



**PARLIAMENT OF WESTERN AUSTRALIA**

**Interim Report of the**

**SELECT COMMITTEE ON  
THE WESTERN AUSTRALIAN POLICE SERVICE**

**Term of Reference 3**

"Whether the self-regulatory role of the Internal Affairs Unit within the Police Service is effective or desirable in the public interest and if not, what method of detecting, punishing and preventing corruption within the Police Service should be implemented"

**Presented by the Hon Derrick Tomlinson MLC (Chairman)**

**JUNE 1996**

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Hon Nick Griffiths MLC  
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**Previous Reports of the Committee:**

*Interim Report: Term of Reference 7, February 1995*

*Interim Report: Report of the Examination Undertaken by the Committee of Procedures and Systems in Relation to Complaints Against Police and the Detection of Corruption in Other Jurisdictions, October 1995*

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## **TERMS OF REFERENCE**

That a Select Committee of five members, any three of whom shall constitute a quorum, be appointed to make full and careful inquiry into and report on the Western Australian Police Service and its operation and administration and in particular, but without limiting the generality of the inquiry to inquire into and report upon -

- (1) What should be the relationship between Government, Parliament and the Police Service to ensure -
  - (a) independence in operational matters;
  - (b) governmental input into and ministerial responsibility for policy matters;
  - (c) proper accountability to Parliament, in particular, through Parliamentary questions;
  - (d) some form of operational supervision and check, free of political input, and whether the appointment of a Board, the defining of the powers of the Minister of Police, a Standing Committee of the Parliament or some or all of these or other measures may address the matter.
- (2) Whether any political interference in the Police Service at any level has occurred affecting any commissioned or other officer currently a member of the service or who has in the last 5 years, retired from the service.
- (3) Whether the self regulatory role of the Internal Affairs Unit within the Police Service is effective or desirable in the public interest and if not, what method of detecting, punishing and preventing corruption within the Police Service should be implemented.
- (4) Whether any incidences exist of unlawful, improper or unauthorised use of listening devices, visual surveillance devices, tracking devices or telephone interception by members of the Police Service and further report on the adequacy of the protocols observed in the installation, use and retrieval of such devices and the collection, dissemination use and storage of material gained from the installation or use of such devices.
- (5) Whether the funding provided to the Internal Affairs Unit has been expended in the lawful execution of the units responsibility and further determine the amount of funds expended on the acquisition of equipment used or able to be used as a listening device, visual surveillance device, tracking device or equipment associated with telephone interception and the likelihood of breaches of individuals privacy consequent on the unlawful, improper or unauthorised use of such equipment.
- (6) Whether the police have appropriate methods for dealing with young people.
- (7) To consider the appropriateness of police recruitment training and promotional procedures and structures.

- (8) Any further matter relating to the Police Service arising from the inquiry.
- (9) The Committee have power to send for persons, papers and records and to travel from place to place.
- (10) The Committee report to the House not later than April 12 1995, and if the House do then stand adjourned the committee do deliver its report to the President who shall cause the same to be printed by authority of this order.<sup>1</sup>

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<sup>1</sup>

The Legislative Council extended the date for the Committee to report the House on 5 April 1995 to 16 April 1996 (1995 WAPD 719-20) and on 19 March 1996 to 28 November 1996 (1996 WAPD 32)

## ABBREVIATIONS

ACB	Anti Corruption Board (SA)
ALS	Aboriginal Legal Service
CIB	Criminal Investigations Branch
CJ Act	<i>Criminal Justice Act 1989 (Qld)</i>
CJC	Criminal Justice Commission (Qld)
COG	Commission on Government
DPP	Director of Public Prosecutions
DPP Act	<i>Director of Public Prosecutions Act 1991</i>
FBIS	Forensic Behavioural Investigative Service
IAU	Internal Affairs Unit
ICAC	Independent Commission Against Corruption (NSW)
IIB	Internal Investigations Branch
IIB SA	Internal Investigations Branch (SA)
IID	Internal Investigations Department (Vic)
IIS	Internal Investigation Section (Qld)
IIU	Internal Investigations Unit (Vic)
IRAD	Internal Review and Audit Division (NT)
ISU	Internal Security Unit (Vic)
NCA	National Crime Authority
NYCPD	New York City Police Department
OCC	Official Corruption Commission
OCC Act	<i>Official Corruption Commission Act 1988</i>
OIC	Officer in Charge
OPR	Office of Professional Responsibility (NSW)
PACC	Police Anti-Corruption Commission
PCA	Police Complaints Authority (SA)
PCA UK	Police Complaints Authority (UK)

PCC	Police Corruption Commission (NSW)
PCDP Act	<i>Police (Complaints and Disciplinary Proceedings) Act 1985 (SA)</i>
PR Act	<i>Police Regulation Act 1958 (Vic)</i>
PRD	Professional Responsibility Division (NT)
QC	Queen's Counsel
QPS	Queensland Police Service
WAPS	Western Australian Police Service

## **TERMS**

Fitzgerald Inquiry	Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct chaired by Commissioner GE Fitzgerald
Fitzgerald Report	<i>Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct</i> , Commissioner GE Fitzgerald, June 1989
Lusher Commission	Commission to Inquire into New South Wales Police Administration, Commissioner: The Hon Mr Justice EA Lusher
Mollen Report	<i>Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report</i> , Chair: Milton Mollen, July 7, 1994
The Ombudsman	The Parliamentary Commissioner for Administrative Investigations
Wood Commission	The Royal Commission into the New South Wales Police Service, Commissioner: The Hon Justice JRT Wood
Wood Report	<i>Royal Commission into the NSW Police Service: Interim Report</i> , Commissioner: The Hon Justice JRT Wood, February 1996



## PART 1

# INTRODUCTION

In many jurisdictions Police Commissioners have made public statements to the effect that, "There is no corruption in my police force: there may be pockets of corruption or 'a few bad apples'". Subsequently, under the scrutiny of Royal Commissions, commissions of enquiry or thorough internal reviews, corruption has been uncovered. Frequently corruption is discovered to be widespread and has been tolerated for a long time.

It seems to matter little whether a police force has been the subject of ongoing review or enquiry. Given the right circumstances, police corruption can endure public scrutiny. The New South Wales Police Force was the subject of a Royal Commission in 1981 (the Lusher Commission<sup>1</sup>). More recently, in 1993 and 1994, parts of it were subjected to critical investigation by the Independent Commission Against Corruption (ICAC). Yet it seems since the Wood Commission<sup>2</sup> began its public hearings there have been almost daily disclosures of police corruption.

Similarly, the New York City Police Department (NYCPD), has been the subject of a full scale Mayoral Commission approximately every twenty years of this century. After each investigation, levels of corruption have changed little: only the form or catalyst for corruption has changed. In the 1970's, corruption within the NYCPD protected gambling and prostitution; today it is drug related.

The Western Australian Police Service (WAPS) is a much smaller jurisdiction numerically than either New South Wales or New York and the possibilities for corruption may be fewer. Be that as it may, it has been subject to only limited organised external scrutiny for much of this century. Many people would say that is a good thing. They would argue that in the past half century there have been no public scandals of sufficient import to justify a judicial inquiry. Even so, until recently, the WAPS was one of the few public agencies in this State which had not been the subject of some kind of review, not to mention complete overhaul. This can make for complacency, an agency which tolerates bad habits, corrupt or otherwise, and an agency rigid in its procedures.

Since this Select Committee was appointed in 1993, the WAPS has undergone comprehensive internal review, first through the *Scoping Review of the Police Department of Western Australia* with consultants Arthur Andersen & Co, and from September 1994 through the ongoing Delta

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<sup>1</sup> Commission to Inquire into New South Wales Police Administration, Commissioner: The Hon Mr Justice EA Lusher

<sup>2</sup> The Royal Commission into the New South Wales Police Service, Commissioner: The Hon Mr Justice JRT Wood

Program to overhaul the organisational structure and management of the WAPS. The changes recommended by those processes are now being implemented and may be wide-ranging in their effect. Their goals will not be met quickly. An agency so large and firmly set in its ways, like an ocean liner, changes direction slowly and cautiously.

That is not necessarily a bad thing. Royal Commissions or judicial inquiries generally shake public confidence, rock police morale and make tough recommendations. Experience elsewhere has shown their effect proves to be short-lived. Recommendations made by Royal Commissions are only partially implemented. The police force makes cosmetic changes, but avoids the organisational changes necessary to get to the root of the problem. Public attention is then diverted by the media to other matters and the "them and us" psyche continues its destructive course.

The Committee is hopeful the fact that the changes to the WAPS are being generated from within the Service, rather than being imposed from the outside, their long term success will be assured. It is in that spirit we present this report. We have not avoided making unpleasant criticisms where we believe they are warranted. There are instances of corruption which were brought to the Committee's attention which give us cause for serious concern. There are strong indications that these have on occasion been either tolerated or deliberately concealed. Where that happens, self-regulation has failed.

### **TERM OF REFERENCE 3**

*Whether the self-regulatory role of the Internal Affairs Unit within the Police Service is effective or desirable in the public interest and if not, what method of detecting, punishing and preventing corruption within the Police Service should be implemented.*

The Committee was directed specifically to consider the self-regulatory role of the Internal Affairs Unit (IAU). To some extent, that reflects a misunderstanding about how the WAPS deals with unlawful behaviour within its own ranks. The IAU is only one of three sections whose separate functions address different aspects of police conduct and the good order of the WAPS. It would be inappropriate, therefore, to attempt to assess the effectiveness of one without also considering the roles of the others. In particular, it is necessary to understand the complementary roles of the IAU and the Internal Investigations Branch (IIB) and their interaction, each with the other, to properly appreciate how self-regulation is managed within the WAPS.

For that reason, this report discusses the Committee's assessment of the IIB as well as the IAU. It considers their effectiveness through detailed examination of their organisation, functions, methods of operating, and success in detecting and preventing misconduct and corruption. The IIB is considered through three case studies. The episode at Eucla Police Station which resulted in the conviction and imprisonment of three police officers for conspiring to pervert the course of justice is presented in some detail to show how external pressures operated against the IIB from

carrying out its proper function. It reveals inadequacies in the self-regulatory processes which are not in the public interest.

Because of the nature of the work done by the IAU and its method of operating, it was not appropriate to present case studies for discussion. Several of the matters pursued by the IAU involve continuing monitoring and investigation. Elements of some cases interact with others. They might be jeopardized if the Committee inadvertently were to reveal details of particular cases.

## **CORRUPTION OR MISCONDUCT?**

The Terms of Reference did not require the Committee to decide whether there is corruption within the Police Service. Neither did they require investigation of its nature nor extent. Rather, the Terms of Reference took for granted there is corruption. The concern is how effective the organisational structures are in responding to it.

However, the Committee found it could not avoid asking whether there is corruption. To assess the effectiveness of self-regulatory mechanisms, it is necessary to understand the nature of misconduct that might occur within the Police Service from time to time. Is it restricted to isolated disciplinary incidents or is it criminal corruption? It also is necessary to establish the extent of misconduct. Is it restricted to opportunistic acts by individual officers or groups of officers? Is it more pervasive? Is corruption endemic in the WAPS, similar to that exposed in jurisdictions elsewhere?

Even if the Committee had decided to avoid these questions, they arose from submissions. Serving and former police officers had genuine concerns that all was not well. Individual citizens who had grievances about their treatment by police officers, brought serious matters to the Committee's attention. These included abuse of police powers, manufacturing evidence to secure convictions, collusion to conceal evidence, interference by senior officers in proper investigations of suspected criminal activities, the selective leaking of confidential information to the press, police officers receiving corrupt payments to protect prostitutes and drug traffickers, and persons under investigation for gambling and/or drug offences being warned by "friendly" police officers.

These allegations gave cause for concern, but their veracity could not always be proved. It is acknowledged that whenever there is a parliamentary investigation of this kind, people with real or imagined grievances seize the opportunity to have their moment of sunshine. They cannot be denied that. To do so would be to prejudge the issues. The problem is what to do with information given. Sometimes it is possible to reject "evidence" as fanciful, unfounded or wilfully mischievous. At other times, information is so convincing that it causes disquiet. Some submissions to this Committee were of the latter kind.

Before it could proceed with examining the evidence and attempting to answer the questions

posed by the Term of Reference, the Committee had to make clear what is meant by corruption, and in particular, police corruption. It has been the subject of much academic disputation. There is some ambivalence as to what is acceptable behaviour by police officers. They deal with people who operate outside the law and it is sometimes necessary for police to go beyond what might otherwise be regarded as the limit of acceptable behaviour in order to apprehend criminals or to prevent crime.

This was highlighted in the Mollen Commission report into corruption in the New York City Police Department. Part of its investigation and comment was devoted to perjury and the falsification of documents. The challenge which faced the investigators was:

*. . . not only to prevent the underlying wrongdoing that spawns police falsifications but to eliminate the tolerance the Department and the criminal justice system exhibit about police who fail to tell the truth.*<sup>3</sup>

*What breeds this tolerance is a deep-rooted perception among many officers of all ranks within the Department that nothing is really wrong with compromising facts to fight crime in the real world. Simply put, despite the devastating consequences of police falsifications, there is a persistent belief among many officers that it is necessary and justified, even if unlawful. As one dedicated officer put it, police officers often view falsification as, to use his words, "doing God's work" -- doing whatever it takes to get a suspected criminal off the streets. This attitude is so entrenched, especially in high crime precincts, that when investigators confronted one recently arrested officer with evidence of perjury, he asked in disbelief, "What's wrong with that? They're guilty."*<sup>4</sup>

Closer to home, the New South Wales ICAC in its *Investigation into the Relationship between Police and Criminals: First Report* showed how contact between the two, which often is necessary for the investigation and prosecution of crime, may become an improper relationship:

*A good deal of police work involves contact with the seamy side of life, and detectives particularly have frequent contact with criminals. That contact is often informal, and sometimes extends to socialising with criminals, or suspected criminals. This can lead to a blurring of the line between proper and improper conduct. The fact that many detectives are frequently in the company of criminals, and that the latter are seeking to advantage themselves, means that information is often provided to police by criminals. Information is used as currency. It is provided in exchange for something - money, help with bail, or outstanding charges and sentences, are probably the most common rewards sought. Of course, some of the rewards sought are more intangible than these.*<sup>5</sup>

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<sup>3</sup> *Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report*, Chair: Milton Mollen, July 7, 1994, page 36

<sup>4</sup> *Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report*, Chair: Milton Mollen, July 7, 1994, page 41

<sup>5</sup> *Investigation into the Relationship between Police and Criminals: First Report*, NSW ICAC, February 1994, page 1

Much of the literature on police matters makes reference to the taking of free or cheap food or drink from a family restaurant as the first step on the slippery slope to the taking of other favours, financial or otherwise, from powerful institutions and individuals. It is argued that the family restaurant wishes to have uniformed police officers on its premises to provide a sense of security, and hence the discounted meals are not in themselves a bad thing. Such a "security presence" is not afforded the smaller coffee shop or hamburger bar down the street which the officers are not enticed to frequent.

A further example is when an elderly woman to whom officers have given assistance makes a gift of a cake. If the accepted definition of corruption is that it involves material gain no matter how insignificant, it might reasonably be argued that the giving and receiving of the cake was corrupt. Rejection of the gift, on the other hand, might cause loss of good feeling between the citizen and the police officer.

Philosophical issues of that kind are not the focus of this Report. They should be dealt with by the police administration through guidelines to protect police officers from allegations of corrupt behaviour. The Committee focussed its investigation primarily on matters which it deemed of a more serious nature which have profound and prolonged effects upon the police service, its officers and public confidence. These include allegations of brutality, manufacturing evidence, harassment, perjury, perverting the course of justice and misuse of privileged information. The Committee tried to differentiate criminal misconduct from incompetence, managerial shortcomings and poor comprehension of responsibility, all of which sometimes look like corruption.

It will become clear in this report that many of the matters discussed do not fall into the category of corruption simply defined as:

*...the illegal or improper use of police power for personal gain in some form, not necessarily financial, by persons possessed of police power.*<sup>6</sup>

For the purpose of evaluating the effectiveness of self-regulation, however, the separation of misconduct, serious misconduct and corruption is useful. The Fitzgerald Report offered a practical model. It referred to police misconduct as:

*...the refusal of police to comply with the law and allow the criminal justice system to operate as is intended by the general community because of police dissatisfaction with the results. There is no direct personal benefit to police except where investigations or proceedings against police for misconduct are involved. Activities available to police officers because of their role in the criminal justice process include:*

- (i) manufacture or falsification of evidence;*
- (ii) interference with evidence and other material, including loss and destruction of*

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<sup>6</sup>

Report by Mr Justice Lusher of the Commission to Inquire into New South Wales Police Administration, May 1981, page 631

- records;
- (iii) *intimidation and suborning of witnesses;*
  - (iv) *obtaining admissions by threats or inducements; and*
  - (v) *obstruction of investigations.*<sup>7</sup>

Corruption:

*...involves much more diverse behaviour and degrees of culpability as police take advantage of opportunities which arise in the course of their duties to obtain personal benefits. Opportunities so afforded include:*

- (i) *theft of seized or forfeited property, evidence, or funds intended to be used to pay for assistance rendered to police;*
- (ii) *acquisition of seized or forfeited property at an undervalue upon its official disposal;*
- (iii) *use of informants and other criminal associates to dispose of illegally acquired property; and*
- (iv) *acceptance of money, property and sexual favours in connection with the benefits which police are able to provide such as information and warnings in relation to law enforcement activities, information in relation to criminal opportunities, and licences and the like for which police have responsibility (in false names where appropriate), the prosecution and falsification of evidence against rivals of protected criminals, and the favourable exercise of wide discretions which, in practice, arise at various stages of the criminal process: for example, in relation to charging (both in whether a charge is laid and, if so, what charge, which is relevant not only to the likely success or failure of the charge brought and potential punishment if the charge proceeds but also to whether a conviction can be avoided by forfeiture of bail and to whether forfeiture of property can be avoided), charging "nominees" to avoid consequences for those in fact responsible, applications for bail, modification of charges, and prosecution.*<sup>8</sup>

The dichotomy of responsibility in the self-regulatory structures of the WAPS can be misleading. The Committee has discovered that improper behaviour of police officers does not divide neatly into categories. Rather it is a continuum of behaviour. At one extreme is the seemingly innocent example cited earlier of accepting favours from grateful citizens. At the other is the malicious aiding and abetting of criminal acts through the abuse of police powers for personal gain. Underlying the whole spectrum is the betrayal of trust placed in police officers by the community.

It is useful to consider the treatment of misconduct by noting it can be one or more of three types, that which is internal - to do with the discipline of the service - that which involves reaction with

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<sup>7</sup> *Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct*, Commissioner GE Fitzgerald, June 1989, page 206

<sup>8</sup> *Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct*, Commissioner GE Fitzgerald, June 1989, pages 207-8

the public and that which requires external sanction.

Evidence presented to the Committee was that most of these offences, in one form or another, had been committed by Western Australian police officers in recent history. Because of the separation of responsibilities between the IIB and the IAU they were investigated and prosecuted differently.

Neither do they fall exclusively within the responsibility of the IAU which is charged with investigating, researching and educating against corruption within the WAPS. Most were dealt with by the IIB whose focus is professional conduct and responding to complaints about police conduct from both within and outside the WAPS.

In order to judge the effectiveness of the two sections responsible for self-regulation within the WAPS, the IIB and the IAU will be considered separately.

## **DEALING WITH THE EVIDENCE**

Parliamentary Select Committees inquire into matters of public importance. In this respect they are similar to Royal Commissions. They have powers to summon witnesses, demand production of documents and to compel witnesses to answer questions, but they do not function as courts. It is not their purpose to decide guilt or innocence. Rather they are inquiries whose purpose is to answer particular questions. Actions that might follow from their findings demand different kinds of forensic investigation and different standards of proof.

Select Committees are not bound by the rules of evidence. Neither are they required to establish truth beyond reasonable doubt. All a Select Committee can hope to achieve is a judgment about what is probable based on what it is told and what it can uncover by its own research.

The Committee is fully aware that submissions may have been made to it which were intended to discredit individuals whose conduct is blameless. Therefore the Committee's findings must be presented with the qualifier that they are conclusions based upon the evidence presented to the Committee and they are not irrefutable. If recommendations which arise from the conclusions based on this evidence are acted upon by other bodies, the Committee would suggest further scrupulous investigation and scrutiny to ensure the validity of the evidence.

The Committee did not have the resources necessary to conduct a thorough and expeditious investigation of all allegations. Some matters brought to its attention were of sufficient gravity to warrant probing which was beyond its capacity. The Committee is concerned about this. Each of those matters poses serious questions about the integrity of the police officers involved and the overriding ethos of the WAPS. For example, there are unanswered questions about the way in which "confessions" were obtained and the evidence structured in the Mickelberg case. Public apprehension about the probity of police officers in the Stephen Wardle case and alleged subsequent harassment of members of the Tilbury family need to be answered. There are

suggestions that investigations into the theft of diamonds from Argyle Diamond Mines have been frustrated by senior police officers. These are questions which have yet to be adequately addressed.

The Committee heard submissions and viewed documentary evidence about these three matters.

## **THE ARGYLE DIAMONDS AFFAIR**

The Committee found the evidence about the Argyle Diamonds affair presented to it by Sergeant Robyn Thoy to be most alarming. Decisions by senior executive officers to terminate his and others' enquiries prematurely were inadequately explained. Thoy's evidence suggested there may have been collusion by senior personnel of the CIB to frustrate investigations into the theft of diamonds and the involvement of police officers. If there were substance in these allegations, endemic corruption at the highest levels of the Police service might be exposed.

The Committee decided against pursuing them for several reasons. Criminal proceedings then before the court had yet to be finalised. Barry Crimmins was convicted in February 1994, but the prosecutions of Detective Sergeant Noye and Lindsay Roddan had not been heard. The Committee was unwilling to jeopardise those proceedings with its own unavoidably restricted enquiries. It preferred to allow the course of justice to proceed.

Meanwhile, the Commissioner of Police, Mr Falconer, instituted his own enquiries. First, earlier investigations were reviewed by private consultants, Forensic Behavioural Investigative Services (FBIS). They were engaged initially by Argyle Diamonds. Their observations, and disquiet about evidence presented to the Parliamentary Commissioner for Administrative Investigations (the Ombudsman) by Sergeant Robyn Thoy, persuaded the Commissioner that their review should be widened. He gave FBIS unrestricted access to police files and police officers of all ranks who were associated with the three previous enquiries. Upon receipt of the report by FBIS, the Commissioner requested a team of Federal Police investigators to conduct what is now the fourth official police inquiry of the theft of diamonds from Argyle. The conduct of senior executive officers in the earlier investigations is part of that brief. The findings will be of considerable public interest. It is likely that only an independent judicial inquiry will resolve the issues raised by the Argyle Diamond affair.

## **THE MICKELBERG CASE**

The Mickelberg case is the subject of continuing court proceedings. Much has been written and spoken about this case. It has been the subject of civil and criminal proceedings before the Supreme Court, the Court of Criminal Appeal and the High Court for almost a decade and a half. In that time, the case has been the subject of intensive public speculation in the print and



electronic media.

The former Attorney General, Hon Cheryl Edwardes MLA, responded to a petition by the Mickelbergs under section 21 of the Criminal Code (The Royal Prerogative of Mercy). She sought a response to the Petition from the Director of Public Prosecutions, Mr John McKechnie QC, and independent advice from Mr Brian Martin QC. Subsequently, special leave to appeal was granted to Peter Mickelberg. An ex-gratia payment to Peter Mickelberg to help pay for his appeal has been approved.

The Committee considered the 65 page section from the Opinion prepared by Mr McKechnie QC and others which deals with the factual merits of the Petition. A request to the Hon Cheryl Edwardes MLA for access to Mr Martin's report was denied on the ground it was subject of legal professional privilege. That is unfortunate. Whatever opinion it contains and whatever justification of that opinion it offers, the Martin Report would have been of interest to the Committee. It might have helped resolve, or alternatively have confirmed, some of the doubts held about the integrity of the case against the Mickelbergs.

The Committee has considerable disquiet about the information presented to it in lengthy hearings. On the face of it there is strong evidence to suggest the police case against the Mickelbergs was contrived. Whether the Mickelbergs committed the crime, they were convicted and imprisoned. At law they are guilty, but they may have been convicted on evidence about which there are grave questions.

The pursuit of those answers was beyond the Committee's resources. Furthermore, the case is again before the Court of Criminal Appeal. That is a proper procedure under the law as it now stands. Nevertheless an independent judicial inquiry will be necessary to prove whether the police handling of the Mickelberg case was beyond reproach.

## **THE DEATH OF STEPHEN WARDLE**

Public doubts have long been entertained about the circumstances surrounding the death of Stephen Wardle in the East Perth lockup in February 1988. The case achieved notoriety because of the persistence of the dead youth's parents in seeking explanations of how he died in custody and public concern about the police investigation.

The Coroner, Mr David McCann SM, found that Stephen Wardle died because of the toxic effects of drugs and alcohol, aggravated by lack of care. Controversy arose, not about the Coroner's findings, but because police officers on duty at the time Stephen Wardle was in custody declined to give sworn evidence at the inquest. This resulted in adverse media publicity and speculation.

The reason for the seventeen police officers not giving evidence was later explained by the Ombudsman, Mr Eric Freeman. He initiated an inquiry after Stephen Wardle's mother, Mrs

Tilbury, complained to the Ombudsman about the investigation by the WAPS into the circumstances surrounding the death of her son. During that inquiry, Mr Freeman met with Mr John Quigley, counsel for the police officers at the inquest. Mr Quigley explained that because the inquest might have become a committal hearing, he was concerned that his clients could have been committed without the normal process of a preliminary hearing. In the circumstances, and after discussion with two Queens Counsel, he advised his clients not to give evidence.

Each officer involved gave evidence to the Ombudsman's inquiry. The report tabled in August 1990 concluded at page 55 that, "...the death of Stephen Wardle was an unnecessary death in custody." The Ombudsman rejected allegations that police officers were implicated.

Since then Mr and Mrs Tilbury have been unceasing in their efforts to have the matter reconsidered. They have gathered forensic evidence and have maintained public interest in their case through the media. It is fair to say they have been a continuing irritation to the WAPS, and in particular, those officers who were on duty when Stephen Wardle died.

Mr and Mrs Tilbury gave evidence to the Committee that they have been subjected to police harassment. This has taken several forms. Mr Tilbury told the Committee that between 1989 and 1994 his vehicle has been stopped by police in unmarked vehicles between 40 and 50 times; his vehicle has been followed over long distances and late at night; police officers have been unlawfully on his premises when he and his wife were absent and a diary and an audio tape have been taken from their home; their home has been under surveillance by police officers in an unmarked vehicle and their telephone has been interfered with; they have been searched for drugs at Perth airport twice when they have returned from overseas travel together; Mr Tilbury has been searched on three of the four times he has been overseas since 1988; he has been charged with shoplifting a bottle of vitamin pills; friends have been intimidated by police officers; documents have been seized from the office of his solicitor, Mr Arthur Auguste; and Mr Tilbury has been charged with perjury, conspiracy to pervert the course of justice and attempting to pervert the course of justice. According to Mr and Mrs Tilbury, all this has been because they have been pursuing what they believe is the true cause of the death in custody of their son.

Some of these complaints were looked into by Detective Inspector Hawker of the CIB after complaint to the Deputy Commissioner of Police in December 1994. He dismissed most of them as unsubstantiated. Others were denied or could not be investigated because there was insufficient information to identify the police officers involved. One of the complaints was shown to have substance, but no action was taken.

The Committee prefers not to comment upon those findings at this stage. Neither does it choose to re-open matters relating to the death of Stephen Wardle. Like the Mickelberg case, it has implications beyond the resources of this Committee to investigate. It is another matter which can be resolved only by independent judicial inquiry.

## **PROBLEMS OF PROOF**

Some matters presented to the Committee were subjected to close examination. They are reported here to illustrate the apprehension of the Committee about the effectiveness of the existing processes of self-regulation within the WAPS. We have chosen to discuss in detail three matters which are of considerable public interest. They also reveal the extent of problems that exist within sections of the WAPS.

Many matters raised with the Committee in private submissions are not discussed here. The Committee is aware of its responsibility to be fair. Where uncorroborated evidence was presented, it was put to one side. In other instances, witnesses requested that their evidence be suppressed. Finally, claims were made that seriously implicated individuals. These claims were treated circumspectly. In the interests of fairness those individuals should be able to defend themselves against allegations. Inquisitions of this kind are not appropriate for that sort of exercise. Wherever possible documentary evidence was used to test claims made and witnesses were called to give testimony about matters others claimed they were involved in or had particular knowledge about.

The manner in which some evidence was given cast doubt upon its veracity as well as the witnesses offering it. Individuals took the opportunity to denounce their colleagues to the Committee. The Committee formed the impression that the WAPS is riven by factional hostility and intense personal feuds.

Some serving and former police officers did not conceal their antagonism toward associates and/or senior executive officers. They were frank in their disapproval. Others presented their evidence in ways which appeared contrived to raise doubts about the integrity of their fellow officers and former colleagues. In particular, some former senior officers from the Criminal Investigation Branch who believed they had been victimised in charges brought against them were bitter toward erstwhile colleagues.

Morale within the WAPS is low. This seems to have been the situation for at least the past eight or nine years. Too many police officers, particularly at middle management ranks of sergeant and above, hold the Police Department in very low regard. Within this context, it is easy to understand recurring accusations of misconduct, abuse of powers, and contravention of acceptable standards of conduct. A police service which holds itself in low esteem, believes it does not have public support, and regards politicians, lawyers and the judiciary as the enemy rather than as allies, is prone to self-immolation.



## PART 2

# SELF-REGULATION WITHIN THE WESTERN AUSTRALIAN POLICE SERVICE

## INTRODUCTION

There are three sections of the WAPS which have different but complementary functions in relation to self regulation. They are the Internal Affairs Unit (IAU), the Internal Investigation Branch (IIB) and the Office of the Inspectorate.

There are also structures in place, within and outside the WAPS, which are an integral part of the “self-regulation” apparatus. The Committee expanded its area of inquiry to include those agencies. The Committee has familiarised itself with the role of the Parliamentary Commissioner for Administrative Investigations (the Ombudsman), the Official Corruption Commission (OCC) and the Office of the Director of Public Prosecutions (DPP).

## INTERNAL AFFAIRS UNIT (IAU)

### History of the IAU

The IAU of the WAPS was established formally in 1988. The Committee was informed that the IAU was not established because there was a general belief that corruption was rife in the WAPS, but was created as a preventative measure and in response to the concerns raised by the findings of the Fitzgerald Inquiry<sup>9</sup> into the Queensland Police Service.

At its inception, the IAU was a small unit. Now Deputy Commissioner Les Ayton, the inaugural Officer in Charge (OIC) told the Committee that:

*There seems to be a perception that the IAU was and always has been well resourced, all powerful and able to exert considerable influence at high level. In 1988, 1989 and 1990*

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“Fitzgerald Inquiry” refers to the Queensland Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct chaired by Commissioner GE Fitzgerald

*the investigative staff consisted of two people...<sup>10</sup>*

*We had no resources and no knowledge of investigations into corruption. We had to learn as we went along.<sup>11</sup>*

In 1988, two officers, with physical and technical covert surveillance skills, were recruited from outside the WAPS and inducted without progressing through the Academy.

### **Functions of the IAU**

The functions of the IAU are centred around three objectives:

- (a) The Unit is responsible for investigating specific allegations of corrupt behaviour by serving Police Officers and Public Servants within the Police Force.*
- (b) The Unit is charged with researching areas of the Police Force that contain potential risk for corruption and provide strategies to reduce that risk.*
- (c) Education of members on their responsibilities regarding corruption and prevention strategies.<sup>12</sup>*

The Commissioner's policy in relation to the work carried out by the IAU is as follows:

*The Internal Affairs Unit is responsible for all matters involving corruption or the use of position to gain an advantage or cause detriment by serving members or civilian employees within the Police Force.*

*Where a Police Officer or member of the Police Force commits a criminal offence which does not relate to using his position then it is correctly a matter for the CIB.*

*Disciplinary matters are handled by the Internal Investigation Branch and any matter relating to Discipline which is uncovered during an inquiry [by the IAU] is referred to the Commander (Discipline) for possible action at his discretion.*

*The Internal Affairs Unit may be used on other sensitive matters at the discretion of the*

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<sup>10</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 29 April 1996, page 1

<sup>11</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 29 April 1996, page 22

<sup>12</sup> Information tended by Acting Superintendent DJ McLeod, Acting OIC of the IAU, 1 September 1994

*Commissioner of Police.*<sup>13</sup>

This policy is too broadly stated to correctly describe the role of the IAU and gives the impression that all work involving corruption is dealt with by the IAU.

The Committee observed that many areas of corruption are uncovered by the work of investigators from the IIB, but upon discovery are not handed over to the IAU for investigation. The investigation is carried to completion by the IIB investigators. The overlap in responsibility does not make for the effective combating of corruption in the WAPS.

Where the investigation into alleged criminal behaviour by a police officer is carried out by the CIB, it presents a myriad of difficulties. Evidence may be tampered with. The names of witnesses are readily available to officers with access to the police computer.

Continuing education programs, in relation to the release of confidential information from police computers, have had little or no impact upon the number of newspapers articles quoting unnamed police sources releasing confidential information. Evidence was given that police officers often feel it is their duty to access confidential information on the computer, whether or not it pertains to a matter they are currently investigating. Although a witness name may be “flagged” on the computer to inform authorities of who has accessed the records, that is cold comfort to a witness who is approached, threatened or intimidated.

The policy aim that the IAU may be used on “...*other sensitive matters at the discretion of the Commissioner*”<sup>14</sup> raises grave concerns with the Committee. It was concerned that a Unit, established to combat corruption in the WAPS, was in fact used to investigate matters which were brought to the attention of, and subsequently to investigate on behalf of, the Royal Commission into the Commercial Activities of Government and Other Matters.

The Committee believes that such investigations should not be within the ambit of the IAU. It is inappropriate that the Commissioner of Police can request officers of the IAU to conduct such investigations into people that are not members of the WAPS. The Unit has limited resources and staffing. The nature of the investigations carried out in relation to the Royal Commission had little to do with corrupt or improper behaviour by police officers.

## **Proactive Strategies**

The IAU’s educational function in relation to corruption is confined to information seminars at the Academy, lectures to continuing education courses and information releases on current topics.

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<sup>13</sup> Information tended by Acting Superintendent DJ McLeod, Acting OIC of the IAU, 1 September 1994

<sup>14</sup> Information tended by Acting Superintendent DJ McLeod, Acting OIC of the IAU, 1 September 1994

During 1995, several information bulletins were produced by the IAU regarding the unauthorised release of information from police computers.

Because of the limited resources available to the IAU, investigators or analysts are required to conduct these courses. In other police forces nationally and internationally there is a dedicated unit which undertakes research and provides information and education about developments in policing.

