

**The changing face of corruption: how corruption and serious misconduct in the NSW
Police has changed since the 1994 Royal Commission**

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Introduction

In this paper, I will discuss how misconduct and corruption has changed within the NSW Police Force over the past 25 years, emerging trends and areas of concern, and systemic issues presently warranting investigation and change. At the outset, it is important to acknowledge the extremely difficult job police officers have, often dealing with uncooperative, abusive and sometimes violent people, and even sometimes exposed to life threatening situations which require split second decisions. Substantial resources are necessarily devoted to the investigation of serious crimes, such as unlawful killings, terrorism, substantial fraud, drug manufacturer and dealing, armed robberies and the like, which inevitably involves significant interactions with organised crime and serious criminals, necessarily giving rise to opportunities for corruption of various kinds and, there can be no doubt, presenting major institutional risks, not only that the work of the Police Service will be undermined but that public confidence in it compromised. At the same time, the work of most police officers outside the specialised units, one way or another, involves every day interaction with members of the public, young and old, respectable and not so much, drunk and sober, violent and peaceful, in homes and cars, on the streets, asking for help. The law gives these officers significant powers, sometimes needed where there is very little time for reflection and the risk of injury ever present. Police are, of course, subject to the usual human failings of ignorance, misunderstanding, foolishness, instinctive overreaction, and the arrogance that comes with power. In this area of what might be called street policing, opportunities for corruption also abound.

The Law Enforcement Conduct Commission also has power to investigate agency or officer maladministration, where decisions – including those made affecting internal management – which are, for example, unlawful, oppressive, unreasonable or discriminatory can be examined, using the full range of its powers, including the compulsory examination of officers. Two examples are given below.

Training and supervision are designed to ensure, as much as possible, that officers use their powers honestly, appropriately and with due respect for the personal dignity of those with

whom they deal, as well of course, to efficiently deal with criminal behaviour and bring miscreants to justice.

It is in this context that oversight bodies are required to exercise their responsibility, independently to investigate misconduct and maladministration, inform and encourage appropriate management processes that will enhance ethical conduct. The fundamental objective is to help demonstrate to the public that the Police Service is worthy of its trust.

Although, no doubt, all of us have a view about what conduct amounts to corruption, it is perhaps useful to attempt a definition or, at least, a description for clarity's sake. It involves much more than merely taking a bribe. Corruption comprises deliberate unlawful conduct (whether by act or omission) by a police officer misusing his or her position, whether on or off duty, and the exercise of police powers in bad faith, comprehending all abuses of those powers. It is not necessary that the conduct be badly motivated, so that the fabrication of confessions or other evidence or committing perjury in order to secure the conviction of someone the officer genuinely believes to be guilty of the offence is nevertheless serious corruption: amongst other things, it amounts to a perversion of the course of justice and undermines the rule of law. On the street, it includes the use of excessive force or other powers of detention or search without lawful justification, whether or not for the purposes of extortion.

What follows has, of course, a selection bias since the discussion focuses on serious misconduct and criminal conduct. Although, as I briefly describe, corruption has flourished in the NSW Police Force since its early days, it was always – even when at its most brazen – tempered by the conduct of ethical officers, by no means in the minority, who maintained high standards and did their best to perform their duties, often displaying considerable courage when doing so. Although the Force has massively changed over recent years and improvement is palpable, much work still needs to be done. Each generation of police officers reflects the society from which it has emerged, both for good and ill, and needs to recognize and reject those things which undermine its ability to perform their sworn duty and adapt its ways of working to exemplify a culture of honour and right acting. We have seen and are duty bound to recognize the increasing achievement of these goals. At the same time, we ignore the lessons of the past at our cost. One way or another, the corruption of power will always tempt and, humans being what they are, it will succeed often enough to require continued vigilance. But we need to bear in mind how far we have come and

Early days in New South Wales and the Wood Royal Commission

The police force was established in the new colony of New South Wales by the *Police Regulation Act 1862*, with the first official enquiry into police conduct coming only five years

later, when Commissioners were appointed to examine the conduct of magistrates and police in a rural district troubled by the extent to which bushrangers had been shielded or assisted by police connivance or inactivity. Their report used language which was echoed by Justice Wood, namely that the instances of misconduct and inefficiency were “not solely confined to that portion of the Force which has come under our more especial notice” and “improper intimacy and familiarity has existed between members of the Police Force and certain connections of the bushrangers”.

This kind of corruption was, to a greater or lesser extent, a feature of policing in New South Wales for much of its history to modern times. (For more information, reference should be made to the Final Report of the Wood Royal Commission, Vol 1 Chap 3, from which much of this account is drawn.) Of considerable significance was the resistance of both Police Commissioners and Government to the notion that corruption was anything more than the actions of a few “rotten apples” in an otherwise clean force. This attitude had the effect, amongst other things, of enabling proposals for thorough going investigations to be easily dismissed.

