

**APPENDIX A*****EXAMPLE OF METROPOLITAN INTERNAL INVESTIGATION FILE***

The complainant in this matter was well known to internal investigators and the Ombudsman. The complaint concerned a search of the complainant's home, which, as a precaution, was video, taped from start to finish. The video tape provides evidence that the police officers involved acted with restraint in difficult circumstances.

<b>19 August 2002</b>	Incident occurs. Complaint lodged at police station and first advice note compiled.
<b>17 September 2002</b>	District compiles second advice note and forwards to IIU.
<b>27 September 2002</b>	IIU compiles third advice note and forwards to Ombudsman. Regional Commander advised and instruction to investigate forwarded to District Superintendent.
<b>4 October 2002</b>	District Co-ordinator receives IIU papers.
<b>7 October 2002</b>	District Co-ordinator advises IIU of file allocation details.
<b>8 October 2002</b>	District Superintendent forwards paper to OIC of workplace for investigation.
<b>9 October 2002</b>	OIC advises District Superintendent of unavailability to investigate. File reallocated with note that it is to be completed by 8 November 2002.
<b>31 October 2002</b>	Investigation commences.
<b>5 March 2003</b>	Investigation report completed and forwarded to District Co-ordinator.
<b>7 March 2003</b>	District Co-ordinator forwards file to District Superintendent, who agrees and forwards to IIU.
<b>10 March 2003</b>	District Superintendent writes to complainant.
<b>12 March 2003</b>	IIU sends file to Ombudsman for review.
<b>14 March 2003</b>	File received at Ombudsman's Office.

<b>INVESTIGATION TIME -</b>	4 months (57 per cent)
<b>ADMINISTRATION TIME -</b>	3 months (43 per cent)
<b>TOTAL TIME -</b>	7 months

## Appendix B

### ***EXAMPLE OF COUNTRY INTERNAL INVESTIGATION FILE***

In this matter the complainant alleged assault. Police had closed down a noisy party and were removing gate-crashers when the assaults allegedly occurred.

<b>28 March 2002</b>	Incident occurs.
<b>3 April 2002</b>	Complaint lodged at police station, statement obtained and forwarded to IIU.
<b>4 April 2002</b>	IIU compiles advice note, advises Ombudsman, forwards file to Regional Commander and instructs District to investigate.
<b>8 April 2002</b>	Regional Co-ordinator forwards file to District for investigation.
<b>12 April 2002</b>	File allocated for investigation by District Co-ordinator and IIU notified of allocation details.
<b>17 April 2002</b>	File received by OIC of workplace and investigation commences.
<b>19 September 2002</b>	Investigation report completed and forwarded to District Co-ordinator.
<b>26 September 2002</b>	ADO suggests minor changes to report's recommendations.
<b>3 October 2002</b>	Amended report sent back to ADO.
<b>10 October 2002</b>	ADO forwards file to District Superintendent.
<b>5 November 2002</b>	District Superintendent asks for further investigation to be conducted.
<b>27 November 2002</b>	Amended file sent to ADO.
<b>20 March 2003</b>	ADO forwards amended file to District Superintendent.
<b>27 March 2003</b>	District Superintendent forwards file to Regional Co-ordinator.
<b>6 May 2003</b>	IIU send file to Ombudsman for review.
<b>8 May 2003</b>	Ombudsman receives file for review. (It is not clear when the letter to the complainant, dated 7 March 2003, was actually sent.)

<b>INVESTIGATION TIME -</b>	6 months (46 per cent)
<b>ADMINISTRATION TIME -</b>	7 months (54 per cent)
<b>TOTAL TIME -</b>	13 months

### Appendix C

#### **EXAMPLE OF POLICE LETTER**

[REDACTED]

#### **DISTRICT OFFICE**

Ref: [REDACTED] DO  
Enquiries: A/Sergeant [REDACTED]  
Internal Investigations Co-ordinator  
[REDACTED]

[REDACTED]  
Western Australia  
Telephone: (08) [REDACTED]  
Facsimile: (08) [REDACTED]

Dear Mr [REDACTED]

On [REDACTED] [REDACTED], 2002 you attended [REDACTED] Police Station and lodged a complaint about an incident, which occurred at the [REDACTED] Shopping Centre the previous day. The subject of your complaint was an off duty police officer.

Since that date you have failed to keep a number of appointments with the investigating officer and have not responded to our letters.

The investigation has since been completed without your assistance. There was insufficient evidence to support your allegation; subsequently no action was taken against the police officer allegedly involved.

The file on the investigation of your complaint will now be sent to the Ombudsman for independent review. You may expect the Ombudsman to contact you about the matter shortly. If you are not satisfied with the outcome of the police investigation, or wish to raise matters which you believe have not been taken into account you should discuss these matters with the Ombudsman who will decide whether or not police should make further inquiries or whether the Ombudsman should conduct her own investigation into your complaint.

Yours sincerely

[REDACTED]

District Superintendent

[REDACTED] District Police Office

[REDACTED] April 2003

**Appendix D*****EXAMPLE OF OMBUDSMAN'S LETTER***

Our Ref: [REDACTED]  
Enquiries: 92207519

14 May 2003

[REDACTED]

Dear Mr [REDACTED]

**COMPLAINT ABOUT POLICE**

I refer to the complaint that you lodged with this Office in which you alleged that [REDACTED] assaulted you on [REDACTED].

I will deal with this matter on behalf of the Ombudsman.

My review of the police internal investigation considered your statement to police dated [REDACTED], the police internal investigation report and District Superintendent [REDACTED]'s letter to you of [REDACTED] April 2003, copy attached.

**Background**

After reviewing your statement and the transcript of the interview conducted with [REDACTED], based on the available evidence, it would appear that:

- during the afternoon of [REDACTED] you were taking a break from your shift as a trolley boy at the Shopping Centre,;
- you were sitting in the trolley corridor that is located next to the Coles supermarket;
- you had placed a trolley across the exit to prevent public access;
- you were sitting on a metal pole, balancing with your feet on the trolley; and

- [REDACTED], who was off duty at the time of the incident, entered the trolley corridor on his way to his car.

After [REDACTED] entered the trolley corridor an altercation occurred between you and the officer. During this altercation you lost your balance and fell off the metal pole on which you were sitting. However, your account of the events both before and after your fall is quite different to [REDACTED]. To illustrate these differences I have summarised both statements below.

#### **YOUR ACCOUNT**

When [REDACTED] entered the trolley corridor you state that:

- you advised [REDACTED] that he was not allowed to use the corridor;
- [REDACTED] swore at you and continued to walk through the corridor;
- you asked him to please turn around and walk out of the corridor as he was not allowed to be there;
- [REDACTED] again swore at you and continued to walk towards you;
- [REDACTED] told you to move the trolley and you refused;
- [REDACTED] became aggressive, grabbed the trolley and rammed it into the back of your left leg causing you to fall;
- you yelled at him questioning "what the hell did you do that for?";
- [REDACTED] became aggressive and hit you in the chest with two open hands;
- you started swearing at and abusing [REDACTED];
- an unidentified male shopper intervened by telling you to stop swearing; and
- [REDACTED] walked to his car and drove away.

#### **[REDACTED] ACCOUNT**

In summary, [REDACTED] states:

- as he entered the corridor you used offensive language to tell him that he could not exit through the corridor;
- he advised you that his car was only 5 metres away from the exit;
- you continued to use offensive language to tell him that he could not use the exit;
- he tried to walk through the gap between the trolley and the wall when you slammed the trolley into his legs;
- he pushed the trolley away from his legs;
- you lost your balance and fell to the ground;
- you abused him;
- an unidentified male shopper intervened telling you to stop swearing; and
- he walked to his car and drove away.

The questions that arise when comparing the two perspectives are:

1. **did you push the trolley into [REDACTED] legs when he tried to exit through the corridor causing you to lose your balance and fall;**
2. **did [REDACTED] become aggressive as a result of your refusal to move the trolley, grab the trolley and ram it into the back of your left leg causing you to fall off the poles; and**
3. **did [REDACTED] push you in the chest?**

#### **MEDICAL EVIDENCE**

I note that you consulted a doctor the day of the incident. [REDACTED] observed several bruises and grazes to your right elbow, left ankle and your chest. While the injuries you received are consistent with your account, they are equally consistent with you having fallen to the ground. It could also be argued that you had pre-existing injuries. [REDACTED] supplied a photograph of the injury that he alleges he sustained when you pushed the trolley into his legs. The photograph of the injury appears to be consistent with a shopping trolley being pushed into his legs.

#### **ANALYSIS AND OMBUDSMAN'S OPINION**

Both versions of the incident are plausible, but both cannot be true. The police internal investigator tried to locate additional evidence to help reconcile the two versions. Unfortunately, he could not locate the witness or other forms of evidence. Faced with these differing versions and the absence of additional evidence the police internal investigator could not reach a firm conclusion that the police officer involved acted improperly. He therefore decided that your complaint could not be sustained.

I tried to fairly and impartially establish whether there is any satisfactory way to decide whether I should prefer one version of events over the other. I cannot simply choose one version of events without good reason to do so. Unfortunately, I was also unable to locate additional evidence to help me reach a firm conclusion. This does not mean that I do not believe you. It means only that, based on the limited evidence available to me, I am unable to reach a firm conclusion about what happened. Therefore, I consider that the conclusion reached by the internal investigator was reasonable.

On the basis of the information before me it is evident that there was an altercation between you and [REDACTED], which in my opinion could have been avoided by both parties. However, there is insufficient independent evidence to prove that [REDACTED] assaulted you.

I have formed the view that the police internal investigator, [REDACTED], appears to have properly considered the issues raised in your complaint in light of the available evidence and reached appropriate conclusions.

### **CONCLUSION**

My further involvement in this matter would be unlikely to alter this outcome. For statistical purposes I will record this matter as not sustained. Accordingly I have closed my file.

While I understand this may not be the outcome you were seeking, your complaint has served a useful purpose. It has made the police service aware of your dissatisfaction with police actions.

Yours sincerely

# CHAPTER 10

## INTERNAL INVESTIGATIONS

### 10.1 INTRODUCTION

The evidence led in nearly every segment of the hearings of the Royal Commission revealed a failure on the part of the Internal Affairs Unit ("IAU") of the Western Australia Police Service ("WAPS") to adequately deal with allegations of corrupt conduct of officers under investigation. This observation is not intended as a criticism of the current staff of the Professional Standards Portfolio, who fully supported the work of the Royal Commission. The WAPS Assistant Commissioner (Professional Standards) and members of IAU volunteered intelligence and assistance which significantly contributed to the success of Royal Commission operations, but the undeniable fact is that, over a period of time, IAU has had very few successes and, at the same time, officers whose conduct which is described in Volume I of this Report and which has been unacceptable, have, with very few exceptions, remained in WAPS.

On a number of occasions, when asked to account for the failure of IAU to deal with officers whose conduct warranted investigation, a common explanation proffered was a lack of resources. The claim seems to have some substance, but that could not explain every instance, and some were undoubtedly due to a lack of vigilance and vigour. An inference to be drawn from the alacrity of the officers of IAU to assist the Royal Commission is that it has provided them with access to resources, powers and expertise which the Professional Standards Portfolio has lacked in the past, and is an indication that those short-comings should be immediately attended to.

There has been controversy in the literature and in the community as to who should be responsible for undertaking investigations of police who are alleged to have committed criminal conduct. Wood (1997: 307-309) describes a number of deficiencies that he found in the system for internal investigations carried out by the New South Wales Police Service. He said that the system:

- Is complex, inconsistent and inflexible;
- Through its dependence on the proof of specific charges in a legalistic, adversarial context, and its punitive nature has encouraged the code of silence, and the practice of cover-up; discouraged honesty and a willingness to admit mistakes; and been productive of delay and enormous disruption to the careers of the officers involved;



- Is usually productive of an immediate stand-off between the Service and the member concerned, which effectively precludes any chance of problem solving;
- Has been affected by bias, leaks of information and collaboration and by an approach that is very much less thorough and convincing than conventional law enforcement;
- Is conducive to fear and want of openness in dealings between members and the organization;
- Is not well related to supervision, or to managerial improvement of the performance of staff about whom complaints are made; and
- Is characterized by investigations that are often given the appearance of being conducted with the objective of writing them off as unsustainable as soon as decency permits.

To varying degrees, some of the same criticisms have application in respect of the history of internal investigations carried out by WAPS.

The issue of the primary responsibility for the investigation of police misconduct was dealt with in the Interim Report of the Royal Commission and was referred to earlier. Notwithstanding the recognition of the problems identified by Wood, the conclusion was reached that it is essential that the Commissioner of Police have primary responsibility for internal investigations. That position has been recognized in Western Australia ("WA") since the *Parliamentary Commissioner Amendment Act 1984*, which authorized the Ombudsman to investigate complaints against police officers, but only after the Commissioner of Police had been provided with a reasonable opportunity to conduct his own investigation. WAPS and the Ombudsman have entered into a Memorandum of Understanding that records arrangements by which police complaints will be investigated by the Commissioner of Police and reviewed by the Ombudsman. These arrangements were discussed in the previous Chapter of this Report.

The Anti-Corruption Commission ("ACC") also has the capacity to oversee internal investigations by WAPS pursuant to the powers provided in the *Anti-Corruption Commission Act 1988*. The ACC and WAPS have also entered into a Memorandum of Understanding regulating the dealings between the two organizations. The Royal Commission has recommended the continuation of that position by the Corruption and Crime Commission ("CCC"), which is to fulfill the external oversight role previously carried out by the ACC and the Ombudsman. However, it is an implied condition of the arrangement that WAPS discharge its responsibility in an efficient and timely manner. The existence of an external

oversight agency that can fill in the gaps in investigations should not be an excuse for an inefficient and inadequate internal system.

## **10.2 HISTORY**

The manner in which internal investigations have been approached by WAPS has not been static, and there is a benefit in gaining an appreciation of the changes that have been made over time. WAPS has invested heavily in its internal investigation system to bring about positive change, and there is no doubt that much has been achieved, as can be seen in the evolution of the WAPS internal investigation system from 1985 to today, but it is equally clear that challenges remain.

### ***1985 to 1993***

In terms of a co-ordinated approach to internal investigations, WAPS established an Internal Investigation Branch (“IIB”) in 1985. IIB was charged with the responsibility for receiving and investigating complaints from members of the public about alleged police misconduct. IIB came under the control of a Chief Superintendent. He was also the primary point of contact with the Ombudsman, who had become involved in the investigation of complaints pursuant to s. 14 of the *Parliamentary Commissioner Act 1971*. IIB developed a system that included an internal investigation methodology:

- Complaints were received either at police facilities or the Ombudsman’s Office and then forwarded to IIB for investigation.
- Copies of complaints were provided to suspect officer(s) and witness officer(s), who were asked to prepare reports in response.
- Reports were compiled and forwarded to IIB.
- Forensic evidence might be obtained.
- Non-police witnesses were interviewed.
- Evidence was analysed and a report compiled.
- Complainants were then advised of the outcome in writing.

During this phase a process of dealing with minor complaints, which focused on conciliation, was also developed.

The most obvious characteristic of this methodology is that it was different from the methodology typically employed by police to investigate crimes. There were a number of

problems associated with it. Mostly, those problems related to quality. The following are examples:

- Complainants were not routinely interviewed. This frequently resulted in a lack of clarity about investigation issues and the complainant's account of the events in question.
- There was significant opportunity for the officers involved to collude. For example, it was not uncommon for the reports submitted by the involved officers to be identical in every respect, including the same grammatical and spelling mistakes. Ironically, internal investigators regularly cited the consistency in accounts given by officers as a reason to prefer their accounts to the less clear accounts of complainants.
- The accounts of complainants, witnesses and police officers were not regularly tested by putting competing propositions and contrary evidence to them.
- Correspondence to complainants was typically brief and often curt.
- Notwithstanding the emphasis on conciliation in the minor complaint process, apologies to complainants were rare. Matters were frequently concluded on the basis that police and the complainants agreed to disagree.

The issue of timeliness was dealt with through a formal extension system. In accordance with section 14(1)(b) of the *Parliamentary Commissioner Act*, the Ombudsman granted written extensions of time to complete internal investigations more than 42 days old. By 30 June 1993, the average time taken to finalize allegations was 70 days.

The IAU was established in 1988 and given responsibility for investigating allegations of corrupt behaviour within the then Police Force, researching potential corruption risks and prevention strategies and educating members on their responsibilities. The intention was that IAU would be responsible for all matters involving corruption or the use of position to gain an advantage and that IIB would retain responsibility for disciplinary matters. The distinction was not always easily drawn and the potential for overlap was not conducive to the effective combating of corruption.

### ***1993 to 1997***

This period coincided with a decision to change the way the Ombudsman's oversight role was discharged. Instead of the complainant expressing dissatisfaction with the outcome of the police internal investigation as a prerequisite to the Ombudsman's involvement, the

merits of selected police internal investigations were reviewed against objective investigation standards.

Over a three-year period commencing in 1993, the WAPS processes for internal investigations were reviewed by the Select Committee on the Western Australia Police Service (Tomlinson 1996). At that time, as part of the Delta Reform Programme, WAPS had resolved to restructure the system by creating a Professional Standards Portfolio that would incorporate IAU and IIB. The Select Committee was of the opinion that the previous systems did not work and recommended greater external oversight. The Select Committee noted that the experience from other jurisdictions was that, when a police force is being scrutinized, it acts more quickly and effectively. Conversely, where scrutiny was removed, there was a tendency for a police force to lapse into its former practices.

At the initiative of the then Commissioner of Police, Robert Falconer, WAPS proceeded to create the Professional Standards Portfolio under the leadership of an Assistant Commissioner, whose line of command was directly to the Commissioner. Commissioner Falconer gave priority to resourcing the Professional Standards Portfolio, and endeavoured to ensure that officers were recruited who were free from past allegiances. Following the departure of Commissioner Falconer, entreaties were made to having the Assistant Commissioner responsible for the Professional Standards Portfolio report to the Deputy Commissioner (Operations) rather than to the Commissioner of Police. Fortunately, the incoming Commissioner, Mr Barry Matthews, did not accept the arguments presented and this suggestion was not proceeded with. However, the IAU no longer had first call on appointments, and it would appear that resourcing IAU became less of a priority.

WAPS replaced IIB with the Internal Investigations Unit (“IIU”) within the newly created Professional Standards Portfolio. Although the internal investigation system remained largely unchanged, the investigation methodology underwent significant improvements:

- Complainants were interviewed as a matter of standard procedure.
- Suspect police officers were not routinely provided with copies of complaint letters.
- Police and civilian witnesses were interviewed as a matter of standard procedure, including putting competing and conflicting evidence to them; and
- All interviews were tape recorded and transcribed as a matter of procedure.

The extension system was retained as a means of controlling timeliness, but by 30 June 1997 the average time taken to finalize allegations had blown out to 126 days - a deterioration of 80 per cent from the 1993 average.

The establishment of the Professional Standards Portfolio marked a major advance in internal investigations in WAPS. Data produced to the Royal Commission by WAPS records that the number of disciplinary and criminal charges laid against members jumped sharply upon the creation of the Professional Standards Portfolio, although in the last two financial years, the number of criminal charges laid has dropped significantly.

### ***1997 TO PRESENT***

This period coincided with further changes to the way the Ombudsman's oversight role was discharged. As from 1997, all police internal investigation files were sent to the Ombudsman for review.

Primary responsibility for the case management and conduct of internal investigations was gradually devolved to Districts. IIU retained a quality control role, as well as acting as a "post box" for complaints and completed internal investigation reports. IIU remains the primary point of contact for the Ombudsman.

The minor complaint process was revamped and the Local Complaint Resolution ("LCR") process that was introduced emphasized conciliation over investigation.

The WAPS statistics show a significant reduction in the number of officers subject to formal disciplinary proceedings since the introduction of LCR. One explanation offered by WAPS for this is the recognition within Districts and Divisions of the benefits of managing and leading people at the local level rather than resorting to the centralized disciplinary processes to address improper behaviour. That explanation is logical and, if correct, encouraging. Not only is the management-oriented approach to be preferred, it also enables matters to be finalized much more quickly and expeditiously than through the formal disciplinary process.

## **10.3 THE RULE OF LAW**

The internal investigation process is not an alternative to, nor should it undermine, the rule of law. This is reflected in the "Commissioner's Orders and Procedures Manual" – Operational Procedure 28.2 (WAPS, 2002d):

Community perceptions of the Western Australia Police Service as an institution of public trust, are largely dependent on the extent to which the community embraces the belief that sworn officers, as law enforcers, are themselves subject to the rule of law

In order to ensure that there are no weaknesses in the process used by internal investigators to determine whether a police officer should be charged with a criminal offence, and thereby avoid the perception that police officers are treated more favourably than ordinary citizens, it is important that:

- All of the reasonably available inculpatory and exculpatory evidence is gathered in an admissible form;
- Evidence is analysed in ways that are not skewed towards reducing the culpability of the officer involved, including the consideration of relevant factors and the exclusion of irrelevant factors; and
- Disciplinary action is not preferred as an alternative to criminal charges, without reference to the prosecution policies.

WAPS has advised that, where an investigation has revealed that an officer may have contravened a criminal law, that officer will be subject to proceedings before a court in accordance with the Policy Guidelines of the Director of Public Prosecutions ("DPP"). Occasions arise when legal advice is sought from the DPP in relation to indictable matters or from the Crown Solicitor's Office in relation to non-indictable matters, as to whether matters should proceed before the court. Where there is *prima facie* evidence of an offence but the matter does not proceed to court, the reasons, supported by any advice from the DPP or the Crown Solicitor, are recorded in a discretionary register. Such a system is appropriate and should be adhered to rigidly.

#### **10.4 INTERNAL AFFAIRS UNIT**

The failures in internal investigations revealed by the evidence of the Royal Commission related primarily to investigations by IAU. Lack of resources were usually blamed, and that clearly seems to have been a factor. In recent years, IAU has adopted the process of utilizing a Tasking and Co-ordination Group, which approves and allocates priority to operations. Although many other units in WAPS would presumably be in the same position, IAU was not possessed of sufficient resources to pursue more than a few of its approved operations at any one time. In the context of the integrity of the organization, that position has serious implications. It means that there is available information to the effect that officers may be acting corruptly but no action is being taken because there are insufficient staff to do so.

It has to be recognized that investigating corrupt police is probably the most challenging of all criminal investigations. Corrupt police are invariably astute, skilled liars, aware of investigative and surveillance techniques, and often protected by a sympathetic network of

colleagues. Although the vast majority of police would not actively participate in corrupt conduct, there are no doubt many who would not hesitate to tip off a colleague if they were aware of a pending investigation into him or her. To successfully investigate serious police corruption requires a high level of expertise and resources, combined with appropriate powers.

IAU recently made a submission requesting the provision of 12 additional officers, but was only granted three. The Royal Commission has not made a detailed analysis of the staffing requirements of IAU, but if the performance of the IAU in the evidence before the Royal Commission is any guide, the request for 12 additional staff would have been reasonable.

### ***STRUCTURE***

WAPS has taken a decision to merge IAU and IIU into one entity, following a review by its Management Audit Unit. The complaint processing function currently discharged by IIU will be conducted through a group to be known as the Complaints Assessment Centre. Steps have already been taken to co-locate IAU and IIU in the same building, but a full merger will not take place until 2004 because of the formalities involved. One of the matters to be attended to arises from the fact that the activities of IAU are exempt under the *Freedom of Information Act 1992*, on the basis of its current specific function of covert activities related to the investigation of corrupt police. If its functions are to be broadened, and the number of personnel significantly increased, the FOI exemption has to be reassessed.

There are risks associated with merging the two units. IAU is necessarily a high security unit in which its covert activities must be carried out in circumstances of secrecy. At present, officers are only appointed to IAU positions after integrity checks have been made. The same does not happen for officers transferred to IIU. If the officers currently attached to IIU are to share the same accommodation, and have access to IAU information, integrity checks will need to be carried out for all staff within the new IAU. In addition, physical arrangements should be put in place to ensure that the covert activities within IAU continue to be conducted in circumstances of maximum security.

Recommendations for increased civilianization of WAPS are a recurring theme in this Report. The opportunity should be taken to reassess the requirement for sworn officers to discharge the functions of the staff of the Complaints Assessment Centre. The work of staff in the Centre will be essentially administrative and, whilst knowledge of the workings of the Police Service is essential, it does not follow that operational police are required to occupy the positions. The task of civilian staff is made easier by the availability of the various Standard Operating Procedures and the Corrective Action Matrix, which provides guidance

for the handling of complaints about police. In particular, the employment of a lawyer within the staff, with immediate ability to provide legal advice concerning the adequacy of the evidence for criminal charges, or the provision of natural justice, would be far more efficient than seeking the advice of the DPP or the Crown Solicitor on each occasion.

It is critical that the merger does not further dilute the existing inadequate resources of IAU. The merger will undoubtedly provide an opportunity for reducing the need for administrative support, and the opportunity should be taken to substitute those resources with additional staff in the Corruption Investigations Unit of the IAU.

### ***EXPERTISE***

In principle, it is desirable that the best investigators in the Police Service be available to carry out most corruption inquiries. In that respect, the approach of Commissioner Falconer was commendable. The role of an internal investigator is not attractive to all police. Investigating colleagues is not a task that comes easily in a working environment that, from the beginning of training, has been inculcated with the importance of teamwork and loyalty.

There is also the difficulty of returning to other duties after a posting to the Professional Standards Portfolio, such as unease about the prospect of investigating colleagues and then having to return to work amongst them. An unacceptable possibility is that officers spend their posting in the Professional Standards Portfolio carrying out their duties in a manner which is designed not to put at risk their popularity amongst officers with whom they will need to work in the future. Such an attitude is not consistent with the independent and robust attitude necessary to successfully expose corruption. These factors are real and enduring, and have to be addressed. Processes have to be put in place to attract the best investigators, and also to ensure that they do not suffer retribution for having carried out the role.

The options could include:

- Temporary promotion while serving in IAU;
- Promotion upon leaving IAU;
- The provision of fringe benefits while serving in IAU – such as the use of a motor vehicle; and
- Payment of a specialist allowance.



Measures that attract the best investigators are also important from the perspective of the Police Service, demonstrating its commitment to improving integrity and probity by entrusting resources and power to what is shown to be an elite group of investigators.

Another aspect of acquiring appropriate expertise is to recognize that there may be considerations that relate specifically to internal investigations in regard to recruitment and training. As has been pointed out, internal investigations not only require a high level of investigative skills but also officers with moral courage and resilience. Not every experienced officer will be suitable. Nor is it sufficient to exclude merely those in respect of whom there have been past integrity issues. The focus, rather, should be on identifying desirable job specific characteristics and actively seeking to locate and recruit candidates with those characteristics.

In many respects those responsible for internal investigations have as much in common with their colleagues working in similar areas in other jurisdictions as they have with other WAPS officers. Given the particular skills required for internal investigations, there may well be significant potential for there to be sharing of resources in regard to both training and recruitment with the police services of other States and Territories. Recruitment of external personnel directly into IAU is an option that should be available and should be utilized in order to maximize the population upon which IAU can draw.

Most importantly, recognition should be given to the position of the individual officers who accept the responsibility of a posting to IAU, with its consequential disadvantages. In order to ensure the opportunity of selecting high quality officers to transfer to IAU, it is essential that there be a system which provides both the incentive and the reward to officers who are inclined to accept the role.

## ***RESOURCES***

It follows from the recognition of the complexity of the task of investigating corrupt police, that it is essential that IAU have the best equipment and facilities to meet that challenge. Not only is it necessary to provide IAU with maximum assistance, but the appearance of preference being given to IAU in the allocation of those resources confirms the privileged position of the Unit in the Police Service, creating an atmosphere of professionalism and increasing its attractiveness to prospective officers.

On any view, it appears that the number of officers attached to IAU has been insufficient and needs to be increased. The ability of IAU to carry out educative and risk identification functions is compromised in circumstances where it is unable to investigate matters referred

to it. There will always be a need to prioritize investigations, but in allocating resources it must be acknowledged that corruption investigations, by their nature, tend to be resource-intensive. Thus there are special factors that justify more generous resourcing of internal investigations than might otherwise be appropriate.

The genuineness of the will of the Executive of WAPS to rid it of corruption remains liable to criticism while IAU has the appearance of being inadequately resourced.

### ***POWERS***

IIU has no power to compel a police officer to answer questions in relation to the investigation of criminal matters, nor to search the personal lockers or clothing of officers. IAU has a restricted capacity to enter all police premises and to search, without warrant, police-owned filing cabinets, desks and other property, but otherwise is required to obtain search warrants in the usual manner. Pursuant to regulation 603 of the *Police Force Regulations 1979*, IAU officers can order a police officer to answer questions relating to disciplinary matters, even though any such answers may be incriminating. The answers cannot be used in any criminal proceedings, but false answers or a refusal to obey an order to answer may form the basis of disciplinary proceedings. Notwithstanding the recommendations in the previous chapter that the disciplinary process should adopt a greater orientation towards management solutions, the retention of the power to direct officers to answer, is necessary. The provision has a dual purpose. It enables the Commissioner of Police to obtain information in circumstances in which, for reasons of self-protection, officers may be reluctant to answer. On the other hand, it also enables officers to provide information in circumstances in which what they say could not be used against them in any criminal proceedings. The existence of the provision is not inconsistent with the recommendation for the adoption of a less punitive approach to discipline within WAPS.

IAU needs statutory authority to conduct integrity testing programmes on the same basis as the Royal Commission. WAPS currently takes the view that it can conduct integrity tests, and in fact it has, although without success. However, it is evident that without legislative authority WAPS is not in a position to implement integrity tests of the requisite level of sophistication necessary to detect corrupt police. The establishment of the Corruption and Crime Commission ("CCC") will enable WAPS to co-operate with the CCC in order to utilize the integrity testing powers available. Nevertheless, WAPS should be in a position to conduct its own integrity tests, and to do so it should be given similar powers for the use of assumed identities and the conduct of integrity testing programmes as are available to the Royal Commission.

WAPS has published Administrative Direction 84 "Integrity Testing" (WAPS, 2002d) which provides the policy for the adoption of integrity tests, but of course provides no legislative authority for breaches of the law that may occur in the implementation of an integrity test. It is difficult to envisage an effective integrity test designed to test the probity of a corrupt officer that does not involve breaking the law in order to create the scenario of the test. As discussed earlier, police are obliged to obey the law in the same manner as other members of the community and to enable WAPS to conduct appropriate integrity tests, legislative authorities should enable the Commissioner of Police to authorize an integrity test which permits officers to engage in breaches of the law as particularized in the approved programme. Such a provision has been enacted in New South Wales in Part 10A of the *Police Act 1990* (NSW). Section 207A provides that the Commissioner of Police may conduct or authorize any police officer or other person to conduct an integrity testing programme to test the integrity of any particular police officer. The section provides that a person participating in an authorized integrity testing programme is not guilty of any offences specified in the section.

Some members of the community may question the capacity of the police to break the law, but the fact is that integrity tests are now an essential tool in corruption detection and need to be conducted properly and lawfully. That the Corruption and Crime Commission ("CCC") have the capacity to supervise any such tests could be stipulated in the legislation and would act as a safeguard against the power being abused.

## **10.5 THE ROLE OF THE UNION**

The Western Australian Police Union of Workers ("the Union") is in a complex situation in the context of investigations into allegations of corrupt conduct by WAPS police officers. The Union provides a range of services for its members including (2003):

- Industrial representation;
- Conditions of employment and rights;
- Assistance with disputes;
- Assistance with matters a member takes to the Industrial Relations Tribunal;
- Advice and help with disciplinary matters;
- Legal representation; and
- Funding for legal assistance for charges against members.

The Union is associated with the Police Federation of Australia, a federally registered organization under the *Workplace Relations Act 1996* (Commonwealth), which provides

coverage for 45,000 police officers Australia wide. In an earlier submission to this Royal Commission, the Union made positive statements of support for external oversight agencies and for a reform programme in general, and their attendance and input at a number of Round Table Conferences has evidenced this willingness to participate.

The Union has been prominent in almost all investigations by the IAU or the ACC into allegations of police corruption since the Eucla matter in 1988. It has not only provided finance for the legal representation of officers under investigation, but has taken a proactive role in challenging the tactics or powers of the IAU or ACC at every opportunity. In recent times it has provided facilities to comfort officers who were stood down as a result of corruption investigations.

Experts have consistently counselled against police unions supporting corrupt officers, and have encouraged the unions to contribute to the fight against corruption.

The report of the Mollen Commission (1994:125) noted that “while respecting the right of police unions to represent the interests of their members zealously, the Department [the NYPD] must make every effort to enlist the support of union leadership in assisting the fight against corruption”. In stating this Mollen recognized that the vast majority of police officers are honest and not corrupt, and that it is this vast majority of officers who are the principal victims of police corruption.

Wood (1997) also pointed out that police unions, by supporting the few corrupt officers, could be seen to be working against the interests of the vast majority of its membership.

Fisher in his review of Professional Standards in the Australian Federal Police (2003:60), and whose views must be respected after a long and distinguished career in industrial relations said:

As policing develops as a profession, so too will a different concept emerge for police professional representation. Few, if any, other professional associations support their membership in contested disciplinary cases. Indeed, most play a role in determining best practice for their profession and sit on boards or tribunals which hear and decide performance issues. It needs to be remembered that poor performance impacts on the profession as a whole, not just on the officer who is alleged to have committed the breach. In short, professional bodies, including police associations, should really be dealing with industrial and not conduct matters.

During the Royal Commission hearings, the Union was able to accommodate its conflicts of interest by the arrangement that was established in consultation with the government for funding to be given to the Legal Aid Commission for the representation of officers who were

adversely mentioned in evidence. This enabled the Union to confine its role to facilitating contact between the officers and the Legal Aid Commission, and to provide welfare support for those who were confronted with the stress of appearing before the Royal Commission. This arrangement replicated a similar situation established for the purposes of the Wood Royal Commission (1997), when the New South Wales government established the Legal Representation Office ("LRO"). The LRO has become a permanent body since the Wood Royal Commission and provides legal representation for police officers and other public sector employees before the Police Integrity Commission, the Independent Commission Against Corruption, and any Royal Commissions that may be established. The continuation of the arrangement has enabled the NSW Police Association to become more distant from corruption investigations and to adopt a more appropriate role for a police union.

Prior to the commencement of the hearings of this Royal Commission, the Union sent a letter to all its members advising them of the methodologies of Police Royal Commissions. On one interpretation, the letter seemed to be coaching police on techniques to avoid detection by the Royal Commission, but the Union has assured the Royal Commission that this was not its intention. Otherwise the Union has co-operated fully with the Royal Commission and has been able to adopt a neutral position in view of the independent arrangements for the provision of legal representation. With the establishment of the CCC and the likelihood of regular public hearings, a permanent arrangement should be established to enable the Legal Aid Commission to provide similar representation to police officers or public sector employees who are summoned to appear before the CCC. By those means, the Union will be able to continue to protect the interests of the vast majority of its members who are honest police whose reputations are damaged by the corrupt conduct of a few.

## **10.6 INTERNAL COMPLAINTS**

In the chapter on police culture in this Report, reference was made to the negative aspects of a culture in which officers are protective of colleagues and reluctant to report their misconduct. If that position is to be improved, it must involve a procedure that encourages and protects those officers who may be inclined to report misconduct.

In some respects, the shift to a managerial approach to handling complaints against police will contribute to an atmosphere in which police themselves may be more inclined to complain about their colleagues. An expectation that complaints will be handled more sensitively and less punitively may encourage officers to disclose misconduct, in the knowledge that the previous formal and punitive approach no longer prevails.

The issues concerning internal complainants are complex. Human nature favours loyalty. Reporting colleagues is not a natural inclination, nor is it likely to attract the approbation of mutual acquaintances. However, those factors are not a barrier to improvement, but simply a challenge. It is also worth noting that this is yet another issue in which systems may be improved, but there is a prerequisite of substantial cultural change before the benefits of structural changes are likely to be felt.

