

ROYAL COMMISSION
INTO THE
NEW SOUTH WALES POLICE SERVICE

INTERIM REPORT

IMMEDIATE MEASURES FOR THE REFORM OF
THE POLICE SERVICE OF NEW SOUTH WALES

Commissioner: The Hon Justice JRT Wood

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ROYAL COMMISSION INTO THE NSW POLICE SERVICE

7 November 1996

The Hon RJ Carr MP
Premier of New South Wales
Governor Macquarie Tower
1 Farrar Place
SYDNEY NSW 2000

My Dear Premier

Pursuant to Letters Patent issued to me by the Government of the State of New South Wales on 13 May 1994, 30 November 1994, 21 December 1994, 16 May 1995 and 23 October 1996, I now have the honour to present to you a further Interim Report of my inquiry into the New South Wales Police Service entitled "Immediate Measures for the Reform of the Police Service of New South Wales".

Yours sincerely



The Hon Justice JRT Wood
Royal Commissioner

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ABBREVIATIONS USED IN THIS REPORT

AD(JR) Act	Administrative Decisions (Judicial Review) Act 1977 (Cth)
GREAT	Government and Related Employees Appeal Tribunal
OPM	Office of Public Management
PIC	Police Integrity Commission
PSSSES	Police Service Senior Executive Service
RCPS	Royal Commission into the New South Wales Police Service
RCT	Royal Commission Transcript
SES	Senior Executive Service

1. INTRODUCTION

This report can conveniently be referred to as 'the Immediate Measures Report'.

1.1 The Royal Commission has two principal objectives in relation to the police corruption terms of reference:

- to investigate and expose the extent of corruption related problems within the New South Wales Police Service ('the Service'); and
- to make recommendations to address those problems, and prevent their recurrence.

1.2 The evidence has shown fundamental problems that cannot be corrected by a mere patching up of the old system. What is needed is a substantial revision of management practices, and of the way in which the Service makes use of the skills of its members.

1.3 A carefully structured long term reform agenda is necessary to redress the problems. There can be no quick and simple solution. Effective reform, however, calls for a harnessing of the current momentum for change and the taking of appropriate steps at an early stage that will entrench the process and not be incompatible with the long term agenda.

1.4 Factors that impact upon the present situation include:

- the acknowledgment by the Service itself that major reform is necessary;
- the recently published report of the Ombudsman that demonstrates the extent of the problems persisting in the Service and the need for them to be addressed promptly;¹
- the appointment of a new Police Commissioner who has won immediate respect from within the Service and from outside of it, who is not weighed down by institutional baggage from the old organisation, and who has by letter to this Commission dated 18 October 1996, detailed reform initiatives that he is anxious to implement, but the implementation of which is frustrated by present constraints, statutory and otherwise, attending his Office;
- the fact that the initiatives specified in Commissioner Ryan's letter accord with the views of this Commission, assisted as it is by the services of Dr Peter Crawford, the management and organisational reform consultant engaged by it; and
- the fact that some significant changes cannot take place without legislative amendment which if not effected in the current session of Parliament cannot be addressed until April/May 1997.

¹ NSW Ombudsman, *Annual Report 1995-96*, Sydney.

1.5 This Royal Commission has arrived at the conclusion that the reform process could be unacceptably impeded if certain changes are not implemented forthwith. The role of the new Police Commissioner is vital. If his hands are tied for a further six months any opposition from within the Service will have an opportunity to further entrench itself, and important management initiatives will remain in suspense.

1.6 It is because of the importance of the proper unfolding of the reform process that the unusual course is now taken of issuing a further Interim Report. The long term solution to the problems uncovered lies only partially in the investigation and prosecution of corrupt individuals. The more significant reform lies in addressing the structure, attitudes and professionalism of the Service, with a view to preventing the occurrence of such conduct. Failure to achieve this reform can only result in the cyclical reappearance of the very same culture and conduct that led to the setting up of the current inquiry.

2. THE PRESENT SITUATION

2.1 The position has been reached where, following the reception of a substantial volume of evidence, and the assessment both of the round table discussions, and the submissions received from a cross-section of the community, a vision for the future is available.

2.2 A general acceptance has emerged of certain premises that will underline the Final Report. They include the following considerations:

- policing involves a compact with the community in which high standards of professionalism and service are expected and adopted from within;
- the notion that the Service is a law unto itself is unacceptable;
- the negative aspects of the police culture identified in the public hearings have no place in a Police Service that makes claim to professionalism and public respect, nor do those police who have ascribed to that culture and demonstrated themselves to be corrupt have any place within the Service;
- there is a need for radical change, and a current momentum for reform exists that should not be lost;
- the worth of each individual as a member of a high performing professional team should be recognised;
- management should be based upon modern concepts of leadership, rather than insistence upon blind obedience to authority;
- a primary focus of the Service should be Patrol level policing, accompanied by supervision that adds value, and local responsibility for quality of service and for integrity;

- the system of appointment and promotion within the Service should be one that outlaws patronage and favouritism, and encourages appointment of the best person for the job;
- the position held should reflect true responsibility and accountability for quality of service, and integrity, and should not simply represent a rung in a hierarchy of authority; equally, salary entitlement should reflect the responsibility of the position and not simply a rank;
- greater flexibility should exist to permit the Police Commissioner and his management team to deal with matters of staffing and the allocation of resources and also to deal with discipline in a quick, fair, straightforward and managerial way, without undue procedural or bureaucratic restraints;
- stringent external audit should exist, alongside internal acceptance of responsibility for discipline and anti-corruption measures; and
- an external audit process to monitor implementation of the Final Report, and the continuing performance of the Service, is essential.

