



Ombudsman NT Investigation Report

Matters arising from allegations of inappropriate conduct by a former Commissioner of Police and another police officer

May 2015

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Overview

1. This report arises from investigation of allegations relating to the conduct of two NT Police officers, former NT Police Commissioner, Mr John McRoberts and Mr Richard Bryson.
2. The former has resigned from NT Police while the latter remains a serving officer.
3. In each case, it was alleged that a conflict of interests arose in relation to the same criminal investigation because of the association of the officer with a person who was under investigation ('the travel agent').
4. The information obtained by my Office does not suggest that there was any common course of action between the two police officers — the allegations arose out of the same investigation but the two officers acted separately and their actions can be considered separately.
5. In addition to personal associations with the officers, the travel agent provided travel agency services to NT Police and was Chairperson of Crime Stoppers Northern Territory, a non-profit incorporated association, that was closely aligned with but not part of NT Police. In the course of their association, the travel agent also gave a number of personal gifts to the former Commissioner.
6. The NT Police *Code of Conduct and Ethics* contains extensive provisions relating to conflict of interests and associations with people who have had or are having adverse dealings with Police. These include requirements to avoid becoming involved in matters involving friends, to disclose any conflict, and to resolve any conflict in favour of the public interest and NT Police.

Department of Health and NT Police investigations

7. The investigation of the travel agent was part of broader investigations into apparent overpayments to a number of travel agents made in the course of administration of the Northern Territory Pensioner and Carer Concession Scheme.
8. Under the Scheme, which is administered by the Department of Health, eligible individuals could make claims to recover certain amounts spent on travel. Often travel arrangements and claims on the Scheme were made on behalf of individuals by travel agents under agreements with the Department of Health.
9. Following concerns identified in October 2012, the Department of Health conducted internal investigations and identified a number of potential discrepancies between amounts claimed and amounts ultimately paid for travel. The Department approached NT Police at that time and was given initial advice on how to proceed.
10. In early 2013, the Department engaged Ernst & Young to conduct a preliminary investigation. The Ernst & Young report, which is dated 24 May 2013, was a scoping report rather than an in depth analysis of individual transactions. Its purpose was to point to avenues and mechanisms for further enquiry. It did identify a number of "Higher Risk" and "Lower Risk" travel agents but any action would involve a great deal of additional investigation and analysis.
11. In November 2013, the Auditor-General was consulted in relation to the issue. The Auditor-General wrote to the Commissioner of Police on 6 November 2013. This was followed by a letter from the Chief Executive of the Department of Health to the Commissioner of Police dated 13 December 2013.

12. In January 2014, NT Police commenced investigations and sought further information from the Department of Health. On the basis of information provided, NT Police identified the travel agent as a target for criminal investigation and proceeded accordingly.
13. In the course of those investigations, advice was sought from the Office of the Director of Public Prosecutions and a decision was made to execute a search warrant on the premises of the travel agent in early June 2014. However, this decision was reversed shortly before the warrant was to be executed.
14. In June/July 2014, there was a reconsideration of the approach to the investigations, the outcome of which is summarised in a memorandum from the Assistant Commissioner, Crime dated 14 July 2014:

Due to the extensive number of suspect transactions involving separate travel agents, a structure and process needs to be adopted that will enable resolution of civil matters (overpayments) without affecting the resolution of criminal matters (frauds and/or stealing).
15. This process was overseen by an inter-agency task force led by the Department of Health. A staged approach was adopted. The first stage involved seeking co-operation from each travel agent to reconcile apparent overpayments. In the absence of co-operation from a travel agent, matters would proceed by way of criminal investigation.
16. Ultimately, a search warrant was executed on the premises of the travel agent on 14 November 2014 and criminal proceedings commenced. Those criminal proceedings are ongoing.

External investigations

17. Following a public interest disclosure of allegations against the two officers to the Office of the Commissioner for Public Interest Disclosures (OCPID) in January 2015, a number of inquiries and investigations were commenced. These involved my Office, OCPID, the Solicitor-General and the Solicitor for the Northern Territory (SFNT).
18. There has been co-operation between these offices from the outset to reduce the potential for unnecessary duplication of investigative effort.
19. Of particular note, OCPID engaged an independent investigator to conduct an investigation into disclosures it had received. The investigator was Mr John Taylor, a highly regarded former Deputy Ombudsman of Victoria.
20. Mr Taylor served as Deputy Victorian Ombudsman for more than ten years. He acted as Victorian Ombudsman on many occasions. Prior to that he was a Senior Assistant Commonwealth Ombudsman responsible for the Ombudsman's state and territory offices, corporate and law enforcement functions. He has significant experience in managing and conducting complex investigations in a wide range of jurisdictions, including police, state and federal agencies and local government.
21. In light of that step, my Office continued to obtain and analyse evidence but did not immediately proceed to full investigation. My Office met with staff of OCPID and Mr Taylor to discuss and offer assistance with respect to the OCPID investigation.
22. Mr Taylor ultimately produced a report to the Minister for Police (the OCPID report), recommending that the Minister cause the conduct of Mr McRoberts to be investigated for the criminal offence of attempting to pervert the course of justice, that disciplinary action be taken against Mr Bryson and that steps be taken to ensure that executive vacancies within NT Police be promptly filled.

23. In a joint Media Release dated 1 March 2015, the Chief Minister and Minister for Police accepted those recommendations.
24. With regard to the first recommendation, the Australian Federal Police is undertaking an investigation on behalf of NT Police.
25. With regard to the second recommendation, I have obtained and reviewed the findings of the Commissioner of Police with respect to the disciplinary proceedings. Following consideration of a report from the Solicitor for the Northern Territory, the Commissioner determined that Mr Bryson had breached the NT Police Code of Conduct by failing to deal appropriately with a conflict of interest. The Commissioner decided to terminate his appointment as Commander, effectively demoting him to the rank of Superintendent. I note that the Commissioner accepted that Mr Bryson did not allow the conflict of interest to influence adversely any decision made in the conduct of the investigation. I also note that there are provisions allowing him to seek review of the decision.
26. With regard to Mr Taylor's third recommendation, I strongly support prompt action to fill executive vacancies in NT Police. It is clear that the extended period of acting appointments following the departure of the former Deputy Commissioner in 2014 gave rise to significant challenges for all involved in the senior management of NT Police.
27. Appointments have recently been made to the Commissioner and Deputy Commissioner positions. NT Police has advised that appointments to other senior positions will be progressed in a timely manner.

This report

28. I have obtained and considered a copy of the OCPID report. I believe it appropriately addresses the issues raised in the public interest disclosure to OCPID.
29. In light of the acceptance of the recommendations in the OCPID report and the disciplinary proceedings undertaken in relation to Mr Bryson, I see little value in going over the same ground covered by Mr Taylor in relation to the specific allegations against the two officers.
30. I am also acutely aware of the existence of ongoing investigations and criminal proceedings. In order to minimise the potential for adverse impacts on those ongoing investigations and proceedings, I have restricted discussion in this report of the particular circumstances of these matters.
31. The focus of this report is on a number of broader administrative issues that I consider can and should be addressed as soon as possible. A number of these were referred to me by OCPID in a letter dated 13 February 2015 from Mr Taylor. With the exception of two matters mentioned in paragraph 235 below, they are addressed in this report.
32. In brief, those issues relate to the need for:
 - review of police integrity policies and procedures, including those relating to conflict of interest, associations and gifts and benefits;
 - training and ongoing awareness building relating to integrity issues and complaint handling at all levels within NT Police, including senior management;

- review of processes relating to how police raise issues of concern about other police, including how police who raise concerns are treated; and
- review of legislation and procedures relating to handling and investigation of complaints against Police under the *Ombudsman Act*.

33. I have made a number of recommendations that NT Police proceed to review relevant policies and procedures in consultation with my office and OCPID. I have requested that NT Police report regularly to my Office on progress until those recommendations are fully implemented.

34. I have also made recommendations that the NT Government consider options for change in relation to reporting, investigation and seeking advice on integrity issues and strengthening the investigative powers of the Ombudsman.

PETER SHOYER
Ombudsman

Recommendations

Recommendation 1

NT Police review its policies and procedures dealing with conflicts of interest, associations and gifts and benefits in consultation with the Office of the Ombudsman and OCPID.

Recommendation 2

NT Police review its controls in relation to procurement of travel management services to minimise the potential for personal interests to influence decision-making.

Recommendation 3

NT Police review its training and awareness programs for all levels, including senior management, in order to ensure that all officers develop and maintain the analytical skills and mindfulness to be able to identify and address integrity issues as they arise.

Recommendation 4

The NT Government consider the need for, and benefits of, alternative options for reporting, investigating and seeking advice on integrity issues.

Recommendation 5

NT Police review procedures relating to education and awareness of options for police reporting concerns about other police (including external reporting) and treatment of police who report such concerns.

Recommendation 6

NT Police review procedures for identification and reporting of police complaints in consultation with the Office of the Ombudsman and OCPID.

Recommendation 7

The NT Government take steps to amend the Ombudsman Act to abrogate the privilege against self-incrimination for the purposes of investigations under the Act, subject to inclusion of adequate protections against future use of information disclosed.

35. In order to ensure that adequate steps are taken to implement recommendations concerning NT Police made in this report, I seek from the Commissioner of Police:
- a. within one month of the date of this report, a response that outlines the further steps NT Police has taken or proposes to take to give effect to each recommendation and any reasons for not taking all steps necessary to give effect to a recommendation; and
 - b. every three months thereafter until full implementation, a summary of steps taken in progress towards implementation.
36. As noted elsewhere in this report, my Office and OCPID are happy to assist NT Police in any way they can in the implementation of the recommendations.
37. I provided a draft report to the Commissioner of Police, Mr Kershaw, for comment. The relevant parts of his response are set out below:

The Northern Territory Police Force is committed is to continuously improving the manner in which it provides services to the Northern Territory community and therefore welcomes the report. Northern Territory Police supports each of the recommendations and notes that many aspects of the recommendations are in the process of being implemented.

I am confident that in the very near future, Northern Territory Police will be a better trained, highly capable and adaptable workforce that is better equipped to meet the challenges of the 21st Century. My priority will be to reform and redefine the police force's core values and vision and transform the force into a truly values-led organisation.

Over the past few weeks I undertook to develop and implement a number of new initiatives that will assist in meeting the challenges of reforming core values of the organisation including the establishment of the Special References Unit. This unit forms part of the Professional Standards Command and is a specialised investigational area that will undertake investigations into corruption allegations, matters that are politically sensitive, serious conflicts of interest and other complex internal matters. To ensure the integrity of all investigations is maintained, the Professional Standards Command including the Special References Unit will soon be relocated to separate office accommodation in the Darwin Central Business District.

As stated, reforming the police fore's core values with an emphasis on integrity is my priority and I have instructed the Professional Standards Command to review the now dated Code of Conduct and Ethics General Order with consideration to be given to the development of a new and discrete Integrity Framework that will encompass the conflict of interest, associations, gifts and benefits environment in a comprehensive and effective manner.

You will agree that it is vitally important that a new direction in terms of a framework dealing with integrity and values, needs to be supported by a robust education and training framework. This will ensure all officers can develop and maintain a higher order understanding of these critical concepts. To this end, I have appointed [a] new Director of the Police, Fire and Emergency Services College. [The new Director] has a solid background in adult education and will ensure that the new Integrity Framework will resonate with police officers and will be implemented to best effect across the organisation.

