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29 June 2015

Submission to the Andrew Tink review on Police Oversight in NSW

Thank you for this opportunity to make a submission on police oversight in NSW. The police oversight system in NSW is in dire need of reform, with the current system seriously failing the community and eroding trust in the NSW Police Force. For the benefit of both the public and police, a well-resourced, independent, fair and prompt police oversight body is essential.

The system relies on police investigating police, with minor oversight roles by the NSW Ombudsman and the Police Integrity System, which together produces an opaque and expensive mess. We strongly support a single, independent police oversight body for NSW. We have referred to this proposed independent body throughout this submission as the Independent Police Standards Commission (IPSC).

The current system provides ambiguous and delayed investigations that yield poor results, often failing to address the systemic issues that plague NSW Police protocol, processes and culture. A truly independent, transparent and accountable police complaints system would increase trust in the NSW Police Force, manage individual complaints responsively, and identify systemic and cultural issues as they occur.

Reflecting on other police oversight models internationally, such as those in the UK and Northern Ireland, it is obvious that the NSW system would be improved by pooling current powers of oversight and resources into one single oversight body that is independent of police. Such a body must be equipped with investigative powers, sufficient resources to properly assess and investigate complaints received, and a capacity to make binding recommendations.

An accountable, transparent and truly independent IPSC would substantially contribute to trust in the NSW Police Force.

Regards,

David Shoebridge
Greens NSW MP and Justice Spokesperson

I. Options for a single civilian oversight model for police in NSW, including identifying measures to improve efficiency and effectiveness of oversight

1. We strongly support a model for a single body to handle police complaints. This body must move away from any model that involves police investigating police, and must be seen to be independent to earn the respect and trust of both the public and police.
2. Any such organisation will require:
 - complete independence from the NSW Police Force
 - powers and funding sufficient to allow investigation of complaints, both by reference and by its own initiative
 - the ability to conduct transparent, unbiased and fair investigations into allegations of police misconduct
 - responsibility for *all* parts of the complaints process, including receiving the complaint, recording the complaint, investigating the complaint, and appealing the complaint
 - the ability to issue certain disciplinary recommendations and make binding recommendations in individual cases and on systemic matters,
 - the ability to escalate systemic issues where the police or other bodies do not cooperate or implement recommendations, and
 - the capacity to make special reports to Parliament.
3. As such, we support a civilian *control* model, rather than the civilian review model that characterises the current system.¹
4. The core measure that would improve efficiency is the pooling of resources and ending the duplication of current police oversight bodies. Our position is that the resources and work of the Ombudsman relating to police, Police Internal Affairs and the Police Integrity Commission should be combined in a single comprehensive new oversight body.
5. Any credible independent police oversight body must have immediate involvement on-site where critical incidents have occurred, and must have the power to collect its own evidence. To improve the effectiveness of its oversight responsibilities, the body must have the power to initiate an investigation as well as acting on matters referred to it.
6. Currently the NSW Ombudsman has a capacity to make special reports to Parliament on relevant matters, this capacity must be provided to the new body and expanded to require detailed response and action where appropriate.

II. Any gaps in the current police oversight system

7. Current gaps in the police oversight system include:
 - a) **Perception of bias/actual conflict of interest:** The current system relies primarily on police investigating complaints against fellow officers. Police investigating police creates a fundamental conflict of interest between officers' real or perceived obligations to their fellow police and their duty to the public. Equally important is the perception of bias within the Police against those officers who make complaints that potentially prejudice the careers of fellow police. Terms such as "dog" are widely known to be used by some police against those officers who make complaints regarding alleged misconduct by other officers. This

¹ "External oversight of police conduct", Briefing Paper No 6/2015, NSW Parliamentary Research Service.

creates a wholly understandable perception amongst some police complainants that their concerns will not be addressed fairly through internal police investigations.

Expecting investigation police to operate free from bias within such a framework is not only naïve, but it consistently produces poor outcomes.

