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## **POLICE INVESTIGATIONS ON BEHALF OF THE POLICE COMPLAINTS AUTHORITY**

- 4.1 This chapter addresses term of reference (3):
- (3) the adequacy of any investigations which have been carried out by the Police on behalf of the Police Complaints Authority and which have concerned complaints alleging sexual assault by members of the Police or by associates of the Police or by both, and, if any of those investigations have not been adequate, the respects in which they were inadequate:

The fifth of the terms of reference is also relevant (as explained later):

- (5) any other matter that may be thought by you to be relevant to the general or particular objects of the inquiry:
- 4.2 The Commission of Inquiry into Police Conduct took the view that term of reference (3) required it to review investigations carried out by the police either on behalf of or subject to review by the Police Complaints Authority (PCA). I have already discussed in Chapter 3 the adequacy of investigations carried out by the police since 1979 into complaints alleging sexual assault by police members or police associates. Of those investigations, there is a subset that have been reviewed or overseen by the PCA since its establishment in April 1989. For comment on the latter group of police investigations, see paragraphs 4.68 to 4.74 of this chapter.
- 4.3 The primary focus of this chapter is on the PCA's governing legislation and structure, the number of complaints it has received since it was established and how those have been dealt with, and the PCA's interaction with the police and with complainants. I also discuss the Independent Police Complaints Authority Amendment Bill, which is currently before the House of Representatives, and a police proposal (presented to this Commission) that the PCA and its legislation be the subject of more far-reaching changes.
- 4.4 Key aspects of the structure and operation of the PCA are summarised in the box overleaf.

A more detailed explanation of the PCA and its functions, powers, and discretionary capabilities occurs later in this chapter.

### **Background details of relevance to this chapter**

*Time frame.* The period of interest to the inquiry was determined in March 2004 to be the 25 years from 1 January 1979. The Commission considered police investigations of relevant complaints that had been made since January 1979. The Police Complaints Authority (PCA) was established in April 1989.

*Parties to the inquiry.* The Commission formally recognised four parties to the inquiry: New Zealand Police, Police Complaints Authority, Police Association, and Police Managers' Guild.

*Legal advice to the Commission.* Ms Mary Scholtens QC and Mr Kieran Raftery acted as counsel assisting the Commission in its work programme. Mr Douglas White QC was appointed legal adviser to Dame Margaret Bazley after she became sole Commissioner in May 2005.

*Submitters.* Of those who approached the Commission directly about the police investigations into their complaints, 10 submitters were considered to fall within the terms of reference and directions.

*Witnesses.* The Commission heard evidence from Police Commissioner Robert Robinson, a range of other New Zealand Police staff, the Police Complaints Authority, the president of the Police Association, and various specialist witnesses.

*Operation Loft.* Staff from the New Zealand Police Professional Standards section at the Office of the Commissioner carried out a comprehensive search of police records to identify all cases that related to the Commission's terms of reference (known as Operation Loft). As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to allegations of sexual offending by police or associates of the police since 1 January 1979. All these files were provided to the Commission for review.

*Operation Austin.* In 2004, in response to public allegations of sexual offending by police and of inadequate handling of historic rape complaints, the police initiated criminal investigations into the alleged offending. The investigations into this conduct became known as Operation Austin.

*Making complaints against the police.* Complaints alleging sexual assault by members of the police may be made to the PCA, any member of the police, the registrar or deputy registrar of any District Court, or to an ombudsman.

### **The Police Complaints Authority**

- came into operation on 1 April 1989
- operates under the Police Complaints Authority Act 1988
- receives certain complaints (as defined in the Act) against the police
- operates independently of the police
- consists of an Authority appointed by the Governor-General, who may be assisted by a Deputy Authority, together with a small staff of investigators, reviewing officers, and administrative staff members
- has (under the Act) barristers or solicitors of the High Court as the appointed Authority and Deputy Authority. (In fact, the Authority has been a High Court or District Court judge since the inception of the PCA.)

## SCOPE OF MY INQUIRY IN RELATION TO THE POLICE COMPLAINTS AUTHORITY

- 4.5 The four parties to the inquiry held differing opinions as to how my terms of reference might apply to the PCA.
- 4.6 Although term of reference (3) specifically required me to inquire into both the manner and the adequacy (or otherwise) of the relevant investigations carried out by the police on behalf of the PCA, it was initially unclear whether I had jurisdiction to consider the structure of the PCA, the way it operates, and its relationship with the police under the current Police Complaints Authority Act 1988 (PCA Act) or under the Independent Police Complaints Authority Amendment Bill if enacted in its present form.
- 4.7 The matter was highlighted by a proposal submitted by the police in November 2005 that changes be made to the PCA's mandate and mode of operation. Counsel for the PCA queried whether my terms of reference allowed me to consider this proposal, and as a result I sought submissions from counsel assisting the Commission and counsel for the parties on the extent of my jurisdiction in this regard.
- 4.8 At a hearing on 8 December 2005 I received submissions from counsel for the PCA and counsel assisting. Counsel for New Zealand Police supported the submission of counsel assisting.
- 4.9 Counsel for the PCA, Mr John Upton QC, submitted that I did not have jurisdiction to consider the police proposals for changes to the PCA. Mr Upton stated that he did not consider that it was intended that this Commission would review the workings of the PCA and propose fundamental changes of the type suggested by the police so soon after a review of the PCA had been received by the Government.<sup>435</sup> That review was undertaken by the Hon Sir Rodney Gallen in 2000,<sup>436</sup> and gave rise to the bill currently before Parliament that proposes several changes to the PCA.
- 4.10 In his submission to me counsel assisting noted that this Commission is neither an inquiry into the PCA nor a general review of the Authority. Nevertheless, the natural consequence of the direction to me in term of reference (3) meant that my inquiry might well involve at least some consideration of the structure of the PCA, the way it operates, and its relationship with the police. Also counsel assisting submitted that, as a result, I would need to consider the impact of the legislation currently before Parliament on such matters.
- 4.11 I subsequently sought advice from my legal adviser, Mr Douglas White QC, on the conflicting views of counsel assisting and counsel for the PCA. Mr White noted the relevance of the fifth term of reference. He advised me that on the face of it this provision enabled me to consider and report on "any other matter" provided that I believed it was "relevant" to either the "general" or "particular" objects of the inquiry. He concluded that the fifth term of reference allowed me to consider and report on the police proposal that changes be made to the PCA's mandate and mode of operation. In the light of the advice

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435 Police Complaints Authority, Submission as to jurisdiction, 8 December 2005, p. 8. (For comment on the provision of references to quotations, submissions, and other information provided by the parties, refer to "Notes for readers" in the Appendices.)

436 Hon Sir Rodney Gallen, *Review of the Police Complaints Authority* (Gallen Report), October 2000.

I received from Mr White, I issued a memorandum on 15 December 2005 stating that I did have the jurisdiction to consider matters related to the PCA that appeared to me to be relevant to the general and particular objects of my Commission (see Appendix 3.5).

- 4.12 The question of my jurisdiction to consider matters related to the PCA was revisited in 2006. The PCA did not agree that the Commission's jurisdiction extended to such matters. It considered my jurisdiction was limited to the adequacy of investigations carried out by the police on behalf of the PCA, and not to the PCA itself or its workings. The PCA requested that I record its views on this matter<sup>437</sup> and I do so. However, my advice is that I am within my terms of reference in addressing the matters related to the PCA. (The relevant memoranda of advice and the memorandum of the Commission of 28 July 2006 are provided as Appendix 3.7.)
- 4.13 This chapter will, therefore, consider the structure, operation, and role of the PCA, and its relationship with the police under the current PCA Act and the proposed bill insofar as I consider these issues are raised by the evidence and relevant to the issues I am tasked to address.

### **CURRENT LEGISLATIVE CONTEXT OF THE POLICE COMPLAINTS AUTHORITY**

- 4.14 As outlined in Chapter 2, the Government first considered the concept of some form of civilian oversight of the police in 1985. An officials committee, chaired by Sir David Beattie, was established in 1986 to "prepare a draft Bill relating to the concept of an Independent Examiner of complaints relating to the Police".<sup>438</sup> This draft bill was enacted as the Police Complaints Authority Act on 10 March 1988, and the PCA came into operation on 1 April 1989.
- 4.15 The Authority is one of the very few positions that are appointed by the Governor-General "on the recommendation of the House of Representatives".<sup>439</sup> I was told by counsel for the PCA that this method of appointment reflects the constitutional importance of the position of the PCA and the wish to emphasise its independence as far as possible.<sup>440</sup> This is reinforced by the fact that the Governor-General can remove the person appointed as the PCA from office only "upon an address from the House of Representatives".<sup>441</sup>

### **Functions of the Police Complaints Authority**

- 4.16 The functions of the PCA are set out in section 12 of the PCA Act. In general terms, there are two main functions:
- to receive complaints alleging misconduct or neglect of duty by any member of the police or concerning any practice or policy of the police affecting the person who makes a complaint
  - to investigate of its own motion any incident involving death or serious bodily harm notified to the PCA by the Commissioner of Police.

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437 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 3.

438 *The Report of the Committee on an Independent Examiner of Complaints Against the Police* (1986), p. 1.

439 Police Complaints Authority Act 1988, section 4(2). There are currently five positions created in this manner, namely the Police Complaints Authority, the three Ombudsmen, the Parliamentary Commissioner of the Environment, the Auditor-General, and the Judicial Conduct Commissioner.

