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March 2002

The Hon Meredith Burgmann MLC
President
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Parliament House
SYDNEY NSW 2000

The Hon John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker,

I submit a report pursuant to s 31 of the *Ombudsman Act 1974*. In accordance with the Act, I have provided the Minister for Police with a copy of this report.

I draw your attention to the provisions of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make it public forthwith.

Yours faithfully,

Bruce Barbour
Ombudsman



Improving the management of complaints

Identifying and managing officers with
complaint histories of significance

A special report to Parliament under s 31
of the *Ombudsman Act 1974*

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Foreword

Over the past five years there have been extensive reforms to the NSW police complaints system.

Before the Royal Commission into the NSW Police Service (Wood Royal Commission), commanders of local police stations played a lesser role in dealing with corruption and misconduct that occurred at their stations. Today, those local commanders have the primary responsibility for dealing with misconduct in their patrols. This is appropriate.

Increasingly, commanders are better prepared and more committed to dealing with unethical conduct in their commands. With most matters now dealt with at the local level, complaints are finalised faster. Complaint management teams are being established to streamline internal investigations and promote fairness to all involved — officers and complainants alike. Rank and file officers are standing up to criminal and corrupt conduct; almost two-thirds of the 80 officers criminally charged as a result of complaints last year were reported by their colleagues.

There is no doubt that the system can and does deliver results. However, there is always room for improvement.

Commanders must give priority to dealing with complaints more efficiently. In recent years, I have initiated agreements enabling commanders to resolve customer service and minor management issues on the spot. Commanders are getting better at doing this. These agreements have excluded over 1000 complaints from the service's formal investigation process. However, a number of their investigators continue to conduct unnecessarily lengthy and formal investigations. For this reason, I am encouraged that the police service has agreed to run a pilot program to trial faster, smarter approaches to investigating matters.

The police service must also address the way that its handling of complaints can affect officers' morale. I have regularly raised with the police service the need to develop policies making it clear to officers that mistakes — as opposed to corrupt conduct — will not prejudice their careers. This still has not been done, despite pressure also being applied on the service by ordinary rank and file police officers in a number of forums. Supervisors at local commands are best placed to monitor the detrimental effect this has on their officers' morale. Yet I am aware of matters still being handled in a punitive way even when the police conduct under investigation only involves an error of judgement. For this reason, it is critical that local commanders be trained in dealing with these matters in a constructive way. My office has initiated research into this issue. The proposed complaint handling pilot program also provides an opportunity for commanders to develop more effective ways of managing these matters.

A related issue concerns the service's handling of vexatious complaints. Last year I supported legislative changes to allow for the prosecution of those who make malicious complaints. It is too early to assess the impact of this change. However, the power to prosecute those who make malicious complaints must be complemented by a strategy that encourages local commanders to properly identify individuals who abuse the system and to prevent police from wasting resources on pursuing matters without merit. My office has a firm approach to avoid wasting resources on these kinds of matters. The service should do the same. In doing so, it should take care to avoid discouraging those with genuine concerns from blowing the whistle on corruption.

Parliament has given me the role to keep under scrutiny the police complaints system. This role includes flagging the need for specific improvements while recognising the positive work of many police and their commanders. If necessary change is not being implemented quickly enough, I have a responsibility to report my concerns to Parliament. This is the first of a series of related reports that I will present on key issues relating to the police service's management of complaints. It is vitally important that the public be confident that police commanders are properly managing complaints.

My decision to report on the service's management of complaints is also consistent with the need for my office to focus on the effectiveness of overall systems for dealing with unethical conduct, instead of just commenting on individual matters.

The purpose of this report is to highlight the need for police commanders to manage officers with complaint histories of significance, fairly and more effectively. I draw attention in this report to a number of occasions where an officer's complaint history should have been more thoroughly considered by the police service. These examples have been selected, not because they demonstrate the worst complaint histories, but because they clearly illustrate the issues being discussed.

Preliminary research by my office suggests in excess of 200 police officers have complaint histories which indicate they may present a significant risk to the police service and community. Some of these officers have very serious substantiated complaints against them, including criminal matters. Others have between 20 and 40 complaints of varying degrees of seriousness.

