairs Branch, he was aware of an 'inordinate number of complaints being levelled at some members of the Gosford Drug Squad'. A Regional Internal Affairs investigation in 1993 into one such complaint had considerable potential. The opportunity presented was lost largely because the Regional Internal Affairs Unit involved was crippled by lack of resources at the time. Such inquiries as were made were ineffective and hampered by lack of communication.

2.61 At the time of the establishment of this Royal Commission the resources of the PIB were deployed in two Task Forces. One, Task Force Coomera, focussed on the Gosford Drug Unit.

2.62 The Terms of Reference for Task Force Coomera were approved on 21 April 1994. It commenced operations on 9 May 1994 and was due to present its Final Report on 11 November 1994.

2.63 Assistant Commissioner Jarratt envisaged the Task Force as a proactive body which would utilise a range of investigative techniques to get to the bottom of these long-standing allegations.

2.64 The Task Force did not operate in the way envisaged by Assistant Commissioner Jarratt. Mr Jarratt received monthly briefings from the Commander of the PIB, Chief Superintendent Clamp. He was not aware, however, of the day-to-day operations of the Task Force. Chief Inspector Matthews, who assumed the role of Task Force Commander in June 1994, did not understand that the role of the Task Force was to be proactive. Nor did Assistant Commissioner Schuberg when he assumed command of the OPR. The assumption each made was that the Task Force should undertake a series of reactive investigations of specified complaints. The reason for this breakdown in communications is not apparent.

2.65 Task Force Coomera did not submit a Final Report. Of the complaints which had been live when the Task Force was established, all, save one, have been investigated and reports submitted to the Ombudsman recommending that the complaint be found 'not sustained'. The only outstanding matter relates to a complaint which is the subject of pending court proceedings and in which the balance of the investigation has been deferred.

2.66 The confusion as to its role and objectives, and the failure of Task Force Coomera to operate as a proactive body, effectively excluded any prospect of it succeeding, or of collecting evidence of the kind which has been led so far at this Commission concerning various members of the Drug Unit.

2.67 Until the public hearings on this segment are concluded it is inappropriate to do more than record that serious allegations of corruption, including the collection of bribes, extortion, dealing in drugs, sharing in rewards paid to informants, and process corruption persist. They are supported by some of the witnesses called and refuted by others. The evidence is incomplete and the police involved have not yet had the opportunity to answer any case against them. Further conclusions must await the Final Report. It can, however, be stated that if the form of corruption here under investigation is established, then it would properly be regarded as more sophisticated than much of that identified in the Kings Cross segment. It is a form of corruption which combines active drug law enforcement with serious abuse of police powers to extort monies, to steal cash and drugs, and to recycle drugs. It would be akin to that discovered by the Mollen Commission and reflects a disturbing escalation from the more traditional forms of corruption, involving the receipt of bribes in exchange for favours or benign neglect.

CAMEO INQUIRIES

2.68 A number of limited topics were examined including:

- the bashing of a lone civilian by off duty police at the Westend Hotel;
- the alleged involvement of NSW Police officers in an organised robbery of a jeweller in Melbourne;
- the cover-up of a motor vehicle accident involving a police officer, and his subsequent insurance fraud;
- the alleged procurement by a police officer of a former student police officer to work as a prostitute;
- the alleged involvement of a police officer in the theft of a cigarette cargo;
- the baton bashing of a number of young civilians by off duty police;
- the use of some totally inappropriate exercises for a detectives course at the Police Academy, which were racist, sexist and wrong in law;
- the making of fraudulent claims for financial benefits, involving travel allowances and the like;
- the supply of drugs by police to civilians, including informants; and
- the recreational use by some police of drugs, and a tolerance of their supply to civilians.

2.69 The evidence led in relation to these matters was consistent in that it revealed an initial firm denial of involvement in, or knowledge of wrongdoing, followed by acknowledgment, on the part of some police, of the falsity of those denials when presented either with video evidence, or with the evidence of some of their associates. In other instances, the denial continued, and it will be appropriate for final determination to be left to the Criminal Courts.

2.70 The hearings were also notable for:

- the expectation, on the part of the principals, that other police would cover up for them;
- the fresh evidence which this Commission was able to turn up when the complaints were investigated, some of which contradicted that collected by police in their earlier inquiries;
- the obvious stress felt by those police who broke the code of silence, and the pressure applied to them to maintain closed ranks;
- the extent to which, and the ease with which, police involved were able to suborn civilian witnesses, and other police, to give false statements in respect of matters under investigation.

C. SUMMARY

2.71 The limited public hearings disclosed a number of areas of serious concern. Intelligence available to the Commission, and evidence gathered by it, but yet to be called, would tend to support the trend of these hearings, at least on a prima facie basis. The matters of concern fall into various categories.

CRIMINAL CONDUCT AND PROTECTION

2.72 As summarised earlier, evidence has been called of an identifiable pattern of police providing protection, receiving bribes and benefits from the criminal milieu, failing to exercise their office to bring to justice those criminals with whom they have formed an illicit association, and engaging directly in criminality and extortion themselves. This seems not to be confined to policing in Kings Cross, although judgment as to its full extent must await the Final Report.

2.73 It also seems to be sufficiently well-established as to be beyond the capacity of any Internal Affairs unit to police effectively.

2.74 Other serious forms of conduct concerning abuses of police powers, the attaining of financial benefits by deception, or substance abuse have been demonstrated. On the evidence and intelligence available they appear not to be isolated forms of misconduct, but that will be further tested before the Final Report is presented.

INIMICAL POLICE CULTURE

2.75 It is apparent that there is an inimical feature of the NSW Police culture, and its significance has not been sufficiently recognised by those responsible for the management of the Police Service. Similarly the Professional Integrity Branch has been unable to combat it.

2.76 This aspect of the police culture is the enemy within. It is virulent and perverts the oath of office. It thrives on greed, prizing loyalty to one's corrupt colleague above loyalty to the Police Service. Its weapons are those of the standover merchant and it depends on group loyalty, a tradition of mateship and peer group pressure. Those who subscribe to it hold little fear of being exposed.

2.77 The difficulty which this aspect of the culture causes to the Police Service, in effectively policing itself, must be recognised. There is ample evidence to establish that those who have had most to fear from exposure by the PIB have been best able to avoid detection and successful prosecution. Whilst ever this is the case, strategies designed to encourage and protect whistleblowers will, at best, achieve only limited success.

2.78 The best support which a whistleblower can obtain is not that afforded by an add-on policy such as the Internal Witness Policy which itself concedes the existence of inimical

aspects of the police culture, but that provided by confidence in a police internal investigation process which is effective. It has been the experience of this Commission so far that such confidence is lacking. It has similarly been its experience that, as confidence grew in its capacity to do that which the Police Service, through internal organs such as PIB, had failed to do, a trend emerged in that officers and members of the public began to assist the Royal Commission by volunteering information concerning misconduct, or by willingly co-operating with investigators when approached.

'PROCESS' CORRUPTION

2.79 This form of corruption involves the substitution of belief in the guilt of a suspect by the police officer for that of the ultimate tribunal of fact, and is evidenced by the fabrication of incriminating evidence and perjury. It strikes at the very heart of the administration of the criminal justice system, bringing it into disrepute. Moreover, once learned and practised, it can become an effective method of extortion in the hands of an officer lacking integrity. If it is not checked, it will eventually destroy or so destabilise the Police Service and other institutions of criminal justice, such as the Courts, to the point where all confidence in and respect for them is lost. It is a mark of a lazy Police Service, or one which is unduly driven by targets for high arrest or conviction rates.

2.80 It is often the first step in the destruction of the values of junior, able and enthusiastic police. Not often at the level at which it is first encountered is it recognised for what it is: an exercise of naked power and cynical disregard for the rights of the individual. Once compromised by an act of this type of corruption, the junior police officer is forever tarnished and likely to be prey to other forms of corruption. It is here that an otherwise honest and trustworthy officer can learn to place loyalty to corrupt associates ahead of the goals and objectives of the Police Service. It is this misplaced loyalty which is at the core of all forms of organised corruption in the Police Service, and also the difficulties in identifying and exposing corruption in all its forms.

2.81 A significant number of the police called in relation to the Kings Cross and Joint Task Force segments, spoke of its existence as routine, and as something they believe was expected of them. Intelligence received and evidence yet to be called suggests that it was not confined to these areas. On the contrary, the suggestion is that it has been widespread, and has escaped the attention of the Judiciary, and of those involved in the prosecution process, from whom the truth has been concealed.

HONEST POLICE

2.82 It would be an unjustifiable conclusion that all members of the NSW Police Service, or even the majority of them, are tarnished with the same brush as those who have given evidence of serious misconduct so far. The Commission has also seen and heard from, dedicated, honest and competent police officers whose presence and commitment to the Service must not be overlooked. Similarly, the dangers, tragedies and stresses of a job which is almost always demanding, and often not welcomed by individual members of the

public, until the time arrives for them to need police assistance, must not be overlooked. With an appropriate change of culture, the establishment of a leadership which places integrity and professionalism above all, the institution of an anti-corruption plan which exists in action rather than word, and the creation of an external agency with the capacity and will to fight serious misconduct, public confidence and a true sense of vocation in the Police Service can be restored.

Notes

- ¹ ICAC, *Unravelling Corruption: A Public Sector Perspective*, Redfern, March 1994, pp. 5-24.
- ² A.R. Lauer, quoted in 'Resignation not an option, says Lauer', *The Sydney Morning Herald*, 2/8/95, p. 6.
- ³ The Internal Informers Program was renamed the Internal Witness Support Program on 1/3/95.

CHAPTER 3

THE INQUIRY SO FAR (II)

PROBLEMS ARISING IN DEALING WITH POLICE MISCONDUCT AND CORRUPTION

3.1 The evidence heard thus far by the Commission, and evidence yet to be led, reveal significant problems with the current arrangements for dealing with police misconduct and corruption. The existence of many of these problems has been documented in the past by organisations with an audit or oversight role in relation to the NSW Police Service, such as the Ombudsman and the former Inspector General.

A. OBJECTIVES OF AN EFFECTIVE SYSTEM

3.2 The existence of an effective system for the management and investigation of complaints of police misconduct, and of corruption, is essential for a healthy Police Service. Such a system should possess the following features:

- public confidence;
- credibility in the eyes of serving police, including a genuine belief that misconduct and corruption will be detected and appropriately dealt with;
- reinforcement of high standards of ethical conduct and integrity, which are recognised as having strong leadership support;
- constant alertness to the risks of corruption, and responsible management of those risks;
- the will and capacity to engage in determined investigation of police misconduct and corruption utilising sophisticated methods and resources;
- a swift, effective and fair disciplinary process, which is accessible to the public, and not burdened with minor, frivolous or vexatious complaints; and
- a clear division of responsibilities between all agencies involved.

3.3 The system needs to accommodate three circumstances of considerable significance, namely that:

- investigation of police is potentially the most difficult area of criminal investigation, for many reasons, including the following:
 - police know the system, and are likely to have early warning of any interest in their activities;

- they are skilled in investigation techniques and counter-surveillance;
 - they are likely to have corrupt associates willing to cover for them;
 - they are not easily fazed by interview, they are experienced in giving evidence, and they are capable of lying;
 - their credibility and character are readily assumed by jurors and tribunals;
 - they can exert considerable personal influence over internal informants, and internal investigators, particularly if they hold senior rank;
- honest police are at risk of being discredited, neutralised or diverted from their work by fabricated complaints, at the hands of those whom they have arrested, as well as at the hands of disgruntled members of the community and other police whose paths they have crossed, in promotional competition or otherwise; and
 - a formal complaints system is not a good indicator of serious misconduct and corruption within a Police Service because of the notorious under-reporting of those matters, and because in many cases there is not a conventional victim to act as a complainant.

B. THE ROLE FILLED BY THE POLICE SERVICE

3.4 Although at first glance the current arrangements for dealing with police misconduct and corruption seem tripartite in nature, the system is better described as a dual system in which the Police Service plays the dominant part, since:

- it has the primary responsibility to respond to, investigate, and reach a finding for most complaints of misconduct; and
- it has undertaken by far the majority of corruption investigations.

3.5 A number of problems have emerged in the implementation of the current system which is widely regarded as:

- cumbersome, slow, and inflexible;
- insufficiently responsive to corruption;
- unproductive in terms of the resources and managerial time involved;
- lacking in credibility; and
- counter-productive in terms of overall operational effectiveness.

3.6 Some of the factors leading to that unsatisfactory state of affairs can be identified.

THE NOTION OF POLICE INVESTIGATING POLICE

3.7 Despite public statements and assurances that the Police Service is itself determined to weed out corruption, and the creation of numerous internal policies and procedures to achieve this, the reality is that the existence of very serious corruption has largely escaped notice or gone unchallenged. The Police Service submission acknowledged this to be the case, and also acknowledged that the assessment by Senior Command at the commencement of this Commission, as to the nature and extent of corruption within the Service, was incorrect.

3.8 An inevitable reaction to the evidence led in the Commission so far, has been the assertion that:

- police should not be allowed to police themselves; and
- any system which possesses that feature will lack public credibility,¹ if for no other reason than that internal investigation units invariably end up seeing their primary role as being one to protect police, and to deflect criticism of their agency.²

3.9 In part, this reflects an acceptance of the negative aspects of the culture mentioned in the preceding Chapter. It is the fact that the initial reaction of Senior Command to this Royal Commission was one of resentment and strong resistance, despite lip service to the contrary. That has not entirely relaxed, and is due to a desire at an institutional level to protect the reputation of the Police Service and to maintain morale. At an individual level, it arises out of:

- traditional reluctance to inform on close associates;
- fear of harassment from workmates and of institutional payback; and
- mistrust of the system, outside community, and Internal Witness Support Program.³

3.10 So far as the internal investigation process is concerned, the existing culture has clearly been a major stumbling block. In very many cases investigations have ground to a halt in the face of police turning a blind eye to obvious misconduct or corruption, being encouraged or even directed by senior officers to remain silent, lying when interviewed, or simply failing to co-operate with internal investigators. Those investigators are commonly seen as 'the enemy' or spies, and recruitment to the Office of Professional Responsibility (OPR) has not been regarded as an attractive career option.

3.11 Further, there is concern at the number of serving officers who have advised that they were not confident of the support of their senior officers if they reported suspected misconduct. Rather than positive assurances of support and protection from victimisation, the norm appears to have been silence at best, or active discouragement at worst.⁴ In many cases the officer has been counselled (possibly in the genuine belief that it was in his or her best interest) as to the likely adverse career consequences of reporting such matters. There is reason to suppose that this is the general expectation of serving police, many of whom

have found themselves transferred, stalled in promotion, made the subject of disciplinary complaints themselves, examined by investigators in a hostile way, and even forced to resign once they initiated an internal investigation.

3.12 It would, however, be as naive to attribute all the problems seen to this culture, as it would be to find a solution in excluding the police from any internal investigative role.

3.13 The notion of a single culture within the Service or its designation as uniformly 'evil' is simplistic. Every organisation has an occupational culture which reflects the environment in which it works, and its shared organisational knowledge, customs, and values. However, within an organisation of the size and structure of the NSW Police Service, there is likely to be more than one culture. A core culture may be shared, but the attitudes, values, and code of conduct adopted by beat police, detectives, and managers is likely to vary considerably.

3.14 The dynamics of the culture, or cultures, which exist within the NSW Police Service accordingly require closer attention than that which has been possible so far, in order to:

- identify and build on the positive aspects, such as the support given and expected in situations of operational danger, and the readiness of police to respond to a role model and move to a uniform view; and
- identify and change the negative aspects which permit or encourage police to place the protection of corrupt associates, or the 'reputation' of the Service, ahead of its legitimate objectives.

3.15 The use of the culture in a constructive way is likely to be more beneficial than excluding police from investigations. The conditions are ripe for change, and that might best be encouraged by the Service maintaining a significant role, rather than succumbing to any current temptation to give up and pass the responsibility to an external agency.

THE COMPLAINTS MANAGEMENT SYSTEM

Inflexibility and Formality

3.16 The formal complaints system suffers from inflexibility and a narrow focus so far as it:

- is reactive to single instances of misconduct;
- does not allow for classification of complaints which would reflect their variety and different levels of seriousness; and
- is confined unduly within a structure of formality.

3.17 Concentration on single instances of misconduct, many of which are minor in nature, has:

- led to an appearance of diligent self-regulation, which in turn has helped promote the false sense of security⁵ engendered by the 'rotten apple' theory advanced by senior commanders at the commencement of this Royal Commission;
- caused the system to be issues driven without regard to broader management and intelligence considerations;
- concealed the links between those involved in organised corrupt activities; and
- allowed matters to be minimised through fragmenting complaints into separate issues.

3.18 The absence of flexibility has meant that:

- minor complaints have been dealt with in the same way as major ones, utilising the same investigative techniques, resources, and paper-work;
- opportunities for early remedial solutions at a local management level have been missed; and
- police locked into the disciplinary system, and their families, have suffered psychological debilitation and loss of productivity, for relatively insignificant matters.

3.19 The formality of the system has meant that:

- some serious matters of neglect and unethical conduct have been overlooked as they have fallen outside the reach of the Commissioner's Instructions, a consequence which could be avoided if a general Code of Conduct were adopted, as the Ombudsman has suggested;⁶
- the wide definition of complaint adopted by Justice Lee⁷ has meant that many matters which are best described as internal management issues, have to be reported and managed formally by the OPR, even though no complaint has been lodged, or complainant exists;
- the requirement that a complaint be in writing has meant that some matters which warrant treatment as complaints have been missed, and potential complainants deterred. On occasions this has been available as an excuse for not recording or reporting a problem;
- on the other hand, intelligence information, once committed to writing, must be dealt with as a complaint,⁸ whereas in some cases it would be better held in reserve as intelligence; and
- mandatory formal reporting discourages anonymous complaints,⁹ an option chosen by a large number of serving police who have brought matters to the attention of this Commission.

3.20 The formality and inflexibility of the system has also led to a sharp distinction being drawn between those matters which are regarded as disciplinary and criminal. This can set an internal investigation on an inflexible course of action which may result in:

- delay; and
- an absence of an appropriate disciplinary outcome, since if a criminal prosecution fails, the principle of double jeopardy is often invoked as a reason for closing the file.

3.21 Reinstatement of an officer after a failed prosecution, with a 'clean bill of health', can encourage cynicism and loss of faith in the system, and may even increase the power and status of that officer, provided he or she has not obtained severance from the Service as the result of stress associated with suspension, investigation and prosecution. Further, the opportunity of dealing with the matter promptly on a managerial/remedial basis, in which improvement of individual performance might be encouraged, can be lost.

3.22 The problems of inflexibility have been identified by the Ombudsman on several occasions,¹⁰ and they were the subject of several submissions to the Commission.¹¹

3.23 Efforts to redress the problem by encouraging conciliation of customer service complaints, and treating more matters as suitable for internal management have not been entirely successful, as the informal resolution process has also been bureaucratised.

3.24 As a result:

- the complaints system remains overburdened by the number of complaints which need to be processed;
- the opportunity to divert resources to the fight against corruption has been reduced;
- highly labour intensive procedures have been required;
- morale has been affected; and
- productivity has been reduced.

3.25 A more flexible complaint system which clearly defines complaint categories and delineates a clear and relevant range of penalties or outcomes, including the greater exercise of remedial action at local level, would assist to overcome these problems.

Adversarial System

3.26 The adversarial nature of the system, and the concentration on punitive, rather than remedial action, has also not been conducive to police officers admitting they may have made a mistake. This works to strengthen the culture of cover-up and denial, ensure that more serious misconduct is protected, and results in a loss of opportunity for improvement at a managerial/remedial level. The inhibitions of the present system in this regard have been mentioned more than once by the Police Board.¹²

Delays

3.27 The current delays are serious, and have been the subject of regular reports from the Ombudsman.¹³ They were also the subject of a submission to this Commission from the Police Service.¹⁴ There are differences of opinion as to whether the responsibility for delay lies with the Police Service or with the Ombudsman. Whatever the cause, 30% of complaints take over one year to finalise and the Commission has heard of current cases which are very much older.¹⁵

3.28 Time limits have been imposed by the Ombudsman in an attempt to remedy this problem. That has had some success,¹⁶ but questions persist as to whether:

- the process is sometimes manipulated by late reporting; or
- investigations are curtailed, or rushed, to meet the time constraints.

3.29 The absence of guidelines for extensions is a problem, as is the absence of any provision allowing for the exigencies of complex or difficult investigations.¹⁷

3.30 The delays exist not only in the investigative phase. It has been reported by the Ombudsman that the time taken by the Office of the Service Solicitor to advise on departmental charges, and by the DPP to advise on criminal charges, is often in excess of three months.¹⁸ Sometimes this exceeds the time taken for the investigation.

3.31 Delays are serious because they can:

- be used to cover up corruption, to assist fellow police officers, to reduce the likelihood of a complaint being sustained, and even to avoid appropriate criminal action if the result is to allow a limitation period to expire;
- result in dissatisfied complainants;
- exacerbate stress for members of the Service who are the subject of complaints, particularly those of a vexatious or mischievous kind;¹⁹ and
- lead to continued employment of unsuitable officers, often on suspension with pay.

Complainants Access

3.32 As several previous inquiries and various submissions to this Commission have noted, problems are experienced by some groups in accessing the complaints system. These groups include:

- young people;²⁰
- gays and lesbians;²¹
- Aborigines and Torres Strait Islanders;²²
- people of non-English speaking backgrounds;²³

- people who have difficulties with literacy;²⁴
- women; and
- people with disabilities.²⁵

3.33 The Commission's view is that neither complaints nor corruption will be effectively dealt with if the system is not accessible to all. Steps are necessary to open up the access, and to render the reporting of complaints less of an ordeal.

POLICE INTERNAL INVESTIGATIONS

3.34 A number of matters affect the quality and integrity of internal investigations by the NSW Police Service, in addition to those previously mentioned as integral to the notion of police investigating police.

Resources of the Office of Professional Responsibility

3.35 The resources of the OPR seem inadequate to meet the demands placed upon it by the complaints system. The risk is that in order to perform its statutory obligations in that regard, and to properly staff the Customer Assistance Unit, the OPR has been compelled to divert attention away from corruption fighting. This lack of resources has been reported by the Ombudsman,²⁶ and was confirmed by the Commander of the OPR in his evidence to the Commission.²⁷

Devolution to Regional Responsibility

3.36 Regionalisation of Internal Affairs and devolution to Line Command investigations was a necessary and desirable feature of the move from a centralised system to regionalised policing. Its efficacy, however, has been reduced by the low priority and inadequate resources given to Line Command and Regional IA investigations.

3.37 Evidence was led before the Commission of the results, namely:

- the absence of the surveillance capacity and specialised equipment of the kind needed for this type of investigation;
- the secondment of IA staff, particularly supervisors, to fill operational vacancies in the region; and
- the diversion of skilled investigators, who might have conducted effective Line Command investigations, to the competing demands of local policing, including the investigation of serious crime.

3.38 An associated problem has been the failure to sufficiently involve Regional and District Commanders in the area of Professional Responsibility. In part this is a result of the different lines of responsibility which attach to Regional and Line Command investigations on the one hand, and Central IA on the other. Consequences include:

- the failure to share intelligence between the OPR and Regions concerning high-risk areas or officers;²⁸ and
- the failure to properly empower and involve Regional and District Commanders in a way which might encourage them to assume greater accountability for the actions of police under their command, and to head off potential problems.

3.39 The consequences of such neglect were highlighted as a critical failure in the NYPD, by the Mollen Commission.²⁹

Bias in Investigations and Discouragement of Complainants

3.40 Several instances have been cited where the Service has failed to impartially interview police under scrutiny, or where it has seemingly conducted a half-hearted investigation of an internal complaint but pursued with vigour allegations (often of a minor kind) against the internal complainant. These will be explored by the Commission when it comes to the whistleblowers segment.

3.41 The Ombudsman's 1995 Special Report to Parliament on Police Internal Investigations (1995 Special Report), identified several cases where investigations had been given to officers who were inappropriate choices to handle them, or of investigations being allocated to an inappropriate area.³⁰ This was also evident in a number of cases, one of which was seen in the Kings Cross segment, and involved an investigation by Detective Sergeant Scullion into an alleged assault by Kings Cross police of Manuel Blanco, a person from whom he had previously received a corrupt payment;³¹

3.42 A further element of bias has been detected in the investigative approach which commonly seems to have commenced with an assumption of innocence on the part of the police officer concerned, and involved a search for justification of that officer's conduct rather than for matters which might corroborate the complaint. This is the reverse of the approach taken by police in a normal criminal investigation. It is inappropriate.

3.43 In 1986 the Ombudsman reported his concern that police officers attempting conciliation had tried to persuade complainants to withdraw their complaints, using a variety of approaches, including:

- threatening or warning of possible violence, persecution or harassment by the officer the subject of the complaint (usually made to people in custody or to those about to appear in court);
- informing complainants that an investigation could have an adverse effect on the career of the police officer the subject of complaint (the officer may be said to have recently married or had children so that a complaint would be particularly harmful);
- agreeing to take no further action in respect of, for example, a Traffic Infringement Notice; and

- advising the complainant that there was no need to take the matter further because it had been taken seriously by the Department and had been brought to the attention of persons in authority.³²

3.44 In December 1995 the Ombudsman again raised this issue, citing instances of misconduct in the conciliation process including:

- requests to complainants to sign blank conciliation forms; and
- the fabrication of information on conciliation documents.³³

3.45 The Commission supports increased conciliation of complaints, but abuses such as these, and bias in investigations, must be eliminated.

Leaks of Information and Collaboration

3.46 Several police who have admitted corruption to the Commission have been investigated by the Service in the past, but the 'mates' system has ensured that they were warned in advance, and as a consequence evaded detection and/or punishment.³⁴ The expression 'whale in the Bay' is part of the language of the Service, and is understood by all and sundry, to be an alert as to the existence of an internal inquiry.³⁵

3.47 Investigations compromised in this fashion have often been 'dropped' without any apparent attempt to use alternative methods. This is an inappropriate response, and only encourages the leaking of information. An aggressive stand is required, similar to that now applied to those officers found to have made unauthorised access to the COPS system.

3.48 The Ombudsman reported, as long ago as 1985, that Internal Affairs Branch investigators commonly allowed police under investigation to discuss matters before preparing a memorandum responding to the allegations.³⁶ Little has changed, and it is also a practice which is in stark contrast to that followed when police are interviewing civilians suspected of criminal behaviour.

3.49 The Commission has received evidence of leaks and collaboration between police officers who were under investigation or who were potential witnesses. For example:

- Detective Sergeant Trevor Haken gave evidence that he was always aware of the timing and subject of internal inquiries and was able to collude with colleagues;³⁷
- JTF6 gave evidence that, in 1990, he was warned of an impending interview in relation to the Operation Cedar reference;³⁸
- evidence was also led of the exchange of statements concerning this reference which occurred before the commencement of hearings conducted by the Crime Commission, and again before hearings of this Commission.³⁹

Steps are required to alter this practice.