**Organisational Structure of the IAU**

The current personnel strength and current staffing levels at the IAU are:

<b>Approved</b>	<b>Actual</b>
<b>Superintendents</b>	
1	0
<b>Inspectors</b>	
5	
3	
<b>Sergeants</b>	
5	
9	
<b>Auxiliary staff</b>	
10	10 <sup>15</sup>

The Superintendent of the IAU is required to perform primarily administrative functions, however he currently undertakes some investigation tasks. In a review of the IAU undertaken in 1995 a recommendation was made that the investigation tasks of the Superintendent should be removed. This was not because there was any deficiency in investigations, simply that the role of the Officer in Charge is more properly in management, rather than investigation.

**Resolution of Matters Investigated**

The following statistics were supplied by the IAU for the previous five years regarding resolution of matters investigated. It is difficult to determine the validity of these statistics. It would also be more meaningful if the statistics were kept in relation to what types of allegations were being investigated and whether “resolution other than by arrest” included resignation or retirement.

**Table 1: Statistical Summary, IAU Annual Reports 1989-90 to 1994-95**

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<sup>15</sup> Statistics supplied by Acting Superintendent KJ Sawyer, IAU, in a Memorandum, 4 January 1996



<b>1989/90</b>	
Resolved by Arrest	5
Resolved Other than by Arrest	7
Currently Under Investigation	41
Awaiting Investigation	15
<b>Total</b>	<b>68</b>

*Investigations carried out by the Internal Affairs Unit in 1989/90 resulted in the arrest of four (4) serving Police Officers (including one Police Aide) on a total of forty two (42) charges.*

*Other arrests included eighteen (18) civilians on a total of twenty four (24) charges and one (1) civil servant from the Police Licensing Section.*

*The majority of these charges were Corruption or Bribery related matters.*

<b>1990/91</b>	
Resolved by Charge	8
Resolved other than by Charge	18
Currently Under Investigation	38
<b>Total</b>	<b>64</b>

*Of the 18 inquiry files cleared other than by charge, 17 were as a result of insufficient evidence and 1 was regarded as a probable false report.*

*The 8 inquiry files cleared by charge resulted in 8 criminal charges and 1 disciplinary breach being preferred against 3 police officers and 6 civilians.*

*Two civilians were charged with making false reports in respect of allegations against Police.*

*In addition to inquiry and complaint files, 84 administration and miscellaneous files which required other than normal day to day attention were received.*

<b>1991/92</b>	
Resolved by Charge	1
Resolved other than by Charge	12
Currently Under Investigation	16
<b>Total</b>	<b>29</b>

*One (1) civilian was charged with making a false report to police and seven (7)*

*matters were re-directed to other Sections or Squads for investigation.*

<b>1992/93</b>	
Resolved by Charge	6
Resolved other than by Charge	18
Currently Under Investigation	25
Referred to Other Sections	6
<b>Total</b>	<b>55</b>

*During the preceding 12 months the IAU had undertaken several major inquiries, including tasks associated with the Royal Commission.<sup>16</sup>*

*In addition to the statistics provided there are a number of incidents where serving members under investigation have opted for early retirement. (These officers were Johnson, Pace, Smith, Busby and Thompson)*

<b>1993/94</b>	
Resolved by Charge/Counselling	4
Currently Under Investigation	28
Referred to Other Sections	7
“Information Only” Received	10
Unfounded/No Evidence	15
Pending Further Information	14
Subjects Resigned	2
<b>Total</b>	<b>80</b>

*Since July 1, 1993, staff attached to the Unit have preferred 55 charges against serving police officers, public servants and members of the public. Offences were wide ranging and included Stealing & Receiving, Disclosing Official Secrets, Perverting the Course of Justice, Offering Bribe and Official Corruption. Internal charges laid included Making False Statements and Disclosing Official Information.<sup>17</sup>*

<b>1994/95</b>	
Resolved by Charge/Counselling	5
Currently Under Investigation	24

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<sup>16</sup> Royal Commission into Commercial Activities of Government and Other Matters

<sup>17</sup> Information tended by Acting Superintendent DJ McLeod, Acting OIC of the IAU, 1 September 1994

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<b>1994/95</b>	
Referred to Other Sections	17
“Information Only” Received	10
Unfounded/No Evidence	28
Pending Further Information	11
<b>Total</b>	<b>95<sup>18</sup></b>

The IAU was involved in the investigation of allegations concerning police officers in the Argyle Diamond stealing enquiry. Also a CIB investigation into organised vehicle theft, conversion and resale and a major bribery inquiry resulting in serious charges being preferred against a member of the CIB.

The IAU was also involved in a task force inquiry into allegations of police corruption and involvement in illicit drugs.

### **Accountability of the IAU**

The IAU reports to the Commissioner, through the Deputy Commissioner. The Committee was told that the IAU is also accountable to the DPP, the OCC and the Ombudsman.<sup>19</sup> This appears to be a misunderstanding of where the IAU stands in relation to these entities.

The IAU has a relationship with the DPP which can hardly be described as one of accountability. The IAU conducts investigations and provides evidence to the DPP to assist in the prosecution of officers. It is the responsibility of the Officer in Charge of the investigation to prefer charges and provide sufficient evidence to the DPP so that there may be a successful prosecution. This is not an accountability mechanism.

The OCC requires all government agencies to provide it with information about allegations of corruption and the steps taken by the agency in relation to corruption. The WAPS’ obligations in this respect are no greater than other agencies in the public sector. The IAU is not accountable to the OCC: it provides information to it and occasionally carries out investigations at the behest of the Commissioners of the OCC.

The Ombudsman has a monitoring and review role with respect to complaints against police. The IAU is a covert organisation investigating allegations of corruption.

The Ombudsman has observed:

*Until recently, this office has had little involvement in the investigations conducted by the*

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<sup>18</sup> Statistics supplied by Acting Superintendent KJ Sawyer, IAU, in a Memorandum, 4 January 1996

<sup>19</sup> Information tended by Acting Superintendent D J McLeod, Acting OIC of the IAU, 1 September 1994

*Internal Affairs Unit (IAU) of the Western Australia Police Service. One of the reasons for this appears to have been the requirement of the Parliamentary Commissioner Act (the Act) for complaints to be in writing, whereas most of the matters the IAU investigates were said to be, in the main, internally generated by word of mouth from within the Police Department. In addition, there have sometimes been misunderstandings about the role of the Ombudsman and what, in terms of the Act, constitutes a 'complaint'.*

*From time to time, the lack of advice of complaints received by the IAU was raised in discussions with the Commissioner of Police and senior police officers, but the problem remained largely unresolved until after Mr Falconer became the Commissioner. In recent discussions, Mr Falconer, who has an informed and clear understanding of the Ombudsman's role in the complaints system, agreed that he will provide my office with notice of internal complaints, made to the IAU and all other areas of the Police Department, which are of a serious nature or likely to attract public interest. Furthermore, although not strictly relevant, Mr Falconer agreed to give my office notice of complaints about off duty conduct where the matter is likely to attract public interest.<sup>20</sup>*

These changes in the Ombudsman's role arose from an informal agreement between the Ombudsman's office and the current Commissioner of Police. This is not accountability. There is no mechanism in place, whereby the work of the IAU can be properly scrutinised by any body or organisation outside the WAPS.

## **1995 Review of IAU**

In March 1995 the Deputy Commissioner appointed a Review Committee for the IAU.

The Terms of Reference of the Review Committee were:

- *the relevance and appropriateness of the Unit's currently stated mission and objectives, and the Strategic Plan;*
- *the degree to which the mission and objectives are being achieved;*
- *the adequacy of workload determination, assessment and monitoring systems;*
- *the adequacy of the existing organisational structure, including internal and external reporting lines and the rank structure;*
- *the effectiveness of current Unit management systems and processes;*
- *evaluation of the resource requirements - human, material and financial;*
- *assessment as to the future direction of the Unit and its place in the total organisational structure;*
- *the degree to which the Unit undertakes and appropriate balance between*

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Letter from Mr R Eadie, the Parliamentary Commissioner for Administrative Investigations, to the Committee, 16 February 1996

- proactive and re-active efforts;*
- *human resource practices, including tenure of office, staff selection and promotional processes, succession planning;*
- *the status and relationship of the Unit is its stakeholders and the organisation as a whole.*<sup>21</sup>

The recommendations of the review were:

1. *That the three units with responsibility for organisational integrity be amalgamated into a “Professional Standards” portfolio, whilst retaining individual respective entities.*
2. *The Professional Standards portfolio comes within the administrative and functional responsibility of an Assistant Commissioner.*
3. *To reflect the true nature of the Internal Affairs Unit’s functions and to promote its role (internally and externally), the Unit be renamed the Anti-Corruption Unit.*
4. *The Assistant Commissioner (Professional Standards) be administratively and functionally responsible for surveillance and technical operatives and develop strategies to amalgamate these areas of the Internal Affairs Unit and Bureau of Criminal Intelligence.*
5. *The role of the officer in charge should be directed towards management, both of the Unit, and most importantly towards initiating, co-ordinating, promoting and monitoring the whole of the agency’s efforts in response to corruption issues.*
6. *Following re-design of the position description (in line with 1), immediate action be taken to have the officer in charge position advertised and substantively filled.*
7. *The new officer in charge be given responsibility for implementing approved recommendations arising from this report.*
8. *Future recruiting and staff placement policies and practice provide for an appropriate induction of new staff into the Unit.*
9. *The Unit establish a lecturing plan, encompassing all ranks, to ensure consistent delivery of lectures to Academy courses.*
10. *That, where possible, the Unit be exposed through internal communication conduits and the media.*
11. *The officer in charge be invited to become a member of the Ethics Committee.*
12. *Investigators at the Unit commence visitations to all areas of the Police Service.*
13. *The Officer in Charge to ensure that all reports submitted to the Official Corruption Commission are accurate, objective and thorough.*
14. *That responsibility for resolution of priority disagreement(s) between the WA Police Service and National Crime Authority be transferred from the Assistant Commissioner (Crime) to the proposed Assistant Commissioner (Professional Standards).*
15. *The Internal Affairs Unit make greater effective and efficient use of surveillance and technical staff in protracted and in-depth in-service investigation allegedly*

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*A Review into the Internal Affairs Unit*, Review Committee, April 1995, pages 77-78

- deferred due to operational difficulties. (The claim, that such investigations exist, and are deferred due to personal opinions and preferences of other investigators was raised on several occasions). This will increase the usage ratio of such staff to a more equitable balance.*
16. *In acknowledging the requirement, under the National Crime Authority Act for surveillance and technical officers carrying out inquiries on behalf of the National Crime Authority to be sworn Authority officers, consideration must be given as to whom can access, and hold, the personal details, and photographs, of these officers. The recommendation of the committee is that this person be the executive head of the (Perth) National Crime Authority office. This will remove the burden of this knowledge from the seconded police officers at the Authority.*
  17. *The financing of salaries, motor vehicles, and accommodation of surveillance and technical staff of Internal Affairs Unit either remain as under the present Memorandum of Understanding, or alternatively, be totally financed by the WA Police Service, with National Crime Authority having (some) right of utilisation of human and material resources of the surveillance/technical unit, on a full “user pays” basis, to be negotiated between police and National Crime Authority.*
  18. *On restructuring of the Human Resources Division of the agency, the Director of that division take immediate action to conceal the identity and location of all surveillance and technical officers attached to Internal Affairs Unit within the computerised records of human resources.*
  19. *Operations need to be restricted to time frames which may be extended by the Officer in Charge.*
  20. *Investigations must commence with a set objective and contain Performance Indicators to ensure time frames are maintained.*
  21. *Regular meetings adopt a formal approach for the purpose of the dissemination of general intelligence, an overview of the status of investigations and monitoring of workloads.*
  22. *The Officer in Charge continually monitors the progress of investigations, provides field supervision (where required), but does not adopt an investigative responsibility.*
  23. *Investigations are allocated to teams and not individual investigators.*
  24. *The Officer in Charge develops and implements a proactive plan.*
  25. *The Internal Affairs Unit develops an investigations format to ensure uniformity or consistency to meet stakeholder’s expectations.*
  26. *The Internal Affairs Unit develops Performance Indicators to enable the degree to which the Unit’s mission or objective is met.*
  27. *In due course the Internal Affairs Unit develops short and long term objectives to enable the Unit to attain its Mission Statement.*
  28. *The Unit develops strategies to disseminate (corruption) risks, at all levels, regional visitations and means of analysing trends.*
  29. *The Internal Affairs Unit develop a template to measure the cost effectiveness of investigations.*
  30. *The position of Officer in Charge Superintendent be immediately advertised,*

- either on a like to like basis, or if no suitable applicant is identified, on a positioned promotional basis. The need to stabilise this position is viewed as urgent by the committee.*
31. *Internal Affairs Unit management to have greater accountability for financial management and expenditure and offer advice where blowouts occur.*
  32. *The Officer in Charge of the Internal Affairs Unit to assume greater management and leadership of the unit, address strategic planning and future direction needs, supervise, direct and review investigations from a “top down” perspective and apart from major matters requiring direct intervention, devolve authority and accountability for competency and thoroughness of investigations to investigators.*
  33. *The position of Administrative Sergeant be civilianised immediately.*
  34. *The present incumbent Administrative Sergeant be formally allocated that position of Analyst he now acts in.*
  35. *The Assistant Analyst, now acting as Administrative Sergeant, return to his former, and substantive position.*
  36. *The analytical arm (of two persons) of the unit not, in future, be utilised in other “acting” positions to fill human resource gaps or shortages within the Unit.*
  37. *The position of “Senior Investigator, Second in Charge” within the Internal Affairs Unit be abolished.*
  38. *The investigative arm of the Unit be restructured to consist of three, two man teams, of Inspector and Sergeant rank respectively.*
  39. *Investigations to be allocated equitably to such “teams”, to be actioned and reported on direct to the Officer in Charge.*
  40. *The future of those specialised technical officers attached to the Unit be considered by the Service’s executive as to future promotional prospects, placement, remuneration, and succession.*
  41. *All positions now vacant within Internal Affairs Unit (and in some instances occupied by “secondees”) to be advertised. In the instances of promotional vacancies, these positions be filled in the manner advocated within the ADVANCE promotional model. In instances of “like to like” transfers not involving promotions, staff selection be conducted by the portfolio head (as recommended on the “Future Directions” area of this report), and two other officers, independent to Internal Affairs Unit Management.*
  42. *The tenure of service of all officers attached to Internal Affairs Unit be the responsibility of the portfolio head of Internal Affairs Unit, consideration as to effectiveness and suitability of individual officers, future career pathing being the responsibility of this officer.*
  43. *The Officer in Charge immediately develop a proactive and marketing strategy in consultation with the Internal Investigation Branch and Office of the Inspectorate.*
  44. *An alternative is to leave recommendation (1) until the establishment of a Professional Standards portfolio when this responsibility should be vested in the portfolio head.*
  45. *That a statistical data base be established with the Internal Affairs Unit to allow*

*for the Monitoring of Performance Indicators, trends, etc.*<sup>22</sup>

The Superintendent in charge of the Unit was also an investigator within it. Generally investigators within the WAPS do not necessarily wish to undertake the role of manager and relinquish their role as investigator as they progress through the ranks. Officers are rarely trained in effective management strategies prior to taking up management positions. The management role is ill-defined and the functioning of the Unit suffers.

The WAPS should be changing its recruitment, training, education and promotion procedures in line with the Committee's First Interim Report<sup>23</sup>.

## **INTERNAL INVESTIGATIONS BRANCH (IIB)**

The IIB of the WAPS was established on 1 July 1985 following amendments to the *Parliamentary Commissioners Act 1971*. The IIB is the investigative branch charged with receiving and examining complaints from the public about police behaviour and carrying out investigations of those complaints.

When a complaint is received it is investigated by a nominated investigator who then recommends to the Commander (Discipline) what action, if any, should be taken. If the complaint is trivial it may be dealt with at a command or station level rather than being referred to the IIB. On occasion, however, such complaints may be referred to the IIB. There is a view within the WAPS that trivial complaints should be dealt with by conciliation at local level, rather than being referred.

The IIB is within the Discipline portfolio of the WAPS.

The Charter of the Discipline portfolio is:

- 1) *Control and supervision of Branch officers, thereby ensuring competent and efficient investigations into -*
  - (i) *complaints against police;*
  - (ii) *cell deaths and attempted suicides by persons in police custody;*
  - (iii) *deaths resulting from actions by officers in the performance of their duty;*  
*and*
  - (iv) *incidents involving officers discharging firearms in the execution of their*

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<sup>22</sup> *A Review into the Internal Affairs Unit*, Review Committee, April 1995, pages 68-76

<sup>23</sup> *Interim Report of the Select Committee on the Western Australian Police Service: Term of Reference 7*, February 1995



*duty.*

- 2) *Supervision of all regions and branches on matters of discipline.*
- 3) *Initiation of appropriate disciplinary or criminal proceedings against police officers, where determined by investigations.*
- 4) *Co-ordination of tribunal hearings and appeals in matters of discipline.*
- 5) *Effective and harmonious liaison with the Parliamentary Commissioner for Administrative Investigations (the Ombudsman).*
- 6) *Regular examination of police procedures and practices to ensure identification and reporting of corruption, or potential corruption, by members of the Force.*
- 7) *Development of corrective strategies and amendments to Police Regulations and Routine Orders, where warranted, to minimise opportunities for corruption and procedural malpractice or the appearances of such.*
- 8) *Lecturing to all ranks at the Academy and police stations. The theme of such lectures being Accountability, Responsibility and Discipline.<sup>24</sup>*

### **Personnel of the IIB**

The Committee was informed on 17 May 1994, there were 34 authorised personnel including three administrative assistants and the Officer in Charge, being a Commander.

### **Figure 1: Organisational Structure of the IIB<sup>25</sup>**

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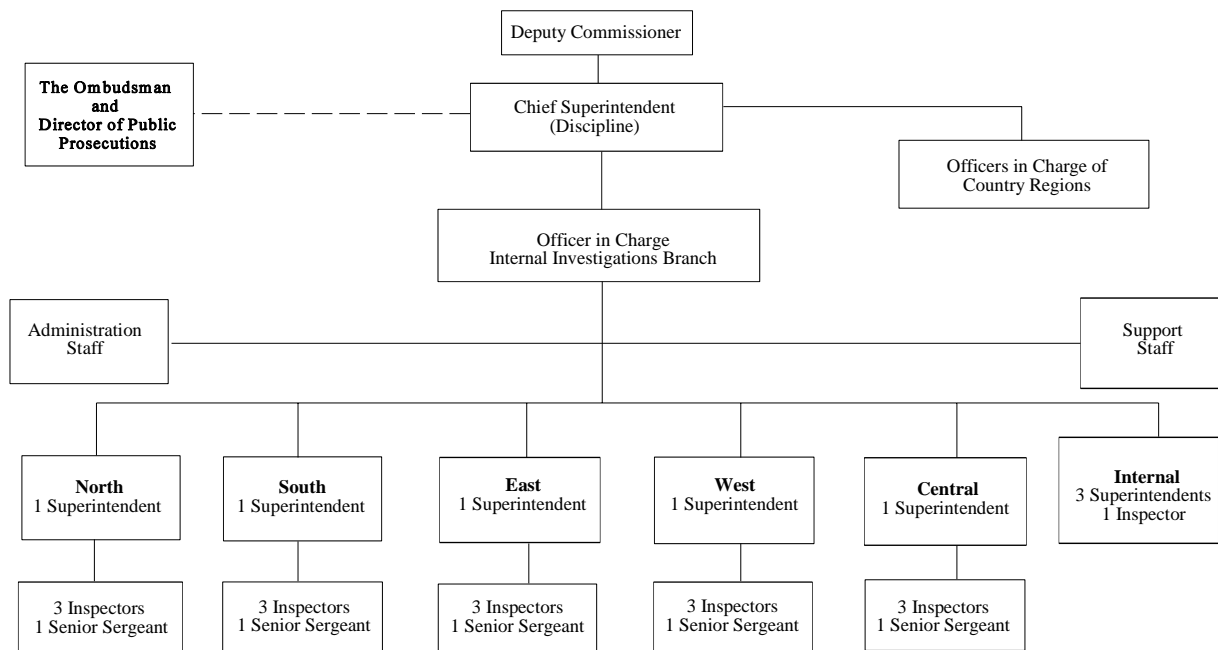
<sup>24</sup> Annual Report for the Internal Investigations Branch for 1993 - 1994, by Commander (Discipline) GDS Lippe to the Acting Deputy Commissioner

<sup>25</sup> *A Review into the Internal Investigations Branch*, M Hay, J Crawford and R McDonald, May 1994, Appendix, page 57

### Accountability of the IIB

The IIB is accountable to the Commissioner of Police through the Deputy Commissioner. The Ombudsman’s Office has the capacity to review investigations of complaints and in certain circumstances, to conduct its own investigations. If the complainant is not satisfied with the result of the investigation, the matter may be referred to the Ombudsman’s Office which may then examine the documents from the initial investigation, review the findings and may conduct its own investigation.

In May 1994 an internal review of the management, direction, staffing and resourcing of the IIB was conducted. It identified shortcomings in the processes of the IIB.



- Responsibility and accountability were not accepted nor enforced by Regional Officers or supervisors. There was an increasing trend for Regional Officers to refer misconduct to the IIB at the earliest opportunity rather than taking responsibility and sorting the matter out at a lower level. The recommendation of the Review Committee was that in all but the most serious matters the supervising officer should be responsible for the initial inquiry into the complaint and if it was shown that further investigation was required or it was a matter of seriousness, then it should be referred to the IIB.
- There was a lack of communication between the IIB and executive management within the IIB. This lack of communication created suspicion and misunderstanding within the

WAPS.

- There was a lack of sensible management in relation to files and the prioritisation of matters. Due consideration was not given to the seriousness of matters, or public perception of the importance of matters.<sup>26</sup>

The internal review recommended that the IIB develop a strategy for prioritisation of files and file management. The current practice of retaining large quantities of the agency's information by single police officers was to be discouraged. The information belongs to the agency for its use. It is not the property of a single officer.

The WAPS should give consideration to the extensive work carried out in this area by the NSW ICAC and the systems proposed by it regarding file management, storage and security which have now been implemented in NSW.

## **OFFICE OF THE INSPECTORATE (the Inspectorate)**

The Office of the Inspectorate (the Inspectorate) was established in 1981, and in 1991 the Internal Audit Branch was attached to the Inspectorate for the purpose of carrying out regular audits and operational reviews of areas of the WAPS. The Internal Audit Branch includes members with diverse skills including expertise in financial management and systems and police operational knowledge.

### **Functions of the Office of the Inspectorate**

The Inspectorate's role is to "*...achieve sound managerial control over all activities managed by the Executive Command, in order that activities are carried out effectively and efficiently.*"<sup>27</sup>

The Objectives of the Inspectorate are as follows:

- To provide a continuing impartial assessment of the efficiency and effectiveness of the Police Service;*
- To assist Regional Officers and Branch Heads in improving efficiency in their respective areas of responsibility; and*
- To provide Senior Management with advice and appropriate solutions to identified problems within the organisation.*

*The objectives of the Branch are achieved by:*

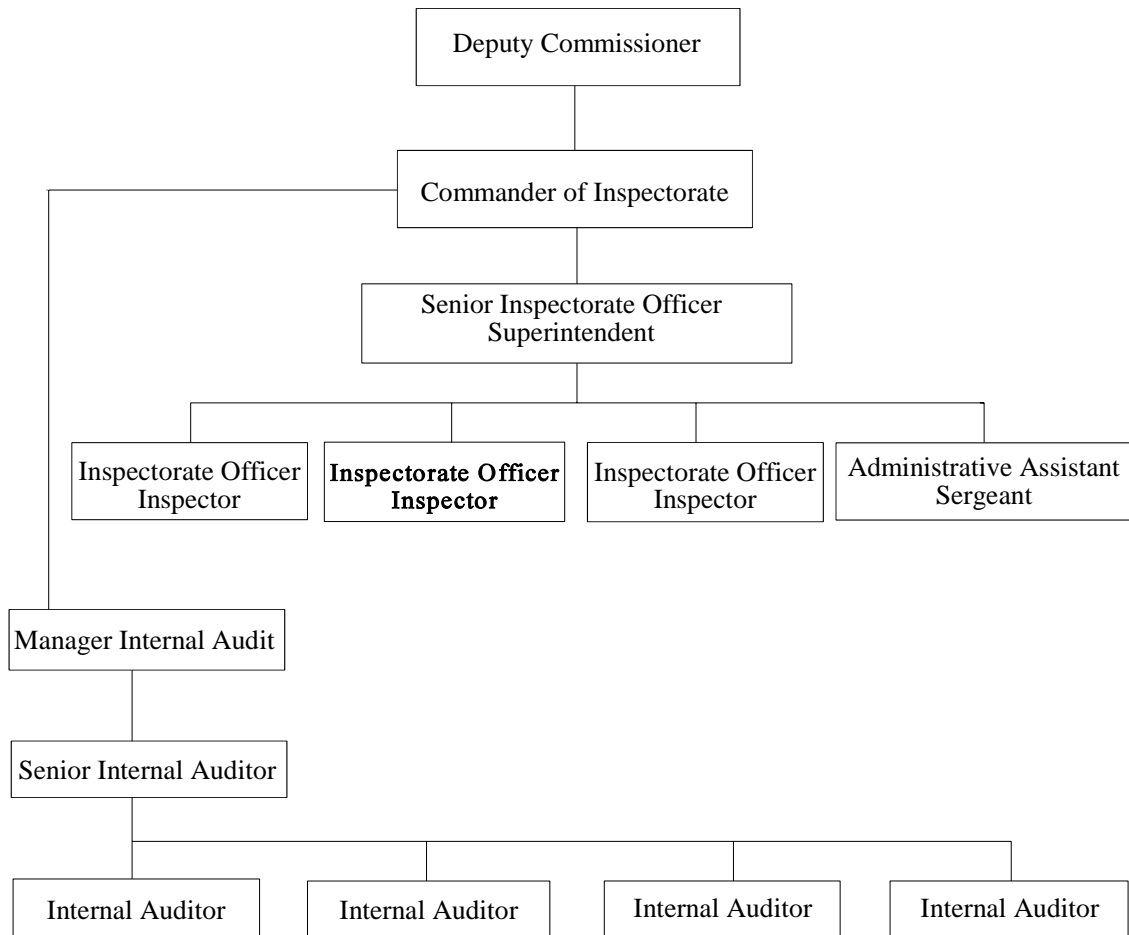
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<sup>26</sup> A Review into the Internal Investigations Branch, M Hay, J Crawford and R McDonald, May 1994

<sup>27</sup> Commissioner's Briefing Notes: Office of the Inspectorate, Overview of Role and Function, JR Hawkes, A/Commander, Office of the Inspectorate, November 24, 1995

- 1) *Carrying out both a cyclic and random system audit inspections;*
- 2) *Carrying out audits and reviews of the operational, management information and control systems and activities;*
- 3) *Providing comprehensive advice, in the form of written reports, concerning audit/inspections to Regional Officers and Branch Heads;*
- 4) *Ensuring Policies and Strategies of the Police Service are understood and implemented in Regions and Branches;*
- 5) *Ensuring the functions of Regions and Branches are carried out in an efficient manner;*
- 6) *Ensuring appropriate arrangements are in place for promoting co-operation within and between Regions and Branches;*
- 7) *Ensuring Regions and Branches are adequately housed, manned and equipped;*
- 8) *Ensuring procedures are adequate to serve the interests and welfare of members;*
- 9) *Ensuring new schemes, suggestions and initiatives are being considered and introduced when appropriate; and*
- 10) *Performing duties as directed by the Commissioner of Police.*

**Figure 2: Organisational Structure of the Office of the Inspectorate**



### **Accountability of the Office of the Inspectorate**

An Internal Audit Charter was approved by the Commissioner of Police on 1 January 1987, and revised on 17 February 1992 to reflect the integration of the Internal Audit Branch with the Office of the Inspectorate.

The Internal Audit Charter specifies:

- *the role and function of the unit;*
- *the requirement for independent status;*
- *where the authority for the operation is derived;*
- *requirement to plan internal audit activities;*
- *requirement to maintain internal and external relationships;*
- *methodology to adopt; and*
- *general reporting and quality assurance standard.*

The Inspectorate reports to the Internal Audit Committee which consists of:

- *Executive Director (Chairman);*
- *Commander of the Inspectorate;*
- *Director, Policy, Planning and Evaluation; and*
- *Manager, Internal Audit.*

The Committee meets quarterly. Its aims are to ensure that the internal audit function operates in accordance with appropriate internal auditing professional standards and that attention is given by internal audit programs to analyse the effectiveness and efficiency of the WAPS.<sup>28</sup>

## **THE ROLE OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS (THE OMBUDSMAN)**

In Western Australia complaints against police are made either directly to the Commissioner of Police or to the Ombudsman. The Ombudsman's role in general terms is to investigate matters of administration "...by any government department or other authority" (see section 14(1)). However, the ambit of the *Parliamentary Commissioner Act 1971* ("PC Act") has been extended by section 14(1a) to include:

**14(1a)** *Subject to this Act and notwithstanding subsection (1), the Commissioner shall investigate any action taken by a member of the Police Force or Police Department, whether or not that action relates to a matter of administration, where that action was, or purported to*

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This information is taken from *Commissioner's Briefing Notes: Office of the Inspectorate, Overview of Role and Function*, JR Hawkes, A/Commander, Office of the Inspectorate, November 24, 1995

*be, done in the exercise of, or in connection with or incidental to the exercise of, that member's powers, duties or functions as a member of the Police Force or Police Department:*

*Provided that the Parliamentary Commissioner shall not investigate such action until the Commissioner of Police has had a reasonable opportunity to conduct his own investigation into such action.*

**(1b)** *For the purposes of the proviso to subsection (1a) the Commissioner of Police shall be deemed to have had a reasonable opportunity to conduct his own investigation into any action referred to in that subsection if*

- (a) a period of 42 days; or*
- (b) such longer period as is agreed by the Commissioner of Police and the Parliamentary Commissioner,*

*has expired since the complaint relating to that action was received at the office of the Commissioner of Police.*

The Ombudsman, whose role is primarily to investigate administrative decisions which impact upon the individual is required to investigate complaints against police which relate almost exclusively to operational matters. That is to say, the matters about which people complain relate to the manner in which they have been treated by the police officer rather than the administration of the police force. This focus has required that within the Ombudsman's office there is a separate focus on the receipt and investigation of complaints against police.

A complaint is received by either the Commissioner of Police or the Ombudsman and each opens a file. In most cases complaints are initially investigated by the IIB. A complainant can complain to the Ombudsman about the results of the IIB investigations. The Ombudsman may review the investigation documents, interview the people concerned and report.

There are circumstances where the Ombudsman has carriage of the original investigation of complaints. Such situations are:

- *where the complaint is one involving very senior police officers and, if it were to be investigated by police, it would be inappropriate or impractical for it to be investigated by anyone other than the Commissioner himself; or*
- *where the complaint involves matters of such high public interest or concern that it would be in the best interests of police as well as the public for the matter to be investigated by my [the Ombudsman's] office.<sup>29</sup>*

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<sup>29</sup>

*Parliamentary Commissioner for Administrative Investigations: Western Australia, Annual Report 1995, page 37*

In his Annual Report 1994, the Ombudsman outlined the assessment procedure for complaints which have been in place since October 1993. He stated:

- *certain complaints made against the police are selected at the outset for assessment by my office;*
- *in general, only the more serious cases are selected for assessment, on the basis of agreed criteria - these include complaints of assault or excessive force or serious threats or intimidation;*
- *complaints about matters falling outside the agreed criteria may also be selected by me for assessment, either at the outset or at a later stage, if it appears to me to be appropriate in the particular circumstances of the case;*
- *in each case selected for assessment, the Commissioner of Police must send me a written progress report at the expiration of 21 days from the commencement of the police investigation into the complaint, and I may consult, if appropriate, with the Commissioner of Police as to the contents of the progress report or any aspects of it;*
- *my assessment takes place upon completion of the police investigation and **prior to** the complainant being notified by the Commissioner of Police of the outcome of the investigation;*
- *the purpose of the assessment is to review the **adequacy** of the police investigation of the complaint (and to consider the recommendations of the police officers in charge of the investigation);*
- *if I find that the police investigation is adequate, I inform the Commissioner of Police who then notifies the complainant of the outcome of the investigation;*
- *if I find that the police investigation is inadequate, the matter is normally referred back to the Commissioner of Police for further enquiries and, on completion of those enquiries, the police investigation file is again reviewed by my office;*
- *the letter sent to the complainant by the Commissioner of Police explains that, if the complainant is not satisfied with the outcome of the police investigation, he or she may contact my office; and*
- *if the complainant is not so satisfied and asks me to take a further look at the matter, I may refer the matter back to the police for further action or carry out my own enquiries, (and, if appropriate, I may decide to commence a formal investigation under the Parliamentary Commissioner Act); alternatively, I may*



*advise the complainant that no further action is warranted.*<sup>30</sup>

Under the new guidelines agreed to by the Commissioner of Police assessment of the adequacy of a police investigation can be generated by the Ombudsman either before the complainant is informed, or after the complainant has registered dissatisfaction with the Police investigation. In certain situations where the matter “...is considered to raise serious issues of importance, either to the police or [in] the public interest, or involves contentious matters of some complexity, [the Ombudsman] may proceed to conduct a formal investigation under the PC Act, using [his] Royal Commission powers.”<sup>31</sup>

The Ombudsman has highlighted shortcomings in the police investigation of complaints, which have been assessed under the new procedure:

*In most cases those shortcomings have involved the failure by police investigating officers to properly address the legality or reasonableness of police actions. In other cases, although the scope of the investigation has been quite adequate, there has been a failure to draw proper conclusions from it. In a number of cases there has been a failure to deal with some legitimate issues raised by the complainant.*<sup>32</sup>

## **THE ROLE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (DPP)**

The DPP’s office is the prosecution office of the State. It has the responsibility to bring actions against persons on behalf of the State where it believes that there is evidence which may persuade a jury that an offence has been committed.<sup>33</sup>

The Committee, in reviewing the role of the Office of the DPP in regulating the WAPS, considered whether the DPP’s powers in this regard should be retained. Currently the Office of the DPP provides a further check and balance in the system. Upon reflection, and bearing in mind particularly the view of the DPP as set out later in this Report, (See Part 4 - Memorandum to the Premier, the Attorney General and the Minister of Police, pages 79-82) it is not appropriate that the DPP have an investigatory function. The DPP’s function is primarily that of a prosecutor. The major client of the DPP is the CIB. The DPP has to have a close working relationship with the CIB.

If the DPP is obliged to investigate any part of the CIB that will, necessarily, impinge on this

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<sup>30</sup> *Parliamentary Commissioner for Administrative Investigations: Western Australia, Annual Report 1994, page 34*

<sup>31</sup> *Parliamentary Commissioner for Administrative Investigations: Western Australia, Annual Report 1995, page 38*

<sup>32</sup> *Parliamentary Commissioner for Administrative Investigations: Western Australia, Annual Report 1994, page 34*

<sup>33</sup> The DPP’s functions are set out on page 4 of *Office of the Director of Public Prosecutions: Annual Report 1994/95*

working relationship. The work of a prosecutor is significant in itself. Given the close working relationship that has existed between the office of the DPP and police personnel, it may be that the DPP's office is not able to recognise police corruption. The worst and most basic form of police corruption is that which involves a fabrication of evidence by police officers. The DPP's office has, arguably, relied from time to time on the evidence of corrupt police officers.