440 Police Complaints Authority, Submission as to jurisdiction, 8 December 2005, p. 2.

441 Police Complaints Authority Act 1988, section 6(3).

4.17 The jurisdiction of the PCA in relation to complaints is limited to those alleging police misconduct or neglect of duty. The PCA is not empowered to investigate complaints alleging criminal misconduct or to prosecute alleged offending. Nor can the PCA determine guilt or innocence in criminal cases.

4.18 Counsel for the PCA explained this distinction to me using the following two examples:

Mrs Brown complains to the Police about a burglary of her house by a third party. Then (being dissatisfied about the Police handling of the matter) she complains about that ... The first complaint is for the Police to [handle]. The second is for the PCA (or the Police under its oversight).

In the second example, Mrs Brown complains to the Police about a sexual assault on her by a member of the Police. This complaint has two dimensions – one of criminal offending (to be investigated by the Police), and the second of Police misconduct (to be investigated by the PCA). The two dimensions will obviously overlap to some extent, but it is only the complaint to the extent that it alleges misconduct on the part of the Police which the PCA is empowered to investigate.<sup>442</sup>

4.19 On receipt of a complaint, the PCA has discretion to do any of the following:

- investigate the complaint itself<sup>443</sup>
- defer action until receipt of a report from the police on their investigation of the complaint<sup>444</sup>
- oversee a police investigation into the complaint<sup>445</sup>
- decide to take no action on the complaint<sup>446</sup>
- indicate to the Commissioner of Police that the complaint should be dealt with in accordance with the conciliation procedure established by the PCA (known as District Complaint Resolution).<sup>447</sup>

Where the PCA defers action to enable the police to investigate, the Commissioner of Police must report to the PCA on the result of the investigation as soon as practicable (and in any case no later than two months) after its completion.<sup>448</sup>

4.20 Where the PCA undertakes its own investigations under the PCA Act, it forms an opinion on “whether or not any decision, recommendation, act or omission, conduct, policy, practice, or procedure which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable”.<sup>449</sup> This opinion, along with its reasoning, is conveyed to the Commissioner of Police, together with any recommendations that the PCA thinks fit, including that disciplinary or criminal proceedings be considered or instituted against any member of the police.<sup>450</sup> This Commission is not concerned with such investigations. There have been very few in fact because the PCA has had its

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442 Police Complaints Authority, Submission, 29 July 2005, pp. 2 and 3.

443 Police Complaints Authority Act 1988, section 17(1)(a).

444 Police Complaints Authority Act 1988, section 17(1)(b).

445 Police Complaints Authority Act 1988, section 17(1)(c).

446 Police Complaints Authority Act 1988, section 17(1)(d).

447 Police Complaints Authority Act 1988, section 17(3).

448 Police Complaints Authority Act 1988, section 20(1).

449 Police Complaints Authority Act 1988, section 27(1).

450 Police Complaints Authority Act 1988, section 27(2).

own independent investigative capacity only since November 2003, and none relevant to complaints of sexual assault by police officers or their associates.

- 4.21 The more common situation is where the PCA refers the complaint for police to investigate; less commonly, the PCA oversees a police investigation. In both these situations the PCA reviews the completed police investigation<sup>451</sup> (after legal action is taken, if that course is followed by the police) and forms an opinion on whether any decision, recommendation, act, omission, conduct, policy, practice, or procedure that was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.<sup>452</sup> After forming its opinion, the PCA indicates to the Commissioner of Police whether it agrees with the commissioner's decision or proposed decision in respect of the complaint.<sup>453</sup> The PCA may, where it disagrees with the police, make such recommendations as it thinks fit, including that disciplinary or criminal proceedings be considered or instituted against any member of police.<sup>454</sup>
- 4.22 The police may seek the PCA's views about a case, either informally (i.e., where there is a good and proper reason, but no statutory obligation, to do so) or under section 20(3) of the PCA Act which allows the police to consult the PCA on any proposal for action on a complaint before providing the report required by section 20(1).

### **Powers of the PCA**

- 4.23 As noted above, the PCA may disagree with a police finding on a complaint or with any action proposed by the police. It may direct the police to reinvestigate a complaint if it thinks that the original investigation was inadequate,<sup>455</sup> or to reconsider their proposals for action on a complaint.<sup>456</sup>
- 4.24 Although the PCA has the power to make recommendations to the Commissioner of Police on most aspects of a complaint, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of the police,<sup>457</sup> it cannot direct the prosecution of a police officer before the court or a police tribunal.
- 4.25 The Commissioner of Police is required as soon as practicable after receiving a recommendation from the PCA to notify the PCA of the action (if any) proposed to be taken to give effect to the PCA's recommendation or to give reasons for any proposal to depart from, or not to implement, the PCA's recommendation.<sup>458</sup>
- 4.26 With respect to the specific cases under consideration by this Commission, counsel for the PCA advised me that the PCA had examined 145 of the Operation Loft files that were provided to me by the police.<sup>459</sup> Of these, 70 were determined to be situations where the PCA was not in a position to agree or disagree with the police. In no fewer than 70 of the

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451 Police Complaints Authority Act 1988, section 19(a).

452 Police Complaints Authority Act 1988, section 28(1).

453 Police Complaints Authority Act 1988, section 28(2)(a).

454 Police Complaints Authority Act 1988, section 28(2)(b).

455 Police Complaints Authority Act 1988, section 19(d).

456 Police Complaints Authority Act 1988, section 19(e).

457 Police Complaints Authority Act 1988, section 28(2)(b).

458 Police Complaints Authority Act 1988, section 29(1).

459 Police Complaints Authority, Transcript of hearing, 9 December 2005, pp. 57 and 58.

remaining 75 cases, the PCA fully endorsed the action of the police. Of the remaining five, there were three instances where the PCA and the police had a divergence of views (in each of these instances the police accepted the PCA's view and amended the outcome accordingly),<sup>460</sup> and there were two instances where the PCA made comments critical of the standard of the investigation (in one case, that less time should have been spent on that investigation), but ultimately agreed with the action taken by the police.<sup>461</sup>

4.27 Under section 29(2)(a) of the PCA Act, if, within a reasonable time after a recommendation is made, no action has been taken that seems to the PCA to be adequate and appropriate, the PCA may, after considering any comments made by the Commissioner of Police, send a copy of its opinion and recommendations on the matter to the Attorney-General and the Minister of Police.<sup>462</sup> The PCA may also, where it considers it appropriate, transmit a report on the matter to the Attorney-General for tabling in the House of Representatives.<sup>463</sup> These powers have never been used.<sup>464</sup>

4.28 The Authority, Judge Ian Borrin,<sup>465</sup> explained to me that in his view section 29(2)(a) of the PCA Act is to be interpreted as referring to “broader recommendations of practice, policy, procedure”, rather than relating to the outcome of a specific complaint.<sup>466</sup> He described the actions of the PCA in the few instances where the Authority has not agreed with the conclusion reached by the police and reported to them:

we put our view to the Police so that the matter can be the subject of discussion, because it may be that we are misunderstanding something about the matter. It may be that they will be assisted by our input, and so, the matter is then the subject of ongoing discussion, and it may result in an agreed resolution or we may be in the position that they have one view and we have another. That does not happen very often, but it does happen.<sup>467</sup>

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Where the outcome of a complaint is the subject of disagreement, that is to say, as to whether it should be sustained or not ... if there is disagreement we simply disagree; the Police will enter it on one basis in their records, together ... with the conclusion that we had reached, and we will enter it on our basis.<sup>468</sup>

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My experience has been that the Police have been most responsive to suggestions that we have made.<sup>469</sup>

4.29 These comments were given in response to a question from counsel assisting, who had interpreted section 29(2) as referring to, or certainly as including, recommendations specific to a particular file (rather than only to broader matters of practice, policy, and

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460 See Operation Loft files LT 51, LT 80, and LT 148.

461 See Operation Loft files LT 5 and LT 194.

462 Police Complaints Authority Act 1988, section 29(2)(a).

463 Police Complaints Authority Act 1988, section 29(2)(b).

464 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, pp. 37 and 60.

465 Note that since the time of the Commission hearings, Judge Borrin has retired. Her Hon Justice Lowell Goddard took office in February 2007.

466 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 60.

467 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 57.

468 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 60.

469 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 60.

procedure). The PCA subsequently agreed that there may be a specific outcome on which there is formal disagreement between the police and the PCA and which is sufficiently serious in itself to be referred to the Government. Counsel for the PCA noted, however, that in the view of successive Authorities no such case had arisen to date.

- 4.30 It is my view that where the PCA is critical of the police handling of a case, and the police do not accept that criticism, it should not be possible for these matters to be left where they lie; rather, they should be formally notified to the Minister of Police, the Attorney-General, and the House of Representatives. The PCA and the police opposed any removal of the discretion under section 29(2) of the Act. They stated that it was very rare for the police and the PCA to formally disagree, and that any disagreement may cover a range of situations of varying degrees of importance and seriousness. The police and the PCA submitted that the Authority, as an independent judicial officer, could be relied upon to determine whether any disagreement is of sufficient moment to warrant referral to ministers.<sup>470</sup> However, I consider that it is important that these very rare instances of disagreement are notified to Government. I believe it is important for the PCA to have effective sanctions in its armoury of powers. I therefore recommend that the discretion in section 29 be removed in the Independent Police Complaints Authority Amendment Bill in order to ensure that the PCA brings all disagreements to the attention of the Government of the day.