Chapter 1 - Dealing with integrity issues

38. I have declined to further investigate the specific conduct of the two officers because that conduct has already been investigated by OCPID and SFNT.
39. However, on the basis of my investigations and consideration of existing policies, I have come to the conclusion that it would be appropriate for NT Police to review its policies and procedures relating to maintenance of police integrity and ethical conduct.
40. Developing and maintaining a high level of police integrity is essential to the preservation of respect for NT Police. If there is an absence of respect for the ethical conduct of police within the Police Force and in the community generally, the job of individual officers is made immeasurably harder and the effectiveness of the Police Force severely limited.
41. It is in the interests of all police and the community in general that police at all levels operate and are widely acknowledged to operate with a culture of integrity.
42. The following comments from the Victorian Office of Police Integrity¹ neatly summarise the position:

The Importance of Integrity

Corruption and misconduct do not just affect the individuals directly involved in the behaviour. When police are corrupt, deliberately break the law, disregard their duties, and act without integrity, every member of police and their families and friends is affected.

The reputation of the corrupt member and the reputation of every member ... may be tainted and public confidence in policing services can be diminished. This in turn may mean that the community becomes less willing to assist or cooperate with police. This can do great harm to police members' ability to do their jobs effectively.

When the integrity of a police member is in doubt – whether substantiated or perceived – the consequences upon that member's wellbeing and that of their loved ones can be devastating. Also, the community may experience a loss of faith in police and the organisation may experience low levels of pride and morale. The process of rebuilding trust can be time consuming.

Police wrongdoing can also seriously jeopardise the personal safety of other police and the community. Every member ... has the right to work in a safe, fair and ethical environment. In the local workplace, unethical behaviour of members can contribute to perceptions of unfairness, cause factions, lead to claims of bullying or harassment, impact performance and generally produce an unhealthy work climate. [p.7]

...

¹ *Promoting integrity awareness: A group activity kit*, July 2008, pp6-7. The Victorian Office of Police Integrity has been replaced. This document may be found on the website of the Victorian Independent broad-based anti-corruption commission (IBAC), <http://www.ibac.vic.gov.au/docs/default-source/opi-prevention-and-education/promoting-integrity-awareness---group-activity---a-kit-for-facilitators.pdf?sfvrsn=2>

[Culture of Integrity]

An agency's culture of integrity, as defined by clearly understood and implemented policies and rules, is more important in shaping the ethics of police officers than the qualities of individuals within that agency. A culture of poor ethical health can infect individuals, such that, over time, they make decisions and judgements that do not reflect their initial values and begin to mirror that of their environment. Similarly, a culture of high ethical health can bring about change in individual's attitude, tolerance and judgement when placed in ethical dilemmas.

The cooperation of front-line police is essential in detecting breaches of integrity, but often, misplaced loyalty or concern for the personal welfare of their colleagues discourages many officers from reporting misconduct. Weakening the silencing effect of this concern or loyalty is vital to enhancing integrity within the agency.

Officers learn to evaluate the seriousness of various types of misconduct by observing their organisation's diligence in detecting it and dealing appropriately with those found to have engaged in misconduct. If a department or region welcomes complaints about misconduct, thoroughly investigates those complaints, and takes appropriate and timely action for any misbehaviour, then officers conclude that such misconduct is unacceptable.

However, if a department ignores or discourages complaints and fails to investigate or fails to address unacceptable behaviour, officers learn not to take those violations seriously. If an unwritten, informal rule conflicts with written policy and codes of conduct, the resulting confusion undermines the agency's overall integrity building efforts. To avoid this situation, police managers need to follow the written policy in practice, model expected attitude and judgement and coach officers who are unclear on official policy.

Consistently, most officers agree on the appropriate assessment of serious misconduct and the expected sanctions, particularly for serious offences. Most complaints of misconduct however, are less serious. There is greater discrepancy and less agreement about how to assess and respond to these complaints. From a "building integrity" perspective, consistently addressing these relatively minor breaches with the appropriate strategies to rectify behaviour assists officers understanding and judgement for future dilemmas. [p.6]

43. The current NT Police Code of Conduct and Ethics contains extensive provisions relating to conflicts of interest, associations and acceptance of gifts and benefits, a number of which are set out below:

Conflicts of Interest

33. The importance of family and private commitments is accepted. However, members shall arrange their private affairs in a manner that will:

33.1 prevent any conflict of interest from arising; and

33.2 ensure there is no incompatibility, or perceived incompatibility between their personal interests, activities or beliefs, that interfere with the impartial fulfilment of their official duties and responsibilities.

33.3 cease or minimise any contact or interaction with persons who have or continue to have adverse dealings with the NT Police, (adverse dealings for example can include; extensive criminal history, adverse intelligence holdings, known police targets)

34. If a conflict of interest does arise, the member shall resolve the conflict in favour of the public interest and the Northern Territory Police Force.

35. *Members shall take reasonable steps to prevent any conflict of interest from arising. Where they have any doubt, members shall discuss with their supervisor.*

36. *Members are to disclose any conflicts of interest to their supervisor.*

37. *Members who believe that another member has been placed, or is in, a situation of conflict of interest shall report the matter to a supervisor.*

...

43. *Members should, whenever practicable, avoid becoming involved in police matters involving themselves, their friends, their relatives or in which they have a direct personal interest. Unless immediate action is required and the member concerned is on duty, such cases should be referred to other members for appropriate action.*

...

45. *Examples of conflicts of interest are:*

45.1 *any financial or other interests that could compromise the impartial performance of a member's duties;*

45.2 *any personal beliefs or attitudes a member holds that may influence the impartial performance of their duties;*

45.3 *outside activities including studies and volunteer work which adversely affect a member's ability to perform their duties; and/or*

45.4 *improper associations or relationships with people with whom a Police Force or Law Enforcement Agency has had or is having adverse dealings. This is not to be limited to mean only persons convicted of an offence and may include persons charged with offences or persons subject to adverse intelligence holdings.*

...

Acceptance of Gifts or Benefits

58. *Members must not solicit for or improperly obtain any gift, benefit or advantage for themselves, the police force or any other person.*

59. *Members must not use their powers or office for personal gain.*

60. *A member must not accept a gift or benefit for themselves or anyone else in circumstances where the gift or benefit is, or may be perceived to be, a payment for an act or omission which if done or not done would compromise, or may be perceived as compromising, their duty as a member of the Police Force.*

61. *What is important is how the public perceives Police behaviour and the reason why a gift or benefit might be offered. However innocent the acceptance of a gift or benefit might be, if the public or a member could perceive such acceptance as compromising a member's duty, the gift or benefit must not be accepted. A member should politely decline by explaining Police policy. This does not mean you cannot participate in normal social events that involve shared meals and the like.*

62. *A gift or benefit that is received by a member that could breach this General Order must be declared to the member's Divisional Officer.*

63. *A member that is offered a gift or benefit from a person or business that has tendered or supplies goods and services to the NT Police will not under any circumstances accept such gift or benefit.*

44. *There is also other supporting NT Police documentation that promotes ethical conduct, for example, the Leadership Charter and the Statement of Ethics.*

45. I acknowledge that the *Code of Conduct and Ethics* is a detailed policy document that goes a considerable way to establishing robust guidelines in relation to handling of integrity issues.
46. However, this is an area in which there have been significant developments since the current Code was promulgated in 2007 and it is important to regularly review policies and procedures to ensure that they continue to represent best practice.

Matters for consideration in review

47. Without wishing to limit the scope of a review, I discuss below a number of matters that I believe should be considered.
48. Firstly, NT Police has raised a number of potential initiatives, including reinvigorating its core values and vision statement, reviewing its conflict of interest policy within the Code of Conduct and its internal investigation general order, and possibly developing a discrete conflict of interest general order. These are all positive proposals and my Office is happy to participate in any discussion of the best way forward.
49. Secondly, I support recommendations of OCPID that there be clear and unambiguous guidelines on gifts and hospitality, with case studies on what is and is not appropriate and that NT Police establish a gifts register.
50. Situations can be complicated by gift giving, even if it is ostensibly an aspect of a personal association. If it occurs in a context where there is a public element, for example, where there is also a business association as a supplier of goods or services, the extent of gift giving may well be relevant to establishing whether an association is of sufficient substance to give rise to a conflict of interests. Accordingly, this should be addressed in relevant policies and procedures and it is arguable that, where there is a business association with NT Police or an associated body, even personal gifts should be recorded in the gifts register.
51. Thirdly, I am concerned that there is an underlying view held by some individuals that they can deal with a conflict of interests by heroically carrying on and making sound judgements in spite of the conflict — that they can rise above personal interests to “do the right thing”.
52. While in a particular case, an individual might not make a different decision because of a personal interest, such an approach misses the point of conflict of interest processes. They are not about the subjective intentions of the officer or their strength of character. They are about dealing with risk.
53. The best approach is invariably to avoid becoming involved in a situation that gives rise to a conflict of interests.²
54. The key elements of conflict of interest procedures should be to encourage disclosure and discussion in order to identify potential conflict of interests and avoidance or withdrawal from involvement in cases where a conflict of any substance is identified.
55. We should not expect or accept public officers putting themselves in or being put in positions where they must reconcile competing personal and public interests. The goal must be to protect the officers and the public from such situations. Procedures must make this clear and every effort must be made to ensure that officers understand and accept the need to deal appropriately with conflicts of interest.

² There may be exceptional cases where emergency or statutory requirements mean that it is not possible to avoid some involvement but these would be very rare.

56. Fourthly, procurement of travel management services has in the past in many organisations been subject to less control than other services. The value of individual transactions has been relatively low and there has been considerable flexibility in choice of agent.
57. This is also an area where there is some flexibility in travel arrangements and costing. For example, an agent may be able to secure a discount or an upgrade, giving an advantage to an individual.
58. Where an officer has influence or control over choice of agent, this can give cause for concern whether the advantage is received in an official capacity or in a private capacity. Clearly a discount granted for personal travel could raise concern but equally so may a free upgrade on official travel. Or there may be situations where a discount on official travel means the difference between an officer gaining or being refused approval for work travel for a pet project.
59. Clearly it is in the interests of NT Police that officers travel economically but there must be systems in place to ensure that the benefits flow to NT Police and not merely to select officers who may be able to influence choice of agent.
60. Of course, in addition to strengthening integrity policies, potential concerns can be addressed directly through better controls in relevant operational areas.
61. I note that there is currently a whole of government Travel Management System (TMS) pilot under way in relation to provision of travel management services. I also note that on 22 May 2015, the Chief Executive of the Department of the Chief Minister announced a whole of government review into public sector travel processes and systems. These initiatives are likely to address many issues in relation to choice of agent. However, it is probable that any final system will allow a level of flexibility and choice.
62. Therefore, in addition to dealing with this issue in the context of integrity policies and procedures, I believe it is important that NT Police review its policies and procedures in relation to procurement of travel management services once the TMS pilot and whole of government review have been finalised, in order to ensure that procurement decisions are made in the public interest and not influenced by personal interests.
63. My Office and OCPID would both be willing to assist NT Police in the reviews discussed above.

Recommendation 1

NT Police review its policies and procedures dealing with conflicts of interest, associations and gifts and benefits in consultation with the Office of the Ombudsman and OCPID.

Recommendation 2

NT Police review its controls in relation to procurement of travel management services to minimise the potential for personal interests to influence decision-making.