In a report entitled “Internal Reporting Systems” (1995), the Independent Commission Against Corruption (“ICAC”) in New South Wales identified the following as among the essential elements of an effective internal reporting system:

- Complaints must be received and acted upon within a spirit of continuous organizational improvement. This should be the primary motivation for disclosing information;
- Managers and supervisors must demonstrate a commitment to protecting persons who make disclosures, acting on the disclosures in a timely manner, and ensuring that any needed organizational improvements are made;
- At least two alternative internal reporting channels must exist;
- The system should be able to ensure confidentiality to those who disclose information as far as is practical;
- There should be clear documentation and description of the internal reporting system in the organization’s code of conduct;
- Members must be fully trained in the operation of the internal reporting system; and
- The organization should conduct regular reviews of the effectiveness of the internal reporting system.

This recognizes that information obtained from a complaints management system has the potential to improve an organization. Managers and supervisors need to be aware of this and be committed to supporting employees who come forward with information, as well as ensure that they do not suffer detrimental effects as a result of their disclosure.

An effective internal complaints system relies on all members at every level of the organization, each of whom has a crucial role to play in ensuring the success of the reporting system (ICAC, 1995). Employees should be encouraged to report known or suspected incidences of corrupt, criminal or otherwise inappropriate behaviour. Employees also have a role in supporting colleagues who do report such incidents. Supervisors have a responsibility for handling the information appropriately. This includes attending to the

matter quickly and efficiently in whatever manner is most suitable for the nature of the complaint. Supervisors must also maintain a relationship with the individual who made the disclosure and provide him/her with frequent feedback as to the status of the complaint. Top management has an important role to play in implementing organizational reform that may be necessary as a result of disclosures. Supervisors and managers also have a crucial function in providing support to members of the organization who come forward with information concerning corruption and/or misconduct within the agency, as well as supporting those who may be the subject of the complaint.

The effective operation of an internal complaints system is a function of efficient management. A complaints system cannot be separated from the individuals who make use of the system or are in some way involved in the system. Managing an internal reporting system, therefore, entails competent management of the organization's human resources. It is within this framework of a contemporary managerial administration on the one hand, and a lessening of the importance of traditional punitive measures on the other, that a best practice model for an internal reporting system should be considered.

According to figures provided by WAPS to the Royal Commission the rate of internal complaints is encouraging. Between 16 per cent and 17 per cent of complaints made to IIU are generated internally, although the actual number of complaints is reducing over time. The data indicates that 50 per cent of the complaints investigated by IIU are generated internally, although again, the actual numbers are reducing. No definite conclusion can be drawn from the figures provided, but they do provide support for the contention that there is a willingness on the part of WAPS officers to lodge complaints about their colleagues. However, in relation to complaints of serious corrupt conduct, the evidence before the Royal Commission revealed that the WAPS system for processing such information is far from perfect.

### ***WHISTLEBLOWERS***

Reporting corrupt behaviour is never easy, and it is even harder when the suspected corruption involves a friend, colleague or boss.

A whistleblower is a person who makes an honest disclosure of information in the public interest about serious wrongdoing in the workplace to an authority that is able to take the appropriate steps to deal with the matter. It is important to note that this definition, with its basis "in the public interest," sets it apart from those persons who make disclosures for personal gain or who make false or misleading reports.

It is widely acknowledged that reporting wrongdoing to an appropriate authority can be very difficult to do, and that some prefer to allow perpetrators to continue with their wrongdoing unchallenged, rather than to draw attention to themselves by whistleblowing. Reasons cited for not reporting wrongdoing include:

- (a) The belief that nothing useful will be done about the disclosure;
- (b) The belief that they do not have enough evidence of the wrongdoing;
- (c) Not wanting public attention and concerns over loss of privacy;
- (d) Fear of reprisals and disapproval from work colleagues and others;
- (e) The perception that they are being disloyal to a person or organization.

Anecdotally, it is understood that the two main reasons for failure to make reports within police services are the latter two reasons. The Royal Commission has heard of examples of harassment and intimidation of officers who have brought matters to the attention of police management.

It needs to be recognized and accepted that whistleblowers provide a valuable service in that whistleblowing can change the operating environment and culture of an organization by exposing past corruption, and by making it less likely that corruption will occur in the future. There is an additional benefit in that whistleblowing helps to delineate what practices are unacceptable.

### ***WHISTLEBLOWING AND THE LAW***

The *Police Force Regulations 1979* provide at r. 602 that “A member or cadet shall not – withhold any complaint or report against a member or a cadet,” and at r. 623 that “Any member being an officer, non-commissioned officer or officer-in-charge of a police station shall report promptly any member or cadet who has committed an offence against the discipline of the Force”. It is accepted that these regulations have been inserted to ensure that members of the Police Service recognize that they have a duty not only in respect of their own behaviour, but also for the behaviour of fellow officers.

Western Australia has recently enacted whistleblower legislation in the form of the *Public Interest Disclosure Act 2003*. The Act applies to WAPS. Section 5 of this Act provides that:

- (1) Any person may make an appropriate disclosure of public interest information to a proper authority.
- (2) A person makes an appropriate disclosure of public interest information if, and only if, the person who makes the disclosure –
  - (a) believes on reasonable grounds that the information is true; or



- (b) has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.

The section is important as it in part addresses the second of the reasons cited for not reporting a matter – namely that a person may feel that he/she does not have enough evidence of the wrongdoing. This section enables a person to make a public interest disclosure if he/she has an honest belief that an event or activity has occurred.

Section 8 of the *Public Interest Disclosure Act* creates an obligation on the proper authority to carry out an investigation and provides that it may refuse to do so only if it considers that:

- (a) the matter is trivial or frivolous;
- (b) the disclosure is made vexatiously;
- (c) there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter, or
- (d) the matter is being or has been adequately or properly investigated by another person to whom an appropriate disclosure of public interest has been made in accordance with s. 5(3).

Section 10 places an obligation on a person who has received a public interest disclosure to keep the informant abreast of the progress and outcome of the person's disclosure:

If an appropriate disclosure of public interest information is made to a person referred to in section 5(3) that person must, subject to section 11, not more than three months after the disclosure is made, notify the person who made the disclosure of the action taken or proposed to be taken in relation to the disclosure.

Subsequent parts of s. 10 deal with progress reports for matters not finalized and for providing final outcome reports once a matter has been concluded.

When taken together, ss. 8 and 10 will do much to remedy the first of the reasons given for non-disclosures, namely the apprehension that nothing useful will be done about the disclosure. Ensuring that, other than for stated reasons, the public disclosure will be investigated and feedback provided, should do much to give confidence that the concerns raised are being taken seriously and appropriately addressed.

Concerns about loss of privacy and not wanting public attention drawn to oneself, reason three of those given for failure to disclose, has been addressed in s. 16 of the Act:

- (1) A person must not make a disclosure (an "identifying disclosure") of information that might identify or tend to identify anyone as a person who

has made an appropriate disclosure of public interest information under this Act unless -

- (a) The person who made the disclosure of public interest information consents to the disclosure of information that identify or tend to identify him or her;
- (b) It is necessary to do so having regard to the rules of natural justice.
- (c) It is necessary to do so to enable the matter to be investigated effectively;
- (d) The identifying disclosure is made under s.12 or s.22 of the *Anti-Corruption Commission Act 1988*, or Part II Division 6 of that Act; or
- (e) To do so is required under s.14 or s.15 of the *Anti-Corruption Commission Act 1988*.

It is hoped that these provisions will do much to mollify concerns about the confidentiality of disclosure and, in doing so, open the way for increased disclosures to be made.

Concern number four, the fear of reprisals and the disapproval of work colleagues, has been given attention in s.14:

- (1) A person must not take or threaten to take detrimental action against another because anyone has made, or intends to make, a disclosure of public interest information under this Act.  
Penalty: \$24 000 or imprisonment for two years.
- (2) A person who -
  - (a) attempts to commit an offence created by subsection (1);
  - (b) intending that an offence created by subsection (1) be committed, incites another person to commit that offence; or
  - (c) commits an offence.
 Penalty: \$24 000 or imprisonment for two years.

The requirement to have such a provision is evidenced in the Public Interest Disclosure Bill 2002, second reading debate (Hansard, 11 March 2003), where the Hon. Derrick Tomlinson stated:

What will be done to protect the police officer who is suspected by his mates of disclosing information to the police internal affairs department and who constantly finds, for example, when he enters his office that all his files are scattered over the floor and when he complains to his superior, he is told, "You sort it out". What will we do for the ethical informant – I use this term rather than whistleblower – who gave evidence against her police colleague and was transferred from her station to a station a couple of thousand kilometres north? She was sent to Coventry! Her colleagues did not speak to her; they pretended she did not exist. How will she be protected? ... The constable who was sent to Coventry eventually took stress leave and then resigned from the Police Service – very, very effective protection! In fact, the Commissioner of Police gave her a commendation. Her colleagues showed her the way out. Her colleagues disclosed her medical file – contrary to the law – and nobody was prosecuted.

Relying on these comments, and on other information that has been made available to this Royal Commission, it is apparent that the Police Service has particular difficulties that need to be overcome to encourage officers to come forward with information, and to protect them from possible repercussions and retribution as a result. To this end, WAPS has developed two programmes – the Blueline anonymous reporting system and the Supported Internal Witness Programme - both of which are discussed in subsequent sections of this chapter.

The final reason cited for non-disclosure, feelings of disloyalty to a person or organization, is not an aspect that can be easily regulated. It goes to the heart of the culture of police services. Much has been written by Fitzgerald (1989) and Wood (1996; 1997) about this culture of silence and the difficulties in penetrating the “blue veil”. Wood (1997) described police as having a distinct organizational culture, aspects of which were seen as functional to the survival and sense of security of officers who have to work in dangerous and demanding environments. In this regard, Wood (1997) found that the group loyalty aspect of policing was not in itself negative. It was when this group loyalty became misguided and associated with a siege mentality and code of silence that it becomes dysfunctional and corruption tolerant.

As discussed earlier, there is a view that there is no one single police culture and that there are marked differences in the way in which various areas of the police service carry out their functions. It is necessary therefore, that strategies be developed appropriate for each of the sub-cultural groups to deal with any misguided sense of loyalty. As an example, the strong emphasis that is placed on team work and solidarity during recruit training needs to be balanced with an emphasis on individual accountability and responsibility.

### ***BLUELINE REPORTING SYSTEM***

The Blueline is an anonymous telephone reporting system that is managed by the Standards Development Unit in the Professional Standards Portfolio of WAPS. The system was introduced in June 1999 and provides a mechanism for officers to report serious misconduct or corruption through a confidential, dedicated telephone line (WAPS, 2003g).

Callers to the Blueline have the choice of communicating directly with an officer or simply leaving an anonymous message. Confidentiality of the information and anonymity of the caller are significant features of the Blueline reporting system.

Three hundred and seventy five calls have been made to the Blueline between its inception in 1999 and December 2002. A great many of these calls have been described as “hang-ups” and “curiosity calls”. Indeed, only 52 of the calls received contained information that was forwarded for investigation (WAPS, 2003g). The information provided in five of these 52 calls led to a sustained result, while nine of the 52 calls were not sustained.

Furthermore:

- Six of these calls were resolved internally;
- There were eleven ongoing investigations;
- The information provided was unfounded on fifteen occasions; and
- Six calls contained information that was retained for information/intelligence purposes only.

Only 52 calls to Blueline in three and a half years forwarded for investigation does not provide a convincing endorsement of the Blueline anonymous reporting system as being effective. These numbers raise questions regarding the usefulness of the Blueline reporting system, in terms of users of the system, the information provided, and the quality and success of the investigations that result from the information provided. What appears to be an attractive solution to the fundamental problems associated with reporting a colleague’s inappropriate behaviour (such as confidentiality and anonymity) is not in fact as effective as it should be if one is to rely on these statistics.

In July 2001, WAPS conducted an internal review of the Blueline reporting facility. The review found that:

- Blueline provides the only means whereby members of the Western Australia Police Service can anonymously report corruption and serious improper conduct;
- Members are using Blueline as a means of seeking advice on a range of ethical and workplace issues;
- Blueline is embedded in the Supported Internal Witness Programme site, which makes it difficult for police officers to access; and
- There is limited organizational awareness of Blueline and it needs to be marketed across the organization.

The review also noted that the number of calls regarding corruption and serious improper conduct was decreasing year by year. This raises the question, is the decline in the number of calls an indication of a fall in the level of corruption and/or misconduct within WAPS, or is

it a reflection of the “limited organizational awareness” identified in the review? John Kleinig (no date) would argue, neither. Rather, Kleinig would attribute the resistance on the part of police to make full use of the Blueline reporting system to a phenomenon that is deeply embedded in the culture of police, namely the “Blue Wall of Silence”. Kleinig (no date: 7–13) maintains that police are bound together by powerful associations kept alive by an intense loyalty:

... for those inside, the associations themselves have come to hold a significant place in their sense of who they are and what they stand for, as well as providing other significant intrinsic and/or instrumental benefits – benefits that are vulnerable to outside threat. And the code of silence protects those associational bonds ... For whatever reasons, the relations that are fostered and that frequently exist among police officers are very similar to those – and characterized in the same way as those – found among friends and family. It is not surprising, therefore, that where associations like these are perceived to exist, bonds of loyalty comparable to those we find – and generally acknowledge, within limits, as legitimate – within the contexts of friendship and family – will also exist. And with such bonds there will go a code or codes of silence.

This points to the fact that no amount of assurances of confidentiality and/or anonymity in relation to an internal reporting system will motivate police officers to use the system, because of the strong bonds between police officers that create a culture in which individuals support one another no matter what, and in which breaches of this unspoken rule are not tolerated. This is the fundamental principle that underpins any police organization, and is also the greatest barrier preventing members from coming forward with information relating to corruption and/or misconduct in the behaviour of colleagues. Kleinig (no date: 17–18) states:

The blue wall of silence, like its counterparts elsewhere, is sustained by a number of factors ... Most significant is the cost of breaching it. There is a huge social cost – ostracism, hate mail, harassment, denigration, threats, and so on. There is also likely to be a career cost – those who breach the wall may be reassigned or transferred (often to less desirable work), subjected to false complaints of misconduct, have their own violations reported, be given poor evaluations, not promoted, or even “forced out” of the job.

WAPS defends the value of the Blueline anonymous telephone reporting system in the belief that it has had some effect in terms of reporting serious corruption. Furthermore, WAPS maintains that the Blueline system is important in that it is just one of a range of reporting mechanisms within the organization.

Despite the above assurances, the Royal Commission heard evidence taken in private that casts doubt on the regard with which Blueline is held by serving officers. The private hearing evidence, of Officer Two, is canvassed later in this chapter.

From information gathered by this Royal Commission, it is safe to conclude that the view expressed above is not idiosyncratic, but is reflective of a wider held view. Indeed, notwithstanding genuine efforts to improve the situation, internal complainants have reported to this Royal Commission that:

- They have no confidence in the existing complaint mechanism;
- They fear, and have experienced victimization in the workplace as a result of complaints they have made;
- Feedback has been limited or in some cases non-existent, leaving them feeling that their efforts were not valued or appreciated;
- The culture remains one that is strongly opposed to reporting and those that do may be isolated and ostracized; and
- Their own experiences have discouraged them and are likely to deter both them and others from reporting such conduct in the future.

Notwithstanding those views, there is no doubt that the Blueline is a valuable facility for receiving anonymous internal complaints. The criticisms of the system relate more to the consequential use of the information rather than the Blueline system itself. It is based upon similar strategies used overseas, particularly in the New York Police Department and the London Metropolitan Police Service, and the continued provision of the service is essential.

### ***SUPPORTED INTERNAL WITNESS PROGRAMME***

Administrative Direction 74 "Supported Internal Witness Programme" ("SIWP") (WAPS, 2002d) includes that "It is the policy of the Western Australia Police Service to assist and support personnel who report serious misconduct or corruption within the Police Service". It further states that the purpose of the policy and guidelines are to:

- Develop a professional organizational climate where Police Service personnel feel confident to report corruption and serious misconduct, including harassment and racism;
- Provide practical support to the person making the report; and
- Ensure that appropriate action is taken in relation to the information communicated in the report.

In a foreword to Administrative Direction 74 the Commissioner of Police, Mr Barry Matthews, wrote as follows:

All members of our Police Service take responsibility for the integrity of the Service as a whole. We as a Police Service strive to foster a climate in which our members

feel safe and secure in the knowledge that their reporting of misconduct or corrupt behaviour by police personnel will be supported by the organization. We recognize there will be instances where police personnel will not have the confidence to make such reports to their superiors due to the perceived reaction of their colleagues.

The Supported Internal Witness Program is designed to offer assistance and support to police personnel who report corrupt or improper conduct by police. This ensures that we foster a climate in which members feel safe and secure in the knowledge that their actions are supported.

The reporting of this knowledge is generally done out of a sense of duty arising from high personal ethical standards. It is recognized that reporting on other officers can carry with it a high personal risk to the individual, as any disclosure of such action is not viewed lightly by colleagues.

All personnel reporting serious misconduct or corruption should do so in the knowledge that I personally support their actions, and that they will receive every assistance available.

Our integrity is our credibility.

A Code of Conduct for WAPS was subsequently promulgated in December 2002. Page four of this Code relevantly provides as follows:

It is your duty to report possible corruption, unprofessional conduct or unethical behaviour to one of the following:

- Your immediate supervisor, Superintendent, Director or Regional Commander
- BLUE LINE – 1800 99 44 88
- Internal Affairs Unit
- Assistant Commissioner (Professional Standards)
- Anti-Corruption Commission
- Ombudsman

Remember, you are not alone ... a Supported Internal Witness Program is available to members who report unprofessional conduct. The program is managed by the Standards Development Unit.

The foreword of the SIWP is important in that it encourages no illusions about the difficulties confronted by those contemplating making a disclosure, and the high-risk nature of doing so. It also recognizes the difficulties faced at an organizational level in encouraging such disclosures to be made. The personal assurance by the Commissioner of Police of his support is important in this regard, and is welcomed. It must however be assessed as to how effective the SIWP has been in encouraging disclosures.

The SIWP was designed to support and assist police personnel who report corrupt or improper conduct by other police officers. It emphasizes the separation of the investigative

process from its support and welfare role. This is clearly desirable, because investigators may well need to examine the available evidence very closely, and this role may conflict with the role of a support person. For this reason, the programme delineates the roles of various officers. The Officer in Charge of the Standards Development Unit is the Co-ordinator of the SIWP. It is the responsibility of the Co-ordinator to allocate a Case Officer, whose task it is to manage and administer all aspects of the particular cases allocated to that officer by the Co-ordinator. The duties of the Case Officer include fully informing the witness of the process and provisions of the programme and co-ordinating the provision of necessary support to the witness. The role of the Support Officer is, *inter alia*, to provide moral and emotional support to the witness, and to be alert to possible victimization/harassment of a witness and to take all available steps to prevent it. The Investigator must be a person independent of the SIWP. Amongst the duties of the Investigator are to treat the witness in a professional manner at all times, being mindful of the stressful circumstances that the witness may be in, and to liaise with the Case Officer. All supported witnesses are required to enter into a Memorandum of Understanding, which sets out what support they can expect from the programme, and what is expected of them in return.

Official records for the SIWP evidence a low application rate, such that it is necessary to question whether this programme has made a meaningful contribution to corruption prevention. Beyond its obvious corporate value, it is likely that any analysis of this programme would regard its effectiveness as limited.

By way of example, matters investigated by the Royal Commission, code-named Operation Amity, serve to demonstrate many of the failings of the existing systems and procedures, and perhaps more importantly, the manner by which they are put into operation. These examples are dealt with in some detail later in this chapter.

Other hearings of the Royal Commission have produced allegations from serving and former police officers of widespread corruption and misconduct. Many officers appear to have known of that conduct, but none felt sufficiently confident that they could report it. On the available evidence that situation can be explained in that officers are not confident that:

- if they report information to their superiors they will be treated with respect and fairness;
- they will receive support if they report information;
- reports they make will be kept confidential; and
- they will be protected from victimization and reprisals.



Those features should always have existed, and should now exist independently of the SIWP. The programme can be effective only if it reflects real attitudinal change within the organization. Such change must occur throughout the Police Service, but particularly within the Professional Standards Portfolio.

## **10.7 OPERATION AMITY – INTERNAL COMPLAINANTS**

The Royal Commission conducted a segment of hearings under the code-name Amity, during which four cases of internal complainants were examined in order to assess the issues and the effectiveness of WAPS procedures. It is acknowledged that this constituted a very small sample, but there was a very small group from which to choose.

Four internal complainants were called to give evidence in the Royal Commission in the course of this segment, together with a number of officers who were responsible for investigating their complaints. Two of the complainants gave their evidence in private, and two gave their evidence in public. The private hearings enabled the Royal Commission to hear evidence from witnesses who would otherwise have been reluctant to tell their stories, because they feared retribution or other negative consequences for themselves. Three of the complainants provided historical examples, while the fourth provided a contemporary example. The Blueline and SIWP were available to the fourth complainant, but they were of very limited value to him. For obvious reasons the officers are not named.

### ***PRIVATE HEARINGS - HISTORICAL EXAMPLES***

#### ***OFFICER ONE***

This officer gave evidence that, as a result of his witnessing particular incidents, he complained to the IAU concerning a fellow police officer. He had concerns about reporting the complaint through his local District Officer, because he believed it would not be handled properly if the complaint were to be directed to that officer, and that he himself would be exposed.

Despite his concerns, however, he was informed by the IAU that his complaint would be forwarded to the District Office. He was told that this was necessary because his complaint was of a disciplinary nature, and that the IAU was short staffed and unable to investigate the matter.

The officer was advised that the IAU had put in place certain safeguards, in an attempt to ensure that he was not victimized as a result of his complaint. However, in forwarding the

complaint to the District Office, the officer who was the subject of the complaint became aware of it through his friendship with the District Officer. More importantly, he found out who had made the complaint against him. The complainant was left for some time in the same working environment with the officer about whom he had complained. He indicated that it was “just getting too much”, but he was denied a transfer when he requested it at an early stage in the inquiry. He was not provided with any support in the form of counselling or mentoring, except to the extent that he felt he could call on the support of one of the investigating officers.

The feedback in relation to the investigation of the complaint and its outcome was vague and unsatisfactory. The officer was not told which matters of complaint had been sustained, which had not been sustained, and why they had not been sustained. He did not know whether disciplinary charges had been preferred or, if they had been preferred, what their outcome had been. This was a cause of dissatisfaction on the part of the officer. He received no feedback indicating that WAPS acknowledged and valued the action he had taken. Furthermore, he was later subjected to investigations with respect to counter-allegations, which clearly had the appearance of being motivated by a desire for revenge. The investigation of these allegations, whilst no doubt having been conducted by the IAU in good faith, resulted in the officer’s feeling that he had been punished by the very organization he had sought to assist.

The officer agreed that the manner in which his complaint had been handled would cause him to have reservations about raising any other matter in the future. In addition, he had concerns that, if the evidence he gave to the Royal Commission were to be made public, it would be used against him by his colleagues and, as a consequence, he would be treated differently by them.

### ***OFFICER TWO***

A second officer gave evidence that he had a lack of confidence in the reporting procedures, and in particular as to whether his complaint would be dealt with confidentially. This was due to a lack of response and feedback about other matters concerning which he had previously complained. As a result of his concerns, on this occasion, he referred his allegation directly to the Commissioner of Police, via e-mail. He believed that the then Commissioner of Police was sufficiently independent to act without favour, not having been a Western Australian serving officer throughout his career. He believed that his complaint would be treated seriously and confidentially.

The officer was aware of the Blueline facility. Nevertheless, he said that any complaint he made through this facility could “disappear into a big pit and not be given the credence it deserved, and if I gave my name and details, knowing how the rumour system works within the Police Department, I wasn’t confident that it would remain confidential”.

The officer made several complaints against a senior officer. These complaints were subsequently divided between two different agencies for investigation. As to who was investigating which matters, and why, the officer was never clearly advised. Subsequently, the officer became aware that other officers from his station were being interviewed. He was not warned of this in advance, despite the obvious risk that he might be identified and become the subject of retribution. This did in fact occur, and he became aware of a change in the behaviour of some officers towards him. He recounted an incident in which he had been referred to in derogatory terms as he passed by other officers. They likened him to a notorious traitor.

The officer said he had received little feedback on the progress of any investigation. The personal impact of such a lack of response was revealed in his evidence when he said:

It would be nice to know a little bit more, yeah, what’s going on and a little bit about the progress, I suppose, because I haven’t been feeling that good about myself, about coming forward, but it had to be done.

He then explained how a lack of any feedback regarding his previous complaints had produced a negative impact. He said:

[Y]ou feel bad enough anyway making a complaint about a fellow officer. You feel like you’re letting the team down ... ,but to then not have any feedback saying you’ve done the right thing or you were instrumental in bringing a crook to justice ... [I]f they gave you some feedback you could feel a little bit reassured that you’ve done the right thing.

In relation to the impact upon those officers or witnesses who provided confidential evidence to the Royal Commission concerning other officers, the second officer said, “[t]here’s pretty rigorous attempts made by a good number of people to find out” who is responsible for that information. If they are identified, they can expect to receive adverse comments by being referred to as troublemakers or turncoats, and they are generally ostracized by other officers. Whilst this may be bad enough in any organization, it can be devastating within a police service where so much operational reliance is placed on support from fellow officers.

***PUBLIC HEARINGS - HISTORICAL EXAMPLE***

A former officer gave evidence regarding his experiences in the late 1980s and early 1990s. He explained how he was effectively victimized and marginalized as a result of his making complaints. He was required to conduct an investigation into his own complaints, but was then prevented from adequately completing that investigation. He was subjected to counter-complaints and threatened with attacks upon his fitness for work, and even his sanity was challenged. He was left in a hostile working environment without any support from WAPS. He told the Royal Commission of the effect that these experiences had upon him, of the trauma and the stress he suffered, and of the eventual loss of his livelihood.

The officer had served for 22 years, attaining the rank of sergeant. He was discharged, having been declared to be medically unfit.

While serving as a WAPS officer, he raised a number of concerns he had about the corrupt behaviour of his colleagues, dating back to 1987. Without detailing all the facts giving rise to these allegations, it is sufficient to note that they concerned officers serving at various levels in the police hierarchy, and that they involved varying degrees of corrupt behaviour.

As a result of his concerns, the officer took some precautions to protect himself but he became the subject of various rumours within WAPS. The officers who were the subject of his complaint, became aware that he had tape recorded an interview with a senior officer who was conducting an internal investigation into one of the matters relating to which the officer had provided information. He had suspected that the inquiry would result in a “whitewash”, and he had preserved the recordings as a form of self-protection. He had only told a limited number of his colleagues about the tape recording but he had later heard that it had been spread around the CIB that he had taped his interview with this senior officer. The consequences of these events were described by the officer as follows:

There was nothing overt. There was mainly a whispering campaign. That’s the way the CIB operates. You hear all rumours, but it got back to me that I could forget about any promotion in the CIB.

In relation to a further allegation of improper practices, the officer submitted another complaint report. He later became aware, however, that his superiors had not forwarded this complaint on for investigation. Once he had realized the situation, the officer submitted another report, on this occasion to a person at a more senior level than the first. Included in this report were allegations in relation to two high-ranking officers. These officers were interviewed, despite the officer’s reluctance for this to occur, for the reason that, as soon as

they found out that he had made a complaint against them, that would be the end of his police career. He said that he was fearful of being victimized. He was, in fact, victimized.

The officer said that he was called in for discussions with one of the persons who had been interviewed as a result of his complaint, and he was told that he was to be transferred immediately. He was tasked with conducting an investigation into the allegations he had made of corrupt conduct, to be completed within three weeks. He was effectively being directed to investigate his own complaints concerning his own superiors. Furthermore, the two high-ranking officers had been provided with more information than the officer had expected in relation to the issues about which he had complained.

The officer was advised that the Commissioner of Police had been briefed about his circumstances and that, if he experienced any victimization, there was a person whom he had named who would "sort things out". Based on his personal experience, this would not have been satisfactory.

At the end of the three-week period, the officer was refused an extension of time for the completion of his report. He was then ordered to reorganize the "file room", which he interpreted as a move intended to denigrate him, the task usually being given to a cadet officer. He felt humiliated and belittled by this order.

Some time later, a meeting was called, at which a number of the officer's peers were present. During this meeting he was named as a person who was not welcome because the meeting was being held in relation to allegations that had been made by him against the group, and he was asked to leave. This distressed the officer, as seems clearly to have been intended. He went to the person who had been named as the "Support Person", who told him:

[name], you've always had a propensity to swim against the tide. Why don't you go with the flow?

The officer learnt that the reports he had made had been forwarded to the IAU, with a view to having him charged with criminal defamation. He became distressed, and went on sick leave for a week. He then took accumulated annual leave for two months.

The officer later became aware that the investigators had been unable to find a basis for any charges against him of criminal defamation. When he returned from his annual leave, the officer heard that the senior officers about whom he had complained were going to send him to see a psychiatrist, with a view to having him certified as insane. As a precautionary measure, the officer consulted his own doctor, in order to satisfy himself that

the person to whom WAPS intended to send him was not corrupt. The psychiatrist confirmed that he was suffering from stress, and the officer was given sick leave for a further three months.

During this period of leave, the officer was transferred, and his plain-clothes allowance was cancelled. It was later reinstated. In the circumstances, understandably, the officer viewed the actions of his colleagues as part of a vendetta against him.

The officer was then ordered to present himself to the Police District Medical Officer for examination. At the time, he believed that this was to be the first step in the process of having him certified as insane. In response to this fear, one of the officer's superiors laughed and remarked, "What they're trying to do is break you".

To a question from Counsel Assisting as to whether he received any support or assistance from WAPS, the officer responded, "You're joking aren't you?". He said that he felt that, at the time, the very senior officers, from the Commissioner of Police down, were trying to "shaft" him.

The officer submitted himself to various consultations with a psychiatrist nominated by WAPS. The psychiatrist had no concern with respect to his sanity, but felt that, because of the serious conflicts that existed in his workplace, it was unhealthy for him to remain in that particular environment. On his recommendation, the officer was discharged on stress-related medical grounds.

The officer considers that WAPS never properly investigated the complaints that he had made. Australian Federal Police officers had assessed the officer's allegations and made a recommendation that further investigations should be conducted. A taskforce was formed, and the ensuing investigation produced a report. The officer has not seen this report. He had no response to a letter to the Commissioner of Police asking what had been done about his allegations.

The officer's experience as an internal complainant illustrates police culture over a period of more than a decade. He felt marginalized and isolated as a consequence of his raising complaints against his fellow officers, and being provided with no adequate feedback in relation to the allegations he had made. His career path was seriously affected, and he felt that he had not been supported by WAPS. Apart from doing a few jobs for a solicitor, he has not worked in ten years. He has been embittered by his experience.

***PUBLIC HEARINGS - CONTEMPORARY EXAMPLE***

An officer gave evidence in relation to events that occurred in 2001 when he was notified that he was to give testimony the next day in a *voir dire* hearing in the Supreme Court in respect of the admissibility of evidence in a murder trial. Prior to the *voir dire*, the officer spoke to the Crown Prosecutor and outlined a series of allegations against a senior officer involved in the murder investigation that he would be forced to reveal during the *voir dire*. The officer alleged that the senior officer had assaulted the accused whilst in police custody, that video evidence of the assault had been destroyed, and that notes of an alleged confession had been fabricated.

The officer testified to the Royal Commission that he did not report these events at the time when they occurred, as those involved included his supervisor, an inspector, and another high-ranking officer. His concern about what had transpired is evident in that, in his written statement, made as part of the prosecution brief against the suspect who had been assaulted, he stopped at the point prior to the assault occurring. In this way he neither told a lie nor told the entire truth. On being notified that he was to give evidence on the *voir dire*, the officer recognized that, in order not to lie under oath, he would need to give a full account of his knowledge of what transpired in relation to the assault and the fabricating of evidence.

This was a situation where a serving officer, whose integrity was not in dispute, was making allegations of serious misconduct for no apparent ulterior motive other than that he felt compelled to tell the truth on oath, and was concerned that in doing so his evidence would contradict that of others. The officer gave his evidence on the *voir dire*, and news of his testimony was quickly transmitted around the upper echelons of the Police Service. An inspector from the IAU was allocated to lead the investigation into the allegations made.

On the evening that the testimony was given on the *voir dire*, the inspector and another IAU investigator attended the house of the officer for the purpose of interviewing him. Prior to the interview commencing, however, they issued him with a criminal caution, warning him of the usual terms that anything he said may be used in evidence. The rationale that was subsequently advanced to explain this action was unconvincing, with reference being made to the "time, place and circumstances". This was a phrase that was heard on many occasions in the hearing room and seems to cover a multitude of sins where no other more adequate explanation is available. The effect of the criminal caution on the officer, who had been willing to participate in the interview up to that point, was devastating. Whereas he considered himself to be a witness or a complainant, here he was being issued with a criminal caution as is used with persons suspected of having committed

a criminal offence. It was subsequently acknowledged in Royal Commission hearings that no adequate explanation was offered to the officer to explain this course of action, and that it was not part of any standard practice in relation to complainants to the IAU. The result was that the officer declined the interview.

The following day, the officer attended the offices of the IAU to be interviewed under direction, which in essence meant that the interview was no longer voluntary and answers given could be used in disciplinary proceedings only, and not in criminal proceedings. There were a number of irregularities:

- Despite being criminally cautioned, the officer was not told if he was the subject of any complaint, or criminal or disciplinary matter. It is of concern that experienced investigators were seemingly unable to give thought to the consequences for the officer in being cautioned in this matter.
- The officer was not advised that he could have a support person present during the interview. The lack of adherence to process raises concerns as to the qualifications and capacity of the investigating officers to carry out an investigation of this type.
- The officer was not made aware of the Supported Internal Witness Programme (“SIWP”), nor was he offered the opportunity to participate in it. The lack of knowledge of the SIWP by the investigating officers is disturbing, particularly as the IAU was part of the Professional Standards Portfolio, the section within WAPS charged with carrying out the SIWP.

The manner in which the IAU officers undertook their investigation of the allegations raised is cause for great concern, as too was the response by other sections of WAPS as the following events indicate:

- Notes that the officer had prepared regarding the allegations were subjected to a Scientific Content Analysis. This is an analysis that seeks to determine, by the use of language and grammatical construct, whether a person is telling the truth or not. The officer was not informed that this testing had taken place. This technique was not, however, used to analyse the statements of the senior officer against whom the allegations had been made, or of any other person involved.
- The officer’s medical records were obtained and notations regarding a car accident involving the officer when he was a child, in which he suffered a head injury, led to the officer being requested to undergo neuropsychological assessment. This is despite there being no suggestion



of this childhood accident having a deleterious impact on his ability to perform his duties, and a document on file from his treating neuro surgeon to that effect. The officer was not informed of the outcome of this assessment, which concluded that there was no indication of abnormality and that his responses were all within normal range. Not satisfied with this response, the investigating officers sought answers to specific questions in relation to the officer's memory, the response to which was that there was no deficit detected and, again, that everything seemed to be within the normal range. The IAU investigators subsequently maintained that this was necessary to exclude any potential that he was suffering from memory loss or cognitive impairment from the accident in childhood.

- Following the officer attending for psychological counselling at the well-intentioned suggestion of his supervising officer, news of this attendance was reported back to the supervising officer by one of the IAU investigators to the effect that he had a "nutter" on his hands. It should be noted that at the end of the appointment with the psychologist, the officer was advised that there was no need for him to return. The IAU investigator denied that anything he had said could cause the officer distress, and that he could not recall referring to the officer as a "nutter."
- The officer was requested to provide information in relation to his financial circumstances and, in particular, his bank records. The officer was not informed why this was necessary, nor was he advised of the outcome. The IAU investigators gave evidence to the Royal Commission that this was necessary to exclude the potential that the officer had been paid to have the murder trail aborted.
- An approach by the officer's supervisor for assistance from the Health and Welfare Branch of WAPS was met with the response that "if he's [the officer] got nothing to hide he's got nothing to worry about". As a result, the supervising officer was provided with no professional assistance in supporting the officer despite his clearly seeking such help. No explanation has been forthcoming that would provide justification for this response, and it is indicative of the lack of support experienced by internal complainants.
- The officer was eventually advised by IAU that, due to insufficient evidence, no one was to be charged arising from their investigation.

The officer gave evidence that he believed that, whilst he still had a job, his career was over. He also described the manner of his treatment by some officers, and pleasingly, the support he had received from others – generally those who had shared similar experiences.