2.3 In order to prepare for the wider reform that is to be recommended in the Final Report, and that which is planned by the Police Commissioner, steps should be taken now in the areas specified in this Report.

3. STRUCTURE

3.1 The role of the Police Commissioner as Chief Executive Officer needs to be firmly entrenched. Subject to the direction of the Police Minister, he should have the responsibility, with the support of his two Deputies, for the day-to-day management of the Service, and for settling policy on staffing and the like. In that regard he should not expect his decisions to be gainsaid by external committees, or for implementation to be delayed until their approval is given. In turn, there needs to be a transparency or openness in the management and reform process so that the Service knows what is expected of it, and the reasons for change.

3.2 Administration should be streamlined to recognise the Patrol as the centre of service delivery, with as much emphasis as is practical upon community policing. There should be an immediate return to active duty of those officers who have largely been tied up in administrative or clerical work,² some of which has been driven by bureaucratic traditions, and some of which is capable of being attended to by civilian staff.

² Police Board of NSW, Sub-Committee on Response Policing in Operations (SCORPIO), *Phase 1 Report*, September 1996, Doc. 2470309.

4. COMMISSIONER'S CONFIDENCE

4.1 Absolutely integral to proper management is the existence of a power in the Police Commissioner to remove from the Service those officers in whom he has lost confidence.

4.2 This is to the advantage of the community and of those members of the Service who are performing properly. The power should be as broad and as discretionary as the title suggests. It should be subject to review, but only to the extent currently available under the *Administrative Decisions (Judicial Review) Act 1977* (Cth), which has its broad basis in the 'Wednesbury' principle.³ This means there would be no appeal to the Government and Related Employees Appeal Tribunal ('GREAT'), the Police Tribunal or the Industrial Relations Commission.

4.3 Such a procedure needs to be understood as a managerial and not a disciplinary procedure. It is founded upon the premise that the Police Commissioner has come to lack confidence in the member, which lack of confidence has not been dispelled after the officer, having been given notice of the circumstances brought to the attention of the Commissioner, has had a reasonable opportunity of answering them. It does not involve a finding of guilt concerning an offence or disciplinary transgression, and it does not involve any adverse consequence other than termination of employment.

4.4 It also rests upon:

- the community's expectation of high standards in its police officers;
- the principle that the Police Commissioner is entitled to expect that members of the Service will perform to a high standard of integrity and competence, and should not be expected to retain any person in whom he has lost confidence; and
- the fact that the continued retention of those members who do not enjoy the Commissioner's confidence is a canker within the Service, and a focus of disaffection and corruption.

4.5 In the past, the basic notion has been that security of tenure in the Service was such that unless and until some sufficiently serious offence, either disciplinary or criminal, could be proved, nothing could be done to dispense with the services of a member. Often the argument has gone as far as to assert that acquittal is equivalent to a finding that the person was 'innocent' for all purposes. On occasions, the fact of acquittal has inappropriately been relied upon by the member as 'proof' that the allegation was a fabrication of a disaffected criminal, and hence confirmation of his or

³ *Associated Provincial Picture Houses Limited v Wednesbury Corporation* (1948) 1KB 223 at 228 to 230 per Lord Greene M.R.

her integrity and effectiveness as a police officer. Sometimes this has allowed a corrupt officer to become further entrenched within the Service.

4.6 It is important that the members of the Service who aspire to be professional acknowledge that this concept of tenure is a thing of the past and that only those who adhere to and maintain high standards should continue to hold office.

4.7 The Police Commissioner can hardly be held accountable for poor performance or lack of integrity within the Service, if it is acknowledged that there are non-performers and unethical police and he cannot promptly rid the Service of them. In that regard, as this Commission's first Interim Report revealed, the present disciplinary procedures are tortuous, slow and unsatisfactory, lead to a great degree of stress, and face problems of undue legalism.

4.8 Introduction of a Commissioner's confidence provision, of the kind now in place for the Australian Federal Police,⁴ is the most effective way of bringing to an end the tradition of blind loyalty to colleagues irrespective of their honesty, competence or application. Additionally, it will send a positive signal that the reform process is serious, that it is under way, and that corrupt and non-performing police are no longer welcome within the Service.

4.9 Because the process is founded upon loss of confidence, removal from the Service for this reason should allow the member to leave with retention of present separation entitlements. In cases of serious criminality, asset or proceeds of crime recovery proceedings can be independently pursued.

5. REVIEW OF DECISIONS TO REMOVE FOR LOSS OF COMMISSIONER'S CONFIDENCE

5.1 Proper management considerations are the only appropriate basis for the Commissioner's decision. Hence there is a need for any review to be on administrative law grounds, rather than a rehearing on the merits. In particular, this is the case because of:

- the desirability for uniformity, certainty and prompt resolution of these cases;
- the need for special standards of integrity and commitment on the part of police that are not necessarily expected in other forms of employment; and
- the need for special understanding of the job of policing, and for acceptable work practices.

