
PANSW Supplementary Submission

Review of Police Oversight in NSW



The Public Perception of Oversight Agencies

[1] As has been established, although Commissions such as the PIC and the ICAC are not bound by the same rules and procedures as a court, they must still provide affected persons with procedural fairness.

[2] As noted in our previous Submission, there are many instances where the current police oversight system has denied police officers procedural fairness. Police officers are not only denied procedural fairness in the conduct of the agency's investigation and hearing, but also in the publicising of unreliable information in the media. A fair and balanced process needs to be established for the agency providing information to the media.

[3] The PANSW acknowledges an oversight agency's function to inform the public is facilitated by its ability to communicate with the media. However, this needs to be balanced with considerations of procedural fairness and natural justice. The publicity surrounding oversight agency investigations is often a cause of serious damage to an individual's reputation, career and wellbeing.

[4] A number of complaints upheld by the Inspector of the PIC have been based on the publication and widespread attention of damaging materials or adverse findings which were unreliable, breached principles of procedural fairness and natural justice, or resulted in no formal outcomes such as prosecutions or disciplinary action. If left without appropriate guidelines and processes in place, in any new police oversight system, the publication of materials and the attention this attracts from the media has the potential to condemn the reputations of individuals notwithstanding whether the validity or otherwise of the evidence has been tested or is found to be reliable.

[5] Oversight agencies use formal mechanisms to expose corruption and serious misconduct, including holding public hearings, making adverse findings, reporting to Parliament, referring matters to the Director of Public Prosecutions (DPP) for prosecution, or recommending disciplinary action be taken by the NSW Police Force (NSWPF).

[6] As was concisely outlined in *Keating v Morris* [2005] QSC 243 relating to a Special Commission of Inquiry into Bundaberg Base Hospital:

"[35] The court is concerned with the fairness of the treatment of applicants. The governing consideration is that justice is, and is seen to be, done with the decision maker reasonably open to persuasion.

[36] It is of "fundamental importance that parties and the general public have full confidence in the fairness of decisions and the impartiality of decision makers to whom the rules of procedural fairness apply. Condemnation without a proper hearing or by an apparently biased tribunal is unacceptable; exoneration by such a tribunal may be worthless."

[7] Going forward, the use of the media by oversight agencies to circumvent the protections and standards required for formal action to be taken, effectively punishing individuals for unsubstantiated claims, should be seen as entirely improper and should be prevented by the disclosure provisions of oversight legislation.

Examples of previously reported conduct include:

Breach of Secrecy Provisions

[8] As outlined in Paragraph [23] of our previous Submission, in February 2011, the then Labor Minister for Police requested the Inspector of the Police Integrity Commission to “ascertain if there have been any breaches of the Section 56 secrecy provisions of the Act or other relevant provisions by any current or former officers of the PIC or any other persons.”¹

[9] In his Annual Report, the Inspector stated:

Despite the seriousness of the breach of the Commission’s confidential processes demonstrated by this unauthorised release of confidential information, the PIC informed me that it had not itself initiated an internal investigation with a view to establishing how the breach of its security had occurred.²

Operation Mallard

[10] In both the public hearings and the report on *Operation Mallard*, the PIC published personal details of multiple persons who were at no time under investigation and were never called as a witness³. The PIC then provided transcripts and audio tapes of legal phone intercepts containing these personal details to the media, with no restriction on their use and at no time was the return of these materials sought⁴. The Inspector of the PIC found the publication of these details to be “capable of damaging the interests and reputations of the three persons publicly identified.”⁵

Media release regarding referral to DPP by the ICAC

[11] Recently the High Court ruled the ICAC’s *Operation Hale* was beyond the legislated scope of the agency. Following the decision, the ICAC issued a media statement on Wednesday 27 May 2015 – entitled *Decision to provide evidence in Operation Hale to the DPP*⁶ – which indicated the ICAC had provided evidence it obtained to the DPP.

