



## – APPENDIX 2 – PROCESSES OF THE COMMISSION

A2.1 The Commission of Inquiry into Police Conduct was appointed by Order in Council on 18 February 2004 to inquire into and report upon the conduct, procedure, and attitude of the New Zealand Police in relation to sexual assault allegations made against members of the police or associates of the police. Appendix 1 sets out its terms of reference. A summary of the course of the inquiry appears in Chapter 1. This appendix provides a more detailed account of the processes of the Commission.

### COMMENCEMENT OF THE INQUIRY

A2.2 In March 2004 the Commission, then comprising the Hon Justice Bruce Robertson and Dame Margaret Bazley, began its work by seeking expressions of interest from people wanting to make submissions, give information, or be formally joined as parties to the inquiry. Public notices calling for interested people to contact the Commission were placed in newspapers across the country on 6 and 7 March 2004. Notice was also given that the Commission would hold its first public meeting in Wellington on 22 March 2004.

### Parties to the inquiry and their legal representation

A2.3 At the first meeting the New Zealand Police, Police Complaints Authority (PCA), and Police Association were formally joined as parties to the inquiry. On 13 August 2004, on application to the Commission, the Police Managers' Guild was also accorded party status.

A2.4 The Commissioner of Police was represented by Ms Kristy McDonald QC and Mr David Boldt. They, in turn, were supported by a team within the police led by Detective Superintendent Malcolm Burgess and Inspector Angela Gallagher.

A2.5 The PCA was represented by Mr John Upton QC. The PCA was established in 1988. It is an independent body tasked with receiving and investigating complaints about police conduct. The Authority is a single person, to date a judge, who holds a warrant from the Governor-General and reports to Parliament. The PCA is independent of the police and receives its funding from the Ministry of Justice.

A2.6 The New Zealand Police Association was represented by Ms Susan Hughes and Mr Simon Feltham. The association is a voluntary service organisation that represents 98 percent of all sworn police across all ranks and 92 percent of all non-sworn members of police.<sup>1</sup> The primary roles of the association are to investigate and negotiate pay and conditions for police members; advise on employment rights and obligations; enforce employment agreements and decisions; provide occupational legal assistance to members; convey members' concerns

---

1 New Zealand Police Association, <http://www.policeassn.org.nz>, accessed 7 August 2006.

to the police administration, media, and public; negotiate group benefits and schemes with the New Zealand Police Welfare Fund; and ensure the integrity and independence of the police is maintained. Another arm of the association is the Police Welfare Fund Limited, a non-profit group that manages the association's welfare services and negotiates products at competitive rates for members. In addition to its elected positions, the association, together with the Welfare Fund, employs approximately 40 people to fulfil its various functions.<sup>2</sup>

- A2.7 The Police Managers' Guild was represented by Mr Earle Cooper and Mr Rob Davidson. The guild, registered with the New Zealand Companies Office as the New Zealand Police Officers' Guild Incorporated, was formed in 1955 to represent commissioned officers of the police. The guild is defined as a service organisation under section 2 of the Police Act 1958. In March 2004 it had 153 members from the rank of senior sergeant (and the equivalent non-sworn grade) and above. The guild's prime objective is to "promote welfare and efficiency within the force".<sup>3</sup>

### **Commission's first public meeting, 22 March 2004**

- A2.8 At its first public meeting the Commission outlined the broad framework of how it then anticipated that the inquiry would proceed. A reporting date of 1 November 2004 was confirmed and, to meet this deadline, the Commission expected to finalise its report by mid-September to allow for production and publication.
- A2.9 The Commission announced that Ms Mary Scholtens QC and Mr Kieran Raftery had been appointed as counsel assisting the Commission. It also explained that, in the first instance, the inquiry would consider the relevant police policies and procedures over the 25-year period from 1 January 1979.

### **Expressions of interest**

- A2.10 Expressions of interest from individuals and organisations wishing to provide information were received by the Commission from March 2004 onwards. Commission staff and counsel assisting reviewed these expressions of interest to determine whether or not they fell within the Commission's terms of reference and whether they could provide useful information.
- A2.11 Since expressions of interest were first called for, 156 people or organisations have contacted the Commission. Of these, 132 provided information that was outside the Commission's terms of reference (see paragraph A2.13); four submitters withdrew part-way through the process; two submissions were received from organisations or academics (the Office of the Ombudsmen; Professor Philip Stenning, Victoria University of Wellington); 10 cases were identified as falling within the Commission's terms of reference (see paragraph A2.57); and eight other cases were reviewed as part of the Commission's general review of all relevant police investigation files covering the past 25 years (referred to in paragraph A2.45 below).

