
TRANSCRIPT OF PROCEEDINGS

**INDEPENDENT COMMISSION OF INQUIRY INTO QUEENSLAND POLICE
SERVICE RESPONSES TO DOMESTIC AND FAMILY VIOLENCE**

COMMISSIONER: HER HONOUR JUDGE DEBORAH RICHARDS

**COUNSEL ASSISTING: RUTH O'GORMAN QC
ANNA CAPPELLANO**

**Land Court of Queensland, Brisbane Magistrates Court,
Level 8/362 George Street, Brisbane.**

Tuesday, 2 August 2022

1 COMMISSIONER: Yes.

2

3 MS CAPPELLANO: Good afternoon, Commissioner. There are
4 two witnesses due to give evidence today:
5 Professor Prenzler and Dr Maguire. Professor Prenzler will
6 give evidence here in person, and Dr Maguire resides in the
7 UK and will give evidence remotely. Professor Prenzler and
8 Dr Maguire have prepared a joint report for the Commission.
9 It is in a draft form, and it has been distributed to the
10 parties. I tender that report.

11

12 **EXHIBIT #21 DRAFT JOINT REPORT OF PROFESSOR PRENZLER AND**
13 **DR MAGUIRE**

14

15 MS CAPPELLANO: I call Professor Tim Prenzler.

16

17 <TIM PRENZLER, affirmed:

18

19 <EXAMINATION BY MS CAPPELLANO:

20

21 Q. Professor Prenzler, you are a professor of criminology
22 at the School of Law and Society at the University of the
23 Sunshine Coast; is that correct?

24

A. Right.

25

26 Q. And you teach courses at that university in policing,
27 crime prevention, criminal justice, ethics and
28 accountability?

29

A. Right.

30

31 Q. You also have a number of - you've done research in
32 topics including crime and corruption prevention, police
33 and security officer safety, security industry regulation,
34 and gender equality and policing?

35

A. Correct.

36

37 Q. You have been the recipient of numerous awards for
38 excellence in teaching and research, including awards from
39 the Australian and New Zealand Society of Criminology, two
40 research awards and one teaching award, most recently in
41 2020?

42

A. Yes.

43

44 Q. You've written a number of books, including on the
45 topic of civilian oversight of police, advancing
46 accountability in law and enforcement, and police integrity
47 management in Australia, global lessons for combatting

1 police misconduct and police corruption, preventing
2 misconduct and maintaining integrity?

3 A. Right.

4
5 Q. You've also written a number of articles which have
6 appeared in academic journals on topics including police
7 oversight and police complaint systems. In a number of
8 these journals or books you've done reviews of surveys.
9 Can you just quickly tell the Commission about that type of
10 work?

11 A. Yes. Well, most recently in the 2016 books, civilian
12 oversight of police, I tried to find every survey that had
13 ever been done and published anywhere in the world on this
14 topic.

15
16 Q. What do you mean by "this topic"?

17 A. So public opinion surveys about how complaints against
18 police should be managed, and police experiences and
19 opinions about how complaints against police should be
20 managed, and also complainants' experiences and opinions
21 about complaints processing.

22
23 Q. And they're the surveys that you've referred to in the
24 report?

25 A. Primarily, yes.

26
27 Q. Now, you have for the purpose of the Commission
28 collaborated with Dr Maguire, who's a former Police
29 Ombudsman for Northern Ireland, the organisation PONI, as
30 it's referred to, and to prepare a joint report for
31 the Commission of Inquiry?

32 A. Right.

33
34 Q. And the opinion that you and Dr Maguire reach is
35 outlined in the summary at page 2 and, to paraphrase, the
36 opinion that you give is that the weight of the evidence
37 from a number of diverse sources strongly supports the
38 establishment of an agency with responsibility for the
39 independent investigation and adjudication of allegations
40 and disclosures involving police?

41 A. All allegations and disclosures, yes.

42
43 Q. And in terms of that in a Queensland context you
44 indicate that that would require the re-design of the
45 current institutional arrangements to ensure a much more
46 robust police oversight agency and operation across the
47 state with outreach across the state?

1 A. Right.

2

3 Q. While you and Dr Maguire have reached that joint
4 opinion, is it correct that you and Dr Maguire have
5 differing areas of expertise?

6 A. Correct.

7

8 Q. And in particular for you your expertise includes a
9 comparative analysis of the different types of police
10 complaint systems both in Australia and internationally?

11 A. That's right.

12

13 Q. Looking at the features of those different models and
14 critiques?

15 A. Right.

16

17 Q. It's also within your expertise the current police
18 complaints processes in Queensland?

19 A. Right.

20

21 Q. Including the historical background of that?

22 A. Right.

23

24 Q. And areas - while you know generally about the PONI
25 model through that research, the more finer details of that
26 model would be more Dr Maguire's --

27 A. Right.

28

29 Q. -- ballpark; is that correct?

30 A. That's right. I have also visited the PONI twice and
31 had a tour of their operations, and I have visited many
32 oversight agencies around the world.

33

34 Q. If I do ask questions, given that it is a joint
35 report, that's outside your specific expertise please let
36 me know. You have a copy of the report with you?

