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Civilian Oversight of Police in Australia

Colleen Lewis and Tim Prenzler

“Who will guard the guardians?” asked the Roman satirist Juvenalis. Historically, countries like Australia largely preferred to trust police to keep their house in order, with some external guardianship administered by the courts and government. This simple approach has now been found wanting, as numerous inquiries have demonstrated the vulnerability of policing to corruption and misconduct. While the large majority of officers are usually untouched by exposés of corruption, there can be little doubt that constant vigilance and strong measures are required to prevent misconduct becoming widespread and entrenched in police organisations. The issue is no longer one of whether or not the guards need guarding, but of determining the best form of guardianship. A diverse range of strategies and systems has emerged, with competing claims for their effectiveness. One favoured by inquiries is an external body – free from peer pressure and loyalty to police – tasked with investigating complaints and/or monitoring police investigations.

This paper reports on a survey of such bodies in Australia. The main purpose is not to identify a single preferred model, but to raise a set of critical issues about how these bodies should function. One issue concerns the division of labour between police and the oversight body. Others concern the creation of a specialist police body or the inclusion of police oversight within a broader public sector brief. Particular controversy surrounds proactive measures such as integrity testing and covert surveillance. More attention is also now being given to performance indicators in evaluating oversight bodies. This paper will stimulate greater awareness of options for police accountability, and facilitate the exchange of knowledge between stakeholders in pursuit of best practice in the creation and maintenance of police integrity.

Adam Graycar
Director

In many democracies in the 1960s and 1970s televising of civil rights and anti-war demonstrations beamed graphic images of police violence into people's living rooms. Many were shocked by what they saw. At the same time, scandals about corruption and misconduct led to the establishment of commissions of inquiry into various aspects of policing. All were critical of the way police dealt with citizens' complaints and allegations of misconduct (Goldsmith 1991). Police accountability had become a political issue that governments could no longer ignore, and the first report of the newly formed Australian Law Reform Commission (ALRC) was on complaints against police. The 1975 report examined ways of dealing with complaints in a proposed new Federal police force. When the Federal Labor government lost power in 1975, the ALRC's proposals were not proceeded with. However, the Commonwealth's interest continued and the new Coalition government revisited the issue. In 1978 a supplementary report was issued reinforcing the original recommendation that complaints against police should be subjected to some form of civilian oversight (ALRC 1975, 1978).

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Although general purpose policing in Australia is constitutionally the responsibility of the States, the ALRC reports provided valuable reference points for all governments. By 1985 every Australian police service was subject to some civilian oversight. This development has been marked by controversy and conflict. In Victoria, the Police Complaints Authority established in 1986 was closed down as a result of intense opposition from police unions and management. Complaints oversight returned to the Ombudsman – with the creation of a new position of Deputy Ombudsman (Police Complaints) (Freckleton 1991). In Queensland, a form of civilian oversight was first introduced in 1982 with the establishment of the Police Complaints Tribunal (PCT). Throughout its eight-year life the Tribunal was subjected to repeated criticism for lack of commitment to detecting or deterring corruption. The Fitzgerald Report (1989) recommended it be closed down and replaced by the Criminal Justice Commission (CJC).

In NSW the Ombudsman was initially given responsibility for overseeing police complaints in 1979. While that office still monitors, reviews and in some instances investigates the majority of complaints, NSW has another new and powerful police oversight body, the Police Integrity Commission (PIC). Like the CJC, the Police Integrity Commission is the result of a recommendation from an inquiry:

the Royal Commission into the New South Wales Police Service (Wood 1997). Western Australia also has two bodies overseeing police complaints. The Parliamentary Commissioner for Administrative Investigations (PCAI), the body originally given jurisdiction to oversight police conduct, handles the majority of complaints. In 1996 a new body, the Anti-Corruption Commission (A-CC), was formed to investigate allegations of corrupt or serious misconduct in the public sector, including police.

The changes in New South Wales, Queensland, Western Australia and, to a lesser extent, Victoria have seen a strengthening of the powers given to oversight bodies to deal with complaints against police. Jurisdictions which have not experienced significant restructuring have seen incremental increases in the powers of existing institutions. With experience, the bodies have identified aspects of their enabling legislation which restrict their capacity to serve as watchdogs (Lewis 1999). However, expansion has been slow as commitment to external oversight of police conduct by government fluctuates.