Public comments to meetings, conferences and the media, including the provision of select evidence, by oversight agency officers

[12] The media policy on the Police Integrity Commission website provides:

The Commission cannot comment on matters that are the subject of an investigation or confirm or deny that a complaint has been received.⁷

¹ Office of the Inspector of the Police Integrity Commission, Annual Report 2010-11, p21, para 124.

² Ibid, p24, para 134.

³ Office of the Inspector of the Police Integrity Commission, Investigation by the Inspector Concerning the Publication by the Police Integrity Commission of Certain Telephone Intercept Material, 2011, p 2, para 1-5.

⁴ Ibid, p 2, para 6.

⁵ Ibid, p 2, para 7.

⁶ <http://www.icac.nsw.gov.au/media-centre/media-releases/article/4794>

⁷ <https://www.pic.nsw.gov.au/MediaPolicy.aspx>

[13] The media policy on the Independent Commission Against Corruption website provides:

The ICAC will not, for operational and legal reasons, comment on any matter that is the subject of on-going investigation or consideration, or where it is not in the public interest for the matter to become publicly known.

Generally, the ICAC will neither confirm nor deny that a particular complaint has been received. However, in some exceptional circumstances the ICAC may, at its discretion, decide to confirm or deny the receipt of a complaint.⁸

[14] These statements are clear; as a general rule the PIC and the ICAC policy is to not comment on current matters. However, in practice these agencies have previously departed from this position.

[15] Whilst recognising the importance of the media's ability to comment on public hearings, ultimately, there may be no evidence to substantiate the allegations heard and no findings made against an individual. Despite this, the individual has already had the allegations widely publicised in the media, and now has no recourse to undo the serious damage.

[16] To protect the integrity of the process and limit the loss of public confidence, any new police oversight system should ensure oversight agencies and their officers, including Counsel Assisting, are very aware of the need to ensure they observe their legal duties and are not perceived to have pre-judged any matter currently before them. Such awareness should in turn extend to any comments they make in any public forum.

Addressing the problem of improper disclosures to the media and the public

[17] Disclosure of information to the media can deny individuals procedural fairness and natural justice. The legislative provisions relating to disclosure of information must be strengthened in the reformed police oversight system.

[18] Currently, officers of the PIC, the ICAC and NSW Ombudsman are prohibited from divulging, directly or indirectly, any information acquired by reason of the functions under their respective Acts. This is provided by section 56 of the *Police Integrity Commission Act*, section 111 of the *Independent Commission Against Corruption Act*, and section 34 of the *Ombudsman Act*.

[19] Exceptions to this prohibition are provided. The PIC and ICAC are permitted to disclose information when the disclosure is:

- For the purposes of and in accordance with the Act or otherwise in connection with the person's functions under the Act,
- For the purposes of a prosecution or disciplinary proceedings, or
- In accordance with the direction of the Commissioner or Inspector when the Commissioner or Inspector certifies it is necessary to do so in the public interest.

⁸ <http://www.icac.nsw.gov.au/media-centre/icac-media-policy>

[20] The relevant exemptions for the Ombudsman takes a different form, specifying to whom information may be disclosed and for what purpose.

[21] The penalties for officers of the PIC and ICAC for breaching this prohibition is 50 penalty units, and 10 penalty units for officers of the Ombudsman.

[22] The media policy on the Police Integrity Commission website provides:

The Commission can only provide information to the media if it is satisfied that it is in the public interest to do so.⁹

[23] The media policy on the Independent Commission Against Corruption website provides:

Subject to operational and legal constraints, the ICAC provides the media with as much information as is practical and possible about its work, as long as it is clearly in the public interest for such matters to be made known.¹⁰

[24] According to these policies it appears the PIC and the ICAC should be disclosing information to the media or making media releases based on the respective Commissioner certifying the disclosure as necessary in the public interest, thereby falling into the exceptions for the prohibition on disclosure.¹¹

[25] Police oversight agencies are already able to expose corruption and misconduct by holding public hearings, reporting to Parliament, referring matters to the DPP for prosecution, and recommending the NSWPF take disciplinary action.