Investigative Methodology

3.50 Different standards do appear to apply to investigations of police and civilians.⁴⁰ Apart from the instances already cited, very many internal investigations end in a 'not sustained' finding, upon the basis of a denial when the allegation is put to the officer the subject of the complaint. Few criminal investigations would terminate upon that basis.

3.51 The Office of the Ombudsman has regularly criticised the methods adopted in NSW Police internal investigations. In 1985 it was said that these often gave the impression that the investigators were not really trying. Upon reinvestigation the Ombudsman has often turned up much more information than the initial police investigations.⁴¹

3.52 The practices which have been criticised by the Ombudsman include:

- directing the police involved to submit memoranda in response to allegations of misconduct, rather than interviewing them;⁴²
- failing to take immediate statements from police against whom complaints were made, thereby creating suspicions about collusion;⁴³ and
- letting the trail go cold.⁴⁴

3.53 The methodology and standard of internal investigations was also criticised in the 1995 Special Report.⁴⁵

3.54 The experience of the Royal Commission has been similar to that of the Ombudsman. Its investigations into several areas produced much more information than the internal police investigations.

3.55 The most serious criticism of all should be reserved for the past failure of the OPR to maintain broad-based intelligence gathering operations, and to use aggressive, proactive and covert investigations of the kind employed by this Royal Commission, and by police when investigating serious crime. This has been the primary reason for the failure of the Service to detect and deal with serious misconduct and corruption, and for the development of an air of confidence among the corrupt that they will escape detection and punishment.

Competence of Investigators

3.56 If complaints and corruption are to be properly dealt with by the Police Service then investigators and systems must be of the highest possible quality. Although efforts have been made to upgrade the quality and status of staff in successive internal investigation commands, commencing with Commissioner Avery's creation of Inspector's positions in Internal Affairs, that objective has not been fully achieved.⁴⁶

3.57 Several witnesses before the Commission have acknowledged the 'stigma' attached to working in internal investigations, and the motives of those who apply to work in IA

have from time to time been questioned. Interest in early promotion, rather than a commitment to the work, has been suggested as the motivating factor in some cases, although it would be unfair to suggest that this is invariably so.⁴⁷

3.58 Desirably, transfer to any internal investigations area should be the occasion for further training, and these areas seen as places to which the most promising officers would welcome selection. The NYPD has moved to this position by various means, including:

- giving the Internal Affairs Branch first choice of all candidates for investigative positions within the entire Department;
- supplying comprehensive internal investigations training;
- offering a two year tenure in Internal Affairs followed by assignment to other attractive investigative or command positions; and
- assigning some of its best and most forward thinking managers to Internal Affairs.⁴⁸

3.59 Within the NSW Police Service, OPR and Regional IA should similarly be rotation areas in which police are exposed to advanced investigative techniques, utilising the latest technology and equipment. It should never be a place for investigators seeking a quiet life at the end of their careers.

3.60 The Ombudsman has raised several options for consideration including:

- providing additional allowances and fast-track promotions for IA investigators;
- making service with IA a prerequisite to appointment to higher ranks; and
- arranging for audit and evaluation of the performance of each investigator.⁴⁹

3.61 There is merit in each of these proposals. The problem identified is symptomatic of a larger problem, namely the failure of the Police Service to give the OPR, and all internal investigations areas, a key place in its structure. Each element of that problem will be further considered in the Final Report.

Informers: Lack of Confidence in Internal Investigations

3.62 Evidence to the Commission indicates that a lack of confidence in internal investigations is still a significant problem. Although internal complaints are made, police are more willing to provide information on serious matters to an external body, as has been indicated by the flow of intelligence from serving police to the Ombudsman and to this Commission.

3.63 Little has changed since the Ombudsman brought this matter to attention in 1985.⁵⁰ The assessment then made mirrors precisely the experience and impression of this Royal Commission. The problem will be further examined once the Commission turns to the 'whistleblower' term of reference, and it will be the subject of recommendations in the Final Report.

3.64 The same problem extends to external informants, who have been somewhat inadequately tapped as a source of intelligence in relation to the investigation of police corruption.

Record Keeping

3.65 Record keeping has been identified as a weakness in the Police Service.⁵¹ Some responses to this Commission's requests for documents from the OPR have confirmed that weakness and suggest an absence of integration in the complaints, intelligence and registry systems.

3.66 The OPR still appears to use an archaic system of case file management, which is not conducive to easy progress and monitoring, nor to follow-up, and the volume of documentation generated for each case is formidable. There have been changes, however, during the life of the Commission and this system may be upgraded when the new COPS on-line case management is introduced throughout the Service. A remaining problem will be that the system only records that an action, such as an interview, was taken. The detail and outcome of that action will be recorded on a separate system.

3.67 It appears that each investigation run by PIB and IA is recorded on a separate TIMS file. This may be useful for a specific investigation, but accessing all PIB holdings on a particular person, who has appeared in a series of PIB or IA investigations, would be very difficult, if not impossible.

3.68 What seems now to require attention is:

- integration of the complaints, intelligence, and registry systems;
- a master database upon which intelligence cross-referenced to all PIB and IA investigations is stored;
- central storage of all information disseminated to PIB and IA, both from within the Police Service and from other agencies such as the NSWCC and NCA, and cross-referencing so that it is accessible in a similar way to TIMS database investigation records, subject to legislative restraints and security requirements.

INDEPENDENT LEGAL ADVICE

3.69 The Ombudsman has expressed concern that the Police Service does not obtain appropriate legal advice.⁵² As long ago as 1986, he formally reported that the Commissioner and his delegates had been reluctant to follow recommendations in a number of cases to obtain competent, independent legal advice as to whether disciplinary or criminal proceedings should be commenced, and had sought advice instead from the Legal Services Branch.⁵³ These concerns were repeated in special reports to Parliament in 1988 and 1989.⁵⁴

3.70 In 1993 the Inspector General noted inconsistencies in advices from Regional Legal Services and the Office of the Solicitor, and variations in the quality of internal legal advice, depending upon the training and experience of the adviser.⁵⁵ These issues have arisen in matters examined by this Commission.

3.71 The use of in-house legal advice is a matter which will be addressed in the Final Report along with the desirability, or otherwise, of the Director of Public Prosecutions taking over the conduct of all prosecutions.

INTELLIGENCE AND INFORMATION MANAGEMENT

3.72 The need for more effective collection, analysis and use of intelligence has been mentioned elsewhere in this Report. It is evident that the Service has not effectively used the data available to it from other agencies or from the complaint system. In part this may be due to the absence of an integrated database or intelligence system.⁵⁶

3.73 The Ombudsman has made repeated requests for the establishment of a centralised system to analyse complaints,⁵⁷ but that has not yet been achieved. Both the present Commander of the OPR and his immediate predecessor gave evidence of the limited intelligence capacity of the OPR, and of the poor flow of intelligence to regions.⁵⁸

3.74 An associated fact worthy of mention is that no record of a complaint is kept unless the matter proceeds to formal investigation. As a consequence an officer might be the subject of several minor complaints, the combined circumstances of which would justify counselling, or other remedial action, yet that does not occur because the prior incidents are unrecorded. The Ombudsman highlighted this in 1986 as a deficiency which needed to be monitored, while acknowledging that 'great care must be taken ... to ensure that no inference is drawn merely from the number of complaints against a particular police officer; in some cases such complaints might only mean that the officer was doing his job effectively and well'.⁵⁹

3.75 So far as this Commission can ascertain, the system remains largely unchanged, and it is only in rare circumstances that counselling or a proactive investigation is initiated as the result of repeated complaints.⁶⁰ A system of progressive cautioning notices, such as that in use in Victoria, could be helpful in this regard.⁶¹

C. PROBLEMS WITH THE DISCIPLINARY STRUCTURE

IMPORTANCE OF AN EFFECTIVE DISCIPLINARY SYSTEM

3.76 An effective and appropriate disciplinary system is vital as it enforces the policies, practices and rules which have been adopted by the Police Service. Without an effective disciplinary system those policies and rules are worthless.

3.77 The Royal Commission agrees with the Ministry for Police that the objectives of a police disciplinary system are to:

- assist members to modify and correct unsatisfactory behaviour;
- encourage Line Commanders to educate officers as to appropriate and acceptable standards of behaviour;
- maintain proper standards of conduct of members;
- protect the public;
- protect the reputation of the Police Service; and
- remove unethical and unsatisfactory officers from the Service.⁶²

3.78 In satisfying these objectives, the disciplinary process must be consistent and fair, swift and decisive. The present system lacks these features.

SELECTION OF CHARGES AND PENALTIES

3.79 In his 1995 Special Report, the Ombudsman expressed the view that the Service often selected a penalty which was not commensurate with the misconduct found.⁶³ In five of the 16 cases reviewed, it was suggested that the penalty imposed was inappropriate. Among the examples cited were the following:

- admonishment for 200 improper data accesses, including two relating to a convicted felon with whom the officer was consorting; and
- admonishment for lying to a Royal Commission.⁶⁴

3.80 Evidence before the Commission supports the Ombudsman's view. One case examined revealed remarkably lenient penalty indications (which were accepted) for admittedly fraudulent claims for travelling expenses. This seems to have been an area where the criminality involved in fraud has not been fully appreciated. Other cases are currently under review, since there are signs that overtime, travelling, and similar allowances are routinely or widely abused, and are often treated as minor disciplinary or management matters.

3.81 The inquiries of the Commission suggest that a degree of reluctance exists on the part of the Service to institute criminal proceedings against serving police. They also suggest that sometimes an easy solution is taken in transferring a 'problem' officer found to have been involved in, or suspected of, misconduct in circumstances where an elaborate subterfuge, including a veil of glowing reports, is maintained.

3.82 Transfer alone of a suspect or under-performing officer is not an appropriate management or disciplinary outcome. It risks moving the problem and exposing others to a corrupt, incompetent or lazy officer, and it instils little confidence in the disciplinary system.⁶⁵ It is also unfair to the Commander who inherits the problem. Where

accompanied by retraining, counselling or supervision by a 'buddy', it may be useful, but alone it is a dangerous and inadequate response.

3.83 Concern exists that some investigations, which have been conducted with the utmost vigour, may have been brought mala fide by way of retribution against an officer who was seen to have not fitted the system. Several illustrations exist which will be examined, and dealt with in the Final Report.

3.84 The present system has also demonstrated a worrying lack of uniformity in penalty outcomes, in part due to the number of persons involved in the process, and an apparent unwillingness, on some occasions, to accept that continuation in office is inconsistent with a demonstrated serious departure from the standards expected of police. Not only is there a problem in retaining a dishonest officer in a position of power and trust, there is a very real practical difficulty in allowing that officer to hold a position where his or her credit as a witness is likely to be questioned in criminal trials. Certain decisions of GREAT have been criticised on this basis.

3.85 The number of dismissed police who have been reinstated following appeals to GREAT, and later dismissed after being convicted of criminal offences, is indicative of this concern which has also been taken up by the Minister for Police,⁶⁶ and by the Ombudsman.⁶⁷

3.86 Part of the problem stems from the divided tribunal and appellate structure which does not lend itself to the establishment of precedent in decision-making and penalty determination.

3.87 A further issue of concern arises. The standard required to establish 'neglect of duty' against Commanders who fail to supervise their staff has not assisted in fostering accountability.⁶⁸ It has been criticised as inadequate. The Commission agrees with this assessment since the present test requires an element of culpability or wrongfulness which would call for punishment as a breach of discipline.⁶⁹ This standard is so high that serious cases of lax supervision have gone unaddressed.⁷⁰

COMPLEXITY OF THE DISCIPLINARY PROCEDURES

3.88 Considerable, and justifiable, concern has been expressed in relation to the complexity and ambiguity of the disciplinary structure outlined earlier.⁷¹

3.89 Matters of structural concern relate to:

- the separate functions of the Commissioner, the Police Tribunal, and GREAT, and in particular the existence of separate avenues of appeal in respect of findings and penalty determinations;
- the differences in appeal and review rights possessed by the various categories of officer;

- the fact that GREAT, which is normally presided over by a magistrate sitting with two members of the Service, has greater authority than the Police Tribunal, constituted by a Judge in relation to penalty, and can indirectly vary Tribunal recommendations; and
- the composition of GREAT, which does not contribute to an appearance of independence in disciplinary matters.

3.90 By reason of the inflexibility of the system, many trivial charges, which might conveniently have been remitted to the Commissioner (or to a delegate) for determination, occupy the time of the Police Tribunal. It is inappropriate that the decision whether a matter should be determined by the Commissioner, or the Tribunal, should rest with the officer charged. In other circumstances, this would be open to criticism as forum shopping. However categorised, it is a factor contributing to delays in the Tribunal.

3.91 In substance, the current system is:

- dilatory and costly;
- hindered by overlap and uncertainty of powers;
- potentially unfair and discriminatory in not being of uniform application to all police;
- marked by technicality and undue legalism;
- weakened by its adversarial approach;
- affected by internal anomalies and inconsistency in decision-making and penalty; and
- vulnerable to the imposition of different standards because of the absence of a unified system, particularly a single line of appeal.

3.92 The issues raised for consideration are serious. They will be further addressed in the Final Report.

3.93 At the end of this Chapter is a time line illustrating some steps in the complaints and disciplinary process and the kind of delays which have occurred.

D. LIMITATIONS OF THE EXISTING SYSTEM FOR EXTERNAL OVERSIGHT

OFFICE OF THE OMBUDSMAN

3.94 Most submissions to the Commission have supported the past performance of the Ombudsman, as an independent office which enjoys the confidence of the general public, and provides a forum not elsewhere available for dealing with complaints of misconduct and customer service.

Limitations of Role

3.95 Although the Ombudsman plays an important role in overseeing the manner in which complaints are dealt with by the Police Service, in auditing conciliations at random, and receiving the results of investigations conducted by the Police Service, the performance of those functions is heavily dependent upon the information received from the Police Service.

3.96 The Ombudsman lacks the power to deploy coercive powers or to undertake proactive investigations of the kind required for fighting corruption. Findings made are recommendatory in nature, and for it to adopt a role involving direct participation in criminal investigations and prosecutions would subvert its overall function as a supervisory body.

Inadequate Resources

3.97 The Ombudsman has reported regularly on the consequences of being under-resourced.⁷²

3.98 The rising level of complaints, the significant responsibility of the Ombudsman for matters outside the Police Service, and its limited resources have:

- effectively ruled out any capacity it has to investigate corruption or to monitor protracted and complex corruption investigations;⁷³
- reduced its capacity to focus on the Police Service as a whole; and
- restricted the number of direct investigations and reinvestigations it has been able to undertake.

Employment of NSW Police

3.99 The Ombudsman has been heavily reliant on the use of investigators seconded from the Police Service. Early fears as to their 'independence' when investigating colleagues⁷⁴ were not borne out.⁷⁵

3.100 The problem which has emerged is somewhat different in nature. It relates to:

- the detrimental effect which service with the Office of the Ombudsman seems to have upon careers of police when they return to the Service;⁷⁶ and
- a pattern of harassment which developed including complaints made to the Commissioner of Police, and to the Ombudsman, about the conduct of investigators working for the Ombudsman.⁷⁷

3.101 The payment of an allowance, equal to 10% of the normal salary to make secondment more attractive has not been entirely successful in overcoming future career concerns,⁷⁸ and there is a risk, accordingly, that the quality of investigations will be affected

unless those fears can be overcome. To some extent that has been relieved by the appointment of some civilian investigators, with former policing experience.

Outcomes

3.102 Concern has been expressed that the range of outcomes for the internal investigation of complaints (both by the Police Service and the Ombudsman) is confined to a finding of 'sustained' or 'not sustained'.⁷⁹ A not sustained finding is equivocal in that it embraces a positive finding of innocence as well as a state in which the evidence is such that no clear opinion can be reached either way. The possibility of expanding the available findings, to ensure fairness to the complainant and the officer concerned, has been raised for consideration.⁸⁰

3.103 Criticisms have also been made concerning certain of the Ombudsman's responses such as:

- 'due to conflicting evidence the Office will take no further action';
- 'the matter will only be investigated if criminal charges are dismissed';
- 'it is not believed that an investigation would substantiate the complaint'; and⁸¹
- 'there is an alternative and satisfactory means of redress' (in pending court proceedings).

3.104 These answers may reflect a condition of inadequate resourcing or an assessment that arguable cases, or those depending on conflicting versions, are unsuitable for investigation. The result is that a large number of cases are not investigated, and complainants are left dissatisfied. This needs to be addressed so that cases in which reasonable grounds for suspicion persist are not simply abandoned.

INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC)

3.105 A number of submissions criticised ICAC's performance in relation to police corruption but some supported a continuing or expanded role for it. Most of these recognised the need to separate its work on police corruption from other work.

Competing Functions and Priorities

3.106 The ICAC's responsibility for corruption investigation, prevention and education, throughout the whole of the public sector, may have affected the extent to which attention has been given to the identification and elimination of serious police corruption. Mr Ian Temby QC, when appointed Commissioner, stated that the most important of the ICAC's functions was education, and Mr Barry O'Keefe QC has determined that an additional emphasis should be placed on corruption prevention and education.⁸²

3.107 The dual role of investigation and education/prevention can involve a conflict of interest.⁸³ The finding of corruption by ICAC could be suggestive of a failure of its corruption prevention and education strategies, thereby creating an incentive to ignore, or trivialise, that form of conduct. Further, potential competition for resources exists wherever the same agency has discrete functions carried out by separate departments or units.

3.108 The corruption prevention work carried out by the ICAC in relation to the Police Service seems in fact to have had limited impact. Whether that has been due to shortcomings in its reports, or inadequate implementation by the Police Service, will be tested in further sittings of this Commission. The latter may well be the case having regard to some of the evidence received in relation to the Informants Management Plan, and the divergence commonly seen between espoused policy and operational practices.⁸⁴

3.109 There is no statutory requirement for the ICAC to investigate serious allegations or complaints of corruption. The Ombudsman is of the view that a corruption fighting body must have a limited discretion to refuse to deal with such matters.⁸⁵ The ICAC on the other hand, has resisted this argument on the grounds that it needs flexibility if it is to respond appropriately.⁸⁶ The result of the ICAC's approach is that its intervention in this area, by direct operations or formal inquiries, has been occasional rather than regular.

Operations Review Committee

3.110 The membership of the Commissioner of Police on the Operations Review Committee risks the perception that ICAC's work on police corruption lacks impartiality. This was raised in an ICAC issues paper of 1993,⁸⁷ yet the situation continues.

Employment of NSW Police

3.111 The ICAC Act specifically provides for the secondment of officers from the NSW Police Service.⁸⁸ It has been the policy of the ICAC to use police investigators, generally for terms of up to three years.

3.112 That policy has now changed, following a direction given by the Commissioner to limit police to a maximum of 25% of the investigative staff.

3.113 It has been argued that:

- police are best able to improve policing and put their house in order;
- police who have been seconded to a multidisciplinary external agency are exposed to broader views, ethics and investigative techniques, and are more likely to understand and accept the role of the agency, and communicate that acceptance after they return to their service;
- knowledge of current investigative techniques, policies, procedures, practices, reputations and associations are advantages; and

- non-police investigators may have difficulty interrogating detectives.⁸⁹

3.114 These are valid reasons for an agency such as the ICAC employing NSW Police.

3.115 The difficulties involved with the employment of 'home state' police officers are, however, substantial in the case of an agency responsible for investigating police corruption, because of:

- the negative features of the police culture, with 'mates' protecting 'mates' through leaks and cover-ups;
- reluctance to embarrass the Service of which the investigator is a member; and
- concern for subsequent career prospects, particularly if the targeted officer holds senior rank.

3.116 These factors are at their most potent in the context of corruption investigations.

3.117 The perceived advantages of using NSW Police are recognised but they can be met by the use of investigators who are seconded from other police services or are former members of those services, as this Commission has successfully done. The dangers for a corruption investigation body outweigh these advantages, and their use in the past may have affected the quality of the ICAC's investigative work in this area.

Failure to Deal with Police Corruption

3.118 The ICAC has greater powers than those of this Royal Commission, for example, telephone interception powers. However, when ICAC has tackled police corruption the results have been limited. The Milloo investigation was its most significant investigation in this area, yet in retrospect it seems to have been an opportunity lost, which resulted in limited convictions and the enforced departure of few corrupt officers from the Service. At the conclusion of that inquiry Mr Temby QC, then Commissioner, publicly stated that maybe it was time to leave the Police Service alone for a while to 'prove its capacity to achieve its own reforms which are likely to be the most lasting and beneficial'.⁹⁰ It may be that, as a result, there was a degree of relaxation, both by the Police Service and ICAC, in relation to corruption within the Service. If so, that was an unfortunate outcome of Milloo.

3.119 The ICAC has had the opportunity to be aggressively proactive in the light of material supplied by the NCA, NSWCC and the Ombudsman concerning corruption. However, investigative techniques of the kind adopted by this Commission appear not to have been favoured, and corruption has continued, of a kind and to an extent which appears to be significant.

NEW SOUTH WALES CRIME COMMISSION (NSWCC)

3.120 The NSWCC power to review Police Service inquiries has been sparsely exercised.

3.121 An immediate problem in this area is the fact that the Task Forces which carry out its investigations come under the 'control and direction' of the Police Commissioner. This raises obvious questions as to Task Force allegiance, and the independence or impartiality of any review the NSWCC undertakes of police inquiries.⁹¹

3.122 The appearance of impartiality is also not fostered by the presence of the Police Commissioner on its Management Committee (along with the Police Minister and Chairman of the Police Board).

3.123 Further, by the nature of its work, the NSWCC is a law enforcement agency, heavily dependent on the police with whom it works and tasked with investigating serious criminal activity involving sophisticated methods and planning. It is inevitable that close relationships with task force members will develop and limit its capacity to take any significant part in fighting police corruption.

OTHER EXTERNAL BODIES

3.124 For the reasons identified in Chapter 1 the role of the other external bodies in oversighting, or exerting an influence on, the operations of the Police Service is not such that they have played any real part in discouraging or investigating serious misconduct or corruption.