The officer presented as a sincere and credible witness, who recounted what had occurred to him without bitterness, but with resignation. It was clear that any hope he once had that the organization would treat him fairly and with due regard to his position as an internal witness, had been disappointed.

If the manner in which the officer was treated by the investigating officers was a concern, so, too, was the response of WAPS when these matters were brought to their notice by the Royal Commission. In a submission on this subject WAPS have attempted to exculpate the behaviour of the investigating officers and shift the blame to the officer and his supervising officer. At the risk of selective quotations, the following are illustrative of these points (WAPS, 2003g: 5-7)

[The officer] did not report the serious misconduct at the time it occurred.

[The officer] is to be commended for having the courage to come forward, however there is a question as to whether he came forward motivated only by the desire to take a courageous and ethical step in corruption resistance, or he eventually spoke up to protect his position once allegations about confessional statements were to be aired in a court of criminal jurisdiction.

... the unconventional means by which [the officer] became an internal complainant, an *engineered statement of evidence* and the early stage at which he was being interviewed, it was properly open to the IAU investigators to assume the possibility that [the officer] may have committed a criminal offence and issue a criminal caution to him before they interviewed him. It is surprising that [the officer], as an experienced detective was “stunned” and “perturbed” by the issue of the caution. [emphasis added]

Some responsibility must rest on [the officer] and [the supervising officer] as police officers who were not satisfied with what was happening to ask to take advantage of a programme that was in place and on offer to assist and support [the officer] as a member of the Service. It does not stand up that issuing a criminal caution and the other steps taken in the investigation by IAU would have intimidated [the officer] away from seeking access to this entitlement ...

These contentions evidence a disturbing continuation of the failure of WAPS to appreciate the sensitivity of the position of the officer concerned, and of the cultural inclination to criticize the whistleblower.

The case studies have been described in some detail in order to particularize the problems that seem to arise in the current administration of the SIWP. It is not possible to formulate a scheme that can instantly provide the protection that internal witnesses need, at the same time as taking advantage of the information that they can provide. It is hoped that the case studies themselves will provide lessons that can be learned for the better handling of internal witnesses.

It is acknowledged that amidst a culture of solidarity it is difficult to foster an atmosphere that will support and encourage internal complainants. In order to investigate, deal with and expose corrupt conduct, however, it is necessary to achieve this outcome. The necessary protections must be in place, and those responsible must have a commitment to their application. The police need to have practices and procedures that really work, and are seen to work. The spirit behind such procedures as the SWIP have to be reflected in the way internal witnesses are actually treated. To date there have been only three applications to enter the SIWP. That in itself may be an indication of the view of its effectiveness.

The structures in place through the Blueline reporting system and the SWIP are sound, provided that they are administered sensitively other issues referred to in this Report, a positive change in the culture of WAPS is likely to manifest itself in tangible improvements in various areas, including the position of internal complainants.

# CHAPTER 11

## INFORMATION TECHNOLOGY/UNAUTHORIZED ACCESS

### 11.1 INTRODUCTION

Intelligence-based policing, an approach specifically embraced by Western Australia Police Service ("WAPS"), invokes a requirement to substantially expand intelligence holdings of the Police Service, if the methodology is to be successful. To do so requires the inculcation of an attitude in officers that respects the utility of intelligence. This attitude is manifested in a greater attention to the collection and filing of information, and by ready access and use of the system containing the information. More and more systems for recording intelligence and personal information will become the basic resource of policing. The challenge of police services to maintain security over the information stored will increase at the same rate.

The need to ensure the confidentiality of personal information and integrity in the use of the information is important in maintaining public confidence in WAPS. There is broad public awareness and concern about the amount of personal information that is being stored by government instrumentalities. In respect of the police there is an acceptance that police officers should have access to such information in order for them to carry out their work effectively and expeditiously. On the other hand, members of the community increasingly need assurance that their confidential information will be used only for proper policing purposes, and that their rights to privacy will be respected.

Breach of the principles relating to the security of private information is a breach of privacy and should be considered in that light. Breaches of privacy are contrary to international and Australian standards that, over the last ten years, have increasingly been strengthened. Information Privacy Principles based upon guidelines issued by the Organization for Economic Co-operation and Development ("OECD") form the framework for privacy. The governing principle of the OECD Information Privacy Principles is that personal information should not be disclosed, made available or otherwise used for purposes other than those specified, except with the consent of the individual or by force of law.

To date Western Australia does not have distinct legislation governing privacy and enforcing privacy principles. There is a proposal that such an Act be introduced. A discussion paper was recently issued by the Attorney General, which canvassed the need for privacy legislation and the establishment of an independent statutory office to administer that legislation.

Confidential information held by WAPS, by its very nature, may have a high value to persons in the community. Given the nature of the information held by WAPS, a breach of privacy involving confidential information may imperil the safety or the rights of the person affected. Further, if uncontrolled, breaches may permit corrupt relationships to develop between police officers and criminals. It is noteworthy that, in almost every corruption investigation conducted by the Royal Commission, instances of unauthorized accesses were discovered, often incidentally to the main matter under investigation.

As a matter of practical concern, the compromising of the confidentiality of information held by WAPS will negatively impact upon the effectiveness of operations. Unauthorized accessing and disclosure of information may result in criminals avoiding detection and, in the State, wasting resources on unsuccessful investigations. Information is vital to sound and effective policing. The WAPS computer system must allow for the storage and retrieval of information in a manner that assists the ability of officers to properly conduct their duties, but inhibits unauthorized access of the system.

In addition, rapid advances in communication technology, such as the development of mobile telephones with camera capacity, will add to the corporate burden of maintaining security over information technology systems.

## **11.2 UNAUTHORIZED ACCESS TO POLICE DATA-BASES AND DISCLOSURE**

The WAPS data-bases contain information that has real value to persons who do not have lawful access to it. The reasons for persons wishing to access the information may range from a desire to locate friends, to a debt collection agency pursuing an absconding debtor on behalf of an aggrieved creditor, and to organized crime figures wishing to obtain the whereabouts of a protected witness. It is likely that many, if not most, of such transactions will involve no exchange for pecuniary benefit. The process seems to operate more on the basis of favours. The receipt of a benefit, whilst a relevant circumstance, will not always indicate the seriousness of the conduct.

The scope of what constitutes unauthorized access may not be limited to task-specific exercises. The WAPS guidelines encompass the expectation that officers will utilize the computer system to develop knowledge. The WAPS submitted that officers are actively encouraged to enhance their knowledge of persons of interest and their associates. That is a legitimate and necessary facet of intelligence-based policing. The awareness of the existence of intelligence may alert an officer to relationships between persons, and could assist in making a determination as to whether particular observations made may assist other officers who are undertaking investigations.

Police officers are in positions of trust in respect of the confidential information available to them and the encouragement to access it. It is a trust that may be subject to abuse and hence lost. Concerns exist that unauthorized accessing of information and disclosure is a significant problem in WAPS. If that is the case, it would reflect the experience of other jurisdictions. Whilst the actual number of instances of unauthorized access that emerged during the hearings of the Royal Commission was comparatively small, they arose with sufficient frequency and consistency to indicate that WAPS has a significant issue of unauthorized access.

The Criminal Justice Commission (“CJC”) of Queensland (2000) noted that many of the police officers found to have engaged in the unauthorized accessing of information claimed to have been acting for legitimate purposes in a perceived pursuit of justice, albeit in the knowledge that doing so was contrary to departmental instructions and the law. The reasons to justify the unauthorized accessing included the following:

- The person to whom the information was being supplied was an ex-police officer and could be afforded a higher level of trust than was normally the case;
- There was a common goal shared by the person requesting the information and the subject officers, as the person in question was often performing tasks in relation to persons who were avoiding lawful obligations;
- The person requesting the information, in the opinion of the subject officer, was of good character and had good intentions; and
- To conduct a probity check on an acquaintance.

The Wood Royal Commission (1997) noted that instances of unauthorized access and disclosure of information were most prevalent in the following circumstances:

- The release of information to private inquiry agents and persons in similar occupations, usually former officers, in exchange for payment;
- Searches motivated by casual interest or curiosity regarding persons appearing in the media or other public figures;
- Searches on behalf of friends or family in relation to family and marital disputes, motor vehicle accidents and the like; and
- Searches made to assist criminals in relation to the status of current investigations, or criminal records.

The unauthorized accessing of the WAPS data-base may involve a single transaction or involve numerous transactions by an officer who has developed a corrupt relationship with a private inquiry agent. Evidence was received by the Royal Commission demonstrating that there has been a general increase in complaints of unauthorized accesses to, and disclosures of, information from the Police Service over the last five years.

The Anti-Corruption Commission ("ACC") confirmed that there were 209 referrals by WAPS to the ACC in respect of information disclosure over a six-year period ending 2002/2003. The ACC determined that whilst 113 of the referred cases were not substantiated, 45 cases resulted in some form of administrative or disciplinary action being taken and 27 were subject to further investigation. The Royal Commission received evidence that, of the 209 persons subject to complaint, 180 were sworn officers and 29 were public officers.

The Internal Affairs Unit ("IAU") of WAPS maintains statistics for complaints in eight categories including computer accesses and disclosing official secrets. An allegation, if substantiated, may result in counselling (formal or informal), a disciplinary charge, a s. 8 order of removal or resignation. In 2000/2001 the IAU received for investigation 29 allegations of inappropriate computer accesses and 22 alleged disclosures of official secrets. Investigations resulted in five allegations of inappropriate computer access being substantiated.

The IAU statistics reveal that there have been 96 cases of alleged disclosure of official secrets over a seven-year period ending year 2001/2002. In addition there were 76 cases in the category computer access over three years (there being no recording of such statistics prior to 1999/2000). Of the total 172 complaints, 139 were not substantiated (81 per cent) and only 33 were substantiated (19 per cent).

The Internal Investigations Unit ("IIU") of WAPS also provided statistical records to the Royal Commission detailing the number of complaints relating to unauthorized accessing of the WAPS computer system and the divulging of information. To some extent the records of IIU and IAU overlapped, as complaints received by IIU that had the potential to reveal criminal conduct were referred on to IAU, and appeared in both records. In respect of unauthorized access of information, 29 officers were subject to complaint during the seven-year period ending 2002 with 22 complaints being sustained. The statistics in respect of divulging official information included the disclosing of information other than material accessed on the WAPS computer system. During the seven-year period ending 2002 there were 303 allegations with 201 of the allegations being not sustained, unfounded or the suspect being exonerated. In respect of the 102 allegations that were sustained, six officers

were charged with unauthorized release of information, a further two officers resigned and the other officers were the subject of internal sanctions.

The Professional Standards Portfolio categorizes reported or detected misconduct into behavioural groups. The number of breaches in the category of “misuse of computer information” expressed as a percentage of all categories of misconduct is demonstrated by the following table.

<b>Year</b>	<b>Total number</b>	<b>Percentage of Total Issues</b>
1996–1997	44	3.03%
1997--1998	61	3.39%
1998–1999	82	5.25%
1999–2000	56	4.44%
2000–2001	108	8.35%
2001–2002	60	5.51%

WAPS submitted that the figures should be viewed in the context of the size of the current workforce. The inference invited is that, given the number of complaints in the light of the total number of officers in WAPS, the problem of unauthorized access is not a significant problem in relative numerical terms. The difficulty with this reasoning is that, because of the difficulties of detection, it must be recognized that the statistical recording of the number of complaints may not be an accurate indicator of the extent of the problem. A contrary interpretation of the statistics is that they indicate the degree of difficulty in investigating and substantiating allegations of unauthorized access.

Unauthorized accesses are difficult to detect, given that the disclosure of the information that has been obtained is frequently to the person who requested the unlawful accessing. Unless the person whose private information has been accessed becomes aware of it, there is unlikely to be a complaint. In addition, the absence of adequate security controls on the WAPS data-base may conceal the number of unauthorized transactions.

The Royal Commission conducted hearings that were directed to determine the magnitude of the problem in WAPS, the efficacy of preventative and investigative procedures, the adequacy of existing laws and regulations and training and education of police officers. Whilst it would only ever be possible to sample known cases, it was readily apparent that the experience in WAPS reflects that of other jurisdictions.

In England and Wales, information compromise, which encompasses the divulging of information from a range of sources, including data-bases, was identified as the single most



common type of corrupt activity (Miller, 2003). Disturbingly, by contrast, information compromise is perceived by WAPS as being one of the least common forms of corrupt activity.

More recently, the Chief Commissioner of the Victoria Police has recognized that improper use of police computer files is a significant issue and has established a special internal taskforce to review the use of the police data system. The initial recommendations of that taskforce have included a requirement for all officers to sign a document confirming their responsibilities, tougher penalties for serious breaches, ensuring that only those who need files can use the system and the requirement to provide a reason for using the system. The taskforce is also to consider a new education campaign and the need to upgrade auditing processes.

This Royal Commission experienced similar difficulties to those noted by the CJC (2000) when requesting that officers explain their computer transactions. Explanations provided by WAPS officers generally included:

- The majority of officers were unable to recall why they performed the transaction and that their journal, which may have assisted the officer's recollection, either did not record the transaction or could not be located;
- There is a common practice within WAPS to access the computer system with a personal password but to leave the system open and the terminal unattended; and
- While a particular officer was using the computer, another officer might request that a transaction to be conducted on their behalf. The officer thereafter was unable to recall the identity of the requesting officer or the reason for the request.

Even when what would seem to be compelling evidence is available that information has been accessed in circumstances that constitute unauthorized use, such standard responses make the prosecution of the officer difficult, time-consuming, and expensive. The elimination of evasions offered by officers for possible unauthorized access through the application of enhanced security protocols on computer systems would contribute greatly to prevention, detection and deterrence. The efficacy of false explanations can be minimized by ensuring that there exists proper security and tracking within the system, and a requirement for reasons for access to be given at the time.

### 11.3 ADEQUACY OF EXISTING LAWS AND REGULATIONS

In considering information protection and the law, it is necessary to give attention to both parties to the dissemination transaction. It involves an appraisal of the law that regulates persons within WAPS who engage in unauthorized accessing and dissemination of information, and those persons, both intermediaries and end-users, who procure the information from police officers for both legal and illegal purposes.

Section 81 of *The Criminal Code* provides that any person who is employed in the public service and who publishes and communicates any fact which comes to his or her knowledge by virtue of his or her office and which it is his or her duty to keep secret commits an offence. Section 1 of *The Criminal Code* defines the term "person employed in the public service" to include police officers. It is not entirely clear the extent to which police officers have a "duty to keep secret" certain information. For example, the extent to which Regulation 607 of the *Police Force Regulations 1979* creates a duty to keep secret the contents of a citizen's criminal record has not been resolved. In *Pense v Hemy* (1973) WAR 40 the Supreme Court held that the duty imposed by Regulation 607 was not the kind referred to in s. 81 of *The Criminal Code* in that it was not a duty by virtue of a police officer's office but a duty or responsibility imposed by the Regulation. The correctness of that decision has been doubted from time to time.

Section 440A of *The Criminal Code* provides:

- (2) A person who without proper authorization-
  - (a) gains access to information stored in a restricted-access system; or
  - (b) operates a restricted-access system in some other way, is guilty of an offence and is liable to imprisonment for one year or a fine of \$4,000.

Disclosure is not an element of the offence.

A significant issue is the scope of s. 440A of *The Criminal Code*. The ACC has expressed concern that within the Public Sector Investigation Unit ("PSIU") of WAPS there existed a belief that s. 440A of *The Criminal Code* encompassed only computer hacking. This belief appears to have been based upon the following statement in the Minister's Second Reading Speech at the time the section was introduced (Mr D. L. Smith, 1990: 6074).

The Government strongly believes that there is a need to maintain community confidence in the integrity and privacy of all data stored in computers. The community must be assured that unauthorized access to computers is not condoned even where the access is by a hacker who has no other motive than merely the intellectual challenge of entering the computer system.

On a plain reading of s. 440A of *The Criminal Code* it is clear that the section extends to the situation where an otherwise authorized user of a computer system seeks access to the system for an improper purpose, that is for non-policing purposes. Such an access would be outside the terms of the authorization given.

An issue arises whether s. 440A of *The Criminal Code* is being properly considered and used by those persons who exercise the discretion as to the appropriate approach to adopt in respect of officers who engage in unauthorized accessing of the system. Whilst s. 440A of *The Criminal Code* is available as a sanction, it is accepted that only those breaches viewed as having a degree of seriousness might be considered appropriate to warrant a criminal charge. On the other hand, there will be occasions where criminal charges are the most appropriate disposition. The apparent propensity of investigating officers to favour disciplinary charges is considered further below.

In any event, the offence relies upon a duty to keep secret information available to the officer and it is thus dependent upon the existence and clarity of police regulations. Regulation 607 of the *Police Force Regulations* provides:

- (1) A member or cadet shall not-
  - (a) give any person any information relating to the force or other information that has been furnished to him or obtained by him in the course of his duty as a member or cadet, or
  - (b) disclose the contents of any official papers or documents that have been supplied to him in the course of his duties as a member or cadet or otherwise,

except in the course of his duty as a member or cadet.”

Regulation 607 of the *Police Force Regulations* raises the issue as to what constitutes “in the course of duty”, and whether it is for the individual police officer to determine and, if it is, whether there exists appropriate guidance? The Commissioner of Police has issued a number of directions. Administrative Direction 11.8 (WAPS, 2002d) is a direction that pertains to the release of information relating to civil litigation and provides that, in matters of personal injury claims, upon a receipt of a written request and on payment of a prescribed fee, a member of the community may obtain certain specified information from WAPS.

The rationale behind the release of the information pursuant to Administrative Direction 11.8 (WAPS, 2002d) is to facilitate a personal injury civil litigation claim. However, the procedure for releasing that information is intended to be strictly controlled and may only be supplied by a member of WAPS with the rank of sergeant or above. The nature of the

information that may be released is limited to the particulars of the police officer concerned, names and addresses of civilian witnesses, of vehicle particulars, and a photocopy of the relevant pages from the WAPS Occurrence Book.

Administrative Direction 17.6 (WAPS, 2002d) deals with the accessing of information on the police computer system. It provides:

It is the policy of the Western Australia Police Service (Police Service) to only authorize restricted access into the Police Service Computer System to Police Service personnel and other persons as authorized by the Commissioner of Police.

Procedures: The following procedures relate to all users:

- The logon id issued to a user is personal.
- A user's logon id and password must not be supplied for use by a third party.
- Access by all users is limited to that information which has a direct relationship to their work area and associated work functions.
- Access is strictly prohibited to that information which is not related to those work tasks of a user.
- With the exception of notices and advertisements placed in the Social bulletins for general publication, dissemination of computer-accessed information is prohibited to persons or agencies outside the Police Service unless authorized.
- Unauthorized access of information, or use of a computer account for which a person is not authorized, will be viewed very seriously and may result in prosecution under the Criminal Code with penalties up to, and including, a term of imprisonment.

A further relevant direction is Administrative Direction 85 (WAPS, 2002d), which provides in part that members of the community may be granted access to information that relates to them upon written application and with the payment of a fee. It relevantly provides:

The purpose of allowing access to personal information is to ensure its accuracy and give individuals the opportunity to amend any false or misleading information.

Whilst Administrative Direction 85 authorizes limited disclosure, it is important to recognize that it only authorizes the release of the information personal to the applicant.

Section 83 of *The Criminal Code* provides that:

Any public officer who, without lawful authority or a reasonable excuse-

- (a) acts upon any knowledge or information obtained by reason of his office or employment.
- (b) acts in any matter, in the performance or discharge of the functions of his office or employment in relation to which he has directly or indirectly any pecuniary interest; or

- (c) acts corruptly in the performance or discharge of the functions of his office or employment,

so as to gain a benefit, whether pecuniary or otherwise, for any person, or so as to cause a detriment, whether pecuniary or otherwise, to any person, is guilty of a crime and is liable to imprisonment for 7 years.

In *Rompotis v R* (1996) 18 WAR 54 the majority held that to “act upon” information does not encompass merely communicating information that has been obtained by means of holding an office. Given that decision, the applicability of s. 83 to conduct that involves the improper dissemination of information may be limited.

In considering the adequacy of statutory provisions, the CJC (2000 ixiii) determined that, although legislation similar to that still current in Western Australia was available, it was “generally inadequate for prosecuting the individuals who attempt to procure, receive, obtain or possess classified government information when a financial benefit paid to the public sector employee in exchange cannot be demonstrated”.

There exist some legal avenues for punishing persons who act as intermediaries and end-users of information obtained from persons who engage in unauthorized access of information. A person who induces an officer to commit an offence for reward may themselves commit an offence of bribing a public officer contrary to s. 82 of the *Criminal Code*. That section provides:

Any public officer who obtains, or seeks or agrees to receive, a bribe, and any person who gives, or who offers or promises to give, a bribe to a public officer, is guilty of a crime and is liable to imprisonment for 7 years.

Intermediaries and end-users who request the information may also be subject to prosecution under s. 7 of *The Criminal Code*, which provides for criminal liability to be extended to those who aid, counsel or procure the commission of an offence.

Whilst it is arguable that the existing laws are adequate to address the types of conduct that relate to improper use of information, there is need for improvement. Doubts about the applicability of some provisions may result in other courses, such as disciplinary proceedings, being preferred as offering more certainty. An offence provision that was better framed to refer to inappropriate access or use by persons who have access for specific purposes would be beneficial. Section 408D of the *Criminal Code (Qld)* provides a useful example of such a provision. The terms of the section are set out in full in the next chapter.

The section, whilst having certain advantages including the gradation of offending with appropriate penalties, would also require amendment to ensure that it is made quite clear that a person who has consent to access a restricted computer may have the access circumscribed and that an act of accessing beyond the actual authority would constitute an offence.

## 11.4 THE TREATMENT OF UNAUTHORIZED ACCESS

A significant issue is the level of priority or seriousness placed on suspected breaches by WAPS, and whether the investigators of suspected breaches are inclined to take a different view of the gravamen of the access to and disclosure of personal information than would members of the public whose personal information is affected. An issue arises as to how breaches should be viewed generally and the manner in which specific types of breaches should be dealt with.

The IIU and the IAU conduct the majority of investigations of breaches. Other agencies, the ACC, the Ombudsman and the office of Public Sector Standards Commissioner may become involved subsequently. The demarcation between the IIU and the IAU in respect to the investigation of unauthorized access is based upon the perceived seriousness of the breach, with the IAU dealing with the more serious breaches.

WAPS uses a Corrective Action Matrix, the purpose of which is to guide investigating officers as to the level of disciplinary corrective action which should be taken in relation to various types of misconduct. The Corrective Action Matrix offers the following guidance with respect to particular breaches of computer security.

Verbal Guidance	Local Cautionary Notice	Unfavourable Report	Disciplinary Charge
	Leaving a computer unattended	<p>Accessing confidential information for personal purposes or when not required as part of duties. The issue is perceived as being at the lower end of the scale of seriousness.</p> <p>Leaving a computer unattended without securing his/her access, having previously been issued with a local cautionary notice for same.</p>	<p>Accessing confidential information for personal purposes or when not required as part of duties. The issue is perceived as being at the higher end of the scale of seriousness.</p> <p>Releasing confidential information from the police computer system to a member of the public or another member of the police service not authorized to have access to the information.</p>

It is of interest that the Matrix does contemplate that the accessing of information when not required as part of the officer's duties in circumstances at the higher end of the scale, may be dealt with by a disciplinary charge. Whilst the preferring of a disciplinary charge does not exclude criminal charge, the emphasis on possible sanctions is weighted towards the disciplinary path. Given the paucity of examples where criminal proceedings have been commenced, it is difficult to determine the point where the balance of factors results in a criminal proceeding.

The ACC Principal Investigator gave evidence to the Royal Commission to the effect that there was a failure by WAPS to view unauthorized accessing of information as serious misconduct. The ACC had expressed concerns to the Commissioner of Police about the number of unauthorized accesses by police officers and the manner in which the offenders had been dealt with. The ACC also noted that there was a perception of a difference in the manner in which WAPS dealt with unauthorized accesses by police officers as contrasted with public officers. The ACC has made recommendations to WAPS in respect to the processing of the breaches but is unable to compel prosecution.

The Royal Commission received evidence of one prosecution conducted of a person for four offences of gaining access to a restricted system without proper authorization, contrary to s. 440A of *The Criminal Code*. That person was a public servant in WAPS who accessed the system, not for personal gain, but on one occasion for personal reasons and on the three other accesses pursuant to a request from an associate. The associate, a member of an outlaw motorcycle gang, requested information concerning the number of demerit points on his personal record and made two requests for information in relation to a particular person. There was no allegation that the public servant was aware of the reason for the request for information. The public servant was convicted of the offences. The manner in which the public servant was processed may be contrasted to police officers in WAPS who have made unauthorized accesses and disclosed information, but have not been prosecuted.

The Royal Commission heard evidence in relation to unauthorized accesses and releases of information by police officers that were arguably at least as serious as the case of the public servant. In one case a police officer was found to have accessed a data-base at the request of an acquaintance and provided the name and address of the owner of a vehicle. This information was then passed to a member of an outlaw motorcycle gang who was then under police investigation. The passage of information was fortuitously detected because the motorcycle gang member's telephone was at that time subject to a lawful intercept. The officer admitted to the release of the information, but this admission could not be used in any criminal proceedings as it was obtained in the course of a disciplinary interview (that is, it was under compulsion, not voluntary). The recipient of the information conceded that it

had been received from the officer but refused to sign a statement. Disciplinary action was taken because (at least in part) the direct evidence was inadmissible in criminal proceedings. There was, however, compelling circumstantial evidence, including an audit showing access by the officer to the information. Whilst there might be an argument that disciplinary proceedings can be a viable and satisfactory alternative, this case contrasts markedly with that of the public servant, which in many other respects it closely resembles.

WAPS submitted that all cases must be assessed on their own specific circumstances and that a determination must be made as to whether justice is adequately served by using the disciplinary process. The difficulty with the submission is that criminal sanctions have rarely, if ever, been viewed as the appropriate sanction for offending police officers. The fact that a provision such as s. 440A of *The Criminal Code* exists will have little general deterrent effect if it becomes apparent that it will not be used. The lack of a fear of detection in the first instance and the lack of willingness by investigating bodies to provide real sanctions against persons who engage in unauthorized access must militate against efforts to control these unlawful practices.

## **11.5 TRAINING AND AWARENESS**

### ***ACADEMY TRAINING***

The Comtech Training Unit at the WAPS Police Academy provides an eight-day training programme to recruits that involves training in respect of the WAPS computer system. The Royal Commission received evidence from an officer who held a teaching position at the Comtech Training Unit, who confirmed that recruits undertake nine 40-minute introductory sessions in order to become familiar with the WAPS computer system. Sessions two and three on day one are directed to computer security issues and applicable rules. In particular, recruits are lectured in respect of the COPS Manual and Administrative Direction 17.6 (WAPS, 2002d).

There are no other lectures or seminars during recruit training that directly deal with the security requirements on the WAPS computer system. However, during the eight-day course, recruits are instructed as to the requirements to acknowledge the computer warnings displayed on the screen and they are warned that the right to access the system is limited. The recruits are also instructed that they should be able to account for every access to the police computer system and they are instructed to record all accesses in their official police notebook, noting the time and date of access together with the reasons.



During the course, the recruits have access to the WAPS computer system that is available to all serving officers. The ACC Principal Investigator noted that one recruit made 54 unauthorized accesses of the police computer system over a 12-day period. The recruit was counselled informally.

There are a number of courses that officers must undertake. These include the in-service Development Programme ("DP") courses DP1, DP2 and DP3. The DP courses target the following officers:

- DP1-Constables seeking promotion to Constable First Class;
- DP2-First Class Constables seeking promotion to Senior Constable; and
- DP3-Senior Constables seeking promotion to Sergeant (and some substantive Sergeants seeking the Advanced Diploma of Business Management).

Whilst the respective DP courses contain an informal component as to computer security, there are no lesson plans or measurable objectives in relation to this informal training. It is difficult, therefore, to determine how successful this component of the training is. The informal components dealing with computer security form part of the ethics training within the DP courses.

The Royal Commission received evidence that the training undertaken by detectives in regarding the WAPS computer system was limited and of questionable quality. Until comparatively recently, detectives undertaking the course were told that s. 440A of *The Criminal Code* applied only to "hacking". The course syllabus did not instruct the detectives that s. 440A could apply to unauthorized use of the WAPS computer system.

In April 2002, the Crime Management Training Unit of WAPS commenced a review of detective training that resulted in a pilot Detective Investigation Training Course, which commenced in September 2002. That course includes a component entitled "Protect the integrity and security of information", which addresses computer security including the accessing and disclosure of information from the WAPS computer system.

### ***AWARENESS***

A number of officers who gave evidence to the Royal Commission regarding unauthorized access of the WAPS data-base maintained that they were unaware of the unlawfulness of their actions. The testimony included claims that e-mails were routinely deleted without being considered. They included e-mail alerts sent to all officers by the IAU regarding

computer security. Whilst this evidence may have been self-serving, it may also be indicative of the need frequently to apprise officers of their obligations, using a diverse range of techniques, including a requirement for an acknowledgment that the instruction was received and understood.

Front-screen warnings are used on the various WAPS data-bases. The first screen that is observed when an officer accesses the system brings the following warning:

Important notice. Unauthorized access of this system and information contained within may result in criminal charges and/or disciplinary actions. Penalties may include loss of employment. Users are reminded they are responsible for all computer accesses under their user ID.

A user is then required to click "OK" to enter beyond the initial warning and proceed to allow the user to enter the user's name, the PD number, and the password. A police service logo then appears with the following further warning:

Information contained within the Western Australia Police Service Computer Systems is confidential and must not be disclosed to unauthorized persons under any circumstances and not be accessed for personal reasons.

The warning is preceded by a message in brackets stating "Press the PF2 key to obtain full statement of conditions for accessing the system". The full warning on the WAPS mainframe states:

The information from the system now available to you is confidential and must not be disclosed to unauthorized persons under any circumstances, nor are you authorized to access such information for personal reasons.

Unauthorized access or use of this system and of the information contained within may result in criminal charges and/or disciplinary actions.

Penalties for these offences are severe and may include loss of employment.

Users are reminded that they are responsible for all computer access under their user-id. To protect the unauthorized use of your user-id it is recommended you logoff at the completion of inquiries.

A user need not access and read the full warning, rather they may indicate that they have previously read the full conditions and proceed. The system is not able to determine whether a user has actually ever accessed the full warning.

WAPS has developed initiatives to educate members with respect to computer security. The initiatives include the dissemination of posters warning members not to engage in

unauthorized access, the sending of general bulletins to members, and the circulation of a bi-monthly publication, "The Standard Today", by which the Professional Standards Portfolio disseminates information relevant to ethical issues. An example of the nature of the explicit warnings given is the general bulletin dated 23 October 2001, which stated:

Be aware that Section 440A of the Criminal Code creates an offence relating to unauthorized computer access...

Using the Police Service computer to obtain a friend's personal details or to check the background of a vehicle you wish to purchase may appear to be an innocent act. However, this activity may amount to a criminal offence, which is punishable by imprisonment for up to 1 year or a fine of \$4000.00.

Sworn or unsworn personnel are not immune from criminal prosecution.

In addition, a Code of Conduct for WAPS (WAPS, 2003e) has been introduced. The Code of Conduct relevantly provides that:

Confidentiality: You must not seek, access, use or disclose Service information obtained in the course of your duties without proper authorization or lawful reason.

You may be liable to criminal charges, dismissal, removal or relevant action under Part 5 of the *Public Sector Management Act 1994* for breach of confidentiality.

WAPS has actively developed programmes during the last two years to ensure that officers are informed of their obligations with respect to information. Significantly, an emphasis is now placed on the seriousness of unauthorized accessing of information.

Regrettably, Royal Commission hearings indicated that the present levels of awareness of the laws and administrative directions that relate to confidential information are low. Some officers who appeared at Royal Commission hearings claimed never to have familiarized themselves with these directions, nor did they see any need to do so. The Police Service has flagged new training strategies including in-service training at all levels throughout the agency. On the evidence before the Royal Commission, such training is needed and these initiatives are to be encouraged.

## **11.6 SYSTEM SECURITY AND DETECTING UNAUTHORIZED ACCESS**

### ***INTRODUCTION***

The best practice for information security can be found in the Australian and New Zealand Standard AS/NZS ISO/IEC 17799: 2001 "Information Technology - Code of Practice for Information Security Management". The standard notes that information is a vital asset of

any organization, and that the protection and security of information is of prime importance to many organizations. The OECD "Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security" (2002) provide that the extent of the use of information systems and networks and the entire information technology environment requires that government, businesses and other organizations place a much greater emphasis on security.

Given this context, it is reasonable to expect that large government agencies, such as WAPS, which create and hold vast quantities of sensitive and confidential information, will have a high level of physical and system security to guard the information against unauthorized access. Accordingly, it is necessary to consider the risk reduction and risk management measures in place.

### ***PASSWORD SECURITY***

A primary concern is the use of another person's log-on identification codes ("IDs") and passwords. It was recognized by the CJC that log-on IDs and passwords were not accorded the respect that was necessary to maintain the integrity of the system. Rather, it was frequently the case that log-on IDs and passwords were known to and used by other police officers and, further, that computers were left logged-on unattended for long periods of time, enabling other police officers to then use the same computer terminal. The consequence was that it was impossible to determine with accuracy which officer accessed particular information.

Evidence was received by the Royal Commission that similar difficulties are experienced in WAPS. Officers accepted that among their peers there exists an acceptance that an officer is able to access information from a computer that another officer has entered, using the latter's password. Examples were given in evidence of officers knowing of, and using, the passwords of colleagues to access the computer system, often without the knowledge of those other officers. If, as was proven in some cases, the reason this was done was because the access was for an unauthorized purpose, it made detection and investigation extremely difficult.

A further difficulty with the password system that may compromise security is the ability of an officer to respond to system requirements to change their password by alternating between the same two passwords. WAPS acknowledged that the present situation enables an officer to alternate between two passwords, but that present technology employed by WAPS is unable to stop the practice. The rationale for tolerating this practice is that it reduces inadvertent lockouts, resulting in frequent requests for password resetting and

reduction of the need for officers to write down the single password with consequential security problems. Of course, the converse of this is that the reason why systems require password change is to ensure that system integrity is maintained by minimizing the problem of passwords falling into the wrong hands. Clearly a system that allows users to fluctuate between two familiar passwords defeats this objective.

### ***PARTITIONING WAPS COMPUTER SYSTEM***

Another aspect of the security of the system is access to information that is of no relevance to a particular officer's current line of work. An issue arises as to whether WAPS can and does impose limits on police officers in terms of the time that they are permitted to access the system and whether certain areas of information are partitioned.

The ability to restrict access is presently complicated by the fact that WAPS computer information is contained in several different data-bases, some of which are on the mainframe, others on small networks. A new system that is presently being introduced seeks to overcome some of these problems. Users of the "Information Management System" (IMS) are allocated a role, which determines the nature of information the officer is able to access. There are 16 roles within the IMS which limits the screens needed to perform the particular role. By way of illustration, the Audit Officer role is held by the IAU and allows the audit history functionality to be accessed by IAU officers and not by other officers of WAPS. Most of the instances revealed in evidence before the Royal Commission had come from communication intercepts and would otherwise have gone undetected. In addition, each role is allocated a security template, which determines the nature of the records that may be accessed, depending upon the security level that applies to the particular information being accessed. All other users who do not hold that level of security will be denied access. However, by default, all records and links are unsecured until a determination is made to secure the information.

The ability to impose limits and restrictions is only as good as the will to implement them. Whether IMS results in improvements in information security is yet to be seen. In the meantime, the existing data-bases, which are likely to continue to be available for several years, are markedly deficient in this respect. Generally, all police officers have unrestricted access to the data-bases containing names, addresses, vehicle registrations and criminal records. There might, in many cases, be adequate justification for this, but consideration ought to be given to whether there is an operational need for officers working in particular areas to have access to certain information.

***TIME-OUT DISABLING***

Given the risk that exists that persons may utilize a screen activated by another person, it is an important safeguard that screens in a networked environment have a “time-out disabling” mechanism. If a user remains logged-on for a certain period, and remains inactive, then it is appropriate that the system prompt the user to re-authenticate. Failing to re-authenticate results in an automatic log-off. This has become a standard security measure on most government computer systems.