However, in the late 1970’s several investigations into particular issues and units opened the door somewhat wider on the real situation. A wasted opportunity was the 1979 Commonwealth-NSW Joint Task Force into Drug Trafficking (the JTF), involving both NSW and Australian Federal Police, which was established to target high level drug dealing. As the Wood Royal Commission noted –

Although the JTF obtained many arrests and convictions before being wound up in 1988, evidence led at this Royal Commission demonstrated –

- many of its members were involved during this period in seriously corrupt practices;
- connections between corrupt officers were formed which continued well after the conclusion of the Task Force; and that
- it was quite unable to stem the trade in narcotics.¹

The Wood Royal Commission described the 1970s and 1980s as a time when a so-called “barbecue set” of mainly senior Criminal Investigation Bureau officers, considered to have close links to illegal gaming, became powerful in the Force, corrupt police entertained members of the Police Association and had strong links with the media which they were skilled at exploiting and strong ties between retired and current officers enabling continuing influence, fostering corrupt relationships with criminals and gaining access to confidential

¹ RCPS 1997, ‘Final Report, Volume 1: Corruption’, p.51

information. All this was encouraged by the realistic expectation that there would be no aggressive investigation of internal complaints of corruption.

Three main factors allowed corruption to flourish in this period: first, corrupt police were able to select and encourage junior police to join them and then follow them through the ranks into the various regions or specialist squads; secondly, corrupt or inept management ensured that officers could not safely complain about improper or criminal behaviour and Internal Affairs was unable to protect whistleblowers, so that reporting corruption would effectively bring careers to an end; and, thirdly there was an unwillingness or inability to target corrupt police with well-established links to senior officers. The reluctance or inability of management to face up to these problems allowed this behaviour to continue unchecked.

It also appeared that senior officers tacitly approved what has been called “noble cause” corruption, such as the informal control of crime by allowing preferred and powerful criminals a license or “greenlight” in return for the elimination of their competitors, the avoidance of worse criminality, and the provision of information.

In 1981, a Commission of Inquiry into the administration of the NSWPF resulted in damning criticism of almost every aspect of management and administration, concluding –

The contemporary position follows many decades of either an awareness of or indifference to developments necessitating change, or an inability to grapple successfully with them on the part of successive government and police administration.²

The Commission recommended wide ranging reforms affecting not only management, but also the structures of the Service. Major restructuring did not take place until 1987. However, as the Wood Royal Commission observed, even breaking up the power bases within the CIB squads did not end the widely acknowledged corruption that had flourished. Rather, it spread the corrupt elements through other parts of the Service and State. The change itself met with strong resistance but, at least, the Commissioner at the time recognised that corruption was a serious issue for the Police Service and required a comprehensive response.

Despite progressive structural changes, which were expected to significantly reduce corruption, serious endemic and systemic corruption continued to flourish, demonstrating a protean ability to evolve, adjust and survive in the changing environment. Public and political concern eventually became so great that, in May 1994, the Wood Royal Commission, over widespread protest both political and from within the Force, was set up to

² RCPS 1997, ‘Final Report, Volume 1: Corruption’, p.40

investigate “the existence, or otherwise of systemically or entrenched corruption within the NSW Police Service”³, and other connected aspects of its operations.

It soon became apparent from intelligence made available to and acquired by the Commission that there were “significant groups” of corrupt serving police and that this conduct was long-standing, having been “inherited or copied over many years, and having over that time involved both serving and former members of the Police Service⁴”. The Commission decided that it would concentrate its investigative resources and Royal Commission powers of compulsory examination on this part of its terms of reference and initiated investigations that focused on Kings Cross, a red light area near the Sydney CBD, selected policing regions elsewhere in the State and specialist squads. The Commission focused on the policing of activities involving drugs, licencing and gaming, vice, strip clubs and other establishments that had attracted criminal activity. In respect of Kings Cross, the Commission relied significantly on the assistance of two experienced but corrupt detectives who had worked in the area, followed by the eventual ‘rollover’ of other NSW police officers and AFP officers.

The Commission in due course turned its attention to other regions where intelligence pointed to likely corrupt conduct, using the same techniques which relied on intelligence (often given covertly) from serving officers, covert surveillance of various kinds, both physical and electronic and, of course, information from and evidence given by members of the public.

A significant advantage of enquiry by Royal Commission is the ability to obtain documents and information by compulsory notices and require witnesses to give evidence, both in private and public hearings where the privileges of legal confidentiality and against self incrimination are not available. With the exception of using search warrants, these investigative techniques are (quite rightly) unavailable to police, even when investigating corruption.

Of course, compulsory processes must be used with caution. In particular, questioning witnesses in public, especially where the generally applicable privileges do not apply, may well have serious, perhaps devastating, consequences for their reputations and, possibly, psychological well-being (to be distinguished from mere discomfort and embarrassment) and ought not to be conducted unless there are very good reasons for doing so. In short, the default position should be that examinations be conducted in private. Public hearings, however, do have a number of significant advantages: firstly, they can demonstrate to the

³ RCPS 1997, ‘Final Report, Volume 1: Corruption’, p.1

⁴ RCPS 1996, ‘Interim Report February 1996’, p.1

public that the Commission's powers are used fairly and appropriately and help to allay civil liberty concerns about oppression; secondly, publicity given to the evidence may well, and often does, encourage other witnesses to come forward with additional information; thirdly, it enables members of the public who have, perhaps, come forward or have been affected by particular improper conduct to see at least part of what is being done in response to their complaints; fourthly, more generally, to give the community an opportunity to see that their concerns are being thoroughly investigated; and, fifthly, given the lengthy time taken by most Inquiries, publicly demonstrate the continuing work of the Commission and the significance of its investigations.