[26] The PANSW submits this Review when considering the framework of any police oversight agency should carefully consider the intention and scope of legislated secrecy provisions for oversight agencies to clearly define the media communications which fall into the exceptions to the secrecy requirements.

[27] There needs to be a clear policy framework providing that all media communications must:

- Fully consider the evidence obtained in the investigation and hearings will be publicly available through hearing transcripts and any reports issued as a result of the investigation,
- Establish the necessity to disclose information to the media in a format independent of those methods of publishing findings, and in doing so clearly meets the public interest exemption provision,
- Include mandatory considerations of procedural fairness and natural justice, including whether it will unfairly prejudice any party or a fair outcome, or favour one party over another or others,
- Be undertaken in a balanced, fair and transparent manner,
- Define an appropriate method of disclosure to the media and adherence to the above principles, transparent communication activities, and equality of access,

⁹ <https://www.pic.nsw.gov.au/MediaPolicy.aspx>

¹⁰ <http://www.icac.nsw.gov.au/media-centre/icac-media-policy>

¹¹ *Police Integrity Commission Act 1996*, s56(4)(c), *Independent Commission Against Corruption Act 1988*, s111(4)(c).

- Prohibit the provision of non-published investigation material directly to media representatives and prohibit the provision of such material to a restricted number of media outlets, and
- Provide the Inspectorate with the power to review the oversight agency's adherence to the above requirements in making any disclosures, either by complaint, referral or own motion.

[28] Where information is provided to the media outside of these parameters, legislated penalties should apply to either an individual and/or the whole organisation for providing information without express approval, particularly where it seeks to deny people procedural fairness and natural justice; it favours one party or it prejudices a fair outcome.

[29] None of these changes should impinge upon the freedom of the media to publish any information available as a result of public hearings, access published reports or to commentate on the evidence or testimony presented at hearings.

A duty to maintain ethical standards

[30] Fundamental confidence in oversight agencies has been lost. There is a pervasive view that based on the behaviours of oversight agencies they are incapable of bringing an impartial and unprejudiced mind to matters before them.

Role of Counsel Assisting for oversight agencies

[31] Under s12 of the PIC Act and s106 of the ICAC Act, the Commissioner can appoint an Australian legal practitioner to assist the Commission on individual matters or generally. The selection of a suitably qualified barrister as Counsel Assisting is standard practice for both the PIC and the ICAC for hearings, particularly public hearings.

[32] It is critical that Counsel Assisting at an inquiry, like a prosecutor in a criminal matter, be impartial and importantly appear to be impartial.

[33] The reputations of many have been destroyed by a simple expression of opinion.

[34] Paragraph 10.50 of the Practice Notes of the PIC notes the precedent of *Broken Hill Pty Co Ltd v National Companies and Securities Commission* (1986) 160 CLR 492 when by way of directly quoting this precedent advises its officers "*hearings are to be conducted with as little emphasis on the adversarial approach as possible.*"

[35] In *Firman v Lasry* [2000] VSC 240 ("Firman") it was stated:

"The role of such counsel has been said to be to assist in the elucidation of facts, to present material to the Commission in an orderly fashion, to examine witnesses independently without the Commissioner having to descend into the arena."

"...if the conduct of counsel assisting showed an evident and persisting inequality of treatment as between witnesses espousing one view of matters under inquiry and witnesses espousing an opposing view, if one group of witnesses was apparently

aided in giving its account of events whilst the other group was apparently frustrated in its attempts, and if a Commissioner either gave support to or took no action to redress the situation which unfolded before him, it would not be wrong to consider that support or inaction if an allegation of apprehended bias on the Commissioner's part was raised by an individual whose conduct was under scrutiny."