The following part of the paper summarises the results of a survey of oversight bodies conducted in 1999 (for an earlier version refer to CJC 1995). Reports were consulted for preliminary information and for case disposition data. A partially completed table was sent to all oversight bodies listing major aspects of their structures and

functions. Representatives were asked to correct and complete the tables, and all agencies responded. The final section highlights major issues arising from the development of external oversight.

Agencies and Jurisdiction

Table 1 shows the names of the oversight bodies, their territorial jurisdictions, years of establishment, and the bodies to which they are accountable. Two states, NSW and WA, split the oversight function between a commission and an ombudsman. Six of the ten jurisdictions use an ombudsman. (The main difference traditionally has been that ombudsmen and authorities have had a limited review function and only made recommendations, whereas commissions have had greater investigative powers and could give directions.) The dates of establishment show the ombudsman model to be a phenomenon primarily of the 1970s. Commissions were favoured from the 1980s. Seven agencies report directly to their respective parliaments, while three report to a special parliamentary committee.

Table 2 describes the agencies' jurisdiction, in the sense of their range of authority. While most have investigative powers, in almost all cases their major function is to monitor and review investigations conducted by the police. Only the Anti-Corruption Commission (A-CC) reported having an adjudicative function. Almost all agencies can process complaints by police against police. The Tasmanian and the

Table 1: *Agencies: General features*

Jurisdiction	Oversight body	Established	Gained jurisdiction over police	Agency accountable to
NSW	Ombudsman	1974	1979	Parliamentary Committee
	Police Integrity Commission (PIC)	1996	1996	Parliamentary Committee
Vic.	Deputy Ombudsman (Police Complaints)	1988	1988	Parliament
Qld	Criminal Justice Commission (CJC)	1989	1989	Parliamentary Committee
WA	Ombudsman (PCAI) ¹	1971	1985	Parliament
	Anti-Corruption Commission (A-CC) ²	1996	1996	Parliament
SA	Police Complaints Authority (PCA)	1985	1985	Parliament
Tas.	Ombudsman	1978	1978	Parliament
NT	Ombudsman	1978	1978	Parliament
C ^w wealth	Ombudsman	1976	1981	Parliament

¹ Parliamentary Commissioners for Administrative Investigations.

² Formerly Official Corruption Commission. It was renamed and given increased powers, including powers of investigation in 1996.

Table 2: Range of authority

Jurisdiction	Predominant function (police complaints)	Jurisdiction to investigate complaints by police against police	Does oversight body assess and classify all complaints?
NSW (Omb)	Monitor and review investigations	Yes	Yes - can order a matter be investigated
NSW (PIC)	Detect, investigate and prevent misconduct	Yes	Yes - Category 1 complaints ¹
Vic.	Monitor and review investigations	Yes, with qualifications	Yes - can order a matter be investigated
Qld	Assess and investigate complaints	Yes	Yes
WA (PCAI)	Monitor and review investigations; investigate	Yes	Yes
WA (A-CC)	Receive, initiate and investigate allegations	Yes	Yes
SA	Monitor investigations and assess conduct	Yes, with qualifications	Yes
Tas.	Review investigations	Yes	No
NT	Monitor and review investigations	Yes, with qualifications	Yes
C'wealth	Monitor and review investigations	Yes, with qualifications	Consults with internal investigations

¹ Serious misconduct and corruption

Commonwealth Ombudsmen have no direct control in assessing and classifying complaints. The PCAI, A-CC, and South Australian and Northern Territory Ombudsmen assess and classify complaints. The NSW and Victorian Ombudsmen can determine that a matter be investigated, while the PIC makes decisions in regard to Category 1 complaints which involve serious misconduct or corruption.

Powers and Organisational Profile

A critical issue for the success of any agency is its powers. Table 3 shows that all agencies with the exception of the A-CC have authority to recommend procedural changes. All agencies with the exception of the Victorian Ombudsman have “own motion” powers to investigate suspected misconduct without requiring a specific complaint. Only the PIC currently has telecommunications interception powers. Six of the bodies have powers of entry to police premises or other public sector authorities. The other four reported general powers of entry.