This report does not draw conclusions in respect of officers with disturbing complaint histories. The extent of the problem for the police service is not known primarily because the police service has no comprehensive strategy to identify and assess high risk police officers. The police service must ensure a thorough examination of officers' complaint histories to guarantee fairness, to recognise genuine risks and to address the potential for police officers to be victimised through misuse of complaints.

The need for managers to monitor officers with complaint histories of significance

Serving police officers with complaint histories of significance present an immediate and substantial challenge for managers and supervisors in the police service. Although there is scope to remove officers who engage in misconduct, some remain in the service despite compelling evidence of serious misconduct, incompetence and other integrity or performance issues.

Case A

An instructor with a history of sexual misconduct was moved from the Police Academy to reduce his unsupervised contact with student officers. Despite high-level advice barring him from training positions, he was promoted to acting education officer at his new local command. Subsequently he returned to the academy a few weeks later, where he allegedly sexually assaulted a student officer and was criminally charged.

Case B

The Ombudsman recommended that the police service review the management of a detective suspected of perjury. The detective's complaint history included allegations of theft, corruption and bribery. The service's *Threat Assessment* did not consider details of his complaint history nor were investigators of those complaints consulted. The assessment determined the officer posed a low risk of corruption. Three years later, the officer's longstanding corruption has been exposed in public hearings before the Police Integrity Commission.

Without consistent service-wide strategies to identify, supervise and manage officers with complaint histories of significance, their continued presence can pose serious risks to themselves, their colleagues, the police service and members of the public.

An officer's complaint history includes records of complaints made against the officer, the investigation of those complaints and any management action taken during and at the end of the investigation. The complaint history will include complaints about incidents occurring when the officer is on-duty. It may also include incidents when an officer is off-duty — an off-duty drink-driving offence is a clear example.

An officer's complaint history may be significant because it includes one or more serious allegations, such as corruption, perjury or sexual assault. A complaint history may also be significant because it contains a large number of complaints, even if the allegations are not individually serious.

A complaint history may be significant when making risk assessment and other decisions even where allegations are not substantiated, depending on why the claims were not sustained and other surrounding circumstances.

On the other hand, there can be occasions where an officer's complaint history, while on its face potentially significant, is the result of a sustained campaign to discredit that officer. Complaints should always be considered in context and great care must be taken to assess the value (or otherwise) of any evidence related to each complaint.

Primary responsibility for recognising and dealing with officers of concern lies with local commanders. This is consistent with the reforms following the Wood Royal Commission aimed at making the local command level the focus for effective decision-making. Although the initial recourse should be for commanders to try to remedy problems, officers whose behaviour has grossly offended against proper standards of integrity and honesty should not expect anything other than an early exit from the service (Royal Commission into the NSW Police Service (RCPS) Final Report 1997 Vol II, Ch 4, para 4.26).

So important is the local commander's role in identifying and managing serious misconduct, the Wood Royal Commission advocated that it should be integral to assessing their performance:

...the success with which local commanders perform this supervisory and managerial role should be a critical factor in the assessment of their capability to retain command, or to advance to more senior positions within the service. In this regard, the discovery and reporting of corrupt conduct should be seen as a positive factor, rather than as a potential black mark, unless they have been neglectful in allowing it to continue or expand, when with the exercise of reasonable diligence they should have intervened earlier.

RCPS Final Report 1997 Vol II, Ch 4, para 4.26

A useful starting point for commanders is to check the available records. Over time, the police service's complaint handling — and the Ombudsman's oversight of that process — contributes to a potentially significant body of evidence about patterns of conduct. If used fairly, this can be a valuable tool to assist investigators' and managers' decision-making.

The balanced use of complaint histories can, in conjunction with other information available to managers, be used to identify and manage emerging conduct and performance issues before an officer does something that causes serious injury or warrants dismissal. This is especially the case where patterns of unusual or uncharacteristic behaviour indicate an officer is suffering from stress or otherwise having difficulties which affect the officer's ability to cope.