### ***PCA discretion regarding complaints***

- 4.31 The PCA has the ability under section 17(1)(d) of the PCA Act to decide to take no action on a complaint. The PCA's discretion in such decisions is governed by section 18 of the PCA Act:

- (1) The Authority may in its discretion decide to take no action, or, as the case may require, no further action, on any complaint if—
  - (a) The complaint relates to a matter of which the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint was made; or
  - (b) In the opinion of the Authority—
    - (i) The subject-matter of the complaint is trivial; or
    - (ii) The complaint is frivolous or vexatious or is not made in good faith; or
    - (iii) The person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
    - (iv) The identity of the complainant is unknown and investigation of the complaint would thereby be substantially impeded; or
    - (v) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives, which it would be reasonable for the person alleged to be aggrieved to exercise.
- (2) The Authority may decide not to take any further action on a complaint if, in the course of the investigation of the complaint by the Authority or the Police, or as a result of the Commissioner's report on

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470 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 5; New Zealand Police, Submissions in response to draft report, 20 June 2006, p. 118.

a Police investigation, it appears to the Authority that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.<sup>471</sup>

- 4.32 This section is used very sparingly by the PCA. However, I was concerned by two instances where the PCA told a complainant that it had no jurisdiction to consider his or her complaint because the alleged incident had occurred before the PCA was created.<sup>472</sup> This was unfortunate. The PCA is of the view that it has no jurisdiction to consider complaints of police misconduct (relating to either sexual assault allegations or the police investigation of a complaint) that took place before the Act came into effect in 1989.<sup>473</sup>
- 4.33 The PCA Act came into force on 1 April 1989. Section 18(1)(a) provides the only “time limit” on complaints by providing, in effect, the PCA with the discretion whether to take action where the complainant has had knowledge of a complaint or grievance for over 12 months before making the complaint. Section 40 made transitional arrangements for complaints already lodged either with an ombudsman or the police. The PCA Act, therefore, does not appear to preclude the receipt or investigation of historic complaints about the conduct of police officers or of a police investigation.
- 4.34 Matters giving rise to the establishment of this Commission of Inquiry into Police Conduct and to the contemporaneous police Operation Austin have clearly demonstrated the need for complainants in like situations to be able to take their complaints to some forum. Young women who have been the subject of sexual misconduct are often severely traumatised by the experience, and unfortunately it may be some years before they have the confidence to make a complaint. Given the PCA’s practice of not accepting historical complaints, I am concerned that there is no independent agency to which these complaints can be made. On my reading of the PCA Act it seems that it is open to the PCA to review such historic cases. The PCA took issue with my reading of the PCA Act. Accordingly, I took advice on the matter from my legal adviser, after he had received and considered submissions from the PCA and counsel assisting. The advice I received was as follows:
- ... I have given careful consideration to the submissions made by Counsel for the PCA and Counsel Assisting. For the reasons given by Counsel Assisting, I am satisfied that the presumption against retrospective legislation is not applicable to the issue whether the PCA has jurisdiction to consider pre 1 April 1989 allegations.<sup>474</sup>
- 4.35 I decided to accept that advice. The PCA does not agree and notes that the consistent interpretation of the PCA Act from the outset by all those who have been the Authority over the years is that the PCA lacks the legal jurisdiction to investigate matters that arose before the PCA Act came into force on 1 April 1989. If there remains any ambiguity or doubt about the matter, I believe that a further amendment should be included in the Independent Police Complaints Authority Amendment Bill to remove such uncertainty.

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471 Police Complaints Authority Act 1988, sections 18(1) and 18(2).

472 Operation Loft files LT 23 and LT 53.

473 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 54.

474 Mr Douglas White QC, Memorandum of advice for the Commission of Inquiry into Police Conduct, 28 July 2006, paragraph 27 (see Appendix 3.7).

## Impact of the secrecy provisions on PCA investigations

- 4.36 It has been the practice of the PCA not to conduct its own investigations into complaints that may result in criminal or disciplinary proceedings being taken against a member of the police until those proceedings have been completed, and to defer completion of complaint investigations where a matter is already the subject of proceedings. The fundamental reason for this practice is the provisions in the PCA Act known as the “secrecy” provisions.<sup>475</sup> Mr Allan Galbraith, Manager of Investigations for the PCA, explained to me that, although section 12 of the PCA Act allows the PCA to conduct investigations, section 25(4) directs that no statement taken or answer given by any person in the course of any PCA investigation shall be admissible as evidence in proceedings against that or any other person in any court, inquiry, or other proceeding. Section 32 requires the PCA and its staff to maintain secrecy in respect of all matters coming to their knowledge in the exercise of their functions, subject to certain discretions to disclose information for particular purposes. The effect of these provisions is that although the Authority may investigate police activities in terms of the Act, information gathered in that process is not available for the purpose of any proceedings – criminal or disciplinary.<sup>476</sup> The PCA must be careful to avoid being involved in an investigation where that involvement could later result in “contamination” of proceedings because of the presence of inadmissible evidence.<sup>477</sup> According to Mr Galbraith, these limitations “do not, however, restrict investigations within the apparent intentions of the Act”.<sup>478</sup>
- 4.37 Mr Galbraith informed me that, as a consequence of the investigative capacity available to the PCA since November 2003, a PCA investigator would, in appropriate cases, be assigned to a complaint of sexual assault made against a police officer. But because of the need to avoid contamination of any subsequent criminal or disciplinary proceedings, the role of the assigned investigator “may best be described as ‘active monitoring.’ ... The PCA investigator actively endeavours to ensure that the Police investigation is timely, thorough, and in accordance with best practice.”<sup>479</sup>
- 4.38 The police have expressed concern at the impact of the secrecy provisions on PCA investigations and the utility of information gathered by the PCA, as well as the lack of effectiveness of the Act in facilitating independent investigations.<sup>480</sup> This is discussed further below.

## STRUCTURE OF THE POLICE COMPLAINTS AUTHORITY

- 4.39 In December 2005 the PCA was composed of the Authority, Judge Ian Borrin, assisted by a Deputy Authority, and a staff of four investigators, six reviewing officers, and three administrative staff. (At that time there were 18 members of staff sharing the 13 full-time equivalent positions.)<sup>481</sup>

<sup>475</sup> Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 30.

<sup>476</sup> Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 2.

<sup>477</sup> Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 7.

<sup>478</sup> Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 3.

<sup>479</sup> Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 6.

<sup>480</sup> New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct on 15 November 2005.

<sup>481</sup> Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11.

- 4.40 The PCA Act provides for both an Authority and a Deputy Authority. Both of these positions have precisely the same statutory powers, duties, and functions. Both positions were filled from the establishment of the office in 1989 through to 2000. In 1997 Judge Borrin was appointed Deputy Authority. In June 2000, while Sir Rodney Gallen completed his review of the PCA, Judge Borrin became the Acting Authority, and from July 2000 when Judge Borrin was confirmed as the Authority until September 2005 the position of Deputy Authority was vacant.<sup>482</sup> A Deputy Authority was appointed in September 2005 but ceased duty at the end of March 2006. Therefore, between July 2000 and October 2006, there has been a Deputy Authority for a period of only six months or so.<sup>483</sup>
- 4.41 The independent investigative capability of the PCA was established during the year ended 30 June 2004.<sup>484</sup> Until that time the PCA did not undertake its own investigations because it did not have the capability to do so. In November 2003, in the light of the recommendations of Sir Rodney Gallen, the PCA received funding for and appointed a manager of investigations and three investigating officers. The task of the investigating officers is to operate at the “front end” of the investigation and review process, rather than in the role of reviewing officers, who receive the end product of police investigations.<sup>485</sup>
- 4.42 I was told that the task of the reviewing officers is to review investigations conducted for the PCA by the police and to prepare letters for reporting to complainants and to the police.<sup>486</sup> I was informed that the reviewing officers also now prepare final reporting letters in respect of the (relatively few) matters investigated by the PCA’s own investigators. In those matters the PCA has access to reports from both its own investigating officers and from the police.<sup>487</sup>

## NUMBER OF COMPLAINTS RECEIVED

- 4.43 In the year ended 30 June 2006 the PCA received 2,829 complaints lodged by 1,741 complainants. Of these complaints, 2,481 were accepted for full investigation. The PCA regards the total number of *complainants* rather than the total number of *complaints* as the more reliable indicator both of its own workload and of the level of dissatisfaction with police performance. At 1,741, the number of complainants in the year ended June 2006 was 161 fewer than in the previous 12 months and 215 fewer than the 1,956 complainants in the year ended June 2004. This latter number was considerably higher than the 1,781 complainants in the preceding year.<sup>488</sup> (The record number of complainants was recorded in the year ended June 1997 at 2,066.<sup>489</sup>)
- 4.44 According to the PCA, the increase in complaints in the June 2004 year arose from two sources. First, the stricter policy of the police in matters of traffic enforcement had led to an appreciable increase in the number of complaints from motorists involved in enforcement incidents. Secondly, the PCA considered that the public allegations made in 2004 in respect

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482 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11; and Transcript of hearing, 14 October 2005, p. 66.

483 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 2.