There must be a balancing in regard to “time-out disabling” between the operational needs of police officers and the needs of security. The Royal Commission received evidence that the “time-out disabling” on the IMS is 30 minutes, rather than the five-minute timeframe on the current system. WAPS’ view is that “time-out disabling” is most appropriate at the PC level and not at the server level. The reasoning being that the screen concealment and user lock-out may be enforced for the entire machine, whereas the server can control only a single operation. WAPS submitted that the lock-down of time-outs has been reviewed, and that the Police Service Command has agreed to the lock-down of time-outs after five minutes’ inactivity.

Restrictions may also be necessary to users who are absent for extended periods such as annual leave. In some jurisdictions the systems will automatically revoke a person’s access after a period of non-use. WAPS does not de-activate an officer’s access whilst on extended leave unless an authorization is provided by a district superintendent. In one matter examined in Royal Commission hearings there was evidence that an officer had attended at a police station whilst on sick leave and annual leave and made in excess of 280 accesses to the computer system. It was later discovered that the officer’s girlfriend worked for a debt collection agency. A comparison of a list of bad debtors from the agency revealed that ten names were amongst those also looked up by the officer on the computer. There were other accesses that were clearly of a personal nature during this same period. It was evident that the officer had no difficulty in accessing a police computer during his leave period and using it to make non-police related inquiries.

The ACC noted that a remaining security issue with respect to the authenticating of the person accessing specific information is evident at the Police Operations Centre. The Centre uses a generic-logon for access to the Computer Dispatch System. Therefore, it is not possible to conduct an audit to determine which officer accessed specific information. The ACC Principal Investigator expressed the view that the ACC held concerns that external officers were contacting the Police Operations Centre to obtain information for purposes unknown to the officer to whom the request is made. WAPS, whilst accepting that the

generic-logons have hindered the previous investigations into unlawful accessing, hold the view that the generic-logons are required for the Centre to carry out duties properly. The view of WAPS is that the imposition of more stringent security would reduce the effectiveness of the operations centre and place officers engaging in operations at risk.

WAPS submitted that security is enhanced by the requirement of officers to maintain a log noting information accessed. The difficulty with that submission is that it is predicated on the assumption that officers will maintain an accurate log of all information accessed. It may be very difficult to ensure that this occurs unless there is a regular enforcement and auditing policy. Furthermore, the possibility exists that a data centre operator himself or herself may make unauthorized accesses. It is unlikely that an officer who engages in an unauthorized access will make a record of that entry.

### ***REQUIRING REASON FOR ACCESSING***

An important issue is whether the system requires the police officer to provide reasons for the accessing of the system. The CJC recommended that the reason for access should be given by police officers. The rationale for the implementation of the requirement that officers give reasons is twofold. It requires officers to consider properly whether the accessing of the information is for police business, and it assists investigations to determine why the officer made a particular access. NSW has introduced the mandatory recording of the reason for the transaction in the officer's duty book with a view to introducing electronic recording of the reasons. A taskforce in Victoria has also recommended the introduction of such a requirement in that State.

The Royal Commission received evidence that the current view of WAPS is that the multiple links of the IMS would make it necessary to enter the reason on multiple occasions. However, it was accepted that one reason could be given to explain multiple transactions based upon linked inquiries. It does not seem, therefore, that the imposition of a requirement to give a reason would be impractical.

There are, of course, limitations upon the utility of such entries. Entries by way of explanation may be of such a general description that they would not assist any investigation. Officers would be required to ensure that the explanations give an appropriate level of detail. Further, corrupt officers may enter a false but plausible explanation. However, an explanation would obviously render some assistance to persons investigating allegations of an unauthorized access. In one case canvassed during Royal Commission hearings, an officer had conducted some 84 unlawful accesses that related to friends and family members. In respect of some of these he claimed that he had been

checking, at their request, demerit point details. In respect of others it was entirely out of idle curiosity. The officer said he was not obliged to keep any records of his accesses and was not subject to any supervision in respect of his computer use. It is entirely possible that the mere reminder that access required an appropriate reason would act to deter this sort of casual misuse.

### ***PHYSICAL SECURITY***

Given the confidentiality and sensitivity of the information it is imperative that WAPS secure the information against possible theft. Theft may occur through the transfer of information utilizing discs or laptop computers. In many stations and work areas it is understood that there are computers intended for multiple use. In such circumstances the computer may be unattended for lengthy periods. Some care needs to be taken to ensure that the areas where such computers are kept are not accessible by people who do not have authorized access. This accentuates the need for computers not to be left logged-on when not being used. There was some evidence given that investigations were frustrated because it was impossible to prove who had used a computer that had been left logged-on.

### ***DETECTING UNAUTHORIZED ACCESSING OF INFORMATION - AUDITRAK***

WAPS relies upon a programme, Auditrak, to monitor and record accesses to the system. Auditrak allows the IAU to determine when specific designated information is accessed.

Auditrak was compatible with all data-bases on the WAPS computer system at the time of inception. However, a number of data-bases have been added to the WAPS system and are not covered by Auditrak. The number and nature of the data-bases is not insignificant. Whilst it is not appropriate to list those data-bases in this report, it was accepted in Royal Commission evidence that this imitation has the potential to affect investigations adversely. Where there is an allegation that information of a personal nature has been leaked, a negative Auditrak audit will not be conclusive if the information could have come from one of the data-bases that is not covered.

An important issue addressed by the Royal Commission was the extent to which Auditrak enables an audit to be conducted of an individual's access to the WAPS computer system. Evidence received by the Royal Commission illustrated the inadequacies of the Auditrak programme in carrying out this most important function. In particular Auditrak is inadequate in identifying the particular terminal from which an unauthorized user has accessed information. Further, Auditrak does not record whether the user has printed the information



accessed and fails to record actual log-ons and log-offs by users. There is, furthermore, no recording of the keystroke details of a particular person.

A significant problem identified with Audittrak was that there are means by which information may be accessed without an audit trail being left. In other words, it is possible to obtain information without searching at a level of specificity that would result in an audit record being kept. By way of illustration, a surname may be entered on the system, with all relevant information then being disclosed for the individual of interest, along with others of the same name. Because a specific individual has not been searched, no audit record of that particular access is recorded, notwithstanding the fact that a significant amount of personal information has been viewed. In addition, an officer may enter part of the registered details of a vehicle and, provided the inquiry does not particularize a specific entry, there would be no audit trail. They could, by this means, obtain details of names and addresses of, for example, owners of certain motor vehicles.

Given that there is no auditing of the log-on and log-off, an officer could potentially be able to log-on to the mainframe of the WAPS computer and engage in partial searches for an extended period without there being an audit trail. The ACC gave evidence that, in some of its investigations, covert evidence indicated information was being passed to private investigators, but this was achieved without police officers leaving an audit trail on the system. The reasonable assumption is that this was because unauthorized accesses were being conducted by way of partial searches by police officers.

Officers may also avoid an audit trail by printing out the first screen that lists the possible relevant entries. The printing of screen details does not leave an audit trail. Therefore it is open for an officer to use a normal word processing software package to highlight entries on the screen and copy the details to a document and later print the details.

The Royal Commission received evidence from officers of WAPS who acknowledged that the failure to create an audit trail does inhibit investigations of unauthorized access. Irrespective of the type of system used to store confidential information, it is essential that an adequate system of audit be implemented to ensure that breaches of security protocol are prevented or detected.

This is a significant problem that bears heavily on the ability of investigators to properly conduct an investigation. The ACC recounted that the difficulty in investigating the breaches was a function primarily of the failure of the system to leave an audit trail and the use of generic-logons by officers, which makes it almost impossible to identify the person who accessed the system at a particular time.

### ***PREVENTATIVE AUDITING***

WAPS has not undertaken preventative auditing, rather, it has reacted to allegations of unauthorized accesses by conducting individual investigations. There have not been proactive audits that would serve to firmly identify persons who are suspected of engaging in unauthorized access of the WAPS computer system. Evidence showed that unauthorized accesses were occasionally discovered fortuitously during the course of other investigations. This suggests that there is likely to be a much larger hidden problem of such accesses.

The WAPS computer system does allow for the automatic flagging of information held, which could confirm that the specified details have been accessed. The ACC has utilized the flagging process as a means to monitor possible unauthorized accesses. By way of illustration, the ACC flagged the information held by WAPS relating to a sporting celebrity. Officers having no interest in the subject were recorded as having accessed the information. In the particular case, the unauthorized accessing was undertaken for reasons of idle curiosity. The accesses were found to be closely correlated to reports in the media relating to the celebrity.

### ***DETECTING PATTERNS OF ACCESSING***

Means should be adopted whereby the system is able to identify inappropriate patterns of use. Appropriate patterns may be determined by the particular officer's current duties and the anticipated patterns of accessing, given the role being undertaken. This form of preventative auditing directs investigations into possible unauthorized accessing. The submission made by WAPS notes that, given the daily volume of approximately 1.5 million transactions, a prohibitively large volume of transactions would be required to be analysed.

There exists no means within the WAPS computer system to generate automatic warnings of excessive use of the system. The submission offered the view that tracking all individual users in a data-base and comparing actual versus expected usage levels would be an expensive exercise. WAPS noted that specific access patterns such as repeated access to the same record by the same person could be implemented more easily. The suggestion would have limited use. Excessive users do not frequent the same record, but multiple records, often to meet the request of persons who trade on the information.

### ***INFORMATION MANAGEMENT SYSTEM ("IMS")***

WAPS has introduced a new computer system named the Information Management System ("IMS"). The IMS is a relational data-base that cross-references information with respect to

entities. The entities are search items that may include a vehicle, a person or an organization. By entering a person's name, relevant information held in respect of that person is shown to the person undertaking the access. This obviates the need for police officers to access multiple data-bases to build up a complete profile of a person of interest. The system, therefore, offers distinct advantages to police in conducting investigations. On the other hand, the increased accessibility of information raises the need for increased security.

A number of limitations were identified in respect of IMS. In particular, it was noted that the IMS relies upon the same security system, namely Auditrak.

The IMS has two independent auditing facilities, being an internal audit facility and a record that is sent to Auditrak. The IMS security features are not presently utilized, the rationale being that the IMS should not be extended to act as the audit system for all other systems as it would compromise the primary aim of the system, being the management of the recording of incidents. That is, if the IMS data-base was to process the one million transactions, the response times would be affected. In addition, there existed practical reasons, including the recognition that IMS, notifications are internal to IMS, which would require notifications to be sent to investigating officers, such as IAU and BCI by facsimile and e-mail. Further, IMS does not provide printed audit reports.

The audit procedure for IMS, therefore, is that whenever a user deletes or updates data, or accesses data that reveals links between entities, an audit record of the activity is made. IMS publishes details of the audit record through the interface services and Auditrak subscribes to the audit messages, with the IMS audit records being maintained in Auditrak. In addition, Auditrak messages are published each time a user logs-on and logs-off IMS.

Whilst there are potential safeguards in the IMS system, it is not apparent that those safeguards will be effective (particularly if they are not used). Furthermore, the introduction of IMS is to be phased in over several years. During that time, the existing data-bases will co-exist. There will, however, continue to be deficiencies in the auditing system that will impede investigations and leave a gap in security.

### ***NO OFFICER-IN-CHARGE OF INFORMATION POLICY***

The CJC recommended that an initial step in the organizational approach to information security is the development of a comprehensive set of orders, policies and procedures on all aspects of information security. The CJC Report (2000: 55) noted that:

Decisions relating to information security must be made at the highest level within the Queensland Police Service because of their cost implications and their importance to the efficiency and integrity of the QPS information systems. With the constant changes and improvements to the computer information systems it is necessary to constantly review information security within the QPS.

The Royal Commission received evidence from Superintendent Ian David Johnson, who acts as the officer in charge of the Strategic Information Management Division, which forms part of the Strategic and Corporate Development portfolio. Johnson recognized that whilst Strategic Information Management Division was one of many units within WAPS that had involvement with the computer system security, there existed no single body or committee charged with reviewing and formulating policy. Johnson accepted that WAPS does not have an information security committee similar to that operating in Queensland. The CJC (2000:55) recommended the formation of a security committee:

The Queensland Police Service through the establishment of an information security committee or through current committee structures ensure that the following duties are discharged on an ongoing basis: to review and approve information security, information policy and overall responsibilities; to monitor significant changes in the exposure of information assets to major risks; to review and monitor incidents affecting information security; and to recommend to the Commissioner of Police major initiatives to enhance information security.

The priorities of those charged with developing new computer systems are often focused, understandably, on enhancing police performance and efficiency. Security measures can be seen as a limiting factor. Within WAPS, those responsible for investigating unauthorized accesses, such as IAU (the system owner for Audittrak), do not have responsibility for reviewing and implementing security across the agency. Whilst there was an indication, following hearings in relation to this subject, that WAPS would conduct a review of its systems and structures, it remains the position that there is no single committee or unit with sufficiently high standing which would meet the recommendations of the Criminal Justice Commission, which are equally applicable to the WAPS context.

## **11.7 THE REGULATION OF INQUIRY AGENTS**

With respect to the market for information the CJC (CJC, - 2000) noted that:

The demand for confidential information is created by end users such as finance organizations and legal firms whose staff are often trying to locate evasive individuals. Private investigators and commercial agents act as the intermediaries between the end users and the suppliers of information.

In NSW an inquiry also confirmed that private inquiry agents frequently seek unlawful access to police information. Investigations by the NSW Independent Commission Against Corruption (ICAC, 1994) determined that the principal participants in the illicit trade in information were:

- Police, Roads and Traffic Authority officers and other New South Wales public officials, who have corruptly sold confidential information entrusted to their care;
- Insurance companies, banks and other financial institutions, which have provided a ready market for that information, and have been major contributors to the thriving trade which developed; and
- Private inquiry and commercial agents, who have acted as brokers and retailers, providing the necessary link between anxious buyers and ready sellers.

A significant number of former police officers who have resigned from WAPS have subsequently obtained private inquiry agents licences. This is to be expected, bearing in mind that such former police officers have valuable investigative skills and often a network of serving contacts who are able to obtain information that would be of great benefit and value in conducting private inquiry agents business. The Royal Commission received evidence with respect to former officers who maintain contact with serving officers, and were able to obtain access to WAPS information to assist the private investigations.

A former detective senior sergeant attached to a country station commenced a private inquiry agent business in the same country town. A number of serving officers who gave evidence acknowledged that, when approached by the former officer requesting information they accessed the system, obtained the information, and provided it to him. The explanations provided by the officers for releasing the information were primarily that they claimed the belief that it was lawful to release the information to a licensed inquiry agent.

All officers who released information acknowledged they were either former colleagues of the security agent or were aware of his former position within WAPS. It was clear that the security agent commanded respect, and that the answers were provided to his requests due to his previous position within WAPS. Another factor that may explain the ease with which the former detective senior sergeant obtained information was the small community in which he resided. Some officers approached for information were former colleagues of the officer in the same station.

A further illustration of the manner in which relationships between officers and former officers facilitate the release of information was provided by the activities of a senior constable in the Perth Inquiry Team. The Royal Commission received evidence from this officer of her accessing the WAPS system to obtain information that was provided to her spouse, a former detective who had been implicated in other activity considered in this Report, to assist him in undertaking his employment as a private inquiry agent. The accessing and disclosure of the information was conducted, not in an *ad hoc* manner meeting an occasional request, but in a systematic and organized way to assist her spouse in obtaining remuneration. Supervisors were unaware of the release of information and the only records were those kept by the senior constable. She maintained that she had been misled by a superior officer to believe that she was legitimately able to release such information but intercepted telephone conversations indicated that she endeavoured to be discreet and was conscious that her activities were at least questionable.

Given the fact that former officers tend to pursue careers as inquiry agents, it is important that police who have left WAPS should only obtain a private inquiry agent licence if their integrity is beyond question. The legislation that governs private inquiry agents in Western Australia has limitations in that regard.

## **11.8 SECURITY AND RELATED ACTIVITIES (CONTROL) ACT 1996**

During the course of the Royal Commission, a number of examples were encountered of police officers who left the employ of WAPS whilst under investigation for corrupt conduct or whilst subject to the removal process under s. 8 of the *Police Act 1892*, and obtained licences to act as private investigators pursuant to the *Security and Related Activities (Control) Act 1996*. The examples include:

- An officer convicted of assault occasioning bodily harm, who was issued with a licence after being charged, but had the licence revoked in 1999 after his conviction, only to receive another licence in 2001, which is current. A firm which carries on business as an inquiry agent under the Act employs a number of former officers, including an officer who was terminated, an officer who was investigated by IAU, two officers who were adversely mentioned in the Royal Commission inquiry Operation Least Said and another officer who had previously been recommended for dismissal, but whose dismissal was set aside for legal reasons.
- Three of the officers referred to in the Royal Commission investigation Operation Solo have received licences under the Act. One of them was recorded on a telephone intercept obtaining information from his wife,

who is still employed in WAPS. Another was given a licence when first suspended, and when later reinstated to WAPS retained the licence, and used it again when finally dismissed.

- An ex-officer who is licensed as an inquiry agent to supply the services of investigators resigned from WAPS following an investigation that he had released confidential information.
- An ex-officer was granted a licence under the Act after he resigned from WAPS following two investigations involving him relating to serious drug matters. He has been the subject of a further investigation since he left WAPS, but continues to have a licence.
- An ex-officer is licensed under the Act after resigning from WAPS where he had been investigated twice for allegations of misconduct and had been found in possession of cannabis. Notwithstanding his conviction for possession of cannabis, his licence has been renewed.

The above are but a few of the examples of similar situations that came to the attention of the Royal Commission. It is a matter of concern that there is an increasing circle of former officers of WAPS who are employed as private investigators, and retain strong links to serving officers.

An examination of the files relating to the issue of licences to former members of WAPS who have left the police service following allegations of misconduct, reveals a further concern because of the lack of communication between the officers of the Commercial Agents Unit who issue the licences, and the officers in Professional Standards, who have access to information concerning the character and conduct of the applicants.

The *Security and Related Activities (Control) Act* provides that if a person establishes to the licensing officer that they are a fit and proper person they may be issued with a licence as an inquiry agent or an investigator. There exists no requirement for formal qualifications. In determining whether a person is a fit and proper, WAPS, which screens applicants, accepts that, in the absence of any relevant criminal conviction, it is difficult to assert that a person is not a fit and proper person. Accordingly, a former police officer who is dismissed from WAPS for serious integrity breaches, but not convicted of a criminal offence, would most likely be considered as a person who is both fit and proper and hence obtain a licence under the Act.

That this determination would be made is virtually certain given that there is no formal policy or process that enables the relevant licensing officer to access information from Professional Standards regarding the evidence surrounding the particular circumstances of

the officer's departure. The fact that an applicant for a license was dismissed from WAPS because the Commissioner of Police lost confidence in the officer, would not be a fact that would be known to the licensing officer.

The Royal Commission received a submission from the Australian Institute of Professional Investigators ("AIPi") that if a person is not fit to be a police officer, then the person should not be granted a licence to be a private inquiry agent. The AIPi raises the issue as to whether there exists a possible conflict of interest in having serving officers determine whether former officers should be issued with a licence. An alternative proposed by the AIPi was that another authority, such as the Ministry of Fair Trading, should control the issuing of licences.

A submission from the Police Union argued that the *Security and Related Activities (Control) Act* provides a satisfactory basis for the licensing of inquiry agents. The Police Union suggested that the Commissioner of Police, given the power under the Act to give directions, should stipulate that all applicants undergo a course of training in ethics and privacy principles.

In a submission from WAPS to the Royal Commission, an alternative policy with respect to the issuing of private inquiry agent licences is being reviewed, with consideration being given to requiring former officers wishing to obtain a private inquiry agent licence to declare the reasons for their resignation from WAPS to the licensing officer. In addition, WAPS proposed that an option for legislative change was to allow a licence to be refused, where there were issues of integrity, for a period of five years after a police officer has left WAPS. It was proposed that there be an amendment to the Act requiring applicants to sign a waiver to have their complaint histories, sustained or not sustained, to be taken into account by the licensing officer.

New South Wales has adopted a more comprehensive regulation of the security industry. One change in New South Wales was the grant of greater powers to the Commissioner of Police to refuse and/or revoke security industry licences based upon criminal intelligence, which would not be disclosed in an appeal process. The difficulty that exists currently in Western Australia is that the decision and reasons of the licensing officer are subject to an appeal to a Magistrate. Thus, intelligence that was relied upon by a licensing officer not to grant a licence would be subject to public disclosure and review. The NSW legislation is an appropriate model for WAPS.



## **11.9 REGULATING ACCESS TO WAPS INFORMATION**

A mechanism to regulate the risk of private inquiry agents seeking police information is to establish a single gateway through which information may lawfully pass from WAPS to persons outside WAPS, including private inquiry agents. The Royal Commission received evidence from Senior Sergeant Wray, the manager of the Information Release and Sharing Project in the Information Release and Sharing Unit, that requests from the public for information have risen to such a level as to be imposing a significant burden on police stations. Furthermore, such requests are not adequately monitored or recorded. Apart from the effect on the resources of a particular station, which was required to divert staff to answer requests, there were variations in the interpreting of WAPS policies with respect to the release of information. It was also noted that an enormous amount of time was being spent by operational officers answering correspondence from insurance companies.

Wray also referred to insurance companies being informed by certain officers that only specific information was available to be released and on other occasions different officers would release information. Wray accepted that there was widespread non-compliance with the guidelines with respect to the release of information and the result was that insurance companies and inquiry agents would engage in forum shopping to maximize the release of information.

WAPS introduced Administrative Direction 85, which became effective on 1 January 2002. The rationale of which was (WAPS, 2002d):

Prior to the introduction of the Police Service's Privacy Statement the agency's information release and sharing practices conflicted with legislation, lacked uniformity, were nebulous and exposed the agency to risk.

Administrative Direction 85 creates a single point of contact by requiring persons to make application to the Chief Information Officer with payment of a fee. Administrative Direction 85 requires the release of information to be in line with legislation and consistent with the principles encompassed in WAPS' Privacy Statement. Access is normally granted to individuals who make application, with payment of a fee, to examine personal information held by police in respect of that person.

Wray confirmed that, given the single access, there is no longer any need for a WAPS officer, not specifically assisting the Chief Information Officer, to receive and answer requests for information. This will reduce the potential for any officers to be unsure as to the propriety of providing information in response to requests from members of the public.

It should also prevent officers falsely claiming that they believed they were entitled to release information.

An issue that remains is the nature and extent of the information that should be released. The Royal Commission received a submission from the AIPI, which made the observation:

There can be no doubt that policing is undergoing significant change and many matters, which were solely the province of the police, are now being undertaken by private industry. This is reflected in the considerable growth of private security and investigation agencies, together with the number of government agencies and corporations who have established dedicated investigative positions within their own organizations. ... We believe that the number of criminal investigations conducted by private industry will continue to grow and place an even greater requirement for access to police held information.

The point made is a good one. Police services across the world are generally incapable of enforcing all laws, and progressively other private and public agencies are assuming responsibility for the investigation of various categories of crimes and the provision of security, with either the express or tacit approval of the police services. The Police Services now accept those resources as an essential complement to their own. That being so, there is an obligation to make available such assistance as is convenient and appropriate to enable those agencies to effectively carry out their tasks. Controlled access to information on police data-bases is one such source of assistance. The AIPI submitted that there should be a system of licensing and identification numbers, and even involving the payment of fees, whereby external access to basic information may be obtained. There is much to be said for considering such a system. It would relieve the burden upon police to provide a clerical function of responding to requests for information, and enable the police officers involved to return to operational functions.

The AIPI makes the interesting argument that, unless some means are developed to provide lawful and accountable access to information, unlawful attempts to obtain information will continue. Conversely, however, members of the public provide information to WAPS, often under compulsion, in the belief that the information is received by WAPS in confidence. The WA Police Union noted the high degree of difficulty of subsequently monitoring how the released information is used. By way of illustration, it would not be possible to monitor if a private inquiry agent attempted to on-sell obtained information to an organized crime identity.

The single gateway, with designated responsible officers, may assist in limiting the demand on other officers to provide information to private inquiry agents. ICAC (1992) noted that one of the reasons for private investigators being employed to obtain illicit information was

that publicly available information has been subject to such delays that a parallel illicit trade has developed and has been able to meet the demand more efficiently than the lawful means. A consistent policy that determines what information should be released, and that is implemented efficiently, may serve to limit the demand for illicit information that is publicly available if lawfully requested.

However, there are clear and obvious limitations as to the types of information that could be made available. There would remain a large quantity of valuable information, particularly of a criminal intelligence nature, which could not be released, because to do so would potentially compromise police operations. Thus, whilst the regulation of information release may reduce the problem of unauthorized computer access and disclosure, there would remain a clear need to maintain strong and reliable security systems.

# CHAPTER 12

## LAW REFORM

### 12.1 INTRODUCTION

The laws that govern police conduct in Western Australia serve not only to provide the framework within which the Police Service undertakes policing but, in addition, can contribute to ideological change in policing. Regulation does not only involve the restricting and constraining of policing, but rather a regulatory framework can bring procedural clarity to policing (Dixon, 1996). Appropriate legislative reform can have a significant effect upon the undesirable aspects of police culture, as discussed elsewhere in this Report.

Gaps in the regulatory framework can have a negative impact on those who are the subject of a police investigation. Furthermore, they create uncertainty for officers striving to conduct investigations in a lawful and ethical manner. Reform should not merely impose negative prohibitions but provide a clear and concise framework that informs officers as to the manner in which they should undertake policing in society. An appropriate framework ensures that officers have sufficient powers and that officers cannot justify acting unlawfully by pointing to the inadequacy or ambiguity of their powers and by insisting that the end justifies the means. If adequate and certain powers are given to the police, excursions from the rules are not necessary, and also less ideologically justifiable.

Various issues suggesting reform of laws have come to light during the course of the inquiry and the group consultation meetings or "Round Table Conferences" conducted by the Royal Commission. The Royal Commission recognizes that the Western Australia Police Service ("WAPS") has been undertaking a programme of review of relevant legislation that governs the role of WAPS and various Bills have been or are currently being drafted. The proposed draft Bills include the Criminal Investigation (Covert Operations) Bill 2000, Simple Offences Bill 2000, Criminal Investigation Bill 2000, Prostitution Control Bill 2003, and the Police Administration Bill 2000.

The proposed draft Bills address a number of the issues requiring law reform identified by the Royal Commission. Whilst it was not appropriate for the Royal Commission to undertake a review of the entirety of the proposed draft Bills, reference will be made to some of the relevant clauses of the proposed draft Bills that address the identified law reform issues, in the context of corruption prevention.

## 12.2 EXTERNAL OVERSIGHT

The Royal Commission's Interim Report made a number of recommendations regarding the replacement of the Anti-Corruption Commission with a new external oversight agency to be known as the Corruption and Crime Commission ("CCC"). It is imperative that the CCC be adequately resourced and armed with contemporary and effective coercive and investigative powers.

Whilst the *Corruption and Crime Commission Amendment and Repeal Act 2003*, which amends the *Corruption and Crime Commission Act 2003*, is substantially in operation, the Royal Commission reiterates that it is vital that an oversight agency with the necessary powers is established as soon as possible.

The Royal Commission recommended in the Interim Report that the functions of the CCC should include the investigation of serious and organized crime. A similar function is reposed in the Special Commissioner pursuant to the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*. The powers of the Special Commissioner could be exercised in respect of the investigation of organized crime. The response of the Government to the Royal Commission recommendation in the Interim Report was effectively to transfer the provisions of the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act* to the CCC legislation, with the result that the CCC would carry out the function previously designated for the Special Commissioner. That arrangement does not fully achieve the integration of the investigation of corruption and serious crime envisaged, but it does provide a legislative framework for a workable partnership between the CCC and the Commissioner of Police in relation to the investigation of organized crime.

However, the most substantial difficulty remaining is the jurisdiction in which the powers may be exercised. Section 3 of the *Corruption and Crime Commission Act 2003* defines organized crime as being:

activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organization.

This definition is in identical terms to s. 3 of the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act*. The narrow definition of organized crime is thus carried over into the CCC legislation. Upon the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act* being repealed, the powers, including the power to conduct compulsory examination of persons, are to be granted to the Commissioner of Police by the Corruption and Crime Commission ("CCC"), upon application, pursuant to Divisions 2 to 5 of

Part 4 of the *Corruption and Crime Commission Act 2003*. Divisions 2 to 5 of Part 4 is limited to the investigation of s. 5 offence, which is defined as a Schedule 1 offence committed in the course of organized crime. Accordingly, the same restriction that has been placed on the power of the Special Commissioner to conduct compulsory examinations is imposed upon the CCC.

The definition of organized crime is limited and unduly restricts the exercise of the powers of the Corruption and Crime Commissioner. The precondition that there must exist two or more persons committing two or more Schedule 1 offences prohibits the investigation of serious offending by a single person, who may not be part of an organized crime group. At the time of finalizing this Report, one application under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act* had been made, which seems remarkable given that the Act has been law for over 18 months. That would seem to indicate that the legislation has been of limited utility. The New South Wales Crime Commission, which was the successful model for the Royal Commission recommendation in the Interim Report, has been able to lend its powers to the New South Wales Police in relation to the investigation of serious unsolved murders, and other serious individual offences, because of the wider and more flexible definition in the *New South Wales Crime Commission Act 1995*.

It is recommended that the *Corruption and Crime Commission Act* be amended by broadening the scope when the CCC may exercise the exceptional powers to encompass instances when a single s. 5 offence has been committed, without the requirement that there be two or more persons involved.

### **12.3 CRIMINAL INVESTIGATION POWERS**

Legislation that creates a regulatory framework for policing that fails to ensure that officers have adequate powers to undertake investigations will not only frustrate the investigation of offenders, but may lead to otherwise ethical and competent officers engaging in actions that are in breach of the law. The attention of the Royal Commission was drawn to situations in which legislative provisions are inadequate for the purposes of empowering police officers properly to discharge their investigative functions. The unsatisfactory state of the legislation is not new, as it has been previously recognized, and steps have been taken to draft corrective legislation. However, these have not been sufficient.

The Criminal Investigation Bill, which is currently in its third draft, is a Bill to consolidate and codify police powers, and is intended to be complementary to the *Criminal Investigation (Identifying People) Act 2002*, the Criminal Investigation (Covert Operations) Bill and the

organized crime provisions that have been moved to the *Corruption and Crime Commission Act*.

The Criminal Investigation Bill is more prescriptive than previous legislation that purported to govern criminal investigations and provides clear procedures for police officers to follow in a number of areas including:

- Entering and searching places;
- Powers with and without warrant;
- Dealing with arrested persons;
- Interviewing suspects; and
- Admissibility of evidence obtained during searches and forensic procedures.

Although the Criminal Investigation Bill is not a code, it will provide concise procedures for police conduct during criminal investigations. The Bill addresses a number of difficulties identified by the Royal Commission.

### ***DETENTION FOR QUESTIONING / INVESTIGATION***

Section 6 of the *Bail Act 1982* requires an officer to bring an arrested person before a bail-granting authority "as soon as practicable". Prior to the introduction of s.6 of the *Bail Act* WAPS relied upon English authority to justify the detention of an arrested person without bail for the purpose of conducting interviews and undertaking further inquiries to determine if sufficient evidence existed to support the suspicion that grounded the arrest, prior to preferring a complaint and dealing with bail. In *Williams v R* (1986) 161 CLR 278 the High Court held that the words "as soon as practicable" were restricted to a consideration of the obligation to bring an arrested person before the bail granting authority, not the time required for police to interview, make further inquiries, or conduct further investigations.

The WA Police Union, in a submission to the Royal Commission, succinctly outlined the nature of the difficulties that flow from the restrictive interpretation of s. 6 of the *Bail Act*. In order to thoroughly undertake post arrest investigations and obtain necessary evidence, including exculpatory evidence, officers may have to breach the requirement that persons be brought before the bail-granting authority as soon as practicable. The result may be that officers endeavouring to properly conduct an investigation find that they are in breach of a lawful prohibition. In such circumstances, breaches may occur with the acquiescence of senior supervising officers who accept that the detaining of an arrested person, in breach of s. 6 of the *Bail Act*, is necessary to properly conclude an investigation. Not only does that

involve the officers concerned acting in breach of the law, but it also contributes to an unacceptable culture in which police may consider that they are above the law and to the perpetuation of so-called "noble cause" corruption. The valid point made by the Union is that police do not want to be in this position, and that it is unfair to them.

Accordingly, it is necessary that provisions be enacted to authorize officers to detain an arrested person for a reasonable period after arrest, and before complying with s. 6 of the *Bail Act*, in order to undertake further investigation. Part 9 of the Criminal Investigation Bill provides a comprehensive legislative framework for the regulation of police arrests and related matters. Clause 138 of the Criminal Investigation Bill provides that an officer may detain an arrested person for a reasonable time for the purposes of executing search warrants, interviewing the suspect, investigating any offence suspected of having been committed by the suspect or deciding whether or not to charge the suspect with an offence.

Clause 140 of the Criminal Investigation Bill outlines the factors to be taken into account in determining what constitutes a reasonable period of detention in all the circumstances. The factors call for a consideration of the reason for the detention and whether the time undertaken for conducting the further investigation was reasonable in the circumstances.

Western Australia would do well to enact legislation authorizing officers to detain an arrested person for a reasonable period prior to complying with s.6 of the *Bail Act*, in order to undertake necessary further investigations. Part 9 of the Criminal Investigation Bill provides an appropriate regulatory framework.

### ***SEARCH WARRANTS***

An area of criminal investigation that has gained notoriety during the Royal Commission's hearings has been that related to search warrants. There are two distinct aspects relevant to law reform, being the procedure for the issuing of search warrants, and the regulation of the execution of search warrants.

The three main legislative bases by which officers obtain search warrants are *The Criminal Code*, *Misuse of Drugs Act 1981* and the *Firearms Act 1973*. Pursuant to s. 711 of *The Criminal Code*, the prerequisite to the granting of a search warrant is that a Justice must be satisfied on sworn evidence that there are reasonable grounds for suspecting the presence in any place of the object of the search, and further that there are reasonable grounds for believing that the object will afford evidence of the commission of the offence. Section 714 of *The Criminal Code* requires that seized property be taken before a Justice forthwith where the Justice may cause the thing so seized to be detained in custody until the



conclusion of the investigation or for the purposes of trial. The term Justice includes both Magistrates and Justices of the Peace.

Section 24 of the *Misuse of Drugs Act* provides that, if a Justice of the Peace is satisfied by information on oath that there are reasonable grounds for suspecting that anything being used in the commission of offences may be at a specific location, a search warrant may issue authorizing a search. Similarly, s. 26 of the *Firearms Act* empowers a Justice, who is satisfied that there are reasonable grounds, that there is in any place any firearm, ammunition or any other thing that will afford evidence of a firearm offence, to issue a search warrant to enter premises and seize items.

Part 5 of the Criminal Investigation Bill provides a comprehensive regulatory framework with respect to the issuing and execution of search warrants in relation to all offences. A specific search warrant power in an Act that governs criminal investigation is preferable to the various Acts granting the power to issue warrants at present. Accordingly, there exists no reason why the specific search warrant powers in *The Criminal Code*, the *Firearms Act* and the *Misuse of Drugs Act* are necessary, should Part 5 of the Criminal Investigation Bill be enacted.

However, the Criminal Investigation Bill does not address two difficulties of concern to the Royal Commission, being the status of the person authorized to issue a warrant and the requirement that the execution of the warrant be video taped.

WAPS Operational Procedure 39.6 (WAPS, 2002d) provides that members have a responsibility to ensure that complaints for obtaining search warrants meet legal requirements for the valid issue of search warrants, including documenting the grounds for suspicion and grounds for belief. It further requires that, prior to approaching a Justice, consultation take place with a commissioned or non-commissioned officer, independent of the inquiry, to review the grounds for the issue of the warrant.

Given the evidence received by the Royal Commission, it is clear that there have been frequent instances where this procedure was not followed. Instances have been cited where search warrants have been forged, obtained on false or misleading information, and blank warrants signed by obliging Justices of the Peace. It is to be hoped that the corporate integrity of WAPS, including the numbering of warrants, has improved to the extent that such conduct is no longer likely, but the legislative framework remains unchanged, and the same opportunities continue to exist.