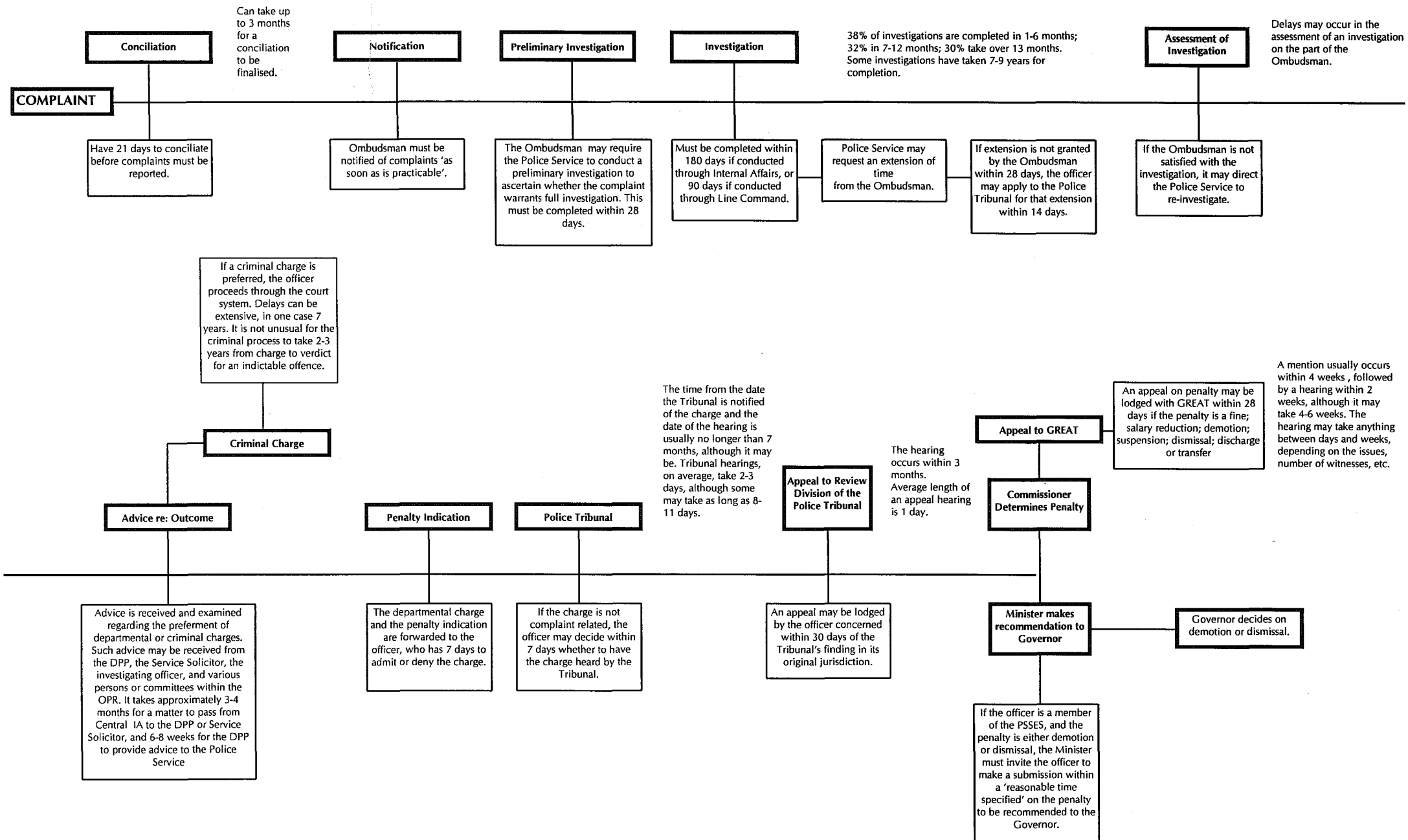
Notes

- ¹ In NSW the Ombudsman has acknowledged these concerns in various reports; see for example, NSW Ombudsman, *Annual Report 1993-1994*, p. 34, where it is also suggested that investigation of complaints against senior officers are a particular problem; NSW Ombudsman, *Report on the role of the Ombudsman in investigating the management of complaints against police*, Special Report to Parliament under s. 31 of the Ombudsman Act 1974, July 1991, pp. 17-8; NSW Ombudsman, *Police Internal Investigations: poor quality police investigations into complaints of police misconduct*, Special Report to Parliament under s. 31 of the Ombudsman Act 1974, Jan. 1995; See also ICAC, *Investigation into the Relationship between Police and Criminals*, 2nd report, April 1994, Ch. 5; Ministry for Police and Emergency Services, *Police Complaints Procedures: Recommendations for Reform*, Discussion paper, May 1995.
In Queensland: *Report of a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Pursuant to Orders in Council), July 1989.
In the USA: *Report of the Commission to Investigate Allegations of Police Corruption and the Anti-corruption Procedures of the Police Department* (M. Mollen, Chair), the City of New York, 7 July 1994.
- ² C. Lewis, 'Necessary Features of a Successful Complaints Review Model', Paper presented to the International Association for Civilian Oversight of Law Enforcement World Conference 1995, Submission to RCPS for Interim Report, Nov. 1995, p. 2.
- ³ Within the Police Service the term 'internal informer' was changed to 'internal witness' on 1/3/95 (see evidence of L. A. Scott, RCT, 12/4/95, p. 5539).
- ⁴ See evidence of K. M. Hook, RCT, 4/5/95, p. 6449. Hook stated, however, that she had received support and assurance from the senior commander of the DEA. See also G. J. Wheadon, RCT, 21/12/95, p. 2110.
- ⁵ CPOA, Submission to RCPS for Interim Report, 5/11/95, Doc. 1418701.
- ⁶ NSW Ombudsman, Submission to RCPS for Interim Report, 23/11/95, Doc. 1761245.
- ⁷ Police Board of NSW, Submission to RCPS for Interim Report, Nov. 1995, Doc. 1745824. See *Ombudsman v Commissioner of Police* (1987) 11 NSWSR 386.
- ⁸ NSW Police Service, Submission to RCPS for Interim Report, Nov. 1995, Doc. 1554164.
- ⁹ *ibid*, Doc. 1554165.
- ¹⁰ NSW Ombudsman, July 1991, *op cit*, pp. 17-18. ICAC, April 1994, *op cit*, p. 65.
- ¹¹ *eg.* ICAC, Submission to RCPS for Interim Report, 20/12/95, Doc. 1640552, and Police Board of NSW, Nov. 1995, *op cit*, Doc. 1745824, p. 7.
- ¹² Report of the Sub Committee of the Police Board established to prepare a Discussion Paper on the Milloo recommendations, March 1994, Doc. 1678647, p. 7. Quoted in Police Board of NSW, *Twelfth Annual Report 1994-95*, p. 43 and see also p. 15.
- ¹³ NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761239-40; NSW Ombudsman, *Annual Report 1994-95*, p. 22. NSW Ombudsman, *Annual Report 1992-1993*, pp. 33-34.
- ¹⁴ NSW Police Service, Nov. 1995, *op cit*, Doc. 1554165.
- ¹⁵ One witness with experience in Regional internal investigations spoke of a current case which is almost ten years old. See P. R. Whitmore, RCT, 16/1/96, p. 18290. A District Commander recently recorded individual cases taking between two and nine years to finalise. One case went through 17 different sections within the Service during 15 months of investigation. See T. W. Collins, *Transformation of the New South Wales Police Service Complaints and Discipline System* (unpub.) Doc. 1652651-52.
- ¹⁶ NSW Ombudsman, *Annual Report Year ended 30th June 1988*, p. 155; NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761240.
- ¹⁷ NSW Ombudsman, *Annual Report Year ended 30th June 1990*, pp. 176-7.
- ¹⁸ NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761240-1: The Ombudsman suggests that time limits be imposed on such bodies
- ¹⁹ NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761240-1.
- ²⁰ Inner City Legal Centre, Kingsford Legal Centre and South Sydney Youth Centre, Joint Submission to the RCPS for Interim Report, 16/11/95, Doc. 1488549.
- ²¹ *ibid*.
- ²² Aboriginal and Torres Strait Islander Social Justice Commissioner and Aboriginal Community Groups, Submission to the RCPS for Interim Report, Doc. 1563395;
- ²³ ALRC, *Under the Spotlight: Complaints Against the AFP and NCA* Issues Paper 16, Nov. 1995, p. 164
- ²⁴ Whistleblowers Australia, Submission to RCPS for Interim Report, 14/11/95, Doc. 1488420.
- ²⁵ ALRC, Nov. 1995, *op cit*, p. 164.
- ²⁶ NSW Ombudsman, *Annual Report 1994-95*, Sydney 1995, p. 22.
- ²⁷ G. E. Schuberg, RCT, 2/2/95, p. 1408.
- ²⁸ J. T. Jarratt, RCT, 13/12/94, p. 539.
- ²⁹ *Report of the Commission to Investigate Allegations of Police Corruption and the Anti-corruption Procedures of the Police Department* (M. Mollen, Chair), the City of New York, 7 July 1994.
- ³⁰ NSW Ombudsman, Jan. 1995, *op cit*, pp. 28-30.
- ³¹ N. Scullion, RCT, 10/7/95, p. 9944.
- ³² NSW Ombudsman, *Annual Report, Year ended 30th June 1986*, Sydney 1986, p. 190.
- ³³ NSW Ombudsman, Dec. 1995, *op cit*, p. 13.
- ³⁴ Mr Haken said that Internal Affairs and Internal Security 'leaked like sieves and any information that was being sought by those organisations was readily available to people who were involved'. T. D. Haken, RCT, 9/10/95, p. 14324. More recently, in 1994, a target of PIB Operation Coomera was told of surveillance on him. See also matters put to J. T. Jarratt, RCT, 28/11/95, p. 16477.
- ³⁵ G. J. Fowler, RCT, 1/5/95, p. 6176; and D. K. Thompson, RCT, 2/5/95, p. 6297 who gave evidence regarding his (Thompson's) warning to Churchill of an internal investigation. (The NSW Police Tribunal matter *Commissioner of Police v Thompson*, 6/6/90, Bell DCJ, *refers.*) See also T. D. Haken, RCT, 9/10/95, p. 14323.
- ³⁶ NSW Ombudsman, *Annual Report, Year ended 30th June 1985*, Sydney 1985, p. 137. The ICAC's Second Report on the Milloo inquiry in April 1994 includes examples of this problem; see for example, p. 66.
- ³⁷ T. D. Haken, RCT, 9/10/95, p. 14324; D. G. Demol, RCT, 29/6/95, p. 9536-48.
- ³⁸ JTF6, RCT, 27/9/95, p. 13650.

- 39 See R. J. Lysaught, RCT, 18/9/95, p.12996; W. R. Donaldson, RCT, 19/9/95, p. 13107; JTF6, RCT, 27/9/95, p. 13561 and 12/10/95, pp. 14638 et seq.
- 40 G. E. Schuberg, RCT, 2/2/95, pp. 1399-1400.
- 41 NSW Ombudsman, *Annual Report, Year ended 30th June 1985*, Sydney 1985, p. 136.
- 42 *ibid*, p. 137.
- 43 NSW Ombudsman, *Annual Report, Year ended 30th June 1986*, Sydney 1986, p. 181.
- 44 NSW Ombudsman, 1985, *op cit*, p. 137.
- 45 NSW Ombudsman, Jan 1995, *op cit*, pp. 26-7.
- 46 NSW Ombudsman, Jan. 1995, *op cit*, p. 35. Stated that training should be improved in internal investigations, conciliation, ethics and integrity training and skills in the interviewing of suspects and witnesses. There was a review underway at the time of the report. In evidence to the Commission in April 1995, Inspector Lynch of the Professional Integrity Branch stated that he received one weeks training when he started as an internal investigator in 1986, and no other internal investigations training since, apart from a few seminars at the Police Academy. He did not receive any form of legal training such as training in relation to matters of evidence in criminal proceedings. A. B. Lynch, RCT, 5/4/95, p. 5013; NSW Ombudsman, *Annual Report, Year ended 30th June 1985*, p. 135. The Ombudsman reported in 1985 that often the expertise of investigating officers was inadequate, particularly in Line Command investigations, and in 1995 he criticised the training of these investigators.
- 47 J. T. Jarratt, RCT, 1/2/95, p. 1318; G. E. Schuberg, RCT, 2/2/95, p. 1429; R. C. Anderson, RCT, 12/4/95, p. 5513; T. D. Haken, RCT, 9/10/95, p. 14322.
- 48 City of New York, *Police Strategy No. 7: Rooting Out Corruption; Building Organisational Integrity in the New York Police Department*, 1995, Doc. 801872, p. 34.
- 49 NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761247.
- 50 NSW Ombudsman, 1985, *op cit*, p. 110.
- 51 J. T. Jarratt, RCT, 15/12/94, p. 802; G. E. Schuberg, RCT, 2/2/95, pp. 1407-8; K. Quince, RCT, 12/12/94, pp. 442 et seq.
- 52 NSW Ombudsman, 1986, *op cit*, p. 173.
- 53 *ibid*, p. 173.
- 54 NSW Ombudsman, *Annual Report, Year ended 30th June 1989*, pp. 284 & 289.
- 55 Report of the Inspector-General's Inspection of Internal Affairs Branch, 15/2/93, Doc. 608006.
- 56 See also, NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761248. Requests by the Royal Commission for particular reports from the Human Resource Management (HRM) data base or Complaints Information System (CIS) seem to have been the first such requests made, since it has been necessary to write new programs.
- 57 NSW Ombudsman, Jan. 1995, *op cit*, pp. 31-3; NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761248.
- 58 G. E. Schuberg, RCT, 2/2/95, p. 1408; J. T. Jarratt, RCT, 1/2/95, p. 1315; J. T. Jarratt, Statement to RCPS, 25/10/94, Doc. 155002, pp. 11-12.
- 59 NSW Ombudsman, 1986, *op cit*, p. 197.
- 60 The Commission is aware of one current investigation of this kind.
- 61 Victoria Police, *Discipline Procedures Manual*, 31/8/94, Doc. 84574, p. 3.1.
- 62 Ministry for Police, July 1995, *op cit*, Doc. 1330120.
- 63 NSW Ombudsman, Jan. 1995, *op cit*. This report followed a review of police investigations to identify patterns associated with poor quality investigations and opportunities to improve. The review disclosed 16 cases of recent poor quality investigations
- 64 NSW Ombudsman, Jan. 1995, *op cit*, pp. 28-29.
- 65 Transfer was the option used in respect of the detectives suspected of corruption at Kings Cross, including Det Insp Fowler and Det Sgt Haken. See J. G. Swan, RCT, 6/7/95, p. 9833-4; T. D. Haken, RCT, 24/8/95, p. 12093-4.
- 66 B. Lagan, 'Fast-track sacking for bent police', *Sydney Morning Herald*, 4 Sept. 1995, pp. 1 & 4.
- 67 NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761244. See also evidence before RCPS: N. M. Bridge, RCT, 13/12/94, p. 477 and Police Board of NSW, Nov. 1995, *op cit*, p. 16.
- 68 eg, NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761245. See also evidence of former Commissioner J. K. Avery, RCT, 6/12/94, pp. 96-105.
- 69 Police Tribunal of NSW, *Commissioner of Police v Matthews & Cooper*, 5/6/85, Torrington DCJ.
- 70 See comment in NSW Ombudsman, *Annual Report 1994-95*, p. 23.
- 71 J. K. Avery, Submission to RCPS for Interim Report, 7/11/95, Doc. 1408735; NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761244-46; Ministry for Police, July 1995, *op cit*, paras 3.1, 7.1.
- 72 NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761241. See also comments in New South Wales. NSW Ombudsman, *19th Annual Report 1993-1994*, Sydney, p. 22; NSW Ombudsman, Jan. 1995, *op cit*, p. 39; G. Masterman, 'External review: the New South Wales experience' in *Police in Our Society*, eds I. Freckelton & H. Selby, Butterworths, Sydney, 1988, p. 216; D. Landa & C. Lewis, 'Making the police accountable for their conduct', in *Australian Policing*, eds D. Chappell & P. Wilson, 2nd ed., in print; See also NSW Ombudsman, *Annual Report 1994-95*, p. 22.
- 73 See comments made in New South Wales: NSW Ombudsman, *Annual Report 1992-1993*, p. 33. In her submission to RCPS the Ombudsman indicated that few direct investigations had been conducted since power was given in 1993 "as a direct result of insufficient funding and the rising level of complaints". See NSW Ombudsman, 23/11/95, *op cit*, Doc. 1761237.
- 74 NSW Ombudsman, *Annual Report Year ended 30th June 1984*, p. 98.
- 75 *ibid*, p. 99; NSW Ombudsman, July 1991, *op cit*, pp. 8-9.
- 76 NSW Ombudsman, *Annual Report Year ended 30th June 1988*, p. 151; NSW Ombudsman, July 1991, *op cit*, p. 9.
- 77 NSW Ombudsman, *Annual Report Year ended 30th June 1987*, p. 135.
- 78 NSW Ombudsman, July 1991, *op cit*, p. 9.
- 79 ICAC, April 1994, *op cit*, p. 67. 'The system is not conducive to negotiating a solution to problems. It aims at black or white answers, but often produces a grey finding of "not sustained".'
- 80 See Mr Dailly for the Police Association, RCT, 14/12/95, p. 17704.
- 81 Inner City Legal Centre, Kingsford Legal Centre and South Sydney Youth Centre, Nov. 1995, *op cit*, Doc. 1488549.
- 82 Parliamentary Committee on the ICAC, *Report of Proceedings Before the Committee on the Independent Commission Against Corruption: Hearing with Commissioner O'Keefe on General Aspects of the Commission's Operations*, Sydney, 15/9/95, p. 3; ICAC, *Annual Report 1994-1995*, p. 4.

- ⁸³ Whistleblowers Australia, Submission to RCPS for Interim Report, Nov. 1995, Doc. 1488417-8.
- ⁸⁴ A good example of this occurred in J. Brockie (producer), *Cop it Sweet*, ABC television, Sept. 1992. Superintendent Small was tasked with the investigation of police practices following this program (see R. B. Small, RCT, 27/4/95, p. 5897).
- ⁸⁵ NSW Ombudsman, 23/11/95, op cit, Doc. 1761251.
- ⁸⁶ ICAC, Submission to RCPS for Interim Report, 8/12/95, Doc. 1640560.
- ⁸⁷ ICAC, *Issues Paper: Composition of the Operations Review Committee; Reporting by the Committee on its Activities*, prepared by V. Jadresko, Secretary, Operations Review Committee, 31/8/93.
- ⁸⁸ *Independent Commission Against Corruption Act 1988*, s. 104(5). When staff were being recruited in 1988, Mr John Avery, assisted by vetting the integrity of every seconded police officer.
- ⁸⁹ See C. Lewis, Nov. 1995, op cit, pp. 17-8 for an outline of some of the arguments on these points. The CPOA submission suggests that one of the strengths of the current system is internal investigator's knowledge of Service, policy, procedures, etc. See CPOA, 5/11/95, op cit, Doc. 1418703.
- ⁹⁰ Parliament of NSW, Committee on the ICAC, *Collation of Evidence of the Commissioner of the ICAC Mr Temby QC on General Aspects of the Commission's Operations*, 4/3/94, p. 84; Reported in *The Australian*, 5/3/94.
- ⁹¹ The NSWCC has conducted a number of investigations which have concerned allegations of police impropriety. These include the "Cedar" reference into alleged improper payments to Messrs Donaldson and Lysaught, which have been re-examined by this Commission; the "Penshurst" reference into the shooting of a police officer at Frenchs Forest; the "Asset" reference into alleged widespread police corruption; and the "Lismore" reference into the loss of drug buy money which occurred during a Drug Enforcement Agency Task Force 1 Operation.

COMPLAINTS AND DISCIPLINARY SYSTEM TIME LINE



This time line is a general representation of time-frames only.

CHAPTER 4

OTHER MODELS FOR INVESTIGATING POLICE COMPLAINTS AND CORRUPTION

4.1 This chapter provides a brief overview of some different models which have been employed to deal with police complaints and corruption. Such mechanisms are an integral element in ensuring public confidence in police accountability. The theory underlying the various strategies deployed is examined in the context of these models.¹

4.2 Police complaints and corruption investigation mechanisms may be broadly classified in the following manner:

- complete self-regulation within the police service;
- complete handling and investigation of police misconduct by a body external to the police service;
- investigation by police with external oversight; and
- combination of police investigation with external oversight for most matters and investigation by an external body for a specified class of matters.²

A. COMPLETE SELF-REGULATION MODEL

4.3 Under this model, the police service is solely responsible for complaints and corruption investigations: all matters are investigated by police officers and disciplinary charges, outcomes and penalties are determined by senior officers, subject, in some cases, to disciplinary boards or tribunals.

STRENGTHS OF THE 'COMPLETE SELF-REGULATION' MODEL

4.4 It has been said that this model, which leaves responsibility for uncovering corruption and maintaining discipline solely within the police service, encourages accountability and engenders organisational pride.³ Self-regulation is often cited as one of the defining criteria of professions.⁴ The recent push within policing for professionalism is suggested by some to indicate that police want to be considered as conscientiously responsible as members of other professions.⁵

4.5 In relation to this model, it has also been suggested that police services are best equipped to uncover and investigate corruption within their ranks. It is argued that external investigators cannot be as well-informed, as able to penetrate the organisational culture, or as able to access relevant files as internal investigators.⁶

WEAKNESSES OF THE 'COMPLETE SELF-REGULATION' MODEL

4.6 In Australia and most other Western democracies, complete self-regulation of police complaints and corruption investigation is considered unacceptable. For the latter half of this century it has been suggested that some form of independent external scrutiny is a necessary element in ensuring public confidence in police accountability. No submission received by this Royal Commission supports this model.

4.7 It has recently been observed that 'a succession of ad hoc royal commissions, commissions of inquiry and reports in Australia and overseas have exposed numerous examples of the failure of the police internal investigations process, particularly when there was no external, independent body to oversight the police'.⁷ There is now little argument about whether or not there should be independent civilian involvement in the resolution of police complaints.⁸ Current debate centres upon the form such external scrutiny should take.

B. COMPLETE EXTERNAL INVESTIGATION MODEL

4.8 Under this model the handling and investigation of police complaints and corruption is carried out by a body which is external to and completely separate from the police service. It receives and investigates all complaints, and initiates disciplinary action or criminal prosecution.

STRENGTHS OF THE 'EXTERNAL INVESTIGATION' MODEL

4.9 This is the model which provides the greatest degree of independence in investigations of police complaints and corruption. Theoretically, it should inspire most public confidence.⁹

WEAKNESSES OF THE 'EXTERNAL INVESTIGATION' MODEL

4.10 Little systematic analysis has been conducted of the consequences of the transfer of responsibility for police complaints and anti-corruption activities away from police control to an external agency. The major concern raised, however, is that the removal of internal responsibility for abuses and poor procedures may provide a licence for sub-standard and irresponsible management practices or for abnegation of responsibility to maintain integrity and discipline.¹⁰ It has also been suggested that when supervisory attention comes solely from outside an organisation, there are risks to employee morale.¹¹ Several submissions to this Royal Commission (including that of the Police Service) suggested that it is essential that members of the Police Service maintain some degree of responsibility for police complaints and anti-corruption activities.¹² The Royal Commission does not, at this stage, dissent from that view.

4.11 An additional concern is that an external civilian agency operating alone could be hamstrung in its investigations by a united wall of silence from the Police Service.¹³ For example, the NSW Crime Commission (NSWCC) submitted that 'completely external agencies will never earn the co-operation from police which is necessary to glean the information (most of which comes from police sources) and investigate the offence effectively.'¹⁴ It has been suggested that specialist police investigators, who are familiar with the ways police operate, are likely to conduct investigations superior in quality to those conducted by an external civilian agency.¹⁵ However, the increased use of civilians working in external agencies (such as office's of the Ombudsman and specialist police complaints authorities) suggests that police are no longer the sole repository of the relevant investigative skills.¹⁶ Currently, most external agencies utilise a combination of police investigators working with civilians, and it is possible under such a structure to combine the skills of several disciplines.

C. INTERNAL INVESTIGATION WITH EXTERNAL OVERSIGHT MODEL

4.12 This model represents the system as it currently operates in most Australian states.¹⁷ It is also employed widely overseas. Under it, police officers retain primary responsibility for conducting investigations and senior officers are ultimately responsible for determining and imposing discipline (subject to the involvement of disciplinary boards or tribunals). There is, however, an organisationally distinct civilian agency 'monitoring' and 'reviewing' the police disposition of complaints.

THE AUSTRALIAN EXPERIENCE

4.13 In the mid-1970s the Australian Law Reform Commission (ALRC) reported that an external body was necessary to oversee investigations into police misconduct relating to the proposed Australia Police.¹⁸ By the mid-1980s, all police forces in Australia had specialised internal investigations units with an independent body responsible for 'monitoring' and 'reviewing' the performance of those units.

4.14 In most Australian jurisdictions, an all-purpose statutory authority has responsibility for overseeing police internal investigations. Victoria, Western Australia, Northern Territory, Tasmania and the Commonwealth/ACT all utilise an Office of the Ombudsman (or equivalent) for that purpose.¹⁹ South Australia is currently the only jurisdiction with a dedicated Police Complaints Authority (SA PCA). As in the other States or Territories, the primary function of the SA PCA is to monitor internal investigations conducted by the SA Police. An external auditor conducts random audits of internal investigation files and reports annually to the Minister. The Queensland system is unique and is referred to elsewhere in this chapter.

4.15 In Victoria, Western Australia, Northern Territory and the Commonwealth/ACT, the police must notify the Ombudsman or Deputy Ombudsman of all complaints from members of the public. In the Northern Territory and Western Australia, the Ombudsman must also be notified of all complaints by police against other police. In South Australia,

complaints can be received by either the SA Police or the PCA, but all complaints must be registered with the PCA. The SA PCA can investigate complaints made by police against other police, but only if they are lodged with the PCA rather than with the SA Police.²⁰

4.16 During the past decade, many oversight bodies in Australia have gained the power to conduct their own investigations at the initial stage of the complaints process. This power is widely regarded as fundamental to an effective complaints system. However, in some jurisdictions the use of this power has been restricted.²¹ For example, in Western Australia the oversight agency can conduct its own investigations only after the police have had 42 days to do so.²²

4.17 In Tasmania, the police are under no obligation to notify the Ombudsman of complaints lodged with the Tasmania Police. However, complainants may contact the Tasmanian Ombudsman if they are unhappy with the police investigation. Under the Tasmanian system the Ombudsman is restricted to investigating administrative action. This means that examination of a complaint is usually confined to whether or not the administrative action taken by the Service's Internal Investigation Unit constituted a failure to investigate adequately.²³ No other oversight agency within Australia is restricted in this way.

4.18 The major limitation of the Ombudsman model, as it operates in most Australian jurisdictions, is the lack of an 'own motion' power. The Northern Territory, Tasmania and the Commonwealth Ombudsman are empowered to independently determine to investigate a matter without receipt of a complaint.²⁴ The Ombudsman in each other jurisdiction and the SA PCA do not possess own motion powers relating to the investigation of police.

THE OVERSEAS EXPERIENCE

4.19 Models combining internal investigation and external oversight operate in New Zealand, England and Wales, Ontario, Canada and New York City, USA. As in Australia, the primary functions performed by external agencies are monitoring and reviewing police internal investigations.

4.20 **England and Wales:** The Police Complaints Authority (PCA), with jurisdiction over police officers in England and Wales, was established by the Police and Criminal Evidence (PACE) Act 1984.²⁵ The PCA has three main functions:

- to supervise the investigation of the most serious complaints against police officers;
- to supervise investigations into non-complaint matters voluntarily referred by police forces because of their potential gravity; and
- to review the outcome of every investigation, whether supervised or not, and to decide whether disciplinary action should be taken against any officer.²⁶

4.21 It performs these functions in two divisions, one carrying out the supervisory role, and the other reviewing the results of investigations and adjudicating on them. The actual investigations are carried out by the internal investigation units, except when outside forces are called in for serious matters of corruption.

4.22 Under the PACE Act, the PCA may decide to take no action on a complaint. In 'supervised' cases, the PCA must approve the appointment of the investigating police officer. The PCA also has powers to impose requirements which it considers necessary for the 'proper conduct of the investigation.'²⁷ When the investigation is complete, the PCA must issue a formal statement indicating whether or not it is satisfied and specifying any areas of concern.

4.23 For well over a century, police in England and Wales have also been subject to scrutiny by Her Majesty's Inspectors of Constabulary (HMIs). The first HMIs were appointed under the provisions of the County and Borough Police Act 1856. In 1962, the Royal Commission on the Police formally acknowledged the contribution of HMIs to policing.²⁸ The duties of the HMIs are provided in the Police Act 1964 (as amended by the Police and Magistrates' Courts Act 1994). The Inspectorate is tasked to:

- inspect and report to the Secretary of State on the efficiency and effectiveness of police forces in England and Wales;
- offer advice as appropriate to the Home Secretary, the Police Department of the Home Office, Chief Officers of Police and Police Authorities on a range of policing issues;
- promote the dissemination of good practice;
- provide advice to the Home Secretary and Police Authorities on candidates for senior police appointments; and
- administer the graduate entry scheme.²⁹

4.24 HMIs are also required, under the PACE Act, to keep themselves informed concerning the implementation of the provisions of the Act for the handling and investigation of complaints against police.³⁰ Any member of a police force may report incidents of alleged misconduct or areas of concern direct to the Inspectorate by arranging a confidential interview during the force inspection, or by writing direct to the Inspectorate.³¹ The Inspectorate is not directly involved in the investigation of complaints, but may review the police internal investigation process to establish that the correct procedures have been followed.³²

4.25 **New Zealand:** Civilian oversight of the New Zealand Police was established by the Police Complaints Authority Act 1988. Under the Act, the Police Complaints Authority (NZPCA) is empowered to receive complaints 'alleging any misconduct or neglect of duty' and to investigate of its own motion 'any incident involving death or serious bodily harm'. Upon receiving or being notified of a complaint, the NZPCA may investigate the complaint itself, whether or not the police have commenced an internal investigation; defer action until the receipt of a report from the Commissioner on a police investigation of the

complaint; oversee a police investigation of the complaint; or decide to take no action on the complaint. The Authority reports that all of the above alternatives are used, but the 'great majority' of complaints are investigated by the police who report the results to the Authority which reviews the appropriateness of the finding and penalty.³³

4.26 **Ontario, Canada:** In Ontario, municipal, regional and provincial police services are administered by the Solicitor General. Under the Police Services Act 1990, the duties of the Solicitor General include:

- monitoring police forces throughout Ontario to ensure service standards;
- conducting a system of inspection and review;
- assisting in the co-ordination of police services;
- managing programs of research and policy development; and
- operating the Ontario Police College.³⁴

4.27 The Act establishes the Ontario Civilian Commission on Police Services (OCCOPS) which reports to the Solicitor General.³⁵ The responsibilities of OCCOPS include:

- ensuring compliance with policing standards;
- securing employment equity compliance;
- investigating the conduct or performance of duties of a municipal Chief of Police or a member of the Police Services Board;
- inquiring into any matter relating to crime or law enforcement at the request of the Lieutenant Governor in Council; and
- hearing appeals in disciplinary proceedings.³⁶

4.28 In December 1981, the Police Complaints Commissioner (PCC) was established in metropolitan Toronto as a three year pilot project. The legislation provided that the body would:

- monitor the handling of complaints by the Metropolitan Toronto Police;
- perform initial investigation in 'unusual circumstances';
- re-investigate and review findings when the complainant was dissatisfied with the action taken by police;
- when the public interest required a hearing, refer cases to a civilian adjudicative tribunal with direct disciplinary power; and
- perform a preventive function, making recommendations to the Chief of Police and government on policing issues arising out of complaints.³⁷

4.29 In 1984, the Metropolitan Toronto Police Force Complaints Act 1984, 'embodying basically the same system with some housekeeping amendments', was passed to establish the system in metropolitan Toronto on a permanent basis.³⁸ In December 1990, the Solicitor General for Ontario introduced the Police Services Act 1990. The Act expanded

the jurisdiction of the Police Complaints Commissioner (PCC) on a mandatory basis throughout the province.