⁴ *Australian Federal Police Act 1979* (Cth) ss. 26E(2)(b), 26F.

5.2 Ultimately, provision will need to be made on a long term basis as to the identity of the tribunal or body that will entertain such review. This can conveniently await the Final Report and matters currently under consideration concerning the review of administrative decisions generally within New South Wales. For immediate purposes, it would be appropriate to give such power to the Supreme Court in its Administrative Law Division.

5.3 In formulating this recommendation, the Commission has given careful consideration to a detailed submission presented by Counsel on behalf of the Police Association, concerning the reinstatement of those members of the Service who are dismissed by the Commissioner.⁵ That submission focussed upon the extent to which there should be an inquiry into 'the validity of the basis of the dismissal', and upon the proposition that the ordinary reinstatement processes of the Industrial Relations Commission are sufficient to achieve the objectives of fairness and efficiency in the review of dismissals.

5.4 With certain elements of the submission, the Royal Commission expresses its agreement. For example, it accepts that:

- it is desirable for the process of dismissal to be an open and accountable one;
- the exercise of a dismissal power without a right of review could tend to make the Service less accountable; and
- it is imperative that the Service treat its employees fairly.

5.5 However, the Commission does not agree with the proposition that the process of review proposed is:

- illusory;
- inconsistent with any international obligations arising under Convention; or
- otherwise inappropriate.

5.6 The reasons for the availability of a Commissioner's confidence power have been summarised earlier, but rest essentially upon the high standard of integrity and trust required of Police, and upon the need to remove from the Service as quickly as possible, but with due process, those members who are not prepared to meet the required standards of ethical conduct and professional performance. In those circumstances a process of review that introduces a considerable measure of flexibility and discretion, and turns upon the broad notion of unfairness, is inappropriate.

⁵ Police Association of NSW, Submission to RCPS, 30/10/96, Doc. 2531730.

5.7 The form of review proposed is, in the opinion of the Commission, appropriate since it would encompass the review of any decision made where there was:

- a failure to comply with the rules of natural justice;
- a failure to observe the procedures prescribed;
- an error of law;
- an absence of evidence or other material to justify the decision;
- a decision induced or effected by fraud;
- an exercise of the power that was improper, for example, because:
 - an irrelevant consideration was taken into account;
 - a relevant consideration was not taken into account;
 - the power was exercised for a purpose other than its true purpose;
 - the power was exercised in bad faith; and
 - the exercise of the power was so unreasonable that no reasonable person could have so exercised it.

5.8 In summary, this Commission favours a procedure for dismissal that:

- allows a member of the Service to be informed of the circumstances of concern to the Police Commissioner;
- gives that member a real opportunity to address those concerns; and
- allows the exercise of the dismissal power to be reviewed on any, or all, of the grounds specified above.

5.9 Review of the Police Commissioner's decision to dismiss under section 181B of the *Police Service Act* is enabled by subsection 181B(5). Current litigation has exposed some differences in approach concerning the nature of this review.⁶ Legislation is now desirable to declare that the review intended by this subsection is not a hearing *de novo*, but one based upon the material available to the Commissioner at the time of making the decision. The need for section 181B, which was an interim measure, would be obviated by the introduction of a general Commissioner's confidence provision and if that comes into effect it would be appropriate to repeal section 181B.

⁶ *Bigg v Commissioner of Police (NSW)*. Unreported judgement of Fisher P, NSW Industrial Relations Commission, 12/7/96.

6. EARLY RETIREMENT

6.1 The Police Commissioner should be able to offer a financial incentive to encourage departure from the Service of those officers who are non-productive, but for whom the Commissioner's confidence provision would be inappropriate.

6.2 It would be inappropriate to extend the application of this provision as an open offer to all officers, as experience suggests that general redundancy schemes are often taken up by those members of staff who should be retained, and disregarded by those whom it is hoped might leave.

6.3 Although redundancy and early retirement do have a financial impact, the cost to the community of corruption, mismanagement, and incompetence within the Service cannot be adequately measured in dollars. Neither can the debilitating effect, to the Service and the reform process, of the continued presence of those members who have the potential and demonstrated ability to poison the attitudes and performance of others, be measured. Under present circumstances, it is very difficult to remove such people. Ultimately, they will have to be paid their severance entitlement from public funds. The value of making an appropriate payment in return for their early departure needs to be recognised.

7. INTEGRITY ADVICE

7.1 In the past the Professional Responsibility Command has been the principal provider to the Police Board of advice concerning integrity issues for the purposes of appointment, transfer and contract renewal. The Commission recommends that in the future, the reformed procedures require that the views of the Police Integrity Commission also be sought and taken into account.

8. APPROPRIATE APPOINTMENTS

8.1 The Police Commissioner needs to be given authority to hire and fire as well as to have effective day-to-day control of managerial matters.

8.2 It is imperative that steps be taken to ensure the appointment of the best possible person for each job. No person in any existing position should presume that he or she will be reappointed to that position. Moreover, a clear message should be sent now that there is no room in the Service for those members who are not prepared to be conscientious or professional, or for those who are incompetent, or uninterested in performing to their true potential.