[36] In *Re Doogan; Ex parte Lucas- Smith* (2005) 193 FLR 239 ('Doogan') it was stated:

"Whilst the duties of Crown prosecutors and counsel assisting coroners are by no means the same, we accept that both should be guided by the overriding principles that their goal is the attainment of justice rather than the achievement of a preconceived objective."

[37] In addition to the precedents before them, Rules 82, 84 and 85 of the Barrister Rules should be at the forefront of the mind of Counsel Assisting when undertaking their duties:

82 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

84 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

85 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.

[38] During both public and private hearings Counsel Assisting oversight agencies can illustrate a disdain or contempt towards certain witnesses during examination – where sarcastic, aggressive or flippant comments are made which in turn may give rise to an apprehension of bias. In contrast Counsel Assisting may display undue favourable treatment towards a witness.

[39] Rule 75(C) of the New South Wales Barristers Rules, states a barrister must not take any steps towards the publication of the expression of an opinion on any issue arising in a proceeding.

[40] The Review may wish to consider whether legislative guidance is needed to ensure the highest ethical standards are maintained by those entrusted to perform these important oversight roles.

Launching of private prosecutions by oversight agency staff members

[41] As outlined in Paragraphs [73] to [77] in our previous Submission, the PANSW is concerned about individual staff members from both the PIC and the ICAC launching private prosecutions against persons investigated by those agencies.

[42] Unfortunately little public reporting is available to the PANSW of additional examples of the PIC and the ICAC attempting to undertake private prosecutions beyond those included in our previous Submission.

[43] The PANSW reiterates any legislation in the reformed oversight system should ensure the Office of the Director of Public Prosecutions has responsibility for prosecutions from oversight findings, remove any doubt oversight agencies have no powers of prosecution, and explicitly address the issue of agency staff commencing private prosecutions.

Process for utilising oversight powers

[44] The current process of investigating a complaint or critical incident in which an oversight agency has become involved has multiple inefficiencies and obstacles to effective investigation, as outlined in our previous Submission. The PANSW provided a model process for the oversight agency exercising its powers in Paragraphs [44] to [59] on pages 12 to 15 of our previous Submission.

[45] The PANSW outlined a number of reforms to the oversight system which would establish this improved process:

Single Agency Model

[46] Firstly, the move to a single agency model would immediately remove a major source of duplication, delay and waste. No longer would a single matter be subject to the NSW Ombudsman and later a PIC investigation, potentially impeding the police officers' ability to carry out their internal or coronial-directed investigation. No longer would one agency decline to investigate a matter only for another to decide it warranted an investigation. This would improve the current process simply by giving one agency the ability to decide what oversight response is required; no further action, review or monitor the police investigation, or carry out an independent investigation.

Monitor Power

[47] Amending the monitor power currently performed by the NSW Ombudsman would also greatly improve the process of investigation. Currently the Ombudsman has the ability to confer with investigators and specify matters needing to be examined. This has been a major source of frustration for investigators, and created tensions between the NSWPF, the Coroner and the Ombudsman, when the investigative expertise of the NSWPF or the directions of the Coroner do not conform to the suggestions of the Ombudsman officer. The process as it currently stands is unclear, as the Ombudsman is able to utilise a power in which they are neither a passive observer nor an independent investigator, but somewhere between those two roles.

[48] Any agency in the new oversight system exercising this monitoring power should have all the powers necessary to assess whether the police officers carry out their investigation impartially and thoroughly, but have no powers which permit them to directly or indirectly *influence* the investigation.

[49] This would improve the current process by clearly defining the activities the oversight agency could engage in, and therefore limiting the impediments oversight involvement creates for the police investigation. As outlined in Paragraphs [50] to [55] of our previous Submission, a single oversight agency, upon receipt of a complaint, should assess which of its distinct complaint powers is the appropriate course of action; review a NSWPF complaint file, monitor the NSWPF investigation,

or conduct an independent investigation. By removing the ambiguity and frustration caused by the current provisions creating the monitoring power, these distinct complaint handling powers are more clearly defined and the blurring of the monitor power with the ability to direct an investigation is removed.