---

<sup>2</sup> Mr Greg O'Connor, President, New Zealand Police Association, Brief of evidence, 16 December 2005, p. 10.

<sup>3</sup> Mr Earle Cooper, Police Managers' Guild, Field Officer, Submission, 5 December 2005, p. 2; letter from Mr Cooper to the commissioners, dated 10 March 2004.

- A2.12 In addition, seven current or former police officers who had been the subject of allegations contacted the Commission, either directly or through their lawyers, to identify their interest in the Commission's proceedings. As people with a direct interest in the inquiry, they were kept informed of key Commission processes throughout the inquiry.
- A2.13 As noted above, many people who contacted the Commission raised issues that did not fit within the Commission's terms of reference for a variety of reasons:
- The complaint was not of a sexual nature.
  - The alleged sexual assault was not carried out by a police officer.
  - There was no, or no relevant, association between the police and the person whose conduct was the subject of complaint.
  - The complaint fell outside the Commission's time frame in that it concerned matters that were investigated and disposed of before 1 January 1979.
  - The person had not made a complaint of sexual assault at the time, so there was no police investigation for the Commission to review (see paragraph A2.16).
- A2.14 Some of the expressions of interest did not provide sufficient information to be able to determine whether or not their concern fell within the terms of reference. Commission staff and counsel assisting followed up persons in this category, who were given a further opportunity to provide relevant information before their files were closed.
- A2.15 In May 2004 several cases that appeared to fall within the terms of reference were put on hold for the Commission's purposes while the police actively investigated their complaints, or other related complaints. This was done to ensure that the Commission did not act in any way to jeopardise the criminal investigation process and any subsequent criminal proceedings. As a result of the Government's changed directions in the May 2005 Order in Council, cases in this category were taken outside the Commission's terms of reference and were not examined any further, unless, as in several cases, criminal investigations, and any prosecutions that followed, were completed well within the Commission's period of evidence gathering.
- A2.16 The Commission was contacted by eight people who alleged that they had been sexually assaulted in the past by a police officer or by a police associate but who had not made a complaint to the police. Steps were put in place by the Commission and the police to assist these people make a formal complaint, if they wished. The police identified two senior police officers as points of contact for people wanting to lay a complaint. In the event it appears that no formal complaints were made using this process. The Commission did not review these complaints because they had never been the subject of formal investigation by the police; thus, there were no police investigation files to assess.
- A2.17 Ultimately, apart from Ms Nicholas and Ms Garrett (see Chapter 1, paragraphs 1.2 to 1.6), there was a small group of 10 individuals who came forward to the Commission with complaints that were considered to fall within the Commission's terms of reference. Because Ms Nicholas's and Ms Garrett's allegations became the subject of police investigation in early 2004, the Commission did not review any of the files relating to their complaints. Commission staff and counsel assisting then sought further information from these 10

submitters regarding their experience of the police investigative process (see paragraphs A2.57 to A2.63 on the Commission's hearing processes).

### **Support for inquiry participants**

A2.18 On 27 April 2004 the Government announced that legal support would be made available to assist complainants, and also police officers, former police officers, and police associates about whom complaints were made.<sup>4</sup> Ms Marlo Greenhough, barrister, was appointed by the Government to provide legal support to complainants. She was also available to provide advice to those people who were considering laying a complaint of sexual assault by a police officer, or associate, and who had not laid a complaint in the past. Mr Bruce Corkill, barrister, was appointed to provide legal support to those officers, former officers, or associates complained about.

A2.19 Ms Greenhough and Mr Corkill were not authorised to appear before the Commission, but were available to either complainants or those complained about if they had any concerns they felt unable to raise with counsel assisting the Commission, or if they wanted legal support before deciding whether to come forward to the Commission to give evidence.

A2.20 There was a concern that some of those about whom complaints were made might feel inhibited in talking to counsel assisting, because counsel assisting would have already received information from those complaining about them. Thus the provision of this extra legal support provided transparency and independence for those who felt they might be involved in the Commission's processes. A few complainants sought advice from Ms Greenhough during the course of the inquiry. Mr Corkill was involved in informing the subjects of the submitters' complaints that the police investigation into the allegation made against them was of interest to the Commission (see paragraph A2.26).