37 A. Yes.

38

39 Q. You can refer to it during your evidence if needed.
40 If you would like, certain sections of the report can be
41 placed on the screen as well. Now, can I begin by asking
42 you about the different types of police conduct and
43 complaints handling models. Am I correct in my
44 understanding of your evidence in the report that you and a
45 number of other academics have divided the police complaint
46 models throughout the world into three different types of
47 model?

- 1 A. Right.
2
3 Q. Is that correct?
4 A. Correct.
5
6 Q. They are the internal affairs model, a civilian review
7 model, and a civilian control model?
8 A. Right.
9
10 Q. I understand that there are other ways that those
11 types of models can be classified, but that is the
12 classification that you have used in your research?
13 A. Right.
14
15 Q. And a number of other academics as well?
16 A. Right.
17
18 Q. Now, I will ask you to outline the salient features of
19 these different models in a little bit more detail shortly,
20 but just so that we can get a little bit of initial context
21 can I just get you to confirm a basic summary of those
22 different types of models. So internal affairs, does that
23 involve really police investigating police?
24 A. Essentially, yes. Police are largely left to their
25 own devices in how they investigate and adjudicate
26 complaints, with some very limited oversight. For example,
27 a police officer giving testimony in court will have their
28 testimony questioned, inquests, some other forums, there
29 might be some interrogation or investigation of police
30 processes, but otherwise they're essentially on their own.
31
32 Q. And in terms of the civilian review model, just in a
33 short compass?
34 A. A separate agency, staffed by police who - sorry,
35 staffed by employees who are not part of a police
36 department, largely engaged in auditing of police
37 investigations. Police still carry out the majority of
38 investigations with most of these agencies, although some
39 independently investigate complaints but they don't have
40 any adjudicative power. They can only recommend
41 disciplinary interventions. So there's a real mix within
42 that category. Some can --
43
44 COMMISSIONER: Is that with no real authority?
45 A. Correct.
46
47 MS CAPPELLANO: And then in terms of the civilian control

1 model?

2 A. It basically has full responsibility and authority
3 invested in the agency for investigating and determining
4 the outcomes of complaints, and usually with a significant
5 role in misconduct prevention as well.

6

7 Q. And the body in a civilian control model would be
8 firmly outside and independent from the police?

9 A. Correct.

10

11 Q. Now, as I said, I will get you to go through a bit
12 more detail of those different models and examples of those
13 and the critiques of those in a moment. But so that we can
14 understand for the Queensland context can you please give a
15 little bit of detail on the current Queensland police
16 complaints and conduct model in Queensland, perhaps
17 including - and perhaps beginning with where you see it
18 sitting within those three different types of models?

19 A. Currently I think technically you would have to
20 classify it as a civilian review model because it has
21 discretionary powers to independently investigate
22 complaints, and it has an auditing function. There's a
23 lack of transparency currently about what it does on the
24 public record. Limited evidence would suggest it does very
25 little. The very large majority of complaints remain
26 within police jurisdiction. So it's kind of marginally on
27 the border there between civilian review and internal
28 affairs.

29

30 Q. When you're talking about "it" before in terms of the
31 oversight body?

32 A. The CCC, the Crime and Corruption Commission.

33

34 Q. So that we can understand the current complaint
35 system, can you give a brief historical background to how
36 the current system came to pass?

37 A. We've had three differently named commissions,
38 integrity - public sector integrity commissions emanating
39 from the Fitzgerald inquiry. The report was produced in
40 1989. The recommendations were for something very, very
41 close to the civilian control model, restricted really only
42 in terms of authority over disciplinary matters, which were
43 passed entirely to the police. So independent
44 investigations of all suspicions and allegations and
45 reports of misconduct by police, although another limiting
46 factor was the involvement of seconded police, which was
47 kind of an unusual feature. It's a little bit of a

1 carryover from the Fitzgerald inquiry. Fitzgerald made a
2 lot of use of seconded police very successfully under the
3 supervision of lawyers for the Commission of Inquiry, so he
4 recommended that be continued. However, it was used much
5 more than intended, I think.

6
7 It's hard to know exactly what happened in those early
8 years. No-one has actually written the history, and there
9 are limited reports. But my impression is that the
10 Commission was overwhelmed with an upsurge in complaints as
11 public confidence increased in the new system.

12
13 Q. And that was the CJC?

14 A. CJC. So, yes, Criminal Justice Commission. It also
15 had responsibilities for serious and organised crime, as
16 the current Commission does, and it also had a role in
17 coordinating criminal justice - the whole criminal justice
18 system operations. So it was kind of distracted by
19 different tasks, and I think it was frustrated by the
20 volume of complaints against police and very quickly
21 started to send many of them back to the police for local
22 resolution by police.

23
24 Then with the introduction of the Crime and Misconduct
25 Commission at the turn of the century after about 10 years
26 the legislation for the Commission embodied the idea of
27 devolution, which was sending the very large majority of
28 complaints back to the police and the idea of police taking
29 responsibility for discipline and kind of managing their
30 own affairs, if you like.

31
32 COMMISSIONER: So when was that? About 2000?

33 A. 2001 I think the legislation was for the Crime and
34 Misconduct Commission.

35
36 COMMISSIONER: And that's when devolution first started?

37 A. In legislation.

38
39 COMMISSIONER: Can I ask you something that may be
40 completely wrong. I thought at one stage it split into
41 two?