Clearly defined scope

[50] The scope of the oversight agency should also be clearly defined. The ICAC has been embroiled in litigation, legislative amendment and review as a result of uncertainty surrounding its legislative scope, and this uncertainty should not be repeated in the new police oversight system. As was demonstrated in our previous Submission, a large proportion of the workload of the PIC has fallen well short of conduct which could be described as corruption or serious misconduct. The intended purpose of the PIC when established was to expose and prevent corruption or serious misconduct, and surely anything falling short of this does not warrant the independent investigation of an external agency, and could be better handled through internal investigation with external review to ensure accountability.

[51] Therefore, the scope of the new agency should be clearly defined, distinguishing between its review function and its investigation function.

[52] The agency should be empowered to exercise its monitor and review power on any complaint matter it considers appropriate. It should also be able to audit the complaints handling process of the NSWPF. This is essentially a quality control function: ensuring the impartiality and thoroughness of the NSWPF handling of complaints, or holding the NSWPF accountable if it does not achieve this standard.

[53] The agency's power to conduct an independent investigation should be enlivened by the reaching of a legislative threshold, namely: whether the alleged conduct would, if proven, constitute corruption or serious misconduct according to a legislative definition of these terms.

[54] The decision to begin an independent investigation should also involve the following considerations:

- Whether another agency, including the NSW Crime Commission, Coroner or the NSWPF, has a better capacity to investigate the alleged conduct,
- Whether another agency has already commenced an investigation into the same matter,
- The primacy of the Coroner's role in any matter involving death, and
- Whether the initiation of an independent oversight investigation would prejudice the investigations of these other agencies.

[55] If these reforms were enacted in the oversight agency's governing legislation, it would create a system where a single agency could access all complaints and utilise its quality control powers to ensure police investigations are impartial and thorough. The exercise of these powers would not impede the police investigation or coronial investigation. If matters met a certain standard according to legislatively defined criteria, the agency would be empowered to conduct an independent investigation, utilising all the powers required.

3 Person Panel

[56] In our previous Submission, the PANSW put forward a model for a new Inspectorate for the police oversight agency. This can be found in Paragraphs [80] to [91] on pages 19-22 of our previous Submission. Below is a process for the operation of the proposed panel.

[57] According to the evidence provided by the Hon David Levine to the Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "*Operation Prospect*"¹², in his capacity as the current Inspector of the PIC, he did not have the resources to review the large amounts of case material provided in relation to the *Emblems* Report. While *Emblems* involved a large amount of material and therefore it is understandable an individual could not possibly review this quantity, it is nevertheless highly concerning the Office of Inspector did not have the resourcing to review voluminous investigation material when its function is to review investigations.

[58] The objective behind the PANSW model of a 3 Person Panel is to increase the capacity of the Inspectorate to review investigation material. The primary purpose was to increase the ability of the Inspectorate to conduct a detailed review of investigations, taking precedence over its ability to cover an increased number of complaints (an outcome achieved by the dip-sampling function we proposed).

[59] The other objective of our Submissions is to ensure a rigorous, transparent and accountable decision making process of the Inspectorate.

[60] The PANSW submits the following process for the Inspectorate:

Inquiry into Specific Cases

[61] The Inspectorate should be empowered to launch an inquiry into oversight agency activity, including an investigation, hearing, report or disclosure. This can be initiated by a complaint to the Inspectorate, a referral from a Minister or other agency, or on its own motion.

[62] As identified above, the objectives behind the 3 Person Panel include:

- to increase the capacity to review in detail voluminous case material, rather than simply increase the number of cases the Inspectorate can take on, and
- to establish a robust and transparent decision making process, shared between the 3 members.