8.3 The initiative of the Service to establish Assessment Centres is generally supported. However, this will need to be the subject of further examination in the Commission's Final Report. In that regard it will be important to ensure that the Assessment Centres have sufficient external monitoring and input to dispel any impression that the old malaise of patronage or favouritism is still afoot.

9. POLICE COMMISSIONER AS EMPLOYER

9.1 To accord with the notion of the Police Commissioner being responsible for the day-to-day management of the Service, he should be the person who makes the ultimate decision about appointment and promotion of all personnel. He should be free to deploy them in the interests of best management of the Service. He should be free to determine whether to fill a position with either a sworn or an unsworn officer.

9.2 Appointments by the Commissioner should be the outcome of an independent and fair selection process based on the merit principle, with due emphasis on integrity and on the skills and abilities needed for each position. The Commissioner should use whatever advisory committees or assessment processes he considers appropriate to achieve this outcome.

9.3 Unsworn members are presently employed by the Police Commissioner. However, some terms and conditions of their employment differ from those of sworn police. From the point of view of proper management, it is desirable that there be as much integration and uniformity as possible for all employees. It is better that this be achieved as a transitional process, with appropriate consultation, but without preventing those who wish to retain their current union representation from so doing. Nor should it prevent portability of employment back to the Public Service or the negotiation of terms and conditions of employment suitable to both the employer and the employee.

9.4 The above will necessarily mean termination of the concept of authorised strength. This should be replaced by more meaningful measures of police effectiveness, allowing the deployment of members of the Service to those Patrols, agencies or task forces where they are most needed.

9.5 An option to be considered in the Final Report is term employment for all, carrying with it periodical performance reviews, an obligation upon managers to ensure the proper training, development and supervision of their staff, and the opportunity for non-renewal of employment in appropriate circumstances. This need not be addressed in the current preparatory phase, but an interim structure must be settled pending finalisation of the Royal Commission, and urgent attention must be given to the filling of those key positions that have either been left vacant, or filled on an acting basis.

9.6 It is considered that appointment should be by the Police Commissioner, for all but the ranks of Deputy Commissioner and Assistant Commissioner, which should be by the Governor following a recommendation from the Commissioner to the Minister. All personnel should be subject to dismissal for want of Commissioner's confidence, save that in the case of a Deputy Commissioner or Assistant Commissioner, there should be the added requirement that dismissal be with the approval of the Minister.

9.7 The view is also taken that the Police Commissioner should have power to make appointments of persons who are not presently members of the New South Wales Police Service.⁷ The advantage of such a power is that it will enable lateral recruitment from other police services, and the recruitment of civilians with appropriate qualifications, who are free of inappropriate associations, and who possess special skills that would be of advantage to the Service. Already there is a power to appoint outsiders to Police Service Senior Executive Service ('PSSES') positions. The principle underlying this should be extended. The reform process entails the appointment and, if necessary, the recruitment of the best available personnel. Present lack of reciprocity with lateral entry arrangements existing in other Services should not defer its introduction. Rather, its introduction should act as a catalyst in the current move towards a national profession of policing.

9.8 The nexus between rank and a fixed salary band should lapse. Focus should be upon appointment to a position, with a broad band of salary payable and reviewable, depending on personal integrity, capacity and skills as well as performance and the demands of the particular position. Commanders of particularly challenging Patrols, or officers holding particularly demanding positions, should be paid commensurately for the value of their service, with the added benefit that such a pay structure would assist in encouraging the best applicants to apply for those positions when they become vacant. This is a measure that will have to be introduced progressively.

10. THE POLICE BOARD

10.1 The Police Board was established under the *Police Board Act 1983* as a result of recommendations made by Justice Lusher,⁸ following his review of the structural, management and administrative deficiencies of the Police Force at the time.⁹ A Police Board was recommended as a way to introduce specialised skills into, and promote better administration and management within, the Police Force, as well as to oversee the implementation of the Report.¹⁰

⁷ This is currently not possible by reason of the *Police Service Act 1990* (NSW) ss. 63, 64.

⁸ Justice E.A. Lusher, *Report of the Commission to Inquire into New South Wales Police Administration*, 1981.

⁹ *ibid*, pp. 68-69.

¹⁰ *ibid*, p. 785.

10.2 The Board commenced operation on 16 January 1984. It was composed by the Commissioner of Police and two part-time members. A small Secretariat was provided.¹¹ Its principal function was to 'promote the improvement of the police force and to ensure the maintenance of an efficient and effective police service'.¹² Its specific functions related to:

- education, training and the development of modern personnel practices;
- recommendations concerning policy, corporate management and the employment (appointments and transfers) of senior officers; and
- initiating research.

The Act also placed an obligation on the Police Commissioner to implement Board decisions.

10.3 Apart from some minor changes, the Board's functions remained essentially the same between 1984 and 1993. However, in 1990 the *Police Board Act* was repealed and the Police Board functions were included within the new *Police Service Act 1990*. Under the new Act the Board assumed responsibility for the employment of Police Service Senior Executive Service ('PSES') officers.