42 A. In the mid-90s we had a conservative government for
43 three years, the Borbidge government, and they created a
44 separate crime commission, like the New South Wales Crime
45 Commission.

46
47 COMMISSIONER: Okay.

1 A. So they split the CJC in two, and then --

2

3 COMMISSIONER: And then one was police complaints, was it?

4 A. No, one was a public sector wide integrity commission
5 exclusively concerned with integrity. The other agency was
6 a serious and organised crime investigation agency.

7

8 COMMISSIONER: Okay.

9 A. And then when Labor came back in they brought those
10 functions back together, yes. Then with the current Crime
11 and Corruption Commission Act we've seen a much greater
12 departure from the original Fitzgerald vision, where it's -
13 as I said, it's hard to tell because of the opaqueness of
14 public information, but it appears that the Crime and
15 Corruption Commission has largely abandoned all
16 responsibility for complaints against police and management
17 of police integrity.

18

19 MS CAPPELLANO: In the report you talk about when the CMC
20 was in charge that at that point in time - and by "in
21 charge", when the CMC was in existence I should say - the
22 devolution figures then were in the realm of about
23 two per cent of investigation, and we've heard evidence
24 yesterday that now the level of CCC investigation is less
25 than one per cent of matters involving police complaints.
26 Would that be consistent with your knowledge?

27

28 A. Right.

29

30 Q. And in terms of the current policy you talked
31 previously about the current oversight body, being the CCC,
32 being quite an opaque process. Can you expand on that?

33

34 A. Well, the only information available really is from
35 the annual report and other information at the website. So
36 previous annual reports by the various commissions had a
37 lot of statistics about numbers of complaints specifically
38 about police, the types of allegations involved, how they
39 were processed, what the dispositions were. All that has
40 vanished. So it's really impossible, as far as I can tell,
41 to get a picture of what the Commission does in relation to
42 complaints against police and other issues to do with
43 police integrity.

44

45 Q. And in terms of your - is it that limited involvement
46 of the CCC as to why you say the current Queensland model
47 is marginally within a civilian review --

48

49 A. Right. The legislation I think puts it within the
50 review model, the auditing responsibility and the

51

1 discretion to independently investigate complaints or
2 disclosures.

3
4 COMMISSIONER: But practically because they don't seem to
5 take anything on it's in practice the police internal
6 system?

7 A. It looks that way.

8
9 MS CAPPELLANO: Perhaps if we could go now to talk a
10 little bit in a little bit more detail going through each
11 of those types of systems and getting some examples of
12 those systems and what the different critiques and the
13 answers to those critiques are about those different types
14 of systems. So if we could start with the internal affairs
15 model you outlined initially. Can you just expand on what
16 the features of an internal affairs model in relation to
17 police complaints are?

18 A. Police having essentially sole responsibility for
19 investigating and adjudicating complaints, and managing
20 integrity generally.

21
22 Q. Do I understand your evidence correctly that when you
23 talked about there being some limited oversight that would
24 be the oversight that would occur in a court process if,
25 for example, an officer's record of interview was thrown
26 out of court --

27 A. Right, yes.

28
29 Q. -- because it didn't comply with broader - the
30 Evidence Act, broader legislation?

31 A. Right. Questions from a coroner, political questions,
32 questions from members of government, some limited
33 oversight in that regard.

34
35 Q. But in essence it's police investigating police when
36 it comes to complaints?

37 A. Correct.

38
39 Q. And, in terms of the history of policing, initially
40 that was how really most police models for complaints were
41 set up; is that correct?

42 A. That's right, yes.

43
44 Q. In terms of the Queensland situation, prior to the
45 Fitzgerald inquiry was the system in Queensland in practice
46 an internal affairs model?

47 A. It was. There was an agency called the Police

1 Complaints Tribunal, but it was strongly condemned by
2 Fitzgerald as just being a token enforcement agency. It
3 had very little involvement in discipline and essentially
4 sent all matters back to the police.
5

6 Q. In terms of the critiques of this type of model, you
7 talk about these from page 8 of your report and you state:
8 "Reliance on the internal affairs model has been widely
9 condemned by commissions of inquiry, integrity NGOs
10 scholars and other stakeholders as involving an inherent
11 conflict of interest with a record of abysmal failure. The
12 internal affairs system had some achievements in exposing
13 corrupt officers at times, but in the main has served to
14 protect corruption through coverups, suppression of
15 evidence and intimidation of complaints witnesses and
16 whistleblowers." Is that your personal view, or is that
17 the view that's in the literature?

18 A. No, that's my summary of the literature, particularly
19 of judicial inquiries.
20

21 Q. While you indicate that a lot of the literature talks
22 about things that are quite specific to policing
23 terminology, such as police culture, blue curtains of
24 silence, you indicate that that - is it just unique to
25 policing or is it a broader issue when there's internal
26 affairs?