Table 3: Powers

	Power to make recommendations on procedural issues	Own motion powers to investigate	Telecommunication interception powers	Power of entry
NSW (Omb)	Yes	Yes	No	Public authorities
NSW (PIC)	Yes	Yes	Yes	Yes
Vic.	Yes	No	No	Yes
Qld	Yes	Yes	No	Public premises ¹
WA (PCAI)	Yes	Yes	No	Agencies under jurisdiction
WA (A-CC)	No	Yes	No (anticipated)	Public authorities
SA	Yes	Yes	No	Police premises
Tas.	Yes	Yes	No	Yes
NT	Yes	No	No	Yes
C'wealth	Yes	Yes	No	Police or prescribed authority

¹ Not confined to public premises with a warrant.

Almost all systems now work with a civil standard of proof for disciplinary matters and include a capacity for investigative hearings. About half have power to compel an officer to answer incriminating questions. All or almost all agencies can compel the production of documents, compel attendance of witnesses and make use of informal resolution. None of the agencies can prosecute directly in a court of law. Almost all oversight bodies have recourse to sanctions for failure to comply with directions during an investigation. While all agencies clearly have a preventive mission, only the CJC and NSW Ombudsman have a separate unit tasked with proactive prevention of misconduct.

Table 4 reports further powers and constraints related to processing complaints. The CJC and NSW Ombudsman can give procedural directives. Only the NSW Ombudsman reported having powers to administer penalties for non-compliance. The NSW Ombudsman, CJC and PIC

can report non-compliance to the parliament through a parliamentary committee or police minister. No agency has the power to impose disciplinary sanctions and only the CJC has the power to appeal a police disciplinary sanction. The CJC, WA Ombudsman and SA PCA are able to refer serious matters to an independent tribunal. Most systems provide avenues of appeal for police aggrieved of a procedure or decision.

The agencies are staffed by civilians, and only four use seconded police (see Table 5). The PIC employs former police but not current or former NSW police.

Outcomes

An important issue in any examination of external review is that of the disposition of complaints. How many complaints are formally investigated? What is the final outcome in terms of criminal proceedings, discipline or mediation? Given the theoretical claim that external review will be more vigorous and independent than internal investigations, it is also arguably important to compare rates between external and internal agencies. However, attempts to answer such questions come up against a number of major hurdles. From a national perspective it is impossible to provide a comprehensive picture of comparative dispositions because of differences in categories of offences, procedures and possible outcomes. Indeed, no agency provides a complete table charting all complaints from initial

Table 4: Powers and constraints

	Give procedural directives to police	If so, means of enforcement	Power to impose disciplinary sanctions	Power to appeal police imposed disciplinary sanction	Power to refer serious matters to an independent tribunal	Appeal mechanism for police aggrieved with procedure	Appeal mechanism for police aggrieved with decisions
NSW (Omb)	Yes	Penalties, report to Minister or Parliament	No	No	N/A	Internal review, Parliamentary Committee	Internal review, subject to judicial review
NSW (PIC)	Yes	Inform Police Commissioner, report to Minister & Parliament	No	No	N/A	Complaint to Insp. of PIC, appeal to Supreme Court	N/A
Vic.	No	N/A	No	No	No	None	None
Qld	Yes	Report to Parliamentary Committee	No	Yes	Yes	PCJC ¹ , Parliamentary Commissioner of PCJC, judicial review	PCJC, Parliamentary Commissioner of PCJC, judicial review
WA (PCAI)	No	N/A	No	No	Yes	Seek internal review or apply to Supreme Court	Seek internal review or apply to Supreme Court
WA (A-CC)	No	N/A	No	No	No	-	-
SA	No	N/A	No	No	Yes	Judicial review	None
Tas.	No	N/A	No	No	No	Supreme Court	Supreme Court, civil jurisdiction
NT	No	N/A	No	No	No	None	None
C ^{wealth}	No	N/A	No	No	No	Internal review	Judicial review

¹ Parliamentary Criminal Justice Commission

receipt to final outcome. However, all agencies publish some data on dispositions and it is useful to briefly examine some of the main features through examples.