- b) **Low rate of investigation:** As detailed in our submission to the McClelland Review of Police Handling of Critical Incidents, the surprisingly low rate of investigations of critical incidents is of serious concern (submission annexed here as Annexure A). The fact that police only undertook 222 critical incident investigations over six years (between 2007-2013) is fairly clear evidence that the current, opaque guidelines lead to most critical incidents not being investigated at all. The definition that is applied is narrow (for instance, only incidents resulting in 'death or serious injury') and in some ways arbitrary. Similarly, in 2013/14 the Ombudsman is recorded as having only undertaken one actual investigation, despite receiving several thousand complaints. It is likely this one investigation is Operation Prospect (which is the subject of separate, adverse comment below in this submission). Similarly, the PIC currently does not have the resources to undertake more than a handful of investigations each year, which is particularly concerning considering the seriousness of the complaints it receives.
- c) **Outcomes:** Less than half of one per cent of complaints against police result in any disciplinary action at all, a miniscule fraction.² Of the complaints upheld, two thirds of them relate to police internal complaints (by police). Available data on investigations of critical incidents show that even where critical incidents result in 'adverse findings', it does not follow that the officers involved are subject to any disciplinary actions. It is also worth noting that some years go by where a large number of critical incidents occur and there are no adverse findings at all. This is far more likely an indication of a failing oversight system than a perfected police force.
- d) **Independence:** Investigative bodies, such as the Ombudsman, do not conduct their own investigations where they can collect evidence independent of police. This means investigations are limited in practice to oversight of the police's own handling of the complaint, rather than an independent review. This reliance by the Ombudsman on the police and Commissioner makes it impossible for it to achieve genuinely independent conclusions on the matters referred to it. The fact that of the 3,390 complaints received by the ombudsman it conducted only one wholly independent investigation confirms this lack of independence.

This office's experience of the Ombudsman's office has been that it is extremely reticent to be critical of police or make adverse findings.³ Indeed the evidence suggests that the Ombudsman will only in extremely rare cases make adverse conduct findings against police. Of the more than 20 specific instances where this office has referred police complaints to the Ombudsman, ranging from allegations of excessive force to the failure to investigate,

² These numbers detailed in our submission to the McLelland Review into the handling of police critical incidents.

³ The 2013 report from the Police Association of NSW alleges that there is often procedural 'misconduct' within the NSW Ombudsman, amongst other oversight bodies, because they are pre-occupied in finding adverse conduct to justify their existence. While there is cause for significant criticism of the role of the Ombudsman in overseeing police there is no objective evidence to support the assertion of the Police Association that the office is pre-occupied in finding adverse conduct. (Police Association of NSW (2013), <https://www.pansw.org.au/sites/default/files/public/PANSW%20Submission%20to%20Critical%20Incident%20Inquiry%20-%2016%2010%2013.pdf>, pp 9)

there has been not a single substantive outcome.

The Ombudsman's considerable police investigation resources would be far more beneficially applied to a wholly new and independent body.

- e) **Initiative:** Currently investigative bodies are in practice limited to initiating investigations in response to initial complaints, and investigations conducted external to police are generally only as an appeal following a police investigation. The Ombudsman noted this issue in relation to critical incidents following the investigation into the death of Roberto Curti, and changes were made in 2013 to ensure that critical incidents were notified to the Ombudsman. The proposed IPSC must be able to initiate investigations into individual and systemic issues without a need for a referral or formal complaint to be received. Regarding critical incidents, there must be adequate resources in the new body to allow for the deployment of independent investigators within the "golden hour", the first hour following the incident.
- f) **Toothless recommendations:** The current system does not allow oversight bodies to make binding recommendations on improving processes and procedures for handling police misconduct, or police processes more broadly. While reports with recommendations are often presented to Parliament by the Ombudsman, there is no enforceable obligation on the Police Commissioner to implement the recommendations, and no obligation on the Government to respond. There is no avenue for either oversight bodies or complainants to press for the implementation of recommendations. As a result, these bodies, and in particular the Ombudsman's office, are seen as essentially toothless by both the general community and the police.
- g) **Staff:** Currently the PIC is prohibited from having former or serving NSW Police officers on its staff. This means that in practice it is generally staffed by current or former police from interstate. This means that the peak body that oversees NSW police could rightly be criticised for having limited knowledge of the inner workings, culture and practice of the body they are overseeing. There are clearly strong policy reasons not to have current or former NSW Police undertaking the investigative and fact finding work of any oversight body. However there may well be a carefully circumscribed role for highly competent and well regarded former NSW police to undertake reviews and advice within a new oversight body. It is important that the organisation have a balance between police and civilian employees to deliver both a police perspective *and* a civilian perspective on police complaints and behaviour.
- h) **Clear communication:** It is very difficult for complainants to get an understanding of where they can complain, how their complaint will be handled and what their reasonable expectations are for outcomes. Contributing to this are the number of bodies, all with differing responsibilities and complaint handling mechanisms. This complex legislative patchwork is not assisted by the absence of clear information about what exactly the oversight offices can and will do to investigate a complaint. For example the NSW Ombudsman's office has this introductory paragraph on its Police Complaints webpage <https://www.ombo.nsw.gov.au/what-we-do/our-work/police>:

Our role in the police complaints system includes independently reviewing the way the NSW Police Force (NSWPF) handles complaints about serious misconduct and investigating particular areas of police practice, if it is in the public interest to do so. We check how police handle less serious complaints, and regularly audit the way their complaint-handling processes are working to ensure they are effective and comply with legislative requirements.

We work with police to make sure the complaints system appropriately identifies criminal and serious misconduct and is accessible, credible, flexible and responsive.

This does not include the crucial information that the Ombudsman only undertook one fully independent investigation in 2013/14, or that of the 3,390 complaints received, only 579 were further investigated, and only by the police with paper oversight by the Ombudsman. It does not make clear that, even if the Ombudsman was to make a recommendation for reform, these recommendations are unenforceable. Some frankness from the Ombudsman's office would, if nothing else, assist in expectation management for those making complaints.

- i) **Overall view of system:** With the fragmentary nature of the current system it is not possible to get a complete view of how effective it is in handling police complaints. It is currently difficult to get a comprehensive picture of the number of complaints, number of police involved or even the total budget allocated to managing police complaints. This makes evaluating the efficacy of the scheme almost impossible.

III. Functional overlap between oversight bodies and if that contributes to ineffectiveness, unnecessary complexity, inefficiencies, or impairs transparency or police accountability

8. The current overlap between police oversight agencies produces complex and repetitive investigations, poor accountability, delays, expense and frustration. In short, it does not work.

Design

9. The current system is a historical creation, primarily flowing from the recommendations of the Wood Royal Commission and the April 1992 NSW Parliamentary Report of the Joint Committee on the Office of the Ombudsman.
10. This scheme was created at a time where police corruption was the main concern, and it is not as effective at considering issues that are now increasing in prominence such as mission creep, misuse of police powers, bullying, injury management and other unsafe work practices within the NSW Police Force.

Duplication of large workloads

11. Multiple entities investigating the same matters using their own methods and resources to collect evidence leads to incoherent and inconsistent findings. It is also an inefficient use of resources.
12. Police complaints, considered together, represent a substantial workload for a number of agencies, and one that would most appropriately be managed as a single caseload with the ability to deploy appropriate expertise and identify trends in complaints where they exist.
13. The best available data of the size of the issue suggests that in 2013/14 there were the following number of complaints:

Organisation	Number of complaints in 2013-14
NSW Police	NSW Police received 4,995 complaints against police officers from both NSW Police Force staff and members of the community. The complaints contained 9,150 separate allegations, 18% of which were sustained. More than 77% of complaints were successfully resolved without needing a formal investigation.
Ombudsman	The Ombudsman received 3,390 complaints about police: 579 complaints were investigated by the police with Ombudsman oversight; 1,163 were resolved by police through informal resolution with Ombudsman oversight; 413 complaints were assessed as local management issues and referred to local commands; 1,093 were assessed as requiring no action; and 1 complaint was investigated by the Ombudsman.
Police Integrity Commission	PIC assessed 1,297 complaints against sworn and administrative officers. PIC oversighted 24 investigations by the police. PIC conducted 141 preliminary investigations and 36 full investigations. Of finalised investigations, 24% resulted in material being sent to NSW Police for consideration of further action. No finalised investigations resulted in briefs being referred to the DPP.
State Coroner	In 2013, there were 17 cases reported to the Coroner of persons who died as a result of, or in the course of, police operations.