Chapter 2 - Making it real and keeping it real

64. Development and maintenance of best practice policies and procedures is an essential part an integrity system. However, it is also important that each police officer accepts and adopts the principles underlying the integrity system. Ethical behaviour is something lived, experienced and developed by the individual rather than a set of facts committed to memory by rote learning.
65. It is therefore essential that there be not only initial training in how to approach the task of identifying and dealing with integrity issues but also ongoing awareness programs that engage and challenge more experienced and senior officers to refresh and continually develop their appreciation of ethical behaviour in a police context.
66. The following passage provides a useful discussion of what constitutes police integrity:

Despite attempts to define [police integrity], a clear, testable, and measurable definition proved to be elusive. Consider the definition of integrity proposed by the HM Inspectorate of Constabulary:

[I]ntegrity in its broadest sense ... encompasses fairness, behaviour, probity and equal treatment, as well as a range of operational and management issues. It is not about corruption in a narrow sense but how public confidence is secured and maintained. In policing, integrity means exercising powers and using discretion to the highest standards of competence, fairness and honesty in practical terms integrity can be described as the minimum standards the public has a right to expect.

This broad definition requires that we label even some completely legitimate behavior as behavior of low or no integrity if it does not fit the "highest standards of competence, fairness and honesty." Occasionally being a few minutes late, not responding to the call for service promptly, accepting a free cup of coffee, or using lies in the undercover work may all be the viewed as violations of this standard. Hickman and colleagues also recognize the lack of a succinct, testable definition and argue that "... like some public policy questions — such as pornography — we may find it (integrity) difficult to define, but know it when we see it, or fail to see it as the case may be." Whereas not solving the problem entirely, Carter and Goldsmith refine the definition by allowing for a more dynamic perspective. In particular, rather than viewing police integrity as a state that has or has not been achieved, they view it as a process or "a journey rather than a destination."³

67. I draw two significant points from the above discussion. The first is that any integrity system must deal with issues that go well beyond what may be popularly regarded as 'police corruption'.
68. Failure to meet the highest standards of integrity can frequently arise not through some deliberate and overt intention to subvert the law or the requirements of a position. In many cases, a failure will arise through:

³ Klockars C B, Ivkovic S K, Haberfeld R, *Enhancing Police Integrity*, Springer Science & Business Media, 2007, p.xvi, footnotes deleted.

- simple lack of appreciation that there is an issue; or
 - ineffective attempts to satisfy a range of competing official and personal interests — to steer a path through a complicated mess in an effort to avoid having to raise the issues with a superior officer.
69. The second point is that, while broad parameters and procedures can be established for identifying and dealing with integrity issues, the process does not, at the margins at least, lend itself to resolution by adherence to detailed, black and white rules. In many cases, deciding how best to deal with an issue will require considerable disclosure, discussion and debate.
70. It is therefore crucial that all police have regular opportunities to refresh and reflect on integrity issues and what constitutes ethical behaviour. The efficient functioning and the credibility and reputation of NT Police depend on it.
71. This is particularly true for senior police because:
- if integrity policies are to be followed, it is important that compliance be openly and demonstratively supported at the highest levels in the organisation; and
 - dealing appropriately with issues of this nature often requires a willingness to ask questions and raise issues — junior officers must have the confidence that issues they raise will be considered and approached in an appropriate manner by senior officers.
72. Given the extraordinary powers and broad discretions that police have and the wide variety of situations they find themselves in, an important tool in this continuing awareness process will be regular discussion of a broad selection of scenarios that may arise.
73. To illustrate just how broad the potential range of scenarios for police can be, I have set out at Appendix 1 a sample of 46 potential scenarios taken from two sources.
74. One approach to awareness building that commends itself is outlined in the following design principles:
- *Facilitators should be skilled and experienced in managing group facilitation and group dynamics. Conversations about corruption and conduct are notoriously difficult to manage, because behaviours used to illustrate conduct are often context-specific, can stir strong emotion and be difficult to discuss objectively without personal values influencing perspective.*
 - *Facilitators need a range of resources rather than rigid session plans. ...*
 - *Workshops about conduct work best when there are a mix of classification levels, ranks and work areas represented among the participants. People will benefit from the wider ranging discussion and seeing the application of judgement and decision-making differences. The risk of conducting a workshop with an existing team is that it may only serve to perpetuate their current world view.*
 - *Active senior leadership involvement is essential in delivery of the workshops, to show the organisation's commitment to building corruption resistance and so that participants can see their senior leaders modelling acceptable behaviours.*
 - *Workshops need to be interactive – participants need to be actively engaged in conversations and debate about the behaviours to effectively develop their understanding around the complexity of the issues.*

- *Participants should come away with a greater appreciation of what constitutes unacceptable behaviour and, demonstrate enthusiasm for communicating their understanding throughout the workplace.*⁴

75. OCPID has recommended that regular training on conflict of interest be provided and that police members should be reminded on a regular basis of the rules relating to associations, with particular reference to the *Code of Conduct and Ethics*.
76. NT Police also advises that it is considering mandatory training and awareness for conflicts of interest, Ombudsman and OCPID investigation procedures and policies.
77. My Office and OCPID are happy to assist NT Police in the review and ongoing implementation of such programs.

Recommendation 3

NT Police review its training and awareness programs for all levels, including senior management, in order to ensure that all officers develop and maintain the analytical skills and mindfulness to be able to identify and address integrity issues as they arise.

⁴ *Promoting integrity awareness: A group activity kit*, Victorian Office of Police Integrity, July 2008, p.3 The Office of Police Integrity has been replaced. This document may be found on the website of the Victorian Independent broad-based anti-corruption commission (IBAC), <http://www.ibac.vic.gov.au/docs/default-source/opi-prevention-and-education/promoting-integrity-awareness---group-activity---a-kit-for-facilitators.pdf?sfvrsn=2>.

Chapter 3 - Existing mechanisms for reporting concerns and possible alternatives

78. My investigation identified issues relating to awareness and utilisation of existing mechanisms for police reporting of concerns about police conduct.
79. This chapter will outline existing general mechanisms for people to make complaints and disclosures about police conduct, before moving on to consider provisions of specific relevance to police reporting concerns about other police, and some alternative mechanisms that might be considered for reporting and investigating concerns.
80. There are three existing formal mechanisms for reporting concerns about police conduct. A person can make a complaint under the *Ombudsman Act* or a disclosure under the *Public Interest Disclosure Act* (the PID Act) or raise a concern directly to or within NT Police.
81. These are not mutually exclusive options. One report, depending on its nature, may initiate two or all three of the mechanisms.

General provisions for police complaints under the *Ombudsman Act*

82. Section 21 of the *Ombudsman Act* sets out who can make a complaint about the conduct of a police officer:

21 Who may make complaint

- (1) *A complaint about administrative action of a public authority or conduct of a police officer may be made by:*

- (a) *a person aggrieved by the action or conduct; or*
- (b) *a person representing a person aggrieved by the action or conduct; or*
- (c) *a third party or a person representing a third party.*

...

- (3) *In addition, a third party may make a complaint only if:*

- (a) *the complaint raises a substantive issue; or*
- (b) *the party has first-hand evidence about the subject matter of the complaint.*

Example for subsection (3)(b)

An independent bystander who witnesses a police officer's conduct.

83. Police conduct is defined in section 7:

7 Conduct of police officer

- (1) **Conduct** of a police officer is any decision or act, or a failure to make any decision or do any act, by the police officer for, in relation to or incidental to, the exercise of a power or performance of a function of a police officer.

- (2) To avoid doubt, conduct of a police officer includes conduct mentioned in subsection (1) in the capacity of a public official.

- (3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

84. There are two points of contact for making a complaint about police conduct — directly to the Ombudsman or to a police officer other than the officer who is subject to the complaint (s. 24).
85. A complaint about police conduct that is made to a police officer must be referred to the officer in charge of the Police Standards Command who must in turn notify the Ombudsman (s. 65).

General provisions for public interest disclosures

86. The PID Act allows individuals to make a disclosure:

10 Right to make public interest disclosure

- (1) *An individual (and only an individual) may, under this Part, make a disclosure of public interest information.*

87. Section 4 provides:

public interest information means information that, if true, would tend to show a public officer or public body has engaged, is engaging, or intends to engage, in improper conduct.

88. Section 5 defines improper conduct:

5 Improper conduct

- (1) *Conduct on the part of a public body or public officer in, or related to, the performance of official functions is **improper conduct** if:*

- (a) *the conduct involves 1 or more of the following and constitutes a criminal offence or, if engaged in by a public officer, reasonable grounds for terminating the services of the public officer:*

- (i) *seeking or accepting a bribe or other improper inducement;*
- (ii) *any other form of dishonesty;*
- (iii) *inappropriate bias;*
- (iv) *a breach of public trust;*
- (v) *misuse of confidential information; or*

- (b) *the conduct involves 1 or more of the following (whether or not the conduct constitutes a criminal offence or, if engaged in by a public officer, reasonable grounds for terminating the services of the public officer):*

- (i) *substantial misuse or mismanagement of public resources;*
- (ii) *substantial risk to public health or safety;*
- (iii) *substantial risk to the environment;*
- (iv) *substantial maladministration that specifically, substantially and adversely affects someone's interests.*

- (2) *The following also constitute improper conduct:*

- (a) *an act of reprisal;*
- (b) *a conspiracy or attempt to engage in improper conduct that constitutes a criminal offence.*

- (3) *In this section:*

substantial maladministration means conduct that includes action or inaction of a serious nature that is any of the following:

- (a) *contrary to law;*
- (b) *unreasonable, unjust, oppressive, or improperly discriminatory;*
- (c) *based wholly or partly on improper motives.*

Police reporting concerns about police

89. A police officer can, depending on the precise nature of the issue, utilise any of the three processes, namely internal chain of command, complaint under the *Ombudsman Act* or public interest disclosure.

Police chain of command

90. The most common and direct mechanism for a police officer to report concerns about another officer is through the police chain of command. NT Police maintains a clear structure of rank and reporting which is adequate to deal with the great majority of issues in normal situations.

91. There are obligations within that structure for officers who have concerns to report internally. For example, the NT Police *Code of Conduct and Ethics* provides:

85. All members must report any suspected or actual breach of the Code of Conduct and Ethics or any suspected or actual improper conduct.

86. This should be done through the normal chain of command. Where possible such breach should be resolved at a local level. However in serious cases the matter is to be referred to the Commander of the Ethical and Professional Standards Command for assessment and determination of investigation.

...

88. If members are not sure if a matter should be reported, they should seek advice from their supervisor.

88.1 If the supervisor is the person against whom the member is alleging improper conduct, the member should advise the person next in the chain of command or seek advice directly from the Ethical and Professional Standards Command.

Ombudsman complaint

92. Police can make a complaint about police under the *Ombudsman Act* but there is a limitation in relation to such cases set out in section 21(2):

However, a police officer or person representing a police officer may make a complaint about conduct of a police officer only if the conduct:

(a) constitutes an offence punishable by imprisonment; or

(b) is likely to bring the Police Force into disrepute or diminish public confidence in it.

93. This acts to restrict use of the Ombudsman complaint mechanism so that it is not utilised to raise less serious internal matters that are more appropriately dealt with as part of Police management processes.

94. However, questions of what conduct is likely bring NT Police into disrepute or diminish public confidence are open to interpretation and debate. While some cases will obviously be serious enough to meet the test, there is potential for a considerable grey area at the margins.

95. Even so, any police officer can make a complaint under the *Ombudsman Act* in relation to more serious matters, either directly to the Ombudsman or to another police officer.

Public Interest Disclosure

96. Likewise, a police officer can make a public interest disclosure about another police officer. Again, there are restrictions on public interest disclosures that limit the issues of concern that a police officer can raise about another police officer (although in this case the restrictions have general application).

97. The first restriction is that the matter must meet the threshold of improper conduct set out in section 5 of the PID Act (see paragraph 88 above). This in itself points to the serious nature of the conduct envisaged to qualify as a public interest disclosure.