484 Police Complaints Authority, *Annual Report for the year ended 30 June 2004*, p. 5.

485 Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, pp. 2, 3, and 7.

486 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11.

487 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 11.

488 Police Complaints Authority, *Annual Report for the year ended 30 June 2006*, pp. 4–5.

489 Police Complaints Authority, *Annual Report for the year ended 30 June 1998*, p. 33.

of police sexual conduct and attitudes led to the PCA being approached over matters that may not otherwise have been referred to it.<sup>490</sup>

- 4.45 I was told by Judge Borrin during the inquiry that the PCA had a backlog of 2,000 cases at that time, and that 635 of them were over 18 months old. Some of these 635 cases were tied up in court proceedings for which the Authority was waiting resolution, but the majority were matters that, “but for our smallness of size, could be completed in better time”.<sup>491</sup>
- 4.46 For the year ended 30 June 2006, the PCA’s total budget was \$1.755 million.<sup>492</sup> In April 2006 a funding injection of \$0.25 million excluding GST was received from the Government in response to the increase in the PCA’s workload. An additional sum of \$0.55 million has been scheduled for payment during the year ending June 2007 to allow the current accumulation of complaints to be resolved.<sup>493</sup>

## INTERACTION BETWEEN THE POLICE COMPLAINTS AUTHORITY AND THE POLICE

### Basis of the working relationship

- 4.47 The Commissioner of Police is obliged under the PCA Act to notify the PCA as soon as practicable of any complaint against a police member made directly to the police.<sup>494</sup> Similarly, the PCA has a duty to notify the Commissioner of Police as soon as practicable of every complaint received directly by the Authority.<sup>495</sup> This covers all complaints by members of the public.
- 4.48 In relation to complaints coming from within the police, these are the subject of a memorandum of understanding between the police and PCA signed on 10 November 1994. According to the memorandum, when any “serious misconduct” or any “serious neglect of duty” is reported, the Commissioner of Police should notify the Authority as soon as practicable. Serious misconduct or serious neglect of duty is defined as conduct that constitutes a criminal offence, or is of such significant public interest as to put at risk the reputation of the police. In its schedules, the memorandum categorises each of the 42 particular offences set out in regulation 9 of the Police Regulations 1992 as either within or outside its scope.<sup>496</sup>
- 4.49 As outlined in Chapter 2, on 6 April 2005 the police and the PCA entered into a protocol for cooperation defining the working relationship between the police and the PCA in relation to the investigation of complaints, incidents, and other matters.<sup>497</sup> This protocol operates only when PCA investigators are deployed. I was informed that the police and PCA had been operating in accordance with this protocol for some time before it was signed.<sup>498</sup>

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490 Police Complaints Authority, *Annual Report for the year ended 30 June 2004*, p. 5.

491 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 18.

492 Police Complaints Authority, *Annual Report for the year ended 30 June 2006*, p. 7.

493 Police Complaints Authority, *Statement of Intent July 2006–June 2009*, p. 12.

494 Police Complaints Authority Act 1988, section 15.

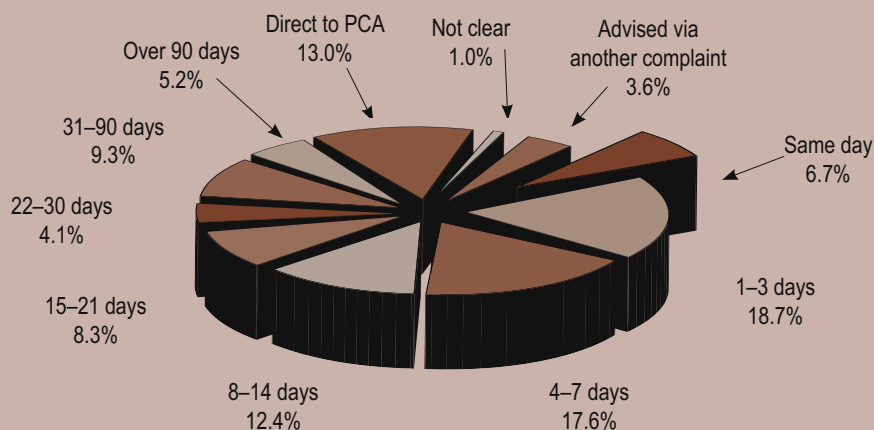
495 Police Complaints Authority Act 1988, section 16.

496 New Zealand Police and Police Complaints Authority, “Memorandum of Understanding between the New Zealand Police and the Police Complaints Authority”, 10 November 1994. In: New Zealand Police, *Ten-One*, No 90b, 28 April 1995, p. 18.

497 New Zealand Police and Police Complaints Authority, “Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority”, 6 April 2005.

498 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, pp. 49–50.

**Figure 4.1: Notification to PCA of complaints of sexual assault by members of police, 1989 to 2005, showing time taken from receipt of complaint by police or other means of receipt of complaint<sup>1</sup>**  
*Data expressed as percentages of the total notifications.*



<sup>1</sup> The data do not include those complaints investigated under the auspices of Operation Austin or those where the alleged offender was not a current member of police at the time of the complaint.

4.50 The protocol requires the police to notify the PCA of all serious complaints and incidents “as soon as possible”.<sup>499</sup> The PCA submitted that this is a higher standard than that specified in the PCA Act.<sup>500</sup> Once notified, PCA investigators are assigned to investigate only serious complaints, incidents, and other matters that the PCA considers appropriate. Even where a PCA investigator has been assigned to a complaint, the PCA will continue to rely on the police investigation for a substantial part of its base information.<sup>501</sup>

### Notification of a complaint

4.51 As just mentioned, the police are obliged to notify the PCA of any complaint received by them from a member of the public as soon as practicable, or, if the complaint is of a serious nature, as soon as possible.<sup>502</sup> The PCA Act does not provide a definition of the expression “as soon as practicable”, but I would consider that it would be appropriate for the PCA to be notified within one week of the police receiving a complaint.

4.52 Between 1989 (the year the PCA came into operation) and 2005, the PCA was notified of 192 complaints of sexual assault by members of police. As illustrated in Figure 4.1, of these 192 complaints

- 83 (43 percent of all complaints) were notified to the PCA within one week of the police receiving the complaint
- 24 were notified between one and two weeks of the police receiving the complaint (12 percent of all complaints)

499 New Zealand Police and Police Complaints Authority, “Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority”, 6 April 2005, p. 2, paragraph 6.

500 Namely “as soon as practicable” (Police Complaints Authority Act 1988 section 15).

501 New Zealand Police and Police Complaints Authority, “Protocol for Co-operation between the New Zealand Police and the Police Complaints Authority”, 6 April 2005, p. 2, paragraph 5.

502 See footnotes 495 and 496.

- 16 were notified to the PCA between two and three weeks after the police received the complaint (8 percent of all complaints)
  - eight were notified to the PCA between three and four weeks after the police received the complaint (4 percent of all complaints)
  - 17 complaints were notified to the PCA between 31 and 90 days of the police receiving the complaint (9 percent of all complaints)
  - 10 complaints were notified to the PCA over 90 days after the police had received the complaint (5 percent of all complaints)
  - 25 complaints were made directly to the PCA (13 percent of all complaints)
  - two complaints were “not clear” with respect to when they were notified (1 percent of all complaints)
  - seven complaints (4 percent of all complaints) were notified as part of another complainant’s complaint.
- 4.53 Of particular concern to me was the number of complaints that were notified to the PCA after 30 days. In the worst instance it took the police 518 days to notify the PCA of a complaint, and this notification occurred only after the complainant had made a third complaint about the same officer.<sup>503</sup>
- 4.54 In another instance the PCA was not notified of a complaint until after the police investigation into the matter had been completed.<sup>504</sup> Counsel for the PCA informed me, nothing turns on the point in this case, because in any event even if notification had been promptly given to the PCA by the Police, the PCA, in accordance with its usual and necessary practice would inevitably have deferred any action on the file until the Police investigation of the criminal complaint was complete.<sup>505</sup>
- 4.55 Nevertheless, I am concerned that the police failed to meet their statutory obligations to notify the PCA as soon as practicable, and the PCA, as a result, was not given the opportunity to direct how the complaint was to be dealt with.<sup>506</sup>
- 4.56 The former Police Complaints Authority, Hon Sir John Jeffries, expressed similar concerns when he was not notified of a complaint until 93 days after the complaint had been made. In a letter to the Commissioner of Police in 1994 he wrote,
- this failure to advise me was a clear-cut breach of the obligations of the Commissioner under s. 15 of my enabling Act. Moreover such failure to advise prevents me exercising my statutory functions in a timely fashion under s. 17 of the Act. Apart from breach of mandatory statutory obligations a complaint of extremely serious misconduct, and possible criminal misconduct, has been allowed to drift unresolved for many months.<sup>507</sup>

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503 Operation Loft file LT 71. (I note that the outcome of the investigation of this complaint was that it was false, but nevertheless the appropriate procedures should have been followed.)