14. At present, in order to make a complaint to the NSW Ombudsman, complaints are first required to be considered by the NSW Police Force. The Ombudsman's investigation then oversees how this complaint is managed. This initial double handling of a matter is unnecessary, and many complainants see the requirement to initially approach police directly as unreasonable.
15. In addition police taskforces have had to be set up at various times to deal with large numbers of reports of misconduct and corruption – most recently Taskforce Volta which investigated 389 such incidents.⁵ These taskforces provide one of the least transparent and accountable ways of handling serious complaints.
16. In certain cases the same critical incident has been investigated by each of the Coroner, the PIC, the Ombudsman and the Police.
17. Efficiency and accountability would be better served if this large number of complaints were managed through a single complaints body, with a single process which can deliver comprehensive investigations and binding outcomes.

Case study – Roberto Curti

The most recent example of overlapping and ineffectual oversight is the investigation into the death of the young Brazilian man Roberto Curti. Mr Curti died while he was being arrested by a number of police. In the course of his arrest he was subjected by police to multiple Taser bursts, the repeated use of capsicum spray, physical restraint and the direct application of violent force. Much of the violence visited against Mr Curti occurred while he was face down with his arms behind him in handcuffs. Mr Curti was unarmed and had not committed any serious offence, nor any violent

⁴ External oversight of police conduct", Briefing Paper No 6/2015, NSW Parliamentary Research Service.

⁵<http://www.parliament.nsw.gov.au/prod/lc/qalc.nsf/18101dc36b638302ca257146007ee41a/97c10554f299a37fca257b3b0015834b?OpenDocument>

offence, before his arrest. He died while the violent arrest was occurring.

It was undoubtedly a very serious matter deserving a thorough and independent investigation. Unfortunately the critical incident review was undertaken by police. That investigation did not consider the possibility of criminal misconduct by police. The inadequacies in that review were reviewed by the Coroner who referred the matter to the PIC. Meanwhile the Ombudsman's office undertook a review and made certain recommendations (the majority of which have not been implemented).

The PIC investigation eventually led to the proffering of minor assault charges against junior police. Those charges have now been heard in the Local Court and only one conviction was recorded for which the officer received a good behaviour bond.

No one received justice in this case: not the police who were subject to repeated interrogation and review by no less than four oversight agencies, a the family of Roberto Curti who are aggrieved by the fact that no one in the NSW police has been held accountable for a young man's wrongful death.

Cost of current arrangements

18. A significant budget is spent managing police complaints, but there is no effective measure of exactly how much is spent across agencies, nor a clear set of indicators to assess how effective this complaint management system is. An estimate for 2013/14 would include the following:

Police Integrity Commission	\$20.2 million in 2013/14 Budget.
Ombudsman police	A proportion of the Service cluster Complaint Resolution, Investigation, Oversight and Scrutiny which received \$25.9 million in 2013-14 Budget
Ombudsman investigation into Operation Emblems	\$6 million
Professional Standards funding	Not disclosed
Costs borne by other agencies as a result of mishandled complaints	Unknown but anecdotally expected to be very high

19. This suggests an annual cost well in excess of \$50 million dollars for a system that does not work for complainants or the police. A single body with a single budget would be able to be properly and independently resourced, and to account for the use of its funds each year.

Evidence and findings of NSW Parliamentary Inquiry

20. The failings in the current system are widely understood. As the recent NSW Parliamentary Committee report into the conduct and progress of the Ombudsman's inquiry 'Operation Prospect' found in its report there was consistent support for a single, unified complaints body. The position of Commissioner Scipione was recorded, at 116, as follows:

Mr Andrew Scipione APM, Commissioner of Police, echoed concerns about the current multi-agency approach, agreeing that it would be best for a single agency to provide police oversight:

I think in terms of the failure, for the failure here is we had three agencies trying to do the work of what should have been a single agency. ... My view is this should have been a single agency that had carriage of this investigation. When there are matters involving police, allegations of police impropriety or, worse, corruption, my belief is that you have a single agency. Why? So that you do not get this. It is very difficult when you have got three agencies, with all the

goodwill in the world, with one steering the bus, one using the break, and one using the accelerator. That does not work.