A2.21 Professional counselling support was also made available to the small group of women who came forward to the Commission in 2004. Several women in this group felt significantly affected by "reliving" their experiences when submitting their complaint to the Commission, and through the process of preparing for hearings (which at that stage were to be public). As a result, the Commission agreed that the women in this group should have access to professional counselling support based in their own home town.

### **CLARIFICATION OF THE COMMISSION'S INITIAL APPROACH**

A2.22 The second public hearing was held on 8 April 2004. The purpose of the hearing was to address the issue of representation and the costs of representation; it was also to clarify and, if necessary, define further the issues the Commission would cover.

A2.23 In a ruling dated 16 April 2004 the Commission outlined that its approach to the inquiry would be based on the concerns of people who alleged that they had been inappropriately treated by police officers or their close associates in a sexual manner, and, having complained about it, were dissatisfied with the response of the police to the complaint. The inquiry would focus on sexual behaviour that could be unlawful, as well as other sexual conduct that impinged on an individual police officer's ability to carry out his or her duties. The

---

<sup>4</sup> Hon M. Wilson, Attorney-General, "Legal support for Inquiry participants", media statement, 27 April 2004.

Commission said that it would not be undertaking a general inquiry into the moral behaviour of police officers in their private capacity where that had no consequence for their work as a police officer. Nor would it address the difficulties people had in raising with the police concerns about sexual assault except where the alleged wrongdoer was or had been a member or close associate of the police.

A2.24 The Commission explained that it would hear evidence presented by counsel assisting and that, although individual representation and private advocacy would not be necessary, it would be accommodated for those who wished it, providing their representatives maintained strict adherence to relevance. The Commission also noted that the funding of such representation was not within its power or control and those requiring assistance would need to seek it elsewhere. A copy of this ruling is attached as Appendix 3.1.

### **Subjects of the original complaints**

A2.25 In 2004, as part of the review of the investigations of submitters' allegations, the Commission undertook to ensure that the subject or subjects of the allegation were informed that the police investigation into the alleged incident was of interest to the inquiry. This notification was done as a matter of courtesy. The Commission did not propose to call them to give evidence given that its focus was on the way that the police dealt with the complaint about them. The terms of reference prohibited making findings about whether the submitter's allegation was true or not.

A2.26 The process for informing people in this category was agreed with the parties. Given that the Commission's interest in these complaints could be unsettling for those involved, a process was designed to explain the role of the Commission and the support options available to the subjects of the complaints. The Police Association and New Zealand Police provided information that explained the role of the Commission and the support available to them. Counsel assisting the Commission wrote to them, advising them of the implications for them. There were 10 people in this category. Each person was informed of the situation by letter and was given the opportunity to meet with the barrister appointed by the Government. Counselling support was made available to those who wished. The subjects of the submitters' complaints were also advised what they should do if they wished to apply to the Commission for ongoing name suppression because at that stage it was intended that hearings into these complaints would be held in public.

A2.27 The May 2005 Order in Council, which made changes to the way the Commission was to operate (in particular, to make the findings of a more general nature than was first envisaged and to ensure that no names or particulars were given that were likely to lead to the identification of any person alleged to have committed a sexual assault), eliminated the risk of any adverse consequences to the subjects of the original complaints. Thus counsel assisting advised the subjects of the complaints in May 2005 that it was unlikely that they would hear anything further from the Commission. (And, indeed, no further communications were made.)

### **Amendment to the Police Complaints Authority Act**

A2.28 Under the Police Complaints Authority Act 1988, investigation files held by the PCA are subject to secrecy provisions designed in part to help the PCA obtain frank information

from police and members of the public during its investigations. These provisions prevented relevant files being made available to the Commission.

A2.29 It was the view of Government, New Zealand Police, and the Commission that the inquiry would be hampered by an inability to consider the PCA files and that, to maintain public confidence in the Commission, this impediment needed to be removed. As a result, a bill was introduced into Parliament on 30 March 2004 to enact temporary provisions to enable the Commission to fulfil its terms of reference.

A2.30 The Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act came into force on 20 May 2004. The Amendment Act allowed the Commission to consider files covered by the secrecy provisions, subject to appropriate protections over that information. The Amendment Act applies only to the current inquiry and will expire one year after the Commission reports to the Governor-General.

### **Interface between the Commission and the ongoing criminal investigations**

A2.31 Justice Robertson and Dame Margaret Bazley had been conscious since their appointment of the potential for concurrent police inquiries to be contaminated or placed in jeopardy by the work of the Commission. Despite working to minimise these risks, they recognised that there were still real and substantial dangers in carrying out inquiries into the investigation of incidents from which criminal charges might arise.