There is no doubt that almost all Justices of the Peace are honest and conscientious, but the fact is that they are invariably lay persons with no particular legal skill, and often seem to achieve a state of inappropriate familiarity with police officers with whom they deal regularly.

An alternative to empowering Justices of the Peace to issue search warrants has been adopted in New South Wales. In NSW the *Search Warrants Act 1985* provides that all applications must be made to an "authorized justice", which is defined by s. 3 of that Act as:

- (a) a Magistrate, or
- (b) a registrar of a Local Court or registrar of the Drug Court, or
- (c) a person who is employed in the Attorney General's Department and who is declared (whether by name or by reference to the holder of a particular office), by the Minister administering this Act in writing or by order published in the Gazette, to be an authorized justice for the purposes of this Act.

Similarly, the issuing officer in relation to a warrant to search premises or persons in relation to Commonwealth offences under the *Crimes Act 1914* is a Magistrate, or a Justice of the Peace or other person employed in a Court of a State or Territory who is authorized to issue search warrants.

Search warrants authorize conduct that would otherwise be a most serious breach of the privacy of a citizen, for which permissions should only be granted in circumstances of caution and formality. The use of Magistrates, Court officers or particular designated persons, to issue search warrants, as opposed to Justices of the Peace, would lead to a more thorough and independent review of applications for warrants. It is sometimes suggested that the geography of Western Australia requires a more flexible system. Integrity, however, should not be sacrificed in the interests of expediency. In any event, given modern means of communication, including facsimile and e-mail, the requirement that warrants be issued by a Magistrate or a particular designated person would not impact on the timeliness of police operations.

The Royal Commission notes that clause 40 of the Criminal Investigation Bill provides that applications for search warrants must be made to a Justice of the Peace. Whilst Part 5 of the Criminal Investigation Bill provides a comprehensive regulatory framework for the issue and execution of search warrants, the persons authorized to issue search warrants should be restricted to Magistrates or other designated persons within the Court system but not all Justices of the Peace. Ideally, the issue of search warrants should solely be undertaken by

Court officers. Should it be necessary to extend the persons who are to be reposed with the power to issue search warrants, the persons should undertake training to ensure that the significance of the power and the basis for the issues of the warrant are understood.

There is no doubt that the majority of the most recent corrupt conduct exposed by the Wood Royal Commission, the Police Integrity Commission in New South Wales and this Royal Commission involves misconduct in the course of executing search warrants. Stealing money from the premises of drug offenders and irregularities in relation to the handling of drugs located, have unfortunately been common. Predictably, in none of those instances was a video recording made of the search. A video of the search is by no means guaranteed to prevent misconduct, but as the requirement to record admissions indicates, the recording seems to change the integrity of the process and has the capacity to significantly restrict the recurrence of such corrupt conduct in the future.

In Western Australia there is no legislative requirement that the execution of the search warrant be video recorded. Such a requirement would improve the integrity of the search and protect officers against allegations of impropriety. The importance of videotaping the execution of warrants is illustrated in the Royal Commission's review in Volume I of this Report of the allegations of Scaffidi, who complained that during the execution of a search warrant at his premises some \$330,000 of the total monies found during the search was stolen by officers. Whilst the allegation was denied by the police, a video tape of the finding of the monies would have been an important safeguard for the officers.

Administrative Direction 24 of the COPS Manual (WAPS, 2002d) provides, that in respect of the execution of warrants for the seizure of drugs, where practicable, consideration should be given to the execution being recorded on video tape. AD-24-21 does provide an adequate direction as to the manner in which the recording of the execution should be conducted. However, the difficulty is that the Direction is not mandatory, but merely identifies a matter to which consideration should be given. In its terms, it is hardly a direction at all. The Direction should be amended to render recording compulsory, whether or not the legislation is changed.

An obligation to video tape is not foolproof. Experience elsewhere shows that officers may provide excuses, such as flat batteries or inability to gain access to cameras, but the position should be that evidence is not admissible as a result of an unrecorded search, unless the officers concerned are able to provide a reasonable explanation for the failure to film.

Part 5 of the Criminal Investigation Bill does not require that the execution of search warrants be video taped. It is recognized that requiring the videotaping of the execution of all search warrants may involve difficulties for WAPS due to resource limitations. Lack of resources should not be an excuse. The Police Service was able to equip all officers with sound and video recording equipment of interviews when the law was changed to require admissions to be recorded in order to be admissible. The cost of providing an adequate supply of video cameras would not be prohibitive. In any event, as the experience with the requirement for the recording of admissions also indicates, the cost saving from the lack of Court resources in resolving frequent controversies over the circumstances of a search, would offset the cost of providing the camera equipment.

It is therefore recommended that the Criminal Investigation Bill provide that only Magistrates and other designated persons, rather than all Justices of the Peace, should issue search warrants. Further, that the execution of search warrants be video taped, before any evidence obtained during the search is admissible in evidence, and finally, the Bill should be progressed to final draft, submitted to Cabinet and presented to Parliament as soon as possible.

## **12.4 INTEGRITY TESTING PROGRAMMES**

Integrity testing programmes are a relatively recent phenomenon in the Australian context and involve placing police officers in contrived situations that provide an opportunity to behave in a dishonest, negligent, or otherwise improper manner (Homel, 2002). The intention is to construct a situation that replicates those situations that confront the employee regularly in the course of his or her employment, and to add to this surveillance that would ordinarily be absent.

WAPS Administrative Direction AD-84 "Integrity Testing" (WAPS, 2002d) describes a policy whereby "[i]t is the policy of the Western Australia Police Service to conduct targeted integrity testing of sworn officers and workgroups suspected of corrupt, criminal or improper conduct". The objective of such integrity tests is cited as being to:

- Ascertain the behaviour of a sworn officer or workgroup in respect of alleged corrupt, criminal or improper conduct.
- Serve as a deterrent against corrupt, criminal or improper conduct.
- Demonstrate service commitment to self-regulation by proactively targeting sworn officers who are involved in corrupt, criminal or improper conduct.
- Scrutinize the capability and effectiveness of existing controls, systems and processes to minimize the incidence of corrupt, criminal or improper conduct.

Although integrity testing programmes can be conducted in relation to both serious corruption and minor misconduct, the cost of conducting a test, together with the cost of surveillance, means that integrity testing programmes will likely be used in Western Australia only in select circumstances. There cannot, however, be any doubt that the use of integrity testing programmes is a significant deterrent to corrupt or criminal conduct and an important tool in a corruption prevention strategy.

In Chapter 3 of this Volume of the Report reference is made to judicial pronouncements to the effect that, in the absence of legislative authority, government officials such as police have to obey the law like all other citizens and have no licence to engage in criminal conduct in the course of their duties. This principle can impact upon the conduct of integrity testing programmes. A predictable scenario would be similar to that used by the Royal Commission in relation to T2 as described in Chapter 10 of Volume I of this Report, in which money was placed in a storage unit and the integrity of T2 was tested by confronting him with the temptation to steal the money. To put in place a scenario such as that often requires officers to breach the law, for example, by gaining entry to the premises to position the money and to install recording equipment. A variation of the same scenario may involve providing the officer being tested with false information to enable him to obtain a search warrant to search the premises, and technical offences may also then take place. The Royal Commission was empowered lawfully to carry out the necessary preparation for these integrity testing programmes of T2 by the statutory authority of the powers provided in the *Royal Commission (Police) Act 2002*. WAPS does not have those powers.

Simple integrity testing programmes may be carried out without any such prospect of breaching the law. However, it is unlikely that any such testing programmes would possess the requisite degree of sophistication to adequately test the integrity of an officer suspected of serious corruption.

WAPS AD-84 (WAPS, 2002d) has no legislative basis. It is highly desirable that the conduct of integrity tests be regulated by legislation, as this will ensure that the regulatory framework is measured and certain. Integrity testing programmes were first legislated for in New South Wales in the *Police Legislation (Further Amendment) Act 1996* (NSW) and now forms part of Part 10A of the *Police Act 1990* (NSW). Section 207A of the *Police Act* (NSW) provides that the Commissioner of Police may conduct, or authorize any police officer or other person to conduct, a programme ("an integrity testing programme") to test the integrity of any particular police officer. Section 207A (3) provides that any act or omission undertaken by a person for the purposes of the integrity test is declared to be lawful despite any other law. In addition ss. 207A(4) and 207A(5) of the *Police Act* (NSW)

specifically provide that the person assisting who undertakes acts or omissions made during an integrity testing programme is not guilty of the following offences:

- An offence against s. 200 of the *Police Act* (bribery/corruption);
- An offence against s. 89 or s. 90 of, or corrupt conduct within the meaning of, the *Independent Commission Against Corruption Act 1988* (bribery/fraud on witness);
- An offence against s. 109 or s. 110 of the *Police Integrity Commission Act 1996* (procuring false testimony/bribery of a witness);
- An offence against ss. 314, 319, 323, 325, 546A or 547B of the *Crimes Act 1900* (offences against the administration of justice); and
- An offence of aiding, abetting, urging, inciting, soliciting, encouraging, counselling or procuring the commission of an offence (in whatever terms expressed), including an offence against s. 2 or s. 3 of the *Crimes Prevention Act 1916* (inciting crimes) or 3ss. 315B or 546 of the *Crimes Act 1900* (offences against administration of justice).

Sections 30(1) and 30(2) of the *Royal Commission (Police) Act* and s. 123 of the *Corruption and Crime Commission Act 2003* provide a similar framework for conducting integrity testing programmes by the external oversight body. Given that the CCC has the power to conduct integrity tests an issue arises as to whether the Commissioner of Police should be similarly authorized and, if such a power is granted, whether the CCC should be required to consider and authorize the Commissioner of Police to engage in each respective integrity testing programme. It is preferable that the Commissioner of Police retain the ability to conduct integrity testing programmes and there is no compelling reason why the Commissioner of Police, when testing his own officers, should be subject to the authorization of the CCC, although it is to be hoped that the level of co-operation will be such that there will be consultation.

Similarly, WAPS has no legislative support or foundation on which to carry out the testing of police officers for alcohol and prohibited drugs or to require the furnishing of periodic financial and integrity statements. These measures, along with integrity testing programmes, will provide WAPS with additional corruption-proofing tools in a measured and certain regulatory framework.

Section 211A of the *Police Act* (NSW) provides that an authorized person may require any police officer who is on duty in accordance with a roster to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol or to provide a

sample of the police officer's urine or hair for the purpose of testing for the presence of prohibited drugs.

Section 97 of the *Police Act* (NSW) empowers the Commissioner of Police to require a member of the NSW Police to furnish a financial statement or an integrity statement. A 'financial statement' means a statement of assets and liabilities or a statement of income and expenditure or a statement of both, whilst 'integrity statement' means a statement to the effect that the person by whom the statement is made has not engaged in any criminal activity or corrupt conduct during the period to which the statement relates. Section 97A of the *Police Act* (NSW) provides for the confidentiality of financial statements.

The Royal Commission is of the view that the Police Administration Bill or similar legislation establishing the role and functions of the Commissioner of Police contain a provision empowering the Commissioner of Police to:

- approve and conduct programmes to test the integrity of any particular police officer or class of police officers and that acts carried out in pursuance of an approved programme are lawful. Sections 207A(7) and 207A(8) of the *Police Act* (NSW) provide appropriate reform precedents.
- approve and conduct programmes to require any police officer who is on duty in accordance with a roster to be tested for the presence of alcohol or for the presence of prohibited drugs. Section 211A of the *Police Act* (NSW) provides an appropriate reform precedent.
- require a member of WAPS to furnish a financial statement or an integrity statement. Sections 97 and 97A of the *Police Act* (NSW) provide appropriate reform precedents.

## **12.5 COVERT OPERATIONS BY THE WESTERN AUSTRALIA POLICE SERVICE**

It has become conventional police practice to investigate major drug offences with the technique of the controlled delivery of narcotics, involving the use of informants acting at the direction of police or undercover officers, to infiltrate criminal organizations in circumstances in which they may be required to participate in criminal activity. The Commonwealth and most other States enacted legislation legalizing controlled deliveries and covert operations by law enforcement officers in response to the High Court's decision in *Ridgeway v The Queen* (1995) 184 CLR 19. Without legislative backing, officers of WAPS are unable to conduct lawful controlled deliveries and covert operations, and are therefore

either denied a most effective tool for the investigation of organized crime, or act unlawfully.

Western Australia requires a legislative framework to authorize WAPS to use covert operations for the purpose of the investigation of corrupt conduct, criminal conduct, criminal involvement, or serious improper conduct and to provide protection for undercover officers.

Divisions 4 and 5 of Part 4 of the *Corruption and Crime Commission Act* empowers the CCC to approve and authorize the exercise of “exceptional powers”, including the use of assumed identities and controlled operations where there is a finding by the CCC that an investigation of an organized crime offence is warranted. This essentially mirrors the provisions of Parts 6 and 7 of the *Royal Commission (Police) Act* in relation to assumed identities and controlled operations. There is, however, no legislation that authorizes the Commissioner of Police to otherwise utilize assumed identities and controlled operations. It is necessary that WAPS have such powers to undertake the investigation of serious offences and organized crime.

The Criminal Investigation (Covert Operations) Bill provides a comprehensive framework for the regulation of covert and controlled operations and should be progressed to final draft, submitted to Cabinet and presented to Parliament as soon as possible.

## **12.6 POLICE ACT 1892**

The legislative authority for the establishment of WAPS is the *Police Act*. The origins of the *Police Act* can be traced back to the *Vagrancy Act 1824* (UK), the *Metropolitan Police Acts* of 1829 and 1839 (UK) and the *Metropolitan Police Courts Act 1839* (UK). The earliest Australian statute was the *Police Act 1833* (NSW). The *Police Act* represents an accretion of over a century of legislation and consequently provides a mélange of styles of legislative drafting since the foundation of the colony.

The *Police Act* serves the twin purposes of regulating the “Police Force” and providing for a large number of simple offences. The first five parts of the *Police Act* are concerned primarily with administration, the appointment of officers and constables, the regulations, duties and discipline, the Police Appeal Board, the appointment and regulation of special constables, Aboriginal aides and the establishment of police districts. However Parts II, IIA and III also contain offences, not all of which are restricted to offences committed by members of WAPS. Although the police are now said to constitute WAPS, the *Police Act* describes it as the “Police Force”.



In 1985 the Law Reform Commission of Western Australia ("LRC") undertook a review of the offence-creating provisions of the *Police Act*. The LRC recommended that a number of the offences be repealed and that the remaining offences should be transferred to a new Act to be named the Summary Offences Bill, leaving the regulation of the Police Force to the *Police Act*. The recommendation was most apposite and not unknown to law reformers in Western Australia. Such a proposal was made in 1906 when a Police Offences Bill was introduced into Parliament to consolidate all legislation, including the redrafting of the *Police Act*. That proposal did not proceed. In 1952 there was a proposal to divide the *Police Act* into two separate Acts dealing with offences and administration respectively (Western Australian Parliamentary Debates (1952) vol 132, 1558). That proposal did not proceed. In 1964 a review of statutes, including the *Police Act*, was announced (Western Australian Parliamentary Debates (1964) vol 168, 1496). The *Police Act* remained unamended.

As a result of the LRC report, amendments were made to the offence provisions in the *Police Act*. However, the Act still contains out-of-date offences and constructs provisions in archaic language, or without punctuation, which makes reading and comprehending difficult. By way of illustration, s. 109 provides that it is an offence to remove night-soil except between the hours 11.30 pm and 5.00 am. One wonders about the necessity of maintaining such an offence when the days of removing night-soil remain a memory for only senior members of the community. Section 117 which creates an offence of causing a stall to be placed on foot or carriageway, is drafted as one full paragraph and has in excess of 420 words without a full stop. There are a multitude of provisions drafted in the same manner. It is essential that criminal offences be drafted in a clear and concise manner to ensure the nature of the prohibition is known and understood. The Act is so anachronistic as to make almost humorous reading, and brings the law into disrepute. If there is to be an expectation that WAPS will change its culture and its level of professionalism, then at the least it should be provided with a legislative framework that reflects the standards required. The *Police Act* does not fulfill that role and should be replaced without delay.

The Simple Offences Bill proposes to excise the legislative provisions that create simple offences, and is intended to be complementary to the Police Administration Bill, which deals with the conduct and management of WAPS. The Simple Offences Bill is currently in its fifth draft. The enactment of distinct legislation to govern the administration of WAPS and the formulation of simple offences is essential. The Simple Offences Bill is a comprehensive code of simple offences and should be enacted as soon as is practicable.

In July 1999, Cabinet approved the drafting of legislation for a new Act for the management and administration of WAPS. That legislation has not been enacted. Legislation is required to establish WAPS as an organizational entity, establishes the role and functions of the

Commissioner of Police, updates provisions transferred from the extant legislation in order to clarify their intent and provides for the management and administration of WAPS. The proposed Police Administration Bill that is currently being drafted addresses these requirements.

Presently there is no legislative power in the *Police Act* to enable WAPS to raise fees and charges. WAPS charges fees for various services, for example, the provision of National Police Clearance Certificates, which are available to members of the public who require evidence of convictions recorded against their name, or lack thereof. WAPS charges \$41 for each certificate, which is appropriate given the amount of time occupied at police stations in providing the documents. This lacuna has obvious implications in relation to WAPS' ability to charge fees for service, cost recovery and third party funding for police services. WAPS is obliged to perform a range of functions or processes that impact on its ability to provide "core policing services".

Accordingly, it is necessary for legislation, empowering WAPS to charge fees for certain services, cost recovery and third party funding. Sections 208 and 209 of the *Police Act* (NSW) provide an illustration of the nature of services provided by police to which fees may properly attach. Section 209 of the *Police Act* (NSW) provides that if officers are required to attend to false alarms at a building (other than a dwelling) on one or more occasions, due to false alarms, the Commissioner of Police is entitled to payment by the owner of a prescribed fee. The Commissioner of Police should be entitled to recover the outstanding charges and fees in a Court of competent jurisdiction and in addition retain the discretion to waive or reduce the charges in appropriate circumstances.

The Simple Offences Bill and the Police Administration Bill, should be progressed to final draft, and presented to Parliament as soon as possible. Furthermore, a provision should be inserted in the Bill that empowers the Commissioner of Police to charge fees for services, cost recovery, and third party funding for police services. Discretion should be reposed in the Commissioner of Police to waive the fees and charges in appropriate circumstances.

## **12.7 PROSTITUTION**

Inadequate legislative support diminishes the ability of WAPS to effectively plan and implement corruption prevention strategies. If the legislature determines not to regulate a particular activity that requires control, such as prostitution, but rather leaves the regulation to the discretion of WAPS, it places officers in a difficult position. Senior officers will be required to formulate policies and determine the scope of discretion that must be exercised, but in a legislative vacuum.

From a corruption perspective, the lack of precise legislation creates a situation of high risk. Although Royal Commission investigations did not reveal evidence of prostitution-linked corruption, that does not mean that such corruption does not exist, and is not a reason for complacency. Prostitution-related corruption was a dominant feature of the Fitzgerald Inquiry (1989) in Queensland, and the same regulatory circumstances continue to exist in Western Australia. It is a situation of risk that should not be allowed to continue.

Whilst prostitution is not an offence under the *Prostitution Act 2000* and the provisions of the *Police Act* that preceded it, activities related to prostitution are offences, including keeping or managing a brothel, living on the earnings of a prostitute, street soliciting and inducing women and children into prostitution. For many years, police sought to control prostitution through the application of the “containment policy”.

The containment policy operated as a stated policy of WAPS from 1975, although it has operated informally for over 100 years. Notwithstanding that the activities were in breach of the law, the policy allowed a number of brothels and escort agencies to operate with police approval and subject to police-imposed conditions. Enforcement of the conditions was conducted by the police and required that brothels be drug and alcohol-free, a female-only operation and have no juvenile involvement. Prostitutes had to be registered with police and were subject to regular health checks. There was no legislative authority for such an approach.

The containment policy was reviewed many times over the years and has been the subject of adverse comment and criticism from many quarters. The Commissioner of Police rescinded the containment policy in August 2000 – meaning that prostitution remained largely unregulated. With the *Prostitution Act* in force and with debate on the Prostitution Control Bill 2003 adjourned in the Legislative Council, there is a lack of clarity, absence of legislative foundation and potential to afford opportunities for corruption. In this context, the Royal Commission considers that legal regulation could provide an important contribution to ideological change in policing.

The Prostitution Control Bill provides a statutory scheme for the control of prostitution. By the creation of a Supervisory Board regulating the industry through the issue of licences to participants in the industry, the role of WAPS as a regulator, without legislative direction, is no longer necessary. Part eight of the Prostitution Control Bill prescribes the proper role of WAPS in regulating the prostitution industry. That Part grants WAPS specific investigative powers to undertake the enforcement of the statutory scheme created by the Prostitution Control Bill. There is a benefit to be obtained in having the prostitution legislation progressed to final draft and presented to Parliament as soon as possible.

## 12.8 INFORMATION MANAGEMENT AND SECURITY

As described in the preceding chapter of this Report, evidence that has been given before, and information otherwise gathered by, the Royal Commission indicates that unauthorized access of WAPS information databases has continued to occur in a variety of circumstances and with varying degrees of harm flowing. There are a number of provisions that form part of the legislative prohibitions on unauthorized access to, and misuse of, the WAPS computer system, being:

- Section 440A of *The Criminal Code* – “unauthorized access to computer system”;
- Section 81 of *The Criminal Code* – “disclosure of official secrets”;
- Section 82 of *The Criminal Code* – “bribery”;
- Section 83 of *The Criminal Code* – “corruption”;
- Section 85 of *The Criminal Code* – “falsification of records by public officer”; and
- Regulation 607 of the *Police Force Regulations 1979* - “disclosure of police force information”.

The scope and nature of the above provisions are outlined in the previous chapter, which deals with the regulation of the accessing of computer systems and the prohibitions that have been enacted to combat unauthorized access. That chapter notes a number of limitations and practical problems associated with the provisions when applied to police officers who misuse the police computer system.

Whilst it is arguable that the existing laws are adequate to address the types of conduct that relate to the improper use of information, there is a requirement for improvement. Doubts about the applicability of some provisions may result in other courses, such as disciplinary proceedings, being preferred as offering more certainty. An offence provision that was better framed to refer to inappropriate access or use by persons who have access for specific purposes would be beneficial. Section 408D of the *Criminal Code (Qld)* provides a useful example of such a provision:

- (1) A person who uses a restricted computer without the consent of the computer’s controller commits an offence.
- (2) If the person causes or intends to cause detriment or damage, or gains or intends to gain a benefit, the person commits a crime and is liable to imprisonment for 5 years.

- (3) If the person causes a detriment or damage or obtains a benefit for any person to the value of more than \$5,000 or intends to commit an indictable offence, the person commits a crime and is liable to imprisonment for 10 years.
- (4) It is a defence to a charge under this section to prove that the use of the restricted computer was authorized, justified or excused by law.

Section 5 provides a number of definitions as follows:

- 'Controller' means a person who has a right to control the computer's use.
- 'Use' of a restricted computer, includes accessing or altering any information stored in, or communicate information directly or indirectly to or from, the restricted computer, or cause a virus to become installed on or to otherwise affect the computer.
- 'Restricted computer' means a computer for which-
  - (a) a device, code or a particular sequence of electronic impulses is necessary in order to gain access to or to use the computer; and
  - (b) the controller-
    - (i) withholds or takes steps to withhold access to the device, or knowledge of the code or of the sequence or of the way of producing the code or the sequence, from other persons; or
    - (ii) restricts access or takes steps to restrict access to the device or knowledge of the code or of the sequence, or to the way of producing the sequence, to a person or a class or person authorized by the controller.

Section 408D, whilst having certain advantages, would require amendment to ensure that it is made clear that a person who has consent to access a restricted computer may have the access circumscribed and that an act of accessing beyond the actual authority would constitute an offence.

In support of the above, *The Criminal Code* needs to be amended to include an offence in similar terms to s. 408D of the *Criminal Code (Qld)*, and s. 440A of *The Criminal Code (WA)* be either repealed or amended to apply to hackers.

## **12.9 PRIVATE INQUIRY AGENTS**

In the previous chapter attention was drawn to situations in which former officers of WAPS who had left in circumstances of concern, became private inquiry agents.

Section 52(c) of the *Security and Related Activities (Control) Act 1996* provides that a licensing officer is not to issue a licence unless the officer is satisfied that the applicant is of good character and is a fit and proper person to hold a licence. In respect of police officers who have left WAPS because of disciplinary reasons or because the Commissioner of Police has lost confidence in them, there is no formal policy or process that enables the licensing officer to access information from the Professional Standards Portfolio regarding the

evidence surrounding the circumstances of that officer and his/her separation from WAPS. WAPS does not supply any information to licensing officers other than information about an applicant's criminal convictions. Former police officers who have been the subject of significant integrity issues whilst serving have been deemed to be of good character and fit and proper persons to hold a licence under the Act.

The *Security Industry Act 1997* (NSW) provides a comprehensive framework for the regulation of the security industry in New South Wales. Sections 15(6), 15(7), 16(1), 16(2) and 16(3) of the *Security Industry Act* (NSW) provide:

15. Restrictions on granting licence – general suitability criteria
  - (6) For the purpose of determining whether an applicant is a fit and proper person to hold the class of licence sought by the applicant, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the applicant that:
    - (a) is relevant to the activities carried out under the class of licence sought by the applicant, or
    - (b) causes the Commissioner to conclude that improper conduct is likely to occur if the applicant were granted the licence, or
    - (c) causes the Commissioner not to have confidence that improper conduct will not occur if the applicant were granted the licence.
  - (7) The Commissioner is not, under this or any other Act or law, required to give any reasons for not granting a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information as referred to in subsection (6).
16. Restrictions on granting licence – criminal and other related history
  - (1) The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:
    - (a) has, within the period of ten years before the application for the licence was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or
    - (b) has, within the period of five years before the application for the licence was made, been found guilty (but with no conviction being recorded) by a court in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or
    - (c) has, within the period of ten years before the application for the licence was made, been removed or dismissed from the Police Service of New South Wales or from the Police Force of any other jurisdiction (whether in Australia or overseas).

- (2) However, if the applicant concerned has been so removed from the Police Service of New South Wales by the Commissioner under s. 181D of the *Police Service Act 1990* on grounds other than the applicant's integrity as a police officer, the removal of the applicant in those circumstances is a discretionary ground for refusing the granting of the application for a licence.
- (3) The Commissioner must refuse to grant an application for a licence if the Commissioner is of the opinion that the applicant is not suitable to hold a licence because the applicant has been involved in corrupt conduct.

The strength of the NSW regulatory framework is that greater powers are granted to the NSW Commissioner of Police to refuse and/or revoke security industry licences based upon criminal intelligence that would not be disclosed in an appeal process. The difficulty that exists currently in Western Australia is that the decision and reasons of the licensing officer are subject to an appeal to a Magistrate. Thus, intelligence that was relied upon by the Commissioner of Police in refusing to grant a licence would be subject to disclosure to the relevant applicant and the public.

To remedy the situation described above, the following amendments to *Security and Related Activities (Control) Act* should be made:

- Empowerment of the Commissioner of Police to supply to licensing officers criminal intelligence reports and/or other pertinent information to aid the determination whether an applicant is of good character and is a fit and proper person to hold a licence.
- Provision that the Commissioner of Police not be required to provide any reasons for not granting a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information.
- Provision that applicants be required to sign a waiver to have their complaint histories, sustained or not sustained, to be taken into account by the licensing officer.
- Allowance for a licence to be refused where issues of integrity in respect to the applicant were raised, during the period of five years prior to the police officer leaving WAPS.

## 12.10 CONDUCT OF ROYAL COMMISSIONS

The *Royal Commission (Police) Act 2002* was enacted to grant the Royal Commission specific powers not available to a Royal Commission under the *Royal Commissions Act 1968*. The powers granted by the *Royal Commission (Police) Act* include:

- Obtain by notice information, documents and other things from a public authority or public office and to enter public premises (Part 2);
- Arrest and conditionally release persons who will not attend to give evidence before the Commission (Part 3);
- Restrict the publication of evidence and restrict the disclosure of information about notices issued to obtain information, documents and other things ( Part 4);
- Use surveillance devices in its inquiry as authorized by the *Surveillance Devices Act 1998* (Part 8); and
- Use telecommunications interceptions as authorized by the *Telecommunications (Interception) Western Australia Act 1996* (Part 9).

Pursuant to s. 47 of the *Royal Commission (Police) Act*, the above powers cannot be exercised after the end of the Royal Commission. Given that some of the powers may be necessary investigative tools of future Royal Commissions, any future Royal Commission in Western Australia requiring these powers would necessitate a specific enactment to grant them. Electronic surveillance is an investigative tool that future Royal Commissions may require. In order to avoid the delay in passing legislation dedicated to a particular inquiry, it would be preferable to have the same provision in a permanent form in the *Royal Commissions Act*. The proclamation establishing the Royal Commission could declare the parts of the Act that are to be available to the Royal Commission, in the same manner as was done for this Royal Commission in declaring s. 18 of the *Royal Commissions Act* applicable.

The procedure for the granting to Royal Commissions of the power to execute search warrants, illustrates an appropriate framework for granting the powers of electronic surveillance. Section 18(1) of the *Royal Commissions Act* provides that the terms of appointment, or instrument made by the Governor, may expressly apply the power of executing search warrants to each respective Royal Commission. An amendment to the *Royal Commissions Act* allowing for the use of surveillance devices would alleviate the need for specific legislation in respect to future Royal Commissions.



Part 3 of the *Royal Commissions (Police) Act* which provides broad powers in respect to the arrest of witnesses should be available for future Royal Commissions.

Recommendation is made that the *Royal Commissions Act* be amended to include the powers currently provided in the *Royal Commission (Police) Act* in Part 3 (arrest), and Part 8 (use of surveillance devices) for use by Royal Commissions generally. Given that the powers may not be appropriate for all Royal Commissions to exercise, the availability of electronic surveillance powers for particular Royal Commissions may be governed by a provision in the *Royal Commissions Act* requiring the terms of appointment or in an instrument made by the Governor to provide that the powers are to be expressly declared to apply.

### ***ROYAL COMMISSIONS AND CONTEMPT***

Sections 13(1) and 14(1) of the *Royal Commissions Act* deal with contempt of Royal Commissions in circumstances where a person fails to attend or to produce documents and where a person refuses to be sworn or affirmed or refuses to answer any question relevant to the inquiry. The issue of contempt of the Royal Commission is also specifically dealt with in s. 41 of the *Royal Commission (Police) Act* which provides that where a contempt of the Royal Commission is alleged to have taken place, the Commissioner may present to the Supreme Court a certificate setting out the details of the act or omission that the Commissioner considers constitutes the alleged contempt. Such certificate is *prima facie* evidence of the matters certified within it. Where a certificate is so presented, the Supreme Court has jurisdiction as if the contempt were a contempt of the Supreme Court.

The procedure was followed in *Kennedy v Lovell* [2002] WASCA 217. A certificate was relied upon to support an application for a warrant for the arrest of Mr Lovell to be issued by the Supreme Court. The warrant issued pursuant to Order 55 Rule 3 of the *Rules of the Supreme Court 1971*, which provides that, when it is alleged that a person has committed a contempt in the face of the Court, the presiding Judge may by oral order direct that the contemnor be arrested and brought before the Court as soon thereafter as the business of the Court permits, or may issue a warrant under his hand for the arrest of the contemnor.

The Royal Commission considers that the procedure dealing with contempts in the face of the Royal Commission is cumbersome. A Royal Commission should be granted the power to issue a warrant to arrest a contemnor before it and to bring him/her forthwith before the Supreme Court. This is congruent with the LRC's (2000) review and conclusion regarding the law of contempt in respect to the need for rationalization and codification of contempt

laws, through a series of specific statutory contempt offences being enacted and that procedures for prosecuting contempt be rationalized and clarified.

Part 10 of the *Police Integrity Commission Act 1996* (NSW) provides a comprehensive procedure for dealing with persons held in contempt of that Commission. The *Royal Commissions Act* should be amended to introduce a more streamlined procedure to be adopted to deal with contempt in the face of a Royal Commission, including a power to issue its own warrant to arrest a contemnor who is before the Royal Commission and to bring him/her forthwith before the Supreme Court.



## CHAPTER 13

### KEY REFORM AREAS

#### 13.1 INTRODUCTION

The Terms of Reference of this Royal Commission relate to the prevention and detection of police corruption and criminal conduct. The issues that have been traversed in this Report relating to that subject have been diverse and general. The topics have been categorized by reference to issues that have known, or apparent connections to, corruption or criminal conduct. From time to time the practical implications of the matters discussed overlap and reappear in a different context. The purpose of this chapter is to distil and coordinate in short form under the various headings the measures identified as the basis for reform.

The aim of increasing the corruption resistance of the Western Australia Police Service ("WAPS") involves three strands:

- Improving the culture of the organization;
- Enhancing the leadership, supervision and management; and
- Implementing and applying appropriate corruption prevention strategies.

Whilst corruption prevention is the focus of those strands, in reality, the goal is little more than the adoption of sound and contemporary management principles applicable in most organizations, which include:

- Employing personnel with appropriate qualifications, attitudes and training in positions for which they possess the necessary skills – The Right People for the Right Jobs;
- Ensuring that those personnel carry out their duties in a professional and ethical manner – Doing the Job Right;
- Selecting plans appropriate for the conduct of the personnel of the organization, and ensuring that they are effective – Making it Happen.

The Key Reform Areas that will be discussed in "The Right People for the Right Jobs" are all concerned with ensuring that the systems and processes that the Police Service uses to attract, recruit, develop, promote and deploy people are designed to maximize the chances of securing a diverse and talented workforce with the capabilities required of a modern police service.

“Doing the Job Right” covers those Key Reform Areas associated with providing a professional environment where staff members are encouraged to do the right thing, and with ensuring that appropriate mechanisms are in place for those who fail to meet the required standards. These Key Reform Areas describe an approach that eschews the traditional command and control/disciplinary style of management in favour of a more managerial and remedial approach.

The experience of reform programmes in policing and elsewhere is that they often commence with earnestness and vigour, but frequently lose momentum and fail to actualize the vision. Lest this be allowed to happen in this instance, it is necessary to have in place a number of mechanisms for “Making it Happen”. The Key Reform Areas in this section provide the framework and the environment in which the reform activities can occur and succeed.

Although the objectives are expressed in general terms, it should not be forgotten that the aim is to improve corruption and criminal resistance by enhancing the culture, professionalism and integrity of the organization. Improved delivery of police services to the community will inevitably follow.

The lack of any direct causal relationship between the number of uniformed officers and the incidence of crime is well documented in the literature. Therefore the inappropriate use of performance figures such as crime rates, clear-up rates and numbers of sworn officers should not be allowed to deflect from the priority of ensuring that the fundamental platforms of professionalism are in place. Such statistical information undoubtedly has a place in the formulation of strategies and in the deployment of resources, but should not be allowed to dictate the process of reform.

It is the hope of the Royal Commission that the opportunity will be taken to introduce not only contemporary best practices but also innovations that will achieve levels of excellence that will establish WAPS as a leader in policing in Australia. Much of the groundwork has been, or is being, done. Many of the resources required are already available. In the Police Academy, WAPS has an outstanding facility with the potential to provide sophisticated education and training to all ranks of the Service. The cost in fiscal terms of achieving the desired improvement is not substantial. What is required is leadership and commitment from within WAPS, the Union and Government.

The Commission has not overlooked the interests of the individual personnel who comprise the Police Service. The implementation of the reform recommendations is intended to advance the position of WAPS staff. Changes that will improve the culture and management

of the organization will undoubtedly advance the professionalism of the Police Service and enhance the working environment of staff.

Some specific recommendations for the adoption of indicated strategies for corruption prevention, such as targeting, integrity testing and drug and alcohol testing, will affect the rights of individual officers involved, but are warranted in the interests of the community and of the broader population of the officers of WAPS, whose reputations stand to be tarnished by the actions of a few. Those who find those conditions unacceptable should look for alternative employment, and will not be a loss to the Police Service.