7.33 In response to further questioning, Mr Scipione agreed that the establishment of an independent police complaints authority was worth considering:

Mr SCIPIONE: You know, look, I am not sure that I am the right person to ask because I am a police commissioner so you are going to get a view that may well be police-centric. But what I can say is this: I have given this a lot of thought over many, many years from a position whereby I was once the commander of the internal affairs branch through to today as the commissioner. I do not want to enter into who it is that should be in charge, but unless you have someone charged exclusively with carriage of these matters, you are potentially going to get a repeat of this problem. My view would be that it needs to be some independent. Perhaps it is time to have a look at something like an independent police complaints authority.

Mr DAVID SHOEBRIDGE: Like the United Kingdom has?

Mr SCIPIONE: Indeed.

21. The position of Deputy Commissioner Kaldas was recorded at 116 to 117 as follows:

Similarly, Mr Kaldas, Deputy Commissioner of Field Operations, expressed his personal views about the problems with the current approach:

I believe in external oversight; I think it is essential. But it needs to be in a rational, structured way ... The framework that we have has sprung up in an ad hoc fashion out of various scandals; it is not a structured, thought-through process, it is simply we have reacted to something and we have said we will need another body to do that and so on. What we have now is a patchwork ...

22. In light of this evidence, which was supported by evidence from the Redfern Legal Centre and the Police Association, the unanimous recommendation of the committee was as follows:

Recommendation 6

That the NSW Government establish a single, well-resourced police oversight body that deals with complaints quickly, fairly and independently.

That the Legislative Council Standing Committee on Law and Justice inquire into and report on the most appropriate structure to achieve this.

23. I again endorse this recommendation.

Complexity produces delay and injustice

Case Study – Operation Prospect

The enquiry into Operation Mascot/Prospect is a prime example of the inefficiencies of the current system in NSW and the impact of overlapping agencies on the effectiveness of such oversight bodies.

From the late 1990s to the first part of this century a series of telecommunications intercepts and listening device warrants were obtained by an internal police anti-corruption command (SCIA). There have since been deep misgivings as to the alleged partial use of these warrants and alleged illegality by police involved in obtaining and using the warrants. The matter became more complex due to the fact that the police, the Crime Commission and the PIC undertook some of this work in a joint investigation.

Repeated complaints were made to the police and the Ombudsman. The Ombudsman did not investigate. One reason given was that the operation involved the PIC and Crime Commission which are not part of the Ombudsman's oversight responsibilities. Eventually a police Strikeforce entitled Emblems was established and it undertook a detailed investigation which was hindered by the secrecy provisions in the Crime Commission Act. The Strikeforce Emblems report was never released.

After the matter was raised in Parliament the matter has since been investigated by the Ombudsman (Operation Prospect) and two parliamentary enquiries. The Ombudsman was given one-off special powers and new secrecy provisions to undertake the inquiry. It has now taken two years and 8 months to investigate the issue and the incomplete investigation is in the process of being handed over to a new Ombudsman.

Some 15 years after the first complaints were registered the matter remains unresolved. Ineffective, conflicted and delayed, this is a classic illustration of everything that is wrong with police oversight in NSW.

24. As noted above, the Parliamentary Committee considering Operation Prospect was particularly damning of the complexity and duplication within the current system.
25. There have also been numerous historical instances where the PIC has been criticised by both its former Inspector Peter Moss and numerous serving and former police officers. Those criticisms largely focused on allegations of breaches of natural justice to police who were the subject of PIC investigations. This clearly illustrated the powerlessness and ineffectiveness of the office of the Inspector. To a significant extent the current conduct of the PIC has addressed these procedural fairness concerns. However the ongoing ineffectiveness of the Inspector and ongoing tendency to agency overreach remain.

Case study – Agency overreach

In 2011 the PIC undertook a joint operation ('Operation Ischia') with the Queensland Crime and Misconduct Commission that identified recreational drug use and drug supply by current and former NSW police while on holiday at the Gold Coast. The PIC provided briefs of evidence to the Queensland DPP and the Crime and Misconduct Commission seeking they prosecute the offences in Queensland. Both agencies refused to prosecute the offences on the evidence provided to them.