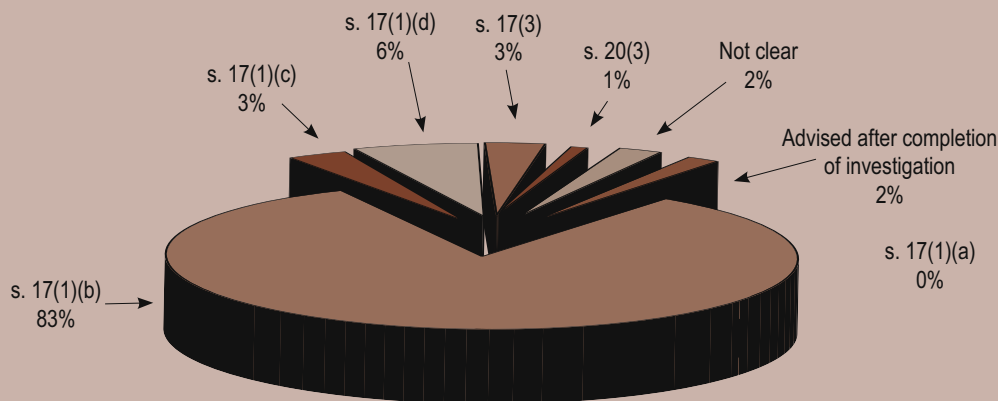
504 Operation Loft file LT 68.

505 Police Complaints Authority, Submission, 29 July 2005, p. 4.

506 Counsel for the PCA also expressed a concern to me about these issues being addressed in a chapter of the report focusing on the PCA, when they involve criticism of the performance of the police, not the PCA. I accept that the PCA is not responsible for the performance of the police in notifying it of complaints; the context of the discussion is nevertheless the relationship and interaction between the PCA and the police.

507 Police Complaints Authority (Sir John Jeffries), Letter to the Commissioner of Police, 28 January 1994.

**Figure 4.2: Initial direction by the Police Complaints Authority on receipt of a complaint, according to the section of the PCA Act 1988 used<sup>1</sup>**  
*Data expressed as percentages of the total complaints of sexual assault by members of police notified to PCA, 1989 to 2005.*



<sup>1</sup> The data do not include those complaints investigated under the auspices of Operation Austin or those where the alleged offender was not a current member of police at the time of the complaint.

4.57 The PCA submitted that it was misleading to take the data over the period without an analysis of the change in reporting times over the period since 1989.<sup>508</sup> Consequently I undertook an analysis of that data and found that there were such fluctuations in the data that it was impossible to determine any pattern of general improvement over time. However, I did note that in 10 years of the 17-year period, the majority of complaints were notified to the PCA within seven days. Also, I was pleased to see that in 2005 all of the complaints were notified within seven days.

4.58 I consider the requirement for the police to notify the PCA “as soon as practicable” means that notification should occur within one week at the very latest. The timeliness of such notifications should also be monitored by Professional Standards section at the Office of the Commissioner.

### Directions from the PCA under section 17 of the PCA Act

4.59 As set out in paragraph 4.19, the PCA may take any or all of several different courses of action under section 17 of the PCA Act in its initial direction on a complaint:

- investigate the complaint itself, section 17(1)(a)
- defer action while the police investigate, section 17(1)(b)
- oversee a police investigation, section 17(1)(c)
- take no action, section 17(1)(d) (in accordance with section 18)
- refer the matter to District Complaint Resolution, section 17(3).

4.60 Figure 4.2 illustrates use of the different provisions of the PCA Act in the initial response of the PCA.

- 4.61 With respect to the 192 sexual assault complaints against police officers made between 1989 (the year of the coming into force of the PCA Act) and 2005, the PCA's actions were as follows:
- None were investigated by the PCA itself under section 17(1)(a) of the PCA Act.
  - There were 160 complaints investigated by the police and reviewed by the PCA under section 17(1)(b).
  - Six complaints were overseen by the PCA under section 17(1)(c).
  - The PCA decided to take no action on 12 complaints, under section 17(1)(d) in accordance with section 18.
  - Six complaints were referred for District Complaint Resolution under section 17(3).
  - Five cases were not clear.
  - The PCA was advised of three complaints after the completion of the police investigation.
- 4.62 I was informed in October 2006 that the current practice of the PCA is to appoint a PCA investigator to undertake an independent investigation where a sexual assault allegation has been made against a police officer.<sup>509</sup>

### ***District Complaint Resolution***

- 4.63 The District Complaint Resolution system was developed by the PCA as an efficient and effective means of resolving a problem arising between a member of the public and the police. It is used where a complaint of a non-serious nature is made, for example a complaint of poor attitude as opposed to criminal behaviour.
- 4.64 The District Complaint Resolution procedure is not commonly used for sexual assault allegations, given their seriousness. However, I have seen its operation in several files that I have reviewed,<sup>510</sup> and overall I consider it to be an efficient method of dealing with a limited number of such complaints at the lower level.
- 4.65 Where a complaint is designated as appropriate for District Complaint Resolution it is referred to the district from which it arose for resolution. This will normally involve a senior officer talking with the complainant about their complaint and finding a mutually agreeable method of resolving it. The complainant is subsequently provided with a letter confirming what has been discussed and stating that if they are not satisfied with the result of the complaint they should write to the PCA. If a complainant is dissatisfied with the outcome, the PCA will review the police file in the same manner as it would any other complaint file.
- 4.66 Judge Borrin considered the resolution system had proved valuable:
- The experience has been that this is a successful procedure, so much so that we have tended to use it increasingly over the years, and in one or two years we have used this procedure in as many as 40% of the matters referred to us by members of the public. It's been a matter of

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509 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 5.

510 Operation Loft files LT 95, LT 153, and LT 209.

some pride and pleasure that, of those, there has been a failure rate of only about 5%.<sup>511</sup>

- 4.67 The PCA does not conduct any sampling of the people whose complaints were resolved in this manner to see if they were satisfied with the services they received from the PCA. Instead the PCA relies on whether or not there is any further correspondence from the complainant after receiving the dispositive letter informing of the right to seek a review by the PCA if he or she is dissatisfied with the result of the complaint.<sup>512</sup> I was told by the PCA, “The very fact that the PCA only gets a very small proportion of requests for review indicates ... that the DCR [District Complaint Resolution] system is working well.”<sup>513</sup>

## ADEQUACY OF POLICE INVESTIGATIONS ON BEHALF OF THE PCA

- 4.68 Term of reference (3) requires the Commission to review the adequacy of police investigations on behalf of the PCA into complaints that allege sexual assault by members of the police or police associates. Chapter 3 has already discussed in detail the adequacy of those complaint investigations during the entire period of interest to this inquiry. Investigations into members of the police that have been overseen or reviewed by the PCA form a subset of those investigations defined by date (the PCA was not established until April 1989) and subject matter (the PCA has no jurisdiction in respect of complaints against police associates).
- 4.69 At first reading, it seemed that very few of the complaints of sexual assault falling into the relevant subset were in fact subject to investigation by the police “on behalf of the PCA” as that phrase is used in this inquiry’s term of reference (3). Only six were overseen by the PCA. The vast majority were investigated by the police and only later reviewed by the PCA. In the event, I have considered the terms of reference to apply to all complaints investigated by the police and reported to the PCA, irrespective of whether the PCA oversaw the investigation as it was carried out or reviewed the investigation after its completion.
- 4.70 The preponderance of complaints that are only reviewed by the PCA after police investigation reflects the need, discussed earlier, to ensure that the secrecy provisions of the PCA Act do not operate to prejudice any possible criminal or disciplinary proceedings. The PCA reassured me, “The more serious the matter the more intense the scrutiny by the PCA.”<sup>514</sup> Despite this, the legislation seems to me to have produced a perverse result: the more serious the complaint, the more the PCA has to take a backseat role so as to ensure there is no contamination of the criminal or disciplinary process.
- 4.71 The investigations overseen or reviewed by the PCA since its establishment in April 1989 all fall into the period, discussed in Chapter 3, when the quality of investigation was much improved compared with that evidenced in the earliest files considered by the Commission

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511 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 23.

512 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 26.

513 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 6.

514 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 6.

(from 1979). Further improvements in the manner in which investigations were conducted have continued up to the present.

4.72 Thus, although I saw evidence of some failings in the past, the files also illustrate significant improvements in the period since 1989:

- an evolving understanding of the need to consider issues of independence, especially when appointing investigating officers, and to ensure that all complaints are investigated fairly and appropriately
- a growing recognition of the needs of sexual assault complainants and the importance of accessing professional assistance for them
- the development of a professional review structure within the police whereby any failings within the investigation process are identified and rectified wherever possible
- a willingness to seek both internal and external legal advice when considering whether to lay criminal charges.

4.73 However, further improvements are necessary. In particular the police should address the need for confidence in the system of investigating complaints, through

- effective implementation of the Adult Sexual Assault Investigation Policy, to ensure a nationally consistent approach towards investigating sexual assault complaints
- policies, and enhanced training, to assist members of the police to adequately identify and manage conflicts of interest (whether actual or perceived) in respect of complaints involving police members or police associates.

4.74 The existence of the PCA as an independent body to investigate or review complaints against the police is another essential element in ensuring confidence in the complaints system because it helps to overcome the perception, which is still held by some complainants, that the police will not accept a complaint against a colleague and/or will not adequately investigate such a complaint.

### **PCA INVOLVEMENT WITH COMPLAINANTS OF SEXUAL ASSAULT**

4.75 Based on my reading of the files and the evidence I heard during the inquiry, I believe there are three areas where enhancements to the practices of the PCA and the level and/or use of its resources would be valuable for complainants of sexual assault. The first relates to the accessibility of the PCA; the second to the communication between the PCA and the complainant during the investigation of their complaint; and the third to the need to address the time the PCA takes to complete its consideration of a complaint.