A2.32 At the same time they recognised the substantial public disquiet and concern that had led to setting up the Commission and the risk that public confidence in the Commission would be irrevocably damaged if there were to be long delays across the entire spectrum of the terms of reference.

A2.33 Two confidential rulings of 13 and 19 May 2004 reinforced the Commissioners' intention to avoid any impediment, contamination, or influence by the Commission on the criminal inquiry process or on any subsequent prosecutions. From their perspective there was no doubt that the issue of possible criminal behaviour must be given priority if and when the two paths of investigation came into conflict. The need for these rulings to remain confidential subsequently ceased, and they were referred to in the ruling of 27 August 2004 (see Appendix 3.3).

A2.34 At that time (i.e. May 2004), the Commission was satisfied, on the basis of the evidence received, that relevant and extensive police inquiries would continue for a substantial period yet. Thus it would be essential for the Commission, and those acting under its direction and control, to be constantly vigilant to ensure that its activities could not have any adverse effect on any trial that might occur if any criminal charges were laid against any of the people whose acts and omissions had been the subject of, or involved in, an earlier investigation. The Commission agreed that it would take no steps in the areas where there were ongoing police investigations for a further three months, until August 2004, when the situation would be reviewed.

## Commission adjournment at 27 August 2004

- A2.35 A public hearing was held on 13 August 2004, during which the Commission heard submissions by or on behalf of 11 individuals or bodies. (These included some of the parties, other government agencies, complainants, and counsel for some media.) In particular, New Zealand Police and the Police Association both advocated the continuation of the inquiry in public, and both submitted that any potential prejudice to the criminal proceedings could be managed.
- A2.36 However, after that hearing, and in the light of continuing criminal investigations, Justice Robertson and Dame Margaret Bazley decided that their activities should stand in abeyance until they were in a position to assess the full implications for the inquiry of any criminal proceedings. They proposed that the Commission be adjourned until 22 October 2004 (or an earlier date, if the Commissioner of Police confirmed that all work of reinvestigation and criminal responsibility had been concluded and the issues were then totally in the hands of the prosecuting authorities).
- A2.37 They were concerned that the publicity that would arise from the Commission's hearings would have a prejudicial effect on the possible trials of serving or former police officers. The ruling of 27 August 2004 concluded by saying, "It is not a case of our task being abandoned, but an issue of when it can fairly and properly be undertaken." (A copy of the ruling is attached as Appendix 3.3.)
- A2.38 Because of the concerns that the Commission had about its work prejudicing any criminal prosecutions and investigations, all work by the Commission was effectively put on hold from 27 August 2004 until May 2005 when the Commission received its new directions from the Government.

## NEW DIRECTIONS TO THE COMMISSION – MAY 2005 ORDER IN COUNCIL

- A2.39 On 21 April 2005, the Attorney-General, Hon Dr Michael Cullen, announced that the Government had altered the mandate of the Commission of Inquiry into Police Conduct so that it could complete its work without prejudicing any criminal prosecutions and ongoing investigations. In his media statement, the Attorney-General said that the Commission would focus generally on how the police responded to the sexual assault allegations and whether people making them were treated appropriately.<sup>5</sup>
- A2.40 On 2 May 2005 the Governor-General, by Order in Council, issued new directions to the Commission and changed its membership and the reporting time (see Appendix 1.2). Under this Order in Council the Commission was directed, *inter alia*,
- to conduct its preliminary investigations in private and limit its public hearings
  - to make findings of a more general nature than those that were envisaged when the Commission was appointed.
- A2.41 The Commission was also directed not to investigate any complaints that were the subject of current or ongoing investigations by the police, or were the subject of criminal proceedings

<sup>5</sup> Hon Dr Michael Cullen, Attorney-General, "Commission of Inquiry into Police Conduct", media statement, 21 April 2005.

before the courts. The Commission was directed not to give names or particulars that were likely to lead to the identification of the person who made the allegation of sexual assault or of any other person alleged to have committed the assault.

A2.42 At the same time, Dame Margaret Bazley was appointed as sole Commissioner. Justice Robertson asked to be discharged because of time pressures resulting from his responsibilities as a High Court Judge and President of the Law Commission. Shortly thereafter he was appointed to the Court of Appeal.