PIC then commenced five purportedly "private" criminal prosecutions in Queensland which were funded and supported by the PIC. This was despite the fact that the PIC had no statutory power to prosecute and no jurisdiction in Queensland.

The private prosecutions were dismissed by the Southport Magistrates Court in December 2014 as an abuse of process: Murphy v Alt & Ors. The PIC had also reportedly commenced a prosecution against a NSW police officer in the Magistrate's Court in Victoria in 2013.

The matter had been reported to the Inspector of the PIC who refused to take any action. No disciplinary or corrective action appears to have been taken to address this serious and improper overreach of powers.

Case study – PIC review

The Catholic Church's Professional Standards Resource Group (PSRG) purported to be the Church's response to child sexual abuse allegations. It met monthly and reviewed complaints of abuse, and from 1998 to 2005 a police representative took part in the PSRG. The PSRG was part of a system of dealing with child abuse by members of the Catholic Church under which NSW Police accepted "blind reporting": the Catholic Church removed the identities of victims of child abuse when making reports to the police.

Clearly blind reporting stymies any real investigation and prosecution of child sex offences, and could amount to an offence of hindering police or concealing an indictable offence. The NSW Government directed the Police Integrity Commission to investigate blind reporting, which became Operation Protea.

Immediately before Operation Protea commenced in October 2014, David Shoebridge MLC provided the PIC with documents obtained from NSW Police under freedom of information that stated that:

Det A/g Superintendent Linda Howlett of the Sex Crimes Squad has advised that documents concerning PSRG meetings were confidential and maintained by... the Catholic Church. Inspector Beth Cullen, the NSW Police representative on the PSRG, shredded hard copies of meeting material after each meeting. Furthermore, Inspector Cullen did not keep any documentation in relation to her work on the PSRG.

Despite being provided with this evidence the PIC report inexplicably concluded that: "There was no evidence before the Commission that Cullen had destroyed any evidence, including any documents provided to her through her membership of the PSRG." When questioned, the PIC admitted that it did not make any inquiries with Det A/g Supt Howlett in its investigation, and claimed (presumably accepting the evidence of Inspector Cullen) that what was destroyed was not technically evidence.

IV. Best practice models from around the world, including the UK Independent Police Complaints Commission and their applicability and adaptability to NSW

Independent Police Complaints Commission

26. The UK Independent Police Complaints Commission is one of the better models for handling police complaints.⁶ Standout aspects of the IPCC model include its independence, and the requirement that the police refer the most serious cases to the IPCC. The IPCC also has a mandate to use learning from its individual cases to contribute to broader changes in policing, improving accountability, and encouraging best practice.⁷
27. There are however a number of issues with the operation of the IPCC, many of which were identified in March 2015 in the report released by the Secretary of State for the Home Department, which include:
 - a) The definition of complaints to be dealt with by the IPCC is too narrow, leaving many complaints to be investigated by local police. This not only defeats the purpose of an independent police oversight system but also prohibits the identification of ongoing trends

⁶ <http://www.ipcc.gov.uk/en/Pages/default.aspx>

⁷ See more at: <http://www.ipcc.gov.uk/page/about-us#sthash.elqvPZf1.dpuf>

in police complaints. Concerns have been raised about whether the IPCC is able to effectively identify systemic failures in policing and give sufficient voice to individuals and groups.

- b) The inability of locally (police) resolved complaints to be reviewed by the IPCC increases public dissatisfaction with the system that offers them no route for appeal outside of the police. The 2015 report indicated 35% of people lacked confidence in the ability of the police to deal with their complaint fairly and 78% of people were not satisfied with how their complaint was handled.⁸
- c) There are currently *no obligations for police to cooperate* with IPCC investigations. Reforms suggest enforcing a duty of candour to encourage officers to cooperate.