Also of considerable importance, the Commission ensured the safety of whistleblowers, including by way of affording witness protection.

The Commission uncovered widespread, deeply rooted systemic corruption existing in the NSW Police Service, which largely involved the following elements –

- **Process corruption**, including many cases of perjury, planting of evidence, posing as a solicitor to advise suspects to co-operate with police and “taxing” criminals who are seen to be beyond the law. Amongst other things, officers frequently colluded to “refresh” each other’s memories, to ensure “there were no pitfalls” in prosecutions, even if this involved perjury (“scrumdowns”), and fabricated false confessions (“verbals”).
- **Gratuities and improper associations**, where rewards ranging from surprisingly small sums to sexual services, free liquor and meals, were provided by operators of premises where officers were expected to enforce vice and gaming laws.
- **Substance abuse**, including drinking on duty, use of recreational and performance enhancing drugs such as steroids⁵.
- **Fraudulent practices**, mostly individual, opportunistic acts of misconduct, such as observation logs and duty books containing ‘filler’ entries to substantiate overtime claims and inappropriate practices relating to travel and overtime claims.⁶
- **Assaults and abuse of police powers**; including “a number of incidents where private citizens were the subject of unlawful assaults and serious abuses of police powers”⁷.
- **Prosecutions qualified by compromise or favourable treatment**, including police interfering with prosecutions, or providing favourable treatment “in return for bribes by

⁵ RCPS 1997 ‘Final Report Volume 1: Corruption’, p.78

⁶ RCPS 1997, ‘Final Report Volume 1: Corruption’, pp.-81-83

⁷ Ibid,p.84

way of encouragement to trusted informants, as an act of friendship extended to criminals with whom an inappropriate social relationship had been established, and in 'recompense' for the theft by police of money or drugs recovered during the relevant inquiry, in the expectation that there would be no complaint, if those items were not booked up."⁸

- **Theft and extortion**, including money and goods stolen by police officers during searches.
- **Protection of the drug trade**, including for cash and drugs turning a blind eye to drug dealing, tip offs of police activity and police action aimed at driving out competitors.⁹
- **Protection of club and vice operators**, including payments of various kinds for protection by the police¹⁰.
- **Protection of gaming and betting interests**, including payment for organising immunity from policing, suppressing competition; and enforcing payment of gambling debts.¹¹
- **Drug trafficking**, including the supply of heroin, cocaine and cannabis, previously seized during drug raids but not "booked up", ie officially recorded as seized drugs in police systems.¹²
- **Interference with internal investigations, and the code of silence**, including closing ranks to any external scrutiny and punishing those who put duty first.¹³
- **Other circumstances suggestive of corruption**, including officers with "significant cash bankings and expenditures, patterns of overseas travel and expensive local holidays, the presence of large sums of cash hidden in shoe boxes ... and monies available to them which inexplicably moved through accounts of friends and relatives."¹⁴

The Commission ultimately presented six reports to Parliament in May 1997, making 174 recommendations for sweeping reform. Unsurprisingly, a large number of dismissals and resignations from the Service resulted, from low ranking officers up to the then Police Commissioner, who had been openly critical of the proposed Royal Commission and denied the existence of widespread corruption.

⁸ Ibid,pp.87-88

⁹ Ibid, p.96

¹⁰ Ibid, p.99

¹¹ Ibid,p.101

¹² Ibid,p.107

¹³ Ibid, p.108

¹⁴RCPS 1997, 'Final Report Volume 1: Corruption' p.113

Significantly for present purposes, the Commission pointed out that its work of thoroughly investigating corruption in the Police Service was incomplete and required the establishment of a standing permanent independent commission, with the powers of a Royal Commission, to investigate identified and ongoing serious police misconduct and develop processes and programs aimed at education and culture change, focusing on systemic issues. This recommendation led to the establishment of the Police Integrity Commission (the PIC) in NSW on 1 July 1996.

The Independent Commission against Corruption

In 1988 the Independent Commission Against Corruption was established which, amongst other things, was given standing Royal Commission type powers to investigate and report on allegations of corrupt conduct within the New South Wales public sector, including the NSW Police. The ICAC conducted a number of investigations into allegations of police misconduct, including those that involved licensing, motor vehicle repairers and paedophiles. In 1994, the year the Wood Royal Commission was established, about 30% of complaints made to the ICAC by members of the public concerned police. Its role in relation to police was taken over by the Police Integrity Commission.