Operational police will also find their duties more circumscribed and complex, but relief from clerical duties and greater technical assistance should result in a more fulfilling outcome.

The implementation of some recommendations will make the duties of various positions more challenging, particularly in the areas of upper and middle management, but at the same time should result in greater job satisfaction and the restoration of appropriate pride as a participant in an organization which is to be respected for its integrity and its important role in the community.

The core changes that follow should not be regarded as the totality of recommendations made. Rather, they indicate the broad areas that require reform. It is necessary to refer to the specific Chapters from which they originate to gain a full appreciation of the issues involved and a more complete account of the recommendations made.

## 13.2 RIGHT PEOPLE FOR THE RIGHT JOBS

### Key Reform Area 1 - Recruitment

#### **Reform Context:**

The process of recruitment determines the quality, integrity, maturity, skills base, experiences, and diversity of the people who comprise an organization and who ultimately will lead the organization in the achievement of its vision. There are changes that WAPS needs to make to the recruiting process to ensure the continual improvement of the standard of recruits attracted to the organization.

For more detail see Chapters 3, 4, 5, 7 and 8.

#### **Core Changes:**

- Selection of police officers be based on a combination of:
  - life skills,

- education, and
- physical ability,

where, beyond the minimum standard, selection is a competitive process based on the aggregate assessment from each of the three categories.

- The minimum entry age be increased to 21 years.
- The minimum education be Year 12, however, applicants with advanced qualifications should be preferred.
- The minimum physical standard be a general level of fitness. However, applicants with superior fitness are preferred. Restrictive essential criteria relating to swimming and unaided vision need to be removed, although they may be retained as desirable attributes.
- Specific selection criteria be developed for the recruitment of specialist positions.
- Strategies be developed to continue to improve the current ratios of under-represented groups, including women, entering the organization.

#### Key Reform Area 2 – Civilianization

**Reform Context:** The separation of staff into sworn and unsworn is anachronistic and does not reflect the change from the authoritarian approach of previous centuries to the contemporary requirement for a police service comprising a wide variety of skill sets and professions. It is necessary, therefore, to redefine the partnership between sworn and unsworn members and to implement an approach that enables WAPS to gain from the range of expertise that can be brought to bear on policing issues, and to ensure that police officers engaged in operational activity are provided with adequate civilian support.

For more detail see Chapters 3, 4, 5 and 7.

#### **Core Changes:**

- A fresh policy of civilianization be adopted throughout the Police Service whereby all positions not requiring police powers will, wherever possible, be filled by civilians, so the maximum number of police officers will be available for operational duties requiring the exercise of police powers.
- Improved administrative and technical support be provided for operational functions, including development of the concept of multi-disciplinary teams.
- The Police Service be released from its agreement as to the

minimum number of sworn officers it is to engage.

- The Commissioner of Police be free to deploy staff as operationally appropriate, and in response to changing demographics and circumstances, including the closing, downgrading, amalgamating and opening of police stations and units.
- Greater unity be sought between the current separations of sworn and unsworn staff by removal of disparities of employment such as separate performance management requirements, conditions of employment, and with similar pay for similar work.

#### Key Reform Area 3 – Lateral Entry

**Reform Context:** In keeping with recommendations regarding issues like promotion, education and training, and recruitment, the Royal Commission recommends that WAPS incorporate lateral entry of both police and civilian staff as part of the process of attracting high quality individuals into the organization. This will ensure that the person best suited for the position does in fact occupy the position, and also broaden the pool of applicants from which to select, thus increasing the likelihood of attracting top applicants. A policy of lateral entry will also broaden the diversity of skills, ideas and experiences within the organization.

For more detail see Chapters 3, 5, 7, and 8

#### Core Changes:

- All impediments to lateral entry be removed.
- A “recognition of prior learning” programme to be developed to identify training requirements for lateral entry appointments.
- The benefits of having worked in other jurisdictions be recognized and valued.
- All vacant commissioned officer positions to be advertised Australia-wide and applications sought from police from other jurisdictions, suitable non-police and re-engagees.
- Suitable employees wishing to re-engage at ranks below that of inspector should be able to do so, and policy be developed to enable this to occur more readily.
- WAPS use its best endeavours to accelerate the programme for providing national accreditation and uniform standards of training, and allocate greater resources to the discharge of its obligations under the programme.



#### Key Reform Area 4 – Education and Training

**Reform Context:** Education and training have significant implications for building a corruption-resistant organization and the Royal Commission recommends the following modifications to WAPS education and training requirements.

For more detail see Chapters 7 and 8

**Core Changes:**

- The benefits of the co-location of Edith Cowan University (“ECU”), West Coast College of TAFE (“TAFE”) and the Police Academy be maximized through the development of a partnership relationship in the development and delivery of education and training at tertiary level.
- The attainment of a tertiary qualifications by officers be encouraged and assistance schemes be developed.
- Where appropriate, students at the Academy should participate in joint study with students from ECU and TAFE to gain additional perspectives and experience a diversity of views.
- The delivery of educational and training programmes make use of mixed modes of delivery to better cater to the needs of those police in non-metropolitan locations and those performing shift-work.
- Ethics training feature in every aspect of recruit training and as a specialist module of study. This training should stress corruption prevention and utilize the examples discussed in Volume 1 of the Report as case studies.
- Civilian educators be used to a greater extent in the delivery of education and training programs.
- Police trainers should attain the relevant training qualification prior to commencing as a trainer.
- The position of head of the Academy be opened up to civilian appointment.
- The establishment of a Professional Development Directorate, involving curriculum development and assessment, strategic co-ordination and planning as recommended by Bogan and Hicks.
- There be a requirement for compulsory continuing education for all staff.
- Staff at the Academy be free from rotation obligations associated with limited tenure.

#### Key Reform Area 5 – Management and Leadership

**Reform Context:** WAPS must develop managers and leaders who are capable of taking the police service into a new era of professionalism and into new relationships with the community. Outmoded management styles of command and control need to be replaced with a more inclusive style that seeks and values the opinions and expertise of others, both within the Police Service and the broader community.

For more detail see Chapters 8.

#### **Core Changes:**

- Leadership of WAPS to be strengthened through the creation of an additional Deputy Commissioner position tasked with strategic management and reform implementation:
- There be a review of the District Office system with a view to inspectors being in charge at large police stations and senior sergeants at medium-sized stations.
- The system of performance assessment “Developing People for Success” be upgraded by the inclusion of requirements for the documentation of assessments and acknowledgements, and by the specification of time periods for steps to be taken, with sanctions imposed on supervisors who do not meet those obligations
- There be instituted an Executive Development Programme with provision for attendance at external management courses, and for secondment, placement or transfer to other public sector agencies or police services in Australia.
- There be instituted a system of accountability in managers and supervisors for failure to implement or adhere to strategies and policies, or to adequately supervise officers who are found to have engaged in corrupt or criminal conduct.

#### Key Reform Area 6 – Human Resource Management

**Reform Context:** The management and deployment of employees of the Police Service needs to recognize the changing nature of society and the requirements to implement more family-friendly policies. Recognition also needs to be made of the changing nature of employment and the trend away from life-long careers to having several careers during one’s working life. In this changing environment, WAPS needs to ensure that it is competitive in attracting employees of high calibre.

For more detail see Chapters 3, 5, 7 and 8.

**Core Changes:**

- There be a scheme of incentives similar to that in use in NSW to attract staff to relocate to designated “hardship posts” as opposed to their being “press-ganged” to do so, and the satisfaction of a minimum tenure should attract a completion payment.
- The tenure policy be revised with risk management review undertaken to identify an appropriate maximum/minimum tenure for all positions. Maximum tenures should be of two, five, or seven years, or open.
- The current arrangement for recognition and rewards needs to be reviewed to reflect the increased expectations as to qualifications, commitment and expertise. This may well require a reshaping of wage levels and other conditions to recognize the differing standards and competencies in the various branches of the Police Service.
- The process of change is driven by middle managers and the middle management structure of WAPS requires review to overcome the low number of commissioned officers against sworn members.
- The Women’s Advisory Network (WAN) be acknowledged for its contributions and efforts made to garner support for its ideals at all levels of the organization.

**13.3 DOING THE JOB RIGHT****Key Reform Area 7 – Information Management and Technology**

**Reform Context:** The collection of information and intelligence, and the ability of police officers to access it, is an essential part of policing. However, much of the information gathered is private and personal and should remain confidential. Unauthorized access and disclosure is a serious matter.

WAPS staff are deserving of a communications system that is integrated and reliable, provides a secure network for exchanging information and which provides for their safety by locating their position whilst in vehicles and on foot. The system needs also to be fully auditable to an extent in excess of the current Audittrak system in order that unauthorized use be eliminated.

The records maintained by police officers in journals and other records are inadequate and officers should be compelled to maintain comprehensive records of their attendances to allow for adequate supervision and accountability.

For more detail see Chapter 11

**Core Changes:**

- The use of electronic journals such as used by SA Police be considered but otherwise there be a requirement for all officers to maintain comprehensive records of their daily duties, to be checked by their supervisors.
- Access to computer systems be stringently controlled, including the requirement for a reason to be recorded when accessing data bases.
- A review be undertaken to determine whether information held on police data-bases can be released to classes of persons or organizations under controlled circumstances

Key Reform Area 8 – Complaints Management and Discipline

**Reform Context:** It is now recognized that the relationship that the Police Service has with the community is of prime importance in maintaining the confidence of the community and in gaining their partnership in crime prevention. It is also accepted that the nature of the powers exercised by police makes for their employment relationship with the Commissioner of Police to differ from that of other public sector employees. To this end it is essential that mechanisms exist to speedily resolve customer-service type complaints and to investigate and deal with more serious matters of alleged misconduct. The current complaints management and disciplinary systems are founded on outmoded concepts such as “defaulters parade”, fining staff members for misdemeanors and penalties of reduction in rank and/or salary.

For more detail see Chapter 9

**Core Changes:**

- A managerial based model of complaints handling and discipline advocated by the Fisher Review of the Australian Federal Police be adopted.
- Section 23 of the *Police Act* should be repealed and replaced with a contemporary management-based system, together with the repeal of s. 33E without prejudice to the fair treatment of police officers.

- There be true devolution of minor complaints management to District and Portfolio level, provided that allegations of criminality, corruption or involving internal complainants be investigated by IAU or under its direction.
- Procedures for referring investigation reports be streamlined to reduce the number of administrative delays that do not add value to the final outcome. In particular, the requirement for reports to be referred up a chain of command, with consequent delays, should be rationalized.
- A permanent arrangement be established to enable the Legal Aid Commission to provide representation of police officers and public sector employees who are summoned to appear before the CCC.

#### Key Reform Area 9 – Internal Investigations

**Reform Context:** Investigation of police by police has quite rightly received criticism in the literature and elsewhere . The Royal Commission saw sufficient examples of unwillingness, inexperience and incompetence by internal investigators to warrant that concern. There has been change following the establishment of the Professional Standards Portfolio, but there is still a demonstrable need to further ensure the professionalism and standing of this unit.

For more detail see Chapters 9 and 10

#### **Core Changes:**

- Allegations of criminality, corruption or involving internal complainants be investigated by IAU, and under its direction.
- For other than criminal/corruption matters, a managerial rather than disciplinary approach be adopted, with removal under s. 8 being the ultimate remedy.
- Legislation be introduced to give IAU power to conduct integrity testing programmes involving controlled operations and assumed identities.
- There be a significant increase in IAU resources, to ensure that efficiency and effectiveness are achieved and also to signify the strong commitment that WAPS has to investigating allegations of police misconduct.
- WAPS offer incentives for officers who work in IAU in order to encourage the best possible investigators to apply for the unit and to counter perceived, and real, disincentives.

### Key Reform Area 10 - Corruption Prevention Plan and Strategies

**Reform Context:** To confirm that proper measures are in place to ensure that all personnel within WAPS display high standards of ethical behaviour and integrity, it is necessary that a Corruption Prevention Plan (“CPP”) be developed to co-ordinate intervention strategies and enable monitoring and evaluation. An effective CPP must operate at all levels of the Police Service. It must be a tiered system to deal with issues from the broadest corporate level to the most specific action of individuals, yet have the flexibility necessary to render it applicable to the huge range of diverse functions carried out by police officers. The objectives of the CPP are to reduce corruption, reduce misconduct and increase ethical behaviour.

For more detail see Chapters 6 and 7

#### **Core Changes:**

- The CPP should:
  - Define corruption;
  - Describe objectives and rationale;
  - Describe processes required to achieve objectives ; and
  - Assign responsibilities for implementation and monitoring.
- The CPP should be integrated into the corporate management framework such that it becomes integral to, and a component of, every aspect of policing.
- The CPP should include a multi-pronged approach, with the philosophy in use by ICAC (Hong Kong) - investigation, prevention and education – considered as suitable.
- The CPP should involve universal, selected and indicated intervention strategies:
  - Universal strategies include interventions that are directed at the entire police service or large aggregations of officers who have not necessarily been identified on the basis of individual risk.
  - Selected strategies include interventions that are directed at high-risk groups or activities of general involvement, which call for specific corruption-control measures.
  - Indicated strategies include interventions that are directed at specific individuals with known or suspected risk factors, and involve risk identification and remedial action at individual and workplace levels.

- The CPP include provision for more extensive integrity checks on recruits.
- The CPP include provision for a system incorporating the Personnel Vetting system of the Australian Government with immediate application to members of:
  - Police Senior Management Group;
  - Organized Crime Investigations;
  - Bureau of Crime Intelligence;
  - Tactical Investigations Group; and
  - Professional Standards Portfolio
- The CPP make provision for a programme of Target Hardening in relation to accountable documents, cash and valuables handling, and other property of value.
- The CPP make provision for the maintenance of a Register of Associations to record compulsory disclosure by officers of associations or relationships with known or suspected criminals.
- The CPP make provision for drug and alcohol testing.

### 13.4 MAKING IT HAPPEN

#### Key Reform Area 11 – Reform Agenda Implementation and Change Management

**Reform Context:** The causes of the corrupt or criminal conduct by police officers are now reasonably well known and the principles of management necessary to improve the corruption or criminal resistance of a police service have been defined. What remains outstanding is the formulation of a process which has a greater assurance that proposals for reform become effective, particularly with regard to the change in culture and improvement in management.

Consultants Bogan and Hicks were engaged in April 2002 to undertake a review of the WAPS reform since the implementation of the Delta Programme in 1993. Bogan and Hicks identified a lack of traction in change management in the extant WAPS strategic reform programmes.

There is a need for external assistance in this respect and the recommended course is to involve external consultants in the formulation and implementation of the change process, as well as providing for an external audit such as the QSARP process in relation to the NSW Police – as recommended by Wood (1997). The

recommendations contained within this Report require a significant and long-term commitment to the reform programme.

For more detail see Chapters 6, 7 and 8

**Core Changes:**

- The Delta Reform Programme having ended, a new reform programme be commenced under the responsibility of a newly created Deputy Commissioner position.
- WAPS engage external experts in change management to assist internal change agents in the implementation of the reform programme.
- The CCC retain consultants to carry out a function similar to QSARP in independently monitoring and assessing the reform process including auditing of the areas of:
  - Organizational culture;
  - Management and leadership;
  - Human resource management and development;
  - Audit, measurement and evaluation;
  - Corruption prevention and risk assessment; and
  - Information management

Key Reform Area 12 – Law Reform

**Reform Context:** The laws that govern police conduct in Western Australia serve not only to provide the framework within which WAPS undertakes policing but, in addition, can contribute to ideological change in policing. Regulation does not only imply restricting and constraining of policing, but rather a regulatory framework that can bring procedural certainty to policing.

Reform should not merely impose negative prohibitions, but provide a clear and concise framework that informs officers as to the manner in which they should undertake policing in society. An appropriate framework ensures that officers have sufficient powers and that officers cannot justify acting unlawfully by pointing to the inadequacy or ambiguity of their powers and by insisting that the end justifies the means. If adequate and certain powers are given to the police, excursions outside the rules are not necessary, and are also less ideologically attractive.

For more detail see Chapters 11 and 12.



**Core Changes:**

- Consideration be given to amending the *Corruption and Crime Commission Act 2003* by extending its jurisdiction from investigation of "Organized Crime" as defined in s. 3 of the Act, to "Serious Crime" involving a single s. 5 offence, without the requirement for involvement of two or more persons.
- That legislation be enacted authorizing officers to detain an arrested person for a reasonable period prior to complying with s.6 of the *Bail Act 1982*, in order to undertake necessary further investigations. Part 9 of the Criminal Investigation Bill provides an appropriate regulatory framework.
- That legislation be enacted to provide that only Magistrates and other designated persons, rather than all Justices of the Peace, issue search warrants.
- That legislation be enacted to provide a requirement that the execution of search warrants be videotaped, before any evidence obtained during the search is admissible in evidence.
- That the Criminal Investigation Bill 2000 be enacted as soon as possible.
- That the Police Administration Bill 2000 be enacted to establish the role and functions of the Commissioner of Police to empower the Commissioner of Police to approve and conduct programmes to test the integrity of any particular police officer or class of police officers and that acts carried out in pursuance of an approved programme are lawful. Sections 207A(7) and 207A(8) of the *Police Act 1990* (NSW) provide appropriate reform precedents.
- That the Criminal Investigation (Covert Operations) Bill 2000 be enacted as soon as possible.
- That a provision be inserted in the proposed *Police Administration Bill 2000* that empowers the Commissioner to charge fees for services, cost recovery, and third party funding for police services (i.e. for special events). A discretion should be reposed in the Commissioner to waive the fees and charges in appropriate circumstances.
- The Simple Offences Bill 2000 and the Police Administration Bill 2000, be enacted as soon as possible.
- A Prostitution Control Bill 2003 be enacted as soon as possible.
- That *The Criminal Code* be amended to include an offence in similar terms to s. 408D of the *Criminal Code* (Qld). That s. 440A of *The*

*Criminal Code* (WA) be either repealed or amended to apply to computer hackers.

- That the *Security and Related Activities (Control) Act 1996* relating to inquiry agents and private security personnel be amended to empower the Commissioner of Police to supply to licensing officers criminal intelligence reports and/or other pertinent information to aid the determination of whether an applicant is of good character and is a fit and proper person to hold a licence.
- That the *Security and Related Activities (Control) Act 1996* be amended to provide that the Commissioner not be required to provide any reasons for not granting a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information.
- That the *Security and Related Activities (Control) Act 1996* be amended to provide that applicants be required to sign a waiver to have their complaint histories, sustained or not sustained, to be taken into account by the licensing officer and that the Act be further amended to allow a licence to be refused where issues of integrity in respect to the applicant were raised during the period of five years prior to the police officer leaving the WAPS.
- That the *Royal Commission Act 1968* be amended to include the powers currently provided in the *Royal Commission (Police) Act* in Part 3 [arrest], and Part eight [use of surveillance devices] for use by Royal Commissions generally. Given that the powers may not be appropriate for all Royal Commissions to exercise, the availability of electronic surveillance powers for particular Royal Commissions, may be governed by a provision in the *1968 Act* requiring the terms of appointment or in an instrument made by the Governor to provide that the powers are to be expressly declared to apply.
- A provision be enacted to improve procedures for dealing with contempt in the face of the Royal Commission, similar to the provisions in part 10 of the *Police Integrity Commission Act 1996* (NSW).



# APPENDIX 1

## STAFF ENGAGED IN THE SERVICE OF THE ROYAL COMMISSION

AGAR Jason	Investigator	Returned to Ombudsman Office
ALLISON Shari	Analyst	Returned to New South Wales Police
ANDERSEN Kylee	Manager, Complaints	End of Contract
BAILEY Ruth	Monitor	Returned to New South Wales Police
BEGG Julie	Information Management Co-ordinator	Returned to Department of Premier & Cabinet
BLACK Mal	Manager Special Services	End of Contract
BLAKE Gail	Information Officer	End of Contract
BOULTON Clare	Investigator	Returned to Australian Federal Police
BYRNE Matthew	General Counsel and Director Operations	End of Contract
CARLEY Adam	Analyst	Returned to New South Wales Crime Commission
CARLEY Catherine	Monitor	Resigned
CARVILLE Alan	Security Officer	Resigned
CASHMAN Michael	Commission Solicitor	End of Contract
COLE Owen	Media Liaison	End of Contract
COWLING Richard	Investigator	Returned to Tasmania Police
CUNNINGHAM Kelly	Investigator	Returned to South Australia Police
CURTIS David	Security Officer	Deceased
DA RE Marzio	Chief Investigator	Returned to Australian Federal Police
DAVIS Susanna	Security Officer	End of Contract
DIXON Angus	Solicitor	Resigned
DOWN Josephine	Solicitor	End of Contract
DYER Hilary	Intelligence Analyst	End of Contract
ELDERKIN Caroline	Information Management Co-ordinator	Returned to Department of Premier & Cabinet
ELLIOTT Ian	Analyst	Returned to South Australia Police
FISHER Adrian	Analyst	End of Contract
GALL Tracy	Analyst	Returned to New South Wales Police
GIBSON Courtney	Financial Investigator	End of Contract
GODDARD Mark	Security Officer	End of Contract
GREEN Laura	Monitor	End of Contract
GUY Brenton	Security Officer	End of Contract
HAINES Jayson	Security Officer	Resigned
HALL Stephen	Counsel Assisting	Returned to Francis Burt Chambers
HANDLEY Michael	IT Manager	Returned to Crown Solicitor's Office
HARDWICK Sarah	Analyst	End of Contract
HARDWICK Shani	Information Officer	End of Contract
HARRIES Michelle	Investigator	Returned to Ombudsman Office
HASLEM Matthew	Solicitor	Resigned
HASTINGS QC Peter	Senior Counsel Assisting	Returned to Private Practice (Sydney)
HOGG Christine	Switchboard Operator	End of Contract
HOLLAND Renee	Personal Assistant	End of Contract
IRELAND Kerry	Information Officer	End of Contract

JAKINS Kylie	Information Officer	End of Contract
JOHNSON Michael	Executive Director	Returned to Department of Justice
KENSHOLE Natalie	Monitor	End of Contract
LAMBERT Emma	Human Resources Officer	Transferred to Department of Community Services
LAWSON Anthony	Security Officer	End of Contract
LEWIS David	Information Officer	Transferred to Guardianship Board
LEWIS Jessie	Monitor	End of Contract
LEWIS Pamela	Human Resources Manager	Returned to Department of Consumer Protection
LEWIS Paul	Court Monitor	End of Contract
LICARI Daniel	Monitor	End of Contract
MALLON Poppy	Executive Assistant	Returned to Department of Justice
MATTOCKS Maria-Noel	Solicitor	End of Contract
McDONAGH Paul	Analyst	Joined ATSIIS-Canberra
McGRATH Joseph	Counsel Assisting	Returned to Francis Burt Chambers
MIZEN Tracey	Information Officer	Resigned
MORONEY Peter	Investigator	Returned to New South Wales Police Services
NETTO Lauren	Research Officer	End of Contract
NICOL Scott	Analyst	Returned to New South Wales Crime Commission
NICOL Tamara	Legal Secretary	End of Contract
PALOZSA Michael	Information Management Officer	End of Contract
PARRY Kevin	Finance Officer	Returned to DOLA
PEARCE Jeremy	Manager Information Management	Returned to Department of Premier & Cabinet
PETTIT SC Ken	Counsel Assisting	Returned to Francis Burt Chambers
PLOWMAN Garry	IT Support	End of Contract
PURDUE Geoff	Manager, Security and Monitoring	Returned to Attorney General's Department, Canberra
PURDUE Raelene	Information Officer	End of Contract
REDBURN Craig	Monitor	Resigned
RENFREY Sharon	Information Officer	Returned to Department of Justice
RIMKUS Alex	Finance Manager	Returned to Department of Treasury & Finance
ROBINSON Dave	Investigator	Returned to Ombudsman Office
ROSS Glenn	Manager, Research, Policy and Reform Unit	Returned to Department of Justice
SALTER Kathy	Secretary/Clerical Assistant	Returned to Crown Solicitor's Office
SHERRY Michael	Investigator	Returned to South Australia Police
SMITH Brian	Investigator	End of Contract
SUTTON Robert	Chief Investigator	End of Contract
TERRY Anne	Information Management Co-ordinator	Returned to Department of Premier & Cabinet
THOMAS Ian	Security Officer	End of Contract
THOMAS Sally	Monitor/Legal Secretary	End of Contract
THOMAS Vaughan	IT Support	End of Contract
WARBURTON Tanya	Complaints Assessment Officer	End of Contract
WAUGH Iris	Legal Secretary	Resigned
WESTON Tracy	Solicitor	End of Contract

WILLIS David	Assistant Special Services	End of Contract
WINSTANLEY Peter	Associate	Retired
YATES Max	Monitor	Resigned
YIANNAKIS Helen	Personal Assistant	Returned to Industrial Relations Commission
YII Chieng	Finance/Administrative Officer	Returned to Department of Premier & Cabinet



## APPENDIX 2

### ABBREVIATIONS AND GLOSSARY

#### ***ABBREVIATIONS***

ACC	Anti-Corruption Commission
ACP	Australasian Centre for Policing Research (SA)
ACWAP	Australasian Council of Women and Police
ACT	Australian Capital Territory
ADA	Alcohol and Drug Abuse
AFP	Australian Federal Police
AIC	Australian Institute of Criminology
AIPI	Australian Institute of Professional Investigators
AIPM	Australian Institute of Police Management
ANZEOCC	Australia and New Zealand Equal Opportunity Consultative Committee
APLO	Aboriginal Police Liaison Officer
APMC	Australasian Police Minister's Council
ARS	Armed Robbery Squad
ASIO	Australian Security Intelligence Organisation
ASVS	Australian Security Vetting Service
ATO	Australian Taxation Office
Aust	Australia
AUSTRAC	Australian Transaction Reports and Analysis Centre
BAMR	Business Area Management Review
BCI	Bureau of Criminal Intelligence
CAU	Child Abuse Unit
CAU	Complaints Assessment Unit (of the Royal Commission)
CAWIPAC	Commissioners' Australasian Women in Policing Advisory Committee
CCC	Corruption and Crime Commission
CCPC	Commission to Combat Police Corruption (New York)
CCR	Call Charge Record
CIB	Criminal Investigation Branch
CICIC	Commissioner for the Investigation of Corrupt and Improper Conduct
CJC	Criminal Justice Commission (Qld)



CMC	Crime and Misconduct Commission (Qld)
COG	Commission on Government
CNI	Central Name Index
CWT	Central Western Time
DCJ	District Court Judge
DPP	Director Of Public Prosecutions
ECU	Edith Cowan University
EEO	Equal Employment Opportunity
FBIS	Forensic Behavioural Investigative Services
IAB	Internal Affairs Branch (now called the Internal Affairs Unit)
IAU	Internal Affairs Unit
IAWP	International Association of Women Police
ICAC	Independent Commission Against Corruption (NSW)
IIB	Internal Investigations Branch (now called the Internal Investigations Unit)
IIU	Internal Investigations Unit
IMS	Information Management System
IPG	Independent Patrol Group
IPR	Investigative Practices Review
IT	Information Technology
JAG	Juvenile Aid Group
JSCACC	Joint Standing Committee on the Anti-Corruption Commission
LCR	Local Complaint Resolution
LD	Listening Device
LEA	Law Enforcement Agency
NCA	National Crime Authority
NCO	Non-Commissioned Officer
NIS	Name Inquiry System
NSW	New South Wales
NSWCC	New South Wales Crime Commission
NT	Northern Territory
NYPD	New York Police Department
OCC	Official Corruption Commission
ODC	Officer Development Course
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
OIC	Officer In Charge
OIS	Offence Information System
Ombudsman	Parliamentary Commissioner for Administrative Investigations

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OMC	Officer Management Course
OMCG	Outlaw Motor Cycle Gang
OPSSC	Office of the Public Sector Standards Commissioner
OPR	Organizational Performance Review
OSW	Office of the Status of Women
PCYC	Police and Citizen’s Youth Club
PEE	Police Entrance Evaluation
PELP	Police Executive Leadership Program
PIC	Police Integrity Commission (NSW)
PMDP	Police Management Development Program
PPE	Physical Performance Evaluation
PSIU	Public Sector Investigation Unit
PSMC	Public Sector Management Course
PTS	Property Tracing System
Qld	Queensland
QSARP	Qualitative and Strategic Audit of the Reform Process (NSW)
RAU	Risk Assessment Unit
RCIT	Royal Commission Investigation Team
RTC	Round Table Conference
SA	South Australia
SAPOL	South Australia Police
SCIA	Serious Crime and Internal Affairs (NSW)
SIWP	Supported Internal Witness Program
SMS	Short Message Service
SOP	Standard Operating Procedure
SPIRT	Strategic Partnership with Industry – Research and Training
TAFE	Technical and Further Education
Tas	Tasmania
TI	Telephone Interception
TIG	Tactical Investigation Group
TRG	Tactical Response Group
UCO	Undercover Officer
The Union	Western Australian Police Union of Workers
UWA	University of Western Australia
Vic	Victoria
VICPOL	Victoria Police
VIS	Vehicle Inquiry System
WADT	Western Australia Diamond Trust

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WA Inc	Royal Commission into Commercial Activities of Government and Other Matters
WAPS	Western Australia Police Service
WPP	Witness Protection Program
WPU	Witness Protection Unit
WST	Western Standard Time

### ***GLOSSARY***

Adoption Statement	Adopting the statement of another – accepting their version of events.
AKA	Alias – AKA standing for Also Known As.
Amnesty	Police officers and former police officers who had been guilty of corrupt or criminal conduct could avoid prosecution, and serving police officers might be permitted to resign from WAPS, in exchange for their providing assistance to the Royal Commission.
Assumed Identity	Pursuant to s. 22 of the <i>Royal Commission (Police) Act 2002</i> the Commissioner may grant an approval for the acquisition and use of an assumed identity by an officer of the Commission.
Blue Curtain	Reluctance among police officials to punish “one of their own” when a citizen complains; a barrier of silence to protect the police force.
Broken Windows	A theory about the role of the police in promoting neighbourhood safety through reducing the fear of crime. The image of broken windows is used to explain how neighbourhoods descend into disorder and criminality if attention is not paid to their maintenance. An un-repaired broken window signals that nobody cares and disorder is tolerated.
Buy Money	Funds used by police to perform an undercover drug purchase.
Code of Silence	Informal arrangement among police officers that discourages “whistleblowing” regarding misconduct by fellow officers.
COMPSTAT	A process to monitor and map crime events and make commanders focus on emergent patterns and results. Used by the New York City Police Department and entailed the collection and analysis of crime statistics on a daily basis to recognize patterns of crime before they spread.
Containment Policy	WAPS’ approach to controlling prostitution. The containment policy operated as a stated policy of the WAPS from 1975, although it has operated informally for over 100 years. The policy allowed a

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	number of brothels and escort agencies to operate with police approval and subject to police imposed conditions that included brothels be drug and alcohol free, a female only operation and have no juvenile involvement. Prostitutes had to be registered with police and were subject to regular health checks. There was no legislative authority for such an approach.
Controlled Activity	An activity that would be unlawful but for s. 32 of the <i>Royal Commission (Police) Act 2002</i> , which provides protection from criminal liability.
Controlled Operation	An operation in which one or more officers of the Royal Commission participate for the purpose of obtaining or facilitating the obtaining of evidence of corrupt or criminal conduct by a police officer, and which involves or may involve a controlled activity.
Corruptogenic	Social breeding ground for corruption.
Crime Stoppers	A program that uses the media to encourage the public to report criminal activity anonymously.
Curtin House	Location in Perth in which most of the WAPS specialist squads are located, for example Organized Crime Investigations.
Delta	Delta Reform Program – a police reform initiative started by COP Robert Falconer in September 1994.
Green-lighting	A situation where police permit criminals to conduct robberies or drug dealings (criminal activity) in order to obtain some other benefit.
Gutting	As in “gutting a brief” where it means to remove documents from or otherwise weaken a brief so that prosecution will be unsuccessful or charges reduced.
Hand up Brief	A prosecution brief of evidence prepared where the defendant elects not to have a preliminary hearing, requiring the Justice to commit the defendant for trial or sentence, as the case requires.
Heads	Relating to cannabis - a mass of leaves or flowers at the top of a stem.
Hydroponics	The process of growing plants in sand, gravel or liquid without soil and with added nutrients.
Informant	A person who is cultivated as a contact by a police officer, to provide information in relation to the activities of others.
Integrity Testing Program	Placing police officers in a constructed situation that provide an opportunity to behave in a dishonest, negligent, or otherwise improper manner, and to add to this surveillance that would ordinarily be absent.

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Letter of comfort/assistance	A letter provided by an authority in support of a convicted criminal who has assisted that authority in some way, the intention being for a reduced penalty to result.
Listening Device	A device capable of being used to record, monitor or listen to a private conversation.
Lockup	A gaol run by police, usually in a police station, and used to detain persons in legal custody.
Next Friend	A minor or incapable person who desires to bring a legal action must do so through the intervention of a person called a next friend, generally a relation.
Noble Cause Corruption	Illegal activities undertaken by police for the purpose of convicting offenders – the end justifying the means
Non-Operational members	Sworn members who identify themselves as working predominantly in areas which support operational policing such as administration, policy, training or research.
Notices	Written notice under the <i>Royal Commission (Police) Act 2002</i> requiring a public authority or public officer to produce a statement of information, requiring a person to attend before the Royal Commission, produce a document or thing, and/or authorize officers of the Royal Commission to enter and inspect public premises.
Operational members	Sworn members who identify themselves as working predominantly in direct operational policing duties.
Optical surveillance device	Any instrument, apparatus, equipment or other device capable of being used to record visually or observe a private activity.
P11	WAPS Form – used to record the property of individuals taken into custody.
P18	WAPS Form – used to record an apprehension.
Pits	Separate cannabis crop sites.
Police Journal	Diary maintained by each officer.
Process Corruption	see Noble Cause Corruption
Pulling	As in “pulling a brief” where it means withdrawing/losing a brief to prevent prosecution.
Rank/Lock/Step	Requirement to spend time at each rank before being eligible for promotion to the next level.
Rip/Ripping	The theft of money and drugs by police officers from another person during the execution of his/her duty.

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Rollover	A witness who, after initially maintaining an exculpatory version of events common to other witnesses, provided evidence and/or admissions incriminating him or herself and/or other persons in corrupt or illegal activity.
Skimpy/Skimpies	Scantly clad barmaid/s.
String Line	A line strung up between two or more points used for the purpose of hanging and drying cannabis plants.
Super Skunk	Hydroponically grown cannabis with a high THC.
Surveillance Device	A listening device, an optical surveillance device or a tracking device.
Sworn Personnel	A person who, as part of their instrument of engagement to a Police Service, takes an oath of obligation, in accordance with relevant legislation.
Trap	A flag on a computer system such that when specific data is accessed it sends an electronic alert to a monitoring authority.
Telecommunications Interception	Interception of a communication passing over a telecommunications system without the knowledge of the person making the communication.
Tip and Rip	See "Rip" above.
Tipping Off	Providing advanced warning that an event will occur.
Tracking Device	An instrument, apparatus, equipment or other device capable of being used to determine the geographical location of a person or object.
Unsworn Personnel	Public service employees who work in a police service.
Verbal	The practice of fabricating evidence by police, in particular admissions of a suspect during an interview or at the time of arrest.
Whistleblower	An individual who reports misconduct or corruption of another member or members within the same organization.
Zero Tolerance Policing	Street policing strategy that requires police officers to pursue minor offences with the same vigour as more serious offences. This policing style is intended to send a signal to criminals and law-abiding citizens that the police have the capacity and motivation to tackle the spectrum of anti-social and petty criminal behaviours that make a city or neighbourhood feel and look unsafe.