10.4 As a result of a review conducted by the Office of Public Management ('OPM') in 1992,¹³ and conflict between the Board and the Minister in 1993, further changes were made to the Police Board. The OPM reported that the Board no longer needed to have responsibility for ensuring the maintenance of an efficient and effective Police Service¹⁴ and this general function was consequently repealed. Additionally, the obligation on the Police Commissioner to implement Board decisions was repealed and his right to vote in respect of those decisions was removed.

10.5 These changes essentially limited the Board's functions to employment of the PSES and to career development and training. With only limited exceptions, in recent years it has not been concerned with research or with formulation of advice for the improvement of the Service.

10.6 The statutory function of the Board relating to the appointment of senior officers, and to the renewal of contracts for PSES officers, is an area where urgent change is needed to allow the reform process to begin.

10.7 The present procedure for the determination of senior appointments and transfers involves much time spent by the Board on interviews, and on mastering a wealth of

¹¹ Police Board of NSW, *Annual Report 1984*, p. 2.

¹² *Police Board Act 1983* (NSW) s. 7(1).

¹³ Office of Public Management, *Review - Police Board Secretariat*, 1992.

¹⁴ Office of Public Management, *Review - Police Board Secretariat*, 1992, as cited in Police Board of NSW, Submission to RCPS, 15/5/96, Doc. 2147502, p. 35.

mostly unhelpful documentation. It is largely reliant on assessments made, and integrity checks provided, by the Service. In its submission the Board has drawn attention to the deficiencies of this process, and it has given support for the proposition that the appointment of all staff other than Deputy Commissioners and Assistant Commissioners should be the responsibility of the Commissioner.¹⁵

10.8 Perusal of Board Minutes demonstrates the amount of time it spends on this aspect of its work, and the continued delay that results where further information needs to be obtained from the Service. This prevents the expeditious filling of important positions, and it has a disruptive effect upon the Service, so far as staff are taken away from normal duties to act in relieving positions. The Commission understands that of the 61 PSSES positions, 16 are currently vacant and another 10 are being filled by members holding relieving positions. In relation to the 13,046 other positions in the Police Service designated for police officers, 1,130 are currently vacant and an unknown number are being filled by relief officers.¹⁶ This is a distinctly unsatisfactory position, and a clear indication of paralysis in the effective management of the Service.

10.9 The Board is not considered to be the appropriate body to continue its role in relation to appointments, transfers and contract renewals. It is recommended that this power be returned to the Police Commissioner, and made dependent upon appropriate assessment procedures. Legislative amendment is needed to secure this objective.

10.10 The Board's submission also recognises that its role in education and training has been made frustrating and ineffective because of the equal status in this field accorded by statute to the Police Service.¹⁷ The point is best encapsulated in the following paragraph from that submission:

As a matter of practice, the Board's power has been interpreted as being subject to the Commissioner's more general power and the Board has never assumed any direct responsibility in the administration of education and training.¹⁸

10.11 It is not possible under the present arrangements for both organisations to function effectively in the same field. The future direction of police training and education is a matter of some complexity and great importance. Recommendations of the Royal Commission in this field must await its Final Report. The present process of reform, however, is not advanced by the existence of two apparently equal decision making bodies in this area. The reform process would be better advanced by relieving the Board of its responsibility in this area. This Commission will closely examine recent initiatives and submissions from the Police Commissioner and others, for the purpose of formulating the detailed recommendations that will be part of its Final Report.

¹⁵ Police Board of NSW, Supplementary Submission to RCPS, 4/9/96, Doc. 2424958, p. 6.

¹⁶ Information received from the Royal Commission Implementation Unit on 23/10/96, Doc. 2529002.

¹⁷ Police Board of NSW, Submission to RCPS, 15/5/96, Doc. 2147502.

¹⁸ *ibid*, p. 50.

10.12 Absent employment and education related matters, the remaining statutory functions of the Board are indefinite and for the most part are subject to direction or request by the Minister. A question thus arises as to the current utility and the future role of the Board.

10.13 In its supplementary submission the Police Board has suggested that its future should be in a directory capacity.¹⁹ Such a role cannot comfortably co-exist with the priority being afforded to the Police Commissioner in the management of and responsibility for the day-to-day activities of the Service. Further, it confuses the Police Commissioner's accountability to the Police Minister. This Commission does not see the Board's suggestion as a viable proposition. Rather than have a vestigial Board with no obvious function, this Commission considers that the reform process would be assisted by its abolition.

10.14 If the Police Board is abolished, care must be taken to see that there is no gap left between accountability, community consultation and the Service. The Police Board Sub Committee on Reform, chaired by Dr Peter Crawford, will cease to exist but the process put in place by that Committee should continue, oversighted by the Royal Commission.

10.15 The Board's function to review the Service, after consultation with the Minister, and its powers of entry and inspection, could be preserved by allowing the Minister to establish such inquiries.

11. COMMUNITY INPUT

11.1 There is a need to create an effective mechanism for broad-based community consultation and input at Patrol level. The Royal Commission wishes the Service to explore various local and overseas models for such consultation. While there are some examples of these already in existence, as well as special purpose consultative committees, there is a need to ensure that the community has a genuine opportunity to contribute in respect of issues of service, integrity, visibility, and the like.