A2.43 Because Dame Margaret Bazley is not a lawyer, a legal adviser, Mr Douglas White QC, was appointed to provide advice on legal matters that might arise in the course of the Commission's work. Mr White's brief was to act as legal adviser, and to assist Dame Margaret Bazley in the inquiry to the extent that she required. His role was distinct from that of counsel assisting the Commission; in particular Mr White was to provide legal advice in situations where there were differences of view between counsel assisting and counsel for the parties.

A2.44 The new Order in Council excluded the Commission from inquiring into Ms Nicholas's and Ms Garrett's allegations because those matters were subject to ongoing investigation and/or criminal prosecution. The handling by the police of the initial complaints by these two women, and associated issues, were the catalyst for this inquiry and had been specified in the initial terms of reference of 18 February 2004 as relevant to the Commission's work. However, because these cases were both subject to criminal investigations and, subsequently, prosecutions, consideration by the Commission of issues surrounding those initial complaints could not occur.

### **POLICE INVESTIGATION FILES PROVIDED TO THE COMMISSION**

A2.45 After the initial announcement of the Commission of Inquiry into Police Conduct in February 2004, 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).

### **Operation Loft files**

A2.46 As part of Operation Loft, Professional Standards staff members were asked to locate and retrieve any files that related to sexual offending by police and their associates since 1 January 1979. The search categories included sexual offending, disgraceful behaviour, harassment, sexual harassment, unlawful act, and internal discipline. As a result of their search, the police identified 185 separate records (or files) of investigations into allegations of sexual offending in which the alleged offenders were police officers and the allegations were made between 1 January 1979 and 2005 and were within the Commission's terms of reference.<sup>6</sup> Although each of the 185 files identified by the police generally referred to a single investigation, on examination the Commission found that 26 files contained allegations made by more than one person against a police member; 20 contained allegations made by one person against more than one police member; and four files contained more than one

---

6 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, pp. 2 and 3.

allegation by more than one person against more than one police member. For instance, one investigation contained 18 complaints of a sexual nature against one officer.<sup>7</sup>

A2.47 Operation Loft also identified 43 investigations into allegations of sexual offending by police associates. The Commission was informed that the police experienced some difficulties when searching for the records of this type of investigation because police files are not categorised according to an offender's association with police. The search for these records therefore relied on local knowledge of the offending or some form of public complaint.<sup>8</sup>

A2.48 The police informed the Commission that the records provided covered all the cases from the 25-year period in which the Commission was interested and included all allegations of sexual misconduct that fell within the Commission's terms of reference, whether or not they were subsequently found to be proved.<sup>9</sup> The police records concerning these allegations translated into over 600 separate physical files and contained about 55,000 documents.

### **Police Complaints Authority files**

A2.49 In addition, 19 PCA files related to Operation Loft cases were provided to the Commission where it proved possible to secure signed consents to disclosure under the Police Complaints Authority Act from the complainants who had triggered the investigation. (For the statutory authority of the Commission to view these files, see paragraphs A2.28–A2.30.)

### **Gender of complainants**

A2.50 Although the vast majority of files examined related to allegations of sexual misconduct in which the complainant was a woman, there were a few male complainants. It goes without saying that sexual misconduct is a serious matter whatever the gender of the complainant, and that policies and procedures within the police aimed at investigating such misconduct and indeed preventing it, and dealing with it when it occurs, should apply equally to situations where the alleged victim is male.

### **Further information provided by the police**

A2.51 At a hearing on 24 May 2004 the police provided eight volumes of documents detailing the relevant policies and procedures that were in place within New Zealand Police during the time period in which the Commission had an interest.<sup>10</sup> These documents addressed the following matters:

- a general overview, including the structure of the police and the sources of internal policies and procedures
- Professional Standards section, which deals with the investigation of complaints made against police officers
- criminal investigations, with a particular emphasis on policies relating to the investigation of sexual offences
- codes of conduct

---

7 Operation Loft file LT 139.

8 Detective Superintendent Malcolm Burgess, Brief of evidence, 29 November 2005, p. 3.

9 Investigations that were the subject of ongoing criminal investigation or prosecution were not provided to me.

10 Superintendent Dave Trappitt, New Zealand Police National Manager: Planning and Policy, Brief of evidence, 24 May 2004, p. 2.

- general human resources policy
- equal employment opportunities, with an emphasis on sexual harassment policies with the police.

Further documents related to policies and procedures were provided at subsequent hearings in 2005.