27 A. It's not unique to police at all. It's a problem in
28 every organisation: tendency to cover up, to protect
29 colleagues. It seems to be intrinsic in any group
30 behaviour.
31

32 Q. Where there's self- --

33 A. Yes.
34

35 Q. Sole self-regulation?

36 A. That's right.
37

38 Q. And in terms of the effect of such a system on police
39 integrity can you give any evidence in relation to that?

40 A. In many ways it's facilitated police misconduct
41 because it created a culture of impunity. So it emboldened
42 officers with a feeling that they could get away with
43 misconduct.
44

45 Q. Your evidence in relation to that comes from that
46 review that you talk about of doing a review of 27
47 different judicial inquiries internationally, and those

- 1 were recurrent themes coming up; is that correct?
2 A. That's right. They all found the same thing.
3
4 Q. Which in short is?
5 A. Internal coverups, solidarity.
6
7 Q. In terms of the complaint satisfaction surveys that
8 you had looked at in relation to specifically internal
9 affairs type models what were the findings of those
10 reviews?
11 A. The large majority of complainants were dissatisfied.
12
13 Q. Just so that we're clear, this is a review of - that
14 you talked about at the start, going - trying to find all
15 the surveys and analysing; is that correct?
16 A. Correct.
17
18 Q. Were there also any results in relation to police
19 surveys in relation to an internal affairs model?
20 A. Yes. Police surveys are interesting because police,
21 as you would expect, generally express a preference for an
22 internal process because they think they will get a better
23 deal, but they also recognise that it's questionable and it
24 looks unreliable from the outside. So from the point of
25 view of public confidence they do acknowledge that an
26 independent process is best.
27
28 Q. So that's an - an example would be a police officer
29 who has done nothing wrong but a complaint has been made
30 against them, if they're exonerated within an internal
31 affairs model there might still be a public perception that
32 they have in fact done something wrong because of the
33 process?
34 A. Exactly, yes.
35
36 Q. Now, if we could move on to the civilian review model.
37 You've talked about the features of this model, and you
38 said that there's really quite a broad spectrum; is that
39 the case?
40 A. Correct, yes.
41
42 Q. And I think you've placed Queensland at the end of the
43 spectrum closest to internal affairs?
44 A. Right.
45
46 Q. What does the other end of the spectrum look like?
47 A. Independent investigations of all complaints. There

1 are some agencies in the United States and in Canada that
2 do that. But none of them really are able to take that
3 step into discipline. So they do their investigation, they
4 make a finding and they can only recommend discipline to
5 the police or recommend a criminal prosecution to the
6 public prosecutor. So their hands are effectively tied in
7 that second part of the process.

8
9 Q. And you indicate that this is the dominant form of
10 complaint models in the UK and Australia and New Zealand,
11 but that most jurisdictions in Australia have taken a
12 little bit of an atypical approach in terms of the way in
13 which their models are set up?

14 A. Right, just in terms of the fact that in many
15 jurisdictions you have a separate standalone police
16 integrity agency, an Ombudsman or something like that,
17 police complaints commission or something like that,
18 exclusive to police and/or other law enforcement bodies,
19 like Border Patrol or something like that, you know,
20 whereas in Australia there's been an evolution towards
21 these what I call omnibus-style institutions that cover
22 integrity issues across the whole public sector, including
23 politicians. So police, public sector, local government,
24 politicians are all covered by the one agency.

25
26 COMMISSIONER: Which probably means inevitably that
27 there's going to be devolution because of the amount of
28 complaints that are being received?

29 A. That's one of the arguments, yes.

30
31 MS CAPPELLANO: You said New South Wales and the
32 Commonwealth have a different model. What's their model?

33 A. They have a standalone policing agency and a separate
34 public sector wide integrity commission.

35
36 COMMISSIONER: Sorry, where was that?

37
38 MS CAPPELLANO: In New South Wales and the Commonwealth.

39 A. But it looks like the Commonwealth will go over
40 towards the public sector wide model probably at the end of
41 this year with the new federal government.

42
43 Q. And in terms of the New South Wales situation I think
44 at some point perhaps later on in the report you talk about
45 a properly constituted New South Wales style model could be
46 more approaching a civilian control type model. What is
47 the current New South Wales situation, and what would it

1 look like if it was properly constituted, to use your
2 words?

3 A. The Law Enforcement Conduct Commission in New South
4 Wales is very similar to the previous Police Integrity
5 Commission that came out of the Wood commission of inquiry
6 in the 1990s into New South Wales police. It has
7 jurisdiction over the New South Wales police and the Crime
8 Commission. So it only deals with police. But it only
9 deals with serious matters, and it has no disciplinary
10 authority.

11
12 Q. And in terms of --

13
14 COMMISSIONER: Sorry, can we just get a bit more detail on
15 that. So how are serious matters defined, or am I putting
16 you on the spot here?

17 A. In very legalistic terms that don't make a lot of
18 sense to me.

19
20 COMMISSIONER: Okay.

21 A. Yes, just off the top of my head I can't tell you.

22
23 COMMISSIONER: Okay. And who investigates in that
24 situation?

25 A. No former or serving New South Wales police officers
26 are allowed to be employed in the Commission, but
27 some - I believe some police from - retired police or
28 former police from other agencies are employed, as with the
29 Northern Ireland Ombudsman.

30
31 COMMISSIONER: Okay. And do they recommend the
32 discipline?

33 A. They make recommendations to the police, and they can
34 complain if the police don't adopt their recommendations.

35
36 COMMISSIONER: And do you know do the police adopt the
37 recommendations generally?

38 A. I can't tell you currently, I'm sorry.

39
40 MS CAPPELLANO: In terms of the transparency of that, the
41 New South Wales model, is the information published in
42 relation to that?