28. These criticisms of the IPCC model must be taken into account when designing an appropriate model for NSW.

The Police Ombudsman of Northern Ireland

29. The Greens NSW submit that the Police Ombudsman of Northern Ireland (PONI) reflects best practice for a police oversight model. Despite being called an Ombudsman, the PONI is wholly unlike the NSW Ombudsman model.

30. The Office is independent, answering to the Northern Ireland Assembly through the Minister of Justice. In 2013/14, PONI had total expenditure of £9.5 million with a total of 151 fulltime staff.⁹ They have their own auditing committee that reports to the Auditor General.

31. PONI can conduct their own investigations, providing on-the-ground response to critical incidents to collect primary data and conduct interviews with police. It also has a number of disciplinary powers including being able to directly send files on officers to the Director of Public Prosecutions for consideration.¹⁰

32. Crucially the PONI may use their own initiative to investigate matters involving police misconduct, regardless of complaints received.¹¹

33. PONI can also make recommendations that disciplinary proceedings be brought by the Policing Board if the officer is an Assistant Chief Constable, a Deputy Chief Constable or the Chief Constable.

⁸ Home Office (2015), "Improving police integrity: Reforming the police complaints and disciplinary systems: Summary of consultation responses and next steps", https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411970/improving_police_integrity_reforming_the_police_complaints_and_disciplinary_systems.pdf, p7

⁹ Roth, L (2015), "External Oversight of Police Conduct", NSW Parliamentary Research Service, [https://www.parliament.nsw.gov.au/Prod/parliament/publications.nsf/0/74D5A9F61C454021CA257E5B001EF14/\\$File/External%20oversight%20of%20police%20conduct.pdf](https://www.parliament.nsw.gov.au/Prod/parliament/publications.nsf/0/74D5A9F61C454021CA257E5B001EF14/$File/External%20oversight%20of%20police%20conduct.pdf), p39

¹⁰ PONI Report (2014), <https://www.policeombudsman.org/PONI/files/6e/6e035614-ca3a-4111-9bfa-eab2280379f3.pdf> pp.19

¹¹ PONI (n/a), "History of the Office", <http://www.policeombudsman.org/About-Us/History-of-the-Office#sthash.1x5oT8nd.dpuf>

V. A recommended model for police oversight including guidance on its design, structure, cost and establishment

34. For the reasons set out above, it is recommended that an Independent Police Standards Commission (IPSC) similar to the PONI oversight system in Northern Ireland should be adopted in NSW.

Mandate

35. The NSW IPSC must have a mandate similar to that of the PONI. This would empower the IPSC to exercise its powers in such manner and to such extent as appears to it to be best calculated to secure—
- a) the efficiency, effectiveness and independence of the police complaints system; and
 - b) the confidence of the public and of members of the police force in that system.
36. The NSW IPSC should receive all initial complaints concerning police conduct with the powers and resources to investigate and report on matters within its mandate. Its conduct and operations should be largely modelled on the statutory structure found in Part VII of the Police (Northern Ireland) Act 1998.
37. The NSW IPSC must have the ability, and sufficient resources, to deploy its own officers to collect primary evidence from critical incidents and witnesses. History shows that without this independence and capacity any police oversight body will fail.
38. The IPSC should retain the right to refer minor complaints back to local police to be investigated by them, where deemed appropriate. However this must be at the discretion of the IPSC. As the 2015 review of the UK IPCC concluded, a narrow definition of complaints undermines the integrity and utility of an independent office in the first place.
39. They must also be able to make disciplinary recommendations to the Police Commissioner and provide direct referrals for prosecution to the DPP. Consideration should be given to providing the IPSC with powers similar to section 181D of the NSW Police Act – a decision reviewable for the Industrial Relations Commission. Such a power would only be able to be used in the most serious of cases. An explicit right to procedural fairness must be included in the body to allow police who are potentially the subject of such powers to be properly heard and have their case considered.
40. Where less serious misconduct is found, it would be appropriate for the IPSC to make recommendations to the Police Commissioner for action. In such cases it is essential that a police officer be given not only procedural fairness in regards the instant case, but that consideration also be given as to the balance of their career and service before any adverse action is taken. Such action must be reported to the IPSC and any complainant. A review right to the NSW Industrial Relations Commission should be included, where the IPSC believes the action to be manifestly inadequate. In all such cases the complainant must have a right to be heard.
41. Such a model ensures that the Commissioner of Police maintains responsibility, whilst also meaning that the new complaints body has appropriate power to see its recommendations enforced.
42. If a matter is referred to local police, they must be required to inform the IPSC of the outcome of their investigations of minor complaints. These outcomes should be subject to review by the IPSC

on application by the complainant. This system of referral will ensure efficient allocation of resources of the IPSC and avoid the IPSC reaching capacity with complaints that can be more appropriately resolved locally.