The Police Integrity Commission

The PIC (operational from 1 January 1997 to 1 July 2017) continued investigations into matters commenced or envisaged by the Wood Royal Commission, instituting in due course its own investigations into allegations of serious misconduct. It was accepted that primary responsibility for the investigation of misconduct should be the responsibility of the Police Service, subject to oversight by the Ombudsman and the powers of the PIC to conduct its own investigations into serious misconduct where use of its Royal Commission powers might be useful. The PIC selected those appropriate for it to investigate, of course focusing on the more serious allegations of misconduct having systemic significance. The *Police Integrity Commission Act 1996* also created an Inspectorate to oversee the exercise by the PIC of its powers.

(This is a major oversimplification of the structural arrangements that were put in place, involving the NSW Police, Ombudsman and the PIC but that is a discussion for another paper.)

One of the key differences between the corruption uncovered by the Royal Commission and that exposed by the PIC concerned the sharing of the proceeds of crime. During the Royal Commission, instances of corruption and the sharing of proceeds of crime (often referred to as 'the laugh') amongst teams such as the Kings Cross command was much more

commonplace. Following the exposure of this corruption by the Royal Commission and the resulting reforms in the Police Service, this systemic corruption appeared to have been replaced by instances of individual officers, or small groups of officers, engaging in corrupt conduct. Overall, the misconduct that was detected was at a smaller scale and over shorter timeframes than that seen by the Wood Royal Commission. A number of factors appear to be significant in this development: firstly, the removal from the Police Service of a large number of corrupt officers, particularly those at the apices of the corrupt groups, who were no longer able either to influence officers to commit corruption or protect them from investigation; secondly, the publicity given to the use of covert surveillance, including integrity checks and the encouragement of whistleblowing, created a fear of detection which operated as a significant deterrent; thirdly, there was an invigorated commitment by police management to detection of misconduct and the institution of corruption prevention processes, including the videoing of searches and recording of interrogations, which made it more difficult for officers to operate independently and (as recommended by the Wood Royal Commission) structural changes in the organisation of the Service that made it more difficult for corruption to become entrenched; fourthly, there was significantly increased insight by judicial officers and other participants in the court process into the need for close examination of contested evidence without assumptions as to the improbability of false or misleading evidence being given by police witnesses; and, fifthly, but by no means of least significance, the investigative activities of the PIC and the Ombudsman, especially the powers of compulsory examination. Each of these factors, and their cumulative effect, impacted progressively on the ease with which corrupt activities could be undertaken and limited their scale.

Of course, major corruption still occurred. For example, Operation Alpine, commenced in September 2003, concerned the conduct of two officers who faked arrests and stole illegal drugs and money from drug dealers. The stolen drugs were then sold and the profits shared, and sometimes drugs were kept for personal use. The officers were convicted of various drug offences, sentenced to imprisonment and dismissed.¹⁵

The PIC's Operation Cobalt in 2005 exposed evidence that a then serving police officer, together with a former officer, another known criminal and several civilians, was involved in the extortion and theft of money, perverting the course of justice and the unauthorised release of confidential NSW police documents and information. The corrupt activities of the serving officer and his associates were shown to have occurred over a period of nearly 10 years.

¹⁵ PIC 2005, 'Operation Abelia', pp.112-129

The subject officer was the Local Area Command's representative on an Australia-wide investigation into the acquisition and possession of pornographic images of children responsible for executing of search warrants within the LAC's area. He attended briefings and received dossiers of information on the persons of interest in the LAC. On the day before the search warrants were to be executed, he and an associate went to the home of one of the persons of interest and introduced themselves as police officers. They advised him of the impending search warrant and told him to remove any incriminating material from his computer, soliciting \$4000 for this information. When the suspect paid them, the officers supplied additional information about the impending search and gave advice on how to conduct himself when interviewed by the police. A laptop seized on the subsequent search contained no child pornographic images and the suspect was not charged with any offences.

The officer was ultimately convicted of a number of offences including for criminal conduct in addition to that described above and sentenced a lengthy term of imprisonment¹⁶.

In 2009, Operation Lantana discovered a drug "rip-off" conducted by two NSW Police officers who seized and retained a significant quantity of drugs after they pulled over a vehicle and released the driver without charge. Evidence obtained by surveillance and during public hearings exposed other corruption, including theft, extortion, soliciting corrupt payments, conspiracy and unauthorised possession of firearms. It was also discovered that the officers were stealing tobacco and cigarettes from tobacconists and using civilian associates to sell them in return for a portion of the proceeds. Both officers were dismissed. They were also convicted of offences including obtaining money etc by deception, robbery in circumstances of aggravation, procuring false testimony by a witness, and conspiracy to rob armed with an offensive instrument (firearm), resulting in convictions and custodial sentences. This is a classic instance of discoveries made from pulling on a piece of string¹⁷.

Over its 20 years of operations, the PIC published 32 investigation reports and 20 project reports¹⁸. A great deal of the PIC's work was never covered in public hearings or reports. As well as uncovering criminal conduct of police, much of its work concerned serious misconduct in the sense that it resulted in dismissal or serious disciplinary consequences. In fairness, it should be noted that a significant number of investigations did not find evidence justifying adverse findings against police.