98. The second is set out in section 10(2) of the PID Act, which provides:

A public interest disclosure cannot be based solely or substantially on:

(a) disagreement with a policy that may properly be adopted, including a disagreement about amounts, purposes and priorities of expenditure; or

(b) an employment related grievance (other than a grievance about an act of reprisal) or other personal grievance.

99. So, as with the Ombudsman complaint mechanism, public interest disclosures about police are intended to be about more serious matters, not routine matters relating to internal Police management processes.

Cases under investigation

100. In the cases under investigation, the situation was considerably complicated because both of the officers who were the subject of concern were senior officers, one of them being at the time at the very top of the chain of command, the Commissioner of Police.

101. The Commissioner of Police made known a personal and work-related association with the travel agent (the latter through Crime Stoppers) but advised that he did not consider it raised a conflict of interest.

102. There was later internal reporting of concerns and ultimately a public interest disclosure to OCPID (covering the conduct of both officers) and provision to my Office of two complaints.

103. As noted previously, the information obtained by my Office does not suggest that there was a common course of action between the two officers. However, a substantial amount of information pointing to separate associations between the two officers with the travel agent came into the hands of police at the same time in mid-November 2014.

104. Various actions and investigations were undertaken by a number of officers from that point until the resignation of the Commissioner of Police in mid-January 2015.

105. The intervening period was, it is clear, one of significant uncertainty and dislocation for the officers involved. It was an unprecedented situation which presented substantial challenges for all concerned.

106. I do not propose to undertake a detailed analysis of the actions of each officer who may have had some knowledge or suspicions about the situation prior to the resignation of the Commissioner of Police.

107. The major lesson to be taken from the circumstances under review is that, while relying on reporting through the chain of command usually works well in relation to the conduct of rank and file officers, considerable strain can be placed on that mechanism when the officers subject to report are senior officers and in this case, the most senior officer.

108. This is exacerbated in a relatively small Police Force with a correspondingly small group of senior managers who interact with each other on a regular basis, particularly when many positions are held on an acting basis and there is a regular interchange of positions.

109. The focus must be on whether and how procedures can be improved for the future, and in particular, whether there are any changes that can be made to cater for the eventuality that something like this extraordinary situation may recur.
110. As a starting point, one must ask whether the three existing mechanisms discussed above, internal and external, provide adequate alternatives for reporting and investigation of police integrity issues and what other options might be available?

Other options – An anti-corruption body

111. One possible option is establishment of an ‘anti-corruption’ commission. Standing commissions of this nature exist in other Australian jurisdictions under various guises, for example, the Independent Commission against Corruption in New South Wales, the Independent Commissioner against Corruption in South Australia, the Crime and Corruption Commission in Queensland, the Corruption and Crime Commission in Western Australia and the Independent Broad-based Anti-corruption Commission in Victoria.
112. In addition to anti-corruption / integrity functions, such bodies often have an organised or major crime remit. I make no comment on the need for a separate body to undertake that type of function in the Northern Territory. That is beyond the scope of this investigation.
113. Currently, there are two independent bodies which a member of the public concerned about police conduct or a police officer concerned about serious issues involving another officer can approach. Both OCPID and the Ombudsman have substantial investigative powers.
114. There are improvements that can be made in relation to procedural matters and promoting awareness of options within NT Police (discussed in following chapters). However, both independent bodies have the capability to investigate allegations into police conduct.
115. Neither is a large office and the Northern Territory is a small and relatively tight knit community. However, neither of these factors has presented a real impediment to full and proper investigation of issues relating to police conduct. In any event, issues that may arise due to these factors would not be overcome by the establishment of another small office with an anti-corruption function.
116. Bearing the above points in mind, I believe the existing mechanisms provide adequate options for reporting and investigation of police conduct.
117. However, it is vital that officers are aware of the available options and willing to make reports not only internally but also externally when the situation warrants it. This is discussed further in the next chapter.
118. In saying the above, I acknowledge that anti-corruption bodies in other jurisdictions have powers to investigate the conduct not merely of police and public servants but also of members of parliament and ministers.
119. There is currently no standing independent review body in the Northern Territory with such powers. OCPID can investigate MLAs but only on a referral at the discretion of the Speaker (sections 11 and 12 of the PID Act).
120. Whether a stand alone body should be established, or an existing body conferred with broader jurisdiction, in order to address such cases is a broader issue which is beyond the scope of this investigation.

Other options – A special references unit

121. A further option NT Police has raised is the establishment of a special references unit within NT Police Professional Standards Command to investigate corruption, matters with political sensitivities, serious conflicts of interest and other complex internal matters.
122. Such an approach has a limitation in that it is internal to Police and, of course, subject to the ultimate control of the Commissioner. However, a standing unit of this type may well provide an effective mechanism to quickly address the great majority of matters of this type.

Other options - An Integrity Commissioner

123. Another option that may bear consideration does not relate to reporting and investigation as such but rather to the potential to seek confidential advice in relation to integrity issues. It should not be seen as a replacement for a robust reporting and investigation regime but as a potential adjunct to executive management of integrity issues.
124. In his report on the *Inquiry into Stella Maris* (May 2014), Commissioner J A Lawler recommended the appointment of an Integrity Commissioner to provide advice to ministers, the Legislative Assembly and the Northern Territory Public Sector similar to the role of integrity commissioners in other jurisdictions.⁵
125. Commissioner Lawler recommended that the office be held by the Commissioner for Public Interest Disclosures. I do not consider that such a function would sit well with an office already charged with the investigation of complaints or disclosures about actions or decisions that may have been made in line with, or indeed contrary to, advice given as an Integrity Commissioner.
126. An advisor who later becomes an investigator would be faced with numerous challenges, eg, if the official wholly or partly complied with advice, could the advisor/investigator easily gainsay their own advice or if the advice was not taken, could the advisor/investigator fairly report on the action they warned against.
127. Either OCPID or the Ombudsman could provide general advice and training on how to handle integrity issues but having a formal role as an integrity advisor may be problematic.
128. An alternative model, in a Territory context, might be to have a separate, independent Integrity Commissioner whose sole role is to give advice to senior public officials on integrity issues.
129. Given the likely limited demand for advice in a jurisdiction the size of the Territory, the role could be potentially be undertaken by a retired judicial officer, auditor-general, senior lawyer or other respected community figure, on a sessional basis as required.
130. Two jurisdictions, Queensland and Tasmania, have Integrity Commissioners. In Queensland, for example, the *Integrity Act* establishes the office of Queensland Integrity Commissioner with a number of functions, most relevantly for present purposes, to advise senior public officials (including members of the Legislative Assembly) on ethics or integrity issues.⁶
131. In brief overview, any senior public official (“designated person”) can seek advice on integrity issues relating to himself or herself, although a chief executive must approve a request by an officer within a department (section 15).

⁵ Recommendation 18, p.330, <http://www.stellamarisinquiry.nt.gov.au/documents/inquiry-into-stella-maris-report.pdf>

⁶ The Queensland Integrity Commissioner also has functions relating to raising public awareness of ethics and integrity issues and registration of lobbyists.

132. The Premier and a relevant minister or chief executive can seek advice on issues relating to a designated person for whom they have responsibility (sections 16, 17, 20).
133. The number of requests for advice relating to designated persons received in Queensland over the past five years has ranged from 41 up to a high of 68⁷. One would imagine a Commissioner operating in the Northern Territory would receive substantially fewer requests given the comparative size of the two jurisdictions, so a sessional or part-time appointment would seem realistic.
134. An office of this kind might provide useful advice on ethics and integrity issues to senior public officials in the Territory.
135. It might also act as a circuit breaker in cases where concerns are raised about a potential issue or proposed course of action by a public official. The official could, either on their own initiative or following prompting by a colleague, refer the issue to the Integrity Commissioner for advice, which would hopefully resolve the issue.

Other options – An integrity committee

136. An alternative to the Integrity Commissioner model would be to have the same referral and advice function performed by a panel of, say three, senior public officers or former officers who have the experience and standing in the public sector to be able to give sound and respected advice.
137. The first step would be to identify a group of suitably qualified advisors from whom a panel could be drawn. Having a larger group to choose from would be important in order to avoid situations where a panel member is a close friend of the person seeking advice or there is another potential conflict of interest.
138. The group of potential panel members might, for example, include the Commissioner for Public Employment, the Chief Executive of the Department of the Chief Minister and other senior and respected chief executives.
139. Independent integrity officers such as the Auditor-General, Commissioner for Public Interest Disclosures or Ombudsman would have the background and experience for inclusion on such a panel. However, the potential for concerns I have expressed about the dual role of advisor/investigator in paragraphs 125-126, would have to be carefully considered before including one of those officers on a particular panel.
140. To the extent that such a panel comprised current chief executives from within Government, its utility would be open to challenge because of the potential for public perception that a panel was susceptible to peer and political pressures. And, as noted above, an integrity advisor of any description must not be seen as an alternative to a robust reporting and investigation regime.

Recommendation 4

The NT Government consider the need for, and benefits of, alternative options for reporting, investigating and seeking advice on integrity issues.

⁷ Queensland Integrity Commissioner, *Annual Report 2013-14*, p.20.

Chapter 4 - Improvements to existing systems

141. Having discussed above the efficacy of existing mechanisms for reporting and investigation of issues relating to police conduct, I believe it is important to consider how they operate at a practical level.
142. I address issues specific to identifying and investigating Ombudsman complaints in the next chapter. In this chapter, I consider steps that can be taken to improve support for police who report integrity concerns about other police and the level of awareness within NT Police of options for reporting.

Commending police who report concerns about police integrity issues

143. I approach these issues on the basis of four core premises which require some discussion:
1. Police who report concerns about other police should be commended for their contribution to maintaining the effectiveness, integrity and reputation of the Force.
 2. This is equally true whether or not the concern is eventually shown to have substance, so long as there is some reasonable basis for the concern. The real benefit for NT Police is in having concerns aired and addressed, whether substantiated or not.
 3. Police who seek advice from, or report concerns to, an appropriate external body in serious and complex situations should equally be commended for the same reasons.
 4. Senior officers must accept that it is part of their role and responsibilities to report reasonable concerns to external bodies.
144. As to the first point, raising integrity issues about a fellow officer is a challenging and uncomfortable experience. There will be a natural temptation to let 'sleeping dogs lie'. Appropriate reporting of concerns, particularly about senior officers, can be viewed as an act of bravery.
145. There must be an environment in which asking questions, even difficult and uncomfortable ones, is not taken as a challenge to authority or professionalism but accepted as part of a process of establishing best practice. The contribution of officers who are willing to raise integrity issues must be acknowledged.
146. As to the second point, an officer who makes a report is sometimes criticised because he or she "doesn't have all the facts", "doesn't see the bigger picture" or has "simply got the wrong end of the stick". This can be true. An officer who discovers information that raises a concern will often know only part of the story. However, this is not a valid reason for failing to raise an issue with an appropriate authority, so long as there is some reasonable basis for asking the question.
147. It is vital for the proper functioning of the Police that, where there is a reasonable question about an integrity issue, it be answered as soon as possible. It can then be addressed and negated, explained or appropriate steps taken to deal with it. Delay or failure to deal with concerns of this type can only exacerbate the potential for problems over time, whether or not there is any foundation to the concern.

148. Consider the following hypothetical scenarios:

Officer A receives some information that suggests that Officer B may have had a close association with a member of a criminal gang. A does not report but all his future dealings with B are tainted by this information. Over time A learns from other officers that they have heard a similar rumour and don't trust B anymore. In truth, the concern has no substance. [Even though it is not true, the efficiency of the Force is eroded by lack of co-operation and trust.]