#### **Accessibility of the PCA**

4.76 In order for the PCA to function effectively it needs to be accessible to members of the public. I was informed by the current Authority, Judge Borrin,

[The PCA] is readily accessible to those members of the public who wish to approach it. Most complaints are in written form from the outset, either by way of a letter or a complaint form from the complainant (forwarded by fax or post) or by way of a statement made to, and then forwarded by, the Police. Others make initial contact by telephoning

the office (on an 0800 line) in order to discuss their concern in a preliminary way and they are offered a complaint form should they wish it and it is sent to them for completion and return, but generally they choose, following such a telephone call, to write in by letter.<sup>515</sup>

4.77 The PCA did not at that time maintain a website, although one has since been developed and became accessible in July 2006. The website contains information about how to make a complaint to the PCA, and enables a complaint to be made online. Similar information had been available for some time on the police website. The police website explains,

Serious cases involving allegations of misconduct, neglect of duty or grievances concerning police practice, policy or procedure, if reported directly to the police, will be notified to the Police Complaints Authority (PCA) to determine how the matter will be dealt with. The Police, or the Police Complaints Authority, may conduct an investigation.

The PCA also investigates incidents involving death or serious harm involving police officers.

The PCA is an entirely independent body appointed by the Governor-General.<sup>516</sup>

Until recently, the police website used to explain that the PCA “does not currently have a website, so we have provided this information for your convenience”;<sup>517</sup> it now provides a link to the PCA website.<sup>518</sup>

4.78 The PCA has produced an information pamphlet, which is available at some police stations, community law centres, and bureaux of the Citizens Advice Bureau. Judge Borrin told me that the pamphlets used to be provided to police stations, but that the practice “seems to have fallen into disuse”. He said that it would be desirable to have pamphlets and forms available at police stations, but did not consider it essential because complainants who present at police stations are either handing over a complaint they have already written or have come prepared to make a complaint to the police.<sup>519</sup>

4.79 In my view it is important to ensure that members of the general public, in particular those who have dealings with the police, are informed of their rights to make a complaint about the police and have easy access to the complaints process. The evidence I have considered provided examples of the difficulties experienced by people who felt they could complain only to the colleagues of the person who had allegedly assaulted them. Although I welcome the development of the PCA’s website, I believe it would be helpful for the PCA, in conjunction with the police, the Ministry of Justice, and other relevant agencies, to develop a communications strategy with the objective of increasing the general awareness of the PCA and its work, and ensuring in particular that information on the PCA is readily and prominently available in police stations.

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515 Judge Ian Borrin, Brief of evidence, 9 December 2005, p. 4.

516 New Zealand Police, <http://www.police.govt.nz/contact/complaints.html>, “Complaints against New Zealand Police: Police Complaints Authority”, accessed 1 October 2006.

517 New Zealand Police, <http://www.police.govt.nz/contact/complaints.html>, “Complaints against New Zealand Police: Police Complaints Authority”, when accessed at 12 June 2006.

518 New Zealand Police, <http://www.police.govt.nz/contact/complaints.html>, “Complaints against New Zealand Police: Police Complaints Authority”, accessed 1 October 2006, provides a link to <http://www.pca.govt.nz>.

519 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 16.

- 4.80 The PCA should also regularly sample complainants to see how satisfied they were with their interaction with the PCA and with the police on the PCA's behalf. I understand that many other Government agencies, for example, the Health and Disability Commissioner, seek feedback from those who have been involved in their complaints processes.
- 4.81 Dr Warren Young, an expert witness, told me that in his view, although the complaints system has significantly improved since the advent of the PCA, it still fails to meet the criteria for a credible process for dealing with complaints against the police. He offered some examples of obstacles encountered by potential complainants:
- Those who wish to make complaints to the police may be uncomfortable about complaining to the police station in which the police officer complained about works, simply because they will be aware that they are complaining to the officer's colleagues. While they are able to lay their complaints with other agencies of complaint, including the Police Complaints Authority, they may not know of the existence of those other avenues of complaint and may find them inaccessible or difficult to use anyway. For example, it is a significant impediment that the Police Complaints Authority is located solely in Wellington and that (while it has an 0800 number) it requires all complaints to be made in writing.<sup>520</sup>
- 4.82 Judge Borrin confirmed that it is a PCA requirement that a complaint be made in writing. A form is provided for that purpose. The PCA Act allows complaints to be made either orally or in writing, requiring that a complaint made orally shall be reduced to writing as soon as possible.<sup>521</sup> This permits the PCA to write down an oral complaint and have the complainant agree or adopt the written version. However, this has happened only "on a handful of occasions".<sup>522</sup> Instead the PCA has developed the practice of requiring a complaint to be made in writing by the complainant (or someone on his or her behalf) to "avoid an inadvertently incorrect record, made by someone else, of the complaint or to avoid a subsequent mischievous claim that the complaint was not fully or accurately recorded".<sup>523</sup>
- 4.83 I am concerned about this practice, which does not seem to me to take adequate consideration of the difficulties some members of the public have in dealing confidently with Government agencies. In my experience, the requirement for a complainant to put a complaint in writing can limit the accessibility of a complaints process, especially for those who are less literate, have some forms of mental or physical disability, or have suffered an intensely personal and traumatic experience such as rape.
- 4.84 I heard evidence of the difficulties experienced by one person with both the PCA's complaint form and the general accessibility of the PCA.<sup>524</sup> I was told that on other occasions complainants have asked community organisations to prepare the complaint for them and to send it on to the PCA.<sup>525</sup>
- 4.85 I recognise the risks inherent in the conversion of an oral complaint to a written form, and agree with the PCA that, quite apart from the statutory requirement (that an oral complaint

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520 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, pp. 10 and 11.

521 Police Complaints Authority Act 1988, section 14.

522 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 14.

523 Judge Ian Borrin, Police Complaints Authority, Brief of evidence, 9 December 2005, p. 2.

524 New Zealand Police, Submissions, 11 July 2005, p. 7.

525 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 15.

be reduced to writing as soon as practicable), it is desirable to invite a person who has made an oral complaint to confirm that the PCA has committed it accurately to writing.<sup>526</sup> The PCA was concerned about the ramifications of such a process, both practically and in terms of maintaining its independence from complainants, and moreover did not accept that there is evidence of any widespread problem or difficulty in the completion of written complaints.<sup>527</sup> I do not see the obstacles as insurmountable, and believe it would be a useful and workable addition to the PCA's procedures to enable a complainant who has difficulty making a written complaint to make it orally to the PCA and be invited to confirm that the PCA has recorded it accurately in writing.

### Communication between the PCA and the complainant

- 4.86 It is clear from the files that I have read that the PCA does not communicate adequately with complainants. The usual practice appears to be that the complainant is sent an initial letter advising them of the approach that the PCA is taking with regard to their complaint and then a final dispositive letter is sent at the conclusion of the PCA review of the file.
- 4.87 In response to enquiries from counsel assisting Judge Borrin told me,  
We have no established and routine system for reporting progress to a complainant. The reason for that is that we do not have the resources of time and personnel to do that no matter how desirable it is and, to put it frankly, we're too busy doing the rest of the work. We do, of course, reply to inquiries as to progress.<sup>528</sup>
- 4.88 According to the PCA Act, the PCA need inform the complainant of the progress of an investigation only if "it seems appropriate".<sup>529</sup> The PCA commented that my concerns about communication with complainants were based on one or two cases only.<sup>530</sup> Nevertheless in practice it appears that communication during an investigation occurs only if the complainant approaches the PCA seeking a report on progress.
- 4.89 Some of the submitters from whom I heard evidence were upset that the PCA's examination of their case did not take sufficient account of what, in their view, were the main deficiencies in the police investigation. In these instances, the submitters' concerns may not have been adequately set out in the initial documentation surrounding the complaint, or they may have arisen after the complaint was laid, or they may have been a result of misunderstandings. Whatever the case, contact early in the process might have prevented what was, for the complainant, an unsatisfactory result.
- 4.90 It seems to me very important that the PCA provide something of a human face to complainants. I believe even a telephone call to the complainant confirming the details of the complaint, clarifying the complainant's concerns, and providing a point of contact within the PCA would have immense benefits in terms of complainant satisfaction. As it was, complainants may have felt that a decision had been made entirely on the basis of documentation, mostly that provided by the police, and much of which they have never seen.

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526 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 9.

527 Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, pp. 6–7.

528 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 14 October 2005, p. 40.

529 Police Complaints Authority Act 1988, section 30(b).

530 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 3.