43 A. They definitely have better data at their website and
44 in their annual report.

45
46 COMMISSIONER: So they have an independent annual report?

47 A. Right.

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COMMISSIONER: What's the situation in Victoria?

A. Similar to Queensland with the IBAC, Independent Broad-based Anti-corruption Commission.

MS CAPPELLANO: In terms of the civilian criticisms of the civilian review style model, in the report at page 10 what you say initially is: "The civilian review has operated as a partial and frequently inadequate remedy to the inherent problems in the internal affairs model. Generally speaking, civilian reviews represent a political compromise between supporters and opponents of fully independent systems." Is that once again a summary of the review of the literature as opposed to your individual opinion?

A. It's a summary of the review of the literature.

Q. And you recognise that in some jurisdictions there has been some achievements. Can you talk about that?

A. Well, civilian review agencies generally represent a step forward. They scrutinise - the better ones scrutinise police conduct. They put a lot of pressure on police to engage in adequate discipline, and also to introduce procedures and processes that are more effective, less harmful to citizens, and that kind of thing. So they can make quite valuable contributions to police integrity. But they're generally lacking in, you know, a full capacity to deal with all complaints. Complainants feel betrayed when their complaint is referred back to the police. They're complaining against the police, and the complaint is being investigated by colleagues of the officer involved. So where complainant satisfaction surveys are published there's generally quite high rates of dissatisfaction and frustration expressed by complainants.

Q. Another problem that you indicate in the review - sorry, in the report is that with a civilian review it frequently fails to break the recurring patterns of police abuses. Can you elaborate on what you mean by that?

A. So often where you have a civilian review model in operation you still have recurring scandals and crises over police misconduct because a culture of impunity is still quite strong and better procedures haven't been adopted by police to reduce conflict with citizens and errors in police work that generate complaints. So I guess you could say it's an agency that's operating on one or two cylinders instead of six cylinders. So it's an improvement on the

1 internal affairs model, but it's not optimal and there are
2 ongoing problems.

3
4 Q. An issue that you recognise in the report when it
5 comes to civilian review models is that, while
6 theoretically there is seeming improvement in independence,
7 the way in which that applies in practice is different?

8 A. That's right.

9
10 Q. Is that correct?

11 A. Yes.

12
13 Q. Are they some of the critiques that have been made in
14 relation to the current model in Queensland?

15 A. Yes, that's right.

16
17 Q. Has that been a recent complaint, or is that something
18 that's occurred over a longer period of time?

19 A. It developed fairly early in the life of the first
20 Commission, the CJC, as it devolved complaints. So from
21 about the mid-1990s there were increasing expressions of
22 frustration by civil libertarian groups. I quote
23 Phil Dickie, who is the journalist whose investigations led
24 to the Fitzgerald inquiry. He described the CJC as "a
25 useful repository for burying complaints". That was sort
26 of in the mid to the latter part of the 1990s. That
27 critique has continued on up to the present time.

28
29 Q. Another quote that is contained in your report from
30 2010 from the Queensland Council for Civil Liberties, who
31 were calling at that time for a judicial inquiry into the
32 management of complaints against police, claimed that,
33 "We're back to the old pre-Fitzgerald days where police
34 investigate police and run dead on too many complaints
35 against police. The CMC is enamoured of its crime-fighting
36 super police force role and has seriously neglected over
37 the last 10 years its police oversight role." Has that
38 been an issue that is isolated or recognised more
39 widespread?

40 A. I think all the key stakeholders share that view:
41 civil libertarian organisations, non-government
42 organisations, legal groups, scholars.

43
44 Q. Can you explain in a little more detail this tension
45 between an organisation that has as one of its functions
46 sort of that super crime-fighting role, which might involve
47 quite coercive powers, and then the same organisation

1 having functions which are looking at oversight/integrity
2 type functions?

3 A. Right.

4

5 Q. Is there a conflict there or?

6 A. I think there's an inherent conflict. I think the
7 crime-fighting role distracts from the integrity role.
8 It's probably more glamorous and exciting. That's
9 certainly the accusation that is often levelled at
10 the Commission. There's a higher risk of corruption,
11 ironically, obviously in fighting organised crime, so it
12 seems very odd to combine an integrity commission with a
13 crime-fighting - organised crime-fighting organisation.
14 I think it's pretty much unique in the world apart from
15 Western Australia.

16

17 Q. In terms of another criticism that you acknowledge in
18 the report when it comes to civilian review models is a
19 false promise - holding out a false promise to victims when
20 it comes to investigating police misconduct. What do you
21 mean by that?

22 A. Well, if you look at a civilian review commission
23 website, there are a lot of strong statements about
24 independence and authority over police and that kind of
25 thing. So people make complaints thinking that a civilian
26 officer independent of the police will investigate that
27 matter. Then they receive a letter saying that, "Your
28 matter has been referred to the police and will be
29 investigated by the police," and, naturally enough, they
30 feel completely betrayed and disillusioned.

31

32 Q. Have some of the survey reviews been on this topic?

33 A. Yes, that's right.

34

35 Q. What do those reviews indicate?

36 A. They show just that, yes.

37

38 Q. In terms of this issue of the false promise and your
39 reviewing of surveys in this regard, the Commission, as
40 I indicated, heard evidence yesterday that the CCC
41 investigate less than one per cent of complaints about
42 police and in only about 10 per cent of cases there is any
43 form of oversight. Do you think that the public is aware
44 of the limited role that the CCC play in Queensland?

