

## POLICE INTEGRITY COMMISSION

### NSW Police Oversight Framework

1. Australia has a number of police and police like agencies:
  - the Australian Federal Police enforces the Commonwealth criminal law and protects Commonwealth and national interests from crime in Australia and overseas – also provides community based policing in a number of Australian Territories
  - there are 7 State and other Territory Police which provide community based policing
  - a number of national and state based agencies which proactively address major crime, usually with the assistance of special powers not usually available to Police – for example, powers to conduct hearings, require production of documents

#### *The Police Oversight Framework*

2. NSW Police Force is the largest police force in Australia with 19,000 sworn and unsworn officers, predominantly in the three major centres of Sydney, Wollongong and Newcastle, but also most townships.
3. NSW Police is oversighted by, to some extent, or accountable to, a range of organisations and parliamentary or community entities – for example, the Audit office in terms of Financial Management, the Parliamentary Budget Estimates Committees for effective application of resources.
4. The emphasis in this paper is on the oversight arrangements put in place to deal specifically with police corruption and other forms of misconduct. This oversight is handled in NSW by two agencies, the Office of the NSW Ombudsman and the Police Integrity Commission.
5. This framework, involving these two agencies arose from a series of recommendations made by the Royal Commission into the New South Wales Police Service (the Royal Commission) in its Interim Report of February 1996 which noted evidence of systemic corruption. The current framework has been in place since 1997.
6. The roles for the Commission and the Ombudsman are quite different, yet complementary. The Ombudsman concerns itself with issues of administrative efficiency and decision making within NSW Police and other NSW public sector agencies. It is a complaints administration body where complainants have certain legal rights to be informed of action taken, there is regular communication with complainants and relative openness.
7. Investigation of complaints is not a substantive role of the Ombudsman and, when they do conduct an investigation it tends to concern complaints arising from

day to day policing (management of a critical incident eg.), as distinct from corruption (drug dealing eg.).

8. The Commission, however, is a specialist investigative agency with special powers and resources to assist detect, investigate and prevent police corruption. The Commission's investigations are most usually covert and continuing contact with complainants is most unlikely. Complaints administration is not a substantive role for the Commission, but rather a means for facilitating the Commission's role in investigations and its focus on serious police corruption.

9. Commission investigations can originate from complaints, however, they also arise from information derived from a number of other sources including existing Commission investigations, information from other agencies, or, developed from an analysis of available data – eg. assessments of unusual cash transactions, inappropriate relationships – but not otherwise connected with a complaint.

10. The oversight system facilitates the Commission's focus on serious police corruption by requiring NSW Police and the Ombudsman to refer all serious complaints (Category 1 Complaints) to the Commission. The Commission makes a decision whether:

- to investigate
- to review any subsequent investigation by Police or
- refer the complaint to the NSW Police with oversight by the Ombudsman

11. The Commission investigates the most serious complaints and reviews the investigation by NSW Police of a small proportion of the remainder. However, the majority of complaints of police misconduct are investigated by NSW Police and reviewed by the Office of the Ombudsman.

12. The advantages of this framework are that:

- The roles allow the Commission complete discretion to focus its efforts and specialist powers and resources on the most serious forms of corruption – the very reason for its establishment – its role is undiluted by legislated obligations to manage a complaint handling process.
- The arrangements are flexible, allowing the Commission to review those police misconduct investigations which are particularly relevant to its work or where it has an advantage over the Ombudsman in doing so, thereby eliminating duplication of effort.
- The Ombudsman is resourced to enable it to review the vast majority of NSW Police investigations into serious police misconduct (up to 5000 annually and increasing).
- The separation of the investigations and complaint administration functions in two agencies means that the functions are not internally competing for resources.

13. Potential disadvantage is the possibility of duplication of effort. This has not proven to be a problem over the years with regular communication between the two agencies at all levels.

### ***Powers available to the Ombudsman and the PIC***

14. The powers available to the Commission are substantial and include intrusive and compulsive powers typically only bestowed on agencies in Australia dealing with serious and specialised crime such as organised crime and corruption, powers such as:

- Telecommunications Interception
- Listening device and other surveillance warrants
- Power to require production of documents
- Power to require evidence be given before a PIC Hearing (self incrimination does not preclude the giving of this evidence, although there are some limitations on its further use – against accomplices, in disciplinary proceedings)
- Powers of search

15. From a broader oversight perspective, the Commission is also empowered to take over and refer complaints for investigation, and to manage and oversee other agencies in the detection or investigation of police misconduct.

16. The Commission investigates the most serious police corruption. The subjects of its investigations are intimately aware of the strategies that the Commission will bring to bear, many having used similar strategies in their own investigations. Commission investigations are therefore some of the more difficult to undertake. The powers available to the Commission, together with very little legislative prescription on selection and the conduct of investigations, is a powerful combination delivering the Commission the means and flexibility with which to undertake these difficult investigations.

17. The Ombudsman may conduct hearings and require production of documents, however, electronic surveillance powers are not available.

### ***The accountability mechanisms built into the system***

18. In light of the significant powers and discretion available to it in the exercise of its functions, the Commission's accountability framework is comprehensive.

19. The Commission is an independent agency and does not report to a Minister or to the government. It is principally accountable to Parliament. For each investigation in which the Commission has conducted a public hearing the Commission must furnish a report to Parliament. The Commission may report on other matters. The Commission is also accountable to Parliament more generally in respect of its operations with a summary of operations being required to be included in its Annual Report to Parliament.

20. The Commission is accountable to a Parliamentary Committee, made up of representatives of the upper and lower houses, in respect of the exercise of its functions and the content of its Annual Report, other reports and any matters arising.

21. The Office of the Ombudsman is similarly accountable to Parliament and to the same Joint Parliamentary Committee.

22. The Commission is also accountable to the Inspector of the Police Integrity Commission in relation to: compliance with the law of the State; complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission; and, the effectiveness and appropriateness of procedures relating to legality or the propriety of its activities.

23. This framework provides a check on the potential for abuse of powers by the Commission and accountability for the appropriateness of its practices and procedures and for the reasonableness of the decisions that it makes.