As above but there was a close association. Up to the point that A received the information, B had never been involved in matters relating to the criminal gang. Over time B is involved in several cases relating to the gang and 'despite his best efforts' becomes drawn into supporting a series of decisions and actions favouring gang members following gang threats to disclose B's association and damage his career prospects. [The opportunity to address the issue before any damage was done has been lost.]

149. Prompt action in reporting concerns must be supported at every level as it may nip a problem in the bud before it has a real adverse impact.

150. It must be acknowledged that, in the eyes of some officers, such an approach does not sit easily with a police culture of support for fellow officers and respect for senior officers. However, it is in the interests of all police to have doubts and concerns raised promptly and dealt with immediately.

151. Officers who are willing to raise integrity concerns promptly in an appropriate forum should be supported and congratulated.

Promoting awareness of, and consideration of, external reporting options

152. As to the third point, in a disciplined force, there is a natural tendency to favour reporting through the existing chain of command in relation to any concern that may be raised about another officer.

153. This is unexceptionable as a general rule whether in the NT Police or in any other organisation. It is natural to raise issues internally. Even if a direct supervisor is involved, the obvious next step is for the next manager up-the-line to be advised.

154. In any event, reporting outside the chain of command to an external body is only permitted for more serious matters (see the limitations discussed in paragraphs 92-93 and 97-98 above). And, if an internal report qualifies as a complaint against Police under the *Ombudsman Act* or a public interest disclosure, it must in turn be reported by NT Police to the relevant external body.

155. However, there will be more serious matters where there are good reasons for raising concerns with an external body. For example, the concern may relate to a very senior officer, the officer may wish to raise the concern confidentially, or they may wish to simply discuss an issue that they are unsure of with an independent external body.

156. External reporting is a valid option open to police. It has a statutory basis and there are legislative protections for police who raise concerns.

157. Existing external bodies have the capacity to deal with concerns raised by officers from the most junior to the most senior levels. Quite apart from statutory reporting requirements, they should be seen as responsible and effective mechanisms for addressing complex integrity issues that fall within their respective jurisdictions.

158. External reporting does not mean that the chain of command is cast aside. Except in rare cases where there are good reasons for doing otherwise, the first step for the external body will be to appropriately involve the police hierarchy in the resolution of the concerns raised.
159. It is important that all officers are aware of the availability and merits of these external mechanisms for reporting or seeking advice on more serious matters.
160. It is equally important that NT Police and all its senior officers acknowledge and support the legal right of individual officers to take that step. And it is vital that there be overt recognition by NT Police that, in taking such steps, the reporting officer is acting in the interests of the NT Police and the community.
161. While this approach may raise concerns for some, it is an important safeguard to cater for situations where there are perceived or real hurdles to a matter being addressed within the NT Police structures.
162. As to the fourth point, it is crucial that senior officers accept that, as uncomfortable as it may be for them to do so, the ultimate responsibility for external reporting of reasonable concerns should rest with them.
163. It may well be appropriate for them to conduct initial analysis or investigation to confirm that a reporting of a concern is justified. But ultimately their role as leaders requires them to support their junior officers and the integrity of the NT Police by making an external report, even if the purpose that serves is to clear up uncertainty or misunderstandings.
164. I would recommend that relevant NT Police policies and procedures be reviewed in order to ensure they represent best practice in the promotion of awareness of, and support for recourse to, the Ombudsman and/or OCPID in appropriate cases.

Treatment of police who raise concerns about police

165. In order for police officers to be able to feel comfortable raising concerns, whether through the chain of command or to an external body, it is essential that there be a culture of support at all levels of police management.
166. As noted above, the decision to raise concerns can be at the very least trying and at worst traumatic. It will often seem appealing, at least in the heat of the moment, to look away in the hope that an issue is a 'one-off' that will either go unnoticed or be addressed by the officer involved or by some other means.
167. There must always be real effort from senior police to counteract this tendency. Obviously, one step is to mandate reporting and make it clear that failure to report can and will result in negative outcomes for the officer who does not report.
168. But on the other side of the coin, there must be clear support from senior management when an officer does raise a concern. Only when reporting is viewed positively can the integrity system reach a high level of effectiveness.
169. Steps that can be taken to positively support reporting include:

Create a safe reporting culture

Maintain a safe reporting environment in which staff feel confident to report integrity concerns. For example, let staff know that you will act on any reports of improper conduct, misconduct and corruption. Encourage and support staff by sharing stories or examples of issues that have been confronted in the workplace and the outcomes of these issues.

Monitor health and wellbeing

Managers have a responsibility to monitor the health and wellbeing of staff – especially those who have made complaints or internal disclosures about police conduct. Indicators that might suggest staff are experiencing stress or pressure in the workplace include changes in personality (such as socially or professionally withdrawn, depressed or unhappy), changes in work performance (such as a lack of motivation or interest, errors or mistakes), and absenteeism. Managers should ensure that staff are aware of and have access to appropriate support services ... and that the confidentiality of internal witnesses is not compromised.

Support staff

All staff have a right to feel comfortable and safe in a professional and respectful workplace. Be mindful of any destabilising influences such as people who may obstruct the complaints process or people who may victimise or harass those who make internal complaints. Intervene to prevent and redress any instances of retribution, payback or harassment. It is essential that these influences are dealt with immediately and that negative attitudes and behaviours are not encouraged or supported by staff.

Reinforce the consequences for staff who may victimise, harass or bully colleagues who make complaints.⁸

170. One essential step must be to keep the officer who has raised the concern regularly advised of progress.
171. This does not necessarily involve disclosure of details of an investigation that is underway. An officer who raises an issue that does not affect them personally should not expect that they will be informed of personal information about another officer.
172. However, it will usually be appropriate for the reporting officer to be informed regularly about basic details, eg, that the matter continues to be investigated, the reasons for any significant delay and when the matter has been finalised. It is important to do this in order to assure the officer that they have done the right thing in raising the concern. It can also be an important step in avoiding actions that might prejudice an ongoing investigation.
173. It is important for NT Police to review procedures relevant to the issues discussed in this chapter to ensure they represent best practice.
174. To provide an illustration of the many factors that must be considered in the development of necessary procedures, I have included at Appendix 2 a comprehensive description of the elements of a whistle blower program from *Whistling While They Work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*.
175. Again, my Office and OCPID are happy to assist in that review and implementation of programs.

Recommendation 5

NT Police review procedures relating to education and awareness of options for police reporting concerns about other police (including external reporting) and treatment of police who report such concerns.

⁸ *A guide to building workplace integrity: Indicators and practice*, Victorian Office of Police Integrity, December 2009, p.22 <http://www.ibac.vic.gov.au/docs/default-source/opi-prevention-and-education/a-guide-to-building-workplace-integrity---dec-09.pdf?sfvrsn=2>

Chapter 5 - Police complaints under the *Ombudsman Act*

Identification and reporting of police complaints

176. Under the *Ombudsman Act*, a complaint can be made either directly to the Ombudsman or to a police officer (section 24(1)).

177. Where a complaint is made to a police officer, there is a requirement for the complaint to be notified to the Ombudsman. Section 65 sets out the process:

65 Notice of complaint to Ombudsman

(1) *If a police complaint is made to a police officer, the officer must:*

- (a) *immediately refer it to the officer in charge of the Police Standards Command; and*
- (b) *comply with any general orders or instructions issued under section 14A of the Police Administration Act relating to the referral of a police complaint.*

(2) *The officer in charge of the Police Standards Command must give the Ombudsman:*

- (a) *written notice of the complaint; and*
- (b) *if:*
 - (i) *the complaint was made in writing – a copy of the complaint; or*
 - (ii) *the complaint was made orally – a copy of the statement of particulars of the complaint prepared by the police officer to whom the complaint was made.*

178. This contemplates a two stage process, with the complaint being passed on initially to the Police Standards Command and from there to the Ombudsman. More detail on this process is included in the Police Complaints Agreement between the Ombudsman and the Commissioner of Police.

179. By comparison, section 12(2) of the OCPID Act sets out a somewhat more streamlined process in relation to notification of a public interest disclosure:

12 Referral of public interest disclosure to Commissioner

...

(2) *If a public interest disclosure is made to the responsible chief executive of a public body, the chief executive must refer it to the Commissioner within 14 days after receiving it.*

180. While in the great majority of cases the current system for reporting police complaints to the Ombudsman is working well, a number of cases that have come to my attention in recent months have made it clear that it is necessary to review and clarify identification and reporting processes.

181. Situations where police have reported concerns about other police have been particularly problematic. To some degree this may be due to uncertainty in relation to two aspects of the process under the *Ombudsman Act*:

- uncertainty about when a report or expression of concern by one officer about another becomes a 'police complaint' under the Act; and

- uncertainty about when a report by a police officer relates to conduct that “*is likely to bring the Police Force into disrepute or diminish public confidence in it*”, and so must be referred to the Ombudsman as a ‘police complaint’ under the Act.

182. It is important for NT Police and my Office to work together to minimise the potential for uncertainty in these areas and to establish procedures to deal appropriately with cases where there may be a level of doubt.

183. My Office and NT Police have already had productive discussions in relation to these issues but more work is required. Ultimately, it may be appropriate to incorporate the outcome of those efforts in the Police Complaints Agreement or even to seek amendments to the Act.

184. Points that need to be considered and addressed include:

- How to deal with allegations where it is considered inappropriate to disclose information to the officer in charge of the Police Standards Command either because of potential involvement in the matter or because of the rank of the officer subject to investigation.
- How to assess when adverse matter contained in an internal report by one officer relating to another constitutes a police complaint.
- How to assess whether a report from a police officer constitutes an allegation of conduct that “constitutes an offence punishable by imprisonment or is likely to bring the Police Force into disrepute or diminish public confidence in it” and so constitutes an Ombudsman complaint.
- Formalisation of co-operative mechanisms to deal with matters that fall within grey areas.
- The need for ongoing awareness of these matters within NT Police.

Recommendation 6

NT Police review procedures for identification and reporting of police complaints in consultation with the Office of the Ombudsman and OCPID.

Privilege against self-incrimination

At common law the privilege against self-incrimination operates so that a person (but not a corporation) cannot be compelled to answer any question, or to produce any document or thing, if to do so ‘may tend to bring him into the peril and possibility of being convicted as a criminal’. The privilege in this form has been described as ‘deeply ingrained in the common law’, and as a ‘fundamental bulwark of liberty’.⁹

185. The focus of the privilege is to protect a person who may become subject to criminal prosecution. The aims and methods of a commission of inquiry or ombudsman investigation are quite distinct from the adversarial criminal process. Inquiries of this nature are usually inquisitorial in nature, aimed at establishing the truth of the matter, frequently in order to further a broader public purpose.

⁹ Donaghue S, *Royal Commissions and Permanent Commissions of Inquiry*, Butterworths, 2001, p.84.

186. However, the courts have recognised that disclosure of incriminatory information in an inquisitorial forum may, either directly or derivatively, assist in the prosecution of criminal investigations and proceedings in the future. They have found that the privilege can operate in relation to the coercive powers of commissions and bodies such as Ombudsmen.¹⁰

187. But the courts have also acknowledged that the privilege may be excluded by legislation, either expressly or by necessary implication.