45 A. I don't think they know, no.

46

47 Q. Again, I ask this type of question in relation to the

1 internal affairs model. Are these issues unique to police,
2 or is it more broad?

3 A. They're universal issues for any organisation.
4

5 Q. At page 12 of your report you indicate the five
6 principles that have been recognised by the
7 European Commissioner for Human Rights in terms of having
8 democratic accountability when it comes to police
9 oversight, being independence, adequacy, promptness,
10 openness to public scrutiny and victim involvement. Are
11 they the principles, while perhaps expressed in different
12 terms, that are internationally recognised as being
13 important for police oversight bodies?

14 A. For sure. Absolutely.
15

16 Q. Can I move on now to ask you about the civilian
17 control models, and can you begin by telling us a little
18 bit more about what are the features of the civilian
19 control?

20 A. Well, in a civilian control agency the agency is
21 completely separate to the police. There is scope to
22 employ former police in a minority, but all complaints and
23 allegations are - well, initially reviewed and then where
24 necessary formally investigated by the agency, and then the
25 agency has a significant role in the disposition of
26 matters. So if it determines that there's some kind of
27 culpability on the part of an officer it can refer a matter
28 to the public prosecutor, if it's a criminal matter. But
29 more importantly for the large majority of matters it has
30 direct authority over discipline. So it can direct the
31 Police Commissioner, for example, to discipline an officer
32 and be involved in hearings.
33

34 It also has a significant role in also auditing police
35 preventive work and the police disciplinary outcomes, and
36 reporting on that publicly, and also doing research about
37 ways to improve policing to reduce police-citizen conflict,
38 to reduce the problems that cause complaints. So there's
39 an adversarial role to some extent with police, but there's
40 also potential for a lot of cooperation with police on
41 improving police conduct.
42

43 Q. In terms of the criticisms of the potential civilian
44 control models, as is apparent from your report - and we
45 will hear more detailed evidence about PONI as well and
46 I'll ask your opinion, but is PONI, the Northern Ireland
47 model, regarded as the gold standard of civilian control

1 models?

2 A. It is, yes.

3

4 Q. In terms of the potential criticisms of the civilian
5 control model, one that you identify in regards to the loss
6 of expertise of police as investigators?

7 A. Right.

8

9 Q. Is that a valid criticism?

10 A. I don't think it is. I mean, there are government and
11 private sector agencies that are involved in investigations
12 all the time using investigators who don't have a police
13 background. They have developed their skills by some other
14 means or they have been trained in-house. So it's not
15 essential, I think, to rely on police. But also there is
16 some scope to carefully select the right former police
17 officers and have their involvement.

18

19 Q. Another potential criticism that you identify in the
20 report is that the police will close ranks against outside
21 investigators, who they might not consider - who are
22 outsiders, who aren't police?

23 A. Yes.

24

25 Q. Is that a valid criticism?

26 A. Potentially, but if we look at commissions of inquiry
27 that provide protection to police officers, they will be
28 very forthcoming. As well as that, we have the example of
29 the Police Ombudsman for Northern Ireland, which has been
30 very successful with police. Police think its processes
31 are very fair, and, as far as I'm aware, they will be
32 forthcoming with the Ombudsman.

33

34 Q. Another criticism is that there is - the external
35 regulation will then somehow - will then undermine police
36 officers' internal authority and remove the managerial role
37 of police in terms of ensuring that internal integrity. Is
38 that a valid criticism?

39 A. Again, no. The model does allow large scope for
40 police to have responsibility for preventing misconduct
41 themselves, and there's a very wide range of strategies
42 that police can adopt, which are listed in the final part
43 of the report, which they should have primary
44 responsibility for operationalising. So one of
45 the functions of the civilian control agency is to test the
46 quality of police prevention. I mean, there is also
47 scope - under the model there's actually nothing to stop

1 police conducting their own parallel investigations and
2 initiating disciplinary actions where they see appropriate
3 as well. So there's no kind of abrogation of
4 responsibility for integrity on the part of police
5 themselves in the model.

6
7 Q. In terms of the types of things that you talk about
8 that the police - there's still plenty of work - again, I'm
9 paraphrasing - for the police to do in terms of internal
10 integrity; they include things such as training and
11 recruitment and data management so the trends can be
12 identified where there are problems, things like that?

13 A. That's right, yes.

14
15 Q. Another argument that has been made in critique of a
16 civilian control model that you identify is that requiring
17 an independent agency to process all complaints against
18 police means that it will be engaged in numerous trivial
19 matters which are just better handled by the police. Do
20 you have any opinion about that criticism?

21 A. Well, somebody has to make a decision about what's
22 trivial and what's not, and it's best if it's done by an
23 independent agency so that there's no appearance of
24 self-interest in the decision-making process. One of
25 the normal capacities of a civilian review or civilian
26 control agency is actually to prosecute people for
27 vexatious complaints. So there's that option as well.

28
29 But if we look at systems in operation often what are
30 deemed - complaints that are deemed to be minor,
31 potentially trivial, are actually very important to the
32 complainant. They mean a lot to them, and they want to be
33 heard and they want to be understood as part of the
34 process. So there has to be a fair hearing, even if on the
35 surface it appears to be quite a minor matter that has
36 upset somebody and led them to make a complaint.