Case C

A drunken officer caused a disturbance at a police social function, making grossly offensive remarks to a female colleague and allegedly touching a male officer on the buttocks and repeatedly grabbing another officer's shirt. After being forcibly removed from the venue, he threatened suicide and had his gun taken from him. There was evidence that he had threatened suicide in the past and that colleagues feared his unpredictable behaviour.

A workplace conference helped resolve concerns between the officer and his female colleague. A psychological assessment of the officer found that this was a one off incident and he was fit to return to operational duties.

The officer's lengthy and disturbing complaint history included several references to excessive alcohol use and showed management action was taken in response to a number of allegations of assault, conspiracy/cover-up, sexual harassment and threatening behaviour. He stood trial for his alleged involvement in conspiring to cover up a serious assault — the charges against him were withdrawn after two aborted trials. He was considered for removal under Commissioner's confidence provisions but was retained. There were two other complaints of inappropriate conduct in the months before the incident at the social function, one concerning his harassment of junior colleagues (dealt with by counselling) and one (not sustained) alleging the sexual assault of a 14 year-old boy.

The particular nature of complaints about this officer raised concerns about his psychological health and capacity to supervise staff. Unfortunately, the service's failure to adequately consider his complaint history when determining its response meant that key witnesses were not interviewed in relation to the incident at the social function. Similarly, the psychological assessment of his suitability to return to duty did not appear to take account of earlier incidents, including evidence of excessive alcohol use. Further complaints since the incident have prompted the service to initiate a risk assessment.

The police service has begun to respond to the challenge of officers with complaint histories of significance.

The recent formation of the police service Complaints Management Steering Committee provides an opportunity for a more coherent service-wide approach to this and other complaint management issues. The police service has advised that the steering committee, set up in 2001, provides 'a forum for the discussion of matters regarding the complaints processes of the NSW Police Service and their implications for the Service and the Community'. The steering committee's terms of reference include determining and recommending strategic directions concerning the complaints process, and coordinating and prioritising relevant police service projects.

Mechanisms which provide an opportunity to better manage officers with complaint histories of significance are also planned or in place. Since early 2001, the principal role of advising local commanders on how to manage these officers has been the responsibility of the Employee Management Branch. This branch is working directly with commanders through initiatives such as the Management Advisory Service, and the recently published *Decision Making Framework* guide to managers.

The Special Crimes and Internal Affairs Command's Corruption Intervention and Minimisation Program, the Audit Group's Command Management Framework, and the increased use of complaint management teams in many commands are also expanding the range of options available to local commanders. Importantly, the operating guidelines for complaints management teams recommend the consideration of an officer's complaint history by all relevant officers, including by the investigator, when making a risk assessment at the time a complaint is received and in the conduct and outcome of an investigation.¹

¹ NSW Police Service, July 2001

However, all of these developments are relatively new. There is already evidence that they are being adopted in a piecemeal fashion, and without full commitment, by some local commands. In addition, they are not a complete response. For example, there is no comprehensive strategy to identify, across the service, those officers with complaint histories of significance.

The steering committee will need to package and coordinate the various initiatives to provide real assistance to commanders and to ensure measurable improvements. Some commanders will need persuading to identify and manage the risks posed by officers with problematic track records.

Checking complaint histories of officers transferring commands

The need for commanders to know about relevant complaint issues is particularly important when officers with complaint histories of significance transfer to their commands. Yet commanders are not always aware of the history of these officers, even when the transfer might be part of a strategy to rehabilitate the officer or reduce the risk for further misconduct.

While officers with poor complaint histories should be encouraged to make a fresh start, commanders are poorly equipped to assist officers to rehabilitate their careers if they know nothing about their past performance. Commanders also need this information to better manage their commands. Knowing their officers' likely strengths and weaknesses enables supervisors to manage their teams in a way that enhances the capacities of their command.

The decision to transfer the instructor in Case A was in response to repeated concerns raised by this office. It took some time for the police service to acknowledge that the officer concerned posed a risk to students living at the Police Academy. The officer's lengthy complaint history included allegations of indecent assault, inappropriate sexual relationships with student officers, untruthfulness and unlawful accessing of confidential information. The transfer should have reduced the officer's unsupervised contact with student officers and given him a chance to get his career back on track. Despite specific advice to the contrary, the officer was promoted to a position where he resumed his contact with student officers. An incident has since occurred and the officer has been charged with sexual assault. The service's failure to follow through with the action it proposed in this case not only exposed more student officers to further misconduct, but also dashed any hope of rehabilitating the officer's career.