[63] Therefore the following procedures should be in place for the Inspectorate's inquiries:

1. If a complaint or referral is made to the Inspectorate, the Inspectorate will inquire into the matter unless all 3 members decide no further action is required.

¹² Legislative Council Select Committee on the Conduct and Progress of the Ombudsman's Inquiry "*Operation Prospect*", The conduct and progress of "*Operation Prospect*" (Inquiry) Transcript: 30 January 2015, page 49-55.

2. A selected member or members of the Inspectorate can have primary carriage over a specific matter, eg conduct the correspondence, obtain case material, or review information provided.
3. However, each member of the panel will be required to inform themselves of the subject matter of each case to the extent they reasonably believe to be appropriate.
4. The final report, findings and recommendations of the panel will either be unanimous, or determined by the majority with the dissenting panel member providing their ultimate position and reasons attached to the report.

[64] The effectiveness of the Inspectorate will also require individuals being able to bring their complaints to the attention of the Inspectorate in a timely manner. Under existing provisions, this ability could be restricted by the extensive mechanisms available to oversight agencies to prevent disclosure of matters before the agency. The PANSW appreciates the necessity to prevent disclosures which may prejudice an investigation, however it is a significant obstacle to accountability and transparency if an individual is prevented, under threat of imprisonment, from making a complaint to the Inspectorate set up to hold the agency accountable.

[65] Prohibitions on disclosure of information or the ability of the agency to issue non-disclosure orders must be qualified by an automatic exemption for the purposes of making a complaint to the Inspectorate. The automatic exemption is necessary, as it is not an acceptable position to require individuals to seek an exemption to the non-disclosure provisions from the very agency about which they intend to complain.

Dip-Sampling

[66] The Inspectorate will review a specified percentage of the oversight agency's full investigations each reporting year, as a quality control measure. For investigations reviewed in this category, the review may be conducted by a single member of the panel, to increase the number of investigations the Inspectorate can cover.

[67] The Inspectorate will publish in its Annual Report a summary of the results of the dip-sampling reviews, including any deficiencies identified in specific investigations, and any trends or recurring deficiencies.

[68] The Inspectorate is empowered to conduct a full investigation (according to the above procedures) in relation to any matter it identifies as a result of the dip-sampling function.

Assess Effectiveness and Appropriateness of the Agency Activities

[69] In its Annual Report, the Inspectorate should report on the general effectiveness of the oversight agency, the performance of its function, and its compliance with its legislative and procedural requirements. This should include:

- The effectiveness and standard of investigations performed by the agency,
- Compliance with principles of procedural fairness and natural justice,
- Compliance with requirements for disclosures to the media outlined on page 6 of this Submission,
- The agency's use of its legislative powers, and any abuse of those powers,

- The impact of its activities on the activities of other agencies, for example interaction between the Coroner, NSW Crime Commission and NSWPF, and the impact on the activities of those agencies,
- An assessment of whether matters investigated by the agency were justified according to the criteria outlined on page 11 of this Submission defining the scope of the agency, and
- Any other matters the Inspectorate thinks appropriate.

Reporting

[70] The Inspectorate should be clearly permitted to issue findings, recommendations or a full report to any of the following:

- The agency,
- The Commissioner of Police,
- The Complainant,
- Any affected persons,
- NSW Parliament,
- The public, via publication of the report (for example on the Inspectorate's website), or
- Publication in the Annual Report.

Role of WorkCover

[71] The PANSW acknowledges WorkCover is an additional agency which can investigate a matter which may already be under investigation by the other agencies. While this can add to the number of investigations and therefore duration of proceedings and impact on individuals involved, the PANSW does not believe the WorkCover function creates the same problems of duplication posed by the PIC and Ombudsman.