Current position in Ombudsman investigations

188. On an investigation, the NT Ombudsman has significant powers to compel the production of information (sections 52-54), even if that might otherwise be in breach of a non-disclosure requirement or privilege. Section 117(1) and (2) of the *Ombudsman Act* provide:

117 Information disclosure and privilege

- (1) *An obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to officers of a public authority, whether imposed by any law of the Territory or otherwise, does not apply to the disclosure of information for preliminary inquiries or an investigation.*
- (2) *In the making of preliminary inquiries or conduct of an investigation, the Territory or a public authority is not entitled to any privilege that would apply in a legal proceeding to the production of documents, or the giving of evidence, for the inquiries or investigation.*

189. However, that power is limited with respect to individuals by section 117(4):

- (4) *Subject to this Part, an individual has, for the giving of information and the production of documents or other things for preliminary inquiries or an investigation, equivalent privileges to the privileges the person would have as a witness in a proceeding in a court.*

190. As an individual would be able to rely on the privilege against self-incrimination in court proceedings, it is arguable that an individual subject to investigation, whether a public official or otherwise, could rely on that privilege when being questioned by the Ombudsman. This clearly places a limitation on the ability of the Office to conduct comprehensive investigations.

Other entities with powers to compel disclosure

191. By comparison, the OCPID Act abrogates the privilege against self-incrimination. Section 38(2) provides

38 Witness privileges

...

- (2) *No privilege exists to protect a witness in an investigation from disclosing information that would tend to incriminate the witness of an offence, to show that the witness is guilty of a breach of discipline or to expose the witness to a penalty, but the information disclosed is not admissible in evidence, in civil, criminal or disciplinary proceedings against the witness except:*

- (a) *proceedings for an offence against this Act; or*
- (b) *civil proceedings in which a remedy is sought for an act of reprisal.*

192. Enquiries with the eight other ombudsman jurisdictions in Australia establish that there is currently an even split between ombudsmen who have the power to require a witness to answer a question that might incriminate them and those who do not. In one case, the power to compel an incriminatory answer is limited to public servants.

¹⁰ *Sorby v Commonwealth* (1983) 152 CLR 281.

193. There are also numerous other entities within Australia that have the power to compel disclosure of incriminatory information, for example, the crime and anti-corruption bodies mentioned at paragraph 111 above.

194. Most, if not all, of these entities have a proviso that limits the future use of such information along the lines of the concluding proviso in section 38(2) of the OCPID Act above.

195. Another example of such a proviso can be taken from the Commonwealth *Ombudsman Act 1976* which abrogates the privilege against self-incrimination but goes on to say, “*but the information, the production of the document or record or the answer to the question is not admissible in evidence against the person in proceedings other than [in certain specified proceedings relating to the Act]*” (section 9(4)).

196. It is therefore a matter for the legislature to decide whether it is appropriate to abrogate the privilege in particular circumstances and, if it decides to do so, what protections should be put in place in relation to future use.

Police powers to compel disclosure

197. The question of abrogation of the privilege against self-incrimination has recently been considered by the Northern Territory Legislative Assembly in the context of disciplinary proceedings against Police.

198. By way of the *Police Administration Amendment Act 2014*, the Legislative Assembly inserted section 79A, which provides:

79A Member to answer questions or give information in relation to breach of discipline

- (1) *This section applies to a member who is required by the Commissioner or a prescribed member to answer questions or provide information in relation to an alleged or suspected breach of discipline by a member, whether or not an investigation has been initiated under section 81(3).*
- (2) *The member is not excused from answering a question or providing information when required to do so in relation to the breach of discipline or alleged breach of discipline on the ground that the answer to the question or the information may:*
 - (a) *incriminate the member; or*
 - (b) *make the member liable to a penalty.*
- (3) *However, the answer to the question or the information is not admissible as evidence against the member:*
 - (a) *in any other proceedings against the member under this Act; or*
 - (b) *in civil or criminal proceedings in a court.*
- (4) *Subsection (3) does not apply in relation to proceedings for the following matters:*
 - (a) *perjury;*
 - (b) *employment;*
 - (c) *a claim in tort against the Territory made by a member.*

Note for section 79A

Failure to comply with this section may constitute a breach of discipline under section 76(d) or (da).

199. The rationale for inclusion is set out in the Second Reading Speech of the Honourable Attorney-General and Minister for Justice, Mr John Elferink (Hansard, 22 October 2014):

The second amendment contained in this bill provides for the requirement of answers from members to question put to them into the course of an internal investigation. These procedures are also known as directed interviews. The ability of the Commissioner of Police to discipline police officers and require answers to questions in the course of the disciplinary investigation, even where those answers might incriminate the subject members, has long been recognised as essential in maintaining the integrity of and the public confidence in the police force. The High Court legal authority for this proposition is the case of the Police Service Board and Morris and Martin reported at 1985 volume 156 of the CLR's at page 397.

In 2013, a single judge of the New South Wales Supreme Court determined the New South Wales Commissioner of Police did not have the powers under the New South Wales Police Act to direct the police officer to answer questions after the police officer claimed the privilege against self-incrimination in criminal matters.

The decision is cited as Baff and the New South Wales Police Commissioner 2013, New South Wales Supreme Court judgment number 1205. This decision is not binding on the Territory of Australia, and the High Court decision of Morris remains a binding legal authority in the Northern Territory. In addition, the decision of Morris has been applied by the Full Court of South Australia and is still relied upon by the South Australian Police Force to require officers to answer questions.

It is the position of the Northern Territory of Australia that the Commissioner of Police has the power under section 76(d) of the Police Administration Act to direct a police officer to answer questions. Despite this position, a management decision taken following the decision in Baff not to pursue a directed interview where the member had claimed the privilege against self-incrimination. Directed interviews in these circumstances were put on hold pending this legislative provision to confirm the existence of the power, and that the power to require an answer to the question is intended to operate retrospectively. That is, the position will apply to current matters where a member is currently under internal investigation and no disciplinary outcome has been finalised.

The Bill includes provisions to require a police officer to answer questions as required during the course of a disciplinary investigation. A disciplinary investigation can commence prior to the issuing of a notice of alleged breach of discipline under section 79 of the act as recognised by the Northern Territory Supreme Court in the decisions of Holmes and Bulger and the Commissioner of Police cited at 2011 Northern Territory Supreme Court judgment 108.

The Bill is intended to confirm the Commissioner of Police has the power to direct a police officer to answer questions at any time throughout a disciplinary investigation for the breach of discipline or an alleged breach of discipline. An officer cannot claim the privilege against self-incrimination to avoid answering such questions.

To demonstrate the seriousness of a failure to answer a question in the context of a disciplinary investigation, the bill amends section 76 to provide that a member commits a breach of discipline where the member fails to obey a lawful direction, instruction or order given by or caused to be issued by the Commissioner of Police or a member or person having authority over the member, including general orders and instructions under section 14A(1), and directions, instructions or orders given in relation to a breach of discipline or alleged breach of discipline. Where a member provides misleading information in the course of a disciplinary investigation is also provided for as a separate breach of discipline.

Failure to answer questions put to a member in a disciplinary investigation has the potential to seriously undermine the public confidence in the police force. For that reason, a failure to answer questions or provision of misleading information by a member during a disciplinary investigation can be grounds considered by the Commissioner of Police to dismiss a member on public interest grounds under section 78 of the act. The policy basis for this position is that the Northern Territory Police Force is a body upon whose efficiency and probity the Territory must depend for the security of the lives and property of our community. Such a body can only operate effectively under proper discipline.

However, to put appropriate safeguards in place for police members a direct immunity will apply to answers provided by members such as those answers not admissible as evidence in any criminal or civil proceedings. The only exceptions that will apply to allow the use of these answers will be in respect of proceedings for perjury, tort claims against the Northern Territory by police officers and proceedings from employment matters, which includes disciplinary proceedings.

The Bill deliberately does not include immunity against derivative use of information provided in a direct interview. Such immunity is considered too restrictive to allow police to exercise their functions and will still permit alternative lines of inquiry to be pursued following information provided in a directed interview such as already provided for by section 160 (a) of the Act.

Police officers are appropriately afforded special powers to exercise their duties. These powers include the authority to use force, deprive people of their liberty and to access sensitive and confidential information.

It is crucial to have appropriate checks and balances in place to allow the Commissioner of Police to maintain the integrity of, and to uphold public confidence in our police force and ensure that the exercise of powers by members is held to account.

Abrogation for Ombudsman investigations of Police

200. At its narrowest, there is a strong case for providing for the Ombudsman to compel production of incriminatory information in relation to investigations of police conduct. The Second Reading Speech above sets out the rationale for being able to fully investigate such matters. I do not consider that there is a relevant qualitative distinction between an investigation in the course of disciplinary proceedings and an investigation of police conduct under the *Ombudsman Act*.

201. The argument can perhaps be put at its highest when one considers investigations undertaken directly by the Ombudsman's Office rather than by Police under the supervision of the Ombudsman's Office.

202. Section 86(1) and (2) of the *Ombudsman Act* set out the circumstances in which the Ombudsman may decide to directly investigate police conduct:

86 When complaint may be investigated by Ombudsman

(1) *The Ombudsman may decide a police complaint should be investigated by the Ombudsman if satisfied it:*

- (a) *concerns conduct of a police officer holding a rank equal or senior to the rank held by the officer in charge of the Police Standards Command; or*
- (b) *concerns conduct of a Police Standards Command member; or*
- (c) *is in substance about the practices, procedures or policies of the Police Force; or*
- (d) *should for another reason be investigated by the Ombudsman.*

(2) *In addition, the Ombudsman may decide a police complaint should be investigated by the Ombudsman if:*

- (a) *under section 107, the Ombudsman:*
 - (i) *deferred a decision on the complaint pending completion of a proceeding or disciplinary procedures; or*
 - (ii) *discontinued an investigation of the complaint pending completion of a proceeding or disciplinary procedures; and*
- (b) *on completion of the proceeding or disciplinary procedures, the Ombudsman considers an aspect of the complaint should be investigated.*

203. For present purposes, the most significant circumstances for direct investigation by the Ombudsman will include involvement of a senior officer and matters where the Ombudsman considers a complaint should still be investigated after completion of criminal or disciplinary proceedings.
204. These situations are likely to encompass the most serious allegations of inappropriate Police conduct.
205. Yet in the conduct of such investigations the Ombudsman is presently precluded from requiring an officer to answer questions on the basis that the answer might incriminate him or her. This stands in contrast to a disciplinary investigation being undertaken in relation to the most junior police officer who is required to answer questions by a Police investigator.
206. It is certainly arguable that in terms of equity between officers and establishing the truth, the Ombudsman should have the power to compel an officer to answer questions that might incriminate him or her under powers and restrictions similar to those currently held by the Commissioner for Public Interest Disclosures.

Abrogation for Ombudsman investigations generally

207. There are also strong arguments that the privilege should be abrogated generally in relation to Ombudsman investigations, so long as there are appropriate protections against future use of information provided.
208. Ombudsman investigations are not adversarial processes. They are designed to elicit the truth in order to ultimately improve the quality of decision-making and administrative practices in public authorities.
209. In that regard, they are similar in nature to royal commissions and commissions of inquiry, and the following comments in the joint High Court judgement of Mason, Wilson and Dawson JJ in *Sorby v Commonwealth* are pertinent¹¹:

It would seem to us to follow from James v. Robinson that the possibility, or even the strong probability, that a witness called to testify before a Royal Commission will be charged with an offence provides an unlikely basis for a finding of contempt against the Commission in the event that the witness is questioned about matters which are relevant to the offence. He may never be charged. Indeed, any other approach would effectively prevent some Royal Commissions from fulfilling their task. This could be so in the present case, where the terms of reference require the Commissioner to investigate whether a particular person has been engaged in activities which involve contravention of the laws of the Commonwealth or of Queensland. The fact-finding activities of Royal Commissions are often a necessary aid to the executive, the Parliament and the public in bringing to light serious mischiefs which require a remedy, and in some instances an urgent remedy. It would impose a severe restriction on the capacity of the executive and of Parliament to introduce prompt reforms if Commissions were compelled to postpone the examination of witnesses with respect to their possible involvement in criminal offences until such time, if ever, as their criminal liability has been finally determined by the courts. [emphasis added]

¹¹ (1983) 152 CLR 281 at 306-7.