Although the trend to less serious misconduct has continued and corruption, when detected, is not at the same scale as that unearthed during the Royal Commission and the early days

¹⁶ PIC 2005, 'Operation Cobalt', pp.6-7

¹⁷ PIC 2009, 'Operation Lantana', pp.4-25

¹⁸ PIC Annual Report 2015-16, pp.141-149

of the PIC, this should not be taken to suggest that the task of the independent investigative and oversight bodies is less important. The final section of this paper will focus on the work of the current NSW Police Force oversight and investigation body, the Law Enforcement Conduct Commission, and emerging themes warranting investigation.

Law Enforcement Conduct Commission

As mentioned in the introduction, whilst the PIC had carriage of investigating allegations of serious police misconduct and maladministration, the NSW Ombudsman's office retained the function of overseeing how police investigated complaints about their officers (though it also had investigative powers which were, however, rarely exercised).

In time, this led to confusion over jurisdiction and in some instances, duplication of roles that could be considered unnecessary or overly complex. Furthermore, adverse reports made by the PIC Inspector as to the fairness and thoroughness of a small but number of PIC investigations had fuelled criticism and a sustained campaign by the NSW Police Association, representing the vast majority of police officers, questioning the integrity of its investigations. This is not the place to discuss the legitimacy of these views, but I feel bound to say in fairness that, in a number of respects, the most serious criticisms appear to be overblown. However this may be, the relationship between elements of the NSW Police Force and the PIC became strained to the extent that the collaboration essential to the effective operation of what had been set up to be a cooperative scheme of police oversight was compromised. It is worth noting, as well, that the infrequency of public hearings meant that most of the valuable PIC's work was not seen by the public, a gap which in the nature of things was not filled by the publication of its reports. Institutions such as the PIC need also to recognize the need for public recognition of and confidence in their work, a factor which needs to be considered when deciding whether to conduct public hearings.

In May 2015, Mr Andrew Tink AM, former NSW Shadow Attorney General, was commissioned to review the existing police oversight model in New South Wales. His report was delivered to government on 31 August 2015. Mr Tink recommended a more streamlined police oversight system, amalgamating the functions previously carried out by the PIC, the Ombudsman's Police and Compliance Branch and the Inspector of the Crime Commission into a single oversight body¹⁹. By and large, the suggested model was adopted and the Law Enforcement Conduct Commission (of which I am the Chief Commissioner), was established on 1 July 2017 to investigate allegations of serious misconduct and serious maladministration within the NSW Police Force and NSW Crime Commission, and oversee

¹⁹ Tink, Andrew 2015, 'Review of Police Oversight', pp.2-4

police investigations into complaints and critical incidents (where a person dies or is seriously injured in the course of a police operation).

The Chief Commissioner must be a serving or retired judge of the Supreme Court, the other two Commissioners, if not such a judge or former judge, must be qualified for appointment as a judge. The Commission is independent of government control in respect of the exercise of its functions. The outcome of its investigations is to produce reports, most of which become public by being tabled in Parliament. It can also publish reports on matters relevant to policing generally. There are substantial interactions with Police concerning the adequacy and timeliness of investigations which, of course, remain confidential although complainants must be notified of outcomes.

The *Law Enforcement Conduct Commission Act 2016* provides (rightly, as a matter of public policy) that one of its objects, as well to provide for independent detection, investigation and exposure of serious misconduct and serious maladministration, is to –

“recognise the primary responsibilities of the NSW Police Force and Crime Commission to investigate and prevent officer misconduct and officer maladministration within those agencies and agency maladministration while providing for oversight of those functions.”²⁰

As a practical matter, it is important to note that the overwhelming majority of complaints about the police do not justify the use by the Commission of its investigative, Royal Commission powers and are appropriately investigated by the police, overseen, and if necessary, monitored by the Commission.

Where an allegation of serious misconduct has been sustained, a high-powered committee of senior police officers (meeting monthly), presided over by the Assistant Police Commissioner in charge of the Professional Standards Command, decides how the officer should be dealt with; however, in cases where dismissal appears to be warranted, the committee makes a recommendation to that effect to the Police Commissioner in whom the power of dismissal is reposed, subject to a possible appeal by the officer to the NSW Industrial Commission. Short of dismissal, consequences range from imposing formal management requirements to reductions in rank. One or more of the Commissioners and its senior staff attend these meetings as observers.

It has become obvious that there has been a significant culture change (assisted by important organisational changes) since the times reported on by the Wood Royal Commission, amongst other things in the way in which misconduct is dealt with by police. I should say, in all fairness, that the attention to detail, the lack of any defensiveness, the

²⁰ Section 3(f) *Law Enforcement Conduct Commission Act 2016*

insistence on the maintenance of proper standards by and the objectivity of the committee members is impressive. The importance of this change cannot be overstated in terms of its positive effect on the culture of the Police Force and the attitude of officers to corruption. Indeed, the Commission has decided only to cursorily examine investigations that have resulted in sustained findings, dipping more deeply on a random basis to ensure consistency, and focuses on cases where investigation has been declined or not sustained findings have been made.

