

**EXTERNAL OVERSIGHT OF COMPLAINTS  
AGAINST POLICE IN AUSTRALIA:  
A CROSS-JURISDICTIONAL COMPARISON**

**July 1995**

**Research and Co-ordination Division**

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As much care as possible has been taken to ensure that the information contained in this paper is accurate. However, the Research and Co-ordination Division is solely responsible for any errors or omissions.

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## ABBREVIATIONS

AFP	Australian Federal Police
ALRC	The Australian Law Reform Commission
CJC	Criminal Justice Commission (Queensland)
IIB	Internal Investigation Branch (South Australian Police)
IID	Internal Investigation Division (Australian Federal Police; Victoria Police)
IIU	Internal Investigation Unit (New South Wales Police; Tasmanian Police)
JRC	Joint Review Committee (Northern Territory)
NSW	New South Wales
PCA	Police Complaints Authority (South Australia)
PCAI	Parliamentary Commissioner for Administrative Investigations (Western Australia)
PCJC	Parliamentary Criminal Justice Committee (Queensland)
QPS	Queensland Police Service (Queensland)

## PART 1 INTRODUCTION

### PURPOSE AND SCOPE OF THE STUDY

The Australian Law Reform Commission (ALRC) Report, *Complaints Against Police*, published in 1975 recommended, amongst other things, that an 'independent element be introduced into the investigation and determination of complaints against members of the Australia Police' (ALRC 1975:71). The ALRC Report formally placed the police complaints process onto the political agenda.<sup>1</sup> By 1985, all governments in Australia had established bodies to provide for some form of external civilian oversight of complaints against police. This paper describes and compares the key features of these various bodies.

The eight agencies currently exercising oversight functions in Australia are:

- |                      |   |   |
|----------------------|---|---|
| • Queensland         | – | Criminal Justice Commission (CJC) <sup>2</sup>                      |
| • New South Wales    | – | Ombudsman   |
| • Victoria           | – | Deputy Ombudsman (Police Complaints)                                |
| • Western Australia  | – | Parliamentary Commissioner for Administrative Investigations (PCAI) |
| • South Australia    | – | Police Complaints Authority (PCA)                                   |
| • Northern Territory | – | Ombudsman   |
| • Tasmania           | – | Ombudsman   |
| • Commonwealth/ACT   | – | Ombudsman   |

Until now, information about the structure, powers and functions of these different agencies could only be obtained by examining the governing legislation for each body and consulting documents such as annual reports. As anyone who has embarked on this type of research would be aware, collecting data from eight jurisdictions is a laborious and time consuming exercise. This publication, which was originally prepared as an internal working document for the CJC, brings this information together in the one document and places it within a comparative framework. The paper does not aim to provide an exhaustive description of each system: those who require clarification or elaboration of specific aspects will still need to contact the agencies concerned, or consult the relevant legislation. However, the paper does provide a useful overview of the major differences and similarities between the various agencies and enables the interested reader to see where particular bodies fit into the national picture.

1 In 1978 the Federal Government requested that the ALRC produce a supplementary report in relation to the Australian Federal Police and the Northern Territory and Australian Capital Territory Police. The ALRC report (1978) again recommended independent participation in the oversighting of police conduct.

2 A Police Complaints Tribunal operated in Queensland from 1 May 1982 to April 1990. The functions performed by that body are now performed by the CJC.

It was originally proposed to also present comparative data on the resources available to each agency, the number of complaints received, the outcome of these complaints and the level of reported police misconduct in each jurisdiction. However, due to the lack of consistency in the definitions, counting rules and recording practices used in different jurisdictions, it proved impossible to make these types of comparisons. It is to be hoped that, in the future, agencies will be able to introduce greater uniformity into the collection and reporting of relevant statistical data about their activities.

## STRUCTURE OF REPORT

The main body of the paper briefly describes the structure, functions and powers of each agency under the following headings:

- the role and functions of the agency
- whether the agency has own motion powers; that is it is able to independently determine whether it will investigate a matter without receipt of a complaint.
- the jurisdiction of the agency in relation to complaints made by police against other police
- whether the agency uses seconded police
- the investigative powers available to the agency
- whether the agency can impose sanctions
- whether informal resolution or conciliation is used
- the formal accountability of the oversight agency.

The final section of the paper identifies some of the key differences between the various agencies and presents a summary comparative table.

## INFORMATION SOURCES

This paper has been prepared using the following sources:

- the annual reports of each oversight body for the years ended 30 June 1991, 1992, 1993 and 1994
- interviews conducted with officers from each of the oversight bodies, either by telephone or on a face to face basis<sup>3</sup>
- correspondence with each of the oversight bodies

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<sup>3</sup> Personal interviews were conducted with staff from the Office of the New South Wales Ombudsman and the South Australian PCA.



## • legislation:

- *Criminal Justice Act 1989 (Queensland)*
- *Ombudsman Act 1974 (New South Wales)*
- *Ombudsman Act 1973 (Victoria)*
- *Ombudsman (Northern Territory) Act 1993*
- *Ombudsman Act 1978 (Tasmania)*
- *Ombudsman Act 1976 (Commonwealth)*
- *Parliamentary Commissioner Act 1971 (Western Australia)*
- *Police (Complaints and Disciplinary Proceedings) Act 1985 (South Australia)*



## PART 2

# DESCRIPTION OF POLICE OVERSIGHT BODIES IN AUSTRALIA

### CRIMINAL JUSTICE COMMISSION – QUEENSLAND POLICE SERVICE

#### *ROLE AND FUNCTION*

The Queensland Criminal Justice Commission (CJC) was established in 1990, following upon the recommendations of the Fitzgerald Inquiry (1989). The CJC is not a dedicated police complaints body, but has multiple functions and responsibilities. There are five main divisions: the Official Misconduct Division, the Witness Protection Division, the Research and Co-ordination Division, the Intelligence Division and the Corruption Prevention Division. Between them, these divisions are concerned with:

- investigating official misconduct in units of public administration and alleged or suspected misconduct by members of the Queensland Police Service (QPS)
- monitoring, reviewing, co-ordinating and initiating reform of the administration of criminal justice
- overseeing criminal intelligence matters and managing criminal intelligence specifically with respect to major and organised crime and official misconduct
- providing witness protection
- in certain situations, investigating organised or major crime
- overseeing and reporting on reform of the QPS
- through research, investigation and analysis, providing policy directives,<sup>4</sup> and recommendations with respect to law enforcement priorities, education and training of police, revised methods of police operation, and the optimum use of law enforcement resources.

It is the Official Misconduct Division, and more particularly the Complaints section, which is primarily responsible for with the oversight of police conduct and the investigation of complaints against police.

The main role of the Division in terms of the oversight of police conduct is to assess and investigate complaints of misconduct. However, the Division also has a monitor and review function in relation to complaints of a minor nature, investigated by the QPS.

Complaints against members of the QPS are divided into three categories: 'breaches of discipline', 'misconduct' and 'official misconduct'. A breach of discipline is a breach of any provision of the *Police Service Administration Act 1990* or directions of the Police Commissioner. Breaches can commonly be described as a violation or dereliction of duty. Misconduct matters are more serious. Misconduct is defined as disgraceful, improper or other conduct unbecoming an officer; or conduct

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<sup>4</sup> The CJC's practice has been to rely on recommendations and informal feedback and advice, rather than policy directives.

that does not meet the standard of conduct reasonably expected by the community of a police officer (*Police Service Administration Act 1990*, s. 1.4). Official misconduct is the most serious category of complaint in that it involves conduct of such a nature that it constitutes, or could constitute, a criminal offence or a disciplinary breach warranting dismissal. Furthermore, the conduct must involve the officer acting in his or her capacity as a police officer in a manner that is not honest or impartial, involves a breach of trust, or a misuse of information.