37
38 Q. Another concern that's been expressed is in relation
39 to the financial cost of a separate independent agency as
40 opposed to a system that's run by police who are trained as
41 investigators. Do you have any evidence to give in
42 relation to that criticism?

43 A. Well, overall the system should be cheaper because you
44 have less requirement for extensive auditing, which is a
45 kind of double handling of what police are doing. So you
46 have got police doing investigations and making
47 disciplinary decisions, and then you have got all these

1 people in a civilian review agency auditing their work.
2 That's kind of double handling the processes. Somebody has
3 to do the investigating and the decision making, so it's
4 really a matter of where the resources are located, who is
5 doing it, rather than it not being done.

6
7 Q. Now, can you talk the Commission through some of the
8 stakeholder survey reviews that you've done in relation to
9 civilian control models? I understand that you've done
10 reviews involving complainants, you've done reviews
11 involving police satisfaction and you've done reviews on
12 more public opinion satisfaction?

13 A. Right.

14
15 Q. Can you talk the Commission through some of those
16 reviews?

17 A. Right. So there are quite a lot of, if we start with,
18 public opinion surveys on the record from different
19 countries. Some of the best ones actually have been done
20 in Queensland.

21
22 OPERATOR: We've lost the Zoom conference call. So if you
23 could just allow 30 seconds just so we can connect back for
24 the livestream. It's just dropped for some reason.

25
26 COMMISSIONER: Sure.

27
28 MS CAPPELLANO: Professor Prenzler, do you have some water
29 there?

30 A. I'm right, thanks. Yes.

31
32 OPERATOR: Just give it 30 seconds and the microphone will
33 unmute, and then we should be good to go.

34
35 MS CAPPELLANO: Thank you.

36
37 OPERATOR: Okay, we're live again.

38
39 MS CAPPELLANO: Thank you. You were just starting to talk
40 about the different surveys before we cut out.

41 A. Right. So, if we start with public opinion surveys,
42 there have been quite a lot of public opinion surveys done
43 over the decades, quite a few in Queensland by
44 the Commission, that ask questions like, "Do you think
45 complaints against police should be investigated by police
46 or another agency," and overwhelmingly the very large
47 majority of respondents - in the order of around

1 90 per cent, 85 to 90 per cent, sometimes higher - say
2 complaints against police should be independently
3 investigated.
4

5 There have been some surveys that kind of drill down
6 into particular types of allegations to deal with this
7 issue of more minor matters, and there is a bit of a swing
8 back to police for the more minor matters, but nonetheless
9 majority support holds for independent investigation.
10

11 Q. And what about the complainant surveys?

12 A. Complainant surveys again overwhelmingly show
13 frustration with and dissatisfaction with either internal
14 affairs or the civilian control approach, and usually the
15 explanation for the dissatisfaction is that the complaint
16 was not taken seriously. In many cases the complainants
17 say they have had the experience of being dissuaded from
18 making their complaint. They don't feel it was
19 investigated properly, usually by a police officer, so they
20 feel that they haven't received justice for their
21 complaint.
22

23 The only exception to that is in Northern Ireland,
24 where complainant surveys show much higher rates of
25 satisfaction with the process, not as satisfied with the
26 outcome because, as you'd be aware, there are significant
27 evidentiary problems with allegations against police, and
28 so complainants don't always get the response that they
29 want in terms of them being vindicated and a police officer
30 being critiqued. But they are - but the rates of
31 satisfaction for the outcomes are much higher, close to
32 50 per cent, and certainly they recognise that they have
33 experienced a fair and independent process, and they like
34 the communication, the commitment of the staff. All those
35 kinds of things come out really well for the
36 Northern Ireland complainants.
37

38 Q. Is Northern Ireland where there are the most surveys;
39 is that the jurisdiction where the --

40 A. They do one every year, yes, and all the details are
41 published on the website of the PONI.
42

43 Q. What about the surveys involving police?

44 A. Police, more mixed. So under the three different
45 systems you see different results. Some police don't like
46 the internal affairs system because they feel it's
47 discriminatory, so - that it's - it might be - complainants

1 will see it as biased in favour of police but some police
2 officers will see it as being biased against them, if
3 they're not part of a particular network, for example. So
4 they would actually prefer an independent process. That's
5 not the majority. But, as I've mentioned before, where
6 questions also ask police, "Do you think an independent
7 process would be better for public confidence," they
8 certainly agree. So they recognise that even where you
9 have really high-quality police investigations there's
10 always a question mark over them because they're in-house
11 and there's that perceived potential for bias. So either
12 real or perceived bias.

13
14 In Northern Ireland, ironically, I guess, police
15 satisfaction with the process is extremely high, up around
16 80, 90 per cent. So to some extent they're actually the
17 main beneficiaries of the civilian control model in
18 operation.

19
20 Q. In terms of - as I said, we will get Dr Maguire to
21 talk in detail about the PONI model but, from somebody who
22 has done this comparative analysis and is an expert in the
23 different types of models, what is it about the
24 Northern Ireland model that is so robust or that really
25 works?