I have mentioned the extensive compulsory powers available to the Commission when it decides to investigate particular allegations of misconduct. Of course, the use of these powers must be focused on allegations of misconduct that is serious in itself or else that suggests system problems. To date, of the investigations commenced by the Commission, the following allegations were frequently involved (often overlapping) –

- Misuse of authority for personal benefit or the benefit of an associate (including obtaining sexual favours)
- Improper/unauthorised searches
- Dealing in or supply of drugs
- Harassment
- Excessive use of force
- Perjury

These complaints naturally vary in seriousness. Sometimes allegations which, on their face, appear relatively easy to resolve actually involve, on examination, more serious misconduct and may well trigger an investigation with the exercise of compulsory powers of production and examination hearings. Before moving to these matters, I should refer to the substantial work being undertaken by the Commission to identify systemic misconduct and maladministration risks in the NSW Police Force. Particular misconduct will often reflect more systemic problems of training and management. Unless those problems are identified and corrected, individual cases involving impropriety will continue. Taking a larger perspective, litigation for intentional torts (numbering about 300 a year) resulting from the misuse of powers of arrest, search, and the use of force is also a resource capable of providing useful information, especially where the case is determined by court judgment. However, until relatively recently, the Police Service appears to have treated litigation separately to the investigation of misconduct and the judgments, providing very useful information about how the law interacts with and impacts on the use of powers in concrete circumstances, have been largely ignored.

The Commission's Prevention and Education team, in consultation with other teams in the Commission, has identified a number of focus areas which will provide opportunities for the Commission to propose policy and procedural solutions to prevent and reduce misconduct and maladministration in the NSW Police Force. The focus areas are quite significant investigations and I'm pleased to say are coming close to completion. Major investigations of this kind currently being conducted by the Commission include the following.

Strip searching

Following a number of specific complaints from a variety of individuals and community organisations, the Commission is investigating specific allegations of police officers misusing powers to conduct strip searches under the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA). In particular this conduct is having significant impact on the relations between Aboriginal communities and police, especially (but not only) in country (rural) areas. Strip searching of Aboriginal young people is a source of widespread friction and the Commission has focused several investigations on particular instances. Several other investigations are also being conducted involving adults in an urban environment. The officers who conducted the searches are not, however, the primary target of the investigations. The Commission regards them as examples providing useful information about the way in which police management, from the custody officers in the police stations up the ranks to the commanders, manage, supervise and train the officers who conduct strip searches. By way of example, the Commission has obtained the standard procedures applying in individual police stations which, amongst other things, deal with the power to search. Aside from the many inconsistencies in those procedures, none of them could be regarded as giving anything like adequate guidance as to when and how strip searches are to be undertaken or as to the extent of force that might be reasonably used where a suspect refuses to be searched. It is not surprising that this haphazard approach has led to significant confusion and points to a failure of management.

Strip searches of uncooperative suspects can often be associated with what the public might think is unreasonable force, which is problematic when they occur (as they often do) in public. When this happens in communities where relations between community members and police are unhealthy, it is likely that this will reduce confidence in the police and render their job of detecting and controlling crime all the more difficult. Thus, a strip search which is apparently unjustified and associated with what is thought to be excessive force, may well have an adverse effect rippling far wider into the community than the suspect's family and friends.

The Commission's investigation will involve not only evidence from involved officers and their superiors, but also from higher management and consultation with those responsible for training and education within the Force, as well as community organisations. The Commission hopes this collaboration will help to formulate useful and practical approaches to the various aspects of this fraught issue, recognising that bright lines do not exist and rigid guidelines are not appropriate given the wide variation in circumstances which require judgment calls, sometimes needing to be quickly made.

(Allegedly illegal searches form a significant proportion of intentional torts for which police are sued and it is certain that a major reason that more litigation is not undertaken is ignorance on part on the part of the public of the legal pre-requisites for searches. Although anything like precise calculations cannot be made, there is little doubt that this litigation costs the State of New South Wales very large sums in damages.)

Sexual harassment, bullying and discrimination

The Commission has commenced an investigation into possible maladministration by the NSW Police Force in its management of complaints of internal discrimination, harassment and bullying. The investigation is not being conducted in the usual manner. The Force and the Commission share the vision of a police force free of such damaging and costly conduct. Whilst individual allegations of this misconduct are investigated in their own right, the larger issues are being dealt with collaboratively. There has been a frank exchange of material between the police and the Commission. At the beginning of this process there appeared to be some reluctance on the part of the former to have a candid exchange, but as the relationship developed and trust has been established, a more or less joint task force has emerged. The support of senior officers has been essential to this process. The Commission's Prevention and Education Team's recent presentation of relevant research at a conference of senior officers from all relevant areas within the force was very well received. A number of actions were decided on and the group is to meet again to review progress. Gaps in the management approach over time have been identified together with the possible need for legislative change. Perhaps the most problematic attitude is the view that these are really just human resources problems, so that the serious misconduct of the bullying or discriminatory officers, who are often relatively senior, appears to be ignored and he or she is simply moved on to another command, and the officer whose health is seriously affected is allowed to retire, "hurt on duty". Of course, the misconduct is then simply repeated elsewhere.