11.2 General policy as to representation, frequency of meetings and administrative matters should be determined by the Police Commissioner in consultation with the Minister. While the emphasis should be on their advisory nature, they should also be seen as an integral part of the Service's community policing strategy.

11.3 The Royal Commission also sees advantage in exploring the possibility of the Police Commissioner having access to a small band of representatives able to meet with

¹⁹ Police Board of NSW, Supplementary Submission to RCPS, 4/9/96, Doc. 2424958, p.10; see para.19(b) where the Board suggests that the Police Commissioner should be obliged by statute to implement the Board's decisions.

him as part of a Commissioner's Advisory Group. Although this group would not have statutory recognition, and would be advisory only, significant matters arising from Patrol consultation could be placed on its agenda.

11.4 The development and continuing role of advisory bodies of this kind, and the importance of community policing initiatives, will be further considered in the Final Report, once the initiatives referred to above have been explored.

12. INTEGRITY TESTING AND COVERT OPERATIONS

12.1 In its Interim Report, the Royal Commission drew attention to the notion of targeted integrity testing, which the Service has since elected to adopt as a standing procedure. A potential problem, however, has since been identified. On the advice of the Attorney General, certain forms of testing may involve members of the Professional Responsibility Command in committing the offence of public mischief.²⁰

12.2 The Commission is firmly of the view that targeted integrity testing:

- is desirable; and
- should not be precluded because of the possibility that, in certain circumstances, the setting up of a test may constitute the offence of public mischief.

12.3 The Commission recommends that an exception be provided to such provision, to permit a bona fide integrity test authorised by a senior officer of the Service, or by the Police Integrity Commission ('PIC') Commissioner, in circumstances where reasonable suspicion of corruption or criminality on the part of a member of the Service exists.

12.4 Similarly, the Royal Commission is of the view that legislation is desirable to overcome the problems presented by *Ridgeway v The Queen*²¹ to permit approved covert operations, subject to proper supervision and control, that are designed solely for the purposes of legitimate law enforcement. Without such techniques, those forms of conduct involving serious corruption, and serious criminal behaviour, that can only be effectively policed by undercover operations, risk escaping prosecution.

12.5 This matter has been the subject of inter-agency discussions in NSW for some little time and of review by the Covert Operations Working Party.²² The recent South Australian model represents the preferred approach of the various law enforcement

²⁰ *Crimes Act 1900* (NSW), s. 547B.

²¹ *Ridgeway v Queen* (1995) 184 CLR 19.

²² The first meeting of the Covert Operations Working Party was convened by the ICAC in late January 1996. The Working Party comprises representatives from the ICAC, the Service, Ministry for Police, Attorney General's Department, Crime Commission and the Royal Commission.

agencies represented on that Working Party.²³ It has recently been favourably reviewed.²⁴ In NSW the matter currently rests with the Attorney General's Department, but it seems to have been delayed by recent staffing changes which are likely to prevent the introduction of legislation in the current session of the Parliament. The implementation of this reform would send a powerful message in favour of probity in law enforcement, and in favour of the adoption of proper standards.

12.6 In relation to both targeted integrity testing and covert operations, the enactment of legislation would introduce a regime of certainty and accountability, that should:

- discourage mere entrapment;
- require careful consideration of the extent to which participation, to any degree, in a course of criminal conduct, is truly necessary for investigative purposes; and
- subject such an exercise to stringent control.

12.7 The implementation of these measures is not seen as being as urgent as the other recommendations in this Report. They are, however, raised as matters that have been carefully reviewed, yet seem to be currently stalled.

13. DRUG AND ALCOHOL TESTING

13.1 In its Interim Report, the Royal Commission also drew attention to the need for random drug and alcohol testing, and identified some of the considerations relevant for policing, including:

- the interests of rehabilitation in the circumstances of a job that is at times dangerous and stressful;
- the incompatibility between resort to criminal behaviour and the holding of an office in law enforcement; and
- the dangers of handling motor vehicles and firearms, and dealing with the public, when affected by alcohol and drugs.

13.2 Excessive use of alcohol has been identified as a serious problem for police services within Australia.²⁵ Hearings conducted by the Royal Commission have identified the use of illicit drugs as a further problem.²⁶

²³ *Criminal Law (Undercover Operations) Act 1995* (SA).

²⁴ Legislative Council of South Australia, *Hansard*, 2/10/96, p. 42 per the Hon K.T. Griffin, Attorney General.

²⁵ See, for example, M. McNeill & C. Wilson, 'Alcohol and the Police Workplace', Report Series No. 119, National Police Research Unit, 1993; and see also NSW Ombudsman, *Annual Report 1995-1996*, pp. 53-4.

²⁶ RCT, 29/1/96 - 31/1/96.

13.3 These matters have been the subject of review since the Interim Report by the Drug and Alcohol Testing Working Party²⁷ and are the subject of a draft Bill which is yet to be finalised. The Royal Commission believes that a Bill along the lines of the draft Bill should be proceeded with as a matter of urgency.

13.4 Policy is yet to be settled by the Commissioner of Police as to the way in which individual cases should be managed, within the discretion allowed by the proposed legislation. This is not seen as an impediment to its introduction, since the necessary Regulations can be introduced once that policy is settled, without need for further legislation.