## **THE ROLE OF THE OFFICIAL CORRUPTION COMMISSION (OCC)**

The Official Corruption Commission (OCC) was established in 1989 pursuant to the *Official Corruption Commission Act 1988* ("OCC Act"). The function of the OCC is described in the title of the OCC Act as being:

*...to receive, consider and , if it thinks fit, refer to persons or bodies for investigation or the taking of action, or both, allegations of corruption or of the commission of certain offences made against public officers and certain other persons, and for related or incidental purposes.*

The OCC does not have any original power to investigate matters of criminality or corruption. Amendments to the OCC Act in 1994 increased the jurisdiction of the OCC giving it the power to conduct preliminary investigations. However, given the budget and staffing of the OCC, effective investigation by it is impossible.

Allegations made in relation to the WAPS, taken by the OCC are referred to the Police Service for investigation. Those investigations generally are undertaken by either the IIB or the IAU.

That arrangement is unsatisfactory.

The OCC appeared to the Committee to be little more than a body which collated statistics of corrupt behaviour in the public sector.

Pursuant to section 7C of the amendments to the OCC Act, the OCC has the discretion to refer matters to the Ombudsman. In reality, this simply puts one more step, or authority into the system. It is as easy for a person to make the complaint directly to the Ombudsman, rather than making it to the OCC who then merely refers it on.



### **PART 3**

## **THE INTERNAL INVESTIGATIONS BRANCH**

To understand how the IIB operates, the Committee undertook a close examination of a case involving police officers from Eucla and Esperance who were found guilty of charges of perjury and conspiracy to pervert the course of justice. It is reported here as "The Eucla Episode".

Two other cases brought to the Committee's attention through public submissions are reported here, but in less detail. They are the prosecution of James Heaney and the conviction of Jeannie Angel. The accounts presented were derived from oral and written evidence given to the Committee and documentary evidence sought to test the veracity of, or to elucidate aspects of, the verbal testimony.

Taken together, these three cases demonstrate the functions of the IIB. Each illustrates different aspects of its work. They also allow evaluation of the IIB's role as a regulator of police conduct.

### **THE PROSECUTION OF JAMES HEANEY**

In 1986 James Heaney ("Heaney") faced two sets of charges related to two quite separate incidents. The first set of charges arose from an incident at his home. The second set of charges arose over an incident which had occurred earlier that year at another house in the same locality, but several blocks away from his home. Apart from the geographic proximity of the two houses, the incidents were in no way related, except through an assumption made by the investigating officer that because Heaney had been involved in one, he may have been involved in the other.

Heaney was tried on both sets of charges. He appeared in the Supreme Court, Perth, on November 21, 1986, on the charges which arose from the incident at his home. He was acquitted on three of the charges, including a charge of rape, but was found guilty of assault. Two months later, on January 27, 1987, he was acquitted on the second pair of charges.

It was this second matter, a rape which had occurred in January 1986, which is the focus of the Committee's attention. It reveals inadequacies in the original criminal investigation and, more pertinent to the Committee's term of reference, exposes serious shortcomings in the way in which the IIB responded to a complaint about the police investigation.

The episode began on the evening of March 7, 1986. Heaney was arrested and charged with four offences: assault occasioning bodily harm; unlawful and indecent assault; deprivation of liberty;

and rape. The alleged assaults had occurred in Heaney's home.

Six weeks earlier, on the night of 24 January, 1986 a twenty year old woman ("the complainant") had been raped by a man who had broken into her house through the front bedroom window. In her subsequent report to police, the complainant described her assailant as about thirty years of age, 178 centimetres tall, overweight, of fair complexion, light brown short hair, with an Australian accent, a moustache and smelling strongly of beer.

Heaney does not fit that description. At the time of his arrest in March, Heaney was forty-nine years of age, 162 centimetres tall, of stocky build, had greying black hair, spoke with a broad Scots accent and never at any material time had a moustache.

The senior detective involved in the investigation of the January offence had access to the material obtained with respect to the charges laid against Heaney in March. On a hunch, it seems, he thought there might be a connection between the two matters, probably reinforced by the geographical proximity of the two incidents.

A preliminary medical report given to the investigating officer by telephone on March 11, 1986 indicated that exhibits taken from Heaney were consistent with the examination of exhibits taken from the complainant of the earlier offence. That information, which later proved to be incorrect, was that Heaney and the offender in the January rape were both non-secretors.

Armed with that information, the detectives sought positive identification. On the basis of photographs provided by the detectives, the complainant identified Heaney as her assailant. On March 26, 1986, two charges were preferred against him, namely breaking and entering a dwelling home with intent to commit an offence, and rape.

Heaney appeared in the Supreme Court, in Perth on January 27, 1987 and was acquitted of both charges in relation to the complainant.

## **The Evidence**

The prosecution in relation to the breaking and entering and rape charges in January relied heavily upon the evidence of the complainant as to identification. The identification was arranged in the following manner. The investigating officer collected on a single page, 11 photographs of men's faces. Each face was similar in age and appearance to Heaney. Included on the page was a "mug-shot" of Heaney. Another detective was directed to take the photos to the complainant's house and ask her if she could identify any of them as her attacker. After prompting she nominated two of the photos as possibilities. One of them was Heaney. This identification took place, despite the fact that the complainant's original description of the attacker bore no resemblance to Heaney whatsoever.

Two days later the complainant identified Heaney as the offender because she recognised his eyes. Her identification was assisted by a police officer putting paper over each photograph in turn so that only the eyes were visible. The identification of Heaney as the offender was based solely on photographic identification and primarily because the complainant recognised his eyes.

In addition to the positive identification from the complainant, the police relied upon inferences from forensic evidence. This comprised Heaney's blood and saliva samples taken for investigation of the March complaint. Samples were also taken from the complainant's house, being stains from the bed sheets and nightie and material from vaginal swabs from the complainant. The pathologist's reports indicated a possibility that Heaney could have been the source of two of the stains, however, the same reports showed he could not have been the source of all of them.

This last point is significant. The prosecution emphasised that Heaney's blood group represented only fourteen percent of the population. Had all the semen stains and swab specimens been confined to that group, there was a one-in-seven chance that a person of Heaney's blood group may have been the assailant. In fact, all the stains were not of a single blood group. All that the pathologist's report demonstrated categorically was that persons of Heaney's blood group were not excluded. Neither were others.

An important difference between the preliminary report and subsequent close analysis of samples of saliva and blood taken from Heaney on March 7 and material from the complainant and the scene of the crime of January 24, seems to have been overlooked. According to the investigating officer's notes of a telephone conversation with a senior technologist at State Health Laboratory on March 11, both samples exhibited non-secretor characteristics.

The detailed pathology report of the evidence from the crime scene and from the complainant herself was obtained on February 13, 1986. This report showed that stains on the complainant's nightie were consistent with seminal plasma from a Group A secretor. Vaginal swabs similarly gave Group A reactions consistent with a Group A secretor. Because the semen was mixed with vaginal material from the complainant, the possibility that the semen was from a non-secretor of any group could not be eliminated. In the same way, stains on one of the bed sheets were consistent with semen from a Group A secretor or a non-secretor of any group.

The pathologist's report dated February 13, 1986 established that the complainant was a secretor. Saliva and blood samples were taken from Heaney when he was arrested in March and it was established and informally reported to the investigating officer by telephone on March 11, 1986 that Heaney was a non-secretor. His non-secretor status was confirmed formally in a letter on March 25, 1986.

Further analysis, of all the samples taken was done on April 10, 1986 by the technologist in charge of the State Health Laboratory. This confirmed that because of the mixing of vaginal material and semen, it was not possible to exclude the possibility that stains on one sheet and seminal material from the vaginal swabs were from a non-secretor. Therefore, Heaney was not excluded.

Analysis of material from the nightie and the second bed-sheet, however, produced a different result. They were consistent with seminal plasma from a Group A Secretor:

*If in fact the stains were semen with no other body fluids, they could not have been from Heaney.*

*Although these stains may be unrelated to the stains on the swabs and the other sheet, it is unlikely. In each case no spermatozoa were found suggesting one male was responsible for all the semen found.<sup>34</sup>*

The only reason that Heaney was not excluded as the assailant, therefore, was that stains on one bed sheet and material from the vaginal swabs were a mixture of bodily fluids from the rapist and the complainant. It was not possible to separately analyse them. Other exhibits did exclude Heaney.

The crucial factor overlooked by the police investigators was that in each specimen no spermatozoa was found. The forensic report from the State Health Laboratory Services stated:

*The lack of spermatozoa in each of the semen stains is a strong indication that the male was aspermic.*

*Aspermia can be congenital or the result of a vasectomy.*

*If Heaney has produced children and has not had a vasectomy it is unlikely that he would be aspermic...It is unlikely that the semen stains found were from a hypospermic male.<sup>35</sup>*

At the time of his arrest, Heaney was the father of a three year old child. He had not had a vasectomy. There was thus a technical possibility of Heaney being the offender, based upon medical evidence, but as a matter of common sense it was unlikely. For Heaney to have been the offender, another male must have been the source of the stains on the victim's nightie, one of her bed sheets and the semen found in vaginal swabs. This possibility was never investigated, if in fact it was appreciated by the investigating officers. Put at its best it could be said that the forensic evidence did not point to Heaney as the offender, but it did not positively exclude him.

The inadequacy of the understanding of the forensic evidence was matched only by the imprudence of the means by which the "positive identification" was secured. The fact that the complainant was shown photographs only of faces of persons similar to Heaney in age and appearance and not at all similar to the complainant's description of the offender was the subject of repeated comment at trial. The procedures followed by the investigating police officers were

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<sup>34</sup> Letter from AM Feaney, Technologist in Charge, Forensic Biology, State Health Laboratory Services, to Chief Inspector Farrell, CIB, April 10 1990, page 2

<sup>35</sup> Letter from AM Feaney, Technologist in Charge, Forensic Biology, State Health Laboratory Services, to Chief Inspector Farrell, CIB, April 10 1990, page 2

inept, ill-advised and likely to result in a false identification. When it is borne in mind that the only thing the complainant could identify was "the eyes" the problems are even greater.

The question which has to be asked is whether the police case against Heaney amounted to incompetence, or whether there is evidence of malice. There certainly is evidence that the police too hastily formed a belief in Heaney's guilt on insufficient grounds, but this is not adequate to conclude they acted from malice. The best that can be said is the investigating officers were incompetent. The worst is that Heaney was fitted with the crime.

### **The Internal Investigations Reports**

After the verdict in favour of Heaney in relation to the breaking and entering and rape charges, he asked his solicitors to request financial compensation from the Crown for wrongful imprisonment. The IIB prepared a report as a result of which financial compensation was declined. In recommending that, the IIB provided answers to a series of questions raised by Heaney's solicitors. Two of the questions raise issues for comment by the Committee.

The use of the unsafe forensic evidence was challenged by Heaney's solicitors but the IIB did not investigate the treatment of the forensic evidence at the trial. Instead the IIB adopted the same argument as was used by the prosecution:

*In [the pathologist's] initial report he stated that the swabs taken from [the complainant] revealed the same blood group as Heaney, which is found in fourteen percent of the population. This is what was accepted and produced in evidence. In brief, it resulted with the swab test showing the offender could be Heaney and the stain on the night dress could be Heaney's, however the stains on the bed sheet were not from Heaney. As the complainant was sleeping in her parent's bed, it was believed that these stains were probably from her father.*

*Because the main evidence, being the swabs, was compatible with Heaney's blood group, inquiries regarding the bed sheet were discounted.<sup>36</sup>*

This statement stands in stark contrast to this assessment by an independent forensic pathologist:

*...the interpretation of this stain as well as the sheet MC2 was that the semen came from a secretor male. This evidence was immediately available when Heaney's blood group and (non) secretor status was established on March 25th just before he was charged with the offence. One can only assume that the significance of his being a non-secretor, which virtually excluded him from being the assailant, was not understood or else was overlooked at the time. Nor was his "sperm count" or paternity status realised or*

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<sup>36</sup>

Report from IJ Thomter, Chief Superintendent (Discipline), IIB, to the Attorney General, 9 October 1987, pages 4-5



*considered as being highly significant to the charge in the light of the medical evidence already available.*

*In conclusion then, for Heaney to have been the assailant at 2:30am on the 24th January 1986, [the complainant] would have had to have prior recent sexual intercourse with an azoospermic male; is then raped by Heaney who would have had to be wearing a condom and left absolutely no trace of his secretions on the clothing or sheets at the scene. Given this scenario and presumably strong supportive evidence in the form of identification etc, it could then be the duty of a jury to assess whether reasonable doubt existed.<sup>37</sup>*

Concerns about the method in which the identification was carried out were answered by the IIB in these terms:

*Because there was little evidence to hand and having prior knowledge of Heaney's attitude, it was decided to pursue an identification by way of photographs.*

*It was never thought there was any difficulty with the way in which the identification was made.<sup>38</sup>*

In fact, the identification was made even before Heaney was interviewed about the case. He did not know he was under suspicion for the January rape. The Police had not interviewed him and could not correctly assess his attitude. As for the well-documented dangers of carrying out an identification by photographs, the IIB review does not appear to have considered them. In short, the carelessness of the original police investigation seems to have been matched only by the ineptitude of the review by the IIB.

The second report made by the IIB in relation to the matter was after Heaney made claims about the incompetent police inquiry. These comments were broadcast on 6PR radio during an interview with Howard Sattler on the morning of May 18, 1989. This IIB report was even more cavalier than the first. Heaney's comments were described as, "...a tirade of one-sided inaccuracies," but the report did not produce a convincing denial. Instead, it dismissed the salient concerns in this way:

*It is significant there was conflict over the complainant's initial description of the offender to that of Mr HEANEY however this was addressed by Justice ROWLAND in his summation to the Jury and was in no way critical of the police inquiry.*

*HEANEY was represented by a leading barrister in Mr Brian SINGLETON QC who chose not to elect a preliminary hearing wherein he could have tested the police evidence and pleaded 'no case to answer'. That he did not do so weakens the claim by HEANEY of*

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<sup>37</sup> Letter from Derek A Pocock, Forensic Consultancy Service, to Mr Chris Stokes, Butcher Paull & Calder, 13 November 1990, page 2

<sup>38</sup> Report from IJ Thomter, Chief Superintendent (Discipline), IIB, to the Attorney General, 9 October 1987, page 5

*incompetent police inquiry.*

*It is unfortunate the girl's father did not submit blood for comparison with the stains on the bed sheet as this area did lead to the defence raising doubts in the forensic evidence.*

*Forwarded for perusal is Justice ROWLANDS address to the jury which I believe will allay the concern you have expressed.<sup>39</sup>*

These statements display little awareness of jurisprudence and an unwillingness to test those elements of the police case which had been so vigorously criticised. If there had been a careful and informed reassessment of the forensic evidence, different conclusions may have been drawn.

## **THE CONVICTION OF JEANNIE ANGEL**

Jeannie Angel ("Angel") was convicted on a charge of murder following her trial on October 13, 1989. It was later shown her conviction was founded on evidence that was, at best, unreliable. The investigating police had, or should have had, at the time of trial, evidence which supported her "not guilty" plea. She spent more than two years in gaol until that evidence was rediscovered. Only then was her plea supported by the Court of Criminal Appeal. Her conviction was quashed as "unsafe and unsatisfactory" on October 8, 1991.

The police case against Angel rested upon the fact she and the deceased had an altercation on the day the deceased was thought to have been killed. It was alleged Angel struck the deceased on the head and jumped upon her stomach, thus causing fatal injuries. This was supported by a "confession" Angel made stating that she alone was responsible for the death. That alleged confession was claimed to have been given by Angel when she was in custody at Roebourne on March 30, 1989.

Conflicting evidence was brought to the attention of the investigating officers on the same day. A witness reported seeing the deceased on the day of her death drinking with a group of Wiluna and Jigalong women. Such an explanation was plausible because they were of the same people and spoke the same language. The witness named the women. She said she believed these women had killed the deceased and left unexpectedly to return to Newman that same evening.

The police did not investigate that information.

This evidence was raised again with the principal investigating officer on September 28, 1989, two weeks before the trial. The Aboriginal Legal Service (ALS) provided information that two of the women who had been reported drinking with the deceased had been severely beaten on two occasions. They were heavily bandaged after the first beating.

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<sup>39</sup>

Memorandum from Detective Chief Superintendent DL Hancock, CIB, to the Hon Minister for Police, 6 June 1989

An anthropologist familiar with the Aboriginal customs of the Jigalong area, where the women lived, advised that the beating, if inflicted by relatives of the deceased, could indicate that these women were involved in the death. In Aboriginal lore, blame might be attached to a person as a result of a variety of degrees of involvement, ranging from mere presence at the scene and failure to intervene, to direct participation in causing the death.

Even armed with this further information the police did not investigate.

Angel maintained throughout the trial and during her imprisonment that she was innocent. Her case was taken up by Mr George Guidice, a Geraldton lawyer, and a Perth barrister, Mr Ian Marshall, after they were approached by a Bandyup prison officer on Angel's behalf. Mr Guidice travelled to the Kimberley to interview witnesses and obtained statements which threw doubt on Angel's involvement in the death. After 15 months of hard investigative work and campaigning, there was sufficient fresh evidence to convince the Court of Criminal Appeal to grant leave to appeal.

One week before the appeal was listed to be heard before the Court of Criminal Appeal on September 9, 1991, the Crown was provided with an affidavit which contained information said to constitute fresh evidence. The affidavit named two of the women who earlier had been identified as drinking with the deceased on the day she died and implicated them in the death.

Preliminary inquiries by the South Hedland CIB cast doubt on Angel's conviction. An adjournment to conduct a further investigation was sought by the Crown and granted.

### **The Second Investigation**

At the request of Crown Counsel on September 2, 1991, Detective Sergeant Bourke, attached to the South Hedland CIB, questioned two sisters named in the affidavit. Both women admitted drinking with the deceased and having stolen her handbag on the day she died. One of them admitted to hitting the deceased on the head with a stick several times. She collapsed. Shortly after, one sister and another woman in the drinking party checked for signs of life. Believing the deceased was dead they carried her into the bush and covered her with a blanket.

The three women questioned in 1991 had been named by a witness on 30 March 1989 to the investigating officer - the same officer who had charged Angel with the offence. The women were not interviewed in 1989. When the information about them was given to the police in 1989, the women had already left South Hedland. They had returned to Nullagine with the senior constable then in charge of the Nullagine Police Station. The senior constable confirmed he had given the three women named and another woman a lift from Hedland to Nullagine and that they had left South Hedland at 11.00 am on Friday March 3, 1989.

Further investigation in 1991 tended to corroborate the record of events given by the sisters.

Although there were some variations in the recollection of detail, there was general agreement about what had happened and who was involved.

The record of interview of one of the three women also confirmed the information known to police in 1989, that the women had been beaten when they returned to their community. In an interview with Detective Sergeant Bourke, Senior Detective Farris and Police Aid Tullock dated September 10, 1991, Janette Campbell confirmed that the four of them had been given a lift from Hedland by the "Policeman from Nullagine". She was then asked about what happened at Nullagine:

*Q. When you got to Nullagine did you go anywhere else*

*A. Yeah to Newman and Jig a Long and Cotton Creek.*

*Q. Did anything happen to you*

*A. I got a flogging at Jig a Long, Newman and Cotton Creek.*

*Q. Who by*

*A. The old ladies.*

*Q. Why did they do that*

*A. Them old ladies say all of us knife mad and murderers.*

*Q. Did Susan and Lorraine get flogging too*

*A. Yeah<sup>40</sup>*

Detective Sergeant Bourke also gathered evidence which confirmed aspects of Angel's first account of her activities. He reported to Crown Law officers on October 3, 1991 and suggested Angel should be retried.

Crown Counsel submitted to the Court of Criminal Appeal on October 8, 1991:

*...in terms of the grounds of the appeal we are now of the view that in view of the additional information now available to us, which was not available to the crown or defence at the time of the trial, it would be unsafe, in view of that additional information, to allow the verdict to stand and because of the nature of that additional information the crown takes the view it would be in a genuine quandary as to being able to prove beyond reasonable doubt who it was who caused the death of the deceased.<sup>41</sup>*

The last paragraph of Detective Sergeant Bourke's final written report dated November 9, 1992, is worthy of note. He states:

*As there was a period of two weeks before some of the witnesses were spoken to it may have been difficult for them to recall the exact day the group were drinking together. It appears one group had a drink with the deceased on Wednesday March 1, 1989 and*

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<sup>40</sup> Record of Interview between Janette Campbell and Detective Sergeant MF Bourke, 10 September 1991, page 5

<sup>41</sup> Supreme Court of Western Australia, Court of Criminal Appeal, Jeannie Angel v R, Transcript of Proceedings, 8 October 1991

*another group had a drink with the deceased on Thursday March 2, 1989 which, I feel, was the night she was murdered.*

The date suggested by Detective Sergeant Bourke, March 2, 1989 was in fact, the day before the Crown originally alleged that Angel had committed the murder.

### **The Role of the IIB**

The Crown's principal evidence against Angel was her "confession". She was interviewed three times. The first was on March 3, 1989. The second was on March 21, 1989. At that interview she admitted causing grievous bodily harm and was subsequently taken into custody. On March 30, 1989 she was interviewed in custody at Roebourne Regional Prison and confessed to killing the deceased.

This third interview was against the express advice of the ALS. Her solicitor, Vicki Platt, advised Angel that she should not provide any statement or discuss the allegations against her in any way without first advising her solicitor. If the detectives sought to interview her, she was to say she required the presence of the ALS. Furthermore, the investigating detectives were advised that Angel was not to be interviewed other than in the presence of her solicitor.

Despite that advice and instruction, there was no solicitor or representative of the ALS present when Angel was interviewed at Roebourne Regional Prison. She claimed that the "confession" was obtained by threat and oppressive behaviour. One threat was that "if you don't talk straight we'll lock you up in Regional for six months".

This matter was considered by the IIB as part of its inquiry into allegations of improper and inadequate police investigation made in support of a claim for compensation. It was dismissed by the IIB, apparently with little scrutiny:

*It has been ascertained that during the course of a Voir Dire at the time of ANGEL's trial, all those other matters now also raised in support of this claim were thoroughly examined. The trial Judge allowed the evidence of the police officers to proceed before the Jury, whereupon the issues raised were examined for a second time. Consequently, ANGEL was found guilty of murder and sentenced to life imprisonment...*

*Taking into account also that there never has been an official complaint about the manner this investigation was conducted and all of these issues are now raised to only support the compensation claim, it is my view that they have been adequately dealt with. Any further investigation in respect thereof is considered futile and additional information arising therefrom, is not considered likely.<sup>42</sup>*

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IIB File 92/1119 by Superintendent CJ Van Boheeman, IIB, 16 December 1992, pages 1-2

This is surprising in light of the Court of Criminal Appeal's decision to quash the conviction. The evidence was admitted by the Crown to be unsafe:

*...we are in the position that we would have difficulty if we sought a retrial in knowing how to charge and we would have difficulty in proving beyond reasonable doubt which or any of the subsequent assaults was the cause of death.*<sup>43</sup>

The assessment by the IIB that the additional evidence would have been available at the time of the trial if the police had properly conducted their investigations, relied heavily upon the report of Detective Sergeant Bourke. Doubts about the adequacy of the original enquiries hinged upon the questions of when the murder was committed and whether the three other women implicated were in South Hedland at the time.

The Crown had alleged Angel had killed the deceased on the evening of Friday March 3, 1989. Detective Sergeant Bourke formed the opinion that, in fact, she was murdered the previous day. Medical evidence was of little assistance since the body was in an established state of decay when it was discovered on Sunday March 5, 1989. It was estimated that, given the weather at that time, the deceased may have been dead four to six days, but even that guess had to be treated with caution.

It was established that the three women discussed earlier, had left Port Hedland at 11:00am on Friday, March 3, 1989. They said the deceased had been killed by one of them the previous evening. If the deceased had been alive on Friday afternoon, then their story would have to be discounted.

The evidence is uncertain. Detective Sergeant Bourke re-interviewed the police witness who claimed to have seen the deceased on the Friday. She

*...thought the photograph she was shown by Detectives on March 8, 1989 was that of the deceased she saw seated on Friday afternoon, March 3, 1989.*<sup>44</sup>

The old man she had been seated with was Angel's father. The witness said that later the old man was arrested by police. Police Occurrence Sheets show he was taken into custody at 11:30 am on Thursday, March 2, 1989. Detective Sergeant Bourke also checked records of bank transactions.

*The accused, ANGEL, continually stated in her statement to Police and her evidence that her father, Johnson CONDON, had gone to the bank on the day the deceased was assaulted. Inquiries with the Commonwealth Bank show that the day CONDON made a withdrawal was Thursday March 2, 1989.*

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<sup>43</sup> Supreme Court of Western Australia, Court of Criminal Appeal, Jeannie Angel v R, Transcript of Proceedings, 8 October 1991, page 3

<sup>44</sup> Report by Detective Sergeant MF Bourke, I/C 4960, CIB South Hedland, 9 November 1992, page 5

*Bank records further show that the deceased, [named], had withdrawn \$219.00 on March 1, 1989 which would be consistent with the [named] girls stealing her handbag with one hundred dollars in it the following day, Thursday. Angel also stated she attended a funeral on Friday, March 3, 1989. Inquiries with the Funeral Director, Ness, revealed that a [named] was buried on March 3, 1989.<sup>45</sup>*

This evidence indicated that the likely date of death was March 2, 1989.

The IIB carried out no independent enquiries. Their report rehearsed the written statement of Detective Sergeant Bourke. It concluded:

*Of course it has not been determined without doubt that [the deceased] was killed on March 2, 1989, but if that were the case the police officers in any event acted in good faith.*

*For the reasons outlined, I recommend no further action be taken as far as the allegations raised against the investigating police officers is concerned.<sup>46</sup>*

## **MALICE OR INCOMPETENCE?**

Neither of these two cases categorically demonstrates corruption. The police investigation of Heaney shows wilful disregard of significant forensic evidence. Either, the investigating officers did not understand what the pathologist's report revealed, in which case they had a duty to consult someone who did; or they were so eager to find evidence which might attach to Heaney, they selectively disregarded information which eliminated him as a suspect. Whatever their reason, they were grossly negligent.

Similarly, in the case of Angel, the investigating officers had available to them an affidavit naming the women responsible. That information at least should have been tested. The police chose not to do so. Before the affidavit was received they had formed an opinion about when the offence occurred. At that time, enquiries had established that the three women, named in the affidavit of March 30, 1989, had left Port Hedland prior to the time, presumed by the police officers, of the murder. Because of this presumption, the investigating officers did not pursue the information contained in the affidavit.

The second investigation showed just how significant that information was.

It would appear that no cogency was given to Aboriginal lore and custom when information was

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<sup>45</sup> Report by Detective Sergeant MF Bourke, I/C 4960, CIB South Hedland, 9 November 1992, page 5

<sup>46</sup> IIB File No. 92/1119, Superintendent CJ Van Boheeman, IIB, 16 December 1992, page 4

received that the three women had been punished for the crime by their community elders. This exposes inadequacy in police training and procedures.

Both the investigations were inadequate. They may even have been wilfully negligent. The awful consequence was that two people suffered the worst possible consequence of police power. They were denied their liberty and their reputations. Heaney was held in remand at Fremantle and Canning Vale prisons for a total of nine weeks. Nine months later he was acquitted. For nine years since, James Heaney has endeavoured to clear his name.

Jeannie Angel served two-and-a-half years in prison as a convicted murderer. The case against her stood only because those police officers did not exhaust other possibilities which were not merely suggested, but were presented to them in a sworn affidavit. Her conviction was quashed, but she says since that time she has been subjected to continuing intimidation by police officers.

Neither Heaney nor Angel has received compensation, nor has the State apologised. In each case substantial compensation and an apology is warranted.

## **SELF-REGULATION**

What then of the self-regulation mechanism of the WAPS? In both the Angel and the Heaney cases the IIB was charged with assessing the complaints that police investigations had been improper and inadequate. In both cases, existing evidence was reviewed, but no independent investigation was undertaken.

The distinction between a review of evidence and an investigation of evidence must be borne in mind. The former might accurately be described as "arm-chair investigation". It does not involve active testing of evidence by re-interviewing witnesses or following other trails. Those things were done by Detective Sergeant Bourke in the Angel case. The IIB merely examined his evidence and compared it with the original report and the transcript of the trial. That is a review, not an investigation. A similar exercise was undertaken in the Heaney case.

In some cases a review is adequate. In others it is not. If the forensic evidence and the integrity of the procedures for identification had been tested with other information, the IIB might have formed a different opinion of the Heaney case. Likewise, had the evidence which Detective Sergeant Bourke raised about the day of the murder been subjected to closer scrutiny, the IIB may have reached the same conclusion as the Crown Prosecutor, that is, that the original verdict was unsafe. The evidence compiled from the investigation and the re-investigation may have confirmed that nobody could prove beyond reasonable doubt who struck what fatal blow.

That is speculation. There was no new inquiry by the IIB. They confined themselves to reviewing the old evidence. Even so, their conclusions were surprising. The tenor of the reports suggest that, rather than objective appraisal, their primary intention was to protect the police officers from the



charges of incompetence laid against them.

The third case to be considered shows a quite different disposition. Here, the IIB officers conducted a vigorous investigation. Hostility came from sections of the WAPS and was directed at the internal investigators and their prime police witness.

## **THE EUCLA EPISODE**

The investigation of matters at Eucla police station in 1989 arose from a complaint lodged by Judge Clark of the District Court about the behaviour of police officers in a case before him. Because the investigation followed from a complaint against police officers, it was referred to the IIB.

As it turned out, evidence presented to the Committee revealed a complex array of issues, some of which have not been explained satisfactorily. They expose serious concerns about how complaints against police officers are investigated and how disciplinary and criminal matters are dealt with by the WAPS.

The Eucla episode also raises serious and sensitive issues about the conduct of police officers, some of whom hold, or at the time held, high rank.

The Committee is mindful that this is an account of matters which occurred more than six years ago. The Committee notes that changes already have been made within the Police Service, particularly in the IIB. More changes are proposed by the Delta program. These will be discussed later in this report.

### **Judge Clarke's Complaint**

These facts as stated were established from the District Court Transcripts of the trial of the police officers for perjury and conspiracy to pervert the course of justice, submissions made to the Committee, evidence taken from witnesses before the Committee and numerous police reports.

On February 28, 1990, Judge Nigel Clarke wrote to the then Commissioner of Police, Mr Brian Bull ("Bull"), complaining of matters raised in the *voir dire* stages of the trial of Marc Winterburn ("Winterburn") and Robert McCoull ("McCoull"). He did not forward the letter until April 30, 1990, after Winterburn's conviction and McCoull's acquittal on drug-related charges.

The letter brought to attention four concerns about the arrest and charging of the two men at Eucla:

- (a) *the provisions of the Bail Act had not been complied with;*
- (b) *a police officer was called to give evidence of a vital verbal admission not included in his deposition;*
- (c) *on a balance of probabilities the accused had been induced to incriminate themselves by unacceptable means;*
- (d) *an exhibit, a panel van, had been sold and the purchase price had been paid to one of the accused, Winterburn, with money provided by the officer in charge of the police station, Sgt Johansen.*

### **Contravention of the *Bail Act 1982***

Winterburn was arrested on May 9, 1989, for possession of drugs. He was held at the Eucla Police Station until May 12, 1989, when he was charged with minor traffic offences and possession of cannabis with intent to sell or supply. Police Courts were held in Eucla on May 10 and 11, 1989, but Winterburn was not taken before them. The Committee has been unable to establish a justifiable reason for the delay. The terms of sections 5 and 6 of the *Bail Act 1982* require that an accused person be taken before a court at the earliest opportunity.

McCoull was arrested at Norseman on May 10, 1989 and conveyed to Eucla. He appeared in Court on May 12, 1989 on drug-related charges. There is no reason he, like Winterburn, was not taken before the Police Court on May 10, 1989 and released on bail. Again, the requirements of the *Bail Act* were not observed.

### **Record of Interview**

- During the *voir dire*, evidence was given by Senior Constable Thompson ("Thompson") Constable Lee ("Lee") and Constable Brennan ("Brennan") that on May 10, 1989, McCoull had shown them where he had hidden 11 kilograms of cannabis.

McCoull denied this. Independent evidence (not presented at the trial but available to police) was that another man, Frank Grinevicius (known as "Cookie"), had shown the police where the cannabis was hidden.

- At the *voir dire* and the trial, evidence given by Detective Sergeant Fairclough ("Fairclough"), was that on May 11, 1989, he and Probationary Constable Paula Johnson ("Johnson") had travelled from Esperance to Eucla.

He claimed they arrived at Eucla at 1.30pm that day after a 9-hour drive.

- Evidence given by Johnson, and sustained by a petrol docket issued at 7.29am from an Esperance petrol station, was that before leaving Esperance she filled the police four-wheel-drive vehicle with fuel. She and Fairclough later met a couple called Davies at a veterinary surgery where the Davies were collecting their dog. The four then travelled in convoy to Madura.
- At 5.30pm on the same day, before the arrival of Fairclough and Johnson, Sergeant Johansen ("Johansen") and Brennan departed from the Eucla Police Station to help at a chemical spill near Forrest.

In evidence at the trial, Fairclough and Brennan said they had a conversation with McCoull on the evening of May 11, 1989. Both said McCoull made admissions about the cannabis. McCoull denied the conversation occurred.

Evidence also was led by Fairclough and Brennan that conversations with Winterburn took place on May 11, 1989 in which he said the cannabis was to give to friends. Winterburn denied this.

Fairclough's Occurrence Book recorded he interviewed the "petrol thieves" (Marshall and Cummings) on 11 May 1989 and prepared a court brief. There was no mention in his Occurrence Book of his interviewing Winterburn and McCoull.

- The Occurrence Book for Friday, May 12, 1989 completed by Fairclough, showed he with Thompson had interviewed Winterburn and McCoull and both had refused to answer questions.

From the independent evidence obtained, it appears Fairclough did obtain records of interview from Winterburn and McCoull on May 12, 1989. They admitted they had possession of approximately 11 kilograms of cannabis in their Valiant panel van and indicated they would plead guilty to charges laid against them.

However, when Winterburn and McCoull read the prepared depositions supplied by Fairclough to their solicitor, they denied two major areas of the police evidence:

- McCoull did not show police where he hid the bag of cannabis (this had been pointed out to police by the man known as "Cookie"). McCoull had shown Cookie where it had been hidden; and
- no conversations or interviews between Fairclough, Winterburn and McCoull took place on May 11, 1989.

For these reasons, and only these reasons, the two offenders pleaded "not guilty" and challenged

the police evidence at the *voir dire*. This, in turn, alerted Judge Clarke.

### **The Chilvers and Robson Investigation**

On May 9, 1990, Commissioner Bull ("Bull") referred the complaint by Judge Clarke to the IIB.