As part of the shift to local level decision-making, the Wood Royal Commission anticipated that local commanders would inform themselves of any conduct, integrity, welfare or performance issues affecting officers transferring into their command. This included checking all relevant service records about the performance of individuals, commensurate with fairness and accuracy. In checking an officer's complaint history, the Wood Royal Commission stated that it would be expected that suitable discretion and common sense be applied to ignore stale matters followed by a period of satisfactory service (RCPS Final Report Vol II, Ch 4, para 4.57).

Despite the Wood Royal Commission's advice that local commanders should carefully screen all officers transferring to their commands, complaint histories of significance often remain unnoticed.

Case D

A supervisor was unaware that an officer who had recently transferred from a nearby command was still being investigated for her involvement in the unlawful arrest and serious assault of an Aboriginal woman. The investigation was prompted by concerns raised by a colleague and included an inquiry into the officer's alleged attempts to influence her colleague's version of events.

We alerted the officer's new supervisor to the officer's complaint history, which included other allegations of assaults and customer service issues. The supervisor initially placed her under closer supervision and ensured ongoing support before allowing her to resume full duties.

Once alerted to the officer's complaint history, the supervisor immediately recognised the risk of further damaging confrontations with the community. Another incident would also have significantly undermined any attempts by the officer to get her career back on track. There have been no reports of significant concerns about this officer since the supervisor acted.

Case E

An officer attracted eight complaints from unrelated incidents during a two-year posting at a western NSW location. Management action was taken for several matters, including instances of unreasonable treatment and harassment. When the officer transferred to another location, his new commander knew nothing of the officer's complaint history.

The commander's failure to check the officer's background in Case E left a serious risk unattended. Without knowing of the complaint history of the officer at the previous posting (much less the likely reasons for the numerous complaints), the commander was not in a position to initiate strategies to reduce the risk of further incidents. Once we alerted the commander of the officer's complaint history, he responded with monitoring and support to ensure quick intervention should further issues arise.

The Wood Royal Commission advocated routine checks of all relevant records at the time of officer transfers to discourage the once-common practice of commanders deliberately using transfers to rid themselves of problem officers. Justice Wood argued that it was not in the public interest for local commanders to solve difficulties with individuals in their command by encouraging or forcing their transfer elsewhere (RCPS Final Report Vol II, Ch 4, para 4.38).

There is no doubt that there are still many commanders who welcome the prospect of perceived trouble makers opting to transfer elsewhere. In some cases, a transfer might be the best option. In many cases, however, the problems may persist.

Using complaint histories to enhance investigations

Strategies for using intelligence from complaint-related sources when investigating allegations of misconduct against police officers need not be complex or costly. Basic steps such as checking an officer's complaint history at the outset can greatly enhance the quality and consistency of investigative decision-making. If used responsibly, this approach can also reduce waste in relation to some complaints, freeing up resources to better target recurring issues.

Access to complaint histories should not improperly influence professional investigators. Police officers regularly have regard to criminal and other antecedents in investigating matters on behalf of the public without prejudicing their inquiries. All information provided to investigators should be treated in confidence, just as information about members of the public must be treated in confidence. Sensitive handling of confidential information is a routine element of investigative work.

Checking an officer's complaint history supplements the information already available to investigators, helping with decisions about the degree of investigation required. Such checks can either heighten or allay concerns about the likelihood that, if proved, the conduct alleged might be related to broader conduct, competence, integrity or performance issues. These considerations are relevant to assessing the priority that should be given to particular lines of inquiry and are essential to appropriate investigative decision-making.

Failure to have regard to an officer's complaint history at an early stage of the inquiry can directly impact on the ability of investigators to address key issues. Once an opportunity to collect evidence is missed, it can be difficult to remedy the deficiency — particularly months or years after the original incident.