Table 6 from the NSW Ombudsman provides a fairly typical profile of complaints dispositions. Like all oversight bodies, a substantial majority of complaints are assessed as not being able to be substantiated following a brief assessment. Less than 20 per cent are formally investigated and, of these, about 60 per cent result in an adverse finding.

Table 7 from a special CJC report shows final outcomes in terms of the percentage of recommended charges where the officer was found guilty or resigned. The data show a “guilty” or “resigned” outcome

in 35 per cent of cases where criminal charges were recommended, 50 per cent for “official misconduct”, 74 per cent for “misconduct” and 78 per cent for “breach of discipline”.

Data on what might be considered to be the ‘final outcomes’, in terms of police departmental sanctions against those found guilty, were reported separately by the CJC up to 1993-4. Table 8 averages the last three available years to give an indication of the spread of sanctions. It can be seen that the majority of cases resulted in very minor sanctions. Only 2.5 per cent of cases resulted in dismissal or some other form of separation from the police.

Discussion and Consideration of Key Issues

The above outline of civilian agencies responsible for police conduct in Australia shows a mixed picture. One predominant feature of significance, hidden to some extent, is that despite the perception of independence from police, only a small minority of alleged police misconduct cases are investigated directly by the external body. Most agencies are involved in auditing police responses. Even where the agency conducts the initial investigation, in most cases this is done by seconded or former police. Hence the primary descriptors are appropriately those of oversight and review. Any assumption of investigations completely independent of police or former police involvement – as might be inferred from the titles and separate existence of these bodies – is somewhat misleading. It is also apparent that although commissions appear to be more likely to conduct their own investigations, the differences between agencies appear to be largely in name only, with the ombudsman-style of review being

Table 5: Organisational demographics

	Staff (police oversight)	Use of seconded police	Use of former police
Qld	Approx. 130	Yes	Yes
NSW (Omb)	37	No	Yes
NSW (PIC)	107	Yes	Yes
Vic.	11	Yes	Yes
WA (PCAI)	13	No	Yes
WA (A-CC)	58	No	Yes
SA	12	Yes	Yes
NT	14	No	No
Tas.	2	No	Yes
C ^{wealth}	6	No	Yes

Table 6: *Complaints dispositions, NSW Ombudsman, 1995-6-97-8*

Year	Complaints Determined	Declined or Partially Investigated	Formally Investigated	Adverse Finding from Formal Investigation	No Adverse Finding from Formal Investigation	Total Adverse Finding
	<i>No.</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>
1995-96	5372	84	16	58	42	9
1996-97	5283	85	15	60	40	9
1997-98	4978	87	13	63	37	8
Average	5211	86	14	60	40	9

Source: Adapted from NSWO 1998, p. 23.

Table 7: *Outcomes for recommended charges, Queensland, 1991-92 to 1995-96*

Charge	Guilty	Resigned	Not guilty	Nolle prosequi	Not proceeded with by QPS	Withdrawn by CJC	Un-finished	Total	% Guilty or resigned
Criminal	43	—	35	33	—	13	8	132	35
Official Misconduct	12	3	13	—	—	2	1	31	50
Misconduct	192	40	53	—	27	1	2	315	74
Breach of Discipline	436	25	79	—	46	7	9	602	78
TOTAL	683	68	180	33	73	23	20	1080	71

Source: CJC 1997, p. 67.

dominant. Additionally, the systems are characterised by a high volume of complaints, low investigation rates, low overall substantiation rates, and relatively minor sanctions. Beyond this basic profile, there are some marked differences between agencies in a number of crucial areas. Most notably, differences occur in inquisitorial powers, in own motion powers, in proactive prevention, the capacity to give procedural directives, and in access to an independent tribunal.

As noted in the introduction, the purpose of this paper is not to evaluate agencies' performances and identify a best model. One advantage of jurisdictional fragmentation is the opportunity it gives for experimentation. The focus of the paper has been on describing current profiles. The

remainder outlines critical issues requiring further analysis and debate.