210. Four other Australian Ombudsman jurisdictions have the power to compel incriminatory answers, although in one case this is limited to public servants. There are many other entities within Australian jurisdictions of a similar nature that have the power to compel answers.

Recommendation 7

The NT Government take steps to amend the Ombudsman Act to abrogate the privilege against self-incrimination for the purposes of investigations under the Act, subject to inclusion of adequate protections against future use of information disclosed.

Chapter 6 - Complaint and report process

Scope and limits of Ombudsman jurisdiction

211. The office of Ombudsman is created by statute and the powers of the Office to investigate and make recommendations is set and confined by statute.
212. The Ombudsman has broad powers but they are not unlimited.
213. The Ombudsman can investigate administrative actions of a public authority and the conduct of a police officer. This does not include the actions of Members of the Legislative Assembly or Ministers of the Northern Territory Government whose offices are established under the Commonwealth *Northern Territory (Self-Government) Act 1978*.
214. Further limits are placed on the powers of the Ombudsman by sections 15 and 16(1)(c) of the *Ombudsman Act*, which state:

15 Executive and ministerial matters must not be investigated

- (1) *The Ombudsman must not investigate the deliberations of:*
- (a) *the Executive Council or Cabinet; or*
 - (b) *a committee of the Executive Council or Cabinet.*
- (2) *In addition, the Ombudsman must not question the merits of a decision:*
- (a) *made by:*
 - (i) *the Administrator, Executive Council or Cabinet; or*
 - (ii) *a committee of the Executive Council or Cabinet; or*
 - (b) *made personally by a minister.*

...

16 What administrative actions may not be investigated

- (1) *The Ombudsman must not investigate administrative action taken by:*
- ...
 - (c) *a person acting as counsel or legal adviser to the Territory for the Territory or a minister; ...*

215. The focus of the Ombudsman's powers is therefore on the activities of Government departments, agencies and officers, not on Ministers and Members of the Legislative Assembly.
216. The Ombudsman can consider advice and information provided by officers of departments and agencies to Ministers in so far as they amount to reviewable administrative actions or police conduct but in doing so is constrained by the provisions discussed above.

Basis for investigation and report

217. The Ombudsman has received:

- Complaint against Police conduct concerning Mr McRoberts
- Complaint against Police conduct concerning Mr Bryson
- Letter from Mr Taylor, delegate of the Commissioner for Public Interest Disclosures dated 13 February 2015, referring a number of administrative issues.

218. To provide an appropriate mechanism for consideration of all issues, I commenced an own motion investigation under section 14 of the *Ombudsman Act*.

219. The Ombudsman may give the Chief Minister a report relating to a particular case investigated by the Ombudsman (section 153).

Process

220. From the outset, my Office was aware that other entities external to NT Police were involved in dealing with the issues raised in these cases.

221. The *Ombudsman Act* provides for liaison and arrangements with other complaint entities. Section 19(1) states:

19 Liaison with complaints entity

(1) *The Ombudsman may:*

- (a) *liaise with a complaints entity about the performance by the Ombudsman and the complaints entity of their respective functions for investigating or reviewing administrative actions or police conduct; and*
- (b) *enter into an arrangement with the complaints entity aimed at avoiding inappropriate duplication of investigative or review activity.*

222. The Ombudsman has entered into a Memorandum of Understanding with OCPID under that provision (see pages 50-51 of the Ombudsman's 2013-14 Annual Report).

223. The *Ombudsman Act* also provides for the Ombudsman to decline investigation or further investigation if satisfied a complaints entity has investigated, or will investigate, the administrative action or conduct complained of at a level at least substantially equivalent to the level at which the Ombudsman would otherwise investigate the complaint (sections 34 and 67(2)).

224. Those provisions clearly establish a legislative intention to avoid inappropriate duplication of investigative or review activity. I was therefore minded to proceed in a manner that would not unnecessarily duplicate investigative effort or use of public resources.

225. My Office proceeded to meet with NT Police, the Solicitor-General, an officer of the Solicitor for the Northern Territory (SFNT) and a delegate from OCPID. My Office has continued to consult with or obtain information from these entities throughout the course of the investigation.

226. My Office obtained from NT Police, both directly and through the Solicitor-General and SFNT, access to a large amount of evidence and proceeded to analyse that evidence.

227. OCPID advised early in the process that it had secured the services of a very experienced and highly regarded investigator to deal with the disclosures relating to both officers.

228. In light of that fact, I determined to continue to gather information and evidence but not to immediately proceed to full investigation, as that would have duplicated the work of the OCPID investigation.

229. Following completion of the OCPID report, my Office obtained a copy. That report, along with the substantial evidence obtained by my Office was then considered with a view to deciding what further investigations should be undertaken.

230. In broad terms, the materials obtained or created by my Office were:

- OCPID report dated 26 February 2015
- Letter from Mr Taylor dated 13 February 2015
- Phone records
- Email records
- Diary entries
- Memoranda, correspondence and reports
- Records of interview and discussions with various officers.

231. In all, they constituted many thousands of documents and entries.

232. Having reviewed the OCPID report and the evidence independently obtained by my Office, I can see no public benefit in going over the same ground as Mr Taylor's investigation in relation to the specific allegations against the two officers.

233. I have therefore decided to decline to deal further with the specific police complaints against the two officers under section 67(2) of the *Ombudsman Act*.

234. There were however, a number of related administrative issues referred to me by OCPID or identified by my Office.

235. The majority of those issues are addressed in this report. Two issues referred by OCPID that are not dealt with in this report relate to policies on private use of Government equipment and the issue of warrants by Justices of the Peace rather than Magistrates or Judges. For those two issues, I considered it better to deal with the issue separately and referred the matter to the relevant department for consideration and discussion.

Consultation

236. Following analysis of the evidence and issues raised, I prepared a draft report. Extracts or copies from the draft report were then provided to OCPID, NT Police, the two officers and the travel agent for comment.

237. Comments were received from OCPID, NT Police and one of the officers. They have been considered in the development of the final report and incorporated where appropriate.

Appendix 1 – Sample scenarios

Table 1: The 12 misconduct scenarios presented in the police ethics survey

| Scenario | Abbreviation |
|--|------------------------|
| <p><i>1. Off-duty officer tries to avoid a random breath test (RBT)</i> An off-duty police officer who has drunk a little too much is stopped for an RBT by police officers he doesn't know. The off-duty officer is obviously a bit under the weather. He identifies himself as a fellow police officer in an effort to avoid blowing in the bag.</p> | Avoid RBT |
| <p><i>2. Officer at a bottle shop break-in pockets cigarettes</i> The local bottle shop has been broken into for the third time in as many weeks. The responding patrol enters the premises to wait for the owner to arrive and sort out the mess of cigarettes and liquor lying all over the floor. One of the officers bends down, picks up a torn packet of cigarettes from the shattered window display, and puts the packet in his pocket.</p> | Pocket cigarettes |
| <p><i>3. Officer retaliates against a youth who assaulted a female officer</i> A young female first year constable responding with her partner to a disturbance call (a pub brawl) receives a nasty black eye from a tattooed youth wielding a billiard cue. As the arrested youth is led into the cells, the male team member gives him a savage kidney punch, saying, 'Hurts, doesn't it.'</p> | Kidney punch |
| <p><i>4. Officer has an accident in a police vehicle and then misrepresents the accident in a report</i> During a quiet period on patrol, two officers decided to test how the rear of the police vehicle would slide in a deserted, wet car park. Their attempts resulted in a minor collision with a shopping trolley. Rather than go into full details about the scrape when reporting the damage, the driver stated the car was 'sideswiped' by an unidentified vehicle while they were attending to an inquiry.</p> | Misrepresent accident |
| <p><i>5. Officer adds words to a suspected rapist's statement</i> An offender is picked up for a particularly nasty rape/assault in a local park. There's no doubt he's the culprit. There's an excellent ID but the offender who is streetwise says nothing. To make matters certain, the arresting officer attributes the words 'OK, I <u>was</u> in the park but I didn't touch the bitch' to the offender in his notebook.</p> | Rape suspect |
| <p><i>6. Officer makes a pick-up outside the patrol area</i> On a quiet Saturday afternoon, an officer decides to travel well outside his area of patrol to get some equipment for his Sunday building job. In radio contact all the time, he picks up the gear and returns to his patrol area.</p> | Pick up equipment |
| <p><i>7. Officer conducts a registration check to get the details of an attractive woman</i> The young lady in the Mazda sports car is very attractive and smiles at the young officer in the patrol car alongside at the traffic lights. The officer, following a couple of lengths behind, radios for a vehicle registration check to find out her address.</p> | Registration check |
| <p><i>8. Officers accept free beer at Christmas time</i> The publican of a local tavern requests some extra police patrols as he is experiencing some problems with troublesome patrons. The officers at the station accept a couple of cartons of beer sent by the publican to the station's Christmas party in appreciation of the officers' service during the year.</p> | Cartons at Christmas |
| <p><i>9. Officer forcefully moves a youth on</i> A youth on a deserted street is told to move on by the senior member of a car crew. At the youth's look of indifference, the officer jumps from the car and slams the youth against the wall (without injury), turns him round, and shoves him on his way.</p> | Youth move on |
| <p><i>10. Officer sells confiscated drugs on the street</i> An officer decides he/she can make a little extra cash by taking small proportions of confiscated drugs from the property room and selling it on the streets. Given the expense of a mortgage and a family, the officer feels justified in his/her actions; besides, the users would get the drugs from some other source anyway.</p> | Sell confiscated drugs |
| <p><i>11. Officer ignores suspected pot smoking by a housemate</i> An officer has been sharing accommodation with two housemates for about a year. Over the last couple of weeks the occasional lingering, sweet odour of the housemate's clothes has led the officer to think that this housemate is smoking pot. Since the officer has no other problems with the housemate, the officer decides not to take any action.</p> | Housemate's pot |
| <p><i>12. Officer accepts steroids</i> A young officer is finding that working on the street dealing with offenders is physically tough. A lot of other officers 'pump iron' to increase their size and strength, in order to make troublemakers think twice. When presented with an opportunity to bulk up a little faster with the help of steroids, the officer eagerly accepts.</p> | Accept steroids |

Extracted from *Report summary: The ethical perceptions and attitudes of Queensland Police Service recruits and first year constables, 1995–2008*, Queensland Crime and Misconduct Commission, November 2010, page 4.

Scenario Examples

1. A senior constable runs a private business, in which they sell and install security devices, such as alarms, special locks, etc. The senior constable does this work during off-duty hours. However, the officer's supervisor has become aware that the senior constable uses information obtained from their police duties to source appropriate clients.
2. A sergeant overhears members talking in the meal room about a constable who drove a car home from a party early Saturday morning. The constable had been drinking alcohol and was intoxicated (above .08). The constable collided with a gutter on the way home, causing damage to the front tyres. The vehicle was no longer driveable, but there was no major damage or injury. The constable left the vehicle at the side of the road and walked home.
3. At an off-duty police social function, a senior sergeant makes unwanted sexual advances towards a senior constable.
4. A young constable forms an intimate relationship with a known member of an outlaw motorcycle gang. The constable has not mentioned the relationship to their supervisor or colleagues. The constable knows that the people their partner associates with (who visit the residence often) are amphetamine users, but has not witnessed the partner engaging in serious criminal activity.
5. A senior constable working at a metropolitan station takes unclaimed items from the property room. The senior constable does not hide their actions from colleagues, telling them they do not see it as a problem because the items are going to be destroyed anyway.
6. An inspector at a regional station directs a senior constable to conduct an unlawful LEAP check, telling them not to make a record of the check or mention it to other members at the station. This is not the first time the inspector has done this, and the senior constable suspects the information is being passed on to the inspector's wife, who runs her own cleaning business.
7. An off-duty senior constable tries to avoid a random breath test.
8. A member of a specialist squad pockets \$25,000 in a suburban drug raid. The squad has received numerous complaints alleging the theft of money and property.
9. While in uniform, a sergeant visits the home of a friend's ex-husband. The man and his former wife are involved in a custody dispute, and the sergeant implies that physical harm will come to the man unless he agrees to the ex-wife's demands.
10. A sergeant watches officers under their supervision repeatedly and without provocation strike and kick a man arrested for child abuse. The man has previous child abuse arrests.