Case F

An investigator failed to consider a transit officer's extensive complaint history when deciding how to deal with an allegation by the officer's colleague that the officer improperly issued an infringement notice. Subsequent flaws such as a failure to inquire into significant issues and lengthy delays (including a 17-month delay in notifying the Ombudsman), meant important evidence was not obtained or properly tested when relevant records and witnesses were available.

In Case F, a check of the transit officer's lengthy complaint history would have shown that he was already the subject of a Commissioner's warning notice relating to the assault of a juvenile. He was convicted for the assault, but successfully appealed. His supervisor at that time noted: 'All complaints against [the officer] reveal alleged adverse behavioural problems on duty in the area of assault, untruthfulness and ...availing himself of unauthorised leave of absence to travel overseas...I have grave concerns as to this officer remaining as a serving member of the NSW Police Service.'

The investigator's failure to recognise the need to carefully investigate the fresh allegation until well over a year after the alleged misconduct, meant that valuable opportunities to properly obtain and test important evidence were missed. As a result, the investigation was inconclusive. Further doubts about the officer's integrity were not resolved at a time when there were already questions about his suitability to remain a police officer. The failure to gather conclusive evidence (including any exculpatory evidence) when it might have been available led to the officer remaining in the service, but with ongoing and irresolvable doubts about his integrity.

Regrettably, since this complaint the officer has been accused of perverting the course of justice by preparing and signing a fraudulent statement and threatening a colleague with physical harm if he did not also produce a fraudulent statement. He has also been charged with assaulting an offender. The matter is yet to be heard.

The failure to check officers' complaint histories is a common flaw in police internal investigations. The Police Integrity Commission's April 2000 *Special Report to Parliament Project Dresden* noted the low level of pre-investigation research (including the failure to check officers' complaint histories) in its audit of police investigations of Category 1 complaints. It concluded that a quarter of all investigations audited were unsatisfactory or very unsatisfactory for reasons including lack of rigour and having an inappropriate investigator deal with the complaint.

Our own examination of the service's handling of 330 serious Category 2 complaints made preliminary findings that 55 (16.7%) of the investigations were unsatisfactory. In 21 (38%) of those 55 deficient investigations, officers had significant and relevant complaint histories and yet there was no indication that investigators had checked or were aware of the histories. In a further matter the local commander deliberately withheld a relevant complaint history. There were also many additional investigations reviewed in the audit that contained nothing to suggest that complaint histories were checked. However, our own checks showed the service's omission had no impact on the quality of the investigation because the complaint histories in those cases were neither significant nor relevant. Of course, the only way for investigators to know that is to check the relevant records.

The need for balanced assessments

Fairness and common sense dictate that complaint-related information should always be considered in context. Recent patterns of misconduct are obviously likely to be more relevant than any one-off mistakes or incidents that occurred long ago. Personal circumstances or stressful incidents can also impact on an officer's performance, as can poorly managed tensions arising from workplace disputes. The nature of an officer's duties, the officer's experience or seniority, and other individual factors might also be relevant. The more that managers know about the context of past and present conduct, the better informed their management response should be.

The first step in providing a more complete view of an officer's past conduct is to check the actual reports relating to previous complaint investigations and to consult investigators and others who have a first-hand understanding of those matters. With the benefit of hindsight, it is clear that the service's decision not to check details of previous inquiries when conducting its risk assessment of the detective referred to in Case B was an opportunity lost. A more thorough review may have exposed the corruption problems that have since been revealed in the local area much sooner. At the very least it should have provided a firmer basis for determining a course of action in relation to this particular officer.

The type of duties can impact on an officer's complaint history. Highway patrol officers have high rates of contact with members of the public and might be expected to attract a relatively high number of complaints about their demeanour. In some cases this might suggest a need to work on the officer's skills in defusing confrontations with irate motorists, but it may not indicate a lack of integrity.