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## APPENDIX 3

### COUNSEL TO WHOM LEAVE WAS GIVEN TO REPRESENT A PERSON APPEARING BEFORE THE ROYAL COMMISSION

ADAMS Carol Elizabeth	MASSEY Gary William
AMEY Robyn Louise	MAZZA Robert Anthony
ANDREWS Trevor Mark	MCGRATH Duncan James
ASKEW Fiona Lee	MCGRATH Gary Francis
AUGUSTE Arthur	MCPHEE Michael John
BOSTON Lisa	MOEN David Peter Andrew
BROOKES Caroline Elizabeth	MOMBER Peter Renwick
BRYANT William Michael	NOBLE Jeremy Richard
CLARKE Michael Richard	O'CONNOR QC Robert Kenneth
COOMBS Peter Rowland	O'SULLIVAN Sean Walter
COWAN Marlene Roxanne	PALLARAS QC Stephen Paul
CRISPE Maxwell Ian	PEPE Josephine
DARBYSHIRE Thomas	PERCY QC Thomas Francis
DAVIES QC Ronald John	PORTER Linda Patricia
DAVIES Stephen Michael	POWER Anthony Joseph
DE VITA Eliza Anna	PRINCE Hon Antony Kevin Royston
DERRICK Anthony Samuel	QUINLAN Peter Damien
FEUTRILL Michael James	RIDLEY Michelle
FRASER Peter Lachlan	ROBBINS Lindsay Brian
GALATI Carmelina	ROCHE Elizabeth Philomena
GOLDBLATT Martin Clive	ROTH Paul Alan
GRAYDEN Robert James	SAYMAN Timothy
HALL Malcolm Russell	SCOTT Stephen George
HAMMOND John Carpenter	SCUDDS Jeremy James
HOFMANN Robert Curt Mansfield	SEGLER Martin Lee
HOGAN Patrick John	SHANAHAN Christopher Patrick
HOOKER Richard Lancelot	SINGLETON QC Brian John
HORRIGAN Andr�e-Marie Elizabeth	SIOPIIS SC Antony Nicholas
HUDSON Lynn Maree	SMITH Brian Cameron
KARSTAEDT Anthony Orde	STAGG Nicholas Robert
KITTO Johnson Grey	SUTHERLAND Michael William
LASKARIS Phillip George	TROWELL QC Mark Terence
LEE Lawrence	TYDDE Julian Richard
LEVY Laurence Mark	WILLINGE Anthony Clifton
MANERA David Charles	





## **APPENDIX 4**

### **INDIVIDUALS AND ORGANIZATIONS THAT PROVIDED SUBMISSIONS FOR THE ROUND TABLE CONFERENCES**

#### ***EXTERNAL OVERSIGHT – 14 AND 15 NOVEMBER 2002***

- Anti-Corruption Commission
- Cranny, Jennifer
- Cull, Chris
- Falconer, Bob - Ex-Commissioner of Police, WAPS
- Fry, Julie
- Lewis, Dr Colleen, Monash University
- Prenzler, Dr Tim, Griffith University
- Sherman, Shayne
- Smith, S, Acting Chief Executive Officer, Shire of Busselton
- Western Australia Police Service
- WA Police Union of Workers

#### ***INFORMATION MANAGEMENT AND SECURITY 14 MARCH 2003***

- Anti-Corruption Commission
- Australian Institute of Professional Investigators
- Belford, Michael
- Bensley, John
- Brogan, Mark, Edith Cowan University
- Evans, Michael, Aust. Security Academy
- Andrew Forsyth - Kilarney Pty Ltd
- Horton, John, John Horton and Assoc.
- Keighley- Gerardy, Bronwyn - Information Commissioner, Western Australia
- Meridian Services Pty Ltd
- Morgan, Frank, University of WA
- New South Wales Police
- O'Hern, Greg, Institute of Mercantile Agents
- Payne, Christian, Murdoch University
- SGIO Insurance
- Tasmania Police

- Van Aken, Brad, Detective Senior Sergeant Western Australia Police Service
- Western Australian Police Union of Workers

***CORRUPTION PREVENTION STRATEGIES 10 AND 11 APRIL 2003***

- Bensley, John
- Dubois, Bernadette
- Froyland, Dr Irene, Edith Cowan University
- Grainger, Kevin
- Law Student Community Support, Law Reform Commission Branch
- Napper, Robin, University of Western Australia
- New South Wales Police
- Police Federation of Australia
- Pritchard, Bob, Pritchard Francis Associates
- Queensland Police Service
- Savidge, Nigel
- South Australia Police
- Victoria Police
- Western Australia Police Service
- Western Australian Police Union of Workers
- Wood, Glen

***INTERNAL INVESTIGATIONS AND DISCIPLINARY PROCESSES - 16 MAY 2003***

- Anti-Corruption Commission
- Brown, Val
- Douglas, Peter
- Law Student Community Support
- Law Reform Commission Branch
- Marshall, Archie
- Moore, Jack
- South Australia Police
- Steels, Brian & Goulding, Dorothy,
- Sage Social Research Consultants
- Tasmania Police
- Western Australia Police Service
- Western Australian Police Union of Workers

# APPENDIX 5

## MEDIA NOTICES

**REQUESTING INFORMATION – THE WEST AUSTRALIAN AND THE AUSTRALIAN NEWSPAPERS ON 13 2002 AND THE WEST AUSTRALIAN AND THE WEEKEND AUSTRALIAN ON 16 MARCH**



### ROYAL COMMISSION

Into Whether There Has Been Any Corrupt or Criminal Conduct By Western Australian Police Officers

#### **Commissioner: The Hon G A Kennedy AO QC**

A Royal Commission has been appointed to inquire into and report on whether since 1 January 1985 there has been corrupt or criminal conduct by any Western Australian Police officer.

The Commission is further required to report on the effectiveness of existing procedures and statutory provisions in investigating and dealing with such conduct and on whether changes in the laws of the State or in investigative or administrative procedures are necessary or desirable for the purpose of investigating or dealing with, preventing or exposing such conduct.

The Commission is to report by 31 August 2003.

The Royal Commission's terms of reference set out the matters to be investigated, and copies are available free of charge from the Commission or at <http://police.royalcommission.wa.gov.au>.

Any person or organisation with information that may be relevant to the inquiry is requested to make a submission to the Commission with details of the allegation and the date on which the incident or incidents are alleged to have taken place. Anonymity and confidentiality can be given if requested.

Communication should initially be directed in writing to The Manager, Complaints Assessment Unit, by letter, facsimile or email. Inquiries can also be made by telephone.

#### **Correspondence should be addressed to:**

The Manager  
Complaints Assessment Unit  
Royal Commission Into Whether There Has Been Any Corrupt or Criminal  
Conduct by Western Australian Police Officers  
PO Box Z5318  
PERTH WA 6843

**Telephone:** 08 9215 4800 **Facsimile:** 08 9486 7140

**Email:** [info@police.royalcommission.wa.gov.au](mailto:info@police.royalcommission.wa.gov.au)

**NOTICE OF HEARING – THE WEST AUSTRALIAN NEWSPAPER ON 26 MARCH 2002**



**ROYAL COMMISSION**

**INTO WHETHER THERE HAS BEEN ANY CORRUPT OR CRIMINAL CONDUCT BY  
WESTERN AUSTRALIAN POLICE OFFICERS**

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***NOTICE OF HEARING***

The Commission will hold its initial, formal hearing at 10.00am on Thursday 28 March 2002 on the 5<sup>th</sup> floor, Hartley Poynton Building, 141 St George's Terrace, Perth.

Applications for leave to appear at or be represented at the inquiry will be received at this hearing but may also be made subsequently.

Enquiries can be made to the Commission at:

Telephone: (08) 9215 4800

Freecall 1800 809 000

Facsimile: (08) 9486 7140

Email: [info@police.royalcommission.wa.gov.au](mailto:info@police.royalcommission.wa.gov.au)

The terms of reference are available free from the Commission at PO Box Z5318, Perth, WA, 6843 or at: [police.royalcommission.wa.gov.au](http://police.royalcommission.wa.gov.au)

**REQUEST FOR SUBMISSIONS – THE WEST AUSTRALIAN AND THE WEEKEND AUSTRALIAN  
NEWSPAPERS ON 12 OCTOBER 2002**



**ROYAL COMMISSION**  
INTO WHETHER THERE HAS BEEN ANY  
CORRUPT OR CRIMINAL CONDUCT BY WESTERN  
AUSTRALIAN POLICE OFFICERS

**Commissioner: The Hon. G A Kennedy AO QC**

## Request for Submissions

Under its terms of reference, the Royal Commission is required to inquire into and report on the effectiveness of existing procedures and statutory provisions in investigating and dealing with corrupt or criminal conduct by any Western Australian police officer.

For this purpose, a forum involving relevant stakeholders is to be conducted on whether changes in the laws of the State or in investigative or administrative procedures are necessary or desirable for the purpose of investigating or dealing with, preventing or exposing, corrupt or criminal conduct by any Western Australia police officer.

This forum will receive submissions from interested parties and will discuss topics related to external oversight agencies such as:

- Jurisdiction
- Structure
- Powers
- Oversight

To assist in this process, a discussion paper has been prepared and can be obtained by contacting Ms Lauren Netto on 08 9215 4879, or may be downloaded directly from the Commission's website at [www.police.royalcommission.wa.gov.au](http://www.police.royalcommission.wa.gov.au)

### **Submissions**

The Commission invites written submissions which should be lodged no later than 5.00pm, Friday 8 November 2002 to:

Research, Policy and Reform Unit

Royal Commission Into Whether There Has Been Any Corrupt or Criminal  
Conduct by Western Australian Police Officers

PO Box Z5318 Perth WA 6831

Submissions can also be forwarded electronically to:  
[info@police.royalcommission.wa.gov.au](mailto:info@police.royalcommission.wa.gov.au)

**REQUEST FOR SUBMISSIONS – THE WEST AUSTRALIAN AND THE WEEKEND AUSTRALIAN  
NEWSPAPERS ON 22 FEBRUARY 2003 AND IN THE WEST AUSTRALIAN ON 24 FEBRUARY  
2003**



**ROYAL COMMISSION**  
INTO WHETHER THERE HAS BEEN ANY  
CORRUPT OR CRIMINAL CONDUCT BY WESTERN  
AUSTRALIAN POLICE OFFICERS

**Commissioner: The Hon. G A Kennedy AO QC**

## Request for Submissions

Under its terms of reference, the Royal Commission is required to inquire into and report on the effectiveness of existing procedures and statutory provisions in investigating and dealing with corrupt or criminal conduct by any Western Australian police officer.

As a part of this process, a forum involving relevant stakeholders is to be conducted in relation to the information management system of the Western Australia Police Service. This forum will receive submissions from interested parties and will discuss topics related to:

- Intelligence collection, collation and analysis;
- Information management and security;
- Unauthorised access of police computer systems;
- Disclosure of confidential information by police;
- The market for police information; and
- Information security and the law.

To assist in this process, a discussion paper has been prepared and can be obtained by contacting Ms Lauren Netto on 08 9215 4879, or may be downloaded directly from the Commission's website at [www.police.royalcommission.wa.gov.au](http://www.police.royalcommission.wa.gov.au)

### **Submissions**

The Commission invites written submissions which should be lodged no later than 5.00pm, Friday 7 March 2003 to:

Research, Policy and Reform Unit

Royal Commission Into Whether There Has Been

Any Corrupt or Criminal Conduct by Western Australian Police Officers

PO Box Z5318 St George's Tce, Perth 6831

Submissions can also be forwarded electronically to:

[info@police.royalcommission.wa.gov.au](mailto:info@police.royalcommission.wa.gov.au)

**REQUEST FOR SUBMISSIONS – THE WEST AUSTRALIAN AND THE WEEKEND AUSTRALIAN  
NEWSPAPERS ON 22 MARCH 2003**



## ROYAL COMMISSION

INTO WHETHER THERE HAS BEEN CORRUPT OR  
CRIMINAL CONDUCT BY ANY WESTERN  
AUSTRALIAN POLICE OFFICER

**COMMISSIONER: THE HON. G A KENNEDY AO QC**

### Request for Submissions

Under its terms of reference, the Royal Commission is required to inquire into and report on the effectiveness of existing procedures and statutory provisions in investigating and dealing with corrupt or criminal conduct by any Western Australian police officer.

As a part of this process, the Commission invites written submissions relating to corruption prevention strategies relevant to the Western Australia Police Service on the following issues:

- Corruption prevention planning;
- Education in corruption prevention;
- Lateral appointments;
- Improving management and supervision;
- Performance assessment;
- Compliance auditing;
- Risk assessment.

To assist in this process, a discussion paper has been prepared and can be obtained by contacting Ms Lauren Netto on 08 9215 4879, or may be downloaded directly from the Commission's website at [www.police.royalcommission.wa.gov.au](http://www.police.royalcommission.wa.gov.au)

#### **Submissions**

Written submissions should be lodged no later than 5.00pm, Friday 4 April 2003 to:  
Research, Policy and Reform Unit  
Royal Commission Into Whether There Has Been Corrupt or Criminal  
Conduct by Any Western Australian Police Officer  
PO Box Z5318 Perth St George's Tce WA 6831

Submissions can also be forwarded electronically to:  
[info@police.royalcommission.wa.gov.au](mailto:info@police.royalcommission.wa.gov.au)



**REQUEST FOR SUBMISSIONS – THE WEST AUSTRALIAN AND THE WEEKEND AUSTRALIAN  
NEWSPAPERS ON 19 APRIL 2003**



**ROYAL COMMISSION**  
**INTO WHETHER THERE HAS BEEN CORRUPT OR**  
**CRIMINAL CONDUCT BY ANY WESTERN**  
**AUSTRALIAN POLICE OFFICER**

**Commissioner: The Hon. G A Kennedy AO QC**

## Request for Submissions

Under its terms of reference, the Royal Commission is required to inquire into and report on the effectiveness of existing procedures and statutory provisions in investigating and dealing with corrupt or criminal conduct by any Western Australian police officer.

As a part of this process, the Commission invites written submissions relating to internal investigations and disciplinary processes relevant to the Western Australia Police Service including the following issues:

- Internal investigations;
- Effective internal reporting systems;
- Models of complaints management;
- Whistleblowers; and
- Disciplinary system.

To assist in this process, a discussion paper has been prepared and can be obtained by contacting Ms Lauren Netto on 08 9215 4879, or may be downloaded directly from the Commission's website at [www.police.royalcommission.wa.gov.au](http://www.police.royalcommission.wa.gov.au)

### **Submissions**

Written submissions should be lodged no later than 5.00pm, Friday 9 May 2003 to:  
Research, Policy and Reform Unit  
Royal Commission Into Whether There Has Been Corrupt or Criminal  
Conduct by Any Western Australian Police Officer  
PO Box Z5318 Perth St George's Tce WA 6831

Submissions can also be forwarded electronically to:  
[info@police.royalcommission.wa.gov.au](mailto:info@police.royalcommission.wa.gov.au)

## **APPENDIX 6**

### **MEDIA ORGANIZATIONS THAT REGULARLY ATTENDED PUBLIC HEARINGS**

ABC Radio and Television

Australian Associated Press (AAP)

Channel 7

Channel 9

Channel 10

Radio 6PR

The Australian

The West Australian



## APPENDIX 7

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## APPENDIX 8

### ROYAL COMMISSION RESEARCH ACTIVITIES

The Royal Commission's Terms of Reference require it to inquire into and report on the effectiveness of existing procedures in investigating and dealing with corrupt or criminal conduct by Western Australian police officers. Consequently, the Royal Commission's Research, Policy and Reform Unit ("Unit") conducted two surveys with current and former Western Australia Police Service ("WAPS") officers, relating to corruption and other more general policing topics. The surveys were designed to obtain a snapshot of the WAPS in relation to various contemporary and topical policing issues. The research projects undertaken by the Unit were informed by a comprehensive overview of current and historical literature covering a broad range of subjects, including but not limited to:

- Police corruption;
- Police reform;
- The role of police in society; and
- The dynamics of police organizations.

The results of the research projects were valuable in terms of:

- Clarifying thoughts and ideas on the issues;
- Suggesting different areas of focus;
- Confirming established points of view; and
- Influencing the Royal Commission's recommendations.

#### ***RESEARCH ACTIVITY ONE: SURVEY OF FORMER WESTERN AUSTRALIAN POLICE OFFICERS***

The first research project which the Unit undertook was a survey with former WAPS officers. The respondents were ex-WAPS officers who:

- Had left WAPS between the period October 1997 to October 2002; and
- Had left within five years of first entering the WAPS.

The Royal Commission into the New South Wales (NSW) Police Service conducted similar research during its term of operation. The aims of the NSW research were (Chan, 1996:3):

- To obtain information on the nature and extent of corruption in the Service;
- To obtain information on other issues relevant to the Commission's terms of reference (including promotions, training, internal investigations, internal informers); and
- To provide the opportunity for all currently serving officers and some resigned officers to place their views on corruption and other matters before the Commission.

Although comparable to the NSW research, the survey conducted by this Royal Commission differed from its NSW counterpart in that its objectives were more focused specifically on issues related to corruption in the WAPS, and the survey respondents comprised only former police officers, not currently serving police officers.

### ***RATIONALE AND OBJECTIVES***

The rationale behind the survey of ex-WAPS members was to obtain a broad understanding of corruption within WAPS. In order to achieve this, the research had to look beyond the public allegations of corruption emerging in Royal Commission hearings and consider a different perspective of corruption within WAPS which could best be provided by individuals with direct experience of working within the organization. The objectives of the research, therefore, were to obtain information on:

- Corruption and/or misconduct within WAPS;
- Factors influencing officers' decision to leave WAPS;
- WAPS policies and procedures to deal with corruption and/or misconduct; and
- How these policies and procedures could be improved.

### ***METHODOLOGY***

The survey questionnaire was developed by the Unit in consultation with leading academics at the Sellenger Centre for Police Research, Edith Cowan University in Western Australia. A copy of the questionnaire is attached. The questionnaire comprised 26 items covering the following topics:

- General information pertaining to the respondent's demographic details;
- History of the respondents' work experience in WAPS;
- Reasons for joining WAPS;

- Reasons for resigning;
- Exposure to corruption;
- Organizational response to corruption; and
- Personal opinions relating to corruption and misconduct.

In completing the questionnaire, respondents were required to select their choice from a list of options that were provided for each item. Respondents, therefore, were not required to provide lengthy open-ended responses and this ensured that the completion time was kept to a minimum. A definition of corruption was provided with the questionnaire.

Contact information for the respondents was provided to the Royal Commission by WAPS. The questionnaires were, however, anonymous in that respondents were not required to provide any identifying information unless they wished to do so voluntarily. Furthermore, respondents were assured that the information they provided would remain confidential and would only be reported within the context of the broad findings of the research.

Initially, 93 questionnaires were mailed to respondents, each with a return reply paid envelope enclosed. The response rate was low, however, and consequently the questionnaires were posted to the respondents again a few weeks later. This time the covering letter included a paragraph specifically urging respondents to complete the questionnaire and providing further reassurance regarding the anonymity of the questionnaires and the confidentiality of the research. Eighty-one questionnaires were sent in this second mail-out, fewer than were initially sent as many questionnaires had been returned unopened, an indication that the respondent no longer resided at the given address. Subsequently these individuals were not included in the second sample of respondents. The researchers attempted to obtain the correct contact addresses of those respondents whose questionnaires had been returned due to the address being incorrect. This process involved checking the original addresses against the address listed for the respondent on the Electoral Roll. In some instances a different address was given and the questionnaire was subsequently sent to the new address. In most instances, however, either the same address appeared on the Electoral Roll as was originally provided by WAPS, or no address was given at all. All in all, fourteen completed questionnaires were returned and were analysed.

## ***RESULTS***

The analysis was uncomplicated given the small number of returned questionnaires. The results should be viewed in the context of the low proportion of responses and not be seen as representative of the entire sample. However, despite the minimal response, the results

are valuable in terms of providing insight into individuals' experiences of working within WAPS, as well as identifying pertinent issues confronting the organization.

Any research project is inevitably informed by a number of implicit assumptions that provide the framework for the research. This project assumed that corruption could have been a factor influencing the decision of the respondents to leave WAPS, particularly considering they had only been in the organization for five years or less. The survey instrument was therefore designed with this assumption in mind. The results, however, contradicted this assumption. Only one of the respondents cited corruption or alleged corruption on the part of other police as an "important" factor influencing their decision to leave the organization. This was in response to an item on the questionnaire that asked respondents to rate the level of importance of those factors which may have influenced their decision to resign. Respondents were given a list of 15 possible factors and asked to note those relevant to them as either "had some influence", "important" or "crucial". In response to another question that specifically asked respondents to identify whether or not corruption or concern about possible corruption was a factor in their resignation, one answered that it was a "medium factor" and one respondent chose "large factor". All the other respondents maintained that corruption was "not a factor at all" influencing their decision to resign from WAPS. Thus, the overall flavour of the results was that corruption or exposure to corruption was not a factor influencing respondents to resign from WAPS. Rather, there are other issues that were identified as more serious factors influencing their decision, such as leadership and management problems, the promotion system, and the general attitude of police officers.

The following is a summary of some of the other results that emerged from the survey:

- Most of the respondents were male;
- The range of occupations in which respondents had been involved prior to joining WAPS was diverse and included teaching, social work, engineering, electrical contracting, owning a business and defence force training, both locally and abroad;
- One third of the respondents had university degrees when they joined WAPS;
- Most of the respondents had spent two years in WAPS, which means that most left either during or just after having completed the probationary period of two years;
- The reasons for joining WAPS that were given were varied. The most commonly cited were: good career move, exciting profession, meaningful contribution to the community, and always wanted to be a police officer;

- All respondents resigned voluntarily from WAPS. The most common reasons for resigning were: dissatisfaction/frustration with the job; dissatisfaction with police management; lack of promotion opportunities; offered or decided to find another job; personal reasons not associated with the job; stress associated with the job; and being treated unfairly/undervalued;
- Opinion was divided regarding whether respondents felt optimistic about their career development in WAPS with just under half responding yes and just over half responding no. Reasons given for not feeling optimistic included: lack of funds provided for training; too long to wait for promotion; and cronyism/nepotism;
- As previously suggested, corruption was not mentioned as one of the factors influencing resignation in most of the cases. However, all respondents mentioned that they had either heard about or witnessed corruption during their employment with WAPS, while one respondent admitted to having been personally involved in corrupt activities; and
- The final item on the questionnaire was an open question inviting general comments. The following were the most commonly mentioned issues: the unprofessional attitude of some police officers both towards members of the public as well as towards their own work; rigid style of management that relies too heavily on bureaucratic and political influences; and ineffective supervision due to supervisors being too busy with administrative tasks to supervise adequately.

### ***LIMITATIONS OF THE RESULTS***

There are qualifications regarding the interpretation of the results of this research. The low response rate places obvious restrictions on the results specifically in terms of generalizing the results to the whole sample. The sample for this particular study comprised former police officers who had left WAPS for specific reasons. The questionnaire asked these individuals to comment on a topic that could be perceived as potentially contentious, sensitive, and which may have specific personal implications for the respondents. These factors no doubt contributed to the poor response rate of this research. Despite assurances to the contrary in the covering letter, respondents may have been suspicious about the exact nature of the research given that it was being conducted by the Royal Commission, and they may have felt that they would be placing themselves in a vulnerable position if they replied to the questionnaire.



Additionally, survey research characteristically has its own idiosyncrasies, which limit interpretation of results, and the present research is not immune to these. These include:

- Survey questionnaires are self reports of an individual's experiences, thoughts, ideas, opinions, etc of a particular topic and as such must be taken at face value as valid and reliable;
- Those respondents who do complete survey questionnaires may have a specific interest in, or a particular experience of, the survey issues, which motivates the individual to respond. This is especially true in research such as the present study, which attempts to elicit potentially controversial and sensitive information from respondents. This places a further limitation on the generalizability of the findings; and
- The fact that the research may involve controversial or sensitive information could deter some respondents who prefer not to become involved in research that they perceive could implicate them in some way. These are factors in survey research that cannot be completely controlled for by the researchers in the development of the survey instrument.

### ***RESEARCH ACTIVITY TWO: SURVEY OF WESTERN AUSTRALIAN POLICE SERVICE SERGEANTS AND SENIOR SERGEANTS.***

The second research project that the Unit undertook was a qualitative attitude and opinion survey encompassing a range of issues relevant to WAPS. The attitudes and opinions canvassed belonged to the Sergeants and Senior Sergeants in WAPS. This cohort typically comprises what is referred to as the "middle management" in the organizational management structure. The research was informed by a thorough review of diverse literature and research that revealed common and fundamental problems across various policing areas. These "problems" provided the framework for the development of a qualitative open-ended questionnaire designed to extract the attitudes and opinions of the respondents.

### ***RATIONALE AND OBJECTIVES***

The literature on various policing issues exposed problem areas that seemed to be common across police organizations, both nationally and internationally. This provided the rationale for the present research as an attempt to examine the extent to which these problems manifested within WAPS. Additionally, the rationale behind the choice of sample (that is sergeants and senior sergeants in WAPS) was informed by an understanding of the sample

as having been in the organization long enough to have experienced these issues and to have informed opinions about the issues.

Thus, the research aimed to explore the attitudes of sergeants and senior sergeants in WAPS on a range of issues and to obtain feedback from them regarding how these issues can be addressed.

### ***METHODOLOGY***

The questionnaire comprised eight open-ended questions each divided into two parts. Each question related to a specific policing issue and was accompanied by a short explanatory statement. The first part of the question asked the respondent to identify the biggest issue relating to the question topic, and the second part of the question asked the respondent to suggest methods to address this issue. (A copy of the questionnaire is attached.) The issues that were included in the questionnaire were:

- Recruit selection;
- Promotion;
- Training and education;
- Organizational environment;
- Leadership;
- Police culture;
- Organizational structure; and
- Perception and image.

The questionnaire was distributed to the respondents electronically via e-mail. WAPS provided e-mail addresses for all Sergeants and Senior Sergeants. Each e-mail address comprised the individual's official police number, not their names. Respondents could reply either by return e-mail, fax or post. A covering letter accompanied the questionnaire explaining the rationale behind the research, the aims and objectives of the research, the importance of open and honest input, and assurances of the confidentiality and the anonymity of the research. Any identifying information that accompanied the completed questionnaires was destroyed by researchers before commencing the analysis, since the focus of the research was to obtain a broad understanding of the issues identified in the questionnaire and not to relate information about the issues to a specific source. Many respondents, however, did voluntarily and purposefully provide their names and contact details and offered to be available should researchers wish to contact them regarding their responses.

The questionnaire was e-mailed to all WAPS Sergeants and Senior Sergeants, a sample base of 976 respondents. One hundred and sixteen questionnaires were completed and returned.

## ***RESULTS***

The results comprise the common themes in the responses for each issue, and were obtained by means of a qualitative thematic analysis. The main themes for each question are summarized below, accompanied by examples taken directly from the questionnaires, which validate the themes.

### ***RECRUIT SELECTION***

Opinion was divided among the respondents regarding the importance of academic qualifications as criteria for recruit selection over maturity and life experience. Some felt that too much emphasis is placed on achieving academically and that the focus should rather be on attracting recruits with common sense and “real world” experience. One respondent suggested that a balance should be obtained between “the selection of prospective police officers who have not only an academic ability and physical attributes but also display a degree of common sense and maturity”. Other themes that were commonly mentioned as reflecting the issue of recruit selection, and ways to address these issues, included:

- The importance of selecting recruits able to satisfy the requirements of the real work of policing, and not based on a “political” need to increase police numbers;
- Vetting procedures and the process of referee checks needs to be improved;
- Recruit trainers must be leaders and role models;
- Effective marketing of the police service as an attractive and financially viable career option: “You get the police service you pay for”; and
- Selecting recruits specifically on the basis of gender or other diversity criteria could lead to a lowering of entry standards and the standard of policing generally.

### ***PROMOTION***

Respondents criticized the WAPS promotion system for various reasons, such as:

- The application process is complicated, particularly the written application component which is time consuming and long-winded;

- “Selection criteria do not consider practical job knowledge”;
- The selection panels are biased in their selections particularly regarding promotion of officers from the detectives unit (CIB): “It is not what you know it is who you know”;
- Most often the person who wins the promotion is the person who is best able to sell her/himself during the interview and not necessarily the best person for the job;
- Lack of a meaningful and honest performance appraisal system means that officers may be recommended for promotion by their supervisors even though their job performance is lacking; and
- “[The promotion system] largely bypasses current supervisors and relies on subjective accounts and opinions in relation to performance”.

One suggestion for addressing the problems with the WAPS promotion system was that eligibility for promotion should include a range of characteristics, such as experience (particularly of front line policing), academic qualifications, years of service, time at rank, and staff appraisals (including subordinates of supervisors).

### ***TRAINING AND EDUCATION***

An analysis of the responses to the issue of training and education in WAPS located them within one of three categories, namely: availability, quality, and the implications of training and education provided by WAPS.

In terms of availability, some respondents maintained that there was a lack of relevant training, particularly for supervisors and those wishing to apply for promotion. Furthermore, there were some opinions regarding a general lack of ongoing training offered by WAPS once officers had completed the probationary period. “Availability of training and education is haphazard” – country areas are disadvantaged in terms of training opportunities and some officers are favoured over others for training.

Training programs have sacrificed a certain level of quality due to budgetary restrictions, and training “is not directly applicable to the workplace ... [it] is too focused on theoretical and administrative roles”. One respondent wrote that:

The biggest issue with training and education in WAPS is the brain drain of instructors. Instructors at the Academy are valued for their contribution, however, they are always under the cloud of transfer when their tenure is near. Instructors should be head-hunted from within the ranks but even if this happens it is well known that instructors lose a considerable amount of money due to plan clothes

allowance, information allowance, shift penalties and overtime. Instructors should be viewed as a very valuable resource.

Attending training courses has implications for workload levels, as having officers away on training courses places an extra burden on those officers who remain behind and are required to assume the absent officers' duties. Additionally, often staff shortages restrict training opportunities completely.

Another implication of providing training programs is that it removes police officers from operational policing. One respondent suggested: "Most of the Academy could be unsworn, thus releasing additional police officers for operational purposes".

### ***ORGANIZATIONAL ENVIRONMENT***

Themes relating to the organizational environment of WAPS were diverse and included:

- Favouritism of certain groups, for example detectives;
- Ineffective supervision which allows corruption to breed;
- An inefficient discipline system that is too punitive (a "sledgehammer" approach), and that prevents officers disclosing information relating to corruption and misconduct;
- Lack of rewards for honest behaviour and hard work; and
- Alienation between senior management and operational police officers.

Suggested methods for addressing these issues were:

- Create a safe environment to encourage reporting of corruption and misconduct and provide support for whistleblowers;
- Improved accountability measures for managers and supervisors;
- Honest and open communication channels between all levels of the organizational personnel; and
- Removing the elitist status of detectives, for example by putting detectives back into uniform.

### ***LEADERSHIP***

The dominant theme relating to the issue of leadership within WAPS was a lack of effective leadership within the organization. This is evident in the following statements:

Our leadership does not always provide a model of desired behaviour that it should. The current royal commission has shown a considerable lack of

management of some officers who were allowed to do as they pleased. We also have instances where some of our top executives have been seen to do things not considered ethically correct, yet escape virtually unscathed ...

There is too much of an us and them situation.

Poor attitude and lack of proper leadership ... we have too many people behind computers instead of leading the troops in the field.

The system of promotion was largely blamed for the poor management in that it was seen to be promoting people who could successfully respond to selection criteria and scenario based interview questions, rather than promoting the best person for the position. Further leadership issues included:

- WAPS leaders are too tied up with political issues, which detract from the fundamental focus of effective policing;
- No continuity of management as senior officers are never in one position long enough; and
- Officers in leadership positions due to their seniority within the organization rather than specific leadership skills and experience.

Suggestions for ways to address these problems included improved leadership training, changes to the promotion system and effectively identifying, developing and deploying leaders.

### ***POLICE CULTURE***

Opinions on the state of police culture currently in WAPS were divided. Some respondents stated that the culture is “old, staid, inflexible and based on misguided values”, while others felt the culture has the potential to be a positive influence on police officers. Furthermore, some respondents mentioned that police culture was used as a “scapegoat” upon which inappropriate behaviour was often blamed.

One theme which was common among many responses was a feeling of the culture being slowly eroded and individuals felt that they had lost the sense of belonging and loyalty to the organization, and they felt alienated from the broader organizational vision.

Other issues that were raised regarding police culture were:

I can see no problem with a culture where police support each other and that fosters a sense of loyalty to each other and the WAPS as long as it happens within ethical guidelines.

There is nothing wrong with organizational culture per se. Many organizations spend millions trying to develop a culture of belonging and loyalty. It assists with teamwork, commitment to goals, peer support, job satisfaction and motivation. The problem is when culture tolerates something contrary to the interests of the organization. The organizational culture of WAPS has changed significantly towards a culture of ethical behaviour and accountability – not only doing the right things but being seen to be.

Promoting the positive aspects of police culture, continuous training in ethics, and disbanding elite units were commonly suggested as ways of addressing the negative implications of police culture.

### ***ORGANIZATIONAL STRUCTURE***

The organizational structure of WAPS was described as fragmented and alienated in that senior management is inaccessible to the “troops” who felt disconnected from the rest of the organization. The structure was perceived as hierarchical and lacked open channels of communication, particularly from top management.

Other thoughts on the organizational structure of WAPS:

It is in a state of transition. We have commenced down a path, but seem to have stalled and lost direction along the way. We have not maintained focus and direction.

The biggest issue with the organizational structure of WAPS is too many administrative positions being filled by trained police officers and not enough clerical support down the line of command.

The biggest issue with the organizational structure of WAPS is that the senior management cannot comprehend coal-face issues from their glass houses. They rely on internal reports and the media for corporate decisions without consultation of middle managers, senior sergeants and sergeants.

To address these, and other issues that were mentioned, the organization could:

- Increase the number of unsworn personnel for administrative, non-operational functions;
- Clearly set out the goals and vision for the organization;
- Implement an effective system of recognition and rewards; and
- Improve communication from the top.

### ***PERCEPTION AND IMAGE***

The public has certain expectations of the police, which do not necessarily acknowledge the realities of policing. For example, there is an expectation that police are responsible for curing “all the ills of society” which is unrealistic. WAPS needs to market itself more

effectively, including its role and function in society and its limitations: “Not enough is done to promote the good things done by officers both professionally and within the community.”

Some respondents blamed the current Royal Commission for the negative public perception of WAPS, while others felt that the negative portrayal of WAPS was due to media reports that do not always depict situations accurately.

We are at the mercy of the media. No matter how much good work we do, it is undone in a split second by an adverse story. Many times, the negative slant is unjustified and only the ‘other side’ of the story is told. We can’t tell our side due to legal and policy restrictions, but we are accused of being ‘tight lipped’, inferring a cover up or reluctance to talk.

Lack of confidence and trust, lack of staff, and lack of accountability were all identified as issues contributing to the negative perception and image of WAPS.

One respondent astutely listed the following methods for addressing the negative perceptions and image of WAPS:

- Proper positive marketing;
- Visible leadership;
- Media training for all supervisors;
- Rebuilding the tradition of organizational pride at all levels; and
- Independence of political interference.

### ***INTERPRETATION OF THE RESULTS***

The results should be interpreted within the context in which they were collected, that is a qualitative methodology. The purpose of this survey was to obtain a snapshot of opinions regarding various policing issues in WAPS. The survey did not attempt to quantify these opinions or issues in any way. The results should thus not be interpreted as necessarily being generalizable to or representative of all Sergeants and Senior Sergeants in WAPS.

Attachments that follow:

#### Research Project 1

- Letter to Respondents 25 February 2003
- Notes on Completing the Questionnaire
- Questionnaire
- Follow-up Letter to Respondents 28 March 2003

#### Research Project 2

- Letter to Sergeants/Senior Sergeants
- Questionnaire



*Our ref: 3709*  
*Your ref:*

25 February 2003

Dear Respondent

The Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct by Western Australian Police Officers was established in December 2001. The Commission must inquire into the type, extent and level of corruption and criminal conduct within the Western Australian Police Service (WAPS), as well as into the effectiveness of existing procedures in investigating and dealing with such conduct.

Within this framework, the Research, Reform and Policy Unit of the Commission is conducting research with former WA police officers who left the Service during the period October 1997 to October 2002, within five years of first joining WAPS.

### **Aims and Objectives**

The research aims to explore the experience of these officers with particular reference to:

- Factors influencing the decision to leave WAPS
- Officers' experiences of corrupt and/or criminal conduct within WAPS
- Existing procedures designed to deal with corrupt and/or criminal conduct within WAPS
- General perceptions of WAPS

### **The Questionnaire**

The enclosed questionnaire contains 26 items designed to elicit information pertaining to the above content areas. To ensure that our information is valid, we need accurate information from you based on your understanding and experience of these issues. Therefore, we would appreciate it if you could answer the questions as openly and thoroughly as possible.