The file was minuted out to Inspector Chilvers ("Chilvers") who later requested Inspector Robson ("Robson") to assist him. Before travelling to Eucla to interview witnesses, they:

- obtained and studied the court transcripts of the trial and the *voir dire*;
- interviewed Winterburn and McCoull and spoke by telephone to others who had been prisoners at Eucla at the time;
- attempted to obtain documentary or witness corroboration of evidence;
- obtained the Occurrence Books and Prisoners' Property Books; and
- reviewed bail bonds for the prisoner.

It was not until October 1990 that Chilvers and Robson were in a position to interview police officers and other witnesses in the Eucla area.

From October 30 to November 2, 1990, Chilvers and Robson conducted inquiries and interviews at Eucla and Madura. The people interviewed were:

Marian Sarah Hill ("Hill") (Madura Roadhouse): a prisoner at Eucla in May 1989 and involved in misconduct with Constable Goodfield. In a taped interview she told what happened in relation to McCoull and Winterburn and about her involvement with Senior Constable Goodfield ("Goodfield").

Sandra McDowall (now Davies) and John Davies (Border Village, Eucla): both were at Esperance on May 11, 1989 and travelled in convoy with Fairclough and Johnson from Esperance to Madura.

Noelene Crawley (Madura Roadhouse): interviewed about her recollection about the time Davies and Fairclough arrived at Madura on May 11, 1989.

Paula Johnson (Esperance): interviewed on November 13, 1989 about travelling to Eucla with Fairclough on May 11, 1989.

On November 5, 1990 Chilvers met with Deputy Commissioner Zanetti ("Zanetti"), Assistant

Commissioner Harry Riseborough and Commander John Oriel Smith ("Smith"). Smith had been to Eucla and interviewed witnesses already spoken to by Chilvers and Robson.

The purpose of Smith's trip was explained to the Committee by Zanetti as trying to calm the wives of police officers who were worried their husbands were being penalised for the misconduct of Goodfield.

On the same day, Mr John Quigley ("Quigley"), a legal practitioner with Kott Gunning, then the solicitors for the Police Union, met with Chilvers and then Chief Superintendent Lippe ("Lippe") at the IIB.

On November 16, 1990 after they had interviewed Johnson at Esperance, Chilvers and Robson travelled to Kalgoorlie and served on Fairclough, Thompson, Goodfield, Lee and Brennan written notice not to contact witnesses involved in the internal investigation. It was known they had contacted Sarah Hill and Johnson and sought information about the IIB inquiry.

All five police officers were in Kalgoorlie to consult with Quigley as the Police Union solicitor. He was present when the notices were served. Chilvers became aware that Quigley had been attempting to contact Johnson. Other police officers had called her and urged her to meet with Quigley. She refused.

On November 19, 1990, Lippe told Chilvers and Robson that witnesses were making complaints through Quigley about how they had been interviewed by Chilvers and Robson.

On the same day Chilvers and Robson met with Bull, Zanetti and Lippe. They were told that Quigley had received complaints from witnesses, in particular, Hill and Ms Davies. Bull and Zanetti suggested there might be need for a Chief Superintendent to re-interview witnesses. Chilvers disagreed with this proposed course of action and Bull decided to wait until he had heard further from Quigley.

On Saturday November 24, 1990 Quigley met with Bull at his home. On Monday November 26, 1990 Quigley wrote a letter of complaint to Bull about the conduct of Chilvers and Robson and the manner in which they had interviewed civilian witnesses. It was alleged they had been domineering and overbearing and intimidated the witnesses.

On November 27, 1990 Chilvers and Robson were instructed by Lippe to take no further action on the Eucla enquiry. The reason given was the written complaint from Quigley. Chilvers was removed from the enquiry entirely and Robson remained in a monitoring role only.

### **The Thickbroom and Greay Investigation**

On November 27, 1990, Detective Superintendent Greay ("Greay") advised Chilvers that he and

Assistant Commissioner Thickbroom ("Thickbroom") would inquire into Quigley's complaint and other aspects of the Chilvers and Robson investigation. Chilvers informed Greay he understood the brief was only to re-interview Eucla witnesses who had complained.

After a meeting between Bull, Lippe, Chief Superintendent Pilkington and Greay, it was confirmed only the complaints of witnesses would be investigated.

The letter from Quigley was not treated as a complaint against police officers. When a copy was received by Lippe from Zanetti on November 27, it was footnoted "not a complaint". Because it was not treated as a complaint against police officers, there was not requirement that the Ombudsman be advised of the letter, nor did the *Parliamentary Commissioner Act 1971* govern the investigation of its contents.

Thickbroom and Greay were appointed by Zanetti to investigate the matters complained of in Quigley's letter. Chilvers was instructed to pass over to Thickbroom and Greay the statements, recorded transcripts and tapes of interviews he and Robson had obtained from witnesses at Eucla.

On November 28, 1990, Zanetti instructed Lippe that he was to make Johnson available for interview. The next day, Chilvers was instructed to hand over to Thickbroom the tape and transcript of his interview with Johnson. He did so, under protest, on November 30, 1990.

On December 7, 1990, Chilvers was instructed to give Johnson's telephone number to Thickbroom and Greay. She was then interviewed by them about her statement to Chilvers and Robson.

At a meeting on December 10, 1990 Robson and Chilvers discussed with Thickbroom and Greay the manner and circumstances of obtaining statements at Eucla.

The Thickbroom and Greay investigation was completed and a report submitted to Zanetti on December 17, 1990, only twenty-one days after it began. The report was drafted by Greay. It contained a description of each of the witnesses with a comment upon their demeanour and veracity. It also attached statutory declarations from Marian Sarah Hill, Linda McDowell, John Davies, Noelene Crawley and Derek Negus (Manager of the Madura Roadhouse who was not in Eucla at the time of the Winterburn-McCoull incident and was never interviewed by Chilvers and Robson). The report also contained an assessment of the demeanour and veracity of Johnson and Grinevicius, neither of whom complained to Quigley about their interviews by Chilvers and Robson.

### **The Rowtcliff Investigation**

On February 15, 1991, Robson presented a progress report on the complaint of Judge Clarke to Lippe. He, in turn, sent a copy to Zanetti on February 18, 1991 with a memo requesting further

instructions. The report was returned with a footnote dated April 8, 1992:

*Chief Superintendent (Discipline) Now that the relevant appeal by the parties concerned has been determined, please advise of situation in due course.*

It was signed F Zanetti. Fourteen months elapsed between the submission of the progress report and the response by Zanetti.

In the interim, the then Crown Prosecutor, Mr McKechnie QC ("McKechnie"), had written to the Attorney General and suggested that Winterburn be permitted to lodge an appeal out of time because of new evidence which had come to light. Permission was granted and the appeal undertaken with the eventual quashing of Winterburn's conviction.

Subsequently, a "joint" reinvestigation of the Eucla matters was conducted by the IIB and the Criminal Investigation Branch (CIB). Detective Inspector Rowtcliff ("Rowtcliff") from the CIB was appointed as co-investigator to Robson. His report was submitted to Commander Hancock who passed it on to Bull. Robson submitted his final report to Lippe on July 27, 1992.

### **Commentary on the Chilvers-Robson Investigation**

Chilvers and Robson were investigating a complaint from a Judge to the Commissioner of Police. In accordance with statutory requirements, the Parliamentary Commissioner for Administrative Investigations ("The Ombudsman") had been informed. In effect, action on Judge Clarke's complaint to the Commissioner of Police came under the jurisdiction of the Ombudsman.

When the letter from Quigley about the behaviour of the investigating officers, Chilvers and Robson, was received by Bull, the Ombudsman was never informed. Instead, on what appears to the Committee to be the decision of Zanetti, it was treated as "not a complaint". The effect of this decision was that there was no statutory requirement for the Ombudsman to be informed. The "complaint" made about the behaviour of Chilvers and Robson was, however, investigated by the police.

There appears to the Committee to be a contradiction here. The officers complained of were investigating a complaint which was subject to oversight by the Ombudsman. When a complaint about their behaviour and the manner of their investigation was received, the Ombudsman was not informed. Pursuant to the *Parliamentary Commissioner Act 1971*, the police are required to submit progress reports when application is made every 42 days for extensions of time to complete the investigation. In light of the extensive delay in dealing with Judge Clarke's complaint, it appears reasonable to the Committee that the Ombudsman should have been informed of the subsequent complaint made by Quigley.

The police executive could argue that the reason they did not inform the Ombudsman of Quigley's

letter was that it did not fit the definition of a complaint for the purposes of the *Parliamentary Commissioner Act 1971*. Pursuant to section 17(2) of the Act, if the "complaint" is not made by "the person aggrieved himself", then it is not a complaint for the purposes of the Act. The Committee acknowledges this, but no witnesses presented that as the reason it was decided not to inform the Ombudsman about Quigley's letter. Neither was the letter put to the Ombudsman for a decision as to whether it was a complaint. This aspect is of concern to the Committee.

The Committee was informed that it is common practice for defence lawyers to complain about police behaviour. This puts police on the defensive and is in the best interests of the defendant. The police deal with such complaints in the ordinary course of their business, and seldom treat them with the speed and additional care with which the Quigley complaint was treated.

The Commissioner, the Deputy Commissioner and others would have been fully cognisant of such tactics. When the letter of "no complaint" was received from Quigley, the police executive was prepared to impute improper behaviour to the officers from the IIB. Investigation of Judge Clarke's complaint was, for all intents and purposes, shelved. Chilvers and Robson were directed to discontinue their investigation. Even after the Greay and Thickbroom Report was forwarded to the police executive on December 17, 1990 Chilvers and Robson's investigation was not recommenced.

The Greay and Thickbroom report was, at best, inconclusive, but read with statutory declarations which had been received by Quigley and passed on to Greay and Thickbroom, it is damning of Chilvers. It contained no comments about the actions of Chilvers or Robson nor any recommendations about disciplinary action.

The delay in bringing to conclusion the investigation into Judge Clarke's complaint is a matter of serious concern. The consequences were summed up by the Director of Public Prosecutions ("DPP"), McKechnie, in a letter to Bull dated August 25, 1992:

*It is unfortunate that matters have reached this stage, particularly as Inspector Rowtcliff remarks: '...the travesty is that each Winterburn and McCoull have admitted locating the cannabis in South Australia and conveying it into Western Australia'. Thus each in fact committed the offence with which they were charged.*

*However, due to the actions of various police officers, each failed to receive a fair trial to which they, as much as any other citizen, are entitled.*

*The inevitable result of the officers' actions will be to diminish the standing of the police force in the eyes of the community, to cause juries to look with distrust on the evidence of police officers, even when corroborated by other officers, and to bring the force into disrepute.*

The Committee was given no satisfactory explanation for the delay in completing the investigation into the Judge's complaint other than the claim that it was impossible to continue



with an investigation into the behaviour of officers while there were matters before the courts.

The appeal initiated by McKechnie was used as a reason to further delay the investigation of the police officers at Eucla and the specific matters outlined in the Judge's complaint. There appears to have been a belief that because the appeal of Winterburn was related to Eucla, then the further investigation of the police officers could not be continued.

The apparent willingness of Bull or Zanetti to co-operate with Quigley in his complaint about Chilvers and Robson by halting the investigation is difficult to understand. They may have been acting in what they thought to be the best interests of the WAPS by preventing public disclosure of a potentially embarrassing incident. At worst, however, their actions might represent direct and considerable interference in the IIB. In any event, their actions served only to frustrate a proper police inquiry and delay the resolution of Judge Clarke's complaint.

The Committee does not believe that the excuse of prejudice to judicial proceedings can be used for not proceeding with the investigations of other matters at Eucla which would have been subject to disciplinary proceedings only. Concurrent investigation would not have compromised them.

### **Commentary on the Quigley Letter**

The Committee has several concerns about the handling of the Quigley letter:

- No satisfactory reason has been given to the Committee as to why this letter was designated, apparently by Zanetti, as "not a complaint".
- Because of that decision, the letter was not referred to the Ombudsman, possibly for the reasons stated previously. Even if the decision had been that the letter was not a complaint for the purposes of the *Parliamentary Commissioner Act 1971*, the object of having the Ombudsman within the system of investigating complaints against police officers is an important safeguard against public perception that the police service protects its own. The handling of this letter was unsatisfactory for both the administration of the police force and the correct application of the *Parliamentary Commissioner Act 1971*, section 14 (1a) which provides that:

*...the Commissioner [i.e. the Ombudsman] shall investigate any action taken by a member of the Police Force or the Police Department, whether or not the action relates to a matter of administration where an action was, or purported to be done in the exercise of or in connection with or incidental to the exercise of, that members' powers, duties or functions as a member of the Police Force or Police Department.*

- The Ombudsman had not been formally notified of the complaint letter from Quigley but

he was aware that an investigation into the internal investigators was being conducted. The Ombudsman was made aware through discussions with police when applications for extensions of time with respect to Judge Clarke's complaint were required. If the Ombudsman had been formally advised of the letter of complaint, then pursuant to section 16 of the Act, the Ombudsman's Office would have been in a position to initiate its own investigation into the matter on its own motion. The Committee was told that the Ombudsman would not have been in a position to utilise this section in 1991, as the resources of the office then would not stretch to "own motion" investigations.

- The complaint by Quigley was dealt with internally. There was no check on the manner in which the Thickbroom and Greay investigation was carried out. The officers complained of were not given the opportunity to answer the allegations; they did not feel they were adequately supported from within the police service; and there was a perception that senior officers sided with the officers being investigated.

Quigley gave evidence that he told the Commissioner that the letter was not a complaint. The Police Executive decided not to treat Quigley's "complaint" as a complaint for the purposes of the *Parliamentary Commissioner Act 1971*. The Committee is of the opinion that complaints about the demeanour of police officers during interviews fall within the definition of a complaint for the purposes of referral to the Ombudsman.

The police appear in other cases to believe that people who are charged and make complaints against officers are simply attempting to slow down the process. As noted above, a disturbing aspect of the Quigley complaint was the Commissioner's apparent immediate reaction. Instead of treating it with accustomed circumspection and questioning the motives of the writer, the Commissioner decided that the investigations by Chilvers and Robson be suspended, that their conduct warranted inquiry, and that such an inquiry should be made by high-ranking police officers.

Quigley's letter was written on November 26, 1990 and the Thickbroom-Greay inquiry was set up the same day. This suggests that, the Commissioner and/or his Deputy, acceded to Quigley's charge contained in the correspondence, that the material collected by Chilvers and Robson had "*...been collected in a most irregular fashion, to say the least*".

This raises some concern about the influence of the Police Union. It is worrying that Quigley was able to prescribe to the Commissioner of Police how a matter should be handled. It appears to the Committee that all of Quigley's "suggestions" or "recommendations" were eventually taken up. Quigley's letter stated that:

*...it is urged upon you that the only proper way to deal with the two matters that are now before you, is to have an inquiry team first investigate the matters raised by His Honour Judge Clarke and to expeditiously answer the Judge's queries.*

*At the conclusion of the preparation of the report to His Honour, an inquiry team should*

*then immediately investigate the allegations contained in the statutory declarations.*

The sequence of investigations which actually occurred was the Commissioner set up the Thickbroom-Greay inquiry to investigate the allegations contained in the statutory declarations. Fourteen months later the inquiry team of Rowtcliff and Robson (even though working and reporting separately), completed the investigation of the matters raised by Judge Clarke.

It may be reasonable comment that the only reason for the Rowtcliff and Robson investigation was the failure of the Thickbroom-Greay investigation to frustrate the findings of the IIB officers. In any event, the work of Chilvers and Robson was vindicated by the Rowtcliff investigation and the subsequent conviction of Fairclough, Lee and Brennan.

### **Commentary on the Thickbroom-Greay Investigation**

The report of the Thickbroom-Greay investigation was not in the usual form of an IIB report on the conduct of police officers. Such reports viewed by the Committee included corroborative evidence, cross-referencing of statements by witnesses and recommendations for action to be taken against officers where complaints were sustained.

The Thickbroom-Greay report contained no comment about the allegations against Chilvers and Robson. It made no recommendations for action to be taken against them. The officers who complaints were made against were not interviewed nor, it appears, was there any intention to interview them. Thickbroom and Greay advised the Committee they did not need to interview Chilvers and Robson as it was not within the scope of their enquiry. There was not even evidence that Thickbroom and Greay listened to the tape-recorded interviews to assess whether, as alleged, Chilvers had been "overbearing, domineering and intimidating" toward witnesses.

The nature of the Thickbroom-Greay report raises questions about what their investigations were set up to achieve. The Committee was told the instruction given by Zanetti to Thickbroom and Greay was that they were to travel to Eucla and interview the people who complained to Quigley about the way they were treated by Chilvers and Robson.

If this was the instruction, Thickbroom and Greay exceeded their brief. Alternatively, their inquiry was set up for other purposes. For example, Mr Derek Negus was interviewed by Thickbroom and Greay, but his comments were irrelevant to any appraisal of how Chilvers and Robson conducted their interviews. He was not interviewed by those two officers and his opinion of them was gratuitous.

Thickbroom and Greay's interview of Johnson has further and, in the opinion of the Committee, more sinister overtones. At no time did she, or has she, complained about the conduct of Chilvers and Robson. In no way could she be considered one of the complainants referred to by Quigley in his letter of November 26, 1991. Both Thickbroom and Greay confirmed in evidence before

the Committee that there was no necessity to speak to Johnson about the manner in which she was interviewed.

That being the case, it is odd that Johnson was interviewed. The Committee was told that, even though it was outside their original brief, Thickbroom and Greay were instructed by Zanetti to interview Johnson. Notice had been served on Fairclough and other police officers at Eucla not to make contact with her or other witnesses. Had they done so, they would have contravened Routine Orders. The approach by Thickbroom and Greay at the instruction of Zanetti would appear to be an attempt to circumvent that direction. It is of further concern to the Committee that Johnson was on stress leave when she was instructed to meet with Thickbroom and Greay.

As it turned out, Thickbroom and Greay did not ask her about Chilvers' or Robson's conduct. Instead, they challenged her recollection of matters of detail contained in the seventy-page transcript of her interview by Chilvers. The assessment recorded in the Thickbroom-Greay report was:

*...she agreed that she could not personally remember any times or incidents with any accuracy in relation to the trip to Eucla from Esperance on May 11, 1989, in company with Detective Sergeant Fairclough.*

Concern was expressed to the Committee that there were gross inadequacies in the Thickbroom-Greay investigation and report. That concern appears to the Committee to be justified. There are serious flaws in the credibility of the investigation and the report.

The Committee is concerned the Thickbroom and Greay investigation did not include perusal of the transcripts of interviews with witnesses, nor did the report comment upon the demeanour of Chilvers which could have been obtained by listening to tape-recorded interviews of witnesses. The report is confined to comment upon the demeanour and veracity of the complainants and selected others and the only evidence was the attached statutory declarations.

The Committee is concerned that the Thickbroom-Greay report was passed on to Quigley and to other defence Counsel, namely Mr Geoffrey Miller QC and Mr Brian Singleton QC. It was used in cross-examination at the trial of Fairclough, Brennan, Lee and Thompson to try to discredit Chilvers, Robson and Johnson. The Committee finds it extraordinary that a confidential report was passed onto and used by defence counsel.

Evidence given to the Committee suggests that it was a condition of the Thickbroom-Greay inquiry, agreed to by Bull, that Quigley be advised of the result. In return, Quigley was to give to the Commissioner copies of the statutory declarations of witnesses.

Not only was Quigley advised of the result, but he was given a copy of the confidential report. The Committee was unable to find out when, why or by whom, although the Committee received evidence that a copy of the Thickbroom-Greay report and other documents were lodged with Mr Quigley for security.

The Committee was told the DPP was concerned that defence counsel referred to the report at the trial of Fairclough and others and it was therefore brought to notice of the Commissioner of Police. A CIB investigation of a possible breach of section 81 of the Criminal Code, for disclosing official secrets, was undertaken. Again, the results were inconclusive and it was decided not to proceed due to insufficient evidence.

The Committee is also concerned at the manner in which the investigation into how defence counsel came to be in possession of the Thickbroom-Greay report was conducted. It is difficult for the Committee to come to a firm conclusion, but it appears that the investigation was not as thorough as it should have been.

### **Commentary on the Role of the Ombudsman**

The Committee recognises that procedures followed and resources available to the Ombudsman's office have changed since 1990. While that is acknowledged, it is alarming that the Ombudsman did not question the requests for the twelve extensions of time to deal with Judge Clarke's complaint nor question the slow progress. It is reasonable to anticipate that detailed reports and explanations of why this matter was not being dealt with expeditiously would have been called for.

The Ombudsman has the power pursuant to section 16 of the *Parliamentary Commissioner Act 1971* to conduct investigations on his own motion into a complaint. However the Committee has been told that in 1990 the Ombudsman lacked the resources to implement such an investigation.

If the Ombudsman's role is to oversee and monitor the actions of the police in investigating complaints then the Office must be properly resourced and have adequate powers to do so. The Committee anticipates that with the increased resources and a difference in perception by the WAPS of the Ombudsman's role, there would be a more "hands on" approach to an investigation should the same type of matter arise today.

### **Commentary on the Role of the Crown Prosecutor**

Chilvers and Robson met with McKechnie, then the Crown Prosecutor, on a number of occasions to discuss the progress of their investigation and evidence gathered against the Eucla police officers. The Committee was told that McKechnie had grave reservations about the conduct of the investigation after Chilvers and Robson were removed. It appeared to him no progress was being made and no conclusions were being reached about whom should be charged and with what.

In light of the delay of the police investigation, McKechnie approached the then Attorney

General, the Hon JM Berinson QC, regarding the conviction of Winterburn and suggested that permission for an appeal out of time be granted because of new evidence which had come to light. Permission was granted and the appeal undertaken, resulting in the eventual quashing of Winterburn's conviction.

Unfortunately the appeal was used as a reason to delay the further investigation of the behaviour of the police officers at Eucla and the specific matters outlined in the Judge's complaint. There appears to have been a belief that because the appeal of Winterburn was related to Eucla, then the investigation of the police officers could not be continued. Pursuant to the *Parliamentary Commissioner Act 1971* there is no ability for the Ombudsman to direct the manner in which the investigation of a complaint is conducted.

McKechnie was aware of the investigation into the Eucla police officers and the almost complete halt in that investigation which occurred after December, 1990. In light of this, the Committee interprets his behaviour in approaching the Attorney General regarding Winterburn's appeal as a means of keeping the conduct of the police officers open to public scrutiny and ensuring that the investigation into their conduct would not be permitted to languish within the police department.

If the same circumstances arose today and the DPP were not satisfied with the conduct of the police investigation, the DPP is in a position, pursuant to section 22 of the *Director of Public Prosecutions Act 1991* to "...make a request in writing to an official, including the Commissioner of Police and a member of the police force, whose functions include prosecuting for or investigating offences." and further:

- (2) *Where the Director has brought or taken over, or is considering whether to bring or take over, a prosecution or appeal in relation to an offence or suspected offence a request may be made-*

...

- (b) *for the provision of assistance including the carrying out of an investigation or further investigation of any matter,*

*in relation to that offence or suspected offence.*<sup>47</sup>

This has the effect of giving the DPP a limited power to direct that police investigate certain matters, although it does not mean that the DPP can direct how the investigation is carried out. In the Eucla matter, had the DPP Act been in force at that time, the investigation may not have been allowed to languish as long as it did. At the time of the Eucla investigation, McKechnie did not have the power to so direct an investigation into a suspected offence.

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<sup>47</sup>

*Director of Public Prosecutions Act 1991, Western Australia*

## **Commentary on the Treatment of Witnesses**

The police officers who were investigated and those who were subsequently prosecuted were supported by the Police Union, particularly in their legal representation by Quigley, Mr Geoffrey Miller QC and Mr Brian Singleton QC. While the Committee has reservations about some issues discussed here, it has no difficulty with the Union and members of the WAPS backing fellow officers.

The support provided to the officers charged was in direct contrast to the treatment of other officers involved in the trial, namely Chilvers, Robson and Johnson:

- As far as the Committee can determine, the investigation by Chilvers and Robson was conducted conscientiously and vigorously, but fairly. They systematically gathered evidence to confirm or refute statements made to them. However, with the exception of Lippe, they had little support from superior officers, the Police Union, or their fellow officers. They were obstructed in their investigations by having to justify themselves to senior police officers who should have been encouraging them. At the decision of the Commissioner and the Deputy Commissioner, they were removed from the investigation when they had gathered evidence of wrong doing. Before and during the trial, efforts were made to discredit them morally and professionally as a defence against the strength of the case they had put together. It was suggested to the Committee that in the longer term the success of their inquiries may have hindered their careers.
- Johnson was ostracised by her fellow officers, intimidated so as to try and make her change her evidence, slandered and possibly denied equal opportunity in choosing the direction of her career.

The report by Thickbroom and Greay was used by defence counsel at the trial to discredit her. It was claimed she had been coached in her evidence by Chilvers and Robson. The Committee believes that after her initial and inadequate attempt to support Fairclough's account of the journey from Esperance to Eucla, she proved remarkably resilient and consistent in her evidence.

Police officers disclosed official secrets from Occupational Health Services records to defence counsel to discredit her in cross-examination. This was of such seriousness that the DPP named four police officers and recommended an investigation by the CIB into possible breaches of section 81 of the Criminal Code.

It is probable that had the Chilvers-Robson investigation been successfully undermined or their evidence discredited by the defence at the trial, Fairclough, Lee and Brennan would have been acquitted of the charges of perjury and conspiring to pervert the course of justice. The Committee considers that underlines the gravity of the several attempts to undermine and discredit their evidence. The manner in which the Thickbroom-Greay inquiry proceeded, the report they

presented, its unexplained use at the trial by defence counsel and the failure to reinstate the Chilvers-Robson investigation immediately after the Commissioner received the Thickbroom-Greay report, all raise serious doubts about the resolve of the then Commissioner and Deputy Commissioner of Police to see this matter to a rapid and effective conclusion.

No satisfactory reasons for the apparently deliberate, but perhaps misguided, obstruction of the investigations were given to the Committee. The gravity of the matters exposed at Eucla necessitated an early resolution. It should not have taken until August 1994, for matters which were raised in 1990, to be concluded.

The events which unfolded in that time have had adverse impact upon the WAPS. Officers were found guilty of perjury and conspiring to pervert the course of justice. There is now a reinforced public perception that the WAPS protects its own, regardless of the gravity of an offence. That is supported by another perception that police will not effectively investigate complaints against themselves with any vigour and that those who attempt to tell the truth will be discredited.

Such perceptions serve only to make the police task more difficult. They should be guarded against. Senior officers must be seen by officers of all ranks to support their efforts when they do their jobs well and critical of them when they do not.

An argument often presented, and certainly presented often to the Committee, is that complaints against police officers are best investigated by the police themselves. The Committee believes that police officers are competent and well equipped with investigative skills to do so. However, if they are impeded by political or administrative actions, such actions lend support to the proposition that the investigative function should be removed from the police force and carried out by a separate and independent body.

### **Other Matters Arising**

While the police officers who were charged with perjury and conspiracy to pervert the course of justice were on trial, no action was taken with respect to allegations against other officers at Eucla.

On June 6, 1989, Joshua Mills ("Mills") was arrested by Goodfield and Brennan for driving an unregistered Torana sedan bearing false registration plates. He was also charged with driving without a license and drug offences.

Mills was travelling with Juliette Press ("Press"). She was charged with drug offences. On 7 June 1989, Mills and Press pleaded guilty to the charges. Mills was fined a total of \$1050. The fines were paid by his parents who lived at Busselton.

On June 8, 1989, while waiting for acknowledgment that the fines had been paid, Mills alleges



Goodfield told him his car would not be licensed at Eucla and it would cost him \$500 to have it trucked out.

Mills was short of money and agreed to sell the Torana to Goodfield for \$200. He also agreed to sell to Goodfield his licensed .22 rifle and 50 rounds of ammunition for \$100. Mills said he thought he had no alternative but to sell the car and rifle to Goodfield. He believed it was improper in the circumstances. The rifle had been discovered during a search of the vehicle on June 6, but no details of the seized property appeared in the Prisoner's Property Book.

On September 25, 1990, Goodfield was interviewed at Eucla by IIB officers. He admitted purchasing the Torana and rifle from Mills. The unlicensed vehicle was sold at Yalata Aboriginal Mission in South Australia.

This purchase of vehicles from an offender and its on-sale by a police officer was not an isolated occurrence. For example, police witnesses at the trial of Winterburn and McCoull were asked why the vehicle driven by Winterburn was not seized as an exhibit, pursuant to the *Misuse of Drugs Act*. The vehicle had been purchased by officers and sold to a man called Arie Van Wageningen for a sum of \$500.

Goodfield licensed the .22 rifle in his name. Inquiries established he did not submit a report to his regional superintendent for permission to acquire the firearm where possible undue influence may have arisen (*Police Regulations 1979*, 608 (3)).

Goodfield was also the subject of other disciplinary charges relating to misconduct with several female prisoners. He admitted these allegations to the investigating IIB officers on 25 September 1990.

Originally, reports on Goodfield's misconduct were submitted to the police executive on 15 and 20 February 1991. On October 1, 1992, another report was submitted in relation to the conduct of Goodfield at Eucla in 1989. On October 27, 1992, 20 months after the first report and 26 days after the third report, Zanetti approved disciplinary action against him and he was suspended with pay pending the outcome of the disciplinary hearing.

Assistant Commissioner Skehan ("Skehan") was appointed Tribunal Officer and two disciplinary charges relating to Goodfield's conduct with two female prisoners were heard on February 24, 1993. Goodfield pleaded guilty to both charges. Skehan found the facts to be an extremely serious breach of regulations and imposed the penalty of "dismissal from the Force". The reasons were submitted to the Commissioner of Police and on March 9, 1993, the Commissioner confirmed the penalty and Goodfield was dismissed.

On March 17, 1993, Goodfield lodged a Notice of Appeal. The grounds were that the sentence imposed was excessive and manifestly unjust having regard to the fact that:

- (a) Goodfield had a prior good record;

- (b) Three years and eight months had elapsed between the time of committing the offence and the preferring of charges, and a further two years and five months had elapsed since he had admitted guilt, during which time his conduct was exemplary; and
- (c) There was no victim and no complaint from a member of the public.

On 12 May 1993, the Chairman of the Police Appeal Board, Mr K Moore SM, advised the Commissioner of Police that the appeal by Goodfield was upheld. The punishment was reduced from dismissal to a fine of \$200 in each case and Goodfield was to be reinstated without any loss from the date of his dismissal.

The Board was of the view that Goodfield's offences justified dismissal. However, the long and unexplained delay in preferring the charges caused the Board to accept that sufficient reason was shown to reduce the severity of the penalty.

The Board recommended that legislation be implemented to bar proceedings if charges were not preferred within 12 months of offences coming to notice.

### **Commentary on Goodfield's Misconduct**

Although these matters also occurred at Eucla, they were unrelated to the charges of perjury and conspiracy to pervert the course of justice brought against other officers. These matters were brought to the attention of the Police Executive and were left to languish for years.

There is no reason that has been established to the Committee's satisfaction as to why these matters relating to Goodfield were not dealt with as disciplinary matters as soon as they were brought to the attention of the police executive.

The allegations in relation to Goodfield were initially contained in the same report that dealt with the matters of perjury and conspiracy and were discovered while the officers from the IIB were looking into those matters. Careful consideration of the Report and a direction to deal with the matters of Goodfield expeditiously, would have been the appropriate course of action. The failure to do this sends a message to police officers that like conduct will be tolerated within the WAPS, or if it does result in disciplinary charges, low level fines will be imposed and nothing more.



## PART 4

# THE INTERNAL AFFAIRS UNIT (IAU)

Inquiries by the IAU were described as "reactive or proactive on selected targets". The one involves gathering data from informants; the other involves covert inquiry.

The Unit relies upon people providing information to identify possible corruption or sources of corruption within the WAPS. Most of its informants are serving or retired police officers. Others usually are people such as criminals and prostitutes who have doubtful credibility, and who's information requires corroboration.

Because of the way in which it operates, the IAU accumulates intelligence about all manner of alleged misconduct. Some of those allegations are well founded: others are not. Often the first stage of investigation is carried out covertly. The reason was explained as follows:

*...one of the big problems...identified by Fitzgerald was the fact that as soon as a complaint was made against police the first person to find out about it was the person who had been complained about. That was the reason for the structure of the Internal Affairs Unit. Our function was to go in the other direction. The unit was given the capability of doing covert inquiries and carrying out inquiries behind the scenes, and for the person who was allegedly corrupt it was way down the track before he found out that any inquiry was being undertaken in the first place.<sup>48</sup>*

This method of operation has proven to be a major source of suspicion and hostility within the WAPS. Whether that has impeded the effectiveness of the Unit is uncertain. The opinion of those directly involved is that it has not. They believe they have the confidence of the majority of their colleagues. The Committee found a quite different attitude. Officers from middle to senior ranks throughout the State harboured deep suspicions about telephones being monitored and their conduct being watched constantly by informants of the IAU, the "secret squirrels" as they are called. For most, these apprehensions are unfounded, as is exposed by the limited resources available to the Unit. For the rank and file of the Police Service, however, the IAU is anathema.

## PERFORMANCE INDICATORS

Information from Annual Reports from 1989-90 to 1994-95 offers some measure of the effectiveness of the IAU (see Part 2, pages 16-18). The total number of cases investigated annually is difficult to determine from published data. Annual Reports indicate an average of sixty cases were investigated in each of the past six years, but they may be misleading. Investigations not completed one year are carried forward to the next and no distinction is made between continuing and new investigations. According to those reports, between 1989-90 and 1994-95, twenty-nine cases investigated by IAU were resolved by charges or counselling, and 106 resolved by means other than charge. Most were dismissed after investigation as being unfounded.

Other evidence given by Deputy Commissioner Ayton was that between 1989 and May 1995, the IAU laid 166 charges against 60 individuals. The majority of those 166 were criminal charges; some were disciplinary. Penalties ranged from three years imprisonment to a fine and reprimand.<sup>49</sup> Those numbers would indicate a higher incidence of corrupt activity or criminal misconduct than has been publicly reported. Whether that indicates some degree of endemic corruption or is confined to opportunistic wrongdoing by "a few rotten apples" cannot be judged from these data.

Evidence presented to the Committee by another witness refuted the number of charges claimed by Deputy Commissioner Ayton. According to that witness, a senior commissioned officer who requested a suppression order on his evidence, only two police officers have been charged as a result of IAU investigations. Detective Sergeant Noye was charged in relation to the Argyle Diamond Affair and Detective Sergeant Kilmurray was charged in relation to a stolen motor vehicles scam.

The witness was asked to confirm his statement:

- Q. Have only two officers been charged in the time that the IAU has been operating?*  
*A. Yes, to my knowledge.*

While the Committee was sceptical about there having been only two officers charged, neither was it able to reconcile the claim made by Deputy Commissioner Ayton. Furthermore, both were at odds with the breakdown of statistics for 1993 provided by Superintendent McLeod. They are summarised in Table 2. These statistics show that only 3 cases out of 65 reported resulted in criminal charges and 42 were dismissed as unfounded or not substantiated by sufficient evidence.