[72] The previous Submission of the PANSW demonstrated the duplication of the PIC and Ombudsman functions and the obstacles the actions of these agencies has created for effective police and coronial investigations. This duplication does not exist for WorkCover. While there is overlap between the objectives of a WorkCover investigation and a Coronial Inquiry, WorkCover still performs a distinct legislative function, namely to enforce compliance with the *Work Health and Safety Act*. Therefore issues of multiple investigations into the same matter should not be resolved by fundamental changes to functions of WorkCover, but rather assessing any agreed protocols between the NSWPF, the Coroner and WorkCover, ensuring WorkCover investigations do not impede other investigations nor cause unnecessary additional hardship on individuals involved in a matter.

Interaction between Oversight and NSWPF Discipline

[73] The discipline of the NSWPF should be solely the responsibility of the Commissioner of Police and managers and supervisors in the NSWPF. As was demonstrated in paragraphs [163] to

[169] on pages 35-37 of our previous Submission, the current managerial approach to discipline of the NSWPF was a cornerstone of the reforms after the Wood Royal Commission. The system created is one in which direct managers of a NSW Police Officer have primary responsibility for the performance and discipline of the officer, and for misconduct requiring more serious action, the Commissioner of Police can readily take swift action to discipline or dismiss the officer.

[74] This is in contrast to the system prior to the Wood Royal Commission which suffered from inflexibility, drawn out procedures, an excessive adversarial approach, and outcomes which were punitive rather than designed to improve performance.

[75] In the current system, the role of oversight agencies is to provide accountability for discipline outcomes when appropriate. Oversight agencies interact with the *Part 9* discipline action in the following ways:

- The PIC may make non-binding recommendations to the Commissioner of Police.
- The PIC may, before or after investigating a matter, refer the matter for investigation or action to the Commissioner of Police, and require a report on the matter and the action taken.¹³
- The Ombudsman may request the Commissioner of Police to review a decision concerning any action to be taken (but not yet taken) as a result of complaint. The Commissioner may, but is not obliged to, change the decision, and must notify the Ombudsman of the reasons for the chosen response to the request.¹⁴
- The Ombudsman may report on action taken.¹⁵
- In its Annual Reports, the Ombudsman provides a statistical summary of the management action taken in response to complaints.
- If the Ombudsman conducts an independent investigation and issues a Report, the Commissioner of Police is obliged to notify the Ombudsman of the nature of the action taken, or to be taken, as a result of the report.¹⁶

[76] Essentially, these powers permit the PIC and Ombudsman to ascertain and report on action taken when the agency has investigated or requested a review of intended action. Oversight agencies have no ability to oblige the Commissioner of Police to take a particular option available under *Part 9* of the Police Act, or to review action which has already been taken. This is entirely appropriate. As stated above, the discipline of NSW Police Officers should solely be the responsibility of the NSWPF. Any attempt by oversight to gain influence over disciplinary outcomes would return to the inflexible, drawn out, adversarial approach of the pre-Wood era.

[77] Oversight agencies have sufficient powers to report on disciplinary action taken for certain complaints. Proposals for increased powers to require the Commissioner to review action taken would make *Part 9* processes more cumbersome. In addition, reviewable disciplinary action or dismissal under s181D is already reviewable by the Industrial Relations Commission, and therefore placing two potentially conflicting layers of review upon these types of *Part 9* action would result in great difficulty in the NSWPF taking effective disciplinary action. It would also increase the burden

¹³ *Police Integrity Commission Act 1996*, s77.

¹⁴ *Police Act 1990*, s154.

¹⁵ *Police Act 1990*, s155.

¹⁶ *Police Act 1990*, s158.

on affected officers, who would have little confidence in the finality of action they are subject to if the action will be reviewed by oversight and could be changed.

[78] In the new oversight system, oversight powers in relation to discipline should extend no further than current provisions, and this should not allow for a running commentary by oversight on all discipline matters. The proper role of oversight in relation to *Part 9* action is to report on outcomes of matters the agency has investigated or for which the agency has made recommendations or requests.

[79] Your consideration of the matters and issues raised by the PANSW when undertaking this Review is appreciated.