Some items on the questionnaire do require a certain level of personal information, for example sex, age, and work locations. Please be assured that this information will not be used in a way that could identify you. This type of information will be used for statistical purposes and will be analysed and presented within the context of the rest of the data

rather than be presented as pertaining to individual cases. It should take approximately 20 minutes to complete the questionnaire.

### **Your Input**

Research into any policing issue cannot be effective or comprehensive without input from the people who are in the best position to inform us. For the purposes of this research, that means those people who have had direct experience within WAPS. Your input, therefore, is crucial in terms of increasing awareness and understanding of the policies and procedures within the WAPS, and the influence of these on individual members.

### **Confidentiality and Anonymity**

Your name and address was provided to us by the Royal Commission Unit of WAPS, as a person who has left WAPS in the time period stated above. Your questionnaire will remain anonymous in that your name will not appear on the questionnaire (unless you provide it voluntarily), and thus there will be no way of attributing specific responses to any particular individual.

We believe that the results of this research could have significant implications within the context of the broader work of the Royal Commission. Therefore, we really do appreciate your participation in this research. However, please do not feel in any way compelled to complete the questionnaire or to answer certain questions that you may feel uncomfortable about.

If you have any questions about any aspect of this research, please contact Lauren Netto at the Research, Reform and Policy Unit of the Royal Commission on (08) 9215 4879.

Please return completed questionnaires in the enclosed Reply Paid envelope to the Royal Commission by **Friday 14 March 2003**.

Thank you for your cooperation.

Yours sincerely

**GA KENNEDY AO QC**  
**COMMISSIONER**

***NOTES ON COMPLETING THE QUESTIONNAIRE***

This questionnaire has been designed by the Research, Reform and Policy Unit of the Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers. The questionnaire has been distributed to the following respondents:

- Probationary Constables and Constables of the Western Australian Police Service (WAPS) who left WAPS during the period October 1997 to October 2002, within five years of first joining WAPS

For the purposes of this survey, corruption is defined as:

**Definition**

Police corruption is the deliberate, unlawful conduct perpetrated by a police officer utilising his/her position as a police officer, on or off duty, and regardless of the motivation for the offence. This includes, for example:

- Unlawful behaviour for personal gain
- Unlawful behaviour in the course of fighting crime
- The concealment of any form of misconduct by another police officer
- The manipulation of the criminal court process
- Police supervising and organising crime

Please feel free to add any other information that you feel may be pertinent to this research and that is not covered in the questionnaire

## Questionnaire

Please indicate your selection by placing an "x" in the appropriate box – unless otherwise specified.

1. Current age (in years):
  - Less than 24 yrs
  - 24-29 yrs
  - 30-34 yrs
  - 35-39 yrs
  - 40-44 yrs
  - 45-49 yrs
  - Over 50 yrs
  
2. Age when you first entered the Western Australian Police Service (WAPS):
  - Less than 20 yrs
  - 20-24 yrs
  - 25-29 yrs
  - 30-34 yrs
  - 35-39 yrs
  - Over 40 yrs
  
3. Sex:
  - Male
  - Female
  
4. Please provide details of your ethnic background (eg. Aboriginal, Torres Strait Islander, European, Asian, etc)
 

\_\_\_\_\_
  
5. Please list all the occupations in which you were engaged **prior** to joining WAPS
 

	yrs
	yrs
	yrs
	yrs
	yrs
  
6. Date of joining the WA Police Service? \_\_\_\_\_

7. How long were you with the WA Police Service? (Select the closest option, eg. if you were with WAPS for 2 years and 10 months choose 3 years)

- Less than 1 year
- 1 yr
- 2 yrs
- 3 yrs
- 4 yrs
- 5 yrs

8. Please complete this table by providing the following details:

- A list of all the geographical locations in which you worked during your employment with the WA Police Service
- The dates or number of years that you worked in each of the geographical locations that you have listed
- The duties you performed in each of those locations

DATES/NUMBER OF YEARS	GEOGRAPHICAL LOCATION	DUTIES PERFORMED

9. What was your **highest** educational qualification when you joined the WA Police Service?

- Some High School
- Year 12
- Trade/Apprenticeship:
  - Partially Completed
  - Completed

- Diploma/Certificate:
- Partially Completed
  - Completed
- Bachelors Degree:
- Partially Completed
  - Completed
- Other. Please specify \_\_\_\_\_  
\_\_\_\_\_
10. Did you pursue tertiary education during your time with the WA Police Service?
- Yes. Please give details \_\_\_\_\_  
\_\_\_\_\_
- No
11. Why did you join the WA Police Service? (You may choose more than one reason)
- It seemed like a good career move
  - The salary was good
  - I liked the idea of working in different districts
  - I have/had family members working in the Police Service. Please specify  
\_\_\_\_\_  
\_\_\_\_\_
  - I have always wanted to be a Police Officer
  - I wanted to make a meaningful contribution to the community
  - I perceived the WA Police Service to be a good employer
  - It is an exciting profession to be involved in
  - Other. Please specify \_\_\_\_\_  
\_\_\_\_\_
12. Under what circumstances did you leave the Police Service?
- Resigned voluntarily
  - Retired – Medically Unfit
  - Forced to leave/resign. Please specify \_\_\_\_\_  
\_\_\_\_\_
  - Other. Please specify \_\_\_\_\_  
\_\_\_\_\_
- 13a. If you **resigned voluntarily** from the WA Police Service, please select from the list below those reasons that influenced your decision to resign from the WA Police Service. (You may select more than one reason.) Please also rate the reasons you choose

according to the level of importance of that reason in affecting your decision to leave WAPS. (Please circle the relevant number.)

REASON FOR RESIGNING	LEVEL OF IMPORTANCE		
	Had some influence	Important	Crucial
Ill health not associated with the job	1	2	3
Dissatisfaction, frustration with the job	1	2	3
Stress associated with the job	1	2	3
Injury (or concern about injury) associated with the job	1	2	3
Dissatisfaction with police management	1	2	3
Lack of promotion opportunities	1	2	3
Offered/decided to find another job	1	2	3
Corruption or alleged corruption on the part of other police (See definition of corruption)	1	2	3
Corruption or alleged corruption on your part (See definition of corruption)	1	2	3
Police culture, (eg. cliques; pressure to conform; pressure to cover up for others)	1	2	3
Discrimination. Please specify: _____ _____	1	2	3
Treated unfairly/undervalued	1	2	3
Personal reasons not associated with the job (eg getting married; having children; moving with partner to another state)	1	2	3

Job required you to move to a new district	1	2	3
Complex and time consuming WAPS systems and procedures often made it necessary for you to "bend the rules" in order to do your job	1	2	3
Other. Please specify: _____ _____	1	2	3

13b. Any comments regarding the reasons you have provided above?

\_\_\_\_\_  
\_\_\_\_\_

14. During your employment with WAPS, were you optimistic about the opportunities for you to develop your career within the WA Police Service?

- Yes
- No. Please give details \_\_\_\_\_  
\_\_\_\_\_

15. With reference to the definition of corruption provided in the notes preceding the questionnaire, to what extent was corruption, or concern about possible corruption, a factor in your resignation from the WA Police Service?

- Not a factor at all
- Small factor
- Medium factor
- Large factor
- The only reason why I left

16a. With reference to the definition of corruption provided, did you personally encounter what you believed, or reasonably suspected, to be corruption by a WA police officer during your time in the WA Police Service? (This might include incidents you witnessed or were told about or were asked to participate in.)

- Yes
- No



16b. If "yes", please give details \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17a. Was any attempt made by any other WA police officer to get you to participate with him or her in any form of corrupt or criminal conduct?  
 Yes  
 No

17b. If "yes" please give details \_\_\_\_\_  
\_\_\_\_\_

18a. Did you know about the processes in place within the WA Police Service for reporting corruption and/or misconduct of WA Police Officers?  
 Yes  
 No  
If "yes", please give details of these processes

\_\_\_\_\_  
\_\_\_\_\_

18b. If you answered "yes" to question 18a, did you have confidence in these processes?  
 Yes  
 No  
Discuss \_\_\_\_\_  
\_\_\_\_\_

18c. Did you have any personal experience of these processes?  
 Yes  
 No

18d. If "yes", were you:  
 Satisfied with these processes?  
 Dissatisfied with these processes? Please discuss  
\_\_\_\_\_  
\_\_\_\_\_

19a. During the course of your employment with the WA Police Service, do you believe that officers you suspected to be corrupt were assisted in their career development by that corruption?  
 Yes  
 No

19b. If “yes”, please give details

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20a. During the course of your employment with the WA Police Service, were police officers that you knew to be corrupt disciplined?

- Yes
- No

If “yes”, please give details

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20b. If you answered “yes” to question 20a, was the discipline adequate, in your view?

- Yes
- No

20c. Which of the following groups of police officers were **more likely** to be disciplined for their corrupt behaviour?

- Fellow constables
- Supervisors

21a. During your employment with the WA Police services did you ever hear about, witness or were personally involved in any of the following: (Place an “x” in the relevant column. You may select more than one column per statement if appropriate. If a statement does not apply to you place an “x” in the “Not Applicable” column)

	Hearsay / Was generally known	Witnessed	Personally involved	Not Applicable
A WA Police Officer accepting a personal gift ( <b>less</b> than \$200) from a member of the public for a job well done (eg. free meals, drinks, flowers)				
A WA Police Officer accepting a personal gift ( <b>more</b> than \$200) from a member of the public for a job well done (eg. free meals, drinks, flowers)				
A WA Police Officer accepting a gift ( <b>less</b> than \$200) from a member of the public on behalf of the police department in appreciation of his/her good work (eg. providing food and/or drinks for a police function)				

A WA Police Officer accepting a gift ( <b>more</b> than \$200) from a member of the public on behalf of the police department in appreciation of his/her good work (eg. providing food and/or drinks for a police function)				
A WA Police Officer threatening or using excessive force in handling a suspect				
A WA Police Officer tampering with or falsifying evidence in order to ensure a known suspect is convicted (eg. claiming the suspect said something he/she did not in fact say, removing evidence that may point to the suspect's innocence, etc)				
A WA Police Officer repeatedly and inappropriately using police resources (eg. vehicle, telephone, duty time, e-mail, etc) for a <b>private business</b> interest				
A WA Police Officer abusing his/her position of authority as a police officer (eg. exploiting the fact that she/he is a police officer to receive favourable treatment such as gaining entry to a nightclub under the pretense of being on duty)				
A WA Police Officer misusing official police information (eg. telling mates about police business, searching police files and databases for information pertaining to individuals not related to police work, etc)				
A WA Police Officer stealing (eg. stealing a bottle of whisky while attending to a burglary at a bottle shop)				
A WA Police Officer not accepting responsibility for a mistake and lying about the facts (eg. being responsible for an accident in a police vehicle and blaming somebody/something else for causing the accident)				

A WA Police Officer maintaining relationships with known or suspected criminals				
A WA police officer using and/or dealing in drugs				
A WA police officer actively engaging in other criminal behaviour				
A WA Police Officer ignoring or covering up information relating to any of the scenarios listed above				

21b. Any comments regarding the above scenarios

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22a. Please rate the level of importance that you believe **each** of the following factors had or would have had in **IMPEDING OR DISCOURAGING** you to report corruption by fellow police officers: (For each factor please circle the number that best suits your beliefs)

	<b>Not Important</b>	<b>Slightly Important</b>	<b>Important</b>	<b>Very Important</b>	<b>Crucial</b>
Police culture of mateship	1	2	3	4	5
Lack of support from colleagues	1	2	3	4	5
Lack of support from supervisors	1	2	3	4	5
Lack of support from the Service	1	2	3	4	5
Lack of support from your family	1	2	3	4	5
Lack of confidence in internal investigations	1	2	3	4	5
Lack of anti-corruption training	1	2	3	4	5
A weak disciplinary system	1	2	3	4	5

Lack of confidence in the internal informer's policy	1	2	3	4	5
Lack of personal integrity	1	2	3	4	5
Fear of consequences of delay in reporting	1	2	3	4	5
Being victimized/discriminated against	1	2	3	4	5
Potential negative impact on your career	1	2	3	4	5

22b. Any other factors that you believe may **IMPEDE OR DISCOURAGE** police officers in the reporting of corruption?

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23a. Please rate the level of importance that you believe **each** of the following factors had or would have had in **ENCOURAGING** you to report corruption during your employment with the WA Police Service: (For each factor please circle the number that best suits your beliefs)

	<b>Not important</b>	<b>Slightly Important</b>	<b>Important</b>	<b>Very Important</b>	<b>Crucial</b>
Police culture of mateship	1	2	3	4	5
Support from colleagues	1	2	3	4	5
Support from supervisors	1	2	3	4	5
Support from the Service	1	2	3	4	5
Support from your family	1	2	3	4	5
Confidence in internal investigations	1	2	3	4	5
Anti-corruption training	1	2	3	4	5

A strong disciplinary system	1	2	3	4	5
Confidence in the internal informer's policy	1	2	3	4	5
Personal integrity	1	2	3	4	5
WA Police Service Ethical Guidelines	1	2	3	4	5
Legal obligation to report	1	2	3	4	5

23b. Any other factors that you believe may **ENCOURAGE** police officers to report corruption?

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24a. Please indicate whether you consider each of the statements listed in the table below to be: (Please indicate your preference by circling the appropriate number)

- Professional Misconduct; or
- Criminal Misconduct (or both Professional and Criminal Misconduct)

STATEMENT	PROFESSIONAL MISCONDUCT	CRIMINAL MISCONDUCT
A WA Police Officer accepting a personal gift ( <b>less</b> than \$200) from a member of the public for a job well done (eg. free meal, drinks, flowers)	1	2
A WA Police Officer accepting a personal gift ( <b>more</b> than \$200) from a member of the public for a job well done (eg. free meal, drinks, flowers)	1	2
A WA Police Officer accepting a gift ( <b>less</b> than \$200) from a member of the public on behalf of the police department in appreciation of his/her good work (eg. providing food and/or drinks for a police function)	1	2
A WA Police Officer accepting a gift ( <b>more</b> than \$200) from a member of the public on behalf of the police department in appreciation of his/her good work (eg. providing food and/or drinks for a police function)	1	2

A WA Police Officer threatening or using excessive force in handling a suspect	1	2
A WA Police Officer tampering with or falsifying evidence in order to ensure a known suspect is convicted (eg. claiming the suspect said something he/she did not in fact say, removing evidence that may point to the suspect's innocence, etc)	1	2
A WA Police Officer repeatedly and inappropriately using police resources (eg. vehicle, telephone, duty time, e-mail, etc) for a <b>private business</b> interest	1	2
A WA Police Officer abusing his/her position of authority as a police officer (eg. exploiting the fact that she/he is a police officer to receive favourable treatment such as gaining entry to a nightclub under the pretense of being on duty)	1	2
A WA Police Officer misusing official police information (eg. telling mates about police business, searching police files and databases for information pertaining to individuals not related to police work, etc)	1	2
A WA Police Officer stealing (eg. stealing a bottle of whisky while attending to a burglary at a bottle shop)	1	2
A WA Police Officer not accepting responsibility for a mistake and lying about the facts (eg. being responsible for an accident in a police vehicle and blaming somebody/something else for causing the accident)	1	2
A WA Police Officer maintaining relationships with known or suspected criminals	1	2
A WA police officer using and/or dealing in drugs	1	2
A WA police officer actively engaging in other criminal behaviour	1	2
A WA Police Officer ignoring or covering up information relating to any of the scenarios listed above	1	2

24b. Any comments pertaining to the choices indicated above? \_\_\_\_\_

\_\_\_\_\_

25a. Would you be willing to speak to a researcher from the Royal Commission about the information you have provided?

Yes

No

25b. If "yes" please provide your contact details (address and telephone number)

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26. Is there anything else you would like to tell us about?

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Thank you for taking the time to complete this questionnaire. Please feel assured that the information you have provided will remain confidential and will not be used in any way that could identify you.

Should you have any questions or comments, please feel free to contact Lauren at the Police Royal Commission Research, Reform and Policy Unit:

Lauren Netto  
Research Officer  
(08) 9215 4879

[l.netto@police.royalcommission.wa.gov.au](mailto:l.netto@police.royalcommission.wa.gov.au)

Please place completed questionnaires in the Reply Paid envelope provided and return to the Commission by **Friday 14 March 2003**



*Our ref: 3709*  
*Your ref:*

28 March 2003

Dear Respondent

The Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct by Western Australian Police Officers was established in December 2001. The Commission must inquire into the type, extent and level of corruption and criminal conduct within the Western Australia Police Service (WAPS), as well as into the effectiveness of existing procedures in investigating and dealing with such conduct.

Within this framework, the Research, Reform and Policy Unit of the Commission is conducting research with former WA police officers who left the Service during the period October 1997 to October 2002, within five years of first joining WAPS.

This may be the second time that you have received this questionnaire. If you have already completed this questionnaire and sent it to us, please ignore this one. If you have not completed this questionnaire before, please seriously consider completing the questionnaire and returning it to the Royal Commission in the Reply Paid envelope provided. The questionnaire is anonymous and the information you provide cannot be traced back to you. The information you provide is really important to the work of the Royal Commission and will not be used in any operational manner. This means that the information contained in the questionnaire will not be the focus of, or included in, any investigation in which the Royal Commission is currently, or may in the future, be involved.

### **AIMS AND OBJECTIVES**

The research aims to explore the experience of these officers with particular reference to:

- Factors influencing the decision to leave WAPS
- Officers' experiences of corrupt and/or criminal conduct within WAPS
- Existing procedures designed to deal with corrupt and/or criminal conduct within WAPS
- General perceptions of WAPS

## THE QUESTIONNAIRE

The enclosed questionnaire contains 26 items designed to elicit information pertaining to the above content areas. To ensure that our information is valid, we need accurate information from you based on your understanding and experience of these issues. Therefore, we would appreciate it if you could answer the questions as openly and thoroughly as possible.

Some items on the questionnaire do require a certain level of personal information, for example sex, age, and work locations. Please be assured that this information will **not** be used in a way that could identify you. This type of information will be used for statistical purposes and will be analysed and presented within the context of the rest of the data rather than be presented as pertaining to individual cases. It should take approximately 20 minutes to complete the questionnaire.

## YOUR INPUT

Research into any policing issue cannot be effective or comprehensive without input from the people who are in the best position to inform us. For the purposes of this research, that means those people who have had direct experience within WAPS. Your input, therefore, is crucial in terms of increasing awareness and understanding of the policies and procedures within the WAPS, and the influence of these on individual members.

## CONFIDENTIALITY AND ANONYMITY

Your name and address was provided to us by the Royal Commission Unit of WAPS, as a person who has left WAPS in the time period stated above. Your questionnaire will remain anonymous in that your name will not appear on the questionnaire (unless you provide it voluntarily), and thus there will be no way of attributing specific responses to any particular individual.

We believe that the results of this research could have significant implications within the context of the broader work of the Royal Commission. Therefore, we really do appreciate your participation in this research. However, please **do not feel** in any way compelled to complete the questionnaire or to answer certain questions that you may feel uncomfortable about.

If you have any questions about any aspect of this research, please contact Lauren Netto at the Research, Reform and Policy Unit of the Royal Commission on (08) 9215 4879.

Please return completed questionnaires in the enclosed Reply Paid envelope to the Royal Commission by **Friday 18 April 2003**.

Thank you for your cooperation.

Yours sincerely

**GA Kennedy AO QC**  
**Commissioner**

*Our ref: 4233*  
*Your ref:*

Dear Sergeant/Senior Sergeant

The Terms of Reference of the Royal Commission require the Commission, amongst other things, to inquire into whether changes in administrative and other procedures are necessary or desirable in order to effectively prevent and challenge corrupt conduct by Western Australian police officers.

Within this framework, the Research, Reform and Policy Unit of the Royal Commission is conducting this study to explore the attitudes and perceptions of WAPS managers and supervisors regarding various systems, procedures and processes within the Western Australia Police Service.

### **AIMS AND OBJECTIVES**

The research aims to gain the views of middle managers (Sergeants and Senior Sergeants) on the following functions and operations of the WA Police Service:

1. Recruit selection
2. Promotion
3. Training and Education
4. Organizational Environment
5. Leadership
6. Police Culture
7. Organizational Structure
8. Perceptions and Image

### **THE QUESTIONNAIRE**

The attached questionnaire contains eight questions, each of which is divided into two parts. The first part is a general question that asks the respondent to suggest the largest single issue relating to the topic being examined. The second part seeks comments from the respondent on possible ways to address the issue that she/he identified in the first part. Please answer the questions as openly and honestly as possible based on your experience as leaders within a police organization, as well as your general knowledge and perception of the issues identified in the questionnaire.

You do not have to provide any personal information for the purposes of this research. Thus, the information contained in the completed questionnaires cannot be used to identify respondents, who will remain completely anonymous.

It should take approximately 15 minutes to complete the questionnaire.

## **YOUR INPUT**

Research into any policing issue cannot be effective or comprehensive without input from the people who are in the best position to inform us. For the purposes of this research, that means people who have had direct experience of the functions and operations within the Western Australia Police Service, and understand the problems inherent within these systems. Your input, therefore, is crucial in terms of increasing awareness and understanding of the operations of WAPS, the influence of these on individual members, and the implications of this for the reform process. Through this research we hope to provide leaders within WAPS (such as yourself) with an opportunity to have a say in any changes that may need to occur within various WAPS systems, and how these changes should be implemented.

We believe that the results of this research could have significant implications in terms of the broader work of the Royal Commission, as well as for WAPS. Therefore, we really do appreciate your participation in this research. However, please do not feel in any way compelled to complete the questionnaire or to answer certain questions that you may feel uncomfortable about.

If you have any questions about any aspect of this research, please contact Lauren Netto at the Research, Reform and Policy Unit of the Royal Commission on (08) 9215 4879.

Please return completed questionnaires by Friday 30 May 2003 by any of the following means:

E-mail:            [info@police.royalcommission.wa.gov.au](mailto:info@police.royalcommission.wa.gov.au)  
                      [l.netto@police.royalcommission.wa.gov.au](mailto:l.netto@police.royalcommission.wa.gov.au)  
                      [g.ross@police.royalcommission.wa.gov.au](mailto:g.ross@police.royalcommission.wa.gov.au)

Fax:                9486 7140

Mail:            Research, Policy and Reform Unit  
                    PO Box Z5318  
                    St George's Terrace  
                    Perth  
                    6831

Thank you for your cooperation.

Yours sincerely

**GA Kennedy AO QC**  
**Commissioner**

## QUESTIONNAIRE

1. Recruit Selection: The process of selecting recruits is crucial in identifying the kind of individuals that the WA Police Service values as future police officers.
  - (a) The biggest issue with recruit selection in WAPS is ...
  
  - (b) The issue can be addressed by ...
  
2. Promotion: The purpose of any promotion system should be to ensure that the most suitable person for the position is selected.
  - (a) The biggest issue with the WAPS promotion system is ...
  
  - (b) The issue can be addressed by ...
  
3. Training and Education: Ongoing training and education can play an important role in developing leadership and maintaining ethical behaviour among employees.
  - (a) The biggest issue with training and education in WAPS is ...
  
  - (b) The issue can be addressed by ...

4. Organizational Environment: In addition to addressing corruption by individuals, there must also be an examination of the environment that tolerates the existence of corruption.
  - (a) The biggest issue with the organizational environment of policing in WAPS is ...
  
  - (b) The issue can be addressed by ...
  
5. Leadership: The leadership of an organization provides a model for the behaviour that is required of individuals in an organization.
  - (a) The biggest issue with police leadership in WAPS is ...
  
  - (b) The issue can be addressed by ...
  
6. Police Culture: Organizational culture encompasses the unspoken rules according to which all members of an organization function. This results in a sense of belonging and loyalty towards the organization.
  - (a) The biggest issue with police culture in WAPS is ...
  
  - (b) The issue can be addressed by ...



Organizational Structure: The internal structure of an organization determines external performance and influences productivity.

(a) The biggest issue with the organizational structure of WAPS is ...

(b) The issue can be addressed by ...

8. Perception and Image: The way the public thinks about an organization has implications for the efficient functioning of the organization.

(a) The biggest issue with the public perception and image of WAPS is ...

(b) The issue can be addressed by ...

## APPENDIX 9

### ROUND TABLE CONFERENCE ATTENDEES

#### ***ROYAL COMMISSION***

Hon Geoffrey Kennedy AO QC	Commissioner
Mr Matthew Byrne	Director of Operations / General Counsel
Mr Peter Hastings QC	Senior Counsel Assisting
Mr Glenn Ross	Manager - Research, Policy and Reform Unit
Ms Lauren Netto	Research Officer
Mr Stephen Hall	Counsel Assisting
Mr Ken Pettit SC	Counsel Assisting
Mr Michael Cashman	Commission Solicitor

#### ***WESTERN AUSTRALIA POLICE SERVICE***

Asst Commissioner Graeme Lienert	Professional Standards Portfolio
Superintendent Graeme Castlehow	Executive Officer to the Commissioner of Police
Superintendent Mal Shervill	Principal, Police Training Academy
Inspector Louise Ball	Royal Commission Unit
Inspector John Brandham	Internal Affairs Unit
Mr Steven Hebble	Bureau of Criminal Intelligence
Mr Richard Hooker	Barrister Representing WAPS

#### ***WA POLICE UNION OF WORKERS***

Mr Mike Dean	General President
Mr Chris Cassidy	General Vice President
Hon Kevin Prince	Barrister Representing WAPS
Mr Graham Pidco	Lecturer, Criminal Law UWA
Ms Carol Adams	Barrister Representing WAPS

#### ***ANTI-CORRUPTION COMMISSION***

Mr Terry O'Connor QC	Chairman
Mr Don Doig	Commissioner
Ms Moira Rayner	Commissioner
Mr Graeme Charwood	Chief Executive Officer
Mr Terry Buckingham	Director of Operations
Mr Shane Wilson	Principal Investigator
Mr Shayne Sherman	Chief Investigator

***JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION***

Hon Derrick Tomlinson MLC                      Chairman

***OFFICE OF THE OMBUDSMAN***

Ms Deirdre O'Donnell                      Ombudsman  
Mr Roger Watson                      Assistant Ombudsman

***CRIME AND MISCONDUCT COMMISSION, QUEENSLAND***

Mr Brendan Butler SC                      Chairman

***INDEPENDENT COMMISSION AGAINST CORRUPTION, NSW***

Mr Kieran Pehm                      Deputy Commissioner  
Mr Grant Poulton                      Executive Director, Corruption Prevention

***POLICE INTEGRITY COMMISSION, NSW***

Mr Tim Sage                      Assistant Commissioner

***OFFICE OF THE MINISTER FOR POLICE***

Hon Michelle Roberts MLA                      Minister for Police  
Mr Emi Barzotto                      Chief of Staff  
Ms Rachel Sackville-Minchin                      Principal Policy Officer  
Mr Eric Wood                      Policy Officer

***DEPARTMENT OF PREMIER AND CABINET***

Mr Peter Byrne                      Principal Policy Officer

***OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS***

Ms Fiona Low                      Director of Legal Services

***OFFICE OF THE INFORMATION COMMISSIONER***

Ms Bronwyn Keighley-Gerardy                      Information Commissioner

***OFFICE OF THE AUDITOR GENERAL***

Mr Kerry O'Neil                      Deputy Auditor General

***OFFICE OF THE PUBLIC SECTOR STANDARDS COMMISSIONER***

Ms Helen Saunders                      Manager, Ethics Program Services  
Mr Neil Hunter                      Executive Director

***CRIME RESEARCH CENTRE, UNIVERSITY OF WESTERN AUSTRALIA***

Mr Frank Morgan	Director
Dr Neil Morgan	Director of Studies
Dr Harry Blagg	Research Fellow

***EDITH COWAN UNIVERSITY***

Associate Professor Irene Froyland	Sellenger Centre for Police Research
Mr Wayne Snell	Police and Graduate Studies
Mr Greg Italiano	PhD Student

***NEW SOUTH WALES POLICE***

Mr Vic Baueris	State Crime Command,
Commander Brian Reith	Special Crime and Internal Affairs

***AUSTRALIAN FEDERAL POLICE***

Mr Tony Jackson	Strategic Planning Group (Information Technology)
Mr Blaise O'Shaughnessy	Professional Standards

***SOUTH AUSTRALIA POLICE***

Commander Phillip Cornish	Anti-Corruption Branch
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***OFFICE OF THE OMBUDSMAN, VICTORIA***

Dr Barry Perry	Ombudsman
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## APPENDIX 10

### ROYAL COMMISSION CHRONOLOGY

<b>DATE</b>	<b>EVENT</b>
11/12/01	Premier announced the Terms of Reference of the Royal Commission and the name of the Commissioner.
13/3/02	Royal Commission placed newspaper advertisements calling for submissions
16/3/02	from individuals or organisations with information relevant to the inquiry. Advertisements were subsequently placed in country newspapers around the State.
22/3/02	Royal Commission announced an initial formal public hearing was to be held on Thursday 28 March 2002.
28/3/02	Formal public hearing of the Royal Commission at which an amnesty was offered to serving and former police officers.
8/4/02	Police Union launched a radio advertising campaign backing honest police.
10/4/02	State Government announced it would fund legal representation for police appearing before the Royal Commission.
14/4/02	Premier announced legislation would be introduced to give the Royal Commission additional powers including the use of assumed identities and to undertake integrity tests.
7/5/02	Government introduced the <i>Royal Commission (Police) Bill 2002</i> and the <i>Criminal Code Amendment (Corruption Penalties) Bill 2002</i> to give the Royal Commission additional powers.
31/5/02	Amnesty period ended.
20/6/02	<i>Royal Commission (Police) Bill 2002</i> and the <i>Criminal Code Amendment (Corruption Penalties) Bill 2002</i> passed by Parliament.
1/7/02	First public hearing by the Royal Commission, Operation Solo, 1/7/02 – 10/7/02, 26/8/02 – 2/9/02, 14/10/02 – 24/10/02, 28/10/02 – 29/10/02.
15/7/02	Public hearings for Operation Exodus 15/7/02 – 18/7/02.
17/7/02	Avon Lovell refused to be sworn or to take an oath after receiving a summons to attend the Royal Commission.
29/7/02	Public hearings for Operation Firestorm 29/7/02 – 7/8/02, 1/10/02 – 3/10/02, 7/10/02 – 9/10/02.
15/8/02	Avon Lovell fined \$10,000 in the Supreme Court on each of three counts of contempt of the Royal Commission.
10/9/02	Public hearings for Operation Cygnet 10/9/02 – 13/9/02, 7/10/02, 9/12/02.

- 12/10/02 Newspaper advertisements called for submissions for the first Round Table Conference on External Oversight. A discussion paper was also released.
- 25/10/02 Public hearings for Operation Least Said 25/10/02, 20/1/03 – 29/1/03, 30/1/03, 17/2/03 – 27/2/03, 24/3/03 – 2/4/03, 5/5/03 – 13/5/03, 19/5/03 – 28/5/03, 10/6/03, 14/7/03 – 16/7/03, 21/7/03 – 23/7/03.
- 1/11/02 A Detective Sergeant and a Detective Senior Constable resigned as a result of evidence at the Royal Commission’s hearings. The Detective Senior Constable was charged with stealing, aggravated burglary, 8 counts of acting corruptly, 3 counts of fraud and with complicity in the unauthorised use of a computer system.
- 14/11/02 First Round Table Conference on External Oversight.
- 15/11/02
- 18/11/02 Public hearings on unauthorized access to police computer database 18/11/02 – 22/11/02.
- 23/11/02 A Senior Constable stood down as a result of evidence at the Royal Commission’s hearings.
- 25/11/02 Public hearings for Operation Fafalle 25/11/02 – 28/11/02, 9/12/02 – 12/12/02, 1/5/03.
- 16/12/02 Public hearings for Operation Florida 16/12/02 – 19/12/02, 30/1/03.
- 17/12/02 A Senior Sergeant stood aside as a result of evidence at the Royal Commission’s hearings.
- 20/12/02 Premier accepted Royal Commission’s Interim Report.  
A Detective Sergeant stood down as a result of evidence at the Royal Commission’s hearings.
- 23/12/02 An Inspector stood aside as a result of evidence at the Royal Commission’s hearings.
- 13/1/03 Public hearings for Operation Roebuck 13/1/03 – 14/1/03.
- 24/1/03 A Senior Sergeant stood down as a result of evidence at the Royal Commission’s hearings. Retired on medical grounds 9/10/03.
- 31/1/03 Public hearings for Operation Chatham 31/1/03 – 17/2/03.
- 18/2/03 Two Detective Sergeants, two Sergeants and a Detective Senior Constable stood aside as a result of evidence at the Royal Commission’s hearings.
- 22/2/03 Newspaper advertisements called for submissions for the second Round Table Conference on Information Management. A discussion paper was also released.
- 25/2/03 Government accepted recommendations of Royal Commission’s Interim Report to set up the Corruption and Crime Commission (“CCC”).
- 27/2/03 A Senior Sergeant and a Detective Sergeant stood aside as a result of evidence at the Royal Commission’s hearings.

- 28/2/03 A Sergeant stood down as a result of evidence at the Royal Commission's hearings.
- 14/3/03 Second Round Table Conference on Information Management.
- 22/3/03 Newspaper advertisements called for submissions for the third Round Table Conference on Corruption Prevention Strategies. A discussion paper was also released.
- 26/3/03 An Inspector resigned as a result of evidence at the Royal Commission's hearings.
- 7/4/03 Public hearings for Operation Tirari 7/4/03 – 14/4/03, 29/5/03.
- 10/4/03 Third Round Table conference on corruption prevention strategies.
- 11/4/03
- 11/4/03 A Detective Sergeant and a Detective Senior Constable resigned as a result of evidence at the Royal Commission's hearings. The Detective Senior Constable was charged with stealing, aggravated burglary, eight counts of acting corruptly, three counts of fraud.
- 19/4/03 Newspaper advertisements called for submissions for the fourth Round Table Conference on Internal Investigations and Disciplinary Processes. A discussion paper was also released.
- 29/4/03 Public hearings for Operation Catalpa 29/4/03 – 30/4/03.
- 1/5/03 A Senior Constable stood down as a result of evidence at the Royal Commission's hearings.
- 14/5/03 Public hearings for Operation Georgette 14/5/03 – 15/5/03.
- 15/5/03 Corruption and Crime Commission Bill 2003 to abolish the Anti Corruption Commission ("ACC") and replace it with the CCC was introduced into Parliament.
- 15/5/03 Fourth and final Round Table Conference on Internal Investigations and Disciplinary Processes.
- 4/6/03 A Detective Sergeant charged with seven counts of corruption and other offences as a result of evidence before the Royal Commission.
- 5/6/03 Public hearings for Operation Halcyon 3/6/03 – 6/6/03, 16/6/03 – 17/6/03, 7/7/03.
- 5/6/03 Corruption and Crime Commission Bill 2003 passed by the Legislative Assembly.
- 11/6/03 Public hearings for Operation Amity 11/6/03, 13/6/03.
- 17/6/03 Public hearings for Operation Kastoria 17/6/03 – 3/7/03, 9/7/03 – 10/7/03, 18/7/03, 28/7/03 – 21/8/03.



- 26/6/03      *Corruption and Crime Commission Amendment Bill 2003* split into two Bills with both referred to the Standing Committee on Legislation. The *Crime Commission Amendment Bill 2003* has been assented to but not proclaimed.
- 7/7/03      The Royal Commission given a three-month extension.
- 14/8/03      A Senior Constable resigned as a result of evidence at the Royal Commission's hearings.
- 1/9/03      Final public hearing with former Commissioner Falconer and Commissioner Matthews.
- 23/9/03      A summons against Southern Cross Broadcasters, Howard Sattler and Adrian Barich alleging breach of a suppression order returned to the Court of Petty Sessions.
- 24/11/03      Attorney General announced Royal Commission extended to 30/1/04.
- 30/01/04      Final Report presented to the Governor of the State of Western Australia.

# APPENDIX 11

## TABLE OF LEGISLATION AND CASES

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