### **PROCESSES UNDER THE COMMISSION'S REVISED MANDATE**

A2.52 As noted above, the Commission's membership and mandate were revised by a second Order in Council in May 2005. The inquiry was directed to now make findings of a more general nature than originally envisaged. To that end the Commissioner read all of the police files provided to see what issues of a general nature did emerge. After reading the files, the Commission sent letters to the parties identifying issues about which it was concerned, giving, where appropriate, a file reference or two as examples. This was to provide the parties with an opportunity to respond to the issues identified. The Commission also asked for further information from the parties on a range of more general matters.

A2.53 It would have been possible to conduct the entire inquiry on the basis of a review of the files. However, the Commission decided it would be appropriate to meet the expectations of the people and the family of one deceased woman police officer who had been led, during the initial phase of the inquiry, to expect that they would either be called to give evidence or that their cases would be receiving individual attention. Consequently 10 individual hearings were held into these cases (see paragraph A2.57), focusing exclusively on the police handling of the particular submitter's complaint.

A2.54 In the remaining cases, which were the bulk of the police Operation Loft files, the inquiry proceeded on the basis of the issues that arose solely from consideration of the files. The complainants involved in these files had chosen not to come forward to the Commission. In many cases it was some years after the alleged incident, and any contact by the Commission could possibly stir up emotions or raise expectations when neither would be appropriate. Thus, apart from those complainants who came forward to the Commission early in its processes, all other cases were reviewed on the basis of the files alone.

A2.55 The change to the Commission's mandate in May 2005 required a review of its processes to take the Government's revised directions into account. This had several effects on how the Commission subsequently carried out its work:

- Subsequent investigations were conducted in private. No further public hearings were held during the course of the Commission. This allowed counsel assisting and counsel for the parties to refer directly to relevant cases during the course of their submissions, and to present evidence and make submissions without risk of prejudice to ongoing criminal processes.
- The Commission heard and received a significant amount of general evidence, including evidence of police processes and procedures etc. In the light of this evidence, it focused on a review of the relevant police investigation files to assess the way the police had carried out certain types of investigations and to identify any weaknesses or failures in the processes. The Commission identified issues from those files and notified the

police and other parties of those issues in writing. It sought and received evidence and submissions from the police and the other parties on these issues.

- As noted above, the Commission also held individual hearings with a few submitters who had approached the Commission at the beginning of 2004, and who had been interviewed by the Commission staff and counsel assisting in 2004.
- The process adopted, given the very large number of files provided by the police, was to provide examples in the report that were considered to support the Commission's observations or findings. This was intended to provide a transparent process as well as a robust report, enabling the parties and other readers to follow the Commissioner's thinking about the files she had read and for the parties to respond to her preliminary conclusions provided to them by way of a confidential draft report.

## Commission hearings

A2.56 Hearings were conducted over a six-month period between July and December 2005. The Commission heard evidence from over 50 witnesses including submitters, police representatives, and experts with experience relevant to the terms of reference. As directed by the Order in Council of 2 May 2005 these hearings were held in private (that is, without media or members of the public present).

### *Hearings on individual cases*

A2.57 The Commission held hearings into the investigations of 10 individual complaints in total. The police files for these complaints were provided as part of the Operation Loft search. The PCA files for these complaints were also provided, where the complainant gave consent to disclosure. Six submitters attended the hearings in person. For each of the remaining four cases, the submitter's statement was read.

A2.58 In all 10 cases, counsel assisting the Commission worked with the submitters to prepare statements outlining the relevant evidence about their complaint for consideration. The Commissioner, Dame Margaret Bazley, was not privy to any discussions between those individuals and counsel assisting and/or Commission staff. All that she received were the police and PCA files relating to these cases, and the submitters' statements.

A2.59 For each of the 10 separate hearings, counsel assisting prepared a specific issues letter. These letters set out the Commissioner's concerns as a result of reading the relevant files and statements, and also her questions about the police and PCA handling of these cases. The issues letters were sent to the parties before the individual hearing, together with the submitter's statement. The parties responded to the questions and concerns set out in the issues letters with submissions and written evidential statements. These were presented at the hearings.