The CJC is formally responsible for investigating all allegations of misconduct and official misconduct against police. However, it frequently refers cases of minor misconduct back to the QPS for investigation on behalf of the CJC. When the investigation has been concluded, the CJC reviews the investigation report, examines the recommendations and determines if the complaint has been substantiated.

Police are obliged to report all complaints of misconduct to the CJC. The QPS is responsible for dealing with complaints involving breaches of discipline, but through agreement, the QPS also notifies the CJC of all complaints alleging breaches of discipline. The CJC assesses all complaints to determine whether they involve breaches of discipline or misconduct. As with other jurisdictions in Australia, many complaints are disposed of without a full investigation. If at the initial assessment stage it is decided that additional information is required, preliminary inquiries are carried out by seconded police or civilian investigators who report back to the head of the assessment unit, a civilian senior lawyer.

If a complaint is assessed as a breach of discipline, it is referred to the QPS for action and the CJC has no further interest in it. If the complaint is assessed as a misconduct matter, the CJC is responsible for its investigation. The CJC may also refer misconduct matters assessed as minor to the QPS for investigation. However, in such instances the CJC still reviews the investigation. At the completion of the police investigation, the CJC is provided with a detailed report which is reviewed by a civilian senior legal officer. In addition, at any stage of the investigative process the CJC can recall the complaint. This would happen, for instance, if a complainant made a complaint about the police investigator or if preliminary inquiries showed suspected criminality.

If a complaint is assessed as serious misconduct, official misconduct or criminal in nature, the CJC retains carriage of the investigation. In such cases the matter is usually referred to one of two complaints teams for investigation. The teams comprise seconded police, civilian investigators (former police) and civilian lawyers. The teams are co-operatively managed by a senior lawyer and an inspector of police, but the ultimate responsibility for the decisions of the team rest with a civilian senior legal officer. The teams have access to a financial analyst and to intelligence material if necessary. At times the teams also make use of expertise in other units of the CJC; for example, proceeds of crime, witness protection and surveillance.

On occasions, the CJC will have the QPS conduct a preliminary investigation into a complaint which has been assessed as possibly constituting criminal or official misconduct. However, in such instances the CJC retains responsibility for the investigation. The CJC's Complaints Section closely monitors these matters. The police officers follow strict, detailed guidelines laid down by the CJC. The officers are told who the CJC wants interviewed and what their report is to include. When the report is received by the CJC the complaint goes through the normal assessment process. The officer, or officers, who are the subject of the complaint, are interviewed by CJC personnel.

Allegations which involve major or organised crime where the CJC has jurisdiction, or serious complaints against police of a more complex nature go to a Multi-Disciplinary Team for investigation. These teams are comprised of seconded police, former police, accountants and civilian lawyers and are supported by intelligence analysts. The teams also have access to the expertise found in other units of the CJC. The teams are headed by a senior civilian lawyer or police officer. The final responsibility for the Multi-Disciplinary Teams' decisions rest with the Director of the Official Misconduct Division, who is a senior lawyer.

### *SECONDED POLICE*

The Complaints Section of the CJC has around 23 seconded police, who are primarily used in the assessment and investigative stage of the complaints process. To a lesser extent the Section also uses former police. In addition, seconded police are used in the surveillance and witness protection areas, and in Multi-Disciplinary Teams.

### *INVESTIGATIVE POWERS*

The CJC can require a person to furnish information or produce material that it considers relevant to an investigation or proposed investigation.<sup>5</sup>

The CJC can enter and search premises of a unit of public administration (which includes the QPS), inspect records, seize or remove them from premises and/or make copies or take extracts. It can make application to a judge of the Supreme Court for a warrant to enter and search premises (as specified in the warrant), search any person on the premises, seize records or things as stipulated in the warrant, and can make a copy or extract of records.

The CJC can summons a person to attend before it. If a person has been served with a notice to attend as a witness and fails to comply with that notice, the Chairperson of the CJC can make application to a Supreme Court judge for a warrant to be issued for the person's apprehension.

The CJC can also apply to a Supreme Court judge for authority to use a listening device, to take possession of a passport or other travel documents and to take possession of instruments of title and financial documents. It can make copies of and inspect bank records and records from share brokers, and require a person holding an appointment in a unit of public administration and any person associated with that person, to furnish an affidavit relating to their assets.

### *SANCTIONS*

Subsequent to its investigation of misconduct, the CJC may only make recommendations to the Commissioner of Police. If the Police Commissioner disagrees with a CJC recommendation, the CJC has no avenue of appeal.

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<sup>5</sup> This does not apply if a person is before a Misconduct Tribunal on a charge of official misconduct. Misconduct Tribunals are discussed below.

The situation is different with respect to official misconduct. If, after investigation, it is recommended that an officer be charged with official misconduct, the CJC can require the Commissioner of Police to have a police officer so charged and placed before a Misconduct Tribunal, where a determination takes place and sanctions can be imposed.

Misconduct Tribunals are attached to the CJC administratively, but operate independently.<sup>6</sup>

Misconduct Tribunals receive evidence on oath. They are not bound by the rules of evidence or the practice of any other court or tribunal. The Tribunals may inform themselves of any matter and conduct proceedings as it thinks fit. Under certain circumstances they can proceed in the absence of the person who is the subject of the hearing.

The Tribunals have two jurisdictions: the original and appellate. In the original jurisdiction the Tribunals have the power to investigate and determine charges of official misconduct against prescribed persons. If a Tribunal finds the charge is established, it has the power to determine punishment ranging from dismissal to a fine. The original jurisdiction is exclusive. A person aggrieved by a decision in this jurisdiction can appeal to the Supreme Court.

In the appellate jurisdiction, the Tribunals have the power to review decisions (excluding those of a Court or Misconduct Tribunal) made in relation to a disciplinary charge of misconduct. When exercising its appellate jurisdiction a Tribunal informs itself of the facts and determines the issue afresh. It has the power to affirm, quash or substitute a decision. Decisions taken in the appellate jurisdiction are final and conclusive.

### ***OWN MOTION POWERS***

The CJC has own motion powers; that is, it is able to independently determine whether it will investigate a matter without receipt of a complaint.

### ***COMPLAINTS BY POLICE AGAINST OTHER POLICE***

The CJC has the power to investigate complaints made by police against other police. Furthermore, members of the QPS are under a positive duty to report misconduct and suspected misconduct to the Commissioner of Police and the CJC. Failure to do so attracts a penalty.

It is an offence under section 7.3 of the *Police Service Administration Act 1990* to take any action detrimental to a police officer because that officer reported or took action to deal with misconduct or a breach of discipline.

### ***INFORMAL RESOLUTION – CONCILIATION***

Informal resolution was introduced into the QPS in July 1993, largely at the instigation of the CJC. This is a method for dealing with minor complaints such as incivility, rudeness and inappropriate language. Senior police officers designated to handle such matters are expected to act as conciliators not investigators. The focus is on complainant satisfaction rather than on determining if an offence has been committed.

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<sup>6</sup> The CJC has been seeking to have the Tribunals made totally separate from the CJC.