Divisions of Labour

What is the appropriate hierarchy, or division, of labour between police and the external body? An emerging profile – as with the more recently created CJC and PIC – is for police to deal with more minor 'disciplinary' matters while the external body investigates more serious matters. The rationale is that police must be given maximum responsibility for maintaining integrity – qualified by an audit process and external control of more serious investigations. The counter-argument to this is that complainants may not trust police and prefer to have their matter dealt with by an external body. There is also a question about the extent

to which any current or former police officer can be expected to be impartial and zealous in investigating police. A related issue concerns the place of informal resolution. Police appear to do this very well in terms of complainant satisfaction (for example, CJC 1996), but the process may be criticised as placating those who complain rather than addressing real problems.

Reactivity vs. Proactivity

The majority of civilian oversight agencies in Australia restrict their activities to overseeing investigations of complaints. Does this serve as an adequate deterrent for wrongdoing and a mechanism for removing incorrigibles? Are "preventive" measures the province of police management? Should the external agency take a role in management, with power to remove non-compliant police managers? Some "proactive" strategies attributed with success in revealing corruption and implementing reform include covert surveillance, stings, integrity tests, drug and alcohol testing, and use of spies (Henry 1994). These radical measures involve violations of traditional civil liberties. However, they have

Table 8: *Average disciplinary outcomes for proven complaints, QPS charges, 1991-92 to 1993-94*

Sanction	%	Rate per 1000 QPS officers
Dismissed/discharged/resigned/retired	2.5	0.9
Demoted/reduction in pay/salary increase deferred	4.2	1.5
Fined	14.7	5.1
Formal reprimand/caution/warning/counselled/ instructed	57.0	19.8
Suspended sanction	11.4	4.0
Other sanction or sanction unknown	1.1	0.4
Unknown result	8.6	—
TOTAL	99.5	31.7

Adapted from CJC 1997, pp. 68, 121.

been defended as being necessary because of the difficulties of obtaining evidence and breaking the organisational code of silence.

Jurisdiction

The majority of police oversight bodies in Australia have responsibilities across government departments. Few are concerned exclusively with police. The CJC has very broad responsibilities for criminal justice policy and police strategy. The advantage of jurisdiction across the public sector is that it reduces the stigma a specialist agency holds for police. It also allows for the establishment of a large organisation with generic skills and career space. But the example of the NSW Independent Commission Against Corruption prior to the Wood Commission suggests that broad responsibilities can detract from the specialist and resource-intensive task of controlling police corruption (Wood 1997).

Evaluating Performance

To date very little attention has been given to performance indicators for oversight bodies. Developing reliable measures of "productivity" is difficult because of the intrinsic problems of evidence in complaints investigations and the sheer volume of complaints. Two potential quality control measures are independent audits of review samples and complainant satisfaction surveys (see CJC 1996). The CJC appears as the most innovative in developing assessment measures. Its 1997 report on implementation of the Fitzgerald reforms (CJC 1997) used a combination of data sources; including interviews and surveys with police officers, analyses of trends in complaints and case dispositions, and an analysis of police responses to disciplinary recommendations, to show a picture of improving police conduct.

Conclusion

There can be little controversy nowadays as to the need for a body independent of police and politicians to serve as a check on the potential neglect or cover up of police misconduct. The favoured model is for a body chiefly concerned with the auditing of police investigations of complaints, but with little scope for control beyond making recommendations. This could be considered a minimalist model – representing the bottom line in accommodating both public interest criteria and the principle of police internal responsibility for discipline. In several jurisdictions, more extensive forms of civilian control have developed where major corruption inquiries have occurred. The NSW Police Integrity Commission and Queensland Criminal Justice Commission may be the forerunners of more independent assumptions of control of police conduct, but it is doubtful that there is a single best model. The danger in any system is that it becomes merely a clearinghouse for complaints, with a symbolic assurance to aggrieved members of the public that there is scrutiny of police responses. The challenge is to move beyond this into a proactive approach that reduces complaints by reducing police-citizen conflict and by minimising corruption opportunities. This is an extremely difficult task. It needs to be done without deterring genuine complaints and without compromising the police mission.

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