4.30 Under this legislation all 117 Ontario police forces (municipal, regional, and provincial) are subject to a consistent complaints system based on that developed in Toronto.³⁹ The actual investigation of a complaint is normally undertaken by the Public Complaints Investigation Bureau, which is a separate unit of each police force created by the legislation and dealing only with public complaints. In 'certain limited circumstances', the PCC's civilian staff undertake initial investigations, namely when requested to do so by a force, or where a conflict of interest or matter of great public interest arises.⁴⁰ Members of the public may make complaints orally or in writing to any police force or to the PCC. Both the police force and the PCC are informed of every complaint. The PCC monitors police investigations and the decision of the Chief of Police in a matter.

4.31 The Act provides that a complainant or police officer who is dissatisfied with the decision of the Chief of Police can request a review by the PCC. The PCC may also review any decision of the Chief of Police, on its own initiative, where it is considered in the public interest to do so. The PCC can then reinvestigate and reconsider the matter. If, upon reviewing a complaint, the PCC decides that a public hearing by a Board of Inquiry is required in the public interest, then it may order such a hearing.⁴¹ Boards of Inquiry are administrative tribunals independent of the police and the PCC.⁴² The Boards have both original and appellate jurisdictions. When misconduct is proved at the hearing 'on clear and convincing evidence', the Chief of Police may make submissions as to penalty and the Board of Inquiry may impose penalties ranging from reprimand to dismissal from the force.⁴³ The PCC can issue reports and recommendations (after consultation with the relevant force) on matters of general significance to police operations and practices.

4.32 The Act also establishes a Special Investigations Unit within the Ministry of the Attorney General.⁴⁴ The legislation provides that the Special Investigations Unit may at its own initiative, and at the request of the Solicitor General or Attorney General, investigate 'the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.'⁴⁵ Where there are grounds to do so, the Special Investigations Unit refers briefs of evidence to the Crown Attorney for prosecution. The results of all investigations by the Special Investigations Unit are reported to the Attorney General.

4.33 **New York City, USA:** In July 1992, the Mayor of New York City established the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the New York City Police Department (the Mollen Commission). The Mollen Commission was required to:

- investigate the nature and extent of corruption in the Department;
- evaluate the Department's procedures for preventing and detecting corruption; and
- recommend changes and improvements in those procedures.⁴⁶

4.34 The Mollen Commission reported in July 1994. It recommended the adoption of a 'dual-track' strategy for improving police corruption controls. The first strategy focussed upon strengthening the NYPD's 'entire anti-corruption apparatus', including 'improving the quality of recruits, enhancing police training, strengthening supervision, upgrading methods of prevention, strengthening internal investigations, enforcing command accountability, and attacking the root causes and conditions that spawn corrupt acts'.⁴⁷ The second strategy recommended by the Mollen Commission entailed the creation of a permanent external Police Commission, independent of the NYPD, to monitor the quality of internal investigations, and to conduct audits in the course of which it might carry out direct investigations itself.

4.35 In February 1995, the Mayor created an 'independent citizens monitor', the Commission to Combat Police Corruption (CCPC), and appointed as its Chairman Nicholas Scoppetta, who had served as Counsel for the Knapp Commission, Deputy Mayor for Criminal Justice and Commissioner of the Department of Investigation.⁴⁸ As recommended by the Mollen Commission, the CCPC was to be charged with assisting the Mayor in assessing the effectiveness of the NYPD's implementation and maintenance of anti-corruption efforts.⁴⁹ The CCPC has not been granted the full powers recommended by the Mollen Commission, apparently out of concern by the Mayor to ensure that the investigatory responsibilities of the District Attorneys, the United States Attorneys, other government agencies, and the NYPD were not 'superseded or displaced'.⁵⁰ Its Commissioners serve pro bono and it has a relatively small permanent staff.

4.36 The Mayor has requested that the NYPD supply the CCPC with all requested information and access to allow it to perform 'audits, studies and analyses' in relation to:

- the NYPD's development and implementation of anti-corruption policies and procedures;
- the effectiveness of the NYPD's systems and methods for gathering intelligence on corrupt activities and investigating allegations of corruption;
- the effectiveness of the NYPD's implementation of a system of command accountability, supervision, and training for corruption matters;
- the effectiveness of the procedures used by the NYPD to involve all members of the Department in combating corruption; and
- all NYPD policies and procedures relating to corruption controls, as the Commission deems appropriate.⁵¹

4.37 Further, the Mayor has directed that the CCPC:

...shall perform audits, studies and analyses of conditions and attitudes within the NYPD that may tolerate, nurture, or perpetuate corruption and shall evaluate the effectiveness of NYPD policies and procedures to combat such conditions and attitudes.⁵²

4.38 The Chairman of the CCPC attends briefings of the Commissioner by the Internal Affairs Bureau (IAB), and receives regular briefings by the Commander of that unit. All

reactive and proactive inquiries are conducted by the IAB, which is a standalone unit, with a centralised structure.

4.39 New York City also has an independent Civilian Complaint Review Board (CCRB). This Board is responsible for handling FADO complaints relating to police, that is matters involving use of Force, Abuse of authority, Discourtesy and Offensive language. The 13 member Board comprises five appointees of the Mayor, five appointees of the City Council, and three appointees of the Police Commissioner.⁵³ In April 1995, it was reported that the Board receives an average of 450 complaints per month.⁵⁴ The role of the Board is limited to making recommendations to the Police Department for disciplinary action following investigation. The NYPD is obliged to report all FADO complaints to the CCRB, whose investigations are almost exclusively reactive. The CCRB has recently encountered political difficulties and has a significant backlog of work.⁵⁵

STRENGTHS OF THE

'INTERNAL INVESTIGATION WITH EXTERNAL OVERSIGHT' MODEL

4.40 The major advantage of this model is that it allows some independent scrutiny of the way police handle complaints, and thereby increases public confidence in police accountability. Within this model prime responsibility for investigating complaints is still maintained by the police service, thereby preserving pride in self-regulation and accountability for misconduct and corruption.

WEAKNESSES OF THE

'INTERNAL INVESTIGATION WITH EXTERNAL OVERSIGHT' MODEL

4.41 The major criticism of this model, as it operates in Australia and some other countries, is that it primarily relies on police investigating police.⁵⁶ It has been observed that:

No system, however elaborate, which concentrates on supervision and *ex post facto* review of police investigations will satisfy the demand that justice will only be seen to be done when the investigation of complaints against police is taken out of the hands of police themselves.⁵⁷

4.42 This theme has been repeated in many of the submissions received by this Royal Commission.

4.43 Even when oversight bodies possess investigative powers, their use may be constrained. In most jurisdictions, it has been suggested that lack of resources has impeded the ability of the oversight bodies to use their monitoring and investigative powers as often as they would wish.⁵⁸ A persistent threat to oversight bodies is that they can become bogged down in reviewing police handling of individual complaints, and have little time or energy left for undertaking their own investigations.⁵⁹

D. COMBINATION INTERNAL AND EXTERNAL INVESTIGATION MODEL

4.44 This model involves a combination of police investigation with external oversight for most matters, and external investigation alone for specified classes of matters. Under it, members of the external agency are engaged not only in the monitoring and reviewing of complaints, but also in the investigation of police complaints and suspected incidents of corruption as selected. The external agency's powers of investigation may be exclusively exercised, or exercised in conjunction with internal police investigations.

4.45 The Criminal Justice Commission (CJC) in Queensland provides the only example of such a system in practice in Australia. The CJC was established in 1990 by the *Criminal Justice Act* following the recommendations of the Commission of Inquiry into Possible Illegal Activities and Associated Misconduct (commonly referred to as the Fitzgerald Inquiry). The CJC is not a dedicated police complaints or corruption fighting body, but has multiple functions and responsibilities relating to other areas of public administration.

4.46 The CJC's Official Misconduct Division (OMD) is primarily responsible for the oversight of police conduct and the investigation of complaints against police. The Act provides that 'any person may furnish to the Complaints Section a complaint or information concerning conduct that is perceived as, or may be, official misconduct'.⁶⁰ The OMD may also act on its own initiative.⁶¹

4.47 Prior to May 1992, the OMD was required to investigate all complaints other than those dismissed by the chief officer of the Complaints Section as 'frivolous or vexatious'. The CJC frequently reported that this requirement was causing it great difficulty as the number of complaints had increased by approximately 60 per cent per annum since the establishment of the Complaints Section.⁶² The CJC also advised that:

... it could not cope indefinitely with the ever-increasing workload without a substantial increase in staff (which the Commission was not seeking) and that the only alternative was to amend the Act to empower the Complaints Section to determine whether, and to what extent, a matter should be investigated.⁶³

4.48 The suggested amendments were passed and came into effect on 13 May 1992. The Act now provides that the Complaints Section 'may decide not to investigate a complaint, information or other matter communicated to it'.⁶⁴ It is not required to investigate a complaint or information if 'in the opinion of the chief officer of the section' the complaint or information is 'frivolous or vexatious' or 'lacks substance or credibility'.⁶⁵ It may discontinue the investigation of a complaint.⁶⁶ The Act further provides that:

The Complaints Section may refer to the principal officer of a unit of public administration any complaint, information or matter that, in the opinion of the chief officer of the section, involves, or may involve, cause for taking disciplinary action (other than for official misconduct) by the principal officer against a person holding an appointment in the unit of public administration.⁶⁷

4.49 Although the amendments to the legislation allow the Complaints Section to be more selective and reduce the number of complaints investigated, all complaints still require assessment and processing. Through administrative arrangements, the CJC classifies complaints against police officers into three categories as follows:

- Breaches of discipline: A breach of any provision of the *Police Service Administration Act 1990* or directions of the Police Commissioner. Breaches may be commonly described as 'a violation or dereliction of duty';⁶⁸
- Misconduct: These matters are more serious than breaches of discipline. Misconduct is defined under the *Police Service Administration Act 1990* as 'disgraceful, improper or other conduct unbecoming an officer; or conduct that does not meet the standard of conduct reasonably expected by the community of a police officer';⁶⁹
- Official misconduct: This is the most serious category of complaint in that it involves conduct of such a nature that it constitutes, or could constitute, a criminal offence or a disciplinary breach warranting dismissal.⁷⁰ Furthermore, the conduct 'must involve the officer acting in his or her capacity as a police officer in a manner that is not honest or impartial, involves a breach of trust, or a misuse of information'.⁷¹

4.50 The CJC is responsible for the investigation of all allegations of 'misconduct' and 'official misconduct'. The Police Service is required to report all complaints to the CJC. The CJC has no investigative function in respect of complaints which allege purely disciplinary matters. If a complaint is assessed as a 'breach of discipline', it is referred to the Police Service for action and the CJC takes no further interest in it.⁷²

4.51 The CJC often refers cases of 'minor misconduct' back to the Police Service for investigation on behalf of the CJC.⁷³ The CJC can recall the complaint at any stage of the investigative process. When the investigation has been completed, the CJC reviews the investigation report, examines the recommendations and determines if the complaint has been substantiated.⁷⁴

4.52 If a complaint is assessed as involving serious misconduct, official misconduct or a criminal offence, the CJC retains carriage of the investigation. On occasions, the CJC permits or requests the Police Service to conduct a preliminary investigation into a complaint which has been assessed as possibly constituting criminal behaviour or official misconduct.⁷⁵ However, in such circumstances the CJC retains responsibility for the investigation. The CJC's Complaints Section closely monitors these matters, and the police officers conducting the preliminary investigation follow strict, detailed guidelines laid down by the CJC.⁷⁶ The officers are told who the CJC wants interviewed and what their report is to include. When the report is received by the CJC, the complaint goes through the normal assessment process. The officer, or officers, who are the subject of the complaint, are interviewed by CJC personnel.⁷⁷

4.53 Following the investigation of 'misconduct', the CJC may make recommendations regarding discipline to the Commissioner of Police. If the Police Commissioner disagrees, the CJC has no avenue of appeal. However, the situation is different with respect to 'official misconduct'. If, following an investigation, it is recommended that an officer be charged with official misconduct, the CJC can require the Commissioner of Police to have the officer so charged and placed before a Misconduct Tribunal, where a determination takes place and sanctions can be imposed. The Misconduct Tribunals are attached to the CJC administratively, but operate independently.

STRENGTHS OF THE 'INTERNAL AND EXTERNAL INVESTIGATION' MODEL

4.54 This model is thought to provide a greater degree of public confidence in police accountability as the independent body conducts investigations into the most serious or contentious matters.⁷⁸ However, the system is also thought to benefit the police service which retains a degree of responsibility for self-regulation.⁷⁹

WEAKNESSES OF THE 'INTERNAL AND EXTERNAL INVESTIGATION' MODEL

4.55 The fact that police retain responsibility for conducting some investigations under this model leads to problems associated with the public perception of police investigating themselves. Additionally the external body can become bogged down in processing complaints and overlooking police investigations and have little time for active corruption fighting activities.

E. CONCLUSION

4.56 The selection of an appropriate model depends heavily upon factors specific to the police agency concerned, including the needs of the communities it serves, the extent to which corruption has become entrenched or systemic, and the strength of the police culture. A review of the systems operating elsewhere, and of the evidence and submissions collected to date by this Royal Commission suggests that an approach involving a combination of police investigation with external oversight for most matters and external investigation of serious police misconduct and corruption is the preferable option for NSW. The reasons for that conclusion, and the model recommended by this Commission, are considered in the following chapters.

Notes

¹ Whilst it has not been possible to present a full analysis of the mechanisms and experiences of different jurisdictions in this Report, considerable research conducted by the Royal Commission has been taken into account.

² cf. A. Goldsmith, 'New directions in police complaints procedures: some conceptual and comparative departures', *Police Studies*, vol. 2, no. 1, 1988, pp. 63-5.

³ D. Bayley, *Patterns of policing: A Comparative International Analysis*, Rutgers University Press, New Brunswick, NJ, 1985, pp. 159-88.

⁴ Darvell-Stevens lists 'Operates autonomously and exercises control over members' as one criterion of a profession; see R. Darvell-Stevens, 'The national reform to professionalise Australian policing', Paper presented to the Australian and New Zealand Society of Criminology, 10th Annual Conference, *Crime, Criminology and Public Policy*, Sydney, 27-30 Sept 1994, pp. 6-9.

⁵ D. Bayley, 1985, *op cit*, p. 180.

⁶ *ibid*, p. 177.

- ⁷ D. Landa & C. Lewis, 'Making the police accountable for their conduct', in *Australian Policing*, eds D. Chappell & P. Wilson, 2nd ed., in print, p. 2.
- ⁸ All submissions to this Royal Commission have suggested that some form of external, independent involvement in the NSW complaints system is necessary.
- ⁹ Australian Law Reform Commission, *Under the Spotlight: Complaints Against the AFP and NCA*, Issues Paper 16, 1995, p. 149; NSW Ministry for Police and Emergency Services, *Police Complaints Procedures: Recommendations for Reform*, Discussion Paper, May 1995, para. 6.4.
- ¹⁰ I. Freckelton, 'Shooting the messenger: the trial and execution of the Victorian Police Complaints Authority', in *Complaints Against the Police: The Trend to External Review*, ed. A. Goldsmith, Clarendon Press, Oxford, 1991, pp. 63-114.
- ¹¹ A. Goldsmith, 'External review and self-regulation: police accountability and the dialectic of complaints procedures', in *Complaints Against the Police: The Trend to External Review*, ed. A. Goldsmith, Clarendon Press, Oxford, 1991, pp. 13-62.
- ¹² NSWCC, Submission to RCPS for Interim Report, 15/11/95, Doc. 1555282-90; NSW Ombudsman, Submission to RCPS for Interim Report, 23/11/95, Doc. 1761203-564; NSW Police Service, Submission to RCPS for Interim Report, 16/11/95, Doc. 1554129-86; Police Board of NSW, Submission to RCPS for Interim Report, 23/11/95, Doc. 1745824.
- ¹³ I. Freckelton, 1991, op cit. See also DPP, Submission to RCPS for Interim Report, 13/11/95, Doc. 1555123-25; NSWCC, 15/11/95, op cit; NSW Ombudsman, 23/11/95, op cit; Police Board of NSW, 23/11/95, op cit.
- ¹⁴ NSWCC, 15/11/95, op cit, Doc 1555289 (emphasis in original).
- ¹⁵ See for example, D. Bayley, 1985, op cit, p. 177. See also NSWCC, 15/11/95, op cit, Doc. 1555286; NSW Ombudsman, 23/11/95, op cit, Doc. 1761253; Police Board of NSW, 23/11/95, op cit.
- ¹⁶ A. Goldsmith, 'Necessary but not sufficient: the role of public complaints procedures in police accountability' in *Accountability in Criminal Justice*, ed. P. Stenning, in print, pp. 128-9.
- ¹⁷ The current NSW police complaints system has been examined in Chapter 1 of this report and will not be included in this comparative discussion of systems in other jurisdictions.
- ¹⁸ Australian Law Reform Commission, *Complaints Against Police and Complaints Against Police: Supplementary Report*, Reports no. 1, 1975 & no. 9, 1978, Reprint, ALRC, Sydney 1995. The proposed Australia Police Force was to have comprised the former Commonwealth Police, the police of the Australian Capital Territory and the Northern Territory of Australia and certain Customs and Immigration officers. This force was not established.
- ¹⁹ In Western Australia, the Parliamentary Commissioner for Administrative Investigations (PCAI) is commonly referred to as the State Ombudsman. The Parliamentary Select Committee into the WA Police Service is currently examining the Service's operation and administration, including whether the 'self-regulatory' role of the Internal Affairs Unit is 'effective or desirable in the public interest and if not, what method of detecting, punishing and preventing corruption' should be implemented. The Select Committee is expected to report in April 1996. The Western Australian Commission on Government (COG) is also currently examining aspects of that State's police complaints system in the course of its inquiries into the appropriate role, powers and functions of the State's Official Corruption Commission and other agencies in the prevention and exposure of public sector impropriety and corruption. The COG is expected to issue its final report in late 1996.
In relation to the Commonwealth/ACT, it should be noted that the ALRC currently has a reference to review the AFP complaints and disciplinary systems. This review includes consideration of the extent and nature of any external review of complaints against the AFP and whether changes should be made to the respective role, powers and operations of the AFP Internal Investigation Division and the Commonwealth Ombudsman. The ALRC is due to report on its inquiries by June 1996.
- ²⁰ The SA PCA has recommended changes to its enabling legislation which are currently being considered by the SA Government. Proposed reforms include: extending the PCA's oversight role with respect to complaints made by police against other police; granting the PCA a 'limited' own motion power; granting the PCA the power to supervise police internal investigations; and appointing a Deputy PCA with the ability to carry out delegated statutory power and functions. See PCA Memorandum, 17/11/94, Suggestions as to possible changes and/or amendments to the *Police (Complaints and Disciplinary Proceedings) Act 1985*, Doc. 1404702-17.
- ²¹ D. Landa & C. Lewis, in print, op cit, p. 5.
- ²² Criminal Justice Commission, *External Oversight of Complaints Against Police in Australia: A Cross-Jurisdictional Comparison*, Research and Co-ordination Division, CJC, Brisbane, July 1995, p. 15.
- ²³ *ibid*, p. 23.
- ²⁴ The Commonwealth Ombudsman has only recently acquired own motion powers for police matters. The relevant provision of the legislation came into force on 13/1/95.
- ²⁵ On 16/8/95, Sir Leonard Peach, Chairman of the PCA advised the RCPS that new legislation, Police Bill (Consolidated) 1995 is in preparation, but is not yet finalised; see Doc. 995359.
- ²⁶ Police Complaints Authority 1994, *Triennial Review 1991-94 of the Police Complaints Authority, Presented pursuant to Act Elizabeth II 1984 c60 S97(4)*, HMSO, London, 19/5/94, Appendix A.
- ²⁷ *ibid*.
- ²⁸ Home Office, *The Role of HM Inspectorate of Constabulary for England and Wales*, Public Relations Branch, HMSO, 1995, p. 1.
- ²⁹ *ibid*.
- ³⁰ *Police and Criminal Evidence (PACE) Act 1984*, (UK), s. 95.
- ³¹ Home Office, 1995, op cit, p. 5.
- ³² *ibid*.
- ³³ New Zealand Police Complaints Authority, Information abstract (undated), Doc. 447544-49.
- ³⁴ *Police Services Act 1990*, (Ontario), s. 3.
- ³⁵ *Police Services Act 1990*, (Ontario), Part II, ss. 21-26.
- ³⁶ Ontario Civilian Commission on Police Services, *Annual Report 1994*, Doc. 1486369.
- ³⁷ C. Lewis, 'Police complaints in metropolitan Toronto: perspectives of the Public Complaints Commissioner', in *Complaints Against the Police: The Trend to External Review*, ed. A. Goldsmith, Clarendon Press, Oxford, 1991, p. 157.
- ³⁸ *ibid*.
- ³⁹ *ibid*, pp. 168-9.
- ⁴⁰ *ibid*, p. 158.

- 41 In its Annual Report for 1993, the PCC reported that during this year, of the total of 4,125 complaints processed, Boards of Inquiry were ordered to be constituted by the PCC 23 times.
- 42 C. Lewis, 1991, op cit, p. 159.
- 43 *Police Services Act 1990*, (Ontario), Part VI s. 97.
- 44 *Police Services Act 1990*, (Ontario), Part VII s. 113.
- 45 *Police Services Act 1990*, (Ontario), Part VII s. 113(5).
- 46 *Report of the Commission to Investigate Allegations of Police Corruption and the Anti-corruption Procedures of the Police Department* (Milton Mollen, Chair), City of New York, 7/7/94, p. 1.
- 47 *ibid*, p. 152.
- 48 R. Giuliani (Mayor NYC) & W. Bratton (Police Commissioner NYPD), *Police Strategy No. 7 Rooting Out Corruption: Building Organisational Integrity in the New York Police Department*, 14/06/95, Doc. 1122409.
- 49 *ibid*, Doc. 1122480.
- 50 *ibid*.
- 51 *ibid*.
- 52 *ibid*.
- 53 *New York Times*, 'A complaint board chief will face many hurdles', 20/11/95, p. B3.
- 54 *New York Times*, 'Civilian board falls behind on its cases', 23/4/95, p. 37.
- 55 In November 1995, it was reported that the Civilian Complaint Review Board had been 'plagued by a backlog of misconduct allegations that now number more than 3,000, by reports that fail to analyse the incidents thoroughly and by a staff shortage that has left almost a third of the agency's positions vacant.' It was also reported that the agency's first Executive Director was forced to resign by Board members as a result of 'serious doubts about the Board's effectiveness.' See *New York Times*, 20/11/95, op cit.
- 56 See for example, *Police Complaints Authority*, 1994, op cit, pp. 15-16; *South Australia Police Complaints Authority 1995, 7th, 8th and 9th Annual Reports of the Police Complaints Authority, Years Ending 1991-92, 1992-93, 1993-94*, p. 26.
- 57 J. Lambert, *Police Powers and Accountability*, Croon Helm, London, 1986, p. 82.
- 58 *Criminal Justice Commission*, July 1995, op cit, p. 31. For illustrations of this point, see *NSW Ombudsman, 19th Annual Report 1993-94*, p. 22; and the *South Australian Police Complaints Authority*, 1995, op cit, p. 3.
- 59 D. Dixon, *Issues in the legal regulation of policing*, Discussion Paper prepared for the RCPS, 1995, Doc. 1065998, p. 27.
- 60 *Criminal Justice Act 1989*, (Qld), s. 37(1).
- 61 *Criminal Justice Act 1989*, (Qld), s. 29(2).
- 62 *Criminal Justice Commission, Annual Report 1991/92*, p. 17.
- 63 *ibid*.
- 64 *Criminal Justice Act, 1989*, (Qld), s. 38(1).
- 65 *Criminal Justice Act 1989*, (Qld), s. 38(2).
- 66 *Criminal Justice Act 1989*, (Qld), s. 38(3).
- 67 *Criminal Justice Act 1989*, (Qld), s. 38(4).
- 68 *Criminal Justice Commission*, July 1995, op cit, p. 5.
- 69 *ibid*, pp. 5-6.
- 70 *ibid*, p. 6.
- 71 *ibid*.
- 72 *ibid*. In the 1994-95 financial year, 1,424 complaints were assessed as breach of discipline matters; see also *CJC, Complaints alleging misconduct referred to the Queensland Police Service for investigation*, 9/1/96, Doc. 1724598-601.
- 73 In the 1994-95 financial year, 348 allegations of minor misconduct (21% of the total number of complaints against police) were referred back to the Queensland Police Service for investigation on behalf of the CJC; see *CJC*, 9/1/96, op cit.
- 74 *Criminal Justice Commission*, July 1995, op cit, p. 6.
- 75 *ibid*.
- 76 *ibid*.
- 77 *ibid*.
- 78 A. Goldsmith, in print, op cit, p. 128.
- 79 *Police Association of NSW, Submission to RCPS for Interim Report*, 21/11/95, Doc. 1542906, p. 6.

CHAPTER 5

A NEW SYSTEM

5.1 This chapter proposes a new system to deal with police complaints and corruption investigations in NSW which takes into account the circumstances that:

- within the NSW Police Service there is a pattern of corruption, which must be urgently addressed, so that public confidence is restored;
- the handling of complaints, and the detection and investigation of serious corruption, demand different approaches;¹
- complaints alone do not provide an adequate measure of the existence or extent of police corruption;²
- corruption is insidious, difficult to detect and amounts to serious criminal conduct, which requires the application of sophisticated and determined investigative techniques; and
- the Police Service is a disciplined Service which must accept ownership of and responsibility for its problems.

A. THE NEED FOR AN INNOVATIVE APPROACH

5.2 Despite the presence of the Office of Professional Responsibility (OPR), the Independent Commission Against Corruption (ICAC), the New South Wales Crime Commission (NSWCC), and the Office of the Ombudsman, a serious corruption problem and an unhealthy police culture have developed, neither of which is of recent duration. Commenting upon this situation, the former NSW Ombudsman has stated that the 'truth is becoming glaring':

Bodies such as the Ombudsman, ICAC and the NSW Crimes Commission are simply ... 'the flea on the rump on the elephant'. They are only a minor irritation to wayward police. The scattered resources and skills of these oversight bodies are no match for the seriously corrupt. They are at best capable only of surface issues. NSW needs to consider a different approach.³

5.3 The experience of this Royal Commission is that a focussed, sophisticated and aggressive approach is necessary to uncover and combat serious police misconduct and corruption. This has been lacking and a new approach is now needed.