The new procedures were introduced in the expectation that they would decrease the time taken to deal with complaints, free up police resources from costly formal complaint investigations, and provide more satisfaction for complainants, the officer complained about, and the senior officers responsible for handling complaints. (See CJC 1994 for an evaluation of these new procedures.)

If a complaint is assessed as a breach of discipline, the QPS decides whether the matter is appropriately dealt with by informal resolution. However, if the CJC, upon reviewing the matter, believes that the complaint is one of misconduct, the CJC decides if it is suitable for informal resolution. In addition, complaints which are initially classified as misconduct are assessed by the CJC to see whether they are suitable for informal resolution.

### *ACCOUNTABILITY*

The CJC is accountable to the all party Parliamentary Criminal Justice Committee (PCJC) and through it to the Parliament.

The PCJC monitors and reviews the activities of the CJC and reports to Parliament. The CJC provides monthly reports to the PCJC and the CJC's Directors attend before it.

The Committee may request the CJC to elaborate on specific issues or address matters that have come to the Committee's attention and can hold public hearings into the CJC's activities.

The CJC also produces an Annual Report for tabling in Parliament.

## OMBUDSMAN OF NEW SOUTH WALES – NEW SOUTH WALES POLICE

### *ROLE AND FUNCTION*

The New South Wales (NSW) Ombudsman has the power to monitor, review and investigate complaints against the police. However, like most other jurisdictions in Australia, 'modest funding' restricts monitoring and the capacity of the Ombudsman to undertake direct investigations. The latter are initiated in only the most serious or publicly important cases.

The NSW Ombudsman's role is essentially to determine the appropriate course of action; to determine if a complaint is sustained or not sustained; and, if necessary, to monitor an investigation or conduct a direct investigation. The police are obliged to notify the Ombudsman of all complaints except those of a minor nature which are more appropriately dealt with by the police service as internal management issues. Examples of such complaints are absence from duty or failure to attend court.

The Ombudsman reviews all complaints against the police at various stages of the complaints process. There is a determination after the preliminary inquiry stage as to whether the Ombudsman will decline to investigate or investigate. Another determination occurs after an investigation by the NSW Police Internal Investigation Unit (IIU) when the decision is made about whether the complaint is sustained or not sustained. The Ombudsman also has the right to monitor investigations and re-investigations at various stages of the process and to conduct direct investigations. In essence the Ombudsman determines the appropriate course of action in relation to a complaint.

The NSW Police IIU conducts the majority of investigations. Having completed its investigation, the Unit then forwards the file to the Ombudsman who determines whether the complaint is sustained or not, and makes recommendations for appropriate action.

Where the Ombudsman finds that a police officer has acted improperly or illegally, he or she can recommend disciplinary action to the Police Commissioner.

In accordance with an agreed arrangement between the Ombudsman and the Police Commissioner, the Ombudsman can monitor ongoing police investigations into complaints about alleged police misconduct. The Ombudsman, or one of his or her officers, may be present during the interview stage and can confer with the investigating officers in relation to the conduct and progress of the investigation. The Commissioner of Police is obliged to provide the Ombudsman with any documents or other material requested in respect of the investigation.

The Ombudsman finds this is a valuable power as it allows officers from the Ombudsman's office to confer with police 'in a timely manner'. This is seen as preferable in some cases to reviewing the matter after the police investigation is completed. Monitoring powers also allow investigative staff from the Ombudsman's office 'to get an immediate and ongoing feel for the progress of the matter under scrutiny. This is found to be extremely helpful when assessing an investigation submission and determining whether a complaint is sustained' (NSW Ombudsman's Office Annual Report 1993-94:36).



### *OWN MOTION POWERS*

The Ombudsman does not have the ability to independently determine to investigate a matter without receipt of a complaint in relation to police misconduct (*Police Service Act 1990*) but does have own motion powers in relation to administrative matters involving the police service (*Ombudsman Act 1974 - (NSW)*).

### *COMPLAINTS BY POLICE AGAINST OTHER POLICE*

The Ombudsman has the power to investigate complaints made by police about other police.

### *SECONDED POLICE*

There is presently only one seconded police officer on the Ombudsman's investigative staff.

### *INVESTIGATIVE POWERS*

When conducting an investigation in relation to complaints against police, the Ombudsman has the power to: require a person to produce material; enter and search premises; inspect records, seize or remove records or make copies; and to require a person to answer questions provided they are not self incriminatory. The Ombudsman can also summons a person to attend. Non-attendance is in breach of the *Royal Commission Act* and renders the person liable to prosecution. The normal course would be for the Ombudsman to refer such a matter to the Director of Public Prosecutions who would arrange for the person to be charged and arrested.

### *SANCTIONS*

The Ombudsman does not have the power to impose sanctions: he or she can only make recommendations to the Commissioner of Police. If the Commissioner does not concur with the Ombudsman's recommendations the Ombudsman may refer the issue to the President of the Police Tribunal. The Police Tribunal is an independent judicial body with both original and appellate jurisdiction. The Tribunal does not have the power to determine punishment but may make recommendations to the Commissioner. These can range from dismissal to a reprimand.

The Ombudsman also has the right to make a special report to Parliament on a matter.

### *INFORMAL RESOLUTION-CONCILIATION*

New South Wales legislation provides for conciliation of minor complaints. The majority are resolved by the NSW Police Service and complainants through the process of 'open and informal discussions' (NSW Ombudsman's Office 1994:2). Some cases require the active participation of the Ombudsman's staff.

The Ombudsman's office is provided with details of all finalised conciliations for review. The Office further audits the process through complainants' surveys and visits to police stations. The Ombudsman views this method of dispute resolution as most effective, and more importantly, as producing a high level of complainant satisfaction.

### *ACCOUNTABILITY*

The NSW Ombudsman is accountable to the Parliamentary Joint Committee on the Office of the Ombudsman, and to the Parliament.

The NSW Parliamentary Joint Committee's role includes the monitoring and review of the exercise of the Ombudsman's functions. The Committee may report to both Houses of Parliament on any matter concerning the Ombudsman or connected with the exercise of the Ombudsman's function. The Joint Committee may also report on any changes it recommends to the functions, structures and procedures of the Office of the Ombudsman. The Committee must examine the annual report of the Office and report on it to Parliament. However, the Committee is not authorised to reconsider any findings, recommendations or determinations. The Committee also cannot investigate any conduct or reconsider any decisions the Ombudsman may make concerning whether or not to investigate.

## VICTORIAN DEPUTY OMBUDSMAN – VICTORIA POLICE

### *ROLE AND FUNCTIONS*

Victoria has a Deputy Ombudsman (Police Complaints). This office is a separate statutory office created by the *Victorian Ombudsman Act 1973*. The Deputy Ombudsman primarily performs a monitor and review function: most complaints against police are investigated by the Internal Investigation Department of the Victoria Police.

The Victoria Police notify the Deputy Ombudsman of any complaints they receive and must report on investigations as the Deputy Ombudsman requires. The arrangement reached between the Police Commissioner and the Deputy Ombudsman is that the police will report on each investigation within two months and monthly thereafter.

When police have completed their investigation, and before any conclusions are drawn, the Deputy Ombudsman reviews the police investigation. He or she may choose to investigate further, or may request the police to conduct further investigations.