Structure

43. It is recommended that all police oversight responsibilities from the various bodies be amalgamated into the NSW IPSC. This would bring together the resources and powers of the PIC, the Ombudsman (in so far as it deals with police), and the police's internal Professional Standards Command.¹² The coroner must, however, maintain its role in investigating deaths related to policing with evidence being brought before the coroner by the NSW IPSC rather than the NSW police.
44. The IPSC will require a significant regional presence. This will allow for the deployment of immediate on-the-ground responses where evidence needs to be collected. Consideration should be given to the IPSC having a structure similar to the existing NSW police regional commands. These offices would manage regional complaints (receiving and recording complaints), while coordinating the deployment of IPSC officers to collect evidence where investigations are required. Regional offices are particularly important given the sheer size of the State, as well as the different cultures that can exist in policing in vastly different areas.
45. As noted above, consideration should be given to allowing a limited role for former NSW police in the IPSC. To ensure objectivity of IPSC staff, no active police officers or police force staff should be employed by the IPSC in any investigative positions. It would however be potentially be very useful to ensure that a limited number of former officers were engaged by the IPSC to assist in reviewing matters, and thereby contribute their expertise in the organisation and police procedures. Carefully selected and thoroughly integrity tested former NSW police officers undoubtedly would have unique insights into policing culture and systems within this jurisdiction that could prove invaluable.

Transparency

46. The NSW IPSC must have unmediated online access to police databases to allow it to gather data immediately during investigations.
47. Transparency is also vital in achieving public confidence. In this regard, relevant outcomes and data on all current and previous complaints investigated by the IPSC should be available to the public online and made available in other forms on demand. This will also enable the identification of trends in police misconduct across the state and target systemic issues within the NSW Police.
48. The NSW IPSC must also be subject to independent auditing outside of the organisation. A multi-partisan parliamentary committee must be empowered to review the process and performance of the NSW IPSC and an Inspector should be appointed as the head figure of this auditing body. The IPSC will also be required to release annual reports that supply funding, organisation and statistical information on the organisation.

¹² Internal police review agencies that investigate police processes/ practices should be unaffected by the NSW IPSC. The role of these agencies should be to provide the police force with systemic recommendations that may improve police processes. It is not the purpose of a police oversight body to provide day-to-day operational recommendations to the NSW Police Force, where there are no systemic issues affecting police conduct.

Accessibility

49. The public should be able to lodge complaints online, in person at an IPSC office, or make a written complaint. Any complaints made to police need to be referred immediately to the regional IPSC office. At all stages of the complaint, the complainant should be informed of the processes involved and given a clear understanding of the next steps in the complaint process. Complainants should also be given opportunities to provide evidence and respond to outcomes of their complaint.
50. It is important that the IPSC considers not just critical incidents, but also the more routine concerns regarding police conduct. This must include concerns over the use of force, the misuse or partial application of police discretionary power as well as allegations of police collusion or falsehoods in statements and evidence in court. Oversight of these more routine policing issues is important if police cultural and structural issues are to be addressed. Further, splitting off certain kinds of complaints would run the risk of creating another fragmented system with the additional cost, complexity and lack of transparency that this entails.

VI. Any implications for maintaining oversight of the NSW Crime Commission arising from the recommended model of police oversight, while aiming to minimise unnecessary duplication and overlap

51. Currently, the NSW Crime Commission manages complaints made against their own staff, unless the complaint is deemed by PIC as evidence of serious misconduct. As the IPSC would replace PIC, it would then be required to manage all complaints made against Crime Commission Officers, referring minor complaints back to the NSW Crime Commission where deemed appropriate to do so.