13.5 The Royal Commission recommends that such legislation be progressed for the following reasons:

- the need for a means of effectively redressing the problems of drug and alcohol abuse within law enforcement; and
- the positive message it will convey as to the genuineness of the reform process and of the need for members of the Service to abandon inappropriate forms of conduct.

14. INTEGRITY DECLARATIONS

14.1 The Royal Commission would also support the immediate introduction of legislation that would require:

- all members of the Service to furnish to the Commissioner, by way of a sealed envelope, at three-yearly intervals and when applying for each promotion, a declaration disclosing details of the income, assets and liabilities of themselves and of their partners. Such information, the Royal Commission recommends, should be provided in a sealed envelope, to be opened upon direction of the Police Commissioner, or upon direction of the Commissioner of the PIC, where a question as to the integrity of the officer reasonably arises;
- an officer who the Police Commissioner reasonably suspects is living beyond his or her means, to satisfy the Commissioner upon request that all assets and earnings or that person and partner have been lawfully obtained; and
- all members of the Service to provide a statutory declaration to the Police Commissioner, at three-yearly intervals and when applying for each promotion, to the effect that he or she has not engaged in any conduct of a corrupt or unlawful nature.

²⁷ The Drug and Alcohol Testing Working Party was established by the Minister for Police in February 1996. It comprises representatives from the Professional Responsibility and Human Resources Commands of the Service, the Police Officers' Association and Commissioned Police Officers' Association, the Ministry for Police, Labor Council and the Health Department.

14.2 The Commission understands that at present members of the Drug Enforcement Agency, members of the State Executive Group and some senior commissioned officers in the Professional Responsibility Command are required by direction of the Police Commissioner to provide financial declarations.²⁸ No apparent reason exists for confining its application to such members, since many other members of the Service work in drug law enforcement, or similar high risk areas. Legislation is desirable to regularise this practice, and to create an appropriate regime for protection of privacy.

14.3 The Royal Commission considers the early implementation of such legislation would reinforce the commitment of the Service to reform, and add to the integrity of the appointments that the Commissioner of Police needs to make urgently, and which should not await delivery of the Final Report.

15. INVESTIGATIVE METHODS

15.1 Consideration needs to be given to redefining police investigative methods, and powers, in a way that will ensure greater professionalism, integrity and accountability, and avoid abuse of the criminal justice process.

15.2 One of the matters requiring consideration, that is presently the subject of a draft Bill, is the redefinition of police powers concerning the detention and interview of suspects. There is evidence to suggest that the decision in *Williams v The Queen*,²⁹ declaratory of the common law in this regard, continues to be attended with uncertainty, is often not complied with, and frequently gives rise to debate in the course of criminal trials, and upon appeal, as to the admissibility of records of interview.

15.3 The Royal Commission has had the opportunity of examining the draft Bill that has been prepared by the Attorney General,³⁰ following extensive consultation with the Police Association, which provides for:

- a maximum period of time during which a person under arrest may be detained for the purpose of investigating that person's involvement in the commission of an offence; and
- the rights of a person so detained.

It also understands that a private members Bill has been presented dealing with the same matter.³¹

²⁸ J. Jarratt, Statement to RCPS, 25/10/94, Doc. 155001.

²⁹ *Williams v The Queen*, (1986) 161 CLR 278.

³⁰ *Crimes Amendment (Detention After Arrest) Bill 1996*.

³¹ Sydney Morning Herald, 15/10/96, p. 1.

15.4 Some commentators have questioned the appropriateness of such a Bill being prepared without taking into account the view of the Commission. As the Bill is now in the public domain it is considered appropriate to take this opportunity to provide that view.

15.5 The Commission supports in principle the provisions of the Attorney General's Bill for the reasons that:

- it will clarify an area of the common law that is currently fraught with uncertainty and difficulty in its application;
- the existing law can encourage contrivance³² or perjury;³³
- contrived or deliberate disobedience of the law, and abuse of police powers are undesirable and antithetical to the maintenance of integrity;
- the interview of a suspect following arrest is a desirable and necessary step in the criminal investigation process³⁴ so long as it is properly and fairly conducted and is the subject of electronic recording;
- precise definition of police powers in this regard, and of the rights of the suspect, are in the interests of the community so far as the maintenance of the criminal law and the integrity of the justice system are concerned, and are also in the interests of the suspect so far as equality and fairness of treatment are concerned; and
- the legislation proposed would minimise the incidence of arguments concerning the admissibility of records of interview in criminal proceedings, both at first instance and upon appeal, and it would present persons charged with criminal offences with greater certainty when reaching a decision whether or not to enter an early plea of guilty.

15.6 The Royal Commission does not consider this a matter of extreme urgency but it would support progression of the Bill, with opportunity for public debate, as a further significant step towards reinforcing professionalism and ethical standards within the Service.

³² For example by effecting an arrest at a time when it is known that a Justice is not available.

³³ For example, as to whether the suspect had been arrested, was 'assisting the police with their inquiries', or was 'free to leave' if a request to that effect was made.

³⁴ *Williams v The Queen* (1986) 161 CLR 278, per Mason CJ and Brennan J at 296 and Wilson and Dawson JJ at 312-3.