Similarly, officers who are responsible for targeting those people who the police service describes as 'high risk' offenders, frequently raise concerns about the risk of attracting unwarranted complaints alleging police harassment. Part of the rationale for the service developing a formal Suspect Targeting Management Plan was to address this issue by providing a framework to ensure that individual officers acted appropriately when targeting individuals.² If a person in this context is targeted in accordance with instructions issued as part of a legitimate and legal policing strategy, it should not be difficult for police to establish the basis for targeting the person and provide an appropriate explanation. On the other hand, any officers acting outside those instructions should be alerted to their responsibilities. We have initiated research into these issues to clarify how these matters are presently dealt with, and to identify strategies for potential improvements.

Senior officers implementing unpopular reforms can also be the victim of vendettas by officers resisting reform. Care is needed to critically assess the merits of each complaint to guard against abuse of the complaints system in this way.

Although complaint-related sources can provide a wealth of important information, it will only ever be part of the picture. Management reports, performance records, supervisors' progress reports, records of workplace issues, personal information, commendations, and other sources add important details to the information about an officer. Again, it is essential for investigators and commanders to use their discretion and judgement in assessing the relevance of various factors.

Case G

A probationary constable pointed an unloaded pistol at the head of a female colleague and pulled the trigger. The colleague was unsure as to whether the gun was unloaded. After the colleague complained, the probationary constable constructed a story to shift responsibility for the incident onto his colleague. The service failed to fully investigate key aspects of the incident and its initial management of the probationary constable was limited. His probationary period was extended further.

² *Suspect Targeting Management Plan: Report to the Commissioner's Executive Team*, NSW Police Service, July 2001, p13.

The information from supplementary sources can be compelling. Despite the inherent seriousness of the incident in Case G and the probationary constable's attempts to shift the blame onto his colleague, there was little else in his complaint history to indicate serious concerns. However, the information from other sources was damning. His probationary period had been extended to 2½ years and he was already recognised as an officer who required high levels of supervision. His identified deficiencies included his attitude to supervisors, poor academic progress, his failure to complete work on time and a poor sick leave record. In these circumstances, it is difficult to justify the service's initial decision to extend his probationary period further.

The accuracy of any records relied on is a critical factor in their usefulness. For this reason there is merit in the Wood Royal Commission's advice that aspects of officers' complaint histories should be available to those officers on request. Exceptions may include disclosure to the extent that it involves details of a current investigation or complaint not yet disclosed to that officer, or the provision of sensitive and confidential information, such as the identities of internal complainants. Officers should have the right to have noted on their complaint history matters which are disputed (RCPS Final Report Vol II, Ch 4, para 4.57). The information provided to officers about complaints against them depends on the circumstances. However, in most cases officers should know the extent of their complaint histories and whether the service is monitoring their performance. They should also be entitled to know whether, in what circumstances, and for how long, proven misconduct might affect their prospects for promotion.

Recommendations

As mentioned earlier in this report, there are a number of current police service initiatives to improve the quality of complaint handling by local commands. In general terms, the service's Special Crimes and Internal Affairs Command and the various region commands are the primary sources of advice for local commanders seeking assistance on improving the quality of investigations and the Employee Management Branch has particular responsibilities for advising on the management of officers whose conduct or competence has resulted in a review. Others in the service with an active say in the investigation and management of complaints against police include the Audit Group, local level complaint management teams, the Healthy Lifestyles Branch (including the Drug and Alcohol Testing, Counselling and Education Unit), and Human Resources Services (including counselling and other post-incident support). This list is by no means exhaustive. With so many options available to local commanders with respect to identifying and managing officers with complaint histories of significance, coordination is essential to ensure fairness and consistency across the service.

In light of the issues raised in this report, I recommend that:

1. The police service implement a consistent and fair approach to ensure all commanders are aware of the complaint histories of officers in their command, and strategies to manage any officers assessed as high risk.
2. The police service implement routine screening of the complaint histories of officers transferring from one command to another to ensure commanders are alert to any relevant conduct or performance issues that might need to be managed.
3. The police service implement appropriate access by investigators to relevant information regarding the complaint histories of officers they are required to investigate, to better inform their choice of investigative strategies.
4. The police service implement the coordinated use of supplementary records and advice to better inform local commanders and investigators of the context of past and present complaints.
5. The police service implement safeguards against the inappropriate use of complaint histories with respect to officer transfers and promotions.