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<sup>49</sup>

Transcript of Evidence of Deputy Commissioner LD Ayton, 10 May 1995, pages 15-16

**Table 2: Internal Affairs Unit Reports for 1993<sup>50</sup>**

<b>REPORTS RECEIVED</b>	<b>65</b>
<b>NATURE OF ALLEGATION</b>	
Improper Association	12
Misuse of Position	1
Corrupt Payments	11
Improper Computer Access	16
Stealing	6
Unsubstantiated Wealth	2
Perjury/Fabricating Evidence	2
Fraud	1
Drug Related Corruption	10
Drug Usage/Dealing	4
<b>RANK OF SUBJECT</b>	
Inspector	1
Detective Senior Sergeant	2
Detective Sergeant	5
Sergeant	6
Detective Senior Constable	4
Senior Constable	7
Detective 1/C Constable	3
1/C Constable	5
Recruit	1
Aboriginal Police Aide	1
Unspecified Police Officer/s	15
Public Servant	8
<b>RESULT</b>	
Charged Criminally	3
Counselled	2
Referral to Internal Investigations	1
Referral to Public Service Board	1
Resigned	3
Current Inquiries	10
Information Only	3
Insufficient Evidence	26
Allegations Unfounded	16

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Information tended by Acting Superintendent DJ McLeod, Acting OIC of the IAU, 1 September 1994

Some of the apparent inconsistency among the separate sets of data is explained by their different parameters of time and categorisation:

- the data in Annual Reports are for financial years, that is from July 1 to June 30, and refer to cases investigated, not the numbers of individuals or charges involved. Other data provided by Deputy Commissioner Ayton and Superintendent McLeod refer to individuals and charges and in the latter instance are for calendar year 1993;
- the categories of outcomes changed between financial years 1992-93 and 1993-94 and yet again in 1994-95. They cannot be compared directly with each other, nor with the separate data for calendar 1993; and
- the data published in Annual Reports refer to civilian personnel as well as police officers. Published information about the resolution of cases, therefore, offers no indication of the incidence of improper conduct, criminal misconduct or corruption by police officers separate from other personnel.

Even with these qualifiers, the differences among the several sets of data presented to the Committee were puzzling. There appeared to be no reliable statistical information about the number of police officers charged as a result of IAU activities.

To try to resolve this statistical conundrum, the Committee requested details of criminal and disciplinary charges laid against police officers following IAU investigations between 1989 and 1995. They are summarised in Table 3.

In the six years from 1989-90 to 1994-95, 19 police officers were charged, 11 with criminal offences and the remainder with disciplinary offences under Police Regulations. Of the 11 officers charged criminally, 4 were acquitted or had their charges dismissed, 2 are awaiting trial and 5 were convicted.

On the face of it, that number of successful prosecutions indicates either the IAU is ineffective in pursuing corruption within the WAPS, or the incidence of corruption is very low. Whatever the final conclusion, the Committee observed that inadequate information systems maintained by the IAU make it difficult to quantify the extent of criminal misconduct and corruption.

**Table 3: Charges Laid, IAU 1989-90 to 1994-95<sup>51</sup>**

NAME	RANK	TYPE OF CHARGE	OUTCOME
<b>1989/90</b>			
Kim Hyman	Det Sen Constable	Criminal & Disciplinary	Acquitted x 4 Acquitted x 4
Timothy G Wilson	Constable	Criminal	\$750.00 x 2
David D MacDonald	Police Aide	Criminal	1 Mth Imprisonment each charge cumulative x 19. Total 20 Mths Imprisonment
Christopher R White	Senior Constable	Criminal	Not Sustained
<b>1990/91</b>			
Peter H De Worboeys	Sergeant	Criminal	Fined \$500.00
Christopher Ginks	Senior Constable	Criminal	\$200.00 GBB 12 Mths x 9 \$200.00 GBB 12 Mths x 9
<b>1991/92</b>			
Neil P Thomas	Police Aide	Criminal	\$500.00 GBB 6 Mths x 38 x 2
<b>1992/93</b>			
Michelle L Fyfe	Detective Constable	Disciplinary	Informally Counselling
<b>1993/4</b>			
Trevor J Allen	Senior Constable	Criminal & Disciplinary	Appeared in Court - \$250.00 x 20
Anthony R Kilmurray	Detective Sergeant	Criminal & Disciplinary	Trial Pending
Jeffrey H Noye	Detective Sergeant	Criminal & Disciplinary	Trial Pending
Wayne Barnes	Det Sen Sergeant	Disciplinary	Demoted to Sergeant
Corny N Calameri	Inspector	Disciplinary	1601 - \$200.00 606B - \$200.00 608(1)(B) - Rep
<b>1994/95</b>			
Frank J Kinnear	Senior Constable	Criminal and Disciplinary	Appeared in Court- Acquitted
David Spencer	Constable	Disciplinary	Pleaded Guilty - \$200.00
Michael F Bourke	Det Sen Sergeant	Disciplinary	Formal Counsel - \$100.00
Jeffrey C Powell	Constable	Disciplinary	Resigned Prior to Charge
Megan Spence	1/C Constable	Disciplinary	Formal Counselling
Eleanor Armstrong	1/C Constable	Disciplinary	Formal Counselling - Resigned



## THE EXTENT OF POLICE CORRUPTION

Evidence to the Committee by senior executive officers was that within Western Australia there is little or no endemic or organised corruption of the kind revealed in Queensland and New South Wales. It was suggested that corruption is restricted to isolated and occasional opportunistic incidents by individuals or small groups of police officers and that such people do not last long within the Service as they are quickly identified and dealt with.

The Committee is cautious about the proposition that police corruption is confined to "a few rotten apples". This was addressed in 1981 by Mr Justice Lusher in his *Report of the Commission to Inquire into New South Wales Police Administration*. He recognised that individual transgressions, "...slight, spasmodic and isolated...", should be dealt with, but rejected the "rotten apple" theory as a control measure. It deals with corruption in terms of individuals and manages it by displacing offenders through dismissal, transfer, or some other procedure.

Corruption of an organisation, or part of it, is not individual nor spasmodic and isolated. Mr Justice Lusher argued it is a continuing process imposed by a significant power group to the extent that it becomes acceptable. It is made possible by other factors:

*This is the code of loyalty which carries with it the code of silence which can develop within a law enforcement body. This can become traditional in that newer members can be indoctrinated in it. It can be supported by peer group pressure, and the reluctance to submit the offenders to the usual consequences of exposure, viz., dismissal, loss of job, pension rights and disgrace, as well as disgrace and dishonour to the force itself. It is for the latter reason that such a body will be likely to prefer to regard corruption as personal and individual rather than institutional. It also ensures the survival and maintains the power structure of the group involved.<sup>52</sup>*

The examination of the IIB above identified all these factors functioning within the WAPS. They were most apparent in the Eucla case. In that instance, criminal misconduct quickly resolved into corruption affecting more than the officers who participated in the attempted cover-up. It was aided and abetted by acquiescence at several levels. Hence, an isolated and opportunistic incident at the Eucla Police Station became organised co-operation to pervert the course of justice, not merely by the three officers who eventually were charged, tried, convicted and imprisoned, but by an extensive segment of the WAPS who colluded to conceal the offence. Peer pressure was applied, through the Police Union and from the rank of constable to commissioned officer, to prevent honest officers from exposing the malfeasance. The motivation was not personal gain, but rather the "noble cause" of protecting the reputation of the force.

Evidence brought before the Committee indicated similar corrupting tendencies are extensive within the Service, and endemic within the CIB. The persistence of the allegations suggested that

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*Report by Mr Justice Lusher of the Commission to Inquire into New South Wales Police Administration, 29 April 1981, page 635*

corruption is not confined to a few isolated personnel. Admittedly, some of the Committee's information was offered by persons who had personal grudges because of their treatment when they had been members of the WAPS. Hence, their opinion probably was prejudiced. Other witnesses whose nefarious vocations exposed their dubious moral characters, but nonetheless who were in positions to be well informed about police relationships with prostitutes, drug traffickers, and criminals, alleged that some police officers are well paid to protect criminals against investigation and prosecution.

If the Committee's disquiet about the integrity of some sections of the WAPS was based solely upon allegations from these sources, it would have been easy to accept the assurance that criminal misconduct is confined to the "few rotten apples". Evidence presented from within the WAPS itself strongly suggests that this is not so.

Deputy Commissioner Ayton was frank about the extent of corruption:

*In 1987 ... the then Sergeant Alan Watson and I were tasked with investigating what we naively suspected was our lone corrupt person. We started those investigations in 1987; that was the genesis of the Internal Affairs Unit. As a result of the inquiries we undertook there and the material we collected, the need to formalise and expand anti-corruption activities within our service became very evident. So it flowed from the Fitzgerald Royal Commission. The Police Commissioners saw there was a need and that it was long overdue. People like myself in this service never thought about corruption. I did not think about police corruption; I knew we had a couple of shaky people in the job, but never thought about it until we started to investigate. Then the problem just fell out in front of us. It was a big task.<sup>53</sup>*

He admitted to the Committee the number of corrupt officers was greater than he first anticipated:

*I thought we had one! Seriously... We thought we would work ourselves out of a job in two jobs - I kid you not.<sup>54</sup>*

He did not offer an opinion about its nature, but acknowledged that the bulk of corruption was to be found within the CIB, with some problems in the Traffic Branch. Confirmation that corruption is more extensive even than that was offered by the probe which followed the Sinatra's Affair.

## OPERATION BRAVO QUEBEC

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<sup>53</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 10 May 1995, page 9

<sup>54</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 10 May 1995, page 15

In September 1993, four police officers from the Armed Robbery Squad were involved in a traffic accident at the corner of Bulwer and Stirling Streets, Perth. The internal investigation into the event was hampered by dishonesty on the part of the detectives involved. This embarrassed the Police Department when inaccuracies in their stories were exposed daily in the press.

Eventually, disciplinary and simple offence charges were laid and dealt with, but not before the licensee of Sinatra's Tavern, Mr Michael Wilson ("Wilson"), made a number of wide-ranging allegations about a fairly high level of corruption, particularly in the Drug Squad and the Armed Robbery Squad. These were aired in the press. Wilson was interviewed by the Assistant Commissioner of Crime Operations, Les Ayton.

Among the allegations made by Wilson were:

- that a senior detective sergeant in charge of the Drug Squad had an improper association with a known criminal;
- that members of the Drug Squad operated telephone betting accounts with the Totalisator Agency Board for the purpose of laundering money;
- that detectives regularly stole money in the course of their duties, particularly detectives from the Drug Squad; and
- that detectives regularly broke the rules to capture criminals and were "protected" by senior officers.

These allegations caused serious concern within the WAPS, especially since they had been aired in the press and an independent Royal Commission was being advocated.

*Much of the information provided by Mr Wilson was not new. The Internal Affairs Unit, which has been operating since 1987, has been aware of and is actively pursuing inquiries relating to a number of issues directly related to or touching on the matters disclosed.*

*In particular, it has long been suspected that certain CIB officers, both senior and junior had or have improper associations with criminals. Whilst it is accepted that there must be interaction between detectives and criminals by virtue of the nature of the work, the Internal Affairs Unit is aware of issues where associations appear to have passed the bounds of propriety.<sup>55</sup>*

Notwithstanding that, an internal probe conducted by selected officers was appointed to investigate Wilson's allegations. It operated under the code name of Bravo Quebec. Because the allegations were against serving officers of the CIB, the probe team did not include then current

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*Corruption Probe Report: Operation Bravo Quebec*, Acting Deputy Commissioner LD Ayton, March 1994, page 2

members of the CIB. People were drawn from the IAU, the IIB and elsewhere. They were under the direct command of Assistant Commissioner Ayton and the operation was overseen by the DPP.

On December 9, 1993, Bravo Quebec completed its task and a report was submitted to the DPP. Many of the allegations could not be sustained because there was insufficient evidence, but a number of serious issues were identified which go to the heart of policing in this State. Two prime issues were highlighted:

- *There is a degree of corrupt conduct within the Criminal Investigation Branch, the full extent of which is not known.*
- *There are a great many good honest police officers concerned at current trends.*<sup>56</sup>

The comments of Commander ER Crawford, the senior officer of the Probe Team are sobering:

*In finalising this Task Force inquiry I draw attention to the issues identified during the brief life of the inquiry.*

*The sheer volume of information elicited in such a short time has clearly identified an existing level of corruption and reason for great concern. Even if only a small percentage of this information is found to be correct, there is still enough to warrant strong action against those involved.*

*To eradicate the problem through prosecution of corrupt police officers will be difficult, due to envisaged problems in obtaining substantive evidence and strong reliable witnesses who are prepared to risk all in the identification and prosecution of their corrupt colleagues.*

*I cannot accept, however, that this perceived problem will prevent thorough exhaustive inquiries that may result in prosecutions regardless of the outcome.*

*Other avenues of correction suggested by the Task Force should be urgently considered for implementation.*

*It is my view the efforts of the Task Force have only scratched the surface of the problem due to staff and time constraints. However, it has been clearly indicated that there is a need for clear, firm, positive action to be taken. Unless this action is taken without delay it can be reasonably forecast that at sometime in the near future issues covered in this inquiry may become available to others; the results of that action would be devastating*

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<sup>56</sup>

*Corruption Probe Report: Operation Bravo Quebec*, Acting Deputy Commissioner LD Ayton, March 1994, page 7

*for this Department.*<sup>57</sup>

The "others" who might have gained access to the issues may have included this Committee. Be that as it may, what appears to have been most disconcerting was the possibility of a Royal Commission into the WAPS. That option had been floated as early as 1989 by the then Ombudsman, Eric Freeman, in his report on the Bull-Peters Affair. His observations are worth repeating here:

*CORRUPTION AND SERIOUS MISCONDUCT IN THE WESTERN AUSTRALIAN POLICE SERVICE*

71. *At my request, the Commissioner showed me a list of 58 matters which were under monitoring or investigation, involving allegations of serious misconduct against at least 45 past and present officers. In some cases, it was thought that several officers were involved. Some of the matters were extremely serious.*
72. *I was unable to speculate whether these figures reflected a problem in Western Australia greater than those in police forces elsewhere. I discussed separately with the Commissioner and the head of the Internal Affairs Unit whether it was considered that the number of cases and officers suspected was abnormal. Both expressed the view that, having regard to the size of the Police Service in Western Australia, it was not.*
73. *The information before me supports the view that there may be pockets of organised corruption in Western Australia involving past and present police officers.*

*A NEED FOR A ROYAL COMMISSION?*

74. *A strong argument might be advanced for a Royal Commission to investigate the question of corruption and serious misconduct in the Western Australian Police Service.*
75. *Such a Commission would, however, take some time to complete its inquiries and this might further damage the morale of the Police Service and the public perception of it. It might also prejudice certain current investigations unless the Commission were granted extended powers as was done in the Fitzgerald Inquiry.*
76. *I refer the question to the Legislative Assembly.*<sup>58</sup>

In the *Corruption Probe Report: Operation Bravo Quebec* by Mr Ayton, there was a suggestion that a Royal Commission might be necessary. However it was only one of several options

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<sup>57</sup> Quoted in *Corruption Probe Report: Operation Bravo Quebec*, Acting Deputy Commissioner LD Ayton, March 1994, page 11

<sup>58</sup> *Report to the Speaker of the Legislative Assembly of the Parliament of Western Australia on the Current Investigation by the Commissioner of Police involving Deputy Commissioner Peters*, Parliamentary Commissioner for Administrative Investigations, 6 December 1989, page 18

presented by Mr Ayton for combatting the problem. He stated:

*Four courses of action present themselves as alternatives:*

- *Some have suggested that the solution is to dismantle substantial sections of the Police Force and rebuild, thereby eliminating the corrupt element in the Force in one fell swoop.*
- *Subject the Force to an independent (Royal) Commission of inquiry.*
- *Following the above, impose rigid rules and sanctions in respect of which police would be answerable to an outside body*
- *Undertake a reorganisation and refocussing of the Force from within, creating pride in self regulation, ethical standards and providing an environment where corrupt practices cannot take hold.*

*As to the first option : in my view an impractical and illogical solution that is doomed to failure. Two factors mitigate against it - time and effectiveness. The Force, even operating at a low level of efficiency, provides this community with a degree of safety and service. Dismantling of a system or structure such as the Force would cause such disruption and inefficiencies as to make any perceived or hoped for gains unattainable.*

*In respect of the second option : the prime purpose of Commissions of inquiry is to air and force public acknowledgement of a hidden or denied problem. There is no such need here. A further purpose is to recommend solutions which would in the normal course of events, be neither palatable nor achievable within a (Government) department. Again, no such need exists here. [Committee's emphasis]*

*Given the examples in other places the most common result of Commissions of inquiry into police forces is increased Government intrusion into policing operations and a diminishing of police efficiency.*

*Whilst no-one denies the need to cleanse it, Queensland is the best example of a force subjected to a commission of inquiry. Apart from some sensational headlines and a handful of high profile arrests, it has not achieved great results.*

*No-one suggests that the Royal Commission ridded Queensland of corruption in the force. Far worse, there is a serious diminishing of police effectiveness with associated morale problems that will haunt the Queensland Force for years. The good men and women of the Queensland Force despair.*

*Given that there is open and frank acknowledgement of the issues in Western Australia, neither the expense of, nor detrimental effect of an outside public inquiry into the force is needed.*

*As to the third option : externally imposed and supervised rules and controls on the Force is the popular choice of most regulators faced with police problems. The only result that can be achieved by these methods is reduced efficiencies and little diminishing of corrupt or improper practices.*

*What must be remembered by regulators is that the ‘process’ of policing is the province of the police alone. If the will exists the most complicated, rigidly imposed rule can be subverted by a system that does not agree with or resents it (the rule). What results is a system of behaviour so artificial that practical common sense, good policing practice and responsible management are impossible.*

*For policing in Western Australia to be relatively free of corruption and improper practice, the only viable option is the fourth alternative.*

*Where change is needed in an organisation it can only be effective if it occurs from within. The factors which will determine the success of change are:*

- *acknowledgement of the need.*
- *ownership of the process.*
- *ability of management.*
- *support of Government.*
- *will of the organisation’s members.*

*The inefficiencies, improprieties and corrupt practices disclosed by the Internal Affairs Unit and the Bravo Quebec probe cannot be denied. The Commissioner of Police, senior executives and many others readily accept that there is a problem. Indeed, the Commissioner of Police set up the Internal Affairs Unit in 1988 for this very purpose. The need is, therefore, acknowledged.*

*The processes of corruption investigations and change management are matters where “Force” ownership is critical to success.*

*To reinforce this I draw on the comment made by Mr Ian Temby in his February 1994 report into the relationship between police and criminals:*

*“The most valuable reforms will come from within police ranks. External bodies like the Commission can be useful catalysts, but externally imposed solutions do not work well because those who must implement them may be inclined to undermine what they do not see as their own.”*

*Directly affecting the ownership issue is the question of the Force’s management competencies. Given the openness and eagerness with which management has embraced the change processes now taking place, I am confident of our ability to manage the changes necessary to reduce corruption.*

*Government has shown an eagerness to support management in its endeavours to reshape the Force to cope with modern society and needs. Taken together, there is good reason to be optimistic as to the future of Western Australian policing. What is needed is vision, commitment, endeavour and support.*

*Finally the question of 'to whom are we accountable must arise'. Self regulation and internal control does not mean that the Force should be secretive nor not be publicly accountable. The close relationship, openness and frankness that currently exists between the office of the Director of Public Prosecutions, the Commissioner of Police, the Deputy Commissioner and the Internal Affairs Unit is a good reference point of the acknowledged need for accountability.*

*It may be that a Police Board will come into existence in 1994. This body could play an important role in the public accountability of police.*

*As an interim measure, the role of the Director of Public Prosecutions and close and regular contact between him and the office of the Commissioner of Police and the Deputy Commissioner of Police will be important to ensure accountability on this issue.*

*Again I draw on the comments of Mr Temby to underline that the implementation of policy is more important than rhetoric:*

*"In order to ensure that the reform process continues, the Commission will monitor progress as detailed policies are formulated and implemented by the Police Service. The test is not how well the policies read, but how well they work in practice."*

*I recommend that the Government be advised against adopting draconian or inappropriate short term reactive cures for the problems facing policing. I share the view of Temby and the challenge is there to be answered. Government has indicated its intention of providing the wherewithal for change. My advice is that nothing should be done which would impede progress for a better police force.<sup>59</sup>*

## **DPP's Response**

The DPP, who had formal oversight of Operation Bravo Quebec, responded to Ayton's report:

*The report confirms very serious concerns as to the level of corruption within the Police Force. It is obvious that insufficient action has been taken to put in place and enforce systems designed to minimise corruption. The negative aspects of Police culture have*

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<sup>59</sup>

*Corruption Probe Report: Operation Bravo Quebec*, Acting Deputy Commissioner LD Ayton, March 1994, pages 15-18



*allowed corrupt officers to operate with small risk of exposure.*

*The report has a positive aspect. At least there is now a recognition of the problem by senior Police Officers and a displayed willingness to act in relation to it. Mr Ayton is to be commended for bringing the problem to the attention of the DPP instead of keeping the matter secret as has occurred too often in the past. Further, he has displayed a commitment to overcoming corruption. Since his appointment as Acting Deputy Commissioner, the number of corruption-type matters referred to my office has greatly increased.*

*The probe report does not deal with them or with other matters previously referred, such as the Argyle Diamond case.*

*I have discussed his report with Mr Ayton and my response to it. I have not sought his agreement on the suggestions I shall make. He is aware of them. In broad terms, subject to the 2 matters below, I accept his report.*

### ***The Drug Squad***

*Page 10 [of Mr Ayton's Report] deals with procedures designed to address possible corruption in the Drug Squad. I have major concerns that these proposals do not go far enough.*

*There appear to have been few successful operations against major drug dealers in Perth in the last 3 years. Further, evidence gathered by the probe suggestive of compromise of surveillance operations is disturbing.*

*In my view, operational issues affecting the Drug Squad need to be addressed urgently. Government is entitled to require this matter to be the subject of immediate resolution.*

### ***Accountability***

*In general terms, I agree with Mr Ayton's strategy for managing the problem. In particular, I do not consider that there is a present need for a Royal Commission.*

*Rebuilding the Police Force is an option which is at times attractive. However, short reflection shows that it is totally unfeasible. We will have to work with the material available. Besides, there are very many competent, efficient and honest officers. They have often been managed inefficiently and this has opened an opportunity for corrupt officers.*

*Mr Ayton's fourth option is the most suited to Western Australia with one strong caveat.*

*The heart of the problem is a lack of accountability for the operations of the Police Force.*

*The traditional measures of accountability - the Minister of Police, the Government and Parliament - have failed.*

*It is possible to devise systems for accountability which preserve the operational independence of the Police Force. It is vital that these systems be developed before the Government agrees to any proposal by the Police to deal with the problem, including Mr Ayton's fourth option. Otherwise the process of changes will be entirely in the hands of operational Police Officers with no mechanism for the Government to monitor the effectiveness of the measures.*

*This report does not address the management practices within the Police Force. They are relevant in that good management practices will minimise corruption and there have been obviously bad management practice in many areas of the CIB. However, this report is not intended to supplant the Scoping Report completed by Arthur Andersen & Co, or to address the matters in it. This report deals with a different subject - corruption.*

### ***Bodies Unsited to Monitor Police***

*The Parliamentary Commissioner for Administrative Investigations and the Official Corruption Commission are not the appropriate bodies to monitor the Police Force. The Parliamentary Commissioner has a wide jurisdiction over the whole of the Public Service. The Police Force needs a specialised review mechanism. It is the civilian force and the civil government must therefore install accountability systems in respect of the exercise of civil power. A further difficulty in relation to both the Parliamentary Commissioner and the Official Corruption Commission is that they are complaint based. Their jurisdiction is triggered when some person complains. The lesson of the probe is that this response is inadequate.*

*The Official Corruption Commission is essentially a mail box without coercive powers.*

*The DPP is not the appropriate person to supervise the Police Force. I have undertaken this present role reluctantly and for 2 reasons.*

*The first is that I have the support of Government to undertake the probe. For this I thank the Hon Premier for his trust.*

*The second is that at this point some supervision is vital and there is no other body in Government, except the DPP, with any capability to monitor the Police Force.*

*However, there are sound reasons to preserve the difference between the prosecuting and the investigating functions of Government and the involvement of the DPP should be seen as a short-term emergency measure and not a long term solution.*

### ***Proposal for Change - An Inspector General***

*I propose for consideration a structure which will enhance accountability by providing for both general and random audits of Police operations.*

*The first part of the structure is a Police Board or Commission of which the Commissioner is the operational member. The board would exist, not to interfere with operational matters but to provide a measure of control and accountability for the Commissioner.*

*The second stage is an auditor of Police operations whom I call the Inspector General.*

*The Inspector General will have power to compel production of documents and compel Police to answer questions. In consultation with the Commissioner, the Inspector General will monitor performance indicators and investigative guidelines for the whole force and for particular squads. Importantly, the Inspector General will be able to make checks of any part of the Police Force reporting the results to the Commissioner, the Board and either to the Government or Parliament.*

*Mechanisms and controls will ensure that the Inspector General does not become the defacto second Commissioner.*

*The Inspector General would have no disciplinary function whatever but could report suspected criminal activity to the Commissioner or the Director of Public Prosecutions.*

### ***The Future***

*This is a problem which has been inherited by your government, probably unfairly. However, it needs attention and decisive action now before the Police Force gets entirely beyond control of Government and Parliament.*

*I do not doubt Mr Ayton's resolve and I have some confidence in his ability to achieve a clean-up of the force, notwithstanding the factions raised against him. But that is a short-term solution.*

*Systems must be put in place that will survive an individual Commissioner or Deputy Commissioner.*

*The structure I propose should be relatively cheap, will provide a measure of accountability and will give Government and Parliament access to independent advice concerning the operational efficiency of the Police Force.*

### ***Conclusions***

*This report formally completes my involvement. However, I am willing to continue to provide advice to the Government on the subject if you wish.*

*The problems in the Police Force identified by the probe are not directly within the functions of the Director of Public Prosecutions. However, they have such an impact on the criminal justice system in this State that I regard myself as honour bound to assist the Government, if asked.*<sup>60</sup>

## **COMMITMENT TO THE INTERNAL AFFAIRS UNIT**

This evidence of the extent of police corruption accumulated over several years, during the whole of which time the IAU was operating, brings into question the effectiveness of anti-corruption strategies within the WAPS. The IAU's record of prosecutions following from its investigations is a record of failure. Most success seems to have been with charges of a lower order of criminal misconduct by civilian personnel within the Police Department. Charges of a serious order of corruption by police officers have been confined to a few cases, and two of those matters are still to be tried.

There are explanations for the failure. For example, the Unit has not enjoyed enthusiastic support since the initial impetus of the Fitzgerald Inquiry. Its financial resources have diminished to the extent that the IAU now is inadequately resourced and under-manned.

There is no evidence which supports a proposition that the staff are not equal to their task. There are other explanations of the ineffectiveness of the Unit. The IAU is hampered by deliberate obstruction of its investigations and the deliberate leaking of information about its operations; by suspects being tipped off that they are being investigated and undercover operatives being identified to their targets; and by an unwillingness even of honest police officers to stand witness against their fellows.

## **FINANCIAL ALLOCATION**

Annual budgets show declining allocations to the IAU from \$166 000 in 1989-90 (the first full financial year of the Unit's operation) to \$51 500 in 1994-95. The most significant decrease was from \$113 000 in 1991-92 to \$80 000 in 1992-93. Between 1989-90 and 1992-93, the financial allocation was halved, and between 1992-93 and 1994-95 it was reduced again by more than a third.

Within that time, changes have occurred in accounting procedures and in methods for the purchase of vehicles and equipment. For example, in 1990-91, as part of the change for managing the government fleet across the whole of the public sector, vehicles for the IAU were supplied by

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Memorandum from Mr McKechnie QC, Director of Public Prosecutions, to the Premier, the Attorney General and the Minister for Police, 23 March 1994

Fleet Services, even though maintenance was debited to the Unit's budget. Similarly, in May 1994, \$7 000 additional to the budget allocation was made available to upgrade the communications link with Police Headquarters. Even with these qualifiers to the annual financial allocations, the continuing reduction of resources might suggest a diminishing priority for self-regulation through the IAU.

In part, the reduced allocation after the first three years of operation is because major capital costs for electronic, technical and computing equipment had been met. Establishment costs were met in the first three years, and thereafter recurrent allocations were according to prioritised need.

When questioned by the Committee about annual budgets, Deputy Commissioner Ayton explained the reduction in the first four years of operation in these terms:

*When the Internal Affairs Unit was set up, it required considerable funds to purchase some sophisticated equipment. Given the hype that surrounded the Fitzgerald Royal Commission it was a very valuable tool in securing a good part of the budget. The Unit was well treated and better treated than the Internal Investigations Branch. That is now not so. Having been equipped, the Unit fights for funds like anybody else, and the recurrent budget is now commensurate with the work done.<sup>61</sup>*

Later in the same hearing, a suggestion was offered that perhaps the current allocation is insufficient to meet the Unit's needs:

*The Internal Affairs Unit received only \$55 000 for recurrent costs for the current year [i.e. 1994/95]. In fact, that was so fine that we had to give the Unit a boost; otherwise it would have gone out of business. The amount has come down considerably. That is more than a 75 per cent drop in what it originally got.<sup>62</sup>*

Other evidence to the Committee indicates the extent of differences between budget estimates and allocations. Estimates are submitted to the executive finance committee (usually the Commissioner, the Deputy Commissioner and the Chief Executive Officer of the Department) who make allocations among competitive bids from the various sections. In 1994-95, the estimate presented by the IAU was \$126 000. Its budget allocation was less than half that amount. The Acting Officer in Charge, when questioned about the Unit's budget, told the Committee:

A. *The biggest area to suffer is equipment, as I have mentioned before. I am not sure on the \$126 000. It was certainly over \$100 000, anyway.*

Q. *Certainly double what you got?*

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<sup>61</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 10 May 1995, page 12

<sup>62</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 10 May 1995, page 12

- A. *Yes. This year we are hoping and planning to upgrade a lot of our equipment and write off a lot of it. We have ended up with a budget of \$12 500 which buys probably only two items of essential equipment.*<sup>63</sup>

## STAFFING

When the IAU was first set up in 1988, its full complement was two investigators and two surveillance operatives. Since that time, although the staff level has increased, the IAU has continued to experience insecurity in the number of officers at the Unit. It currently has a complement of 21 officers, 19 sworn and two unsworn. These numbers do not make allowance for staff who may be away on long service leave, holiday leave or sick leave.

The number of surveillance staff varies according to need, and in 1995 there were seven designated surveillance personnel and two technical officers.

Like other sections of the WAPS, the IAU has been affected by a moratorium on promotions. Since its inception in 1987, the Unit has had two substantive Officers in Charge, then Superintendent Les Ayton and after his promotion, Superintendent A.K. Watson. After Watson's transfer in August 1994, the position was filled in an acting capacity pending replacement.

Criticism was made to the Committee that the effectiveness of the IAU is hampered by downgrading its investigative staff. Because of the nature of its work, investigations must be carried out by officers of senior rank:

*A person accused of an offence, particularly of the nature that we deal with, does not even have to answer questions unless it is to a superior officer. The ranks are generally mid-constable through to senior sergeant - that is the area that we mainly get the complaints about and, of course, outside that area too.*<sup>64</sup>

The current staffing with an acting Officer in Charge without substantive rank, two commissioned officers less than the approved complement and 9 sergeants compared with the approved complement of 5 must unavoidably lessen the Unit's competence. Taken with the reduction of financial resources, it seems a reasonable criticism that the IAU has been given lower priority in recent years, certainly since 1993. Without adequate equipment, resources and personnel, the Unit could not function effectively.

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<sup>63</sup> Transcript of Evidence of Acting Superintendent DJ McLeod, 28 September 1994, page 17

<sup>64</sup> Transcript of Evidence of Acting Superintendent DJ McLeod, 28 September 1994, page 7

## PROBLEMS OF EVIDENCE

One of the reasons for the variance between the apparent prevalence of corrupt behaviour and the low conviction rate of police officers is the problem of evidence. It is a problem not peculiar to Western Australia, and is a consequence of the specialised knowledge of criminal behaviour, investigation and prosecution procedures that police, especially within the CIB, are trained in. Because they know how to catch criminals, they know also how to avoid being caught.

Some consequences of this problem were discussed with Deputy Commissioner Ayton. He proposed that the 60 individuals who had been charged following IAU investigations had resigned. Some were encouraged to leave the Service simply because there was not sufficient evidence to convict them or to prove serious misconduct warranting dismissal:

*It is not possible always to gather sufficient evidence against persons to charge them with corruption or criminal activity because they often know the system better than we do and they do not have the hindrance of having to abide by the laws of evidence. Therefore, often these people evade detection. We take many opportunities to encourage them to leave the job.<sup>65</sup>*

In response to the question at a subsequent hearing:

*Q Is it a success for the community, though, to have someone out there with possibly evil intentions who for all intents and purposes has a perfect record, good recommendations...*

Mr Ayton said:

*A No. It is less than satisfactory...but it is the lesser of two evils.<sup>66</sup>*

A case in point involved the informant in Operation Bravo Quebec, Wilson, while he was the licensee of the Railway Hotel at Donnybrook where an undercover drug operation was to be carried out in November, 1992. Shortly after the undercover operatives had visited the town, confidential information was provided to IAU staff that the operation had been compromised. A senior detective sergeant was believed to have been involved. Because he was readily identifiable, a covert inquiry by IAU was not possible and only a narrow investigation was undertaken. The information was filed when no substantial evidence was discovered to corroborate the identity of the corrupt police officer.

Allied matters were brought to the attention of and investigated by the Bravo Quebec probe team. Insufficient evidence was produced to substantiate those matters. Subsequently, new information

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<sup>65</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 10 May 1995, page 16

<sup>66</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 29 April 1996, page 12

about the Donnybrook incident was referred to the IAU and a second inquiry was instituted. All available members of the hotel staff at the time of the original drug operation in February 1992 were interviewed. Although memories were hazy, most could remember being advised by the licensee, Wilson, that undercover police were coming to the hotel. The fact that Wilson had been tipped off was corroborated and he identified the detective sergeant who had warned him.

Even though the IAU knew that an undercover drug operation was compromised by a detective sergeant arranging to have the subject of the inquiry informed of the existence of the undercover officers, no action could be taken against him. The IAU had direct evidence from the person who was given the information that the particular police officer had given the information to him. Other police officers were interviewed, but evidence given by Wilson could not be corroborated. No charges were preferred

The matter did not rest there. During the IAU's second inquiry, the suspect detective sergeant denied even knowing the existence of the drug operation. Earlier in this incident, however, a listening device had been installed in his office and he was recorded talking to another person about the operation the day before it was to have been carried out.

Deputy Commissioner Ayton described the subsequent events:

*Now that is a lie, the only lie we could prove. When he came up for promotion the IAU lodged an objection to his promotion on the basis of integrity. He questioned us down to the wire. We played the tape to him, and he resigned. I count that as a success; not a comfortable success, but a success. It is a sad reflection that we could not prove it, but we would never have got him through a court of competent jurisdiction.<sup>67</sup>*

Successes of this kind are limited. People guilty of criminal conduct are identified, but are not prosecuted. They are dealt with by getting them out of the WAPS. The Service is rid of a miscreant, but the person who engaged in illegal conduct evades the penalties of the law. In this instance, the officer lost his career - and that is a substantial penalty - but he escaped other punishment.