5.4 There is general acceptance of this proposition. The debate has largely centred upon the model now appropriate for NSW, and the agency or agencies which should be tasked with appropriate responsibility.

Model 1: Complete Self-Regulation

5.5 There is no support for the complete self-regulation model, in which the Police Service would retain sole responsibility for the investigation of complaints and corruption. The deficiencies of this model and the extent of the problem are so glaring, and the need for external involvement which is not merely of a supervisory nature is so compelling that it need not be further considered.

Model 2: Single External Agency

5.6 In certain submissions⁴ the advantages were propounded of a single external agency, similar to the Criminal Justice Commission, with total responsibility for the management of police complaints and the investigation of police corruption (to the exclusion of the Police Service); and with associated functions concerning research and education and the determination of disciplinary matters. As such it would combine the functions of:

- the Office of Professional Responsibility (OPR);
- the Ombudsman;
- the ICAC;
- the NSWCC; and
- the Bureau of Crime Statistics and Research;

as they relate to the Police Service.

5.7 This model has some advantages so far as it might assist to:

- unify the presently fragmented system and integrate management;
- ensure that individual cases do not fall between the cracks;
- centralise record keeping and enhance intelligence collection;
- provide a cost-effective structure, with a clear focus;
- facilitate pre-emptive strikes against corruption by allowing early identification of and intervention in matters which may be symptomatic of more serious corruption problems;
- facilitate reporting, and remove any uncertainty as to obligations in that regard;
- prevent duplication of effort and operational conflict; and
- introduce greater consistency in the disciplinary process.

5.8 On the other hand, it has significant disadvantages in that:

- the sheer volume of complaints in NSW is such that the external agency risks being swamped, and diverted from dealing with serious corruption;
- the external agency may experience internal tensions as a result of conflict between the different approaches which complaints handling and corruption

fighting necessitate (for example, the openness required of a complaints handling body versus the secrecy required of a corruption fighting body);⁵

- depending on the extent to which responsibility is transferred to the external agency, the ownership and responsibility of the Police Service to deal with its problems, and the incentive to pursue integrity as a first priority may be severely threatened; and, similarly
- the opportunity for management to intervene early, and to enforce discipline, may be reduced.

5.9 This Commission is of the view that the employment of a single external agency is unsuitable for NSW, even if a direct role was preserved for the Police Service in the management of less serious complaints. In this regard, it considers the disadvantages previously mentioned to be persuasive, given the size of the Service⁶ and the large number of police complaints received annually.⁷ The combination of functions, and the volume of complaints to be managed and investigations needed, would require a significant bureaucracy.

5.10 There are significant differences in the approaches required to manage and supervise misconduct and disciplinary complaints, to investigate serious corruption, and to perform a corruption prevention, research and education function. Further, externalising detection and treatment of the problem would adversely affect the maintenance of discipline within the Police Service, and any commitment or responsibility it has to combat corruption.

5.11 The factors which would support the creation of a single external agency can be suitably addressed without unduly complicating the system or compromising the tactical advantages of such an agency. This is addressed later in the chapter.

Model 3: Internal Investigation with External Oversight

5.12 Although this model is largely that presently in place (subject to a discretionary investigative capacity of the ICAC and the Ombudsman), it has not proved capable of dealing with the problem.

5.13 External oversight alone is not sufficient, since an oversight body has a limited capacity to alter police practices, or to get behind police internal inquiries to the true facts without a substantial investigative arm.

5.14 The NSWCC has eschewed such a role except to the extent that it arises incidentally in the course of criminal investigations,⁸ and there are real difficulties in linking an anti-corruption function with an investigative function which requires the agency to work in partnership with the police.

5.15 The Ombudsman's primary function is to oversee police handling of complaints about the use or abuse of police powers. The Office is not a corruption fighting body and

its complaint handling process is unlikely to uncover serious corruption.⁹ Moreover, it has significant public sector responsibilities beyond the Police Service, and limited resources.

5.16 The ICAC has not traditionally exercised an oversight role in relation to the Police Service, and to add the present responsibilities of the Ombudsman in that regard to its other responsibilities would be inappropriate.

Model 4: Combination of Internal and External Investigation

5.17 The Commission has concluded that the model which needs to be adopted is one in which:

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

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

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

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

THE ICAC OR A NEW PURPOSE BUILT AGENCY?

5.20 Careful consideration has been given to the option of establishing a dedicated Police Corruption Unit or Division within the ICAC, as was canvassed in a number of submissions.¹⁰ It is not favoured for several reasons:

- there is a public perception that the ICAC has failed to tackle police corruption or to use its coercive and other powers with sufficient determination and initiative, necessitating the establishment of the Royal Commission;
- a real difficulty exists in structuring a Division of the ICAC which could be kept separate and independent from the rest of the organisation;
- because of the significant competing functions of the ICAC relating to other public sector matters, and its role in corruption prevention and education generally, there

is a risk that the resources of the Division would be drawn away from police corruption, particularly if a major inquiry was undertaken in some other area;

- co-ordination of direction, decision making, and priority setting in the ICAC with, in effect, two heads would be difficult and potentially produce internal tension;
- competition could exist in access to technical services and surveillance, with the potential for divided loyalties;
- permanent hiving off of an area of the ICAC, while sharing central administrative resources, would not be conducive to good morale or harmony. Jealousy over resourcing and a tendency to attribute failures to that fact are almost inevitable;
- the security of a Police Division would be very difficult to maintain in an environment in which a common organisational culture existed, and staff from different sections mixed at work or socially;
- by the nature of its general work in the public sector, the ICAC faces an ever present danger of being caught up in political controversy, which might affect its credibility and level of commitment; and
- other agencies such as the Australian Federal Police, the NCA, and the NSWCC, might feel greater confidence in the dissemination of sensitive information to a smaller specialist agency than to a multifunctional agency which has a larger staff.

5.21 The security needed for the highly sensitive nature of the work, and the separation of function needed for public acceptance of a separate Division within the ICAC would require:

- a separate Commissioner;
- new premises;
- standalone technical support and surveillance capacity;
- separate records systems, file management, and intelligence and operational databases;
- a separate Operations Review Committee (of which the Police Commissioner would not be a member);
- additional systems for access to police and external databanks;
- additional equipment for physical and electronic surveillance; and
- additional staff comprising investigators, analysts, surveillance operatives, lawyers, and support staff.

5.22 The ICAC has acknowledged that the resources needed to establish a Police Division within its organisation would be 'very significant'.¹¹

5.23 It is not expected that there would be any significant financial cost in establishing a new agency, since:

- part of the existing budgets of the Police Service, and of the ICAC, could be transferred to the new agency;
- some police presently attached to the OPR could be returned to ordinary investigative work, and fill existing vacancies for experienced detectives (taking with them a commitment to integrity); and
- the new agency would be given a substantial headstart by taking over the intelligence, and other resources and equipment available to this Commission.

5.24 It is not considered that statutory directions in a separate part of the *ICAC Act 1989*, as to the role, functions, autonomy and direction of a separate Division, providing for its own budget and creating a specific responsibility to investigate matters of serious police misconduct and corruption, would overcome the institutional problems identified.

5.25 Creation of a new ICAC Division satisfying the above requirements would be akin to establishing a separate agency but any advantage obtained in the form of resource savings through a common administration would be negated by the difficulties in co-ordinating separate Divisions of the ICAC, particularly if they were maintained in separate premises, with separate resources and facilities, as would need to be the case. Transfer of the ICAC's responsibility to a new agency would not involve any further fragmentation of the system, and the system proposed would achieve the clear organisational focus which seems to be generally accepted as essential.

5.26 If a new agency were created with a focus on serious police misconduct and corruption, the responsibility of the Ombudsman would continue unchanged, and the ICAC would still retain significant public sector responsibilities. Without the police function, which at present imposes considerable demands on the resources of the ICAC in the processing and assessment phase (particularly in respect of complaints made directly to it) with little real result in investigative terms, the ICAC could:

- achieve resource savings; and
- better perform its remaining public sector investigation, education and corruption prevention functions.

5.27 The responsibility of the Police Service for maintaining its own discipline, and promoting integrity, can be enhanced under the proposed model.

5.28 The conclusion reached is that creation of a separate Division of the ICAC is not the answer, and that a new purpose-built agency is needed.

5.29 In recommending the establishment of a new agency, which is hereafter called the Police Corruption Commission (PCC), it is emphasised that it will:

- provide a fresh approach to the problem;
- be purpose-built, with a specific focus upon the investigation of serious police misconduct and corruption; and

- be free of the institutional baggage attaching to an anti-corruption system which has failed to deal with corruption of the kind revealed by this Commission.

B. THE POLICE CORRUPTION COMMISSION (PCC)

FUNCTIONS AND POWERS

5.30 The principal function of the PCC should be the detection and investigation of serious police corruption. It should not be of the genus of a standing Royal Commission, whose primary function is to establish the facts of a matter under review through the exercise of inquisitorial powers. For bodies of the nature of standing Royal Commissions, 'securing convictions is a secondary aim'.¹² A key function of the PCC must be to assemble admissible evidence when investigations reveal criminal conduct, and to furnish such evidence to the Director of Public Prosecutions.¹³

5.31 The PCC should be able to conduct an investigation on:

- its own initiative;
- a complaint made to it;
- a report made to it; or
- a reference made to it.

5.32 The PCC should be empowered to assign specific investigations to the NSW Police Service to be conducted under PCC supervision. It should have a role in recommending preventative action arising out of its inquiries, and in carrying out audits on any aspect of policing, at any time. Further it should have a power to refer special investigations involving Police Service tenders and procurement contracts to the ICAC, which has specific expertise in that area of public sector performance.

5.33 The PCC requires the full range of coercive powers necessary to detect and investigate serious police corruption. This comprises the powers currently held by this Royal Commission or by the ICAC, including powers to:

- obtain information, documents and other things;¹⁴
- enter and search public premises and seize material;¹⁵
- summon witnesses to give evidence;¹⁶
- obtain and execute listening device warrants;¹⁷
- intercept and record telephone conversations (a power unfortunately denied to this Commission and sorely missed by it);
- refer matters to a relevant agency for investigation;
- consult with and disseminate information to law enforcement agencies;¹⁸ and
- hold private and public hearings.¹⁹

5.34 It will need an appropriate secrecy provision and its investigators will require the powers of a NSW Police officer.²⁰

ACCOUNTABILITY

5.35 The PCC should be open to public review, and accountable to the Parliament. Two avenues of accountability are proposed.

Inspector of the PCC

5.36 There is always a risk that an agency which is heavily committed to covert investigations, reliant on informants, and possesses powers which are both coercive and of a kind which might involve substantial infringements of rights of privacy, may overstep the mark. For this reason it is important that there be a 'watchdog' which is able to respond quickly and effectively to complaints of misconduct and abuse of power, without risking secrecy of operations, or confidentiality of informants and witnesses.

5.37 It is proposed that the office of Inspector of the PCC be created by the legislation governing the agency. This office might be held by a serving or former Supreme Court Judge, given power to:

- audit operations of the PCC;
- deal with complaints of abuse of power and other forms of misconduct on the part of its employees; and
- report to Parliament on matters affecting the PCC and its operational effectiveness or needs.

5.38 The Inspector should be able to:

- have access to the records of the PCC;
- require employees to supply information upon request;
- assess complaints or incidents of misconduct which come to light, either alone or in conjunction with the PCC Commissioner;
- recommend internal disciplinary action or criminal prosecution; and
- refer matters of misconduct in the case of seconded investigators, to parent agencies.

5.39 It should be the duty of the Inspector to report to the Parliament annually on the operations of the PCC, and on other occasions as need arises.

Annual Report

5.40 The PCC should submit an Annual Report to Parliament. Having regard to the narrow focus of the PCC, and the direct supervision of the PCC Inspector, a Parliamentary Joint Committee is not recommended.

THE ESTABLISHMENT OF THE PCC

5.41 In order to restore public and police confidence in the system and cause as little disruption as possible, the process of establishment of the PCC and transfer of functions from the Royal Commission to it should be speedy and carefully managed. As the Commission is winding down, the PCC should be gearing up. It should take over matters from the Commission, including those matters which need more work than the Commission will have the time for, as well as matters which the Commission considers appropriate for preparation of briefs of evidence.

5.42 The PCC would fulfil a useful role as the Commission Task Force, and would benefit substantially from receiving the intelligence holdings and technology which have been assembled by the Commission. It might also be possible to house the PCC within the present Commission premises.

5.43 It is recommended that an Implementation Working Party, comprising senior officers from the Government, the Police Service, the Ombudsman and the Royal Commission, be established. The role of this Working Party should be to oversee, co-ordinate, and implement the recommendations of this Interim Report. Some high priority tasks include:

- the establishment of the PCC, including necessary funding, resources and staffing;
- the refinement of complaints categories based upon those proposed in this Report;
- the transfer of holdings from the Commission and ICAC to the PCC; and
- co-ordination of activity.

5.44 The PCC should be established during the life of the Royal Commission, so that its progress can be monitored. The Final Report of the Commission should include recommendations for any changes considered necessary to fine-tune the operation of the new system.

Commissioner

5.45 The PCC will require a full-time Commissioner of the highest reputation, ability, integrity and commitment. That person must be qualified for appointment as a judicial officer or have formerly held such office. He or she should be able to delegate to an Assistant Commissioner any of his or her functions.

Staffing and Resources

5.46 The PCC must be staffed by persons with skill, dedication and commitment to professionalism. Staff should comprise the same mix of multidisciplinary personnel as are working at this Commission, including investigators, surveillance operatives, legal officers, financial and intelligence analysts, information technology and administrative staff. The multidisciplinary team approach to investigations is now well recognised as the most effective for serious and complex matters.

5.47 The PCC might well be able to recruit staff from those currently employed by this Commission, who possess the skills and knowledge to continue its work. It is not envisaged that a large staff would be required, but quality and commitment will be essential. A diagram of the recommended structure for the PCC follows this Chapter.

5.48 Parliament decreed that no current or former NSW Police officers should be employed by this Commission. That decision was correct but, as events have shown, no screening process is infallible, nor can it be said that any Service is totally free from corruption. However, to ensure public confidence in the independence and integrity of the PCC, no members or former members of the NSW Police Service should be employed by it. If considered necessary or desirable in the future, this restriction may be open to review.

5.49 The PCC could engage suitably qualified investigators on fixed term contracts or on secondment from other law enforcement agencies. Suitably qualified people may include serving police officers and former police officers from jurisdictions other than NSW and civilian investigators. The employment of investigators on secondment from other jurisdictions will require co-operation on the part of other law enforcement agencies. The possibility of arranging one-for-one exchanges with other police services, with NSW Police providing the personnel from this State, should be pursued.

5.50 In view of the importance to all other police services of ensuring the highest level of integrity and effectiveness of internal affairs units, the NSW Government may seek to have this recommendation considered and endorsed by the Police Commissioners' Conference and the Australasian Police Ministers' Council.

5.51 The PCC will also require its own Information Technology system, and access to information systems of the Police Service (such as COPS, HRM and CIS) and of other agencies and government instrumentalities (at least equivalent to that secured by this Commission). It should have current electronic and physical surveillance capacity and equipment including that required for telephone interception, and such other physical resources as are required by the nature of its specialised investigations. It should also have a similar status to this Commission, and the ICAC, in relation to the collection of information from other agencies (including Commonwealth agencies).

5.52 The new system needs to be fully funded to be effective. The problems caused by under-funding of external accountability mechanisms are well recognised and cannot be overstated. It is unquestionable that corruption fighting is a resource intensive exercise and

any success achieved by this Commission would not have been possible without adequate resources. Its work suggests that it will take many more years to effectively investigate all of the alleged serious corruption within the Police Service.

5.53 The division of function, and the capture of matters involving serious corruption and misconduct proposed in this Chapter largely reflect the de facto system established for this Royal Commission by agreement, and by the *Royal Commission (Police Service) Amendment Act 1994*. It has proved extremely workable and the Commission has received good co-operation from the Ombudsman and the Royal Commission Response Unit (RCRU) of the Police Service. The precedent so established can be further developed by the standing inter-agency committee mentioned later in this chapter.

C. THE COMPLAINTS AND CORRUPTION INVESTIGATION SYSTEM

5.54 The existing system must be simplified and as much of the formality and legal complexity removed as is consistent with fairness. The refinement of that system requires further examination, and consultation, in the light of the issues identified in Chapter 6 of this Interim Report. However, the key elements of the system recommended at this stage are as follows:

- the majority of complaints should continue to be investigated by the Police Service under the oversight of the Ombudsman, whose existing powers should continue;
- a special category of 'serious misconduct and corruption' should be created, the responsibility for the investigation of which would rest with the PCC, and be directly attended to by it, or by the Police Service under PCC supervision; and
- the Ombudsman and the PCC should conduct audits of the Police Service internal investigations, where appropriate in conjunction with each other.

5.55 One of the terms of reference for this Royal Commission requires it to examine the experience of internal informers or witnesses from within the Police Service.²¹ This area of the complaints system will be discussed in the Final Report. It is emphasised, however, that the new complaints system must ensure that police officers are encouraged to make a report about the misconduct of others by ensuring that they are provided with the protection and support to meet their statutory obligation to do so.

CLASSIFICATION OF CONDUCT

5.56 The manner in which conduct is classified and the certainty of that classification are vital components of the complaints process. In the new system, the classification will essentially determine whether the matter is investigated by:

- the PCC;
- the Police Service under PCC supervision; or
- the Police Service under Ombudsman supervision.

5.57 The final decision with respect to determining the classification of complaints as falling within the special category, and the responsibility for their investigation should rest with the PCC.

5.58 The following system of classification of conduct is proposed:

Category 1: Serious Misconduct and Corruption, comprising:

- behaviour which constitutes corruption and other serious criminality;
- matters warranting dismissal from the Police Service; and
- matters in which it is unlikely that there will be public confidence in an internal police investigation (for example, where the complaint relates to a death or serious injury in police custody).

Category 2: Misconduct, comprising:

- serious breaches of police rules or procedures and lesser criminal conduct, which warrants investigation, and would require some sort of disciplinary action, short of dismissal, if proven.

Category 3: Customer Service Matters, comprising:

- lesser breaches of police rules or procedures, and matters suitable for conciliation,²² including, for example, failure of an officer to take necessary action, rudeness, incivility, perception of a threat and unreasonable treatment.

Category 4: Internal Management Matters, comprising:

- matters where there is no allegation or implication of misconduct but managerial action is called for,²³ including, for example, loss or damage to police property, debts, failure to complete a rostered shift, absence from or during duty, incidents arising from police pursuits or discharge of firearms (not involving death or serious injury) and injuries to persons in custody not involving allegations of police misconduct.

5.59 A similar system of classification has been recommended in the submissions of the Police Service, the Police Association, and the Police Board and in the Ministry for Police and Emergency Services Discussion Paper of May 1995.

THE COMPLAINTS PROCESS

5.60 The process of handling police complaints may be broken down into the following four stages:

- reception and assessment of complaints;
- conciliation of agreed customer service type complaints;
- investigation of matters not suitable for conciliation; and
- dissemination of the findings of complaint investigations.

5.61 The sections that follow detail the role that each agency will play at each stage of the new complaints process.²⁴

Reception and Assessment of Complaints

5.62 Three possible sources of complaints may be identified:

- members of the public;
- police; and
- other government agencies, including courts.

5.63 In reality, it is impossible to control the agency with whom people elect to lodge complaints. Some people will prefer to go direct to the source and lodge their complaint with the Police Service, whereas others will prefer to complain to an independent body. It is also recognised that making one agency responsible for the receipt of all complaints would place a large administrative burden upon that agency. Therefore it is recommended that, in the new system, it should be possible for complaints to be received by either the Police Service, the Ombudsman or the PCC, but thereafter they should be recorded centrally.

5.64 A complaint made to the Police Service should be forwarded as soon as possible to Central IA for entry on the CIS (as is already required). Central IA should then be required to forward copies of all complaints as soon as practicable to the Ombudsman. They should also forward copies of those complaints constituting misconduct or serious misconduct and corruption to the PCC.

5.65 The PCC should notify the Ombudsman, as soon as possible, of those matters which it will take over. For all complaints which are not taken over by the PCC, the Ombudsman should determine the manner in which each complaint is to be handled, that is whether it should be declined, conciliated, made the subject of preliminary inquiries, or of a full investigation either by the Police Service or by the Ombudsman.

5.66 It is likely that the ICAC will continue to receive complaints, or information, relating to police corruption. It should be under a duty to refer them to the Police Service or, where they involve a Category 1 matter, to the PCC. The NSWCC should be under the same requirement.

5.67 A complaint made initially to the Ombudsman or to the PCC should similarly be forwarded to Central IA for recording on the CIS, except where it is a Category 1 complaint. In such a case, where received by the Ombudsman, it should be forwarded in the first instance to the PCC.

5.68 If for operational or security reasons (notwithstanding the availability of a caveat on further disclosure) the PCC decides that reporting to Central IA of a Category 1 complaint received directly by it, or forwarded on from the ICAC or Ombudsman, should be deferred, then it may take that course, until such time as it judges it safe to have the matter entered on the CIS. The intention is that the CIS be available as an accurate and accessible central intelligence reference point for all complaints.

5.69 This will require a review of the manner in which the CIS records are kept, and the introduction of an appropriate security system. Currently the CIS records are poorly maintained and not amenable to efficient computer access, or suitable for use as a tool for proactive work or the compilation of statistics. The position is complicated by the existence of separate, manual Police Service 'covert' files.

5.70 It is recommended that details of all complaints should be placed on the CIS regardless of sensitivity, but with levels of caveats which would ensure that access to such data is restricted to those who need to know. When matters are no longer sensitive, caveats could be lifted. This, and other considerations reflecting the needs of the PCC, Ombudsman and the Police Service would be best reviewed by the Implementation Working Party previously mentioned.

5.71 The PCC requires the power to investigate any allegation of police misconduct. A seemingly minor offence might have serious consequences. Similarly, a pattern or variety of complaints against an individual, however minor each individual complaint appears, might be symptomatic of a more serious problem. For this reason the PCC must have access to information on all complaints involving misconduct and the capacity to take over an investigation of any matter, within any category of complaint, at any stage.

5.72 The effective functioning of this system will require optimum levels of communication and co-operation between the agencies involved. The Police Service should provide open access to the CIS to the Ombudsman and to the PCC. In addition, the Service should be required to supply files and other information upon request to the PCC (as it is currently required to do with the Royal Commission).

5.73 To facilitate co-ordination of effort, the Police Service should maintain a section like the current RCRU. Further there should be established a standing inter agency Liaison Committee involving the Police Service, the Ombudsman and the PCC.

5.74 This Commission does not share the concern of the NSWCC that an external agency not involving NSW Police in its investigative staff would be frozen out, or starved of intelligence. That has not been the experience of this Commission which has established excellent rapport with external agencies, and after some initial problems, has had little difficulty in receiving intelligence or relevant files from the Police Service. Full access to the CIS would reduce any possibility of the PCC being frozen out, particularly when accompanied by powers to call for relevant documents and information.

5.75 This Commission does not favour the proposal contained in the Ministry of Police Discussion Paper (May 1995) concerning the establishment of an Advisory Panel to assist on the categorisation or assessment of complaints for several reasons, including:

- the delay such a process would involve;
- the risk of disclosure of sensitive information;
- the vetting committee (particularly if subject to changes in membership) would be unaware of officers, patterns or operations of special interest to the PCC, and its capacity to access intelligence of the kind which would initiate PCC attention would be extremely limited;
- the role of the vetting committee could circumvent the work of the PCC (in steering matters away from it); and
- the vetting committee could itself become vulnerable to corruption.

Conciliation

5.76 Conciliation should continue to be used by the Police Service and the Ombudsman as a means of dealing quickly with minor complaints, but it should be accompanied by appropriate managerial action in relation to any officer at fault, and not terminated simply on the basis of an apology or withdrawal of the complaint induced by one or other of the means mentioned earlier in this Report.²⁵

Investigation of Category 1 Serious Misconduct and Corruption

5.77 Although any agency or public authority receiving complaints under this category should be required to refer them to the PCC as soon as possible, the PCC should not be obliged to disclose to other agencies what it is investigating, save as is considered appropriate, or rendered secure by caveat on the CIS. This may lead to concern about duplication in investigations, however the PCC will be aware of that risk because of the obligation of the Police Service to report all matters under investigation.

5.78 Depending upon the volume and seriousness, the PCC should have a limited discretion to refer matters coming within this category to the Police Service, or another agency, for investigation, or to conduct a joint investigation. The PCC should monitor all investigations of serious misconduct and corruption conducted by the Police Service or any other agency, and be able to resume any investigation at any time, if it chooses. The PCC should have the power to request other agencies to cease investigations when it assumes responsibility for them.²⁶

5.79 The PCC should, in this regard, be under a statutory obligation to investigate all Category 1 matters either directly, or by monitoring those matters which are assigned by it to the Police Service or any other agency. It should also have the power to dismiss, at the outset, those complaints which are obviously frivolous, vexatious, or without any identifiable substance.

Investigation of Category 2 Misconduct

5.80 The great majority of these matters should be retained for investigation by the Police Service, with oversight by the Ombudsman. Although further development is required within the context of the issues identified in Chapter 6, it is desirable that greater emphasis be placed on a remedial approach for these forms of misconduct and that greater responsibility for their management be accepted at a regional level.

5.81 Pending development of a more streamlined internal system, it is recommended that the Police Service should strengthen the Regional IA units. The role of the Central IA unit should be confined to a more supervisory, intelligence, and co-ordination role. It should, however, be in a position to audit Regional and Line Command investigations, and to carry out investigations in those cases where it is undesirable that they be entrusted to Regional or Line Command inquiry.

5.82 It is recognised that there have been concerns about the quality of Regional and Line Command investigations, and about lines of responsibility in the past.²⁷ In order for these investigations to be of a suitably high quality, there is an urgent need for appropriate training, improved information management procedures, and answerability by way of audit. There is also an urgent need to ensure an effective flow of intelligence between Central and Regional IA units, and between those responsible for Regional and Line Command investigations.