The Deputy Ombudsman has the power to conduct his or her own investigation at the beginning of an investigation, or at any stage of the process. The Deputy Ombudsman may also choose to assign a person from the office to liaise with the police throughout an investigation. This may be done in relation to complex matters, if it appears that there could be a heavy demand on resources, or if the review at the end of the process would be complicated. In these circumstances, the Deputy Ombudsman feels that it makes more sense to have an officer across the problem at the outset (Annual Report 1992-93:8).

Despite having the power to conduct investigations, the Deputy Ombudsman primarily performs a monitor and review function. The review process looks at the 'relevance, thoroughness and comprehensiveness' of police investigations and the 'soundness' of proposed outcomes (Annual Report 1992-93:10). At the very least, the Deputy Ombudsman conducts a thorough review of the police file. This may involve discussions between the revising officers and the investigating police officer, interviews with the complainant and other inquiries.

The review process is independent of the police and the Deputy Ombudsman does not depend entirely on the police for information. He or she may call for a brief of evidence, have a person from the Deputy Ombudsman's office inspect the scene of the incident, contact independent witnesses, and seek clarification on any matter.

If the Deputy Ombudsman has any reservations about a withdrawn complaint, he or she contacts the complainant, and other persons if necessary, to ensure that no undue pressure was placed on the person to withdraw. If for any other reason the Deputy Ombudsman is dissatisfied about particular aspects of an investigation, he or she may request the Police Deputy to conduct further investigations. Alternatively, the Deputy Ombudsman may choose to take over the investigation from police and conduct his or her own further investigations. 'That decision is entirely [his]' (Victorian Deputy Ombudsman's Annual Report 1991:55).

### *OWN MOTION POWERS*

The Deputy Ombudsman (Police Complaints) is not able to independently determine to investigate a matter without receipt of a complaint.

### *COMPLAINTS BY POLICE AGAINST OTHER POLICE*

The Deputy Ombudsman cannot receive complaints from members of the Victoria Police about the conduct of other police. The Victoria Police investigates those complaints itself. However, there is an informal arrangement that the Deputy Ombudsman will review the police investigation. Under this arrangement, the Victoria Police has agreed to respond to the Deputy Ombudsman's review in the same manner it would to any review by the Deputy Ombudsman of the police investigation of a citizen's complaint.

### *SECONDED POLICE*

The Ombudsman's office does not have seconded police officers on staff but has employed two former police officers to investigate complaints against the police.

### *INVESTIGATIVE POWERS*

In the course of an investigation the Deputy Ombudsman can: require a person to answer questions and produce material; enter and search premises; inspect records, seize and remove records and make copies. He or she can also summons a person to attend a hearing and give sworn evidence. The sanction for non-appearance is set down in the *Evidence Act*, which provides for a penalty of \$1500 or three months imprisonment.

### *SANCTIONS*

The Deputy Ombudsman can make formal recommendations to the Chief Commissioner of Police in relation to sanctions, but if the Chief Commissioner disagrees the Deputy Ombudsman cannot enforce them. The procedure for resolving disagreements between the Chief Commissioner of Police and the Deputy Ombudsman in relation to such matters is laid out in the *Police Regulation Act 1958*. The matter goes to the Minister for Police and Emergency Services unless criminal charges are involved, in which case the matter goes to the Director of Public Prosecutions.

### *INFORMAL RESOLUTION -- CONCILIATION*

The Deputy Ombudsman has an oversight role in the area of informal conciliation. The Victoria Police use the informal conciliation process for minor matters such as discourtesy, but not for more serious allegations such as assault. The outcome of the conciliation process is confirmed with the complainant by letter.

### *ACCOUNTABILITY*

The Deputy Ombudsman (Police Complaints) is accountable to the Parliament. This is done primarily through the tabling in Parliament of an Annual Report.

## PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS – WESTERN AUSTRALIA POLICE

### *ROLE AND FUNCTION*

Western Australia does not have a dedicated police complaints body. The Parliamentary Commissioner for Administrative Investigations (PCAI), also referred to as the State Ombudsman, monitors police investigations of complaints against the police and, in selected cases, reviews the completed investigation. The PCAI can also investigate complaints against the police but only after the police have had a reasonable opportunity to investigate (42 days). If the Commissioner of Police needs an extension beyond 42 days, he or she is required to get the agreement of the PCAI. This allows the Parliamentary Commissioner to monitor the time police take to complete an investigation.

Complaints received by the PCAI in respect of police are forwarded to the Western Australia Police Force to investigate in the first instance. However, by agreement with the Commissioner of Police certain complaints are chosen for assessment by the PCAI at the outset, or at different stages of the complaints process. These are usually the more serious cases such as allegations of grave threats, intimidation, assault or excessive force. When cases are selected for assessment, the Commissioner of Police is obliged to furnish the PCAI with a progress report 21 days after the commencement of the investigation. The PCAI can discuss any aspect of the progress report with the Police Commissioner. The PCAI's assessment occurs after the police investigation is completed and before the complainant is advised of the outcome. Even with serious cases, the PCAI has no power to direct an investigation; it can only assess the adequacy or otherwise of the police investigation at the completion of the process and consider the investigating officer's recommendations.

The PCAI may become directly involved in an investigation if the complainant indicates that he or she is dissatisfied with the outcome of the police process. At that point, the PCAI makes a detailed assessment of the police investigation, including an examination of the police file. Depending on the nature of the problem, this may lead to interviews with the complainant and any civilian witnesses by the PCAI's investigating officers. If it is considered appropriate, court transcripts and videos can be examined and site inspections carried out. The PCAI may then decide to conduct a formal or informal investigation. Formal investigations are by way of a hearing chaired by the PCAI. The PCAI has recently been given the power to delegate certain Royal Commission powers in respect of formal inquiries to other senior staff. However, the PCAI has indicated that such delegations are unlikely except in relation to more serious cases.

The PCAI has the authority to access all completed police investigations before the complainant is advised of the outcome. In practice this oversighting function is generally restricted to the more serious cases.

The Police Commissioner informs the complainant by letter of the outcome of the investigation. The Commissioner's letter also advises that if the complainant is not satisfied with the result of the police investigation he or she can contact the PCAI. If the PCAI believes that the police investigation was inadequate, the case is usually referred back to the Commissioner of Police for further investigation. After the additional investigations are completed, the file is returned to the PCAI for further review.

### *OWN MOTION POWERS*

The PCAI does not have own motion powers in respect of police. However, the PCAI does have this power with respect to other departments within its jurisdiction. The Commissioner of Police may request the PCAI to conduct a direct investigation if he or she deems it appropriate in the circumstances: the PCAI has indicated that such requests will be seriously considered.

### *COMPLAINTS BY POLICE AGAINST OTHER POLICE*

The PCAI can investigate complaints made by police against other police.

### *SECONDED POLICE*

The PCAI does not have any seconded police as investigators, but does use former police.

### *INVESTIGATIVE POWERS*

The PCAI has the power to take evidence on oath and can examine a person without representation, although normally this course of action would not be adopted. The PCAI has power to enter and search premises; inspect records, seize or remove records or make copies; and require a person to produce material and to attend. The PCAI has Royal Commission powers and can issue a warrant in his or her own right; he or she can summons a person to attend, with failure to attend being an offence.

A formal investigation by the PCAI must be conducted in private. The PCAI is obliged to notify the complainant, the Commissioner of Police and the Police Minister of the outcome of the investigation.

After the investigation, the PCAI can make recommendations that a complainant receive redress and/or that a procedure, practice or legislative provision be examined to try and prevent a similar complaint arising in the future. However, the PCAI has no enforcement powers.