11. A superintendent becomes aware that one of their staff regularly uses illicit drugs. The superintendent does not report the matter to anyone since they have known the person for several years and does not believe the person has ever been affected by drugs while on-duty.
12. A constable uses OC spray on a verbally (but not physically) abusive man in a police cell.
13. A detective senior constable pockets a carton of cigarettes at the scene of an armed robbery.
14. A group of police members put pressure on a young woman to retract an allegation of rape made against a fellow police member.
15. A sergeant lies to their supervisor about a police vehicle accident.
16. An ESD investigator interferes with evidence so that an allegation of dishonesty against a personal friend of theirs cannot be substantiated.
17. A detective sergeant releases confidential information about a criminal investigation to a more senior member in a different squad, in the hope that it may lead to opportunities for transfer and/or promotion.
18. Two senior constables on routine patrol seize two hundred dollars and a small amount of amphetamines from a local drug dealer. They do not arrest the dealer but take the money and drugs and do not issue a receipt.
19. An inspector is aware that a probationary constable under their command is being bullied and harassed by senior members, and has twice had his personal property vandalised. The inspector is reluctant to confront the members, so does nothing.
20. A constable takes a part-time job as a security guard at a nightclub partly owned and managed by an outlaw motorcycle gang.
21. A senior constable routinely performs unlawful LEAP checks to obtain information about potential customers for their brother's private security business.
22. An officer stops a motorist for speeding, and agrees to accept a small fee in exchange for not issuing a fine.
23. An on-duty sergeant comes across a vehicle that has been driven off the road. They find that the driver—an off-duty police member—is not hurt but extremely intoxicated. Instead of reporting the accident and the offence, the sergeant transports the driver home.
24. A sergeant protects an illegal brothel-owner in return for a fortnightly payment of \$500.
25. A commander appointed to a selection panel becomes aware that one applicant has an extensive complaint history. The other panel members are unaware of the complaints and believe the applicant to be a 'very good operator'. The commander does not tell the panel what they know and the panel approves the applicant's promotion.

26. A senior constable allows a local drug dealer to continue to sell cannabis and amphetamines on the condition that they receive a small share of the profits.
27. Two members fabricate a story about a pursuit to cover up reckless driving.
28. A sergeant continues to authorise search warrant applications despite serious doubts about the reliability of the source and the methods used by their subordinates in obtaining the information.
29. A sergeant attending a domestic dispute takes the husband into the backyard and breaks his arm, after learning that the man has just assaulted his wife and ten-year old son.
30. A probationary constable accepts a slab of beer from an appreciative local business owner after an attempted robbery.
31. A taskforce investigator pockets \$15,000 in a raid conducted at the residence of an organised crime figure.
32. Two constables make racist comments toward a group of youths at a train station, and tell them to move on despite no indication of trouble or wrongdoing.
33. A superintendent asks a senior sergeant to lie to a disciplinary hearing to protect the career of another senior sergeant, who is also the superintendent's brother-in-law.
34. A detective senior constable pushes a suspect's head into a doorframe, giving him a cut requiring stitches, after the suspect makes a rude comment about the detective's physical appearance.

Extracted from *Promoting integrity awareness: A group activity kit*, Victorian Office of Police Integrity, July 2008

<http://www.ibac.vic.gov.au/docs/default-source/opi-prevention-and-education/promoting-integrity-awareness---group-activity---a-kit-for-facilitators.pdf?sfvrsn=2>

Appendix 2 – Elements of a whistleblowing program

A. Organisational Commitment

A1. Management commitment

– Clear statements by senior management of the organisation’s support for the reporting of wrongdoing through appropriate channels (‘if in doubt, report’), including commitments to

- take credible and appropriate action upon receipt of a whistleblowing report
- remedy any confirmed wrongdoing
- support whistleblowers.

- Commitment to the principles of whistleblowing among first and second-level managers, including

- understanding of the benefits and importance of whistleblowing mechanisms
- knowledge of and confidence in whistleblowing policies.

- Broad staff confidence in management responsiveness to whistleblowing.

A2. Whistleblowing policy

- Easy to comprehend whistleblowing policy, including guidance on procedures, relationship with other procedures and legal obligations.

- Broad staff awareness of the whistleblowing program and policy, including their responsibility to report possible wrongdoing.

A3. Resources

- Staffing and financial resources dedicated to implementation and maintenance of the program, commensurate with organisational size and needs.

- Specialised training for key personnel, including whistleblowing management issues as part of general induction and management training.

A4. Evaluation and engagement

- Regular evaluation and continual improvement in the program.

- Positive engagement on whistleblowing issues with external integrity agencies, staff associations and client groups.

B. Facilitating Reporting

B1. Who may report wrongdoing?

- Clear and comprehensive approach to including all key categories of organisation members (for example, employees, contractors, employees of contractors, volunteers) in the program.

B2. What should be reported?

- Clear procedures and advice to staff on

- the types of wrongdoing that should be reported
- appropriate reporting points for all different types of wrongdoing (including grievances as opposed to public interest disclosures)
- the level of information required/desired in a report.

- Clear advice that staff

- are not protected from the consequences of their own wrongdoing by reporting it, nor for deliberately providing false or misleading information
- may nevertheless seek and be granted immunity from consequences from their own less serious wrongdoing, when reporting other more serious wrongdoing.

B3. Multiple reporting pathways

- Clear advice on to whom and how whistleblowing reports should be made, including

- internal reporting paths
- alternatives to direct line reporting (that is, guidance on when staff should consider reporting outside the normal management chain)
- external reporting paths, including external (contracted) hotlines and relevant regulatory or integrity agencies, and when these should be approached in the first instance.

- Clear advice regarding disclosures to the media.

B4. Anonymity

- Clear advice that anonymous reports will be acted upon wherever possible, and about how anonymous reports/approaches may be made.

C. Assessment and Investigation of Reports

C1. Identification and tracking of reports

- A coordinated system for tracking all significant reports of wrongdoing (including grievances) at all levels of the organisation, including clear advice to supervisors on when, how and whom to notify about staff complaints and possible whistleblowing reports.

- Organisational procedure for mandatory reporting to regulatory or integrity agencies on whistleblowing reports, including early notification of significant or higher-risk reports.

C2. Assessment procedures

- Management procedures and skills for differentiating, as appropriate, between different types of wrongdoing (including grievances), and initiating appropriate action.

- A flexible approach to the types, level and formality of investigations to be conducted, including clear criteria for when no further action is required.

- Early and continuing assessment of the risks of reprisal, workplace conflict or other adverse outcomes involving whistleblowers or other witnesses.

C3. Confidentiality

- Commitment to the confidentiality of whistleblowing reports to the maximum extent possible, including

- procedures for maintaining the confidentiality of whistleblowers, persons against whom allegations have been made, and other witnesses to the maximum extent possible
- clear advice about possible limits of confidentiality
- procedures for consulting and, wherever possible, gaining consent of whistleblowers prior to any action that could identify them, including to external agencies.

- Procedures for determining when confidentiality cannot be ensured, and active strategies for supporting employees and managing workplaces where confidentiality is not possible or cannot be maintained.

C4. Equity and natural justice

- Clear procedures for the protection of the rights of persons against whom allegations have been made, including appropriate sanctions against

- false or vexatious allegations
- unreasonable breaches of confidentiality.

- Clear advice to managers about to whom, when and by whom information about allegations of wrongdoing need be given, for reasons such as natural justice.

D. Internal Witness Support and Protection

D1. Whistleblower/internal witness support

- A proactive support strategy for organisation members who report wrongdoing (that is, management initiated and not simply complaint/ concern driven), including

- designation of one or more officers with responsibility for establishing and coordinating a support strategy appropriate to each whistleblowing case
- support arrangements tailored to identified risks of reprisal, workplace conflict or other adverse outcomes.

- Risk assessment and support decision making that directly involve

- the whistleblower(s) or other witnesses involved
- the identification and involvement of agreed support person(s) (for example, 'confidants', 'mentors', 'interview friends' or similar), with agreed roles.

D2. Information and advice

- Timely provision of information, advice and feedback to reporters and witnesses about

- the actions being taken in response to disclosure
- reasons for actions (including no action)
- how to manage their role in the investigation process, including whom to approach regarding issues or concerns regarding reprisals
- ultimate outcomes, benefits to the organisation, and remedial change.

- Provision of information, advice and access to

- appropriate professional support services (for example, stress management, counselling, legal, independent career counselling)
- external regulatory or integrity agencies that may be accessed for support.

D3. Preventing and remedying detrimental action

- Clear commitment that the organisation will not undertake disciplinary or adverse actions, or tolerate reprisals by anyone in the organisation including managers, as a result of disclosures.

- Mechanisms for ensuring that

- the welfare of organisation members who report wrongdoing is monitored from the point of first report

- *positive workplace decisions are taken for preventing, containing and addressing risks of conflict and reprisal*
- *supervisors or alternative managers are directly engaged in risk assessment, support decision making and workplace decisions, to the maximum extent possible.*

- *Clear authority for support personnel to involve higher authorities (for example, CEO, audit committee and external agencies) in whistleblower management decisions.*

- *Specialist expertise for investigating alleged detrimental actions or failures in support, with automatic notification of such allegations to relevant external agencies.*

- *Flexible mechanisms for compensation or restitution in the event of any failure to provide adequate support, or prevent or contain adverse outcomes.*

D4.Exit and follow-up strategy

- *Exit strategies for concluding organised support to whistleblowers.*

- *Follow-up monitoring of whistleblower welfare, as part of regular evaluation of program and to identify ongoing, unreported support needs.*

E. An Integrated Organisational Approach

E1. Clear organisational model for support

- *Clear information for managers and staff about the support strategies employed by the organisation (that is, 'standing', 'devolved', 'caseby-case').*

- *Clear understanding of whistleblowing-related roles and responsibilities of key players, internal and external to the organisation.*

- *Operational separation of investigation and support functions.*

- *Clear and direct lines of reporting from support personnel to audit/ integrity committee and/or CEO, and external agencies.*

E2.Shared responsibility for whistleblower support

- *Clear lines of communication to ensure managers retain responsibility for their workplace and staff to the maximum extent possible.*

- *Clear lines of communication with external agencies regarding the incidence, nature and status of active cases.*

E3.Embedded policies and procedures

- *Integrated and coordinated procedures (not 'layered' or 'alternative').*

- *Integrated complaint/incident recording and management systems.*

- *Whistleblower support integrated into human resources, career development and workplace health and safety (WH&S) policies.*

Roberts P, Brown AJ and Olsen J, *Whistling While They Work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU Press, 2011, pp.12-16 <http://press.anu.edu.au/wp-content/uploads/2011/10/whole2.pdf>