- 4.91 I acknowledge that better communication with complainants has become possible with the employment of PCA investigators in November 2003.<sup>531</sup> However, the investigators are appointed only in serious cases (including sexual assault complaints) and, in such cases, investigators must be careful about contacting complainants whose complaints allege criminal offending. This is to avoid possible “contamination” of any criminal proceedings, discussed earlier.
- 4.92 Judge Borrin accepted that a deficiency exists in respect of regularly advising complainants of the progress of their complaints. He told me that only in the most serious of cases is the PCA in regular communication with victims or relatives.<sup>532</sup> He explained that this is because his office “does not have the resources to undertake in all matters this very desirable task”.<sup>533</sup>
- 4.93 I believe that this issue needs some closer consideration. It seems to me very important that the PCA should ensure there is regular communication with those people whose complaints are under consideration.
- 4.94 Of further concern was the manner in which some complainants were informed of the outcome of their complaint.
- 4.95 Section 30(c) of the PCA Act requires the PCA to inform the complainant of the result of an investigation “as soon as reasonably practicable after the conclusion of the investigation, and in such manner as it thinks proper”.<sup>534</sup> The PCA has commented that its invariable practice is to provide complainants with a full analysis and discussion if there is no police report that does so.<sup>535</sup> I consider that it would be more appropriate for this to be the general practice irrespective of whether the complainant has received a police report. Given that the PCA operates independently of the police, complainants deserve a transparent and complete account of the PCA’s reasoning.
- 4.96 I was also concerned about the impact of the secrecy provisions on a complainant’s ability to access information held about his or her complaint. I note that section 32 of the PCA Act contains exceptions to the duty of secrecy, including exceptions to enable the PCA to communicate with any person for the purpose of carrying out its functions, or for the purpose of an investigation. The PCA said that section 32 is not an impediment to reporting to a complainant.<sup>536</sup> I accept that view, but despite this I see no reason why information held by the PCA warrants protection beyond the usual provisions that would apply to a police investigation under the Official Information Act 1982 and the Privacy Act 1993. It is a well-settled principle of information law that secrecy provisions with discretionary exceptions can result in a less open attitude in official processes than provisions that presume

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531 Mr Allan Galbraith, Manager of Investigations for the PCA, Brief of evidence, 9 December 2005, p. 2. The PCA submitted that the communication process has changed significantly over the time since the PCA was established (Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 7).

532 The PCA submitted that complaints of sexual assault by members of the police are invariably categorised as serious complaints (Police Complaints Authority, Submission in response to the draft interim report on the PCA, 30 October 2006, p. 7).

533 Judge Ian Borrin, Police Complaints Authority, Brief of evidence, 9 December 2005, p. 2.

534 Police Complaints Authority Act 1988, section 30(c).

535 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 10.

536 Police Complaints Authority, Submission in response to draft report, 30 May 2006, p. 11.

the availability of information unless there is reason to withhold it.<sup>537</sup> In my view it is quite likely that section 32 has had that effect in respect of the complaint investigation process. Moreover the existence of section 32 means that complainants are in practice unable to exercise their right of access to personal information under the Privacy Act in respect of information on their complaint file.<sup>538</sup> I do not believe this is satisfactory, and it appears to be inconsistent with the fundamental principles of fairness for a person to be denied access as a matter of right to personal information unless there is a demonstrated need to withhold it. There seems no reason why the right of access to personal information under the Privacy Act should not be available to complainants, both during an investigation and after a complaint has been dealt with.

### **Delays in completing the investigation and notifying the complainant**

4.97 Judge Borrin told me that delays in completing an investigation could occur because the PCA must await the outcome of relevant court proceedings before it completes its consideration. He explained that there is also the significant factor of resources: “The office does not have the resources to complete its reviews of matters within a timeframe that would leave me feeling comfortable.”<sup>539</sup>

4.98 In one instance, there was a six-month delay between the PCA receiving a substantive report from the police and notifying the complainant of the review of her complaint. Counsel for the PCA offered the following explanation:

The delay in reviewing the file and reporting ... was unfortunate but was a reflection of the fact that ... the PCA has been significantly under resourced. ...

The delay in replying to [the complainant] ... was due to factors outside the control of the PCA, namely, the significant under funding and under resourcing issues which the PCA was facing at the time.<sup>540</sup>

4.99 In my view the PCA needs to be more timely in its processing of complaints. The backlog of complaints (2,000 at December 2005) needs to be addressed as a matter of urgency. I was told that the majority of these outstanding complaints could be completed in better time, but for the small size of the PCA.<sup>541</sup> Judge Borrin saw this as an issue of resourcing. I believe that the PCA needs to be proactive in identifying ways of reducing the current backlog to the extent it is able within the current framework while continuing to proactively work to obtain additional resources as necessary.

### **INDEPENDENT POLICE COMPLAINTS AUTHORITY AMENDMENT BILL**

4.100 The Independent Police Complaints Authority Amendment Bill was introduced to the House on 4 December 2002 and referred to the Law and Order Committee on 20 February

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537 Committee on Official Information, *Towards Open Government: Supplementary Report*, 20 July 1981, paragraph 1.10, p. 7.

538 The Privacy Act does not apply when there is a provision in another Act that regulates the disclosure of personal information (Privacy Act 1993, section 7).

539 Judge Ian Borrin, Police Complaints Authority, Brief of evidence, 9 December 2005, p. 3.

540 Mr John Upton QC, Statement on behalf of the PCA, 7 July 2005, pp. 4 and 5.

541 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 18.

2003. The committee received 17 submissions on the bill and subsequently recommended that it be passed with the amendments shown.<sup>542</sup>

- 4.101 The bill proposes several amendments to the PCA Act. As already noted, the suggested amendments arose out of a review of the Police Complaints Authority conducted by Sir Rodney Gallen in 2000. The purpose of his review was to examine the role of the PCA in investigating and resolving complaints and incidents involving the police.
- 4.102 The bill seeks to amend the PCA Act by changing the name of the entity to the Independent Police Complaints Authority, and increasing the PCA's membership from two to three persons, including a chairperson, who is to be a current or former judge. The name change and the increase in the PCA's membership are designed to enhance the PCA's independence. The bill maintains the secrecy provisions in the PCA Act; however, it provides for an exception to these provisions to allow disclosure in certain very limited circumstances in order to avoid a miscarriage of justice.
- 4.103 I support the general direction of the bill, particularly the intention to increase membership of the PCA to three people. I consider it appropriate for the PCA to be chaired by a judge or a retired judge. However, in my view, it is important that the other members of the PCA are representative of the community, who bring a wider perspective to the work of the PCA. If additional legal people are deemed to be necessary as members of the Authority, then the numbers could be increased to five to ensure that majority representation by people from outside the legal profession is gained. In my view the existing model is out of step with the trends in New Zealand society. Membership representative of all New Zealanders would assist in making the PCA more approachable and strengthen the perception of the PCA's independence.
- 4.104 It was thought appropriate to change the name of the PCA to emphasise its independence. The term "Police Complaints Authority" in itself may tend to imply some sort of ownership of the process by the police. I agree that it is important to dispel this notion. Although it is not the most important of matters I support a name change. I also agree with Sir Rodney Gallen's suggestion, which I note was not taken up in the bill, that the name be "The Independent Authority for the Investigation of Complaints Against Police".<sup>543</sup> Although long, the name would emphasise its independence from the police even more than the name proposed under the present bill and more accurately describe the functions of the Authority.
- 4.105 I discuss the police proposals with respect to the secrecy provisions below, but wish to comment here on the bill's proposal to provide only limited exception to the secrecy provisions. The proposed new section 33A provides for disclosure of information that may point to an accused's innocence, but not if it points to his or her guilt.
- 4.106 It is extremely important that the PCA should (and should be able to) disclose material to enable an accused to assert his innocence. Thus if a police officer is falsely accused of a sexual assault, such an amendment to the Act would help prevent a miscarriage of

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542 Independent Police Complaints Authority Amendment Bill, as reported by the Law and Order Committee, 17 November 2003.

543 Hon Sir Rodney Gallen, *Review of the Police Complaints Authority* (Gallen Report), October 2000, paragraph 11.2.

justice. However, I feel it is equally important that if the PCA has acquired “through the performance of its functions” (to quote the bill) information that points to a police officer being guilty of a sexual assault, then that information should also be available for use in a prosecution. The PCA has the ability under the PCA Act to make recommendations that disciplinary or criminal proceedings be taken against a member, and to disclose such information as is necessary to support such recommendations.<sup>544</sup> Judge Borrin confirmed in evidence that he would not hesitate to use that discretion in such a situation were it to arise.<sup>545</sup> If this does not cover every situation, I would recommend that consideration be given to whether the bill could be further amended accordingly.

## CHANGES TO THE POLICE COMPLAINTS AUTHORITY PROPOSED BY THE POLICE

- 4.107 During the inquiry process the police put forward a proposal outlining significant changes to the role of the PCA.<sup>546</sup> In particular the police proposed changes to the PCA Act that would remove the secrecy provisions and that would enable the PCA to take a significantly greater role in the investigation of complaints against members of the police.<sup>547</sup>
- 4.108 The police contemplate that their proposal would result in an entirely new structure for the investigation of complaints against members of the police. In particular, primary responsibility for resolution of serious complaints would shift from New Zealand Police to the PCA, which would be able to make use of its power under section 27 of the PCA Act to investigate the complaint itself, and make recommendations as to the appropriate outcome. It would also enable the PCA to assume oversight of the investigation of less serious complaints. The police acknowledged in their proposal that the changes may need further policy work and that their proposal would require a substantial increase in PCA resources.<sup>548</sup>
- 4.109 The police outlined to me the reasons for their suggestions. The first is that, in their view, the PCA cannot function as originally intended because of the secrecy provisions contained in the PCA Act. The police explained that the secrecy provisions have resulted in the PCA deferring its consideration of complaints until an internal investigation (and possibly judicial proceedings) have been completed. The police believe that, as a result, the PCA has in practice become a body whose role is largely confined to reviewing investigations the police have already conducted. Thus the police are proposing that sections 32 and 25 of the Act be repealed. This would mean that information discovered by the PCA in the course of investigating or overseeing the investigation of a complaint would be available for all purposes including for use, where appropriate, in criminal or disciplinary proceedings.