### *SANCTIONS*

If, after an investigation, the PCAI believes that a breach of discipline or misconduct has occurred on the part of a police officer, the PCAI is obliged to report to the Commissioner of Police together with appropriate recommendations. A copy of the report is also forwarded to the Minister of Police. The PCAI has no power to enforce its recommendations; how or if an officer is to be disciplined remains the responsibility of the Commissioner of Police.

### *INFORMAL RESOLUTION – CONCILIATION*

Procedures and guidelines are in place to enable minor complaints against the police, such as those relating to traffic matters, demeanour and misunderstanding of police procedures, to be informally conciliated. Conciliation is conducted by the police, but the PCAI's office is advised of all matters which have been the subject of conciliation and is able to vet the process. In every case, the complainant is advised that if the conciliation is unsuccessful an approach can be made to the PCAI's office. If an approach is made, the PCAI decides whether to have further enquires made or to conduct a separate investigation.

### *ACCOUNTABILITY*

The PCAI reports directly to the Parliament through the two Presiding Officers and is responsible to the Parliament, for example, through the tabling of an Annual Report.

## POLICE COMPLAINTS AUTHORITY – SOUTH AUSTRALIA POLICE

### *ROLE AND FUNCTION*

South Australia is currently the only Australian jurisdiction with a dedicated Police Complaints Authority (PCA). The primary role of this body is to monitor internal investigations conducted by the police department's Internal Investigation Branch (IIB) and to assess the conduct of police officers who are the subject of complaints.

Complaints can be received by either the Police Department or the PCA, but all complaints must be registered with the PCA. It scrutinises these complaints and can reclassify or redirect an investigation. The PCA has the power to require the IIB to provide it with information on the progress of an investigation and can inspect documents and other material which the Branch may have. The PCA can also direct (supervise) any investigation as it sees fit.

Provisions in the *Police (Complaints and Disciplinary Proceedings) Act 1985* allow the PCA to conduct an investigation if the Authority considers it necessary. In practice, this is the exception not the norm and usually happens only when the allegations are against senior police officers, or members of the IIB, or involve complaints concerning 'policies, practices or procedures of the South Australia police force'.

The usual practice is that once all investigations are completed by an officer of the IIB he or she prepares a comprehensive report. The report includes a summary of the investigation, conclusions and recommendations. This report is then forwarded to the officer in charge of the IIB (Commander) who in turn forwards the file to the Deputy Commissioner of Police before a summary report and the investigation file is sent to the PCA.

The PCA makes findings in relation to the issues raised by the investigations and assesses whether the conduct falls within section 32 (1) of the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

### *OWN MOTION POWERS*

The PCA is not able to independently determine to investigate a matter without receipt of a complaint.

### *COMPLAINTS BY POLICE AGAINST OTHER POLICE*

The PCA can investigate complaints made by police about other officers but only if they are lodged with the PCA, not if they are made to the Police Department.

### *INVESTIGATIVE POWERS*

If the PCA decides to conduct an investigation it must be done in private. The PCA can require a person to produce material and can enter and search premises, inspect records, seize or remove records or make copies.



The PCA has the power to require people to attend and produce material. It is an offence under the Act to fail to respond. On attendance, the PCA has the power to compel the person to answer questions with qualifications. However, people can refuse to answer on the grounds that it may incriminate them or a close relative.

### *SANCTIONS*

The PCA can recommend disciplinary action to the Police Commissioner, ranging from charging a person with an offence or breach of discipline to taking no further action in the matter. If the Commissioner disagrees with the PCA's recommendation he or she is obliged to confer with the PCA. If no agreement can be reached the matter is referred to the Attorney-General. The PCA has no sanctioning powers, but once the Police Commissioner agrees with a PCA recommendation he or she is obliged to implement it.

### *INFORMAL RESOLUTION – CONCILIATION*

South Australia uses conciliation and informal resolution although conciliation is used only infrequently.

Informal resolution was recently introduced to decrease the number of complaints dealt with by any one of the formal processes established by the *Police Complaints and Disciplinary Proceedings Act 1985* (conciliation, determination or assessment).

Allegations considered suitable for informal resolution are those of a minor nature and include complaints that, even if proved, would not attract a criminal or disciplinary charge; for example: use of bad language, incivility or jostling in a crowded situation.

Complaints can only be resolved through the informal process if the complainant agrees. He or she can withdraw that consent at any stage of the process. A 'resolving officer' – a member of the South Australia Police Service of the rank of sergeant or above – attempts to informally resolve the complaint. The IIB receives a copy of a report from the resolving police officer. It then decides if the matter has been successfully resolved and advises the complainant of the decision in writing.

The Commander of the IIB forwards a report to the PCA which reviews the action taken and considers whether the complaint has been properly resolved. This audit by the PCA may include contacting the complainant to ensure he or she is satisfied with the process.

### *ACCOUNTABILITY*

The Police Complaints Authority is accountable to the Parliament, primarily through the tabling of its Annual Report.

## NORTHERN TERRITORY OMBUDSMAN – NORTHERN TERRITORY POLICE

### *ROLE AND FUNCTION*

The Northern Territory does not have a dedicated police complaints body. Part of the Ombudsman's function is to investigate the actions (or failure to act) of members of the Northern Territory Police. The Ombudsman's jurisdiction covers administrative and operational behaviour.

The Ombudsman primarily performs a monitor and review function. Complaints can be received by either the Police Department or the Ombudsman. However, the Ombudsman scrutinises all complaints at the initial stage of the process.

If a complaint is lodged with the Ombudsman he or she is obliged to refer the matter to the Commissioner of Police prior to an investigation being commenced. Complaints are investigated through the Northern Territory Police Force's Inspectorate, but the actual investigation of the complaint is undertaken by the Police Command with responsibility for the area concerned. The Inspectorate has a general involvement in administrative processing, monitoring and review of complaints and the senior officer of the Inspectorate is a member of the Joint Review Committee (JRC). The JRC is comprised of the Deputy Ombudsman and the Superintendent in charge of the Police Force's Inspectorate. The Inspectorate does not nominate the investigating officer, or have any direct authority over the investigating officer.

The Northern Territory Ombudsman's office considers that the JRC has the power to issue specific instructions if necessary. However, police investigators and officers of the Commands have queried this power. Recent discussions between the Ombudsman and the Commissioner of Police indicate that the roles of the respective parties may soon be clarified.

The JRC is not involved in less serious complaints. At the completion of investigations into these type of complaints, the Commissioner of Police writes to complainants advising them of the outcome. The Ombudsman informs complainants that, if they are dissatisfied with the findings of the police investigation, they can ask the Ombudsman to review it. The Ombudsman can decide either to refer the matter back to the police for further investigation or to conduct an independent investigation. If the Ombudsman decides to proceed to a formal investigation he or she is obliged to notify the Minister, the principal officer of the Police Department and the member of Parliament for the electoral district in which the complainant resides. Alternatively, the Ombudsman can utilise the preliminary inquiry provisions of the *Ombudsman (Northern Territory) Act* which do not require notification to the Minister.

### *OWN MOTION POWERS*

The Northern Territory Ombudsman is able to independently determine to investigate a matter without receipt of a complaint.

### *COMPLAINTS BY POLICE AGAINST OTHER POLICE*

The Northern Territory Ombudsman has the power to investigate complaints made by police against other police, provided that these do not relate to employment matters or matters which arise when a police officer is acting in a private capacity (when off duty and not using any police powers).