It is now increasingly understood that these are not merely matters of personnel management. This is partly why the Commission, whilst collaborating in a systemic

approach, has pressed on with investigations of particular complaints of bullying and discrimination involving senior officers, in the understanding that there will be serious consequences for those found to have committed serious misconduct, which will hopefully encourage cultural change within the Force. Police are themselves conducting several other investigations.

Lest there be any doubt about the matter, sexual harassment, bullying and discrimination constitute serious abuses of power amounting to misconduct and fall well within the description of corruption with which this paper commenced.

Conduct of litigation

Through its Office of General Counsel, the NSW Police Force manages on behalf of the Government, litigation brought against the State for intentional torts allegedly committed by police officers. The Government, as a party, is required to act as a “Model Litigator” and the Rules of Court also impose certain procedural requirements designed to simplify management of the cases by, for example, preventing false issues from being pleaded. The Commission, in examining certain litigation for other purposes, has become aware of conduct that might fall short of full compliance with these standards. I hasten to observe that this has been identified as a possibility only. However, the Commission has decided to investigate the conduct of one case, linked to an investigation of an unlawful strip search and excessive use of force. Given the numbers of potentially affected cases (in excess of 300 a year) this investigation can have a significant effect outside its impact on a single matter.

Suspect Target Management Plan (STMP)

The Suspect Target Management Plan is a proactive policing policy adopted by the police in January 2000 that seeks to reduce serious crime in the community by targeting repeat offenders. The Commission has received a significant number of complaints both from individuals and community organisations about what they see as the overuse of powers to stop and search identified persons who are not, at least at that time, committing offences.

The Commission’s Prevention and Education team is analysing the way the NSWPF applies the STMP to persons under 18 years of age. As part of this research, the team is considering a range of information held by police about the young people placed on the STMP, including the reasons for the young person to be the subject of an STMP and the way police interact with people on the STMP. The Commission is using its compulsory investigative powers to obtain information on these matters.

Excessive Use of Force

The Commission's first three public investigation reports, Operations Tambora, Baltra and Corwen, all relate to allegations of excessive use of force by officers attempting to restrain people affected by drugs or alcohol. Operation Tambora, the Commission's first major investigation, which included public hearings, involved a juvenile male in Byron Bay in northern New South Wales who was under the influence of drugs. The youth's detention (for the purpose of taking him to hospital) involved four officers, one of whom inflicted a shocking number of baton strikes, was filmed by a civilian on a nearby balcony and subsequently broadcast on a television news show. The youth was naked and screaming for help as the officers placed him in handcuffs and the baton strikes were inflicted. A brief of evidence regarding possible criminal charges for one of the officers involved is currently with the DPP.

Operation Baltra involved an officer who punched an intoxicated woman in police custody and then filmed the CCTV footage and disseminated it to other police officers via Snapchat. In its findings, the Commission recommended the dismissal of the officer involved.

Operation Corwen involved the arrest of a woman who was arrested after failing to comply with an officer's move on direction. When detained at the police station, she was face down on the station floor whilst being handcuffed behind her back. One officer began pulling her along the ground towards the search room, using one hand to hold her upper arm. Another officer took hold of her right foot as she was pulled along the ground. The remaining police, including the Custody Officer who was primarily responsible for her care trailed behind and observed.

It was alleged that, before arrival at the police station, the woman had struck two officers, for which she was charged, in addition to the offences of behaving in an offensive manner and refusing to comply with a direction to move on.

The criminal proceedings against the woman were dismissed, with the Magistrate expressing concern about inconsistencies between the evidence given by the police and their actions as depicted on the station CCTV footage. Her Honour directed that her remarks were to be brought to the attention of the "appropriate authority" but this did not occur, the Commission learning of the case from another source. The Commission concluded that that three officers, including the police prosecutor's superior officer (who had not been candid when giving evidence to the Commission), had engaged in serious misconduct and four officers involved engaged in misconduct. The Commission recommended that consideration should be given to disciplinary action by the police against six of the officers involved.

Other significant investigations

As well as investigations conducted as an adjunct to education and prevention enquiries focused on systemic issues, the Commission has investigated a number of cases of criminal misconduct. I describe several of these below.

In Operation Caprera, an officer with improper links with OMCG members was involved in the use and supply of illicit substances. He was subjected to a targeted drug test and tested positive to steroid substances, and admitted to (he claimed isolated) using cocaine. If his behaviour had followed the common trajectory, this misconduct would have escalated with increased consequences for him and predictable risks for the Force.

In a number of other cases, links with OMCG members, through family or acquaintanceship, carry significant risks for personal and organisational integrity, especially in the area of information sharing. Credible intelligence with available lines of enquiry is a necessary prerequisite to the Commission's undertaking an investigation of this kind. For understandable reasons, complaints are often made anonymously with insufficient details to take the matter further, although there may well be indications suggesting that the allegations are likely true. The Commission is, in fact, investigating a number of cases of criminal links where its compulsory powers, particularly of conducting an examinations, can be useful as, of course, the police are unable to use this particular investigative method.