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544 Police Complaints Authority Act 1988, sections 27(2), 28(2)(b), and 32(2)(b).

545 Judge Ian Borrin, Police Complaints Authority, Transcript of hearing, 9 December 2005, p. 36.

546 As noted in paragraphs 4.7 to 4.12, I decided to consider this proposal despite the PCA's objection to my doing so.

547 New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct on 15 November 2005.

548 New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct, 15 November 2005, pp. 2 and 4.

- 4.110 The second reason given by the police is a matter of perception; that, in their view, no matter how independent and objective police inquiries are, the community remains sceptical about investigations conducted by the police themselves.<sup>549</sup>
- 4.111 Dr Young voiced his concern about the perceptions created where the police are the primary investigators of serious allegations against other police members:
- The use of police investigators, particularly in serious cases, produces a perception of a lack of independence in the investigative process, or at the least an investigation that is insufficiently thorough. That perception is likely to be enhanced when investigators from inside the local area are being used.<sup>550</sup>
- 4.112 A similar concern was raised by a number of the complainants who approached the Commission.
- 4.113 Dr Young supported the police proposal to change the role of the PCA. He explained that, because of the systemic problems involved with the PCA, such as the secrecy provisions, its entire structure and functions need to be revamped in order to inject a proper element of independence into the investigative process from the outset, at least in relation to those cases that are likely to cause significant public concern. He said in his view it is no longer appropriate to leave initial investigations almost entirely in the hands of the police.<sup>551</sup>
- 4.114 The police also explained that they have already resolved to make a number of changes to their own procedures designed to achieve greater consistency in their handling of internal investigations. (These changes are outlined in more detail in Chapter 2.) For example, the appointment of investigators is now systematically monitored by Professional Standards at the Office of the Commissioner.<sup>552</sup> The police also told me that, as an interim measure, they are giving consideration to establishing a dedicated body of investigators, so that there is a centralised resource readily available to deal with serious complaints and to investigate intelligence that suggests the existence of illegal or other professional misconduct within a region.<sup>553</sup>

### Views of the parties on the police proposal for changes to the PCA

- 4.115 As well as challenging my jurisdiction to consider the matter, during the course of the inquiry hearings Judge Borrin commented that the police proposal would require a major revamp of the statute, as well as of the PCA itself, and would have resourcing implications for the PCA.<sup>554</sup> Judge Borrin also stated that he did not agree with the police that it was ever the intention of the PCA Act, and those who drafted it, that the PCA would play the sort of role the police are now suggesting. He said he was sure that the PCA Act would have been quite different in several respects, and certainly in relation to the secrecy provisions if this were what was intended.<sup>555</sup>

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549 Police Commissioner Robert Robinson, Brief of evidence, 28 November 2005, p. 5.

550 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 11.

551 Dr Warren Young, Law Commission, Brief of evidence, 22 November 2005, p. 12.

552 This issue is discussed in Chapter 3 (see “Safeguarding the independence of investigations”).

553 New Zealand Police, “Outline of Police Position in Relation to the Police Complaints Authority Act 1988 and Changes to Professional Standards”, paper written for and presented to the Commission of Inquiry on Police Conduct, 15 November 2005, pp. 2 and 3.

554 Judge Ian Borrin, Transcript of hearing, 9 December 2005, pp. 31 and 32.

555 Judge Ian Borrin, Transcript of hearing, 9 December 2005, p. 31.

4.116 The New Zealand Police Association in its submission to me said that the instances presented to the inquiry did not, in their view, demonstrate a police force unable or unwilling to discipline their own. Accordingly the Police Association did not support the police proposal to increase the powers of the PCA. However, the association acknowledged that, if the public lacks confidence in the process, and perceives that the police cannot or will not discipline their own, then for the sake of maintenance of confidence in New Zealand Police the association would support an increase in the powers and resources of the PCA. The Police Association did not concede that there was an evidential basis for such a change to occur.<sup>556</sup>

### My views on the proposal

4.117 The police put forward their proposed changes to the PCA as a way of addressing concerns about the perceived lack of independence in investigations, and also the concerns about the secrecy provisions under the current PCA Act. I certainly read and heard expressions of concern from complainants about the independence of the PCA, given that, in the main, the PCA only reviewed police files. It was also clear to me that some complainants were confused about the PCA's role. Both are matters that I consider could be ameliorated by better communication between the PCA and complainants.

4.118 As I have indicated above, the effect of the secrecy provisions on complainants' access to information needs reconsideration. The police have gone even further in proposing that the provisions be repealed, as part of their proposed reform of the role of the PCA. It is clear that the secrecy provisions have operated to keep the PCA effectively at arm's length from police investigations that may result in proceedings being taken. Accordingly, the need for such provisions should be reviewed.

4.119 I am not convinced of the wisdom of the police proposal for a much greater role for the PCA, effectively taking over all investigations into complaints of serious misconduct. I am in agreement with the Police Association that significant resourcing difficulties would arise from the police proposal.<sup>557</sup> Economies of scale would strongly suggest that the police are best placed to be able to quickly task experienced staff to undertake an investigation anywhere in the country. The Police Association also submitted to me that the PCA acts effectively as a "review authority" or an "appeal authority" in respect to police investigations, and that it is important to maintain this function. The Police Association stated,

That any suggestion that the PCA should become the primary investigating and prosecutorial body of Police Officers should be resisted – due to resourcing and the effective removal of the PCA's appellate and review functions vis-à-vis the Police.<sup>558</sup>

4.120 In relation to complaints of criminal offending by police officers, in my view New Zealand Police is the appropriate organisation to conduct investigations. I do not support the notion of also giving that authority to a revamped PCA, as is proposed by the police. The police have the necessary skills and expertise to conduct criminal investigations, and I consider they should continue to be the organisation that has the sole responsibility for that role.

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556 New Zealand Police Association, Opening remarks on behalf of the Police Association, 5 December 2005, p. 3.

557 New Zealand Police Association, Closing submissions, 16 December 2005, pp. 4–5.

558 New Zealand Police Association, Closing submissions, 16 December 2005, p. 5.

The accountability of the Commissioner of Police for the behaviour of his/her staff is stronger through having this responsibility.

- 4.121 I endorse the measures that the police are taking to strengthen their internal capacity to undertake independent investigations into serious complaints against police officers. My primary concern is that the communication issues between the PCA, New Zealand Police, and complainants, as outlined above, need improvement.

## Recommendations

### Handling of complaints by the Police Complaints Authority

- R21** The Police Complaints Authority should improve its accessibility to people who may wish to make a complaint, for instance, by publicising its newly established website and by wider distribution of its information pamphlet.
- R22** The Police Complaints Authority should, in conjunction with the police, the Ministry of Justice, and other relevant agencies, develop a communications strategy to increase the general awareness of the Police Complaints Authority and its work.
- R23** The Police Complaints Authority should actively facilitate the reception of complaints by accepting oral statements on the basis that the complainant will confirm the Police Complaints Authority's written record of the complaint.
- R24** The Police Complaints Authority should ensure it has more regular communication with those people whose complaints are under consideration.
- R25** The Police Complaints Authority should seek feedback from complainants by way of random sampling on their experience of the complaint process.
- R26** The Police Complaints Authority should develop strategies for addressing its current backlog of complaints, including seeking additional resources as appropriate.
- R27** The Police Complaints Authority should be encouraged to exercise its discretion in favour of accepting historic sexual assault complaints. If there is any doubt about this matter, a further legislative amendment should be included in the Independent Police Complaints Authority Amendment Bill.

### The Police Complaints Authority and legislative requirements

- R28** The requirement for the police to notify the Police Complaints Authority of any complaints received by them "as soon as practicable" (section 15 of the Police Complaints Authority Act 1988) should be amended by adding the words "and in any case no later than 5 working days after receipt of the complaint", and compliance with this requirement should be monitored by the Professional Standards section at the Office of the Commissioner.

- R29** The discretion in section 29(2)(a) of the Police Complaints Authority Act should be removed so that the Police Complaints Authority is required to notify the Attorney-General and Minister of Police if, within a reasonable time after the Authority makes a recommendation to the police under sections 27(2) or 28(2), the police fail to take action that seems to the Police Complaints Authority to be adequate and appropriate.
- R30** The Ministry of Justice should review the secrecy provisions in the Police Complaints Authority Act, and make such recommendations as may be appropriate for those provisions to be repealed or amended (through the Independent Police Complaints Authority Amendment Bill) to ensure that the Act
- encourages the Police Complaints Authority to provide a reasonable level of communication with complainants on the progress of complaints
  - does not inappropriately prevent the Police Complaints Authority from investigating complaints that may result in criminal or disciplinary proceedings being taken against a member of the police.
- R31** On the enactment of the Independent Police Complaints Authority Amendment Bill, the Government should ensure that the majority of members of the Police Complaints Authority are from outside the legal profession. If this is not possible with a three-person Authority (if the Authority and the deputy are both lawyers), the Government should give consideration to promoting further legislative change to enable a five-person Authority to be appointed.
- R32** The Government should adopt a policy to ensure that those appointed as members of the Authority reflect community diversity and strengthen the community's perception of the Police Complaints Authority's independence.