### *SECONDED POLICE*

The Northern Territory Ombudsman does not have any seconded police but has used former police as investigators.

### *INVESTIGATIVE POWERS*

If the Ombudsman is conducting an investigation he or she has the power to require a person to attend and to produce material. The Ombudsman can examine a person on oath and without representation, enter and search premises, inspect records and seize or remove records and make copies.

The Ombudsman can summons a person to attend. A person who fails to comply with a summons can be prosecuted for failing to attend.

The Ombudsman has no authority to apply for or obtain a warrant to enter and search premises, search a person on the premises, seize records or things, or make copies. However, section 8(1) of the *Inquiries Act*, which applies to the Ombudsman, provides that the Ombudsman 'shall at all times have full and free access to all buildings, places, goods, books, documents and other papers for the purposes of the inquiry'. To refuse access would be an offence.

### *SANCTIONS*

The Northern Territory Ombudsman can make formal recommendations to the Commissioner of Police in relation to the type of disciplinary action he or she believes appropriate, but the Office has no compulsive powers. If the Commissioner does not take up the Ombudsman's recommendation, the Ombudsman can furnish a report on the disagreement to the Minister. The Minister is obliged to table the Ombudsman's report in the Assembly within three sitting days of its receipt.

### *INFORMAL RESOLUTION – CONCILIATION*

In certain cases the Ombudsman may agree to a complaint being determined as 'minor'. In such cases, attempts at conciliation are allowed without there being any finding of fault (Northern Territory Ombudsman's Annual Report 1993-94:84). All matters that are conciliated have to go back to the Ombudsman for overview. At times, the Ombudsman will also write to a complainant to see if he or she is satisfied with the process and outcome of the conciliation process.

*ACCOUNTABILITY*

The Northern Territory Ombudsman is accountable directly to Parliament, primarily through the tabling of an Annual Report.

## OMBUDSMAN OF TASMANIA – TASMANIAN POLICE

### *ROLE AND FUNCTION*

The Tasmanian Ombudsman's role in respect to police investigations is primarily a review function. Most investigations are carried out by the Tasmanian Police Department's Internal Investigation Unit (IIU). As a matter of management practice the Ombudsman automatically forwards most complaints it receives to the IIU, although this is not obligatory. If complaints are lodged with the Police Department, the Department is under no obligation to advise the Ombudsman of the complaint. However, complainants referred to the Internal Investigation Unit are advised that if they are not satisfied with the IIU's findings they can take the issue up with the Ombudsman. When a complainant expresses dissatisfaction with the police investigation, the Ombudsman makes a preliminary inquiry which may include an examination of the police file. The Ombudsman can also conduct additional inquiries himself or herself.

The Ombudsman can investigate complaints, but is only empowered to investigate administrative action. This restriction may limit the Ombudsman's jurisdiction in certain matters: for example, does street or beat policing entail administrative action? To deal with these limitations, the Ombudsman usually looks at a complaint on the basis of whether the administrative action taken by the IIU constitutes a failure to investigate adequately.

In some circumstances the Ombudsman's office and the police attached to the IIU carry out a joint investigation. This monitoring process avoids duplication of the process and therefore saves time.

If the police have already commenced an investigation, the Ombudsman does not have the power to instruct the Police Commissioner to cease that investigation. Under such circumstances, the Ombudsman would normally allow the police investigation to be completed before pursuing any investigation himself or herself. Alternatively, if special circumstances warranted it, the Ombudsman would reach agreement with the Commissioner as to a mutually satisfactory way of proceeding with the matter.

### *OWN MOTION POWERS*

The Office can independently determine to investigate a matter without receipt of a complaint.

### *COMPLAINTS BY POLICE AGAINST OTHER POLICE*

The Ombudsman can investigate complaints made by police about other police.

### *SECONDED POLICE*

The Ombudsman does not have seconded police as investigators. There have been recent talks about this issue and the Ombudsman has stated that if his role were to be widened to include total monitoring of the IIU function, as has been considered from time to time, he would require a senior police officer to be seconded to the agency. However, the problem for the Police Commissioner is one of resources due to the relatively small size of the Tasmania Police Force.

### *INVESTIGATIVE POWERS*

If the Ombudsman's office conducts an investigation, the *Ombudsman Act 1978* provides that he or she may do so in whatever manner he or she thinks fit. However there are some restrictions. For example, the Ombudsman can enter and search premises, and inspect and copy records, but cannot seize or remove them.

There is a provision under the Act which makes it an offence to obstruct the Ombudsman in the course of his or her duties. If someone tried to prevent the Ombudsman from carrying out relevant investigations, he or she could use this section of the Act to effect compliance.

The Ombudsman's office has the power to require police to answer questions and can summons a person to attend. Failure to attend would be obstructing the Ombudsman's power and would constitute an offence under the Act. The Ombudsman can also invoke the provision of the Act which says he or she can act in any way he or she thinks fit.

Once the Ombudsman has decided to conduct a formal investigation he or she must notify the Minister of Police and give a report to the Police Commissioner.

### *SANCTIONS*

On completion of an investigation, the Ombudsman only has the power to make recommendations to the Commissioner of Police: these may or may not include disciplinary sanctions. The Police Commissioner is asked for a response to the Ombudsman's recommendations. If the Commissioner does not accept these recommendations he or she has to explain why. The Ombudsman can report to the Minister of Police, the Premier and Parliament on any matters of disagreement.

### *INFORMAL RESOLUTION – CONCILIATION*

The Tasmanian Police regularly undertake informal resolution on an 'unofficial' basis, but the Ombudsman does not play any role in this process.

### *ACCOUNTABILITY*

The Ombudsman is accountable directly to the Parliament, primarily through the tabling of an Annual Report.

## COMMONWEALTH OMBUDSMAN – AUSTRALIAN FEDERAL POLICE

### *ROLE AND FUNCTIONS*

The Office of the Commonwealth Ombudsman has responsibility for the supervision of complaints concerning the Australian Federal Police (AFP). The Ombudsman's primary role in respect to complaints against police is to review investigations conducted by the Internal Investigation Division (IID) of the AFP to ensure the adequacy of those investigations.<sup>7</sup> If the Ombudsman believes further investigations are warranted he or she can conduct those investigations, or instruct the IID to do so. Owing to resource constraints the Ombudsman normally refers the matter back to the IID.

Complaints can be lodged with either the Ombudsman's office or the AFP. Each agency is obliged to notify the other of all complaints received, but the Commonwealth Ombudsman ultimately has the power to decide the appropriate course of action.

Regular meetings take place between the IID and the Ombudsman's staff to discuss progress reports and to highlight cases which the Ombudsman considers the IID is taking an 'unduly' long time to finalise.

The Ombudsman has the power, in the first instance, to investigate complaints received about AFP practices and procedures. He or she also has the power to investigate a complaint where it would not be appropriate for the IID to do so, such as if the complaint concerned IID personnel or practices. With the agreement of the Commissioner of Police, these type of investigations are carried out by either the staff of the Ombudsman's office or by a special investigator. Special investigators are often members of the AFP but are independent of the complaint and usually report directly to the Ombudsman.

Occasionally, the Ombudsman attends the complainant's initial interview with the IID. This is usually done at the complainant's request. If the Ombudsman considers a complaint to be 'particularly significant or sensitive' it may be decided that it is important for the office to 'maintain a close scrutiny throughout the investigation' (Commonwealth Ombudsman's Annual Report 1993/94:122). With the agreement of the AFP, an officer from the Ombudsman's office attends when the complainant, witnesses and the AFP member are interviewed. Owing to the resources involved in this approach it is adopted sparingly. However, this practice does provide a 'useful additional monitoring of the investigation of particular complaints' (Commonwealth Ombudsman's Annual Report 1993/94:122).