There is a difficulty with fellow officers not providing evidence which could convict corrupt officers. Deputy Commissioner Ayton observed:

*That will come about only with a change of attitude, a change of belief and a change of culture. That can happen only with management, and it can happen only from within. The reason that the IAU has not been as successful as it can be is not one single factor but a range of factors. It is a lack of support by senior officers. It is a lack of belief by police officers that there is a problem. You can talk to some coppers about corruption and they*

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Transcript of Evidence of Deputy Commissioner LD Ayton, 10 May 1995, page 16



*plainly do not believe you.* <sup>68</sup>

What signals does this send out to other police officers? Honest police are disappointed and see no point in cooperating with the IAU when they will be the only ones to suffer. Others who push the limits of lawful conduct are confirmed in their expectation that they will not be caught. If they do, they will not be prosecuted. Within the Service there is a perception that the IAU is ineffective. There is a view it is used only for covert purposes to hinder the promotional opportunities of targeted officers. None of this engenders trust within the WAPS and none is in the public interest.

## ACCOUNTABILITY

The earlier description of how the IAU is organised (see Part 2, page 19) explained that it is accountable only to the Commissioner of Police through the Deputy Commissioner. In recent years, Commissioner Falconer reached an informal agreement with the Official Corruption Commission that it will overview all files relating to police corruption.

The IAU is accountable to the Deputy Commissioner and bound by his decisions and sometimes those decisions were not what the IAU preferred. This has been detrimental to the Unit's self confidence. In response to questioning about the morale in the light of scepticism from the rank and file within the WAPS, the Committee was told:

*It fluctuates greatly...They work and worry away at something for quite some time. They are working on someone whom they know very well and have been friends with or colleagues, and they finally reach the end of the day and, although there may be enough to put up a case, nothing seems to happen sometimes. It is a very frustrating area to work in.* <sup>69</sup>

The frustration referred to was the disappointment when recommendations put forward for approval are rejected. Unlike other sections of policing where decisions to proceed are regarded as part of the duty of the office of constable, in the IAU that authority reposes with the Commissioner of Police, usually delegated to the Deputy Commissioner. This means that approval must be given for matters to be pursued to appropriate conclusions. The Unit can only put forward recommendations. They are not always accepted.

When the investigating officers believe they have developed a sound basis for continuing, but are denied that chance by decisions of their superiors, they feel let down. Acting Superintendent McLeod explained what he meant by “...*although there may be enough to put up a case, nothing seems to happen sometimes...*”:

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<sup>68</sup> Transcript of Evidence of Deputy Commissioner LD Ayton, 29 April 1996, page 30

<sup>69</sup> Transcript of Evidence of Acting Superintendent DJ McLeod, 28 September 1994, page 9

A. *I am not talking about a criminal case. Some matters have died which we wanted to keep going.*

Q. *Who kills them? The Deputy Commissioner?*

A. *It is left up to the Deputy and the Commissioner.*<sup>70</sup>

A case in point was codenamed Operation Foxtrot.

## **OPERATION FOXTROT**

Operation Foxtrot, involved a former Officer in Charge of the drug squad. He was under investigation by the IAU for the alleged payment of money, bribery compounding a crime and corrupt association with a criminal. The investigation failed to produce evidence sufficient to sustain criminal charges, but four disciplinary charges were laid. At a disciplinary hearing, one charge was dismissed and three resulted in convictions. They were subsequently overturned on appeal.

The investigating officer within the IAU was of the view that the appeal to the Supreme Court was appropriate and advised the Commissioner that way. His recommendation was rejected. On first analysis, the reason given appears curious:

A. *The reason I was given was that really the Commissioner cannot be seen to be at loggerheads with the Union. Or with the appeal panel, I should say.*

Q. *Does he have to give his reasons as a judge does?*

A. *Oh no, no. It is just a courtesy that he gave me those...Actually I did not get it from him but from Mr Zanetti.*<sup>71</sup>

The authority of the Commissioner to disagree with a recommendation is not disputed by the Committee. The reason said to have been given here requires some consideration. Intelligence indicated a clear association between the suspect and drug dealing in this State. He was believed to associate with a known criminal. The charge against him was substantiated by convincing evidence he had tipped off a cocaine dealer about an undercover operative. The matter was not trivial and was a significant test of self-regulation by police.

The public interest may have been better served by pursuing an appeal to the Supreme Court. Had

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<sup>70</sup> Transcript of Evidence of Acting Superintendent DJ McLeod, 28 September 1994, page 9

<sup>71</sup> Transcript of Evidence of Acting Superintendent DJ McLeod, 28 September 1994, page 12

that been done it is possible that the police and the Department would be exposed to public criticism. From a perspective outside the WAPS, there may be no perceived ethical dilemma: the public duty of the police is to preserve law and order. Even if there is public criticism from time to time, police officers must be dealt with in the same way as other citizens. If there is sound evidence that a crime has been committed, then due processes of law should be followed. That might include an appeal.

From within the WAPS, where collective loyalty sometimes supplants other ethical or moral obligations, the "blue curtain of silence" can cloud those sorts of issues. In this instance, the Commissioner was being asked to risk the credibility of the WAPS. Evidence against the accused already had failed before a magistrate presiding over the Police Appeals Board . Testing it before the Supreme Court could only have been contemplated if the case was irrefutable. In the case of Operation Foxtrot, the investigating officers thought they had such a case.

## **POLICE PROSECUTIONS**

Operation Foxtrot did not involve criminal prosecution. It was dealt with by internal disciplinary processes. Operation Foxtrot raises questions about the competence of police prosecution and was commented on in relation to criminal matters when the DPP appeared before the Committee:

*The Police Force cannot win when it charges its own and prosecutes its own. If it is seen to prosecute too hard, the police officers say it is harder on them because they are police officers; if it is goes too soft, everybody says the police are covering up. Giving it to an independent service is a sensible way to go for the Commissioner of Police.<sup>72</sup>*

The Commissioner has gone that way. The Annual Report of the Office of the Director of Public Prosecutions, 1993-94, described the arrangement and the reasons for it:

*By arrangement with the Commissioner of Police, the office [the DPP] has, in respect of indictable offences taken over from inception, the prosecution of police officers who have been charged with a criminal offence.*

*In this way, there is a measure of independence which protects all concerned.*

*...the office has applied a more objective standard as to whether a prosecution should proceed. Regrettably, in respect of certain matters from the Internal Investigations Branch, decisions have been made to write matters off in an unacceptable way.*

*At times a brief has been structured in such a way as to lead to a result that no charges are laid. A review of the brief by the office and personal contact with some of the witnesses reveals a different state of affairs from that shown in the brief submitted by*

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<sup>72</sup>

Transcript of Evidence of the Director of Public Prosecutions, 24 April 1995, page 16

*police.*<sup>73</sup>

There is a difference between prosecution and successful prosecution. Less than half the cases of criminal prosecution of police officers originating from the IAU in the six years to 1995 resulted in convictions. While disappointing, it is seemingly more encouraging than the Victorian experience:

*Whereas in the year under report some 79% of all citizens prosecuted either pleaded guilty or were found guilty on one or more charges upon which they were presented, the figure for police officers was about 6%. Eighteen police officers were presented for trial: seventeen were acquitted, one was convicted. In 1992-93 twenty police officers were presented for trial; three pleaded guilty, two were convicted and fifteen were acquitted, a conviction rate of about 25% as against 77% for the community generally in that year. Over the two years referred to about 15% of police officers presented for trial either pleaded guilty or were convicted as against 78% for the population generally.*<sup>74</sup>

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<sup>73</sup> Office of the Director of Public Prosecutions: Annual Report, 1993-94, page 35

<sup>74</sup> Director of Public Prosecutions (Victoria), Annual Report 1993-94, page 8



## PART 5

# CRITICAL COMMENTARY

Opinion was offered that the system of self-regulation within the WAPS works reasonably well. For example, former Deputy Commissioner Frank Zanetti told the Committee:

*You will never have a system that will make everyone happy. Originally police were fairly strongly of the view that they should do the investigation and so forth, but after a while they got a bit sick of people saying it was the police investigating the police. It would not matter where a group of people were from; even if they were not police, people would still say it was the police being investigated and it would not be done right anyway. I believe police are probably the best people to do the job. Contrary to what people might say, police generally investigate and deal with their own a damn sight harder than others, and if you spent time going through briefs and things you would see for yourself that is the fact.<sup>75</sup>*

Having considered the evidence presented to it and examined closely some of the cases handled by the IIB and the IAU, the Committee is of the opinion that the system does not work. It is in the public interest to have a system that ensures police operate within the limits of the law and do not abuse their considerable authority. Unfortunately, there is strong evidence some do. The Committee believes most Western Australian police officers are loyal, honest and dedicated, but the honest majority are being let down by a dishonest minority.

Corruption has existed for some time and the Committee cannot say whether it is worse now than at any previous time. Certainly the sources of corruption appear to have changed. Whereas in previous decades it related to gambling and prostitution, now it is focussed more directly on drugs and prostitution. The shift reflects the emphasis of work by the CIB in the respective times.

Because of the nature of the work criminal investigators and other police officers do, opportunities for corruption exist. Therefore, there must be effective regulatory systems against it. When those systems are ineffective corruption can be endemic. There are several reasons for the inadequacy of the present system of self-regulation. Before suggesting an alternative method of detecting, punishing and preventing corruption, it is necessary to appreciate why self-regulation has failed.

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Transcript of Evidence of former Deputy Commissioner F Zanetti, 13 February 1995, page 25

## THE POLICE CODE

Police officers form a strongly-bonded social group with a unique culture. In some respects, that is a necessary part of policing. In difficult or dangerous situations, and in the face of public resentment of their authority, police officers rely on their mates for mutual support and protection. They have to know they can be and are relied upon.

The Mollen Commission described this culture as an: “...*intense group loyalty, fostered by shared experiences and the need to rely on each other in times of crisis...*”<sup>76</sup>

Mollen recognised that loyalty can be a two-edged sword. By itself it is not corruptive, but:

*...group loyalty often flourishes at the expense of an officer's sworn duty. It makes allegiance to fellow officers -- even corrupt ones -- more important than allegiance to the Department and the community. When this happens, loyalty itself becomes corrupt and erects the strongest barriers to corruption control: the code of silence and the "Us vs. Them" mentality.*<sup>77</sup>

The Fitzgerald Report identified a similar concern. It saw the institutional culture of the police force as of vital importance to a community:

*However, a completely new dimension is added if a police culture exhibits features which do not accord with the general social culture, especially involving contravention of the law. The effect is worse if the culture also incorporates a code which provides for a different approach to the enforcement of the law in relation to police officers, and insists that, in conflicts between the law and the code, the code prevails. The practical exercise of police authority, in adherence to such a code, effectively places police officers beyond the law.*<sup>78</sup>

The Eucla episode illustrates the worst features of the code within the WAPS. The collective loyalty of the force was focussed not on bringing police offenders to book, but rather on denying that three of their number should be subjected to the same processes of criminal justice as other citizens. Individual police officers, even at the highest levels, appear to have colluded to frustrate the proper course of investigation, prosecution and trial. Some of the actions of police officers were unlawful, and were the subject of official complaint by the DPP. Attempts to identify police officers responsible were instituted, but, it appears, not pursued vigorously. Faced with that sort of obstruction, the self-regulatory functions of the IIB were rendered ineffectual.

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<sup>76</sup> Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report, Chair: Milton Mollen, July 7, 1994, pages 52

<sup>77</sup> Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report, Chair: Milton Mollen, July 7, 1994, page 53

<sup>78</sup> Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct, Commissioner GE Fitzgerald, June 1989, page 200

The Fitzgerald Report reached a similar conclusion about the Internal Investigation Section in Queensland:

*The Internal Investigations Sections have been woefully ineffective, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will, and demonstrated no initiative to detect serious crime. Corrupt police have effectively neutralised whatever prospect there might have been that allegations against police would have been properly investigated. The Section's effects have been token, mere lip service to the need for the proper investigation of allegations of misconduct.*<sup>79</sup>

That judgment was echoed by Deputy Commissioner Les Ayton in comments about the Western Australian IIB:

*It comes back to the culture of the organisation. You must understand the tribal nature of police and the type of people that we are...There has always been a "them and us" - the community and us - attitude which has been fostered within the service for a number of years, so we build brick walls around ourselves. It was clearly stated by the Internal Investigations Branch in years past that its job was to dust people down - to smooth things out; not necessarily to get to the heart of the problem. Its officers actually thought that their charter was to cover things up so that the service was not seen in a bad light. That is why the Internal Investigations Branch and the Police Service itself degenerated into cover-up mode.*<sup>80</sup>

The reviews of the prosecution of James Heaney and the conviction of Jeannie Angel suggest the IIB was less interested in testing the integrity of police investigations and more concerned with averting public audit. In the Eucla case, on the other hand, Internal Investigations officers did pursue vigorous inquiries to identify criminal activity. In fact, they found more than had been anticipated. Eucla proved to be a "honey pot" of police misconduct. Some of the matters reported have never been prosecuted. The failing was not on the part of the IIB, but on the resolve of members of the Police Force to enforce the law against fellow officers.

## THE CODE OF SILENCE

The Code of Silence practised by any police service is motivated by several considerations. One is desire to protect the image of the Police Service. There are legal constraints upon police officers divulging information relating to the Force or other information that has been furnished or obtained in the course of duties. Section 81 of the *Criminal Code*, "Disclosure of Official Secrets", is binding upon police officers as it is on other public servants. A more general

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<sup>79</sup> Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct, Commissioner GE Fitzgerald, June 1989, page 289

<sup>80</sup> Transcript of Evidence from Deputy Commissioner LD Ayton, 17 May 1995, page 14



injunction against disclosure of information is expressed in 607 (2) of the *Police Regulations 1979*. It states:

*A member or cadet shall not, except with the express permission of his officer-in-charge or the Commissioner -*

- (a) publicly comment, either orally or in writing, on any administrative action, or upon the administration of the Force;*
- (b) use for any purpose, other than the discharge of his official duties as a member or cadet, information gained by him through his employment in the Force or as a cadet; or*
- (c) communicate to the public, press or to any unauthorised person any matter connected with the Force.*

The reasons for this regulation are readily appreciated. Police officers have access to privileged information, which, if used improperly, can be damaging to the welfare and reputations of ordinary citizens or the well-being of the State. It also can be harmful to police officers themselves. They are vulnerable to false accusations by criminals and others motivated by revenge or dislike. Hence, the code of silence enshrined in regulations is to protect members of the WAPS as much as it is for the general good.

Unfortunately, the code of silence can have negative effect upon the self-regulation of the Police Service. One of the disheartening aspects of the Eucla episode was the treatment by their fellow officers of the investigators, Chilvers and Robson, and the prosecution witness, Johnson. They were, and continue to be, persecuted for doing the ethical thing. That is contrary to the unwritten code which expects that police will not enforce the law against other police. Neither will they cooperate in attempts to do so. Rather, as was shown in the disclosure of classified documents to the defence counsel, they obstruct such attempts.

Evidence presented by police who had spoken up about suspected corruption suggested a disturbing propensity of some senior officers to protect at any cost the reputation of the Service. For example, an officer who reported his concerns about possible corruption was told to "kick a few doors then write the thing off". Another, a sergeant who reported that his superiors had perverted the course of justice by "pulling one of my briefs", claimed he was given the job of investigating his own complaints against the officers after they had been told of his allegations.

Many submissions to the Committee from a variety of sources offered a litany of complaints about police harassment or intimidation. Some of these were antagonistic towards police in general or against single officers. Notwithstanding this, the submissions suggest patterns of intimidation in which authority is used to cow complainants into submission. The complainants are made to feel that protest is useless, that the system is against them.

Harassment of police officers who break the code of silence can be more subtle, but not less coercive. The telephone seems to be a favoured instrument of persecution. One officer described his experience over a period of ten days:

*The telephone would ring in the early hours of the morning. I have a telephone extension next to my bed. I picked up the telephone and nobody would be there. There was no verbal contact and the line was never actually opened. If the line had been opened I would have rung Telecom and tried to put a last-party trace on it. I concluded that because of the frequency of them and that they occurred only when my wife and family were away, they were designed by somebody to intimidate me...Sometimes those calls were frequent - after I hung up the phone, within a few minutes the telephone would ring again. This occurred almost every night my family was away.<sup>81</sup>*

At other times he was aware of his vehicle being "tailed" late at night while he was on police duty. When he was off-duty, police cars repeatedly cruised past his house as though he were under surveillance. There was notable similarity between this officer's experience and that related to the Committee by Mr Tilbury and described earlier in reference to the death of Stephen Wardle (see Part 1, page 10).

Similar experiences of nuisance telephone calls were described by another officer who had given evidence against a colleague. His only relief was that calls were confined to daylight hours. For him, possibly because he was of lesser rank and therefore relatively powerless in the hierarchy of authority, episodes of harassment extended into his workplace. For example, files were strewn about his workstation; nobody saw anything and when he complained to his superior he was shrugged off with, "What can I do about it?".

Were these isolated assertions the Committee might have been inclined to dismiss them as bitter recriminations of discredited police officers seeking reprisal for imagined injustices. They were not isolated. A recurring pattern of testimony was that police who spoke out against corruption were invalidated out of the service after being subjected to harassment and psychological intimidation.

## **INTIMIDATION OF WITNESSES**

Uncovering corruption in any organisation relies heavily upon people having the confidence to talk about it. The informer may be a direct witness, but often, preliminary information comes from persons passing on what has been heard or seen by others. Fleshing it out sometimes involves dedicated surveillance. At other times it requires painstaking cross-checking of information from many sources. Confession by guilty parties during the early stages of corruption probes happens infrequently.

Establishing proof sufficient for criminal prosecution may require corroboration confirmation of evidence by persons who have some involvement, but who are not themselves parties to the offence. In cases of police corruption, such evidence can often only be provided by other police

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Transcript of Evidence, 30 October 1995, page 22, (Witnesses' identity suppressed)

officers. The knowledge of such other police officers of particular incidents or episodes can be used to establish a link between the suspect and the offence.

The Eucla and Foxtrot incidents illustrate how police officers are disinclined to provide that corroboration. It is unusual for an officer to give evidence about the misconduct by another. Members of the WAPS have low tolerance of officers who "dob in" their mates. For that reason, among others, few police officers face prosecution for criminal misconduct.

Discriminatory treatment of whistleblowers is well documented. The Fitzgerald Inquiry into the Queensland Police Force found that police and civilians who reported police misconduct risked serious detriment with little prospect of appropriate action:

*For a long time in the Queensland Police Force, speaking out achieved nothing but hardship, loneliness and fear. Those involved in misconduct were not punished. Those who reported it were.*

*Lies, including perjury, are used, both by way of false denials and to attack those who are regarded as a threat.*<sup>82</sup>

The Mollen Commission in New York made a similar observation:

*...the most devastating consequence of the code of silence is that it prevents the vast majority of honest officers from doing what they inwardly want to do: help keep their Department corruption free. It is not surprising that the honest cop wants corrupt cops off the job. The consequences of corruption for honest cops are grave: it taints their reputations, destroys their morale, and, most important, jeopardizes their very safety.*<sup>83</sup>

The Commission on Government in its second Report acknowledged the difficulties faced by whistleblowers:

*We can clearly envisage circumstances in which a person may not wish to report wrongdoing internally, particularly if they are aware that management already knows of the wrongdoing or believe that management is implicated in the wrongdoing. In such a situation, a whistleblower quite rightly would fear reprisal and could have reasonable expectations that the wrongdoing would not be investigated or rectified. In addition, the procedures established by an agency may not be adequate or effective to encourage disclosure by the whistleblower.*<sup>84</sup>

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<sup>82</sup> *Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct*, Commissioner GE Fitzgerald, June 1989, page 204-205

<sup>83</sup> *Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report*, Chair: Milton Mollen, July 7, 1994, page 57

<sup>84</sup> *Commission on Government: Western Australia, Report No. 2, Part 1* December 1995, page 172

Officers who complain risk harassment. This discourages them and others from making complaints.

The Wood Commission in New South Wales reported similar observations:

*3.62 Evidence to the Commission indicates that 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 officers to the Ombudsman and to this Commission.<sup>85</sup>*

## **FILE MANAGEMENT**

Information is vital to dealing with corruption and for this reason, if not for reasons of public accountability, better record keeping is essential.

When considering Eucla, the Committee called for police files on the matter. The IIB did not possess a complete file, even though management expressed a belief that it did. A substantial amount of photocopied documentary information was provided. Original documents were provided to the Committee from sources other than the IIB. Police officers had been holding these documents "in a bottom drawer".

When the Committee asked why this information was not stored centrally, the answers given were "for security reasons" or police officers wanted to prevent the information contained in files from being generally available within the WAPS.

This situation is not unusual to Western Australia. In New South Wales it is not uncommon for police officers to retain briefs or documentary information from investigations they had undertaken.

The fact that investigating officers believe the ownership of files lies with them renders a central database ineffective. The hoarding of information and the loss of agency knowledge must hamper investigations which are re-opened from time to time, or other investigations where recurring circumstances provide important evidence. Where there is no central database and police officers do not file records with a central repository, effective policing relies heavily upon recollection and recall. The memory of some police officers is legendary, but modern policing cannot rely upon their infallibility or incorruptibility. Proper record keeping is vital to policing, noting the facts of transfer, invalidity, retirement or death of officers.

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*Royal Commission into the NSW Police Service: Interim Report*, Commissioner: The Hon Justice JRT Wood, February 1996, page 59

The practice of individual police officers retaining quantities of the agencies' information must be discouraged. Police officers must also be dissuaded from the belief that information obtained legitimately might be used against them or that it might be "inadvertently lost". The information belongs to the agencies for their use; it is not the property of the investigating officers.

## **INDEPENDENCE AND ACCOUNTABILITY**

A disappointing aspect revealed by the Committee's examination of the IIB and the IAU was that they were not always given wholehearted support by the police executive. In recent years the IIB has been reorganised and a more direct arrangement agreed for the Ombudsman to review complaints against police. Cases of criminal misconduct by police officers also are managed differently. Agreements have been negotiated for the DPP to take over indictable offences from inception and for the OCC to overview all files of suspected corruption investigated by the IAU. The result has been a greater number of corruption associated matters have been referred to the DPP. Previously, it was at the Commissioner's sole discretion whether matters brought to the attention of IAU were pursued or prosecuted.

Eucla is a notable example where this discretionary authority was used inappropriately. Comment already has been made about the consequences of suspending the investigations by Chilvers and Robson and, in turn, the curious decision to have their investigative techniques evaluated by Thickbroom and Greay. The catalyst for reinstating the case was the initiative by the then Crown Prosecutor McKechnie in recommending to the Attorney General that Winterburn and McCoull be granted an appeal out of time. As it turned out, the appeal and the subsequent trial of Fairclough, Lee and Brennan was used as a reason for delaying disciplinary hearings of some other matters and not pursuing others exposed by the IIB's inquiries. At times, the police executive was cautious about proceeding on any aspect of the Eucla Episode, with the result that parts of it have not been resolved satisfactorily.

Operation Bravo Quebec arose from an inept preliminary investigation of the Sinatra's Affair. Press revelation suggested that there may have been a deliberate cover-up and the then Assistant Commissioner (Crime), Les Ayton, took over direct responsibility for the subsequent inquiries, in particular those which followed from the allegations made by Wilson. Ayton's concern about the gravity of the alleged corruption caused him to recommend that the DPP become involved. Had the matters already revealed in the press been allowed to fester, calls for a Royal Commission would likely have intensified.

At the time Commissioner Bull was absent from the State and Deputy Commissioner Zanetti was Acting Commissioner. He accepted arguments put to him by Ayton against a Royal Commission and for a task force to be overseen by the DPP. That was the less public path. It was the DPP, however, who sought and obtained a meeting with the Premier, the Minister for Police and the Attorney General for approval of the corruption probe subsequently code-named Bravo Quebec.

Comment already has been offered about the decision not to pursue Foxtrot to Supreme Court Appeal. Tension between the public interest in having corruption in the WAPS dealt with by judicial process and protecting the reputation of the Service by managing problems internally was resolved by doing neither.

These examples demonstrate the need for some form of external accountability. The conventional structure of accountability through the Commissioner of Police, the Minister and the Parliament with respect to the IAU does not work. Mechanisms are needed which will provide governments and the Parliament with independent advice concerning the operational efficiency of the WAPS, as well as allow impartial scrutiny of police conduct.

The Ombudsman already has a role in monitoring complaints against Police. That role and some proposals for change were discussed in Part 2. At the time of the Eucla Episode, the powers then available to the Ombudsman were shown to be inadequate. Since October 1993, guidelines agreed to by the Commissioner of Police have enabled the Ombudsman's office to assess the adequacy of completed internal investigations before complainants are advised of outcomes. These provide greater public accountability for this aspect of self-regulation, but the Ombudsman has argued even they do not go far enough. His proposal is for direct oversight of more serious complaints and power for his office to carry out direct primary investigations.

The Eucla episode demonstrated how ineffective the Ombudsman's function is when proper authority and resources are not available. In that instance, the difficulty appears to have improved. The Ombudsman observed in the Annual Report for 1995: "*...there is good cooperation between the police Internal Investigation Branch and my police complaints section, both for the efficient transfer of relevant documentation and to ensure that matters raised for further attention are considered and dealt with as expeditiously as possible.*"<sup>86</sup>

The Committee noted the comments by the Ombudsman at page 41 of that same report with respect to further changes needed to make the oversight of police complaints even more effective. These are:

- *oversight, by my office, of current police investigations into the more serious complaints, which, in appropriate cases, could extend to active supervision of a police internal investigation where the circumstances are sufficiently serious to warrant it; and*
- *power for me to carry out direct primary investigations of complaints, on public interest grounds, without the need for the Commissioner of Police to have carried out an investigation first.*

These two recommendations reflect the recent experience of the Northern Territory Ombudsman's Office and the investigatory role of the Police Complaints Authority (PCA) in the

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<sup>86</sup>

*Parliamentary Commissioner for Administrative Investigations: Western Australia, Annual Report 1995, page 40*

United Kingdom.

Simply changing the powers of the Ombudsman will not bring about changes to improve the manner in which complaints against police are investigated. The NSW Ombudsman stated in the Annual Report for 1993-94: *“The reality is that powers without necessary resources aren’t true powers.”*<sup>87</sup>

Legislative changes are necessary to put in place a system of accountability. Such a system should not detract from the authority of the Commissioner of Police, but nevertheless should enable Parliament and the Government, and through them the people of Western Australia, to be properly advised about police conduct.

It is argued by police officers that there should not be an external monitoring body. They claim that the best investigative skills are found within the police service. Competent police officers do have good investigative skills. However, that is not the question being addressed here. The real issue is what statutory mechanisms need be set in place for a system which the police respect and in which the public can have confidence. Those now in place have neither respect nor public confidence.

## **THE DELTA PROGRAM**

Proposals for changes in the organisational structure of the WAPS arising from the Delta Program announced in January 1996 are being implemented. Some of them address features of self-management crucial to matters discussed in this Report. In addition to the flatter management structure referred to earlier, the Delta Program envisages:

- a regional administrative structure with localised and integrated management of services supported by centralised specialist squads;
- the maintenance of three central specialist services (Crime, Traffic and Operations Support) with managerial responsibility for particular investigations or special events such as major drug or organised crime investigations and major traffic accidents; and
- the establishment of a Professional Standards Portfolio incorporating functions now performed by the IIB, the IAU and the Office of the Inspectorate.

Taken with the restructuring of the Drug Squad and the Criminal Investigations Branch that followed from Bravo Quebec, these changes may break up entrenched power groups within the specialised sections where corruption seems to have endured. The Professional Standards

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Quoted in *NSW Police Complaints System: A special report to Parliament under section 31 of the Ombudsman Act*, NSW Ombudsman, December 1995, page 8

Portfolio has particular merit for the flow of information between the three units which now function independently.

It was observed in Part 2 that there is an expectation that there will be exchange of information and files between the IIB and the IAU where cases cross jurisdictions. In practice, the flow has been one way, from the IAU to the IIB. Even the Eucla investigations were seen through to prosecution by the IIB, even though they involved some matters of corruption normally within the province of the IAU.

Opportunities for interaction within a Professional Standards Portfolio might overcome the inter-sectoral rivalry which soured relationships between these two sections. They also might better accommodate occasional inappropriate responses to apparent criminal or disciplinary misconduct. Often what appears to be corruption turns out to be poor management, inadequate internal checks and balances, misunderstanding of procedures, or stupidity. An audit team of the Inspectorate could remedy most of these. In other circumstances, apparently minor procedural difficulties could create opportunities for corruption which should be referred to the IAU. Likewise, audit teams might occasionally expose criminal activity. A single portfolio managing the separate organisational functions could better accommodate those sorts of shifts in understanding.

There is merit in devolving responsibility for disciplinary procedures to Regional Commanders and District Officers. Minor complaints are best dealt with locally. Best personnel management practices suggest that discipline is most effectively maintained at the levels of an administrative structure which have direct responsibility for fostering and supervising the organisation's standards and codes of conduct. Only matters of serious misconduct should need referral to central authority.

The Committee has reservations about the Delta proposals. Devolution may serve only to disperse centrally located "hot spots" of criminal misconduct and corruption. The propositions about institutionalised corruption advanced by the Lusher Commission suggest that power structures of continuing groups can be sources of corruption. Restructuring might disperse members of such power groups, but the values and corrupting influences might persist. Until now, dismissal of corrupt officers has been seen to be the most effective way of dealing with them. Few have been convicted. The police executive has adopted the attitude that if a corrupt officer cannot be convicted, then the second best option has to be taken, that is, to get them out of the WAPS. That approach has severe limitations. Corrupt individuals are removed, but the institutionalised values, or the police culture, which tolerated their conduct persist. Changing the management structure without tackling the culture will serve only to shift the locus of corruption.

The Committee offered criticism of recruitment, training, in-service education and professional development in its First Interim Report<sup>88</sup>. The inadequacy of the resources available for the IAU's proactive anti-corruption educational functions is noted. Until these matters are addressed the beneficial impacts anticipated to follow from organisational restructuring will not be realised.

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*Interim Report of the Select Committee on the Western Australian Police Service: Term of Reference 7, February 1995*



The New South Wales example should offer salutary warnings. The regionalisation of the New South Wales Police Service and the structures put in place following the Lusher Commission do not appear to have been effective in minimising police corruption in that State.

In New South Wales the Office of Professional Responsibility (OPR) was a combined body responsible both for the investigation of complaints and police corruption.<sup>89</sup> If the recommendations of the Interim Report of the Wood Commission are implemented then the OPR will retain its responsibility in relation to complaints, the corruption investigation aspect being taken up by the Police Corruption Commission. The recommendations in relation to the OPR are:

15. *The Police Service should strengthen its Regional IA [Internal Affairs] 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.*
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.*<sup>90</sup>

The Committee has reservation about accountability structures within the proposed Professional Standards Portfolio. A new management layer, the Portfolio Head, will be interposed between the Commissioner and the Internal Investigations Unit (now the IIB) and the Anti-Corruption Unit (now the IAU). The *Parliamentary Commissioner Act 1971* mandates the functions of the Ombudsman in police complaints procedures. Changes have been agreed to informally by the Commissioner of Police and others are advocated by the Ombudsman. If the arrangements are worthwhile they should be enshrined in legislation.

There is no change proposed in accountability structures for the Anti-Corruption Unit. Accountability will continue to be through the Commissioner and formally through the Minister for Police to the Parliament. The Committee has observed that this structure has failed. There is no reason to believe that same failed mechanism will work because the organisation has been restructured.

The WAPS should scrutinise the difficulties experienced in New South Wales. In implementing ideas that have been, at best, only marginally successful elsewhere, the WAPS should refer to the change and recommendations that have flowed from the experience of others.

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<sup>89</sup> *Royal Commission into the NSW Police Service: Interim Report*, Commissioner: The Hon Justice JRT Wood, February 1996, page 6

<sup>90</sup> *Royal Commission into the NSW Police Service: Interim Report*, Commissioner: The Hon Justice JRT Wood, February 1996, page 112

The system of regional responsibility for the majority of complaints may still be appropriate for Western Australia as the differences in jurisdiction may favour such a change. However, the Committee urges that consideration of the experience in other jurisdictions should give the WAPS pause.

## **CONCLUSION**

The level of corruption within the WAPS is more serious than has been acknowledged. It has been known to the WAPS for some time and was confirmed by Operation Bravo Quebec. The IAU has not been effective in combatting corruption, other than in identifying some corrupt officers. Few have faced criminal prosecution, and a comparably small number have faced disciplinary charges. Even fewer have been found guilty. Instead, they have been dealt with by transfer or encouragement to leave the Service. The approach has been similar to the “rotten apple” process criticised by Mr Justice Lusher. That has served largely to entrench antagonism towards the IAU.

The IIB has been even less effective in dealing with complaints against police. An internal review in 1994 identified shortcomings in several aspects of management, direction, staffing and resourcing. Changes have been made and further reorganisation has been proposed by the Delta Program. The general thrust of those proposals is supported. Regional and District officers should assume greater responsibility for sorting out misconduct at local levels. Matters of serious misconduct should continue to be handled by the IIB. A more direct involvement of the Ombudsman's office in overseeing and evaluating internal investigations of complaints against police is necessary to strengthen the accountability of the proposed restructured IIB.

Police corruption cannot be combatted effectively by a Unit operating within the WAPS. Identifying corruption relies on police officers speaking out, confident that they are not risking all by doing so. The Committee does not accept the claim of the IAU that it has the confidence of members of the WAPS. Few have been willing to stand witness against fellow officers. Those who have, endured the censure of colleagues for transgressing the code of silence which is central to the police culture. An external structure for receiving and responding to intelligence about police corruption is necessary.

The Committee does not agree with the argument that police officers are best able to investigate other police officers. That argument proposes that no matter how skilled the investigator, an outsider cannot appreciate the complexity of the police culture nor have inside knowledge of personalities and power groups. Experience in other jurisdictions exposes those propositions as patent nonsense. It is true the police culture tends to “pull down the blinds” on external inquiry. This Committee had experience of that. Codes of silence are a challenge to investigators, but breaking through closed sub-cultures is part of criminal investigation. The argument that an external authority cannot understand the intricacies of the Police Service is no argument against external scrutiny.