A2.60 In six cases, the submitter concerned attended the hearing, presented evidence, and answered questions from counsel assisting, counsel for the other parties (where permitted), and the Commissioner. Counsel assisting took the Commission chronologically through the investigation file, and raised particular issues for the parties to address. Counsel for the police also presented statements from persons who had been involved in the investigations, and the parties made submissions on the issues raised by counsel assisting. Counsel for the

parties were not permitted to directly cross-examine the complainants attending the hearings; this was to avoid an unnecessarily adversarial environment or a focus on the substance of the complaint, rather than its investigation. If any other party wished to ask questions of the complainant they had to seek permission and, if granted, the Commissioner would ask the complainant the question. Such questioning or cross-examination was allowed in the hearings at the Commissioner's discretion.

- A2.61 Almost all the relevant evidence for each case was to be found in the particular file. The Commission was interested primarily in the existence of, and adherence to, good procedures (or otherwise). Dame Margaret Bazley made it clear that where any party disputed allegations or particulars of offending raised by a submitter she would not attempt to determine the point. Only if the point became significant would the process be reviewed. In the event, this did not become necessary.
- A2.62 Hearings on the other four cases, where the submitter did not attend the hearing, but where a statement that the submitter had prepared with counsel assisting was read, followed a similar process. These hearings were also attended by representatives of the New Zealand Police, Police Association, Police Managers' Guild, and PCA, who were invited to make submissions on the case in question. Before the hearing, issues letters were sent to the parties detailing questions and issues that arose from the Commission's reading of the police and PCA files on these cases. All parties had access to the files.
- A2.63 Where the facts were in dispute the Commission did not attempt to make any findings. The focus in looking at these cases was on reviewing how the police had investigated the complaints at the time. Thus, reviewing the police files was a key part of the process and the files were an important source of evidence.

### ***Hearings with police representatives and expert witnesses***

- A2.64 The Commission of Inquiry into Police Conduct received regular briefings from Police Commissioner Robert Robinson. The police commissioner kept the Commission up to date with matters related to the criminal investigations and prosecutions and his investigations into the misuse of email and Internet (in terms of its sexual content), as well as providing general briefings on issues that related directly to the terms of reference.
- A2.65 After the hearings into individual cases, the Commission held a number of hearings during which the parties called witnesses to address the general issues that had arisen during the earlier hearings, and out of the remaining Operation Loft files. The police witnesses included a wide range of staff from all levels of the organisation. The police also called a number of expert witnesses, such as Professor David Bayley, an academic from New York University who talked about his work on police cultures; Dr Jan Jordan, an academic from the Institute of Criminology, Victoria University of Wellington, who in 2004 published *The Word of a Woman? Police, Rape and Belief, a study of police rape investigative procedures*; Dr Warren Young, at that time Acting President of the Law Commission and a New Zealand expert on criminology; representatives from the Women's Refuge and the Rape Counselling Network; and two representatives from Doctors for Sexual Abuse Care.
- A2.66 The Police Association called several witnesses, as did the PCA. The Commissioner of Inland Revenue was also invited to appear before the Commission in order to provide

a picture of how another large operational government agency deals with some of the management issues that New Zealand Police faces. Appendix 5 sets out a list of all the witnesses who appeared before the Commission at hearings. (The names of the individual submitters and/or their supporters who came forward to the Commission are not included to protect their identity as required by the Order in Council of May 2005.)

### **Use of police files**

A2.67 Under the revised mandate, the Commission was required to make findings of a more general nature than those that were envisaged at the time it was appointed; not to investigate any complaints that were the subject of current or ongoing investigations by the police, or were the subject of criminal proceedings before the courts; and not to give names or particulars that were likely to lead to the identification of the person who made an allegation of sexual assault or of any person alleged to have committed the assault.

A2.68 The police files were nevertheless useful in assessing the way the police had carried out certain types of investigations. They enabled the Commission to identify any weaknesses or failures in the processes used in those types of investigations during the period in question, and to illustrate particular types of behaviour or attitude within the police. References to a number of files were therefore included in the report to enable the parties and other readers to follow Dame Margaret Bazley's thinking about the files she had read. Particular examples, where mentioned, are not presented as findings about any individual police officers.

### **SUMMARY OF COMMISSION PROCESSES SINCE MAY 2005**

A2.69 In summary, the bulk of the work of the Commission since May 2005 has entailed the following processes:

- a detailed examination of the police files (containing in total some 55,500 documents), and the identification of general issues arising from those files in the context of the police policies and procedures in force at the time of the events they described
- a detailed examination of 19 PCA files for which consent to disclosure of the file was obtained from the complainant
- hearings with six individual submitters to discuss aspects of the police handling of their complaints, these hearings being attended by representatives of the parties to the inquiry, who were also invited to make submissions on the cases in question (this included provision of statements from police officers involved in the investigations of these complaints, where considered appropriate)
- hearings to consider a further four cases where the submitter did not attend the hearing, but where a statement that the submitter had prepared with counsel assisting was read out
- hearings with Police Commissioner Robinson and other police officers regarding the standards, procedures, and practices that have been in place within the New Zealand Police during the period in which the Commission had a particular interest, and other matters relevant to the Commission's terms of reference
- hearings with individuals with experience or expertise in matters relevant to the Commission's terms of reference

- consideration of evidence in private
- circulation of confidential draft reports to the parties and consideration of their comments.