Once the Ombudsman is satisfied that he or she has sufficient information to determine that a complaint has been adequately investigated, the complainant and the AFP are advised of the decision. If a complaint is substantiated, the Ombudsman also considers the issue of remedy for the complainant and any action that may be necessary in terms of the AFP member involved in the complaint; or any procedure, instruction or education and training program that may require attention.

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<sup>7</sup> The Commonwealth Ombudsman also has responsibility for the investigation of complaints concerning the death of, or involving serious injury to, an Aboriginal person in AFP custody. This is the result of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (recommendations 226(a), (i) and (k)).

### *OWN MOTION POWERS*

The Ombudsman has recently acquired own motion powers for complaints against the police. The relevant provision came into force on 13 January 1995. This means that the Ombudsman may independently determine to investigate the matter without receipt of a complaint.

### *COMPLAINTS BY POLICE AGAINST OTHER POLICE*

The Ombudsman does not have the power to investigate complaints against police made by other police. Any complaint made by another officer, about a police officer's conduct is handled by the Internal Investigation or the Internal Security and Audit Divisions of the AFP. The Ombudsman generally does not see complaints of this nature.

### *SECONDED POLICE*

The Commonwealth Ombudsman does not use seconded police in the investigative stage of the complaints process but does employ former police officers as investigators.

### *INVESTIGATIVE POWERS*

If the Ombudsman's Office conducts an investigation into allegations of police misconduct it has the power to require a person to produce material and to attend. A person can be examined on oath without representation. However, representation is allowed if the Ombudsman believes it is warranted. The Ombudsman also has the power to enter premises and carry on the investigation at that place.

During the course of an investigation a person may be required to answer questions under compulsion. Self incrimination is not a defence to refusing to answer. A person can be summonsed on notice to attend before the Ombudsman. If the person fails to do so, the Federal Court can make an order requiring him or her to attend. It is also an offence not to attend.

### *SANCTIONS*

The Ombudsman cannot impose sanctions on police but can make formal recommendations to the Commissioner of Police. If the Commissioner fails to take adequate or appropriate action within a reasonable time, the Ombudsman may inform the Prime Minister.

### *INFORMAL RESOLUTION – CONCILIATION*

Under section 6A of the *Complaints (Australian Federal Police) Act*, AFP officers (sergeants or above) can try to resolve minor complaints through the conciliation process instead of referring them to the IID. Regardless of whether a satisfactory conciliation is achieved, the conciliating officer must furnish the IID with a brief report about the complaint and the type of action used to try and resolve it. The IID forwards this report to the Ombudsman who considers the adequacy of the action taken. The Ombudsman maintains an overview of the process and monitors complainants' satisfaction with the outcome.



Conciliation is considered a speedy and cost effective way of resolving minor complaints: it is also used as a way of making police supervisors responsible for the handling of complaints that arise in their area of responsibility. This method of dealing with complaints also helps to free up scant resources and may allow the Ombudsman's office 'to become more actively involved in serious complaints from day one . . . [or] in the supervision of the IID investigations' (Commonwealth Ombudsman's Annual Report 1993-94:124).

An expansion of the conciliation process, called 'workplace resolution', is currently being trialed in the Australian Capital Territory component of the AFP. This initiative is aimed at streamlining complaint handling procedures. Workplace resolution also places greater responsibility on line area supervisors to handle complaints. The types of complaints that may be dealt with under the new system include those relating to demeanour, discourtesy, rudeness or other incivility; a misunderstanding of the facts or of the law; and "less than serious neglect" of duty and "less than serious" traffic complaints.

### *ACCOUNTABILITY*

The Commonwealth Ombudsman is accountable to the Parliament primarily through the tabling of Annual Report.



## PART 3 SUMMARY

A number of key features emerge when comparing the oversight bodies in each jurisdiction. While the tendency in Australia is for such bodies to primarily perform a monitor and review function, there has been a move towards giving these bodies the power to conduct their own investigations. Most jurisdictions have formally empowered the oversight body to investigate and most of these bodies have similar hearing and compulsive powers available to them. However, depending on the jurisdiction there are limitations on:

- when a complaint can be investigated
- the manner in which a complaint can be investigated
- notification requirements
- whether the agency can investigate complaints made by police against police
- whether the agency can investigate on its own motion
- the level of resourcing.

Examples of these limitations are discussed in more detail below.

### *WHEN CAN THE COMPLAINT BE INVESTIGATED*

Most of the oversight bodies are formally empowered to initiate investigations from the outset of a complaint, but in Western Australia the PCAI can conduct its own investigations only after the police themselves have had 42 days to do so. The PCAI gets directly involved if the complainant indicates that he or she is unhappy with the outcome of the police process. If that happens, staff from the Office make a detailed assessment on the adequacy of the police investigation. If it is dissatisfied, the PCAI can conduct a formal investigation by way of a hearing.

The exception to the 42 day rule is with serious cases involving allegations of grave threats, intimidation, assault or excessive force. According to an agreement with the Commissioner of Police, these types of complaints can be chosen for assessment by the PCAI at the outset or at different stages of the complaints process. The Commissioner of Police is obliged to furnish the PCAI with a progress report 21 days after the commencement of the investigation and the PCAI can discuss any aspects of the progress report with the Police Commissioner. However, even with these more serious cases, the PCAI has no power to direct an investigation; it can only assess the adequacy or otherwise of the police investigation.

### *THE MANNER IN WHICH THE COMPLAINT CAN BE INVESTIGATED*

In Tasmania, the Ombudsman has the power to investigate complaints about police conduct but is restricted to investigating administrative action. This limits the Ombudsman's jurisdiction in certain matters and means that he or she must look at a complaint on the basis of whether the administrative action taken by the Internal Investigation Unit constitutes a failure to investigate adequately. No such restrictions are placed on other oversight bodies.

### *WHETHER THE OVERSIGHT BODY IS NOTIFIED OF ALL COMPLAINTS*

Another weakness in the Tasmanian legislation is that the police are under no obligation to advise the Ombudsman of complaints lodged with the Police Department by members of the public. Elsewhere, all such complaints must be notified to the relevant oversight body.

### *WHETHER THE OVERSIGHT BODY CAN INVESTIGATE COMPLAINTS MADE BY POLICE AGAINST POLICE*

Not all oversight bodies can investigate complaints made by police against other police. For example, the Commonwealth Ombudsman does not have this power. Instead, such complaints are handled by the Internal Investigation Division or the Internal Security and Audit Unit of the Police. The Victoria Deputy Ombudsman (Police Complaints) is also unable to receive this class of complaint, although there is an informal arrangement that the Deputy Ombudsman will review such complaints and that the police will respond to the Deputy Ombudsman's report in the same way they would to any other report dealing with a citizen's complaint against the police.

The South Australia PCA can investigate complaints made by police about other officers but only if they are lodged with the PCA. The Northern Territory Ombudsman has this power provided it does not relate to employment matters or matters which arise when a police officer is acting in a private capacity (when off duty and not using any police powers).

The jurisdictions which have a general power to investigate complaints by police about other officers are Western Australia, Tasmania, New South Wales and Queensland.