The Committee observed that the closed culture of the Police Service was a most powerful factor

working against self-regulation of the Police Service. Suspicions about police stations being “bugged”, telephones being tapped, “secret squirrels” monitoring the conduct of individual officers and units and police officers’ homes being under surveillance are endemic within the Service even at the most senior levels. Deputy Commissioner Ayton told the Committee about his own fears in 1988-89, when he was OIC of the IAU:

*Q: Did [name] ever speak to you about the fact that he suspected that his telephone was being tapped?*

*A: I do not recall that, but he probably did because we spoke about that a fair bit. I also thought mine was tapped at that time.*

*Q: Do you remember the year?*

*A: I thought my phone was off from about 1986. However, I think it was about 1988-1989.*

*Q: Is that your home or your office telephone?*

*A: My home, sir. I was a bit paranoid then because there were a few things happening in my life that made me concerned about a couple of things. I went armed day and night at one stage for two years. I heard clicks and buzzes on my telephone and that made me suspicious. One day my daughter came home with a boyfriend who was from Telecom. I asked him to listen to the telephone and asked him what he thought. He told me that if someone was bugging my phone, I would not hear any noises. That stopped me worrying about the clicks and buzzes but I still thought my phone was off.<sup>91</sup>*

Paranoia about listening devices and telephone bugging pervades the service. Police officers were quite candid in telling the Committee they habitually held important meetings away from their offices to avoid possible eavesdropping.

Resentment of the IAU is a major factor in its failure. That resentment has been, and is, fostered by groups of police officers who have reason to be uneasy about anti-corruption inquiries.

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<sup>91</sup>

Transcript of Evidence of Deputy Commissioner LD Ayton, 29 April 1996, page 13

## PART 6

# RECOMMENDATIONS OF THE SELECT COMMITTEE ON THE WESTERN AUSTRALIAN POLICE SERVICE

## INTRODUCTION

Police corruption is more dangerous to the well-being of society than any other public sector corruption. If corruption in the police service is controlled, it is easier to control corruption in other public sector organisations. The office of constable gives a police officer unique powers. Therefore, measures to combat police corruption must be extensive. Internal investigators from a number of police forces told the Committee that corrupt police officers are more cunning, knowledgeable and clever than their corrupt public service counterparts and therefore more difficult to catch.

Experience around the world has shown that when the police force is being scrutinised it acts more quickly and effectively. When scrutiny is removed, it is only a matter of time before a police force lapses into its former practices.

The Committee recommends the establishment of a continuing Parliamentary Standing Committee to oversight the Police Service, the formation of an independent Police Anti-Corruption Commission and changes to the role of the Ombudsman.

### **1. POLICE ANTI-CORRUPTION COMMISSION (PACC)**

1.1 An anti-corruption body external to the Police Service should be established.

The external body will be referred to as the Police Anti-Corruption Commission (PACC) for the purposes of this report.

1.2 The PACC will be tasked:

1.2.1 to investigate issues of police corruption and serious misconduct;

1.2.2 to make recommendations about police procedure, if an investigation has exposed procedures which have the capacity to create opportunities for corrupt behaviour;  
and

- 1.2.3 to develop anti-corruption strategies and education programs within the WAPS.
- 1.3 This PACC should comprise:
  - 1.3.1 A Management Team responsible for the establishment of the PACC. It is to ensure that the PACC follows best practice procedure in its own operations.
  - 1.3.2 An Education/Research Team responsible for education at a recruit training level and continuing education programs about corruption to officers throughout the WAPS. Special management training emphasis is to be implemented to ensure that “accepted” corrupt practices are identified. It is to conduct research into strategies, structures and systems in place in other police forces utilised to combat corrupt practices. It is to conduct information sessions with management and officers in relation to this.
  - 1.3.3 An Investigative Team to comprise the “best” people for the job. This does not necessarily exclude recruiting officers from the WAPS, but recruitment will be from the national and international arena. The Investigators on the PACC will not be serving police officers of any Police Service and must be accountable only to the CEO of the PACC and not to any Commissioner of Police. Covert/overt investigations of corruption matters will be removed from the Internal Affairs Unit and conducted solely by the Investigation Team at the PACC.
- 1.4 The PACC shall have all the powers, rights and privileges that are specified in the *Royal Commission Act 1968* as appertaining to a Royal Commission and the Chairman thereof.
- 1.5 The PACC must be given adequate resources to realise its goals. This will include recurrent funding for personnel, and capital outlays for computer equipment and technical surveillance equipment.
- 1.6 The PACC should be headed by a legally qualified senior officer/Commissioner. The Committee notes that Mr Justice O’Keefe, the Commissioner of the NSW ICAC, can return to the bench of the Supreme Court of NSW when his Commission with ICAC ends.
- 1.7 The PACC is to be accountable to the Parliament through a Standing Committee of the Legislative Council on the Western Australian Police Service.
- 1.8 The Minister responsible to the Parliament for the PACC is to be the Attorney General. The relationship between the Attorney General and the PACC is to be similar in nature to the Attorney General’s relationship with the DPP.
- 1.9 The PACC is to present an Annual Report to Parliament and on such further occasions as

necessary.

## **2. STANDING COMMITTEE ON THE WAPS**

2.1 A Standing Committee of the Legislative Council on the Western Australian Police Service to oversight the WAPS is to be established.

2.1.1 The terms of reference of the Committee will include:

- Oversight of the PACC. It will be able to recommend matters for investigation, but will not have the power to direct the PACC.
- Oversight of policing matters including matters relating to complaints against police, allegations of corruption including all other areas of public concern relating to the WAPS although not impinging on the operational responsibility of the Commissioner of Police.

2.1.2 The Standing Committee shall comprise 4 members, representative of the make up of the Legislative Council at that time. A quorum will consist of one member of the Government and one member of the Opposition.

2.1.3 The Standing Committee will have the power to vet candidates for the position of senior officer/Commissioner of the PACC and to veto a proposed appointment.

2.2 The submissions and evidence held by this Select Committee are to be referred to the Standing Committee.

## **3. THE ROLE OF THE OMBUDSMAN**

3.1 The responsibility for the investigation of misconduct or complaints of misconduct from the public will continue to be conducted by a specialist section within the WAPS. These investigations will continue to be reviewed by the Ombudsman's Office with the power and resources to initiate its own investigations.

3.2 If during the investigation the Ombudsman or the IIB of the WAPS discovers evidence of corruption or serious misconduct, then the matter must be referred immediately to the PACC.

3.3 The Ombudsman's Office must be resourced sufficiently so that it has the ability to initiate and conduct its own investigations (in line with the following changes to the *Parliamentary Commissioners Act 1971*).

- 3.4 The Committee recommends that changes should be made to the *Parliamentary Commissioners Act 1971* so that it reflects aspects of legislation in other jurisdictions. They are as follows:
- The Parliamentary Commissioner for Administrative Investigations (the Ombudsman):*
- (a) *must investigate a complaint if the conduct complained of is conduct of the Commissioner or of a Deputy or Assistant Commissioner of Police; and*
  - (b) *must investigate a complaint if the conduct complained of:*
    - (i) *is of such a nature that the Ombudsman considers that the investigation of the complaint is in the public interest; or*
    - (ii) *is in accordance with established practices or procedures of the force and the Ombudsman considers that those practices or procedures should be reviewed.*

The Committee recognises that currently these matters form part of an “Administrative Arrangement” between the WAPS and the Ombudsman’s Office. However these are matters which the Committee believes should be enshrined in legislation for their authority to be recognised, and should not rely on the goodwill of the incumbents of the Commissioner of Police and the Ombudsman.

- 3.5 The Committee recommends that section 14 be amended in the following manner.
- 3.5.1. The provision that a written report must be provided to the Ombudsman with any request for an extension of time after 42 days. This report must detail the current status of the investigation, what is still required to be done and the reason for the delay.
  - 3.5.2. The Ombudsman, similar to his Victorian counterpart, must be able to request written reports at any time in relation to any matter under investigation.
- 3.6 The Committee recommends that section 16 of the *Parliamentary Commissioners Act 1971* be amended to allow the Ombudsman’s Office to initiate its own investigations into matters of concern regarding the WAPS.
- 3.6.1 The Committee in discussion with the Ombudsman understands that there has been some difficulty in implementing own motion investigations through lack of resources. This is a matter which must be addressed. Legislation is only effective if the resources are provided to effectively implement it.
- 3.7 The Committee recommends amendments to section 17 of the *Parliamentary*

*Commissioners Act 1971.*

- 3.7.1 Section 17(1) of the *Parliamentary Commissioners Act 1971* to be amended to allow receipt of verbal complaints to be sufficient to initiate an investigation by the Ombudsman.
  - 3.7.2 Section 17(2) of the *Parliamentary Commissioners Act 1971* to be amended to enable a person acting on behalf of another to make complaints about police conduct specifically. For example, this would enable solicitors acting on behalf of complainants to make the complaint.
- 3.8 The Committee recommends that provision be made in the *Parliamentary Commissioners Act 1971* for reference of all matters which relate to corruption or serious misconduct within the WAPS to be immediately referred to the PACC, whether the initial complaint relates to corrupt behaviour or serious misconduct, or corrupt behaviour is uncovered during the course of an investigation.

**4. A NEED FOR A ROYAL COMMISSION?**

The Committee has found that corruption and serious misconduct within the WAPS is far greater than has previously been acknowledged, even though it is and has been known by its Senior Executive.

The Committee has cited specific cases where a judicial inquiry is required in the public interest. Some submissions provided to the Committee may give rise to further instances where a judicial inquiry is required.

The Committee's recommendations give direction for positive action. If they are not implemented the only other course available is the establishment of a Royal Commission into the WAPS with wide terms of reference.

.....  
**Hon Derrick Tomlinson MLC**  
**(Chairman)**

.....  
**Hon Reg Davies MLC**  
**(Deputy Chairman)**

.....  
**Hon Nick Griffiths MLC**

.....

.....



**Hon Phil Lockyer MLC**

**Hon Murray Montgomery MLC**



# **APPENDIX A**



## APPENDIX A

# OTHER AUSTRALIAN JURISDICTIONS

## SOUTH AUSTRALIA

### POLICE COMPLAINTS AUTHORITY (PCA)

The Police Complaints Authority (PCA) was established by the *Police (Complaints and Disciplinary Proceedings) Act 1985* (“the PCDP Act”) in 1985. Prior to its establishment no agency exercised oversight of the SA police force. All complaints were investigated internally and the police force made its own assessment of the substance of any particular complaint and its own reply to complainants.

The system established is a complex one. It followed the model of “External Monitoring of Internal Investigation” rather than an independent investigative agency. The PCDP Act recognised and defined the functions of the Internal Investigation Branch (IIB SA) of the police force as the agency charged with the function of the primary investigation of complaints, subject to the oversight of the PCA. This is similar to the structure of the Police Complaints Authority in the United Kingdom (see the Second Interim Report of the Committee). It was anticipated that a majority of investigations would be conducted by the IIB SA and this has been so.

However, there are exceptions. The PCA can conduct the primary investigation of complaints against senior police officers, against members of the IIB SA, against special constables, the security staff of public instrumentalities and complaints which relate to policies, practices or procedures of the police force. The PCA may conduct an investigation where it considers that there are reasons for so doing. Unlike its counterpart in the United Kingdom, there are no circumstances outlined in the PCDP Act where matters are referred immediately to the PCA.

Aggrieved citizens may complain either to the police or directly to the office of the PCA. In either event the complaint must be registered by the PCA and the complainant notified of subsequent developments. The PCA may receive anonymous complaints (and also complaints from people who do not wish their identity to be made known to the police) and usually requires that complaints be written.

Complaints can be received in respect of police “conduct” which is defined as any act, decision or omission done in the exercise or purported exercise of any power or function which a person has by virtue of being a police officer. It does not cover acts done while an officer is off-duty.

Staff at the PCA provide assistance to people to complete complaint forms and sometimes interview complainants to determine the nature of the complaint. These details are then forwarded

to the IIB SA to form part of the investigation with other relevant documentation. In some cases the referral letter will include instructions as to the way in which the matter should be investigated.

Pursuant to section 21 of the PCDP Act, the PCA may make a determination that a particular complaint will not be investigated or, if some investigation has already been conducted, will not be further investigated. The police themselves cannot make such a determination and must refer a particular file to the PCA for a decision.

The PCA may choose to determine complaints which are trivial, frivolous or vexatious, or are made more than 6 months after the event. Other grounds where a complaint may be determined rather than investigated include where the complainant has insufficient interest in the matter or where the PCA is of the opinion, having regard to all the circumstances, it is unnecessary or unjustifiable to further investigate the complaint. The PCA may also revoke or vary a determination pursuant to the PCDP Act. Currently, approximately 60% of complaints are determined under section 21 of the PCDP Act.

In most cases the PCA directs that an investigation be carried out by the IIB SA. These investigations can be conducted at various levels, according to the seriousness of the complaint.

The PCA may call for reports, logbooks, running sheets and other documentation from the IIB SA without the requirement of formal taped interviews. This practice was implemented to address the build up of complaints. Preliminary investigations can be conducted more quickly than a full investigation.

The PCA consults regularly with members of the IIB SA regarding current investigations. Once investigations have been completed, the investigating officer of the IIB SA prepares a report. It includes a summary of the investigation and documents the conclusion reached by the investigating officer. Recommendations are then made regarding the complaint and the report is submitted to the officer in charge of the IIB SA. The OIC then prepares a summary report pursuant to section 31 of the PCDP Act and forwards this and the investigation file to the PCA.

The PCA may require that further investigation be conducted on any file. The PCDP Act does not impose any limits on this discretion. The PCA may direct how the further investigation is to be conducted, or direct that it be done by the office of the PCA itself (s23). An increasing number of investigations are being conducted jointly by a police officer and an investigator from the PCA.

The PCA may conduct or, by direction to the IIB SA, supervise any investigation as seen fit (s26). Further, the PCA has powers of subpoena and of entry and search which is relevant to an investigation. The PCA may conduct hearings. When it does so they are in private, and legal representation is at the discretion of the PCA.

All persons, including police officers, have the right to refuse to answer a question on the ground that it may tend to incriminate themselves or a close relative. In the case of a police officer, refusal may amount to a breach of discipline.

## **Assessments**

Upon receipt of the summary report of the Officer in Charge of the IIB SA, the PCA must make an assessment of the matters raised by the investigation. The PCA assessment is not limited to the issues raised by the complainant. The criteria by which a complaint is to be assessed, as detailed in section 32(1) of the PCDP Act, are wide-ranging. Pursuant to this section the PCA must assess whether there has been any conduct by a member of the police force which:

- constituted a breach of law or discipline;
- was unreasonable, oppressive or improperly discriminatory or was based upon a mistake of law or fact;
- was, in all the circumstances, wrong;
- was taken pursuant to policies practices and procedures of the police department which were unreasonable, oppressive or improperly discriminatory; or
- was conduct which fell within any other provision of this section.

Although the PCDP Act provides for types of recommendation, it does not limit their ambit. The PCA may make whatever comments it considers appropriate.

After the PCA has completed the assessment, it is sent to the Commissioner of Police. If the Commissioner disagrees with the assessment and the assessment cannot be resolved, the matter is referred to the Minister for Police. If the disputed recommendation involves criminal or disciplinary charges, the Minister must consult with the Attorney-General before giving a decision.

When the terms of the assessment have been resolved, the PCA notifies the complainant and the police officer. A letter is sent to the complainant and the police officer which is identical to the letter of notification initially sent to the Commissioner. Once the Commissioner agrees to an assessment, he is required to implement any recommendations contained within it.

## **Disciplinary Charges**

The PCA may recommend disciplinary charges against a police officer. These are heard by an independent Police Disciplinary Tribunal. The office of the PCA does not prosecute these charges. The onus of proof is specifically stated by the PCDP Act to be “beyond reasonable doubt”. If the Tribunal finds that a breach of discipline has occurred, the penalty is assessed by the Commissioner of Police or the Deputy Commissioner. The PCA must be notified of all matters before the Tribunal, whether arising from its recommendations or not, and the outcome of all proceedings.

## **Conciliation**

Conciliation is provided for in section 22 of the PCDP Act. Whether a matter is suitable for

conciliation can be initiated by the Commissioner of Police, but the consent of the PCA is always required. The PCA may request a matter to be conciliated upon receipt of the complaint.

There are no specific guidelines as to what matters can be conciliated. Conciliation can be used at any stage of the process and any investigation into the complaint will be suspended if the matter is able to be conciliated.

The process is quite flexible and the PCA encourages the police to allow a face to face meeting with the complainant and the police officer involved. Where error or inappropriate conduct is identified the process allows the complainant to have some input into what action is taken.

Conciliation can also enable an investigating officer to explain to a complainant the outcome of an investigation into matters raised by their complaint. Where a conciliation is attempted a complainant may, at any time during or after the process, indicate dissatisfaction to the PCA. The matter is then reviewed.

Drawbacks of the conciliation process is its formality and the need for the police to seek a separate consent to conciliate each matter. In recognition of this, as from 1 January 1994, the PCA, with the Commissioner of Police, implemented the process of informal resolution of complaints.

### **Informal Resolution**

Informal resolution provides a flexible and simple procedure for resolving less serious complaints such as use of bad language, incivility or shoving and jostling in a crowded situation. Ordinarily these would not justify a criminal or disciplinary charge against a police officer.

A complaint can be informally resolved only if the complainant agrees. Consent can be withdrawn at any time during the process.

The police officer who is the subject of the complaint is then spoken to by either a Supervisor or the Resolving Officer and invited to give their version of events and/or an explanation. Further details are requested from the complainant. At this point, the complainant must decide whether s/he accepts that the matter has been successfully resolved. The process should be completed within a 14 day period.

A report is forwarded to IIB SA and it is decided whether or not the matter has been resolved. The decision is then conveyed to the complainant in writing by the IIB SA. A copy of the report is also forwarded to the PCA which reviews the action taken and considers if the informal resolution has been properly completed. This review by the PCA may involve the PCA contacting the complainant to ascertain the complainants view on the resolution of the complaint.

However, the main objective of the process is stated to:

*...generate a higher degree of satisfaction on both the complainants' and the subject*



*police officers' part. The prime object of the informal resolution process is to provide a timely and direct resolution to issues of complaint which arise ... In such a process it is recognised that the police are capable of being accountable for their own actions and that they are able to respond appropriately to a complainant in respect to those actions.*

*A second but equally important, objective of the process is to enable police supervisors to be informed of behaviour by police officers which is of concern to the public.<sup>92</sup>*

### **False complaints**

It is an offence under Section 49 of the PCDP Act to make a deliberate false representation in the course of making a complaint, if the false representation caused the complaint to be investigated. A prosecution for this offence cannot be brought without the prior written authorisation of the PCA.

### **Telecommunications Legislation**

The PCA has also been given the function of monitoring and auditing the police use of telecommunications interceptions. To date, this function has primarily been carried out by the PCA's investigating officer.

### **Reporting**

The PCA must make an annual report to the South Australian Parliament. It may also make a special report at any time.

### **Staffing**

The Office has a staff of 13 full time employees including the PCA. The PCA is a statutory appointment for a tenure of 7 years and must be a solicitor or barrister of at least 5 years standing. The staff includes an investigating officer, 3 case officers and 2 senior case officers who assess investigations and prepare draft reports for the PCA, one determinations officer who prepares determinations under section 21 of the PCDP Act, 1 executive assistant to the PCA who also manages the administration of the office, 2 client services officers, an aboriginal liaison officer and a receptionist. Since 1991 there has been a 30% increase in the number of complaints being sent to the Authority to be dealt with by the staff.

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<sup>1</sup> *The 7th, 8th and 9th Annual Reports of the Police Complaints Authority in South Australia, Years Ending 1991/92, 1992/93 and 1993/94, PAL Boyce, 24 March 1995, page 57*

As with the provisions of section 98 of the *Police and Criminal Evidence Act 1984* in the United Kingdom (see Second Interim Report of the Select Committee into the WA Police Service ) there is a limit to the amount of information that the PCA in South Australia can release. Statements, reports and comments made in the course of the complaints' process are confidential and can be disclosed only in limited cases as defined by the PCDP Act and on the authority of the PCA or the Commissioner of Police.

The PCA has been experiencing researching difficulties in recent years which have hampered its ability to conduct its own motion investigations into serious matters. Even though it has the power, to conduct such investigations, the PCA has reported “...*the Authority should be carrying out more independent investigations than it is currently capable of doing.*”<sup>93</sup>

The PCA is also currently experiencing long delays in completing investigations. There are no statutory requirements for the completion of investigations within a particular time.

However, the PCA, with the agreement of the Commissioner of Police, has put in place time limit guidelines in relation to certain complaints. If there is not an adherence to the suggested time limits, “...*consideration [will be given to the taking] of disciplinary action . . .by the Commissioner in regard to any investigating officer who is found to be at fault.*”<sup>94</sup>

### **Committee's Comments**

The effectiveness of the PCA in South Australia is affected not just by the powers provided in its legislation, but also by the resources provided.

The Committee notes the Western Australian Ombudsman's Office is not well resourced.

### **ROLE AND FUNCTION OF THE SOUTH AUSTRALIAN POLICE ANTI CORRUPTION BRANCH (ACB)**

The Inspectorate was established in 1983 to assist the Commissioner in monitoring performance and compliance with police regulations, general orders and operation administrative procedures. It provided an internal audit function to detect and prevent the occurrence of improper or irregular practices.

In May of 1984, the Inspectorate was restructured and named the Policy Audit Section with a mission to prevent corruption and improper practices within the Police Department. This was to be achieved by promoting and maintaining an acceptable level of compliance with departmental

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2        *The 7th, 8th and 9th Annual Reports of the Police Complaints Authority in South Australia, Years Ending 1991/92, 1992/93 and 1993/94, PAL Boyce, 24 March 1995, page 57*

3        *The 7th, 8th and 9th Annual Reports of the Police Complaints Authority in South Australia, Years Ending 1991/92, 1992/93 and 1993/94, PAL Boyce, 24 March 1995, page 27*

policy, general orders, regulations and procedures.

In July 1988, a Corruption Task Force was established under the control of the Officer in Charge of the Policy Audit Section. The Task Force was required to investigate allegations of corruption identified primarily by the National Crime Authority (NCA).

The outcome of these investigations led to the establishment of the Anti Corruption Branch (ACB) in February 1989, with the roles of prevention and detection of corruption within the Police Force and the public sector. Additionally, the Audit and Corruption Prevention Units are required to assist other government instrumentalities in developing anti-corruption strategies.

### **Jurisdiction of the Anti Corruption Branch**

The Governor's Directions which set up the ACB defined corruption as:

- a. *Conduct of a public official involving a breach or neglect of duty or abuse of office engaged in as a result of a bribe or threat or to gain any financial or other advantage or for any dishonest or improper purpose;*<sup>95</sup>

The ACB has three sections: the Investigation Unit, the Audit Unit and the Corruption Prevention Unit.

*The Investigation Unit performs the following functions:*

- a. *Undertakes investigations into corruption or police misconduct, or allegations of such corruption or misconduct, at the direction of the Officer in Charge with the approval of the Commissioner.*
- b. *Undertaking further investigation or re-investigation into matters referred to it by the Audit Unit with the approval of the Officer in Charge.*

*The ACB has a joint funding arrangement with the NCA to use surveillance resources and when necessary uses this facility to enhance its investigations.*<sup>96</sup>

*The functions of the Audit Unit are to:*

- a. *Monitor the performance of the Police Force to ensure an acceptable level of compliance with general orders, established procedures and departmental policies;*

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4 *Role and Function of the South Australian Police Anti-Corruption Branch*, RG Lean, Commander, Anti-Corruption Branch, page 1

5 *Role and Function of the South Australian Police Anti-Corruption Branch*, RG Lean, Commander, Anti-Corruption Branch, page 2

- b. *Review the operation of general orders, regulations established procedures and departmental policies and recommend changes where such orders, regulations, procedures or policies lead to police corruption or misconduct or create a climate where police corruption or misconduct may occur;*
- c. *Conduct periodic and random audits of specific investigations with a view to identifying any procedural or other inadequacy*
- d. *Conduct audits of specific investigations at the direction of the Commissioner;*
- e. *Recommend changes to investigative procedures.*<sup>97</sup>

*The Corruption Prevention Unit performs the following functions:*

- a. *Assisting other persons or bodies with responsibility with respect to the conduct of public officials in developing practices and procedures designed to prevent or detect corruption;*
- b. *Recommending changes to investigative procedures;*
- c. *With the approval of the Officer in Charge, referring matters to the Investigation Unit for further investigation or re-investigation.*<sup>98</sup>

## **Whistleblowers**

*The Whistleblowers Protection Act 1993*, provides that information concerning fraud or corruption in the public sector must be reported to the ACB. Complaints about members of the police force must be reported to the PCA.

The ACB has pinpointed areas in which corruption is likely to occur and where commanders and police officers should be vigilant. These include:

- 2. *Conditions Favourable for corrupt behaviour.*
- 3. *Misuse of Departmental records.*
- 4. *Misuse of Departmental property.*
- 5. *Misuse of position of office.*
- 6. *Acceptance of bribes/extortion.*
- 7. *Misuse of Departmental time.*

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6 *Role and Function of the South Australian Police Anti-Corruption Branch*, RG Lean, Commander, Anti-Corruption Branch, page 1

7 *Role and Function of the South Australian Police Anti-Corruption Branch*, RG Lean, Commander, Anti-Corruption Branch, page 2

8. *Acceptance of gratuities.*
9. *Preferential treatment - organisations and individuals.*
10. *Preparation of False Reports.*
11. *Improper association with criminals/persons of doubtful repute.*
12. *Misuse of property coming into police custody.*
13. *Off duty employment.*
14. *Drug and alcohol use by members of the Department.*
15. *Wrongful application for reimbursement.<sup>99</sup>*

## **NORTHERN TERRITORY**

The Northern Territory Police Force does not have a separate internal affairs unit tasked to investigate corruption. The Executive Audit was created in 1988 to conducting audits to ensure the Commissioner's policies, instructions and procedures were being adhered to. In 1992 the Internal Review and Audit Division (IRAD) was established to promote organisational integrity. Its strategies include:

- maximise interaction between Audit, Strategic Assessment and Inspectorate
- conduct audits and reviews as directed by the Commissioner and the Deputy Commissioner
- establish and maintain preventative policies, practices and procedures to minimise or remove the risk of corruption
- investigate acts of corruption
- maintain a close professional liaison with the Office of the Ombudsman

The Inspectorate's main function is to oversee investigations into complaints against police. These investigations are conducted either internally or in conjunction with the Ombudsman's office. Administrative arrangements between the Ombudsman and the Police Service have been put in place to complement the legislation and assist in dealing effectively with all complaints against police.

In 1994, IRAD's name was changed to the Professional Responsibility Division (PRD). The PRD was given several new functions including the management of the prosecution of police officers charged with criminal offences and maintaining records regarding officers charged with disciplinary offences.

The following information was provided to the Committee by the Northern Territory Ombudsman and is set out so that comparison between the Western Australian and the Northern Territory system can be easily seen.

### ***Complaints against Police - Administrative Arrangements***

#### ***1. Introduction***

*1.1 The following arrangements agreed upon by the Ombudsman and the Commissioner of Police pursuant to s.14(3AA) of the Ombudsman (Northern Territory) Act (the Act) relate to the manner in which complaints against police shall be dealt with and provide, in certain circumstances, for the joint review and direction by a member or members of the Ombudsman's staff and a member or members of the Police Service of investigations of complaints against police officers.*

s14(3AA) Subject to subsection (4) if the Ombudsman and the Commissioner of Police have agreed on administrative arrangements relating to the manner in which complaint referred to the Ombudsman pursuant to subsection (3) may be dealt with, any complaint referred to the Ombudsman in pursuance of that subsection shall be dealt with in accordance with those arrangements.

1.2 *The arrangements are intended to enable flexibility in dealing with complaints but to also provide clear guidelines for the efficient classification, direction, investigation, review and determination of complaints against police members.*

1.3 *The Complaints Against Police Investigation Guidelines are to be read in accordance with and subject to these arrangements and the Act.*

## **2. *The Joint Review Committee***

2.1 *A Joint Review Committee (“the JRC”) consisting of nominees of both the Ombudsman and the Commissioner of Police will be established.*

2.2 *Each complaint, whether received by the Ombudsman or the Commissioner, will be assessed initially by the JRC which will decide whether it is to be investigated, with or without direction and review by the JRC or referred to conciliation.*

2.3 *The JRC shall meet and discuss as often as the members consider necessary, the investigation and determination of all complaints chosen for investigation under its direction and review. The JRC is to proceed to form its conclusions on any investigation under its control as expeditiously as possible.*

## **3. *Assessment of Complaints***

3.1 *When determining whether a complaint shall be investigated under the direction and review of the JRC or not, the JRC shall have regard to:*

3.1.1 *The seriousness of the action complained about;*

3.1.2 *Whether the complaint indicates the possibility of a ‘systemic’ problem; and*

3.1.3 *Whether the facts necessary to determine the complaint are readily ascertainable.*

3.2 *When determining whether a complaint shall be referred to conciliation rather than be investigated the JRC shall have regard to:*

3.2.1 *Whether the complainant is agreeable to conciliation;*

3.2.2 *The seriousness of the action complained about; and*

3.2.3 *Whether the complaint is likely to be resolved without a finding of improper conduct within the meaning of section 26(1) of the Act.*

S26(1) *This section applies where as a result of an investigation by the Ombudsman under this Act (other than an investigation conducted pursuant to section 15) the Ombudsman is of the opinion that the administrative action to which the investigation relates-*

(a) *appears to have been taken contrary to law;*

(b) *was unreasonable, unjust, oppressive or improperly discriminatory;*

(c) *was in accordance with a rule of law or a provision of any law in force in the Territory or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;*

(d) *was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant*

- considerations;
- (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not but should have been given;
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong.

#### **4. Direction and Review**

4.1 *At each meeting the JRC will, where appropriate, with respect to investigation under its direction and review:*

- 4.1.1 *Consider whether the allegation is serious enough to recommend the complaint be the subject of joint investigation by the Office of the Ombudsman and investigators drawn from another police force or agency;*
- 4.1.2. *Consider the investigation and the evidence to hand;*
- 4.1.3. *Direct any further action required to complete the investigation;*
- 4.1.4 *Decide whether any witness or other person ought to be interviewed and whether that interview should be in the presence of a member of the Ombudsman's staff.*
- 4.1.5 *Make any other recommendations to the Ombudsman it sees fit:*
- 4.1.6 *Decide whether the power conferred by section 20 of the Act and sections 6,7 8(1) and (2), 9 and 10 of the Inquiries Act should be exercised in any investigation and, if so, to exercise or direct the exercise of such powers.*

s20 relates to the taking and dealing with evidence during an investigation or inquiry conducted by the Ombudsman.

#### **5. Determination of Complaints**

5.1 *If the JRC agrees:*

- 5.1.1. *On the sufficiency of the investigation;*
- 5.1.2 *On the merits of the complaint and whether the complaint is sustained or otherwise;*
- 5.1.3 *The JRC shall form its conclusions and recommendations and report the same, together with the reasons therefore, to the Ombudsman. Such recommendations may include that the Commissioner should or should not obtain the advice of the Director of Public Prosecutions as to whether criminal charges should be initiated.*
- 5.1.4 *The JRC, in considering its conclusions and recommendations pursuant to 5.1.3 above, shall have regard to any conclusions, findings and recommendations of the police investigating officer. However, the JRC shall not be bound or constrained by any conclusion of that officer.*

5.2 *Prior to forming any conclusions, findings or recommendations with respect to a complaint against a member, the JRC shall satisfy itself that the specific allegations have been fairly put to the member; that the member has been afforded an opportunity to respond to such allegations and given the opportunity to offer any explanation or raise any defence; and that the member's response has been considered by the JRC.*



- 5.2.1 *In the investigation of any allegation of possible criminal conduct the JRC shall ensure that the accused officer has been informed of his right to silence prior to any interview.*
- 5.2.2 *A complaint shall not be sustained unless in the opinion of the JRC the conduct found to have occurred falls within one or more of the categories of conduct provided for in section 26(1)(a) - (g) of the Act. The JRC shall specify the relevant subsections in any report issued pursuant to subsection 5.1.3 above.*
- 5.2.3 *The JRC shall, in its report referred to in 5.1.3 above, make such recommendations as to disciplinary or other actions as it considers appropriate.*
- 5.2.4 *The Ombudsman will report to the Commissioner his opinion as to the conduct the subject of each complaint and any recommendations as to action in respect thereof, pursuant to section 26(2) of the Act. The Ombudsman, in forming his opinion, shall consider the views and recommendations of the JRC and shall record the same in his Report where they do not accord with his own opinion and recommendations.*
- 5.2.5 *When requested pursuant to section 26(4) of the Act, the Commissioner shall, as soon as practicable advise the Ombudsman of the steps taken, or proposed to be taken, in relation to any recommendations made by the Ombudsman. Where no steps have been taken or are proposed to be taken, the Commissioner shall advise the Ombudsman of the reasons therefore.*
- 5.3 *Where the members of the JRC cannot agree upon the appropriate classification of a complaint, the sufficiency of an investigation, or the conclusions, findings or recommendations to be made, the disparate views of the individual members shall be submitted to the Ombudsman in writing. The Ombudsman shall consider the views of each JRC member and shall form his own opinions which shall be final and binding.*
- 5.3.1 *Any report by the Ombudsman to the Commissioner pursuant to section 26(2) where the JRC does not agree, shall include the view of the Commissioner's representative where the opinion of the Ombudsman does not accord with that of the Commissioner's representative.*
- 5.4 *The Ombudsman or his delegate shall advise the complainant of the Ombudsman's opinions and recommendations, if any, as soon as practicable after advising the Commissioner pursuant to section 26(2) of the Act, in such manner as the Ombudsman or his delegate sees fit.*

**6. Determination of Complaints not investigated under JRC Direction and Review**

6.1 *With respect to the investigation of complaints not under the direction and review of the JRC, the investigating officer, when he has formed his conclusions as to the validity or otherwise of the complaint, shall advise the Ombudsman, or his delegate, of those conclusions and shall provide his opinion of whether the conduct complained of falls within section 26(1)(a)-(g) and his recommendations as to further action, if any. The Ombudsman shall consider the advice of the investigating officer in reporting to the Commissioner his opinion and any recommendations he may make.*

6.2 *The Ombudsman or his delegate shall advise the complainant of the Ombudsman's opinions and recommendations, if any, as soon as practicable after advising the Commissioner pursuant to section 26(2) of the Act, in such manner as the Ombudsman or his delegate sees fit.*

**7. Resolution of Complaints referred to Conciliation**

7.1 *Conciliation of a complaint means the resolution of a complaint to the satisfaction of the complainant without a finding of fault being made against the member concerned.*

7.2 *Complaints determined by the JRC as suitable for conciliation are to be referred to the Commissioner for action.*

7.3 *If conciliation is unsuccessful or the complainant is not willing to have the complaint conciliated or it transpires that an allegation of a more serious nature is involved, then the Commissioner will refer the complaint to the JRC for reassessment pursuant to paragraph 3 hereof.*

7.4 *The JRC will, upon receipt of a complaint pursuant to 7.3 hereof, assess the matter pursuant to the provisions of paragraph 3.1 hereof.<sup>100</sup>*

## QUEENSLAND

### CRIMINAL JUSTICE COMMISSION (CJC)

The Criminal Justice Commission (CJC) was established following the Fitzgerald Inquiry. It is charged with:

*...monitoring, reviewing, co-ordinating and initiating reform of the administration of criminal justice and fulfilling those criminal justice functions not appropriately carried out by the police or other agencies.*<sup>101</sup>

It is accountable through the Parliamentary Legal and Constitutional Administrative Review Committee.