5.83 The Police Service must aim to reach a stage where the work of the OPR, and Regional IA, possesses credibility in the eyes of police officers and the public, and a genuine belief is promoted that misconduct and corruption will be detected and appropriately dealt with, by management, discipline or prosecution. This will be aided by measures such as:

- the development of a capacity within the PIB to deploy sophisticated investigative methods, including the collection and analysis of a wide range of intelligence, and effective use of computer technology, informants and covert techniques;
- the exercise of a broader perspective, including a focus which expands from inquiries which are reactive to specific allegations, to examining patterns and potential problem areas;
- the adoption of a flexible management perspective of complaints, in which there is less reliance on formal discipline, and internal management action is used wherever appropriate for less serious matters;
- the use of highly skilled and respected investigators, and the creation of an environment whereby experience in conducting internal investigations is regarded as a positive factor in the career path of an officer; and
- the promotion of a high standard of integrity throughout the Service.

Investigation of Category 3 Customer Service Matters

5.84 All customer service matters should be received by, or notified to the Ombudsman. Most customer service matters should be able to be conciliated either by the Police Service or by the Ombudsman. Those matters which are not able to be conciliated should be investigated by the Police Service. The Ombudsman should monitor and review these investigations, and where appropriate, may conduct its own investigation.

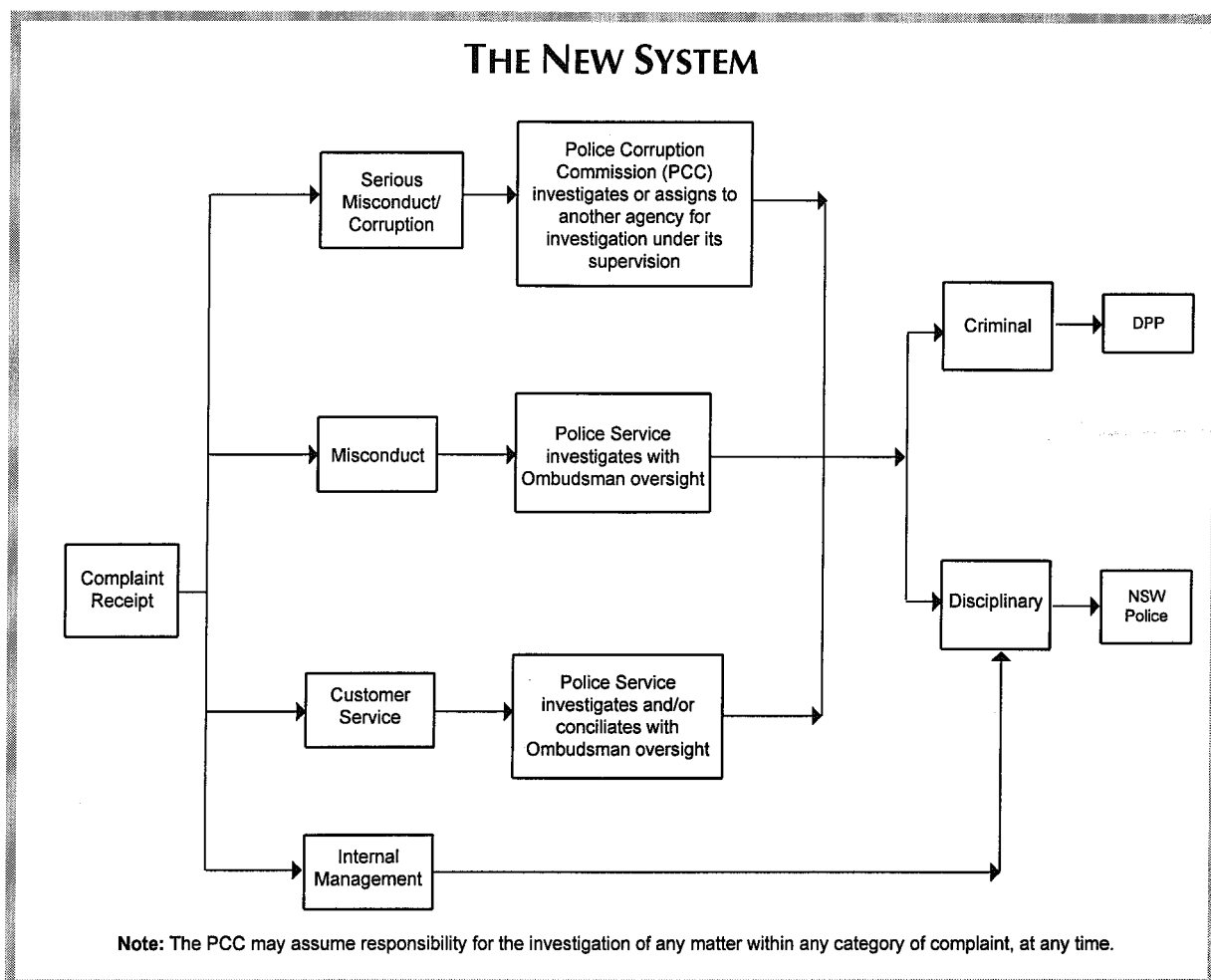
Investigation of Category 4 Internal Management Matters

5.85 If a matter within this class or kind is received by any agency, it should be referred to the Police Service for action. The 'class or kind' agreement should be settled with the PCC and Ombudsman by memorandum of understanding.²⁸ These matters should remain with the Police Service for management.

Findings

5.86 Recommendations made by the PCC and the Ombudsman for disciplinary action, system changes or corruption prevention should be referred back to the Police Service. The Commissioner of Police should report upon the proposed course of disciplinary action to the agency which has made the recommendation. If the Ombudsman or the PCC is not satisfied with the Commissioner's proposed course of action, they should be able to report that dissatisfaction to Parliament.

5.87 When investigations reveal the need for prosecution of criminal conduct, the PCC or the Police Service should assemble admissible evidence and furnish it to the Director of Public Prosecutions, for advice and any subsequent prosecution.



D. ACTIVE CORRUPTION INVESTIGATIONS

5.88 In addition to responding to complaints or other information received, the PCC will need to be active on its own initiative. It should target specific areas of serious police corruption, and institute investigations based upon tactical and strategic intelligence. Such investigations would be unheralded and would involve utilisation of the full range of the PCC's coercive powers, including targeted integrity testing.

5.89 The Police Service recognised in its submission that its past focus had been on misconduct rather than corruption. It acknowledged that to deal successfully with corruption, the investigative unit should not be 'overloaded with, or deflected by, minor matters or unrelated activities'.²⁹ In response to this awareness it has, in recent times, re-tasked the PIB to concentrate on covert intelligence driven operations.³⁰

5.90 Police Service initiatives in this regard are recognised and there is a continuing role for the PIB to work directly in relation to those corruption investigations which the PCC refers to it, or agrees that it should undertake. It is stressed, however, that in order to prevent duplication and complications in such operations, such proactive activities will

need to be carefully co-ordinated and closely supervised or monitored by the PCC. There will be a need for the Police Service to regularly brief the PCC, and to provide intelligence which it obtains regarding serious misconduct and corruption.

5.91 On occasions, it may be considered appropriate for the PCC to include the Police Service in joint operations. The PCC will need to carefully design and closely supervise these operations. Dependent upon the establishment of a professional working relationship, and mutual respect, joint operations could be a powerful weapon in resisting corruption.

5.92 One method of undertaking active corruption investigation, which has been employed by the New York Police Department (NYPD), is Integrity Testing. This is a technique which seeks to replicate the settings in which investigators believe police officers will commit crimes. These 'stings' are used to videotape and record officers committing corrupt acts which can then be used, inter alia, to convince officers to assist in further investigations, or to identify other corrupt officers. The data collected can also be used to identify areas where corruption may exist. The Mollen Commission recommended that integrity tests be increased in the wake of its inquiries, and the NYPD has embraced the recommendation. It uses them both randomly and against specific targets.

5.93 In its submission to the Royal Commission, the Police Service maintains that intelligence based and specifically targeted integrity testing should be introduced, utilising undercover operatives, criminal informants, and electronic surveillance.³¹ The Police Service has, however, rejected the NYPD model of 'random' integrity testing which 'is considered to be of doubtful value and is attracting criticism due to the methodology employed and the statistical presentation of results'.³² This Commission does not disagree with that assessment.

5.94 Integrity testing cannot be regarded as a cure for corruption nor is it a reliable indicator of the level of corruption within a police service. It is but one method of detecting and preventing police corruption. To this end, it can only be effective if it is part of a wide-ranging corruption prevention program which focuses on education, training and accountability at all levels. Its use, in targeted situations, and with sufficient safeguards to avoid unfairness and Ridgeway³³ objections, is supported.

5.95 Another technique adopted by the NYPD is the use of 'Field Assistants', that is undercover IA agents acting in normal police duties, but filling an intelligence gathering role. They are regarded as the 'eyes and ears' of IA. Their use has attracted considerable resentment and suspicion, and a good deal of effort is applied at Precinct level to identify them. Their use is not recommended at this stage. It would be preferable to concentrate on developing the Internal Witness Support Program and changing the police culture. However, this option may need to be revisited along with random integrity testing in the Final Report.

E. EDUCATION AND CORRUPTION PREVENTION

5.96 Education and corruption prevention strategies are of critical importance to the effective reduction of police misconduct and corruption. The Police Service should retain primary responsibility for these functions. It has acknowledged that corruption prevention has not been given sufficient priority in the past and that accountability at a management level has been lacking.³⁴ The onus is now upon it to rectify that omission.

5.97 What is now needed is a co-ordinated and positive program in which professionalism, integrity and accountability are emphasised, appropriate role models encouraged, and leadership shown. The program must have life beyond the paper on which it is written, and it should not be the product of fragmented or ad hoc planning.

5.98 The Mollen Commission emphasised that a commitment to integrity must be apparent in the words and actions of the Police Commissioner, and managers and supervisors at all levels.³⁵ This Commission supports that view. Senior officers must be held accountable for corruption which occurs under their command. There should be an atmosphere in which Commanders at all levels from Senior Sergeant up are responsible for ensuring that persons under their command are acting with integrity. First line Supervisors and Inspectors will also need to exercise greater attention to individual operations to ensure their integrity, and should be held accountable for any failure to detect corrupt practices which occur in those operations.

5.99 Commanders or supervisors should not lose their heads simply because corruption is found unless its existence was due to neglect or complicity on their part. Those who do detect and deal with corruption should be given recognition for doing their job, and not criticised or disadvantaged for any embarrassment occasioned to the Service.

5.100 The recent initiatives of the Police Service concerning:

- the development of a Management Improvement Strategy and a Corruption Prevention Strategy;
- the creation of the Corruption Prevention Unit; and
- the development of a program for personal accountability;

should continue.³⁶

5.101 However, primary responsibility in respect of serious misconduct and corruption should rest with the PCC. The PCC should have online access to computerised records of the Corruption Prevention Unit. Consultation should take place on any future computer developments for this Unit (and for the CIS) to ensure compatibility of electronic data between the PCC and the Police Service.

5.102 The Royal Commission will monitor the progress of the Police Service initiatives and will deal with their implementation in the Final Report.

5.103 The PCC should be ready to make recommendations to the Police Service, from time to time, as weaknesses or corruption prevention issues emerge in the course of its investigations. However, the PCC should not have a specific educative or corruption prevention role, as that may divert it from its primary task of active corruption investigations.³⁷

5.104 ICAC should continue to deal with systems issues and corruption prevention within the public sector, and in that regard, it would continue to be an appropriate agency to deal with tender and procurement issues involving the Service, upon referral from the PCC. The Police Service should be in a position to receive the benefit of any of its work which has relevance to policing and contracting.

5.105 Training and education of recruits, and continuing education of serving police, needs to focus specifically and meaningfully on corruption and integrity. This is so fundamental an issue that it will be addressed in the Final Report, after a proper opportunity has been presented to examine the existing programs and any revision of them.

F. RESEARCH AND POLICY DEVELOPMENT

5.106 The Commission supports the establishment of the Policy and Research Unit within the OPR. That Unit should advise the PCC upon the outcomes of its research, and the PCC should be prepared to consult with it, and provide information of relevance for its work, including intelligence from investigations it completes.

5.107 One research issue which needs to be addressed is the inadequacy of current police complaints statistics. Due to the lack of consistency in the definitions, counting rules and recording practices used, it is virtually impossible to make cross-service comparisons of police complaints.³⁸

5.108 There is also a need for the Police Service, the Ombudsman and the PCC to standardise their statistics and recording procedures so as to eliminate variances of the kind currently seen in the reports of the Ombudsman and the Service.

5.109 The development of national uniform police complaints statistics would be valuable. Australasian Police Services have recognised the importance of accurate quantitative and qualitative complaints data in developing strategies for dealing with serious misconduct, and ultimately achieving enhanced police accountability.³⁹ Such statistics may be regarded by police services as key performance indicators. The inadequacy of current complaints data is a matter which the NSW Government could seek to have considered by the Police Commissioners' Conference and the Australasian Police Ministers' Council. The Australian Bureau of Statistics could be tasked with developing national uniform police complaints statistics, in a similar, consultative manner to that used in the development of the National Uniform Crime Statistics (NUCS) program.

G. OFFICE OF THE OMBUDSMAN

5.110 In the scheme proposed, the Ombudsman would retain its existing role in monitoring and reviewing police internal investigations, and in reporting to Parliament on issues concerning the exercise of police powers.

5.111 The supervisory function of the Ombudsman would be significantly improved if it were given the resources to establish an Aboriginal Complaints Unit. The Commission accepts the strength of the recent submission by the Deputy Ombudsman in this regard.⁴⁰ Such a unit could:

- focus upon the significant volume of complaints by Aboriginal people concerning police misconduct;
- research and monitor issues concerning the complex and often troubled relationship between police and the Aboriginal communities, and prepare reports on these matters;
- assist in establishing better liaison, particularly in remote areas; and
- assist in the implementation of the Police Service Aboriginal Strategic Plan and the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

H. SUMMARY OF RECOMMENDATIONS

THE POLICE CORRUPTION COMMISSION

1. A new agency, the Police Corruption Commission (PCC) should be established and charged with:
 - the detection and investigation of serious police misconduct and corruption including the oversight of NSW Police Service investigations into any such matters assigned to it; and
 - recommending preventative action arising out of any audits or inquiries conducted by it (paras. 5.30 - 5.32).
2. Two avenues of accountability should be created by the legislation governing the PCC:
 - the office of Inspector of the PCC with authority to:
 - audit operations of the PCC;
 - deal with complaints of abuse of power or other forms of misconduct on the part of its employees; and
 - report, as occasion arises, on matters affecting the PCC and its operational effectiveness or needs (paras. 5.38 & 5.39).
 - the delivery of an Annual Report by the PCC to Parliament (para. 5.40).
3. The PCC should be given the full range of coercive powers necessary to detect and investigate serious police misconduct and corruption, equivalent to those possessed by the ICAC (para. 5.33).
4. The PCC should have a full-time Commissioner, being a person qualified for appointment as a judicial officer (para. 5.45).
5. The PCC staff should comprise the same mix of multidisciplinary personnel as are currently working at this Commission, including investigators, surveillance operatives, legal officers, financial and intelligence analysts, information technology and administrative staff, but should not include members or former members of the NSW Police Service (paras. 5.47 & 5.49).
6. The PCC should be provided with its own Information Technology system, and have access to information and databanks of the Police Service and of other agencies and government instrumentalities (at least equivalent to that secured by this Royal Commission). It should have current electronic and physical surveillance equipment including a telephone interception capacity, and such other physical resources as are required by the nature of its specialised investigations (para. 5.52).
7. The PCC should be prepared to take over matters from the Royal Commission, and act as a Commission Task Force to initiate any prosecutions following on from its work (paras. 5.41 - 5.42).
8. An Implementation Working Party, comprising senior officers from the Government, the Police Service, the Office of the Ombudsman and the Royal Commission should be

established. The role of this Working Party should be to oversee, co-ordinate, and implement the recommendations of this Interim Report, including:

- the establishment of the PCC, including necessary funding, resources and staffing;
- the refinement of complaints categories based upon those proposed in this Report; and
- the transfer of holdings from the Royal Commission and ICAC to the PCC (para. 5.43).

COMPLAINTS AND CORRUPTION INVESTIGATION SYSTEM

9. The complaints and corruption investigation system should be simplified and as much of the formality and legal complexity removed as is consistent with fairness (para. 5.55).

10. A system of classification of conduct should be adopted, comprising:

- **Category 1: Serious Misconduct and Corruption:**

- behaviour which constitutes corruption and other serious criminality;
- matters warranting dismissal from the Police Service; and
- matters in which it is unlikely that there will be public confidence in an internal police investigation (para. 5.59).

Complaints within this category should be referred to the PCC, which should have a discretion to refer matters coming within this category to the Police Service, or another agency, for investigation under its supervision, or to conduct a joint investigation. It should have the power to request other agencies to cease investigations where it assumes responsibility for them (paras. 5.78 - 5.80).

- **Category 2: Misconduct:**

- serious breaches of police rules or procedures and lesser criminal conduct, which warrants investigation, and would require some sort of disciplinary action, short of dismissal if proven (para. 5.59).

The majority of matters within this category should be retained for investigation by the Police Service, with oversight by the Ombudsman. It is desirable that greater emphasis be placed on a remedial approach for these forms of misconduct and that greater responsibility for their management be accepted at a regional level (para. 5.81).

- **Category 3: Customer Service Matters:**

- lesser breaches of police rules or procedures, and matters suitable for conciliation (para. 5.59).

Most matters within this category should be capable of conciliation. Those matters which are not able to be conciliated should be investigated by the Police Service, subject to monitoring and review by the Ombudsman (para. 5.85).

- **Category 4: Internal Management Matters:**

- matters where there is no allegation or implication of misconduct but managerial action is called for (para. 5.59).

Matters within this category should be dealt with by the Police Service. A 'class or kind' agreement should be settled with the PCC and Ombudsman to determine the ambit of this category (para. 5.86).

11. Complaints received by the Police Service, the Ombudsman and the PCC, should be recorded centrally, within Central IA via the CIS. Central IA should be responsible for forwarding copies of all complaints to the Ombudsman, and those falling within Categories 1 and 2 to the PCC (paras. 5.65 & 5.68).
12. The Police Service should provide open access to its files and the CIS to the Ombudsman and the PCC (para. 5.73).
13. The PCC should notify the Ombudsman, as soon as possible, of those matters which it will take over. The Ombudsman should determine the manner in which each complaint not taken over by the PCC should be handled (para. 5.66).
14. The PCC should have the capacity to take over an investigation of any matter, within any category of complaint, at any stage. It should also have the power to dismiss at the outset those complaints which are obviously frivolous, vexatious, or without any identifiable substance (paras. 5.72 & 5.80).
15. The Police Service should strengthen its Regional IA units. The role of the Central IA unit should be confined to a supervisory, intelligence, and co-ordination role although it should retain a capacity to audit and assist Regional and Line Command investigations, and to carry out investigations in those cases where it is undesirable that they be entrusted to Regional or Line Command inquiry (para. 5.82).
16. Improved information and intelligence management, answerability by way of audit, and additional training in internal investigations should be provided for Regional and Line Command investigations (para. 5.83).
17. The OPR should have:
 - a capacity via the PIB to deploy sophisticated investigative methods, including covert techniques for the matters involving serious misconduct and corruption which are assigned to it (para. 5.84).
18. The Police Service should establish:
 - a focus expanded from inquiries reactive to specific allegations, to the examination of patterns and potential problem areas; and
 - an environment whereby experience in conducting internal investigations is regarded as a positive factor in the career path of an officer (para. 5.84).
19. The Police Service should maintain a section like the current Royal Commission Response Unit (RCRU) and a standing Liaison Committee between the Police Service, the Ombudsman and the PCC should be established (para. 5.74).

20. The PCC should be ready to target specific areas of serious police corruption, initiate investigations based upon tactical and strategic intelligence, and be in a position to audit suspect areas by proactive measures including targeted integrity testing (para. 5.89).
21. The Police Service should regularly brief the PCC on any proactive activities it undertakes, and provide intelligence which it obtains regarding serious misconduct and corruption (para. 5.91).
22. Recommendations made by the PCC and the Ombudsman for disciplinary action, system changes or corruption prevention should be referred back to the Police Service for action. If the Ombudsman or the PCC is not satisfied with the response, they should be able to report that dissatisfaction to Parliament (para. 5.87).
23. When investigations reveal the need for prosecution of criminal conduct, the PCC or the Police Service should assemble admissible evidence and furnish it to the Director of Public Prosecutions, for advice and any subsequent prosecution (para. 5.88).

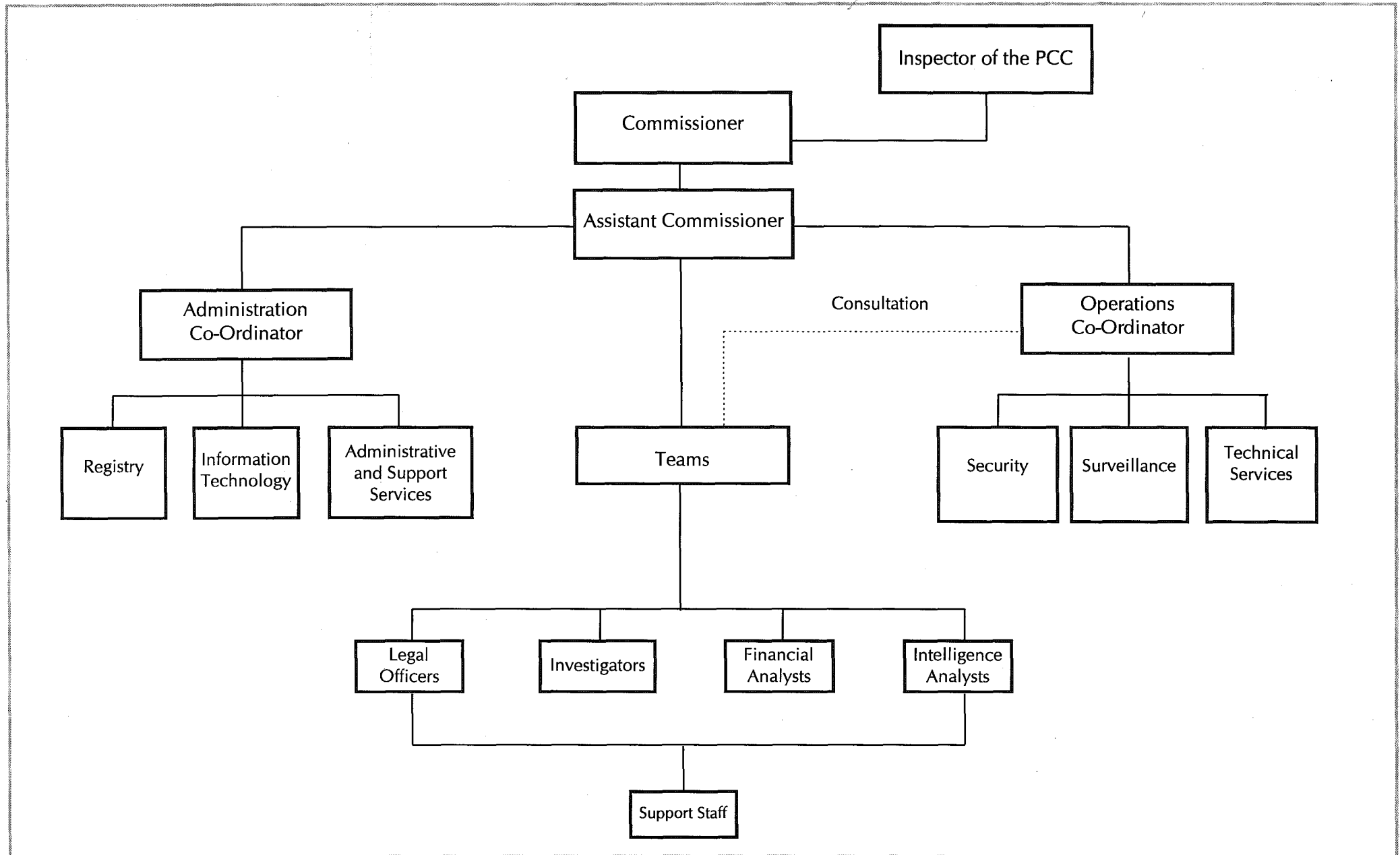
ASSOCIATED ANTI-CORRUPTION MEASURES

24. The new Command of the Police Service should adopt, as a first priority, in all matters of management and leadership, the promotion of integrity and the eradication of the negative aspects of the existing police culture.
25. Greater command accountability should be established, and recognition given to the detection of corruption and not to its concealment (paras. 5.99 - 5.100).
26. The Police Service should retain primary responsibility for education and corruption prevention strategies, but should be responsive to recommendations from the PCC and the Ombudsman arising out of their inquiries (para. 5.97 - 5.98).
27. Training and education of recruits and continuing education of serving police should focus specifically and meaningfully on corruption and integrity, as a means of ending the unacceptable aspects of the existing police culture (para. 5.106).
28. Liaison should be established between the Police Service Corruption Prevention Unit and the PCC, and online access provided to the computerised records of the Unit (para. 5.102).
29. The Policy and Research Unit within the OPR should advise the PCC upon the outcomes of its research, and the PCC should be prepared to consult with it, and provide information of relevance for its work, including intelligence from investigations it completes (para. 5.107).
30. The Police Service, the Ombudsman and the PCC should standardise their statistical and recording procedures in relation to complaints so as to eliminate variances of the kind which currently exist. The development of national uniform police complaints statistics should be explored (paras. 5.109 - 5.110).
31. Consideration should be given to the establishment of an Aboriginal Complaints Unit, within the Office of the Ombudsman (para. 5.112).