A2.70 The Commission also received and reviewed a number of submissions and documents on matters relevant to the terms of reference, for example, academic papers, information about other jurisdictions, and relevant previous reviews. (A list of these documents is attached as Appendix 6). Documents considered by the Commission were also made available to the New Zealand Police, PCA, Police Managers' Guild, and Police Association.

### REPORTING PROCESS

A2.71 The reporting date under the 2 May 2005 Order in Council was 3 March 2006. However, as the complexity of the task became apparent, the Commission sought extensions to the reporting date in order to allow sufficient time to analyse the extensive volume of material and submissions provided by the parties during the inquiry process; and the Commission was also mindful that public release of its report should not jeopardise the right to a fair trial of those whose cases were the subject of investigation or prosecution. Three extensions were granted: the first to 31 May 2006 and the second to 30 September 2006; the subsequent extension (granted in September 2006) specified a reporting date of 30 March 2007. During this latter period the reporting process included the preparation of two interim reports in addition to the final report as published here.

#### *Interim reporting*

A2.72 The Commission's terms of reference allowed the Commissioner to report to the Governor-General on an interim basis if she thought it appropriate. In particular the terms of reference stated,

And it is declared that you have liberty to report your proceedings and recommendations under this Commission from time to time if you judge it expedient to do so.

A2.73 After the extension to the Commission's reporting date in September 2006, the Commissioner determined that there were two issues on which she would like to report in advance of the final reporting date of 30 March 2007 because they dealt with matters that were the subject of proposed legislation or ongoing policy work. The Commissioner believed it was important that those matters not proceed without the benefit of the Commission's views.

A2.74 The first topic that was identified was matters relating to the PCA in light of the Independent Police Complaints Authority Amendment Bill, which the Government indicated would soon proceed through its remaining committee stages in Parliament. To this end the Commissioner prepared an interim report, a draft of which was provided to the parties. The Commissioner was concerned that her views and recommendations should be available for consideration before that legislative measure went any further.

A2.75 The PCA submitted that it would be not be appropriate to release an interim report solely on the PCA at that time. Indications were given that it was most unlikely that there would be any further movement on the amendment bill before the Commission's final report

became available. The Commissioner accepted that submission and agreed to hold the interim report until she had finalised the other interim report so that both could be released at the same time.

- A2.76 The second topic identified related to the police disciplinary system. The Commissioner believed that her contribution on this topic could assist those considering the review of the Police Act announced by the Minister of Police in March 2006. An interim report on this topic was prepared for release, a draft of which was given to the parties for comment. However, counsel for New Zealand Police submitted, among other things, that the review of the Police Act was still a considerable way from being concluded and did not warrant early release of the Commission's views on that specific term of reference. Having considered the submissions received from New Zealand Police the Commissioner decided to wait and review the situation.
- A2.77 In the event, the Commissioner decided that it was unnecessary, at that time, to release the two interim reports.

### ***Final reporting***

- A2.78 The Commission completed its draft report in April 2006 and provided a copy of the draft to the four parties for their comment. Submissions from the parties were received in May and June 2006. These covered both jurisdictional and content issues. The submission received from New Zealand Police was particularly extensive and detailed, and required lengthy analysis to consider all the issues raised.
- A2.79 Where changes were made to the report that incorporated new and potentially adverse material, they were referred to the parties to ensure that findings were based on probative material, that the Commission had correctly understood and interpreted particular files, and that the parties had had the necessary opportunity to comment.
- A2.80 After receipt of such material from the Commission in September 2006, New Zealand Police sought to call additional evidence from Detective Superintendent Malcolm Burgess. The Commission agreed to hear further evidence from the police, and a further hearing was held in December 2006 to provide New Zealand Police with the opportunity to present expert evidence related to police investigations discussed in the draft report.
- A2.81 After full consideration of the parties' feedback the Commission finalised its report for submission to the Governor-General in March 2007.