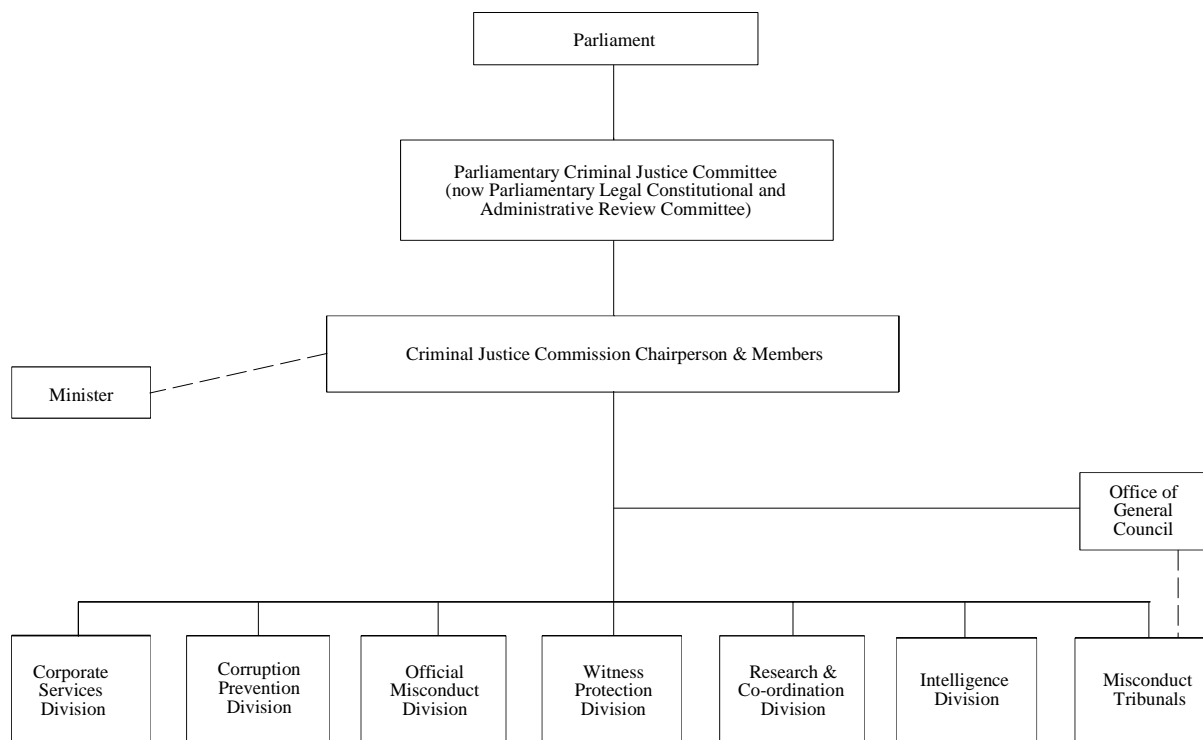
The Parliamentary Committee is brought within the secrecy provisions of the *Criminal Justice Act 1989* (Qld) (“CJ Act”). This situation is unique as similar committees which have oversight of the NSW ICAC or the Federal National Criminal Authority are not within the purview of their governing Acts.

The Parliamentary Committee does not have the power to direct the CJC but it can recommend that certain matter be investigated.

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10 *Submission to the Parliamentary Criminal Justice Committee on its Review of the Criminal Justice Commission's Activities*, Criminal Justice Commission, July 1994, page 2

## Structure of the CJC<sup>102</sup>



The goals of the CJC are:

- *safeguarding the integrity of public administration*
- *improving the criminal justice system*
- *providing an effective witness protection program*
- *combatting organised and major crime*
- *preventing corruption in public sector organisations*
- *promoting public understanding of and informed discussion on criminal justice issues.*<sup>103</sup>

The CJC can investigate complaints made to it, or investigate matters on its own initiative. Pursuant to the CJ Act, police officers are seconded from the Queensland Police Service (QPS). Seconded Police officers are subject to the direction of the Chairman of the CJC and not the Commissioner of Police. Since its inception, about 300 QPS officers have spent time with the CJC, including many officers now in senior management positions.

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11 Figure from *Criminal Justice Commission, Annual Report, 1994/1995*, page 5

12 *Submission to the Parliamentary Criminal Justice Committee on its Review of the Criminal Justice Commission's Activities*, Criminal Justice Commission, July 1994, pages 2-3

This has the effect of ensuring that the work of the CJC was experienced first hand by police officers, who could take their knowledge and experience back to the QPS and use that to inform and influence the actions and direction of other police officers.

## Comparison with WA

Before the establishment of the CJC, the only mechanism for investigating complaints against police or allegations of corruption was the Internal Investigations Section of the QPS. This unit was described in the Fitzgerald Report as

*...woefully ineffective, hampered by a lack of staff and resources and crude techniques. It has lacked commitment and will, and demonstrated no initiative to detect serious crime. Corrupt police have effectively neutralised whatever prospect there might have been that allegations against police would have been properly investigated. The Section's effects have been token, mere lip service to the need for the proper investigation of allegations of misconduct.*

*The Internal Investigations Section has provided warm comfort to corrupt police. It has been a friendly, sympathetic, protective and inept overseer. It must be abolished.*<sup>104</sup>

Queensland did not have an Ombudsman for the receipt and oversight of complaints against police and it did not have any other mechanism to make the police service accountable to the community. The Fitzgerald Inquiry recommended the removal of the receipt of complaints, investigation of corruption, disciplinary and affiliated matters from the purview of the QPS.

The number of complaints rose significantly when the CJC was established. Initially the CJC had carriage of all complaints against police but because of the number of complaints it was unable to cope. After changes to the CJ Act, the CJC was able to refer minor complaints to the QPS for investigation. The CJC retains oversight of the complaint and may report on any inadequacies in the QPS investigation or take over the investigation. Complaints referred to the QPS are generally of a minor nature, although:

*As the reform process has gathered pace within the QPS, and attitudes have changed, the Commission has raised the threshold of matters being referred back so that some 21% of all complaints received are referred to the QPS for investigation.*<sup>105</sup>

The research division of the CJC has given education and training advice to the QPS. The Police Education Advisory Committee is a joint committee of the QPS and the CJC. The CJC has the

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13 *Commission of Inquiry Into Possible Illegal Activities and Associated Police Misconduct*, Commissioner G E Fitzgerald, June 1989, page 289

14 *Submission to the Parliamentary Criminal Justice Committee on its Review of the Criminal Justice Commission's Activities*, Criminal Justice Commission, July 1994, page 17

power, pursuant to the CJ Act to direct that the QPS implement its recommendations, however it has, so far, utilised the co-operative approach to implement change. The CJC has attempted to conduct applied research that is of use to the agencies which it is mandated to assist or investigate.

The CJC has the power, pursuant to its Act, to summon witnesses to give evidence and to compel the production of documents. It does not have the power to intercept telephone calls, but it does have the power to install listening devices, subject to the limitations set out in *Coco-v-R*<sup>106</sup>.

The CJC is divided into five operational divisions. The five divisions, outlined diagrammatically on page XVI are:

### **The Official Misconduct Division**

This is the largest division in the CJC.

*Its principal functions are to:*

- *further the investigative work begun by the Fitzgerald Inquiry*
- *investigate the incidence of official misconduct in the State especially in units of public administration*
- *investigate alleged misconduct by police officers or official misconduct by officers in units of public administration in Queensland*
- *conduct investigations of organised or major crime when, in the CJC's opinion, such investigations are not appropriate to be discharged, or cannot be effectively discharged, by the QPS or other agencies of the State*
- *provide assistance, by way of education or liaison, to law enforcement agencies, units of public administration and others on the detection and prevention of official misconduct.*<sup>107</sup>

### **The Research and Co-ordination Division**

*This Division:*

- *researches issues affecting the administration and enforcement of criminal justice and law reform in the State*
- *reviews the effectiveness of programs and methods of the QPS including*

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15 High Court Decision, *Australian Law Reports*, 1994, vol 120, page 415

16 *Criminal Justice Commission, Annual Report 1994/1995*, page 110

*community policing, crime prevention and police recruitment, education and training*

- *publishes and publicises the results of its research*
- *helps develop procedures and systems for coordinating the activities of other criminal justice agencies in the State.*<sup>108</sup>

### **Intelligence Division**

*This Division is required to:*

- *create a database of intelligence concerning criminal activities and persons concerned therein, from all lawful sources*
- *secure the Database and records so that only persons who satisfy the Chairperson or Director of the Division that they have a legitimate need for information are able to access it*
- *oversee the performance of the Bureau of Criminal Intelligence*
- *control and maintain all data and records of the Fitzgerald Inquiry under the Commission of Inquiry Continuation Act 1989*
- *subject to the CJC's approval report to the Minister and the Minister of the Crown responsible for the QPS on matters of intelligence pertinent to the Government.*

*The Division also provides ongoing tactical support to Multi Disciplinary Teams operations.*<sup>109</sup>

### **Witness Protection Division**

The CJC has established a witness protection program to protect witnesses with information about major crime and organised crime and who are required to testify in court proceedings. Such witnesses are not, generally, upright citizens of the community. They have gained their knowledge through association with criminals and often whilst involved in criminal behaviour.

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17 *Criminal Justice Commission, Annual Report 1994/1995, page 111*

18 *Criminal Justice Commission, Annual Report 1994/1995, page 111*

The CJC recognises that it is in the best interests of the community that the knowledge of these people be utilised to ensure that major criminal activity is being effectively combatted. Therefore the witness is protected “...in the interests of the community, not their own interest.”<sup>110</sup>

### **Corruption Prevention Division**

*This Division focuses on anti-corruption activities by means of*

- *public sector liaison*
- *official misconduct risk management reviews*
- *education and training*
- *whistleblower support.*<sup>111</sup>

### **Corporate Service Division**

*This Division provides administrative and logistical support for CJC’s operations through:*

- *finance and administration*
- *personnel services*
- *information management*
- *executive support*
- *security*
- *media liaison.*<sup>112</sup>

### **Misconduct Tribunals**

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19 *Criminal Justice Commission Annual Report 1994/1995, page 112*

20 *Criminal Justice Commission Annual Report 1994/1995, page 112*

21 *Criminal Justice Commission Annual Report 1994/1995, page 112*



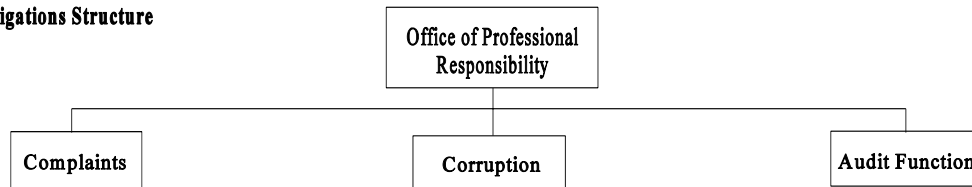
*The Misconduct Tribunals were established under the [CJ] Act. They are independent of the QPS and other units of public administration. Members of the Tribunals must not hold office in any unit of public administration (other than an office held ex officio) or in the CJC.*

*The Misconduct Tribunals review decisions on disciplinary matters within the QPS and make original administrative decisions on allegations of official misconduct by police and other officials.*

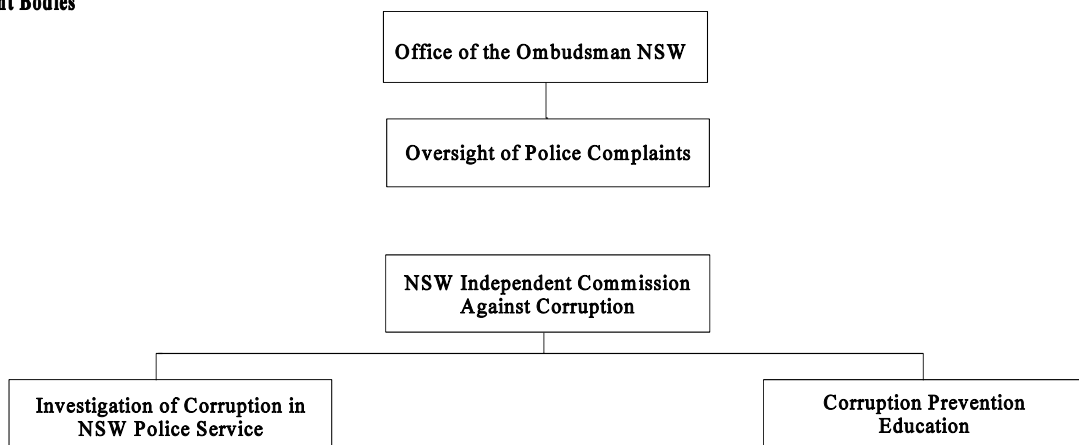
*Following submissions to the Minister for Justice and the Attorney General, it has been approved that the Tribunals be removed from the CJC and transferred to the District Court. It is anticipated that this will occur in the near future.<sup>113</sup>*

## NEW SOUTH WALES

### Internal Investigations Structure



### Oversight Bodies



### Changes Proposed by the *Royal Commission into the NSW Police Service, Interim Report, February 1996*

The oversight of complaint investigations will remain the responsibility of the Ombudsman. Investigation of corruption is to be conducted by the proposed Police Corruption Commission (PCC). Corruption Prevention Strategies and education will continue to be the responsibility of the NSW ICAC.

### The Current System

Complaints against police are investigated by the NSW Ombudsman; investigation of complaints of corruption are the responsibility of the NSW ICAC; investigation of serious crime (including organised crime and drug related crime) is conducted by the NSW Crime Commission. Suspected police corruption is referred to the Office of Professional Responsibility (OPR). The OPR is

responsible for the investigation of complaints and corruption, and reports directly to the Commissioner. New South Wales has a Police Board which is responsible for oversight of promotions and appointments at the senior executive level, police training and career development.

The Wood Commission recommended the establishment of a body separate from the ICAC, to be called the Police Corruption Commission (PCC). Its function is to investigate police corruption. The recommendation is that the new PCC will have the same powers as the Wood Commission and ICAC including obtaining and executing listening device warrants.

*The PCC will 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.*<sup>114</sup>

The Royal Commission proposes that the PCC will be governed by the office of Inspector of the PCC who should be a retired Supreme Court judge.

### **Role of the NSW Ombudsman**

The Wood Commission recommended no change to the Ombudsman's current powers with respect to complaints against police. The NSW Ombudsman has the power to monitor, supervise and undertake investigations. The NSW Ombudsman also has the authority to undertake primary investigations although this is done in a small number of cases, due to resourcing problems. Where a matter involves "...*serious misconduct and corruption...*"<sup>115</sup> it is to be referred to the PCC. There is also provision for combined audits by the Ombudsman and the PCC of the police internal investigations.

The NSW Ombudsman receives approximately 5 600 complaints a year, 1 400 directly from police officers. Matters which relate specifically to management are returned to the Police Service, while issues of corruption are sent onto ICAC. The Ombudsman is critical of the NSW Police Service's investigation of complaints.

The Ombudsman has reported on many aspects of policing in NSW. In November 1995, the Ombudsman produced a report on the release of confidential information by police.

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23 *Royal Commission into the New South Wales Police Service, Interim Report, February 1996, page 94*

24 *Royal Commission into the New South Wales Police Service, Interim Report, February 1996, page 99*

The WAPS is not alone in its officers' disregard for the privacy of the information contained in its computer database. In NSW there is a belief that as long as police are not providing the information to anyone for money there is no offence, nor cause for concern.

The NSW Ombudsman rejected that argument:

*The use of the Police Computer System for any reason other than official purposes is a serious breach of the law and a serious breach of the responsibility expected and demanded of any police officer. Improper access of information stored in this system cannot be tolerated . . . Excuses or claims in mitigation based on 'stupid games' and 'practical jokes' are quite unacceptable. Every citizen of this State is entitled to be confident that any personal information stored in the Police Computer Information System will be properly protected from unauthorised disclosure.<sup>116</sup>*

## VICTORIA

The system in place in Victoria is similar to that currently in Western Australia. The Internal Investigations Department (IID) is tasked to maintain the professional standards of the police service. It is divided into two operational sections being the Internal Investigations Unit (IIU) and the Internal Security Unit (ISU). The IIU is responsible for the investigation of complaints against police and the ISU for the detection and prevention of corruption. The IID has responsibility for research and education within the Victoria Police. The ISU and the IIU both report to the Assistant Commissioner who reports directly to the Deputy Commissioner of Police.

The IID is responsible for the keeping of a register of the matters for which a telephone interception warrant has been obtained and this register is inspected by the Ombudsman.

### Victorian Ombudsman

Pursuant to section 86L of the *Police Regulation Act 1958* (Vic) (“the PR Act”) a complaint about the conduct of a member of the force:

- (a) *may not be made to the Deputy Ombudsman by a member of the force*

Pursuant to section 86P(3) of the PR Act:

*The Chief Commissioner must upon the request of the Deputy Ombudsman make available to the Deputy Ombudsman such members of the force as the Chief Commissioner thinks necessary to assist the Deputy Ombudsman in the conduct of an investigation.*

- (4) *Every member of the force made available to the Deputy Ombudsman remains under the direction and control of the Chief Commissioner but must in assisting the Deputy Ombudsman have regard to the wishes of the Deputy Ombudsman concerning the conduct of an investigation.*

The Ombudsman informed the Committee that he had never requested a police officer to be ‘seconded’. The Ombudsman used his own investigators to carry out his investigations because he did not favour using officers who had obligations to the Police Service.

Unlike Western Australian, in Victoria someone other than the person aggrieved can make a complaint and it need not be in writing.<sup>117</sup>

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26 Relevant sections of the Victorian and Western Australian Acts are as follows:  
The *Police Regulation Act 1958* (Vic):  
**86L. Making of Complaints**  
(2) A complaint about the conduct of a member of the force-  
(c) may be made by a person on that person’s own behalf, or on behalf of another person;  
(d) if so requested by the Deputy Ombudsman or member of the force, must be in writing.

*Parliamentary Commissioner Act 1971* (WA)  
**Complaints**

(continued...)

Pursuant to section 86N of the PR Act:

- (4) *The Deputy Ombudsman*
- (a) *must investigate a complaint if the conduct complained of is conduct of the Chief Commissioner or of a Deputy or Assistant Commissioner; and*
- (b) *may investigate a complaint if the conduct complained of*
- (i) *is of such a nature that the Deputy Ombudsman considers that investigation of the complaint by the Deputy Ombudsman is in the public interest; or*

In Western Australia matters are generally conducted this way in line with agreed Administrative Guidelines between the WAPS and the Ombudsman. The Committee recommends that these matters be put in legislation.

The Chief Commissioner of Police in Victoria must supply the Deputy Ombudsman with a written report “...as often as requested...” (PR Act, section 86O). In Western Australia the Ombudsman must give the Police Commissioner a reasonable opportunity (defined as 42 days plus extensions) to investigate a matter.

### **Changes to Disciplinary Procedures**

The Victoria Police has recently made changes to the manner in which it deals with disciplinary matters. This was in recognition that matters dealt with by disciplinary action, often raise management issues.

The new procedures give the Chief Commissioner the power to inquire into breaches of the disciplinary code within the Force, rather than such breaches being referred to the Police Discipline Board for resolution. There is no legal representation of members of the Force at these proceedings. The Chief Commissioner is bound by the principles of Administrative Law. The test to determine whether or not a breach has been committed is if the Hearing Officer is “reasonably satisfied” that the member has committed the breach.

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(...continued)

17. (1) Except as otherwise provided in this section a complaint under this Act shall be made in writing by any person or any body of persons, whether incorporated or not.
- (2) When the person by whom a complaint might have been made under this Act dies or is for any reason unable to act for himself, the complaints may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as otherwise provided in this subsection a complaint shall not be entertained under this Act unless it is made by the person aggrieved himself.
18. (1) The Commissioner may refuse to entertain a complaint, or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if he is of the opinion that -
- (c) the person aggrieved has not a sufficient personal interest in the matter raised in the complaint; or

The procedures recognise that not all breaches of the code of the police force require punitive action. The Disciplinary Hearings are supported by counselling, administration of caution notices and admonishment notices. Counselling notices are not recorded on the officer's file. A cautioning notice is recorded and if a further notice is recorded within a 12 month period further action is taken.

An admonishment notice is given by an Inspector or higher rank and if 2 are given in any 2 year period, an inquiry into the circumstances must take place. An officer may challenge the issuing of either type of notice so that the decision is reviewed by a higher ranking officer. These notices can be given by commanders at a local level or may be as a result of a complaint made against an officer by a member of the public. There is also a review mechanism in place if an officer does not believe he should be the subject of such a notice.

In relation to disciplinary charges, officers are given the opportunity to provide a written explanation of their conduct to the Chief Commissioner. This written explanation is forwarded to the Assistant Commissioner of the IID and is considered with other evidence before a charge is laid. If a charge is laid, then depending upon the severity of the matter, a Hearings Officer of appropriate rank is appointed to hear the matter.

The sanctions which may be imposed are:

- Deputy Commissioner may impose all penalties available under the legislation;
- Assistant Commissioners may impose all penalties other than dismissal;
- District Commander/Chief Superintendent may impose fines not exceeding \$500, reprimand, adjourn a charge for 12 months on the condition that the member is of good behaviour or transfer the member within the District.<sup>118</sup>

An officer may object to a certain officer being appointed if there is a perception of bias.

The Police Review Commission is empowered to conduct an independent external review of a decision by the Chief Commissioner of Police or Hearings Officer, if applied to by a member. The only decisions which the Commission can review are if a fine is imposed exceeding \$500; transfer to other duties; reduction in rank, seniority or remuneration; or dismissal. The Chief Commissioner is not required to follow a recommendation of the Commission, but is required to give "due regard to the recommendation".





## **APPENDIX B**



### COMMITTEE MEETINGS REGARDING TERM OF REFERENCE 3:

Wednesday, 15 June 1994 from 9.30am to 10.25am.

Thursday, 16 June 1994 from 6.10pm to 6.20pm.

Wednesday, 29 June 1994 from 10.05am to 10.55 am.

Friday, 12 August 1994 from 9.45am to 11.50am.

Thursday, 25 August 1994 from 4.10pm to 5.10pm.

Wednesday, 28 September 1994 from 9.35am to 11.45am.

*Witness - Acting Superintendent Don McLeod.*

Wednesday, 19 October 1994 from 10.45am to 11.45am.

Wednesday, 26 October 1994 from 10.00am to 11.00am.

Wednesday, 2 November 1994 from 9.45am to 12.00pm.

Thursday, 3 November 1994 from 6.35pm to 6.40pm.

Tuesday, 15 November 1994 from 9.30am to 3.40pm.

*Witnesses interviewed.*<sup>119</sup>

Wednesday, 16 November 1994 from 10.20am to 4.55pm.

*Witnesses interviewed.*

Thursday, 17 November 1994 from 9.25am to 10.05am.

Wednesday, 23 November 1994 from 9.35am to 12.20pm.

Thursday, 15 December 1994 from 12.35pm to 1.50pm.

Wednesday, 11 January 1995 from 10.00am to 11.30am.

Monday, 6 February 1995 from 9.25am to 5.00pm.

*Witnesses interviewed.*

Monday, 13 February 1995 from 9.25am to 1.20pm.

*Witness interviewed.*

Monday, 20 February 1995 from 9.15am to 1.45pm.

*Witness interviewed.*

Monday, 27 February 1995 from 9.15am to 11.55am.

*Witness - First Constable Paula Johnston.*

Wednesday, 29 March 1995 from 9.55am to 11.15am.

Wednesday, 5 April 1995 from 9.25am to 10.36am.

Wednesday, 12 April 1995 from 9.25am to 11.35am.

*Witnesses interviewed.*

Monday, 24 April 1995 at 9.00am to 4.35pm.

*Witness - Mr Simon Stone, Office of the Director of Public Prosecutions; Witnesses interviewed.*

Wednesday, 3 May 1995 from 9.40am to 11.30am.

Wednesday, 10 May 1995 from 9.25am to 12.20pm.

*Witness - Deputy Commissioner Les Ayton.*

Wednesday, 17 May 1995 from 9.30am to 12.35pm.

*Witness interviewed; and Deputy Commissioner Les Ayton.*

Wednesday, 14 June 1995 from 9.15am to 1.05pm.

*Witness - Mr Brian Bull; Witness interviewed.*

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<sup>119</sup>

Witnesses who chose to have the operation of Standing Order 358 (d) placed on their evidence have not been named

Wednesday, 28 June 1995 from 9.15am to 11.00am.

*Witness - Mr James Heaney.*

Monday, 24 July 1995 from 8.20am to 8.30am.

Wednesday, 23 August 1995 from 9.30am to 11.40am.

Wednesday, 6 September 1995 from 9.35am to 1.05pm.

*Witness - Mr Ray Fairclough; Witnesses interviewed.*

Wednesday, 13 September 1995 from 9.35am to 12.15pm.

*Witnesses - Ms Ingrid Plutchky and Mr Dean Musa.*

Wednesday, 20 September 1995 from 9.30am to 10.45am.

Wednesday, 27 September 1995 from 9.30am to 10.50am.

Monday, 16 October 1995 from 11.30am to 2.15pm.

*Witnesses - Mr Ray and Mrs Ros Tilbury.*

Wednesday, 18 October 1995 from 9.30am to 11.50am

*Witness - Acting Commissioner Les Ayton.*

Monday, 23 October 1995 from 2.00pm to 4.00pm.

*Witnesses - Messrs Ray and Peter Mickelberg.*

Friday, 27 October 1995 from 9.35am to 11.35am.

*Witness - Mr George Guidice.*

Monday, 30 October 1995 from 9.25am to 3.50pm.

*Witnesses - Mr Frank Scott; Mr Ian Duggan; and Hon Mark Neville MLC.*

Wednesday, 1 November 1995 from 9.30am to 12.20pm.

*Witnesses - Mr and Mrs Tillbrook; and Messrs Ray and Peter Mickelberg.*

Friday, 3 November 1995 from 9.35am to 11.05am.

*Witness - Mr Arthur Auguste.*

Wednesday, 8 November 1995 from 9.35am to 3.30pm.

*Witnesses - Mr Overman, representing the Director of Public Prosecutions; Mr Panagyres, State Crown Solicitor, representing the Ministry of Justice; Mr Bradley Waghorn; Mr Tim Boase; and Mr Avon Lovell.*

Monday, 13 November 1995 from 9.35am to 12.30pm.

*Witness interviewed. The Committee met informally with Commissioner Gregor and Mr Harman of the Commission On Government.*

Wednesday, 15 November 1995 from 9.30am to 11.15am.

*Witness interviewed.*

Friday, 17 November 1995 from 9.30am to 12.05pm.

*Witnesses - Messrs Ray and Peter Mickelberg. The Committee had an informal working lunch with Mr Paul Dickinson, formally of the Hong Kong ICAC.*

Monday, 20 November 1995 from 9.35am to 11.30am.

*Witness - Mr William Nobes.*

Wednesday, 22 November 1995 from 9.30am to 12.25pm.

*Witness - Mr Frank Scott.*

Monday, 27 November 1995 from 9.30am to 12.20pm.

*Witnesses - Commissioner Bob Falconer; and Inspector Russell Gardiner.*

Tuesday, 28 November 1995 from 6.00pm to 6.05pm.

Monday, 4 December 1995 from 9.30am to 1.30pm.

*Witnesses interviewed.*

Monday, 11 December 1995 from 9.30am to 10.35am.

Wednesday, 31 January 1996 from 9.45am to 10.55am.

Tuesday, 20 February 1996 from 9.35am to 1.30pm.

*Witnesses - Assistant Commissioner Kingsley Porter; Commander Jack Mackaay; and Commissioner Bob Falconer.*

Monday, 26 February 1996 from 9.30am to 1.15pm

*Witnesses - Deputy Commissioner Les Ayton; and Mr Peter Kyle.*

Wednesday, 20 March 1996 from 10.05am to 11.20am.

Wednesday, 27 March 1996 from 9.40am to 11.45am.

Wednesday, 3 April 1996 from 9.40am to 10.35am.

Wednesday, 17 April 1996 from 9.30am to 4.00pm.

*Witness - Senior Constable Mike Leijser; Witnesses interviewed.*

Monday, 29 April 1996 from 9.16am to 5.10pm.

*Witness - Deputy Commissioner Les Ayton.*

Wednesday, 1 May 1996 from 9.35am to 12.15pm.

Friday, 3 May 1996 from 10.20am to 12.20pm.

Monday, 6 May 1996 from 10.00am to 12.00pm.

Wednesday, 8 May 1996 from 9.30am to 12.05pm.

Friday, 10 May 1996 from 10.05am to 12.55pm.

Monday, 13 May 1996 from 10.00am to 12.25pm.

Wednesday, 15 May 1996 from 9.35am to 11.55am.

Friday, 17 May 1996 from 10.00am to 12.20pm.

Wednesday, 22 May 1996 from 9.30am to 12.20pm.

Thursday, 23 May 1996 from 12.00pm to 1.20pm.

Monday, 27 May 1996 from 10.00am to 11.15am.

Thursday, 6 June 1996 from 9.55am to 11.05am.

## **TRAVEL**

The Committee travelled to Hong Kong and the United Kingdom in July 1995 in order to discuss other jurisdiction's models for dealing with police complaints and corruption prevention. A report of this trip was tabled in October 1995 by the Chairman Hon Derrick Tomlinson MLC.

In February 1996 the Committee travelled to the Eastern States. The Committee met with Dr Barry Perry, the Victorian Ombudsman, and Mr Charles Bare, Deputy Ombudsman (Police Complaints). The Committee also met with members of the Internal Investigations Department (IID), including Assistant Commissioner Gavan Brown and Acting Chief Inspector Peter Billing.

In Brisbane, the Committee met with members of the Criminal Justice Commission (CJC) including Mr Frank Clair, Chairman of the Commission, Mr Mark Le Grand, Director, Official Misconduct Division, Mr David Brereton, Director, Research and Coordination Division, and Mr Michael Barnes, Complaint Section, Official Misconduct Division.

The Committee met with the New South Wales Minister for Police's advisers, Mr Andrew Gilchrist and Mr Les Tree. A meeting was held with the New South Wales Ombudsman, Ms Irene

Moss and Assistant Ombudsman (Police), Mr Steve Kinmond. The Committee met with the Commissioner of the NSW ICAC, Justice O'Keefe and staff from NSW ICAC's Legal, Investigative, Research and Education Divisions. The Committee also met with the Hon Justice Wood and Mr Gary Crooke QC of the Royal Commission into the New South Wales Police Service.

## **APPENDIX C**





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**SUBMISSIONS**

People and groups who made submissions to the Committee regarding Term of Reference 3:

- |     |                        |     |                                 |
|-----|------------------------|-----|---------------------------------|
| 1.  | Mr HR de Jongh         | 42. | Mr DH Schapper                  |
| 2.  | Ms I E Pluktchy        | 43. | Mr EO Martin                    |
| 3.  | Mr J Heaney            | 44. | Mrs LC Gregory                  |
| 4.  | Mr K Courteney         | 45. | Mr E Scott                      |
| 5.  | Mr PG Giudice          | 46. | Mr F Hubros                     |
| 6.  | Ms ES Date             | 47. | Ms C Couldridge                 |
| 7.  | Mr G Christou          | 48. | Mr RA Ryan                      |
| 8.  | Mr B Hersey            | 49. | Ms MS Hill                      |
| 9.  | Mr N Sharp             | 50. | Mr HE Edwards                   |
| 10. | Mr B Jones             | 51. | Mr G Heazlewood                 |
| 11. | Mr L Meade             | 52. | Mrs V Moore                     |
| 12. | Ms A Longworth         | 53. | Mr MJ Anderson                  |
| 13. | Mr J Boylan            | 54. | Mr I Talbot                     |
| 14. | Mr KJ & HJ Oliver      | 55. | Mr JW Horton                    |
| 15. | Mrs I Barnes           | 56. | Mr BR & J Best                  |
| 16. | Ms C Lisle-Williams    | 57. | Mr GH Scrine                    |
| 17. | Mrs M Jones            | 58. | Mrs Faulkner                    |
| 18. | Sr B Doyle             | 59. | Peter                           |
| 19. | Mr LW Roberts Smith QC | 60. | Mr DH Dutton                    |
| 20. | Ms A Annear            | 61. | Mr MJ Regan                     |
| 21. | Mr P Weygers           | 62. | Mr C Gillham                    |
| 22. | Mr G Hickey            | 63. | Ms F Towill                     |
| 23. | Mr AWJ Smith           | 64. | Mr VJ Holland                   |
| 24. | Mr WH Griffiths        | 65. | Ms JM Riddell                   |
| 25. | Mr P Perry             | 66. | Mr J Jenzen                     |
| 26. | Mr R & R Tilbury       | 67. | Mr SP Murray                    |
| 27. | Mr Fernandez           | 68. | Mr LH Watt MLA                  |
| 28. | Mr S Scott             | 69. | Mrs M Clarke                    |
| 29. | Mr FJ Newman           | 70. | Mr A Hill                       |
| 30. | Mr DJ Varley           | 71. | Mr M Collier                    |
| 31. | Mr F Wyatt             | 72. | Anonymous                       |
| 32. | Mr J Marsh             | 73. | Mr Payam                        |
| 33. | Mr M Stevenson         | 74. | The Most Reverend Dr PF Carnley |
| 34. | Anonymous              | 75. | Mr J Langford                   |
| 35. | Mr AB Greer            | 76. | Mr NV Stevens                   |
| 36. | Mr F Smith             | 77. | Ms L Norbury                    |
| 37. | Mr B Love              | 78. | Mr JP Toohey                    |
| 38. | Mr L Westerlund        | 79. | Mr FP David                     |
| 39. | Mr A Andjelkovic       | 80. | Messrs R & P Mickelberg         |
| 40. | Mr A Simms             | 81. | Mr E Tarik                      |
| 41. | Mr B Elliott           | 82. | Mr S. Carew-Reid                |
|     |                        | 83. | Mr H Bailey                     |
|     |                        | 84. | Mr AR Webster                   |

85. Mr S Casotti
86. Anonymous
87. Trevor
88. Mr D Dyer
89. Ms L Coyle (nee Watson)
90. Ms Sharon
91. Mr & Mrs BL Smith
92. Mr I King
93. Mrs M Finn
94. Mr M Holloway
95. Mr & Mrs R Brennan
96. Mr R Bestry
97. Mr G Hayes
98. Mr H Jaensch
99. Mr T Mioceвич
100. Messrs G & J Drake
101. Mrs L Thompson
102. Mr RL Fairclough
103. Mr A Edney
104. Messrs GV & GMN Young
105. Mr G Wood
106. Cr S Hill
107. Mr P Dickinson
108. Mr M Lowry
109. Mr JR King
110. Mr R Horrigan
111. Mr B Nobes
112. Mr T Grosser
113. Mr L Wakeman
114. Mr JA Falconer
115. Mrs B Henderson
116. Senator C Chamarette
117. Ms J Whittome
118. Mr M. Daddi
119. Ms J Hewson
120. Mr L Townshend
121. Mr R Bropho
122. Mr K Steele
123. Mr RJM Johns
124. Ms J Mallard
125. Ms LC Kinman

## **APPENDIX D**



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