16. RECOMMENDATIONS

16.1 The purpose of this Immediate Measures Report has been to focus upon matters that need immediate attention, and in particular legislative intervention during the current Parliamentary Session in order to ensure the proper progress of reform, and to prevent further harm to the Service during a period in which its management might otherwise be stalled. It will also give an indication of the general direction in which the reform process can be managerially advanced, without constraining the Royal Commission's ability to make more detailed and far reaching recommendations in the Final Report.

16.2 Legislative reforms introduced as a result of this Royal Commission should be reviewed in five years time as part of the reform monitoring process that will be addressed in the Final Report.

16.3 Much is still to be defined in the area of structural change and reform. This will also be addressed in the Final Report.

16.4 In the light of the foregoing, and to facilitate the reform process, this Commission recommends that legislation be passed as soon as possible to achieve the following:

1. To make the Police Commissioner the employer of all persons in the Police Service, ensuring that where contracts with the Police Board are current, existing terms and conditions are preserved.
2. To allow the Police Commissioner to control all appointments, transfers, and removals from the Service except for those relating to Deputy Commissioner and Assistant Commissioner, which will be made by the Governor following recommendations by the Commissioner to the Minister.
3. To permit the Police Commissioner to appoint by lateral recruitment.
- 4(a) To allow the Police Commissioner to designate which positions are to be filled by sworn and which by unsworn members, and in cases where either alternative is acceptable, to ensure that there be equality of remuneration and conditions.
- 4(b) To abolish the concept of authorised strength within the Service and enable the Police Commissioner to deploy either sworn or unsworn persons within the overall budgetary allocation for the Service, according to operational need.
- 5(a) To allow the Police Commissioner to remove a sworn member, if that member has lost the Commissioner's confidence.

- 5(b) To provide a process for review of the Police Commissioner's decision solely by means similar to that found in the *Administrative Decisions (Judicial) Review Act 1977* (Cth).
- 5(c) To repeal the existing section 181B of the *Police Service Act*, once Recommendations 5(a) and 5(b) are implemented.
- 5(d) For the purpose of any existing review of a dismissal under s. 181B(5) of the *Police Service Act* to declare that its true meaning is to provide a review founded upon the material upon which the Police Commissioner made the decision rather than a review *de novo*.
- 6(a) To abolish the Police Board and to transfer its functions in relation to employment, appointments and transfers to the Police Commissioner.
- 6(b) To allow the Minister to establish inquiries, with the powers of entry and inspection currently vested in the Police Board, on any matter relating to the administration of the Police Service.
- 7. To oblige members of the Service to complete financial statements and to provide a satisfactory explanation of the legitimacy of the acquisition of the means or assets of themselves and their partners, if questioned by the Police Commissioner upon reasonable suspicion as to their integrity.
- 8. To oblige members of the Service to complete integrity declarations every three years and when applying for each promotion.
- 9. To prevent the application of the public mischief provisions of the *Crimes Act 1900* to targeted integrity testing conducted by the Office of Professional Responsibility and by the Police Integrity Commission.
- 10. To permit random drug and alcohol testing of police.
- 11. To permit the conduct of duly controlled and authorised covert operations. (It is recognised that the current state of preparation of a Bill on this subject may prevent its introduction in the current legislative session).
- 12. To allow the use of financial incentives by the Police Commissioner to facilitate the early disengagement of officers.
- 16.5 The Commission also recommends that the *Crimes Amendment (Detention After Arrest) Bill 1996* be progressed with an early opportunity for public debate.

16.6 Apart from legislation, the responsibility of the Police Commissioner in the reform process should be recognised. He should, at his discretion, pursue reforms he considers appropriate, having regard to the outline provided by this Report, and also with due regard to such of the recommendations of the Final Report of the Royal Commission that the Government adopts.

16.7 This Commission is acutely aware of the fact that recommendations made in this Report will, to some extent, entrust the implementation of restructuring to a Service that has been found to be seriously wanting. However, there is a new Commissioner in office who is committed to the achievement of radical change, who will lead the process and who is in a position to appoint a reform team. It is also to be noted that:

- reform is most effective when it comes from within;
- the Royal Commission is in a position to monitor developments;
- the changes proposed are considered strategically prudent at this time; and
- progress of those changes will be the subject of detailed consideration in the Final Report.

16.8 The Commission's recommendations will impose significant additional demands upon members of the Police Service, in accordance with community expectations. An issue of importance to be considered in the Commission's Final Report is the question of improving police remuneration, professional status and conditions of employment. This issue will be examined by the Commission in the light of the reforms and any additional police responsibilities then in place.

16.9 This Commission is also conscious that the recommendations made in this Immediate Measures Report will vest very significant powers in the Police Commissioner. While the Commission is confident that this is necessary, a close watch will need to be kept on the effectiveness of the new statutory powers and the accountability of the Police Commissioner. An annual review of their operation would seem appropriate, and this will be the subject of a recommendation in the Final Report.

16.10 In that Report, consideration will also be given to the development of appropriate mechanisms to monitor and audit the reform process, and the implementation of the recommendations of the Royal Commission. This is considered to be a critical element in ensuring that the cycle of corruption does not commence a new revolution.