Notes

- ¹ The NSW Ombudsman provided a summary of the differences between 'complaint handling' and 'corruption fighting', see NSW Ombudsman, Submission to RCPS for Interim Report, 23/11/95, Doc. 1761203-564, Annexure 5.
- ² Reasons for this include the notorious under-reporting of complaints and the fact that, in many cases of more serious wrongdoing, there is no conventional victim to act as a complainant; see D. Dixon, Issues in the legal regulation of policing, Discussion Paper Prepared for the RCPS, 1995, Doc. 1065998, p. 27; NSW Police Service, Submission to RCPS for Interim Report re the Kings Cross Segment, 21/11/95, Doc. 1558946.
- ³ D. Landa & C. Lewis, 'Making the police accountable for their conduct', in *Australian Policing*, eds D. Chappell & P. Wilson, 2nd ed., in press, pp. 11-12.
- ⁴ Commissioned Police Officers Association, Submission to RCPS for Interim Report, 5/12/95, Doc. 1418689-712; NSW DPP, Submission to RCPS for Interim Report, 13/11/95, Doc. 1555123-25; Police Board of NSW, Submission to RCPS for Interim Report, 23/11/95, Doc. 1745824; Police Officers Association of NSW, Submission to RCPS for Interim Report, 21/11/95, Doc. 1542906; Whistleblowers Australia, Submission to RCPS for Interim Report, 14/11/95, Doc. 1555123-25.
- ⁵ NSW Ombudsman, 23/11/95, op cit.
- ⁶ As at 30 June 1995, the total staff strength of the Police Service was 16,372, comprising 13,103 sworn police officers and 3,269 administrative officers, Ministerial employees and transit police; see NSW Police Service, *Annual Report 1994-95*, p. 133.
- ⁷ In its *Annual Report 1994-95*, p. 68, the Police Service reported that during this financial year it received 5,537 written complaints, containing a total number of 10,172 complaint issues.
- ⁸ NSWCC, Submission to RCPS for Interim Report, 15/11/95, Doc. 1555282-90.
- ⁹ NSW Ombudsman, 23/11/95, op cit.
- ¹⁰ Commissioned Police Officers Association, 5/12/95, op cit; ICAC, Submission to RCPS for Interim Report, 8/12/95, Doc. 1640548-95; NSW Council for Civil Liberties, Submission to RCPS for Interim Report, Doc. 1486158-62; NSWCC, 15/11/95, op cit; NSW Ombudsman, 23/11/95, op cit; NSW Police Service, Submission to RCPS for Interim Report, 16/11/95, Doc. 1554129-86; Police Board of NSW, 23/11/95, op cit.
- ¹¹ ICAC, 8/12/95, op cit, Annexure 6.
- ¹² M. Rozenes, 'Crime Commissions and the criminal trial', *Criminal Law Journal*, vol. 19, April 1995, pp. 65-73.
- ¹³ cf. *Independent Commission Against Corruption Act 1988*, (ICAC Act), s. 14(1).
- ¹⁴ See *Royal Commission (Police Service) Act 1994*, [RC(PS) Act], ss. 6 & 7 & ICAC Act, ss. 21 & 22.
- ¹⁵ See RC(PS) Act, s. 10 & ICAC Act, ss. 23 & 25.
- ¹⁶ RC(PS) Act, Part 3.
- ¹⁷ RC(PS) Act, Part 4.
- ¹⁸ cf. ICAC Act, s. 16(3).
- ¹⁹ See ICAC Act, s. 31.
- ²⁰ See RC(PS) Act, s. 37K.
- ²¹ RCPS Term of Reference (e), the efficacy of the internal informers policy.
- ²² See *Police Service Act 1990*, s. 132.
- ²³ See *Police Service Act 1990*, s. 124.
- ²⁴ For ease of reference, a diagram is presented at the end of the section.
- ²⁵ See Chapter 3.
- ²⁶ cf. the current arrangements involving this Royal Commission under Part 6A of the RC(PS) Act 1994.
- ²⁷ NSW Ombudsman, *Inquiry into the Circumstances Surrounding the Injuries Suffered by Angus Rigg in Police Custody and into the Subsequent Police Investigation*, NSW Ombudsman, Sydney, January 1993; NSW Police Service, Report of the Inspector General's Inspection of Internal Affairs Branch, January 1993, Doc. 48049-62.
- ²⁸ These matters do not attract the operation of the complaint handling process under the current legislation.
- ²⁹ NSW Police Service, 16/11/95, op cit, Doc. 1554149.
- ³⁰ *ibid*, Doc. 1554151.
- ³¹ *ibid*, Doc. 1554153.
- ³² *ibid*.
- ³³ *Ridgeway v R* (1995) 129 ALR 41, per Mason CJ, Deane and Dawson JJ.
- ³⁴ NSW Police Service, 16/11/95, op cit, Doc. 1554134.
- ³⁵ *Report of the Commission to Investigate Allegations of Police Corruption and the Anti-corruption Procedures of the Police Department* (Milton Mollen, Chair), City of New York, 7/7/94.
- ³⁶ NSW Police Service, 16/11/95, op cit.
- ³⁷ Whistleblowers Australia, 14/11/95, op cit, Doc. 1488417-18.
- ³⁸ This point has also been raised by the CJC; see CJC, *External Oversight of Complaints Against Police in Australia: A Cross-Jurisdictional Comparison*, Research and Co-ordination Division, CJC, Brisbane, July 1995, p. 2.
- ³⁹ Ministerial Council on the Administration of Justice, *Directions in Australasian Policing July 1994 - June 1996*, November 1993, pp. 8-9. See also, Steering Committee for the Review of Commonwealth/State Service Provision, *Report on Government Service Provision*, 1995.
- ⁴⁰ NSW Ombudsman, 23/11/95, op cit.

STRUCTURE OF THE NSW POLICE CORRUPTION COMMISSION (PCC)



CHAPTER 6

ANTI-CORRUPTION MEASURES - OTHER ISSUES

6.1 The Interim Report has dealt with the investigation and detection of serious misconduct and corruption within the NSW Police Service. This chapter highlights some of the more significant matters which will be dealt with in the Commission's Final Report and which are directed towards minimising or reducing the incidence of such forms of misconduct. They are identified at this stage to provide a focus for further evidence, consultation and submissions over the remaining term of the Commission.

6.2 Some of the issues raised involve fundamental restructuring of the Service, others concern industrial relations. The Commission wishes to engage in a careful and extensive consultation process, involving the Police Service, the Police Associations, outside experts, and other police services, before reaching any conclusions in relation to them. This phase of its inquiries will, as a consequence, include both the formal and informal collection of expert opinion and evidence, and it will constitute a critical step towards the rebuilding of the Police Service in the wake of this Commission.

A. ACCEPTANCE OF CHANGE

6.3 There is a widely held perception that the NSW Police Service is unduly militaristic, a law unto itself, and possessed of undue political power and influence. Such a perception, if true, runs counter to the proper role of a police service in a democratic society, even allowing for that degree of independence which is necessary for it to enforce the law, to the letter.

6.4 The Service must now accept the need for change, and be prepared to listen to criticism. This can be effectively achieved by demonstrating that:

- it is committed to the goals which it sets for itself;
- it shuns corrupt practices and officers to the same extent that the community shuns them;
- its initial response to criticism is not strident and instinctive self-defence and attack upon the critic;
- there is not a gulf between its corporate goals and plans in theory and practice;
- it is prepared to accept modern management practice, and if necessary, a degree of civilianisation; and
- police, at all levels, who are not performing to standard, or willing to conform to the new integrity requirements, will be dismissed or encouraged to leave the Service.

6.5 The opportunity presented to appoint a new Commissioner, and other Commanders, must be used to engage senior staff who embrace these principles. The new Commissioner will need to be a revolutionary change manager capable of strategic thought, strength and vision, who can call upon executives in whom absolute confidence can be entrusted, and who in turn give their full support. Such progress as has been made will be entirely lost if the factions spoken of in an earlier history of the Service as 'Black Knights' and 'White Knights', re-establish themselves. If this means that some senior officers who are too deeply entrenched in the old ways to see corruption, or to adjust to a new regime, are shed, then so be it.

6.6 The issues to be confronted include:

- the development and adoption of a new code of integrity and professionalism, to which there is uniform commitment by the Service;
- severance from the Police Service of the corrupt, the non-performers, and those unwilling to meet the standards expected, either through dismissal or redundancy;
- the introduction of skilled management at command level and in special squads;
- the incorporation of expert civilian skills into the Service;
- the development of strategies to secure a fundamental and permanent change to the culture of the Police Service;
- the move to a structure which ensures accountability at all levels of supervision and command, and which is flatter than the present structure;
- the encouragement of accelerated promotion for those with the skills and commitment required to secure, and maintain, the essential changes;
- the re-establishment of a relationship of trust between the police and the community which they serve, and identification of the expectations which the community has of its Police Service; and
- the development of strategies to ensure that the problems identified in this Royal Commission do not re-emerge on a cyclical basis.

6.7 Securing acceptance at the top of the need for change, and a willingness to explore matters of the kind identified, will be a first step. A further significant step will be the recruitment of middle management to join in this process, since they are the police who are:

- working operationally;
- best placed to undermine or resist change; and
- the nucleus of the future senior command.

6.8 The remaining issues addressed in this Chapter concern structural aspects which impact on the effectiveness of the Service to resist the virus of corruption and serious misconduct, and to respond swiftly and appropriately when it is detected. These issues are taken up in realisation of the fact that integrity and professionalism have to be addressed

from the bottom as well as the top, and in every managerial and operational phase of the Service.

B. THE SCOPE OF DUTIES OF POLICE

6.9 It will be necessary to consider whether the range of duties expected of police should be reduced, and some of those with greater affinity to community services, assigned to other service providers. This has a relevance to the distinction being drawn in some jurisdictions, and in police studies, between community policing and law enforcement.

6.10 Issues to be taken into account could include:

- the particular demands of rural and remote areas;
- the overall efficiency of the Service and its capacity to deliver all the services currently expected of it;
- whether the problem of drug abuse should be addressed as a law enforcement matter for the police or as a matter of public health; and
- whether the Service should continue to have a role in the enforcement of regulatory matters under laws concerning health, traffic, public transport, licensing, tow trucks, prostitution and the like, particularly so far as police involvement in some of these areas opens up opportunities for abuse of power and corruption.

C. RECRUITMENT AND TRAINING

6.11 Several important issues arise for consideration, bearing in mind the importance of attracting and retaining officers of ability and integrity, and establishing a work environment in which professionalism and job commitment are to the fore.

6.12 Lateral entry should be explored not only in the context of transfer from other police services, but also in the context of recruitment of suitably qualified civilians who, after training tailored to their needs, might commence duty at a higher rank than constable, and join multidisciplinary teams in areas calling for special expertise.

6.13 A number of recruitment issues need to be addressed. These include:

- the selection and vetting process; and
- the determination of recruitment criteria appropriate for a modern police service, concerning matters such as academic qualifications, minimum and maximum entry ages, prior work experience and maturity, record of community service, and special qualifications designed to meet the needs of the Service, and to reflect a membership representative of the wider community.

6.14 Occasion also arises for examining the wisdom or otherwise of having a training course which is substantially police orientated. Options to be considered include:

- reconstituting the Police Academy with greater participation by civilian trainers, and/or expanding it to include training for other Emergency Services;
- transferring some training to an outside tertiary institution where trainees mix and exchange ideas with other members of the community, or otherwise linking in more closely with a university;
- creating greater opportunities for graduate and postgraduate training in Policing Studies and in other disciplines which might enhance the skills of police; and
- early identification of those officers with special potential for commissioned rank, for whom additional training and a fast-track promotional path could be established.

6.15 Additionally, it would be appropriate to examine the relevance and content of any course offered to recruits, and those engaged in continuing education or special training. There is a need to ensure the suitability of these courses in terms of promoting ethics and integrity, avoiding abuses of police powers, and other forms of conduct likely to generate complaints, and eradicating the negative aspects of the police culture. Courses will need to integrate ethical matters throughout the syllabus for recruit and continuing training, so as to reinforce its relevance and avoid leaving it isolated as a formal topic which, once taught, is forgotten.

D. CONDITIONS OF EMPLOYMENT

6.16 The nature of the employment contract and its terms can have a significant impact on the development and control of corruption, particularly so far as those matters serve to inhibit its emergence, or affect the response to it.

6.17 Among the issues to be considered are:

- the replacement of tenure by fixed term employment, either for all ranks or for all Commissioned Officers not currently on such contracts;
- the duration of contracts, and the desirability or otherwise of 'honesty bonuses' negotiated in enterprise agreements (it being a curious notion that a bonus should attach to job performance which does no more than accord with the law);
- the termination of contracts, or of employment, on loss of the Commissioner's confidence pursuant to statutory power of the kind embodied in the Police Service Amendment Act 1995, or as proposed in the Australian Federal Police Amendment Bill 1995;
- the compulsory supply of declarations, at the time of each renewal of contract or promotion, that the member has not engaged in any corrupt conduct, nor is aware of any corrupt conduct by any other member;
- the provision of financial statements and declarations of any conflicting interest (such as those currently provided by PSSS members, the Drug Enforcement Agency, and police involved in the Professional Responsibility Command), to be

updated regularly, and upon application for promotion, accompanied by an obligation to explain any sudden or significant changes; and

- the assessment of salary levels and allowances for special skills or duties.

E. TRANSFER AND PROMOTION

6.18 Although this will be dealt with in relation to the promotion term of reference, sufficient has emerged, by way of intelligence and evidence, to suggest that the transfer and promotion system has been used in ways which can facilitate or encourage corruption, for example:

- through cronyism or nepotism, whereby corrupt police can assemble and retain a trusted group to work with them, and then in performance reviews or letters of support, subvert the promotion and integrity vetting process; and
- through transfers of honest police by way of penalty after they have revealed misconduct, or by way of heading off the potential for discovery and disclosure by them of such conduct.

6.19 The promotion and transfer system will need to be rigorously examined for means of limiting these possibilities, and for introducing more stringent personal vetting and performance assessment.

6.20 An allied question requiring examination is the possible introduction of more rigorous rotational policies in high-risk areas, but also in other areas to prevent the inheritance of corrupt practices and the formation of corrupt groups.

6.21 In this review consideration will also need to be given to:

- the extent to which the full record of officers being considered for promotion should be available, including not sustained complaints;
- the present selection committee and performance assessment system; and
- the manner in which integrity can be given sufficient prominence in the selection, promotions and appeal processes.

F. ALLOWANCES

6.22 Another area where intelligence and evidence is available concerns the abuse of the various allowances available to police for overtime, travel, and so on. This seems to be an area where the Service has failed to appreciate the criminality which is involved in obtaining a financial benefit by deception. A review is needed to consider:

- the circumstances in which this attitude came to exist, and the manner in which it can be brought to an end; and
- the introduction of alternatives, or suitable safeguards to limit such abuse.

6.23 An associated area requiring examination is the untaxed allowance paid to operational detectives, designed to compensate them for monetary assistance or rewards paid to informants. This is an area which is vulnerable to corrupt practices. If it is no more than the product of industrial bargaining to supplement salaries, then it should be seen as such, and dealt with in a way which accords with normal salary fixing and taxation requirements.

G. RESIGNATION AND RETIREMENT

6.24 The use of exit interviews could be advantageous in terms of identifying and solving problems within the Service, and in limiting the loss of police in whom a considerable investment exists in terms of training, experience and criminal intelligence. Such interviews may well reveal pockets of corruption and other forms of misconduct which individual police were not prepared to tolerate or report, and which led to their resignation.

6.25 Existing program for rejoining the Service, and part-time Service, need to be reviewed in terms of their effectiveness in retaining the services of police of integrity and value to the Service.

6.26 On the other hand, the existing system for resignation, and retirement for medical reasons or as a consequence of a hurt on duty claim, can be tortuous, stressful and inappropriate. The process itself in some cases may be such as to guarantee the result sought, but only at the cost of unnecessary further harm. The system urgently needs review both to streamline it, to improve the quality of the decision-making, and to avoid its abuse by the corrupt, and those with fraud in mind.

H. THE CODE OF CONDUCT

6.27 More work is needed to develop a Statement of Values¹, and a Code of Conduct² in consultation with the Service and the Associations, which:

- is adopted throughout the Service, as a practical guide for the discharge of duties, starting with fundamental norms and progressing to detailed guidelines for the specific incidents of discretion and ethics, which are likely to arise;
- is sufficiently comprehensive and specific to form a basis for disciplinary action throughout the Service;
- becomes part of the police culture, replacing its negative features; and
- is more than a document to which lip service is paid.

I. POLICY, STRATEGIC DIRECTION AND MANAGEMENT

6.28 In recent years, but particularly since the creation of this Royal Commission, there has been a great deal of activity initiated by the Police Service itself, by the Police Board, or by the Ministry, designed to effect reforms in respect of:

- structures;
- management practices;
- operational readiness/effectiveness;
- training;
- promotion;
- integrity and accountability;
- career advancement; and
- strategic direction.

6.29 Also within Regions, Patrols and Squads, such as Regional Crime Squads, management, operational and anti-corruption plans have been prepared and adopted. These plans have been prepared locally, and on an ad hoc basis, although in accordance with the Service-wide expectation that it become more managerial.

6.30 The volume of reports, surveys and plans prepared is formidable, as is the number of committees variously referred to as 'planning', 'working', 'steering', 'review' and 'advisory' committees. Some of these committees have been reactive to reports of the Ombudsman or the ICAC; others seem to have been initiatives of the Service or the Police Board.

6.31 Examples of the committees or advisory bodies which have been identified, in no particular order, are the:

- Stress Working Party;
- Working Party on Personal Accountability;
- Steering Committee for Career Advancement Planning System;
- PSSSES Performance Management Working Party;
- Performance Review Sub Committee;
- Constables Competency Working Party;
- PSSSES Review Steering Committee;
- Ministerial Advisory Committee on the Police Academy;
- Review Committee to Examine the Role and Structure of the Police Academy;
- Working Party on the Review of Recruitment Standards;
- Working Party to Review Promotions System; and

- Sub Committee of the Police Board to prepare a Discussion Paper on the Milloo Reports.

6.32 Examples of the Service-wide plans introduced in recent years, or presently in the course of preparation or implementation are the:

- Corporate Plan;
- Performance Management Scheme;
- Constable Development Program;
- Outstanding Performance Program;
- Remedial Performance Program;
- Strategic Plan for the Management of Records;
- Information Technology Strategic Plan;
- Human Resources Development Plan;
- Aboriginal Strategic Plan;
- Anti-Corruption Plan;
- Implementation Management Plan; and
- Corruption Prevention Plan.

6.33 In addition to the various plans and programs by which the Police Service is regulated at a Central, Regional, District and local level, police are also expected to comply with the Police Service Regulation 1990 and the Commissioner's Instructions. These Instructions are currently contained in four boxed folders, and they are regularly amended, or added to, by way of circulars promulgated via NETMAIL and also published in the *Police Service Weekly*. Several working detectives called as witnesses displayed ignorance of the content of these various rules and directions, or an unwillingness to conform to them.

6.34 Within the Police Service itself, decisions on matters of policy and strategic direction ultimately come within the responsibility of the Commissioner, acting with the advice variously of the:

- State Executive Group (SEG), comprising the Commissioner, Deputy Commissioner, all Assistant Commissioners, Commanders and Executive Directors;³
- Executive Team, comprising the Commissioner, Deputy Commissioner, State Commander and the Executive Director of Strategy and Review;⁴
- State Commanders Action Team (SCAT), comprising the State Commander, the Region Commanders and the Commanders of Region Support, Special Agencies, and State Intelligence Group;⁵ and
- Strategic Planning Group (SPG), comprising senior executive officers, and executive officers from corporate and operational areas.⁶

6.35 Many other committees exist which together oversee the use of police resources, address issues of strategic importance, and carry out an advisory function. The 1994-95 Police Service Annual Report, in fact, records the existence of 129 current Departmental Committees.

6.36 The knowledge of this Commission, and its capacity to identify or evaluate the function of these executive and advisory groups and committees (let alone the product of their deliberations) has, at this stage, been limited. In particular, it has not yet had the opportunity to determine the extent to which any plans and programs recommended have been implemented, or had any impact, or whether the number of executive and advisory groups which exist constitute a top heavy, and inefficient bureaucracy.

6.37 What is of concern in relation to this process is:

- the apparent size and nature of the decision-making bureaucracy;
- the number of committees and advisory groups involved in setting policies and strategic directions;
- the possible lack of co-ordination in effort;
- the sheer volume of plans, instructions and regulations according to which police, at various levels, are expected to regulate their conduct, or direct others under their supervision;
- the risk that many of the plans and programs exist in word rather than action, and are little more than 'window-dressing', or self-serving statements to be relied upon when the Service is criticised; and, most importantly
- the risk that the existence of so many advisory bodies and plans has led to or encourages a complacency that all is well.

6.38 What is also of concern is that in developing these plans and programs, the Police Service, the Police Board and the Committees have had to rely heavily on serving police who, through no fault of their own, lack real managerial experience or training, and whose vision is blinkered by the fact that they have risen to senior office within a Service which by its nature, as a disciplined Service, is likely to:

- limit independence of thought, and
- be resistant to real change.

6.39 A band-aid approach which responds to issues by initiating surveys, and establishing Committees, is inefficient and undesirable. There clearly is a need for examining means to:

- streamline the executive decision-making process and bureaucracy;
- rationalise the management structure;
- co-ordinate planning;

- secure input from external sources with relevant expertise or managerial experience;
- achieve uniformity in the development and implementation of any planning process, and in the adoption of core standards;
- involve line commanders in the development of local crime management and anti-corruption plans so that they can assume ownership and responsibility for implementation;
- establish a single advisory body to critically assess the product of any reports or surveys, and to assist the Minister and the Commissioner in any process of reform from within the Service; and
- rewrite the current rules and instructions to which police are expected to conform, to reduce their bulk and to remove those which are redundant and ineffective.

6.40 Serious issues arise concerning the management and policy setting structure of the Service, and the need for an expert consultant is more than apparent. A report from such a body on the issues raised in this section would be invaluable.

J. INCORPORATION WITHIN THE PUBLIC SERVICE

6.41 Careful consideration needs to be given to the submission of the Public Employment Office concerning the possible restructure of the Police Service to make it an arm of the Public Service. The implications of such a development would be considerable, and require an assessment, inter alia, of:

- the advantages, in the rehabilitation process, of requiring all members of the Service to apply for and demonstrate their suitability for positions in the newly constituted body;
- the means by which the independence of the Office of Constable could be secured; and
- the extent to which the model of Public Service management might be more or less efficient than the traditional paramilitary style of the Police Service.

K. THE DISCIPLINARY SYSTEM

6.42 The complexity of the existing disciplinary system needs to be addressed to ensure that:

- the maintenance of an appropriately high standard of behaviour and performance becomes a key role for police management;
- the complaints and disciplinary system has a foundation of simplicity, expedition and minimum formality, subject always to fairness;
- an appropriate balance is maintained between discipline and remedial action, so that minor departures from recognised standards, and otherwise inappropriate

behaviour can be addressed in accordance with the remedial approach now expected of civilian employers;

- prompt action, which is not dependent on the disciplinary process alone is available to secure the severance from the Service of those whose integrity or fitness to continue in office has been seriously called into question;
- the present complex structure fragmenting the disciplinary process, and dividing responsibility between a large number of persons and Tribunals is rationalised and simplified, and clarity and consistency introduced in respect of matters such as the admissibility of evidence, the onus of proof, penalty, appeal and administrative review;
- complaints are managed in a way which does not treat complainants as vindictive or misguided antagonists in an adversarial system, but rather in a way which appreciates their value as a management tool for monitoring performance and identifying those members whom the Service does not need; and
- there is transparency not only of the misconduct or corruption which is discovered, but of the reasons for its emergence and of the factors which permitted it, akin to the approach taken by regulatory agencies in financial markets.

6.43 The recommendations contained in Chapter 5 assume the continued existence of the present disciplinary and review structure pending the delivery of the Final Report of this Commission, subject to administrative developments which would refine the classification of complaints, and encourage disposition by managerial action. The Commission, however, wishes to examine the disciplinary decision-making process further, and to make recommendations in its Final Report for a more streamlined and efficient system.

6.44 Issues to be considered include:

- the introduction of additional options to those currently existing (admonishment, disciplinary charge or criminal charge), whereby officers may be dealt with in a remedial fashion without a permanent black mark;
- the vesting of greater original authority for decision-making in disciplinary matters in the Commissioner, Regional Commanders, or designated hearing officers (of Chief Superintendent level)⁷, or in internal committees comprising senior police;
- the adoption of a staged approach, progressing from counselling, through admonishment, and a disciplinary charge (internal hearing) to a disciplinary charge (Tribunal hearing) which could be responsive to progressive cautioning notices⁸ or warnings;
- the appropriateness of continuing or reconstituting the Police Tribunal, as to its composition and/or jurisdiction and powers;
- the introduction of a process for screening minor matters away from formal hearings at a Tribunal, and remitting them for internal determination by the Commissioner, Regional Commander or more immediate Commander;

- the continued involvement of GREAT in the disciplinary and promotional appeal process;
- the creation of a new Tribunal with a single original jurisdiction for all matters concerning police of a disciplinary or employment kind;
- the establishment of an administrative review procedure or a more relevant single line of appeal, uniform for all officers and applicable to every decision affecting discipline or employment;
- the use of assessors with experience in matters of policing to assist any disciplinary or appeal Tribunal;
- the adoption of a more relevant onus of proof, and of an inquisitorial approach;
- re-examination of the admissibility of information received from police, and statements made in the course of disciplinary action; and
- the introduction of a procedure for summary dismissal.

L. POLICE PROSECUTORS AND IN-HOUSE LEGAL ADVICE

6.45 A question arises as to the appearance of impartiality, and potential for corruption which exists when the Police Service:

- relies substantially on in-house legal advice, in determining whether disciplinary charges should be preferred, or whether matters should be referred to the DPP for possible criminal prosecution; and
- uses members of the Police Prosecuting Branch (only about 20% of whom are legally qualified and admitted to practice) to prosecute the majority of summary matters,⁹ particularly having regard to the recent increase in matters which can be dealt with summarily¹⁰

6.46 Options to be considered include:

- assigning all legal work in relation to advice on disciplinary matters and the carriage of those proceedings to the Office of the Crown Solicitor;
- assigning all prosecutions to the Office of the Director of Public Prosecutions, as a specialist prosecution agency, being a body separated from the investigative process, and whose members are all legally qualified and admitted to practice; and
- the introduction of measures whereby suspicion of serious misconduct or corruption, arising on reasonable grounds in the course of criminal trials, might formally be brought to the notice of the PCC and the Police Service, by prosecutors and judicial officers.¹¹

M. CIVIL RECOVERY

6.47 Yet another matter requiring attention is the establishment of an effective system whereby the proceeds of corrupt conduct can be recovered by the State. A number of options exist, including:

- use of powers such as those exercised by the NSWCC and other law enforcement agencies to seize and recover the proceeds of crime;
- the creation of a right for civil recovery; and/or
- claw back of superannuation, pensions or entitlements.

N. THE POLICE UNIFORM

6.48 In some police services, the majority of members wear uniforms and are identifiable as police, plain clothes being reserved for those categories of work where anonymity is desirable. The question arises whether the visibility and discipline of the uniform introduces greater awareness of the need to act according to proper standards, and lowers the risk of corruption.

6.49 This needs to be explored, as the impression gained so far is that the incidence of corruption is less in frequency and seriousness for uniformed (and country) police than it is for detectives. Whether this is due to a real difference in the work environment, or to a difference in the police cultures for uniformed police and detectives, or is an inheritance from the former CIB, is a relevant consideration.

O. INFORMANTS AND REWARDS

6.50 Sufficient has been received by way of intelligence and evidence to suggest serious deficiencies in the implementation of the Informants Management Plan. Problems identified relate to:

- simple non-observance, for the reason that some detectives are unwilling to accept the wisdom or efficacy of the plan;
- the absence of supervision as to compliance;
- manipulation of the system by false contact reports to backup letters of comfort for criminal associates; and
- sharing of rewards, or the submission of false reward or sustenance claims.

The system needs further examination.