In another matter, an investigation by the PIC had identified low-level drug dealing and illegal cigarette rip-offs from criminals by two police officers which, without intervention, would certainly have led to large-scale criminal activity. During this investigation the subject officers identified another police officer who they believed may have participated in their criminal activities. Other intelligence about this officer, years later, led to a Commission investigation into alleged fraudulent activities and other misconduct which appeared to show his criminality escalating, including the coercion of other officers to act dishonestly. This trajectory of corruption was cut short.

Discussion

The Wood Royal Commission in the mid-1990s investigated a police service that had areas of entrenched systemic corruption and a culture of protecting the reputation of the Service at all costs. Those brave enough to challenge the dominant culture of the Service did so at their own peril. Indeed, it took an independent Member of Parliament, who used parliamentary privilege to raise concerns about police corruption and a preparedness to make convening a Royal Commission the condition of his supporting the Government that enabled a powerful investigation to be set up and bring about enduring change. It is obvious that the corruption which was identified had taken many years, indeed a number of generations, to grow into the cancer which came to be exposed. Even then, the

commencing intelligence which enabled pressure to be brought to bear on corrupt senior police to provide information and, ultimately, give evidence was to a significant degree a combination of chance and corruption that was so brazen as to attract the attention of investigators. Once Justice Wood started pulling on that string, more and more of the corrupt tangled knot unravelled. However, the cancer's tentacles in many areas had small beginnings which, had they been exposed and removed early, would not have gone on to grow as they ultimately did. In a sense then, the Wood Royal Commission excised much of the tumour, pointed in the direction where further investigations might prove useful, and made recommendations about organisational and cultural change which brought about significant improvement to the institutional body politic although not of course immunity from corruption. Thus, for example, allegations of fabricated confessions have virtually stopped with the introduction of compulsory audio and then video recording of police interrogations of suspects, much stricter controls of exhibits, especially of drugs, has inhibited "skimming" or simple theft. More broadly, improved ethical training has made officers minded to be corrupt far more cautious about attempting to involve their work colleagues. The fact that an increasing number of complaints about police misconduct are made by officers themselves is encouraging in this regard.

The PIC and the Ombudsman, and the Commission as the successor oversight body have therefore focused on misconduct of officers as those allegations are made, overseeing the police investigations of them as well as undertaking their own independent investigations where it is thought they could have a significant impact. Given the fact that complaints provide the primary source of information about possible misconduct, and by far the greatest number of interactions involve police and members of the public, it is not surprising that the focus of investigations by both police and the Commission will concern those interactions. It should not be inferred, however, that this focus is misplaced. Public trust in police is essential to effective policing and that trust is undermined whenever officers abuse their powers, let alone actively undertake corrupt conduct. It is also reasonable to suspect that where an officer has been guilty, for example, of using excessive force or unlawfully strip searching a suspect, it is unlikely that will have been an isolated act. Nor is it likely that the aggrieved citizen will keep his or her complaint private. When a police officer commits perjury in a magistrate's court in a prosecution for speeding or using offensive language, the knock-on effects are far more serious than the charge itself. (The Commission has taken the step of inviting magistrates who have made adverse findings against the credibility of police officers to inform the Commission of those findings to enable investigations of this conduct to be undertaken). All these cases have a ripple (or what the defamation lawyers call the grape

vine) effect and may not lose fat in the telling either. Especially in small communities, this can be extremely challenging to the reputation of police.

Members of the public are by far the most common source of information that enables detection of crime, identification of criminals and discovery of their whereabouts. The crisis of confidence in the police that led to the Royal Commission had substantial consequential effects in the ability of police to perform their primary function. The gradual but marked change in the perceived integrity of police has significantly improved their ability to undertake their work. Far from being trivial, therefore, dealing with misconduct that arises from police interaction with members of the public is very important, although it does not attract the headlines given to the discovery of major corruption.

It is necessary, however, to be realistic about continuing major corruption, although it is far less obvious than in the days of the Wood Royal Commission. By way of example, the enormous financial rewards available from the manufacture, distribution and sale of drugs attracts organised crime and requires the establishment of criminal networks which cannot remain entirely invisible. It must be regarded as virtually certain that these activities could not flourish without some access to police intelligence at the least and the “blind eye” being turned to their crimes by some officers. Whilst the black market in drugs continues, this situation will inevitably survive and, with it, the power to corrupt and the constant need for vigilance. Thus, links between officers and criminals or suspected criminals will almost invariably attract investigative attention, given the real potential for corruption.

Unless public confidence in the integrity of the police can be maintained, this will be a losing fight. Most heavy lifting must be done by the Police Force itself but it cannot do it alone. Shortly after I took the job of Chief Commissioner of the Law Enforcement Conduct Commission I had morning tea with the then Police Commissioner. He spoke of the Wood Royal Commission and the oversight bodies which had been created as a result, saying that he did not believe that the Force contained anything like the level of corruption exposed by that Commission but adding that, if it were not for oversight, “It could turn on a sixpence.” Given the substantial changes in the Police Force since the Royal Commission, I think this was something of a complimentary oversimplification but it has, nevertheless, an important element of truth.