### *RESTRICTIONS ON WHETHER CAN INVESTIGATE WITHOUT RECEIVING A COMPLAINT DIRECTLY*

Only, Queensland, the Northern Territory, Tasmania, and the Commonwealth Ombudsman have powers to independently determine to investigate a complaint against police without receiving a complaint directly.

## *RESOURCING*

In most jurisdictions the lack of resources has impeded the abilities of oversight bodies to use their monitoring and investigative powers as often as they would wish. David Landa, the New South Wales Ombudsman from 1988 to January 1995, succinctly summed up the problem when he said that:

[w]e have not been able to fully use the new powers granted to us under recent changes to the Police Service Act because of resource limitations.

The reality is that powers without necessary resources are not true powers. (NSW Ombudsman's Office, Annual Report 1993-94:22).

Similar concerns have been echoed by many oversight agencies throughout Australia. The notable exception is Queensland's Criminal Justice Commission which has been comparatively well resourced since its establishment in 1990.

## *COMPARATIVE TABLE*

The following table summarises the key differences and similarities between the various agencies described in this paper.

COMPARISON OF AUSTRALIAN POLICE OVERSIGHT BODIES

JURISDICTION	QUEENSLAND	NEW SOUTH WALES	VICTORIA	WESTERN AUSTRALIA	SOUTH AUSTRALIA	NORTHERN TERRITORY	TASMANIA	COMMONWEALTH/ AUSTRALIAN CAPITAL TERRITORY
RELEVANT LEGISLATION	CRIMINAL JUSTICE ACT 1989	OMBUDSMAN ACT 1974 PART 8A POLICE SERVICE ACT 1980	OMBUDSMAN ACT 1973 POLICE REGULATION ACT 1958	PARLIAMENTARY COMMISSIONER ACT 1971 ROYAL COMMISSIONS ACT	POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) ACT 1985	OMBUDSMAN (NORTHERN TERRITORY) ACT 1993	OMBUDSMAN ACT 1978	OMBUDSMAN ACT 1976
NAME OF POLICE OVERSIGHT BODY	Criminal Justice Commission	Ombudsman	Deputy Ombudsman (Police Complaints)	Parliamentary Commissioner for Administrative Investigations	Police Complaints Authority	Ombudsman	Ombudsman	Ombudsman
ROLE AND FUNCTIONS	Assess and investigate complaints against police	Monitor and review police investigations	Monitor and review police investigations	Monitor and review police investigations	Monitor police investigations, assess subject officer's conduct	Monitor and review police investigations	Review police investigations	Review AFP investigations
Who can receive complaints?	Police or oversight body	Police or oversight body	Police or oversight body	Police or oversight body	Police or oversight body	Police or oversight body	Police or oversight body	Police or oversight body
Must police notify oversight body of all complaints?	Yes - if official misconduct or alleged misconduct	Yes - except certain agreed managerial matters	Yes - but only if from a member of the public	Yes	Yes - except complaints by police against other police	Yes	No	Yes - except complaints by police against other police
At which stage in the complaints process must police notify oversight body?	Initial stage	Initial stage	Initial stage	Initial stage	Initial stage	Initial stage	If complainant unhappy with police investigation	Initial stage

JURISDICTION	QUEENSLAND	NEW SOUTH WALES	VICTORIA	WESTERN AUSTRALIA	SOUTH AUSTRALIA	NORTHERN TERRITORY	TASMANIA	COMMONWEALTH/ AUSTRALIAN CAPITAL TERRITORY
DOES OVERSIGHT BODY HAVE OWN MOTION POWERS RE POLICE?	Yes	No, except in relation to administrative matters involving the police service	No	No	No	Yes	Yes	Yes
JURISDICTION TO INVESTIGATE COMPLAINTS BY POLICE AGAINST OTHER POLICE?	Yes	Yes	No	Yes	Yes, but only if lodged with P.C.A	Yes, providing officer not acting in a private capacity	Yes	No
DOES THE OVERSIGHT BODY USE SECONDED POLICE AS INVESTIGATORS?	Yes, approximately 23 police officers in Complaints Section	Yes, but only one at present	No	No	Yes, for its own investigations by arrangement	No	No	No

EXTERNAL OVERSIGHT OF COMPLAINTS AGAINST POLICE IN AUSTRALIA

JURISDICTION	QUEENSLAND	NEW SOUTH WALES	VICTORIA	WESTERN AUSTRALIA	SOUTH AUSTRALIA	NORTHERN TERRITORY	TASMANIA	COMMONWEALTH/ AUSTRALIAN CAPITAL TERRITORY
INVESTIGATIVE POWERS OF THE OVERSIGHT BODY								
Can oversight body conduct investigative hearings?	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Can oversight body compel production of documents?	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Can oversight body compel attendance of witnesses &/or impose sanctions for not attending?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does oversight body have power of entry?	Yes, for public authorities. Any other premises require order of Supreme Court Judge	Yes, for public authorities	Yes	Yes	Yes	Yes	Yes	Yes, for Police Department or prescribed authority premises
Sanctions available for failure to comply with investigative powers of oversight body	Guilty of an offence. Sanctions vary between fine of up to 85 penalty units (approx. \$2,500) or up to 3 years imprisonment	Guilty of an offence. Sanctions vary between \$1000 fine to 5 years imprisonment	Guilty of an offence - fine	Guilty of an offence. Sanctions vary between \$1,000 fine to 5 years imprisonment. Under <i>Royal Commissions Act</i> - fine \$250 or 12 months imprisonment or both	Non-police guilty of an offence. Sanction up to \$2,000 or 6 months imprisonment. Police - breach of discipline under Police Regulation Act	Guilty of an offence - can prosecute a person	Matter would be referred to DPP who could issue a summons	Guilty of an offence - imprisonment of 6 months or a fine



JURISDICTION	QUEENSLAND	NEW SOUTH WALES	VICTORIA	WESTERN AUSTRALIA	SOUTH AUSTRALIA	NORTHERN TERRITORY	TASMANIA	COMMONWEALTH/ AUSTRALIAN CAPITAL TERRITORY
Can a police officer be compelled to answer incriminating questions?	Yes	No	No	No	No	No	Yes	Yes
DOES THE OVERSIGHT BODY HAVE POWER TO IMPOSE DISCIPLINARY SANCTIONS?	No <sup>2</sup>	No	No	No	No	No	No	No
DOES THE OVERSIGHT BODY HAVE THE POWER TO MAKE RECOMMENDATIONS ON PROCEDURAL ISSUES?	Yes	Yes	Yes	Yes	Yes	Yes, on any administrative actions as defined in the Act	Yes	Yes
DOES THE JURISDICTION USE INFORMAL RESOLUTION/ CONCILIATION?	Yes	Yes	Yes	Yes	Yes	Yes	Yes, informally at this stage	Yes
BODY TO WHICH OVERSIGHT BODY IS ACCOUNTABLE	Parl. C'tee - Parl.	Parl. C'tee - Parl.	Parliament	Parliament	Parliament	Parliament	Parliament	Parliament

1 If an officer can be compelled to answer, the use which can be made of the answer given under compulsion may be restricted. A police officer may attract a penalty for refusing to answer a question put by a superior officer whether or not he or she is compelled to answer.

2 If the Chair of the C/C reports to the Commissioner of Police that there is a prima facie case of official misconduct, the Commissioner of Police must charge the officer with official misconduct. The Misconduct Tribunal may impose a sanction if it finds an officer guilty of official misconduct.



## REFERENCES

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