P. POLICING OF MINORITIES

6.51 This is an important existing term of reference (the impartiality term) and it will be looked at separately. It does have a particular relevance to the disciplinary system and the anti-corruption stance of the Service since:

- some minority or disadvantaged groups are particularly vulnerable by reason of their limited resources, cultural backgrounds, or unfamiliarity with the English language, to extortion and corrupt conduct on the part of police, yet lack an effective capacity to complain; and
- verbal and physical harassment, insult and intimidation of these groups tends to be more pronounced either because of bias or ignorance of racial, cultural and gender issues.

6.52 Matters such as access to the complaints system, liaison officers and the like need to be carefully addressed, not only for their relevance to the complaints system, but also for effectiveness of the Service in policing generally.

Q. COMPUTERISED CRIMINAL RECORDS

6.53 Complaints have regularly been made by judicial officers, and others engaged in the criminal justice process, as to the complexity, inadequacy and inconsistencies of the existing computerised criminal records. A real potential exists for error, and also for corruption by the presentation of a sanitised or altered record. Review of this system is urgent.

R. SUBSTANCE ABUSE

6.54 There is evidence and intelligence available to suggest the existence of significant drug abuse within the Service, particularly among young police. There is a risk of it supplanting the abuse of alcohol, which has in the past been an occupational hazard for many police.

6.55 Occasion now arises for an examination of:

- the circumstances, including stress, and social pressures, which lead to the use by police of drugs and alcohol;
- the introduction of random and targeted drug and breath testing; and
- the manner in which the Service should deal with those police who are detected using drugs, or who seek assistance for a drug or alcohol problem.

6.56 The issue is important having regard to:

- the incompatibility between the use of substances which can impair judgment and co-ordination, and duties which call on an officer to drive a motor vehicle, to respond to emergencies, and possibly to handle weapons;

- the risk of an officer, who is a user of illegal substances, being compromised or blackmailed;
- the reduced commitment of such an officer to drug law enforcement;
- the possibility that such an officer will readily join in schemes for protecting suppliers;
- the likelihood of a proliferation in the use of drugs, as a result of the close relationships in which police work; and
- the need for the Service to maintain discipline.

S. THE POLICE BOARD

6.57 The role of the Police Board and its composition needs also to be considered so far as it participates in setting policies, selecting appropriate senior officers for promotion, evaluating their performance, and participating in the development or supervision of the education and training programs of the Service.

6.58 The concept of an independent body providing policy advice and assistance in these areas has obvious attractions, but it will be necessary to look closely at the Board's achievements or otherwise, in order to:

- identify whether it has been fully and accurately informed by the Service;
- evaluate its future and any wider or different role it could perform;
- determine whether it should have a full time chairman and an expanded support staff; and
- assess whether it has sufficient powers to fulfil the functions given to it.

T. CONCLUSION

6.59 The foregoing, which is by no means an exhaustive list of the relevant structural matters, is a substantial menu for consumption, but no item within it can be overlooked. This Commission would have wasted its time if at the end of the day it had done no more than:

- identify and cause the removal of a group of police (no matter how large) who were either corrupt or unfit to remain in service; and
- recommend a structure for the detection and investigation of those guilty of serious misconduct or corruption.

6.60 That approach would provide only a safety net with less holes than the existing system. It would allow corruption in the same form, or in an even more evil form, to reappear, as has been the experience with the New York Police Department with its twenty-year cycle of corruption, inquiry and reform. It would ignore the more important issue of establishing a system and culture which will neither permit nor tolerate corruption and serious misconduct but is prepared to recognise and reward integrity. If anti-corruption

measures are confined to a negative hard-line approach, the result may only be antagonism and resentment and alienation of the honest police who seek support and encouragement.

6.61 If anything has been learned from the history of inquiries into the NSW Police Service, commencing with the 1867 Inquiry into Relationships between Police in the Braidwood District and Bushrangers,¹² extending through the Studley-Ruxton,¹³ and Maxwell Royal Commissions of the 1950s,¹⁴ the Moffitt¹⁵ and Lusher Inquiries¹⁶ of the 1970s, to the more recent ICAC inquiries,¹⁷ it is that the simple public disclosure of serious misconduct and corruption, accompanied by policy recommendations specific to the matters unearthed, will not guarantee any long-term remedy. What is needed is attention to:

- the reasons for the emergence of these problems;
- the mechanisms which failed, or permitted their occurrence;
- the change to structures and procedures needed to inhibit their re-emergence, and to act as an early warning signal; and
- most importantly, the processes by which those changes should be implemented.

6.62 This will be the approach taken for the remainder of this Inquiry. It is one which calls for a study, from an historical perspective, of the environment in which the Service works and of the forces from both within and without, which affect its behaviour and responsiveness to change. It is also one which calls for examination of the structure of the Service as a whole, to ensure that every possible area of vulnerability is shored up and an integrated, effective, and manageable system left.

6.63 The Commission looks forward to assistance and submissions from as diverse a group as responded to the Interim Report, as well as the support of the honest and dedicated police within the Service, in dealing with these issues over the remainder of its term.

Notes

- ¹ This was developed by the Commissioner's Policy Unit around 1985 and was incorporated into the Police Service Act in 1990, see J. K. Avery, Statement to RCPS, 1/12/94, Doc. 207570.
- ² The present code is adopted under contract by PSSES officers and by some special units.
- ³ B. Gibson, Ex. 21 Statement to RCPS, Doc. 196073, para. 7.6.1.
- ⁴ NSW Police Service, *Annual Report 1994-1995*, p. 18.
- ⁵ *ibid.* It is understood that the SIG no longer exists.
- ⁶ *ibid.*
- ⁷ See Victoria Police, *Discipline Procedures Manual*, 31/8/94, Doc. 84574; T. W. Collins, *Transformation of the New South Wales Police Service Complaints and Discipline System* (unpub.) Doc. 1652651-52.
- ⁸ *ibid.*
- ⁹ Legal Aid NSW, Submission to RCPS for Interim Report, 8/11/95, Doc. 1488536.
- ¹⁰ *Criminal Procedure Amendment (Indictable Offences) Act 1995*, as discussed in Legal Aid NSW, *op cit*, 8/11/95, Doc. 1488536.
- ¹¹ Legal Aid NSW, 8/11/95, *op cit*, Doc. 1488535.
- ¹² Commissioner Appointed to Inquire into the State of Crime in the Braidwood District (Campbell, reported 1867)
- ¹³ Royal Commission of Inquiry into Certain Matters Relating to David Edward Studley-Ruxton (Dovey, reported 1954)
- ¹⁴ Royal Commission On Liquor Laws In New South Wales (Maxwell, reported 1954)
- ¹⁵ Royal Commission Into Organised Crime In Clubs In New South Wales (Moffitt, reported 1973)
- ¹⁶ Commission of Inquiry into New South Wales Police Administration (Lusher, reported 1981)
- ¹⁷ For example, the Investigation into the Relationship between Police and Criminals (Millloo, reported 1994), and other ICAC inquiries which dealt with confined issues.

TERMS OF REFERENCE (CONSOLIDATED)

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To the Honourable James Roland Tomson Wood

We hereby, with the advice of the Executive Council, appoint you as sole Commissioner to make inquiry into the operations of the New South Wales Police Service, with particular reference to:

- (a) The nature and extent of corruption within the Police Service, particularly of any entrenched or systemic kind.
- (b) The activities of the Professional Responsibility and Internal Affairs Branches of the Police Service in dealing with any problems of corruption and internal investigations generally.
- (c) The system of promotion in the Police Service.
- (d) The impartiality of the Police Service and other agencies in investigating and/or pursuing prosecutions including, but not limited to, paedophile activity.¹
- (d1) Whether any members of the Police Service have by act or omission protected paedophiles or pederasts from criminal investigation or prosecution and, in particular, the adequacy of any investigations undertaken by the Police Service in relation to paedophiles or pederasts since 1983; however, you may investigate any matters you deem necessary and relevant which may have occurred prior to 1983.
- (d2) Whether the procedures of, or the relationships between, the Police Service and other public authorities adversely affected police investigations and the prosecution, or attempted or failed prosecution, of paedophiles or pederasts.
- (d3) The conduct of public officials related to the matters referred to in paragraphs (d1) and (d2).

¹ On 21 December 1994 His Excellency the Governor issued further Letters Patent to include sub-paragraphs (d1) to (d3) to be read in conjunction with Paragraph (d).

- (e) The efficacy of the internal informers policy.
- (f) Any other matters appertaining to the aforesaid matters concerning possible criminal activity, neglect or violation of duty, the inquiry into which you consider to be in the public interest.

AND WE declare that, for the purpose of these Terms of Reference, a reference to the Police Service includes a reference to the Police Force of New South Wales before its dissolution by the Police Service Act 1990.

AND OUR further will and pleasure is that you do, as expeditiously as possible, but in any case on or before 30 June 1996, deliver your report in writing of the results of your inquiry to the office of Our Premier at Sydney.²

AND IT IS HEREBY DECLARED that section 17 of that Act shall apply to and with respect to the said inquiry.³

IN TESTIMONY WHEREOF, we have caused Our Letters to be made Patent, and the Public Seal of Our State to be hereunto affixed.

WITNESS His Excellency Rear Admiral Peter Ross Sinclair, Officer of the Order of Australia, Governor of the State of New South Wales in the Commonwealth of Australia.

Dated this 13th day of May, 1994.

A.M. Gleeson
By Deputation from
His Excellency the Governor

By His Excellency's Command
John Fahey
Premier

² On 16 May 1995 His Excellency the Governor issued further Letters Patent to permit the Royal Commissioner to issue Interim Reports and to defer the date for the Final Report to 31 December 1996.

³ On 30 November 1994 His Excellency the Governor issued further Letters Patent to the effect that the word "Act" refers to the Royal Commissions Act 1923.

RELEVANT LEGISLATION

The Royal Commission into the New South Wales Police Service is regulated pursuant to the following NSW legislation:

- *Royal Commissions Act, 1923*
- *Royal Commission (Police Service) Act, 1994*
- *Royal Commission (Police Service) Amendment Act, 1994*

In order to enhance its investigative powers, amendments have been secured to several Commonwealth Acts and statutory instruments. These include:

- *Royal Commission into the New South Wales Police Service (Access to Information) Act, 1994*
- *Financial Transaction Reports Act, 1988*
- *Telecommunications (Interception) Act, 1979*

Additionally, arrangements have been established, under Memoranda of Understanding, with many State and Federal law enforcement agencies, and government departments and instrumentalities, for access to information and records. The Commission has in place mechanisms for protection of secrecy, and for recording, and destruction, in accordance with Statute, of the product of listening device intercepts, and of telephone intercept material disseminated to it by other agencies.

AMNESTY

On 29 November 1995, with the approval of the Government, and with the support of the Opposition and the Police Associations, an amnesty was announced, whereby, subject to certain exceptions and conditional upon full co-operation with the Royal Commission, police guilty of corruption or misconduct might be permitted to resign from the Service and avoid prosecution. The amnesty remains open until 9 February 1996. Its terms are as follows:

1. The Royal Commissioner will give favourable consideration to recommending indemnity from criminal prosecution and acceptance of resignation for serving police officers. However, this offer is available if and only if:

- (a) application in proper form; and
- (b) unconditional tender of resignation from the Police Service

are received by the Royal Commission not later than 5.00pm on 9 February 1996.

2. To be in proper form the application shall be by way of an induced statement, verified by statutory declaration. The statement shall:

- (a) contain full and complete disclosure of all acts of corruption in which the applicant was involved, and of which the applicant has knowledge;
- (b) represent the evidence which the applicant could give if called before the Royal Commission or in disciplinary, civil or criminal proceedings: and
- (c) contain an acknowledgment as contemplated in paragraph 3 below.

3. This offer is made on the basis that the applicant would understand, and acknowledge expressly in the statement, that the statement is available for use in hearings of the Royal Commission and in any civil, criminal or disciplinary proceedings against third parties in which the applicant may be called to testify. Subject to this, the statement could not be used against the applicant, nor would any derivative use be made in civil or criminal proceedings against the applicant, other than proceedings in respect of the falsity of the statement or for the purpose of establishing the falsity of evidence given by the applicant as a witness.

4. The Royal Commissioner will, as soon as practicable, consider any application duly made and inform the applicant of the outcome. If satisfied of the truthfulness of the disclosures and that the applicant's culpability, or misconduct in dealings with the Royal Commission, is not so heinous as to disqualify the applicant for consideration of indemnity the Royal Commissioner will recommend:

- (a) to the Attorney General that an indemnity from prosecution be issued with respect to the acts disclosed; and

- (b) to the Commissioner of Police the acceptance of the said resignation.
- 5. The Attorney General will consult with the Director of Public Prosecutions and give great weight to the Royal Commissioner's recommendation relating to indemnity.
- 6. If an indemnity from prosecution is issued it will be subject to revocation if:
 - (a) there was not full and complete disclosure;
 - (b) the applicant wilfully and falsely implicated any person in the disclosures; or
 - (c) the applicant failed to give evidence in accordance with the statement in trials or proceedings against other persons as and when required or otherwise failed to comply with the reasonable requirements of the Director of Public Prosecutions.
- 7. The Chairman of the NSW Crime Commission is fully supportive of this proposal and has agreed to give great weight to the recommendations of this Commission in relation to the initiation of any proceedings for the recovery of the proceeds of criminal activity.

LIST OF SUBMISSIONS

- Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission; Western Aboriginal Legal Service; South Coast Aboriginal Legal Service; NSW Deaths in Custody Watch Committee (including supplementary submission)
- Australian Drug Law Reform Group
- Australian Institute of Criminology
- Australian Law Reform Commission (including supplementary submission)
- Avery, John
- Bryett, Keith: Institute of Criminology & Criminal Justice, The Queen's University of Belfast
- Collins, Peter: Leader of the Opposition
- Collins, Chief Supt. T.W: District Commander, Northern Rivers, NSW Police Service
- Commissioned Police Officers' Association
- Director of Public Prosecutions (including supplementary submission)
- Findlay, Prof. Mark: Foundation Professor of Law, University of the South Pacific
- Homel, Prof. Ross: Head, School of Justice Administration, Griffith University
- Independent Commission Against Corruption
- Inner City Legal Centre; Kingsford Legal Centre; Sydney Youth Services
- Justice Action (including supplementary submission)
- Legal Aid Commission of NSW
- Lewis, Colleen: Associate Researcher, Centre for Australian Public Sector Management, Griffith University
- Ministry for Police
- NSW Council for Civil Liberties
- NSW Crime Commission
- NSW Police Service (including supplementary submission)
- Office of the Ombudsman, NSW (including supplementary submissions)
- Police Association of NSW
- Police Board of NSW
- Prenzler, Dr Tim: Lecturer, School of Justice Administration, Griffith University
- Public Employment Office
- Redfern Legal Centre
- Whistleblowers Australia

Several confidential submissions have been received which are not listed.

LIST OF WITNESSES APPEARING BEFORE THE ROYAL COMMISSION

The Commission opened its public hearings on 24 November 1994, and between then and 25 January 1996 sat on 165 days in Sydney and on 25 days at Lismore. The witnesses called in alphabetical order were as follows:

ADAMS John Milton	CUSHION John Ian
ALLEM Lewis	DEMOL Duncan Grant
ALLUM Edward Walter John	DEPPELER Brett Alan
ANDERSON Robert Charles	DEVINE Peter Joseph
ANTILL Barry	DILLON Daniel Peter
ARMATIS Steve	DISKIN Graham John
AVERY Kenneth John	DONALDSON William Raymond
BAILEY Gary James	DONOVAN Cynthia Maree
BARAKAT Rod	DOUEIHI Joseph John
BARKER Gloria Jessie	DUNKLEY Paul Graham
BAYEH Bill	EADE Wayne James
BAYEH Louie	EASTWOOD Thomas Ross
BEAUMONT Gordon John	ECKSTEIN Paul George
BENDT Herman	EDGERTON Kenneth Leonard
BEST Roger Anthony	EVANS Christopher
BH1	EVERSON Judith Ann
BH2	FARRELL Richard Maurice
BIDDLE John Gregory	FERGUSON Mark Edward Clyde
BIGG Belinda Joy	FIRMAN Wayne Francis
BIGG Malcolm Lorne	FITZGERALD Glen Edward
BINGE Allen Ralph	FITZGERALD Sandra Helen
BLANCH Brian Anthony	FOSTER John Robert
BOYD Gregory Stuart	FOWLER Graham James
BRIDGE Neil Maxwell	GALLAGHER Peter
BROWN Cory Robert	GAZZARD John Michael
BROWN Peter Raymond	GDU2
BUNDY Harold Charles	GDU4
BURGESS Laurence John	GDU5
BURKE John William	GDU6
BUTCHER Frances Ann	GDU8
CAINES Danny Stephen	GDU9
CARROLL Jennifer Joan	GDU10
CAVASINNI Francesco	GDU11
CHAHINE Emile	GEORGE Peter William
CHAPMAN Wayne Robert	GIBSON Bruce
CHAPPLE Brian James	GIBSON Warren Bruce
CHARLES Paul William	GIOVANNONE Phillip
CHUDLEY Paul Martin	GOOLD Gregory Joseph Patrick
CISERA Robert Anthony	GORDON Michael Graham
COLLIS Brian Stanley	GRANT Victor James
CORNELIUS Jennifer Rose	GRAY Michael Andrew
COX Peter John	GRIFFITHS Terrance

GRINTER Peter William	KENEALLY Gerald
HADGKISS Nigel	KERR-THOMSON Timothy Andrew
HAKEN Trevor David	KING David Maurice
HALL Sydney James	KX1
HANBIDGE Robert John	KX3
HARDAS Spyrou aka Steve Hardas	KX5
HARDIN Paul	KX6
HARDING Brian	KX7
HARTMANN Brett Geoffrey	KX8
HATFIELD Wendy	KX9
HAY Arthur Raymond	KX10
HILTON John Miller Napier	KX11
HOGGETT Geoffrey David	KX12
HOLLES Francis Dominic Logue	KX13
HOOK Kathleen May	LAIRD Dianne Ivy
HURST Christopher Robert	LAIRD Robert Peter
HW1	LANGTON David John
IBRAHIM Hassam	LAUER Anthony Raymond
IBRAHIM John	LEECH Gary Martin
INKSTER Robert Bruce	LEWIS Terrence Peter
ISON Ian Frederick	LYNCH Andrew Brian
ISON Leslie James	LYONS Bruce Edward
JARRATT Jeffrey Thomas	LYSAUGHT Robert James
JENNINGS John Kerry	McAULIFFE Phillip Anthony
JOHNSON Wayne George	McCLOSKEY James Hayes Felix
JONES Paul Douglas	McCORRISTON Lorna
JTF1	McDONALD Albert
JTF2	McDONALD Andrew John
JTF4	McDOUGALL Glen Bruce
JTF6	McDOUGALL Raymond John
JTF7	McGOLDRICK Francis Brian
JTF8	McHUGH Robert John
JTF9	McINTYRE Robert Errol
JTF10	MACKELLAR Clive Ronald
JTF11	McPHERSON Leonard
JTF12	MAGUIRE David James
JTF13	MAHER Ronald Edward
JTF14	MAHONEY Reginald
JTF15	MAKRIS Roula
JTF16	MATTHEWS Gary Patrick
JTF17	MEIZER Geoffrey Robert
JTF18	MEREDITH Brian Joseph
JTF19	MERHI Phillip John Robert
JTF20	MICHAEL Tanya Lynette
JTF21	MIDDLETON Gary John
KALLS Con	MISKELL John Patrick
KARIPIS Pandelis aka George Page	MK2
KEEN Christopher Patrick	MOELLER Heinz Jurgen
KELLY Peter Michael	MONTGOMERY John Edwin
KELLY Timothy John	MOONEY Colin Bryce

MOONEY Grace
MORONEY Kenneth Edward
MOSS Anthony Gavin
MOSS Terrence William
MOUBARAK Joe Mark
MOURAJANIAN Garry
MUNRO Robert John
MURPHY Christopher
MURPHY John William
NICHOLLS Mavis Elsie
NIXON Christine
O'CONNOR Todd Anthony
O'HAGAN John
O'NEILL Graham James
O'SULLIVAN Anthea
O'SULLIVAN Michael John
OLDFIELD John Barrie
OLDFIELD Ninette Judith
OLIVER Michael Geoffrey
ORR John Morgan
PAYNTER Richard James
PENDLEBURY Geoffrey Joseph
PENTLAND Stephen Mark
POSTLEWRIGHT Georgiana Beth
POULDEN Mark Alexander
POULOS Karen
QUEENAN Paul Vincent
QUINCE Kenneth Edward
QUINN Brian Gerard
RAMMA Imants
RANDELL Michael Neil
REIBELT Donald George
REID Reginald John
RICHARDSON Glenn Stuart
RICHEY Peter Kevin
ROFFEY Suellen
RYAN Nathaniel Phillip
SAID Gary Douglas
SANDERSON David Charles
SASSINE Joseph
SCHUBERG Geoffrey Esmond
SCOTT Anthony George
SCOTT Lola Ann
SCULLION Neville John

SIDGRAVES Anthony John
SMALL Robin Barrett
SMITH Anthony Howard James
SOUTHWELL Raymond John
SPENCER Gary Adam
SPOSI Janice
STARR Michael Charles
STAUNTON Charles Joseph
STAVROU Steve
STEN Maria Margaret
STOCKMAN Jason William
STOERR Henry
SWAN John Gordon
TAYLOR Neil Owen
TAYLOR William John
THOMAS Bruce Maxwell
THOMPSON Dennis Kimble
THOMS John Carson
TIDEY Gabrielle Grace
TULLY John William
TUZIAK Peter Vincent
VAGO Leslie
VICARY Greig Robert
VICTORIA 1
VICTORIA 2
VON LIEVEN Hans
WALKER Ivan Darryl
WALL John
WARE Stuart Roland
WATSON Christopher Heath
WATSON Paul Andrew
WHEADON Gregory John
WHEELER Deanne Maree
WHITMORE Paul Robert
WILLIAMS Bruce Haldane
WILLIAMS Wendy
WILLS Michael Geoffrey
WILSON Michael Hugh
WOODLEY Robert Leonard
YATES Phillip John
YOUNAN Michael
YOUNAN Raymond
YOUNG Peter
ZUCCHETTO Alex

There were 23 further witnesses in respect of whom orders suppressing their names were made, and one witness whose evidence remains in camera.

PRIOR SIGNIFICANT REPORTS DEALING WITH OR TOUCHING ON POLICE CORRUPTION IN NSW

The following is a selection of significant reports which have touched on the management of, and integrity or corruption in, the NSW Police Service. It is by no means exhaustive.

Commonwealth Royal Commissions

- Royal Commission of Inquiry into Drug Trafficking (Stewart, 1983)
- Royal Commission of Inquiry into Alleged Telephone Interceptions (Stewart, 1985)
- Royal Commission into Aboriginal Deaths in Custody (Muirhead/Johnston, 1987-1991)

New South Wales Select Committees, Inquiries and Royal Commissions

- Commissioners Appointed to Inquire into the State of Crime in the Braidwood District (Campbell, 1867) - This focused on the "intimacy and familiarity" between police and bushrangers.
- Royal Commission on Alleged Chinese Gambling and Immorality and Charges of Bribery Against Members of The Police Force (Manning, 1892)
- Royal Commission on the Administration of the Law by Police regarding Disorderly Houses in Newcastle (Edmunds, 1912)
- Inquiry under the Police Inquiry Act, 1918 (Street, 1918) - Whether fictitious evidence was concocted by or with the knowledge of the police during a criminal case.
- Royal Commission of Inquiry into Allegations Against the Police in Connection with the Suppression of Illicit Betting, [and] into certain matters arising from the [first] Report of the Royal Commission..., [and] into certain cases heard before the Royal Commission...based upon fresh evidence (Markell, 1936-1938)
- Royal Commission of Inquiry into the Reasons For and Circumstances Surrounding the Transfer of Sergeant Second-Class Alfred John Keogh from Peak Hill to Bathurst (Kirby, 1947)
- Royal Commission of Inquiry into Certain Matters Relating to David Edward Studley-Ruxton (Dovey, 1954)
- Royal Commission on Liquor Laws In New South Wales (Maxwell, 1954)
- Royal Commission into Organised Crime in Clubs in New South Wales (Moffitt, 1973)
- Royal Commission into Drug Trafficking (Woodward, 1980)
- Commission of Inquiry into New South Wales Police Administration (Lusher, 1981)
- Special Commission of Inquiry into the Police Investigations of the Death of Donald Bruce Mackay (Nagle, 1986)
- Select Committee of the Legislative Assembly Upon Prostitution (Rogan, Chairperson, 1986)
- Royal Commission of Inquiry into the Arrest, Charging and Withdrawal of Charges Against Harold James Blackburn and Associated Matters Therewith (Lee, 1990)

Independent Commission Against Corruption (ICAC) Reports

- Investigation Relating to the Raid on Frank Hakim's Office (1989)
- Investigation into Sutherland Licensing Police (1991)

- Investigation into Harassing Telephone Calls Made to Edgar Azzopardi (1990)
- Investigation into Police and Truck Repairers (1991)
- Investigation into the Use of Informers (1993)
- Investigation into the Relationship between Police and Criminals (1994)
- Investigation into Matters Relating to Police and Confidential Information (1994)

NSW Ombudsman Special Reports

- Report on the limitations re: handling complaints against police - Tow Truck Racket (1982)
- Report on the limitations re: handling complaints against police - Blank Search Warrants (1982)
- Report concerning allegations appearing in various recent media reports and statements by the Minister for Police that the police complaint system is being abused (1987)
- Special Report to Parliament on the First Three Years of the New Police Complaints System (1987)
- Report on the failure to comply with recommendations contained in a final report under s.28 of the Police Regulation (Allegations of Misconduct) Act (1987)
- Report on the failure of Commissioner of Police to implement recommendations made by the Ombudsman in a report on the investigation of a complaint by Dr A Refshauge MP, about police conduct during the Redfern Riots of 2 & 3 November, 1983 (1987)
- Report on the failure to obtain evidence adequate for the successful prosecution of a police officer charged with assault occasioning actual bodily harm (1990)
- Report on the failure of the Commissioner of Police to take satisfactory action in relation to previous recommendations of the Ombudsman concerning a review of the Special Weapons and Operations Squad procedures and instructions (1990)
- Section 31 Report: Public Interest in Releasing the Ombudsman's Report on Operation Sue (Redfern Raid) (1991)
- Inquiry into the circumstances surrounding the injuries suffered by Angus Rigg in police custody and into the subsequent police investigations (1993)
- Report on Improper Access and Use of Confidential Information by Police (1994)
- Special Report to Parliament on Police Internal Investigations - Poor Quality Police Investigations into Complaints of Police Misconduct (1995)
- Special Report to Parliament on Race Relations and Our Police (1995)
- Special Report to Parliament on NSW Police Complaints System (1995)

In addition, there have been several external inquiries under the Crimes Act, into specific convictions, in the course of which police methods, and investigations, have come under scrutiny.