26 A. They have all the necessary legal authority to
27 properly investigate in an inquisitorial form allegations,
28 although, as indicated, some civilian review agencies such
29 as the Queensland one have those powers as well, the powers
30 of a standing royal commission, to demand answers to
31 questions. They can conduct raids. They can conduct
32 undercover operations, I believe, demand answers to
33 questions. They have all the authority they need. They
34 are institutionally independent of the police, although
35 they employ some ex-police. They are very carefully
36 selected and monitored. So the consensus is very much that
37 the process is fully external and independent of police,
38 that there's no undue influence from police favouring
39 officers who are being investigated.

40
41 It's a bit hard to summarise, but they also have - the
42 Police Ombudsman for Northern Ireland also has essentially
43 an authoritative role in discipline. Obviously with
44 criminal matters they can only refer matters to the public
45 prosecutor, and then it's up to the prosecutor what they
46 do. But the majority of matters that do end up with some
47 kind of sanction being applied, the Police Service

1 essentially has to accept - ultimately they have to accept
2 the Ombudsman's direction.

3
4 Q. So, while it's the Police Service imposing that
5 sanction, that's on the recommendation --

6 A. That's right. That's exactly right.

7
8 Q. -- that must be followed by the Ombudsman?

9 A. Yes. That's right, yes.

10
11 Q. In terms of if we look back to the Queensland
12 situation, one of the questions that you and Dr Maguire
13 were asked to address is what conditions would be necessary
14 or what barriers exist for an introduction of a civilian
15 control model in Queensland, and the opinion that you
16 outlined in the report is that a civilian control model
17 would be best practice for Queensland, and I think it may
18 be a bit more broad than that in that any jurisdiction
19 should really have this model. What - in terms of the
20 largest barrier to the introduction of a civilian control
21 model, what would that be?

22 A. I think it's political. I think state politicians
23 just haven't grasped the issues, or they haven't wanted to.
24 They have been disingenuous about it. They support this
25 model of police responsibility, and I think to some extent
26 they're afraid of the police lobby. They want to keep the
27 police and the police union on side, and the police and the
28 police union want to keep the process largely in-house.
29 They support a civilian review model but with the majority
30 of complaints managed by police. We know there have been
31 some cases where the police union has been involved in
32 doing deals with political parties on a number of issues
33 affecting police, including the role of the Commission and
34 the authority of the Commission. So I think there's been
35 undue influence from a very powerful police lobby, and the
36 politicians have caved in.

37
38 Q. If political will is put to one side, what about an
39 argument that the circumstances in which the PONI model was
40 established in Ireland were quite a radical response in a
41 very extreme set of circumstances, namely the aftermath of
42 an internal peace process, does that mean that it's only
43 suitable in that particular point in time or is there
44 broader suitability?

45 A. I think there's broader suitability. Obviously there
46 were extreme conditions at the time in Ireland. There was
47 a civil war, bombs were going off in the streets, and the

1 Police Service was seen as very much on one side of that
2 civil war. So there was this enormous reform program that
3 had to be undertaken to make the Police Service look
4 independent, and the PONI has been a very important
5 component of success in achieving a police service for
6 Northern Ireland that is seen by the very large majority of
7 the population, both people who call themselves Catholic
8 and those who call themselves Protestant, to be independent
9 and serving the whole community.

10
11 But, look, we had a crisis in policing in Queensland
12 as well. We had significant corruption in the police force
13 that went all the way to the top, to the Police
14 Commissioner. There were very low levels of public
15 confidence in the police, and there were quite a range of
16 types of abuses practised by police. So Fitzgerald's
17 recommendations were essentially the same as the
18 recommendations for Northern Ireland.

19
20 With the peace process in Northern Ireland, all the
21 political - most of the political groups supported the
22 civilian control model. In Queensland that didn't happen.
23 It was systematically eroded, which is very unfortunate.
24 But I don't think the - you know, I think public confidence
25 in the police is just as important in Queensland as it is
26 in Northern Ireland or anywhere.

27
28 Q. You've already talked about one of the arguments that
29 can be - the critiques of a civilian control model being
30 operating more broadly, and that being the financial cost,
31 and you've given evidence in relation to that. Another
32 potential difference that is quite stark when you look at
33 the difference and what happened in Northern Ireland or
34 Northern Ireland as it is today compared to the state of
35 Queensland is the huge geographical footprint of
36 Queensland. Obviously there are practical challenges
37 involved in a very decentralised large geographical area to
38 impose a new model for police oversight. Is that a
39 challenge that's insurmountable? Is that a barrier?

40 A. I don't think so at all. I think it's - obviously we
41 need government services in all the major population
42 centres throughout the state, and so an integrity
43 commission, in my view, that includes a dedicated police
44 unit should have officers in most of those major population
45 centres. There's work that needs to be done in all those
46 locations. So it's just a matter of I guess regionalising
47 an integrity commission, making it less capital city

1 centric. My prediction would be that if it is set up
2 properly and, if it's working, prevention is effective,
3 then complaints will go down and it will become
4 progressively cheaper to operate and it can put more of its
5 resources into prevention and public outreach and less into
6 investigations and prosecutions.
7

8 Q. Do I understand your evidence correctly in the report
9 that there are sort of two clear ways in which a civilian
10 review model could be applied in Queensland moving forward,
11 and that would be one that is a standalone police integrity
12 body such as PONI or such as what you refer to as a
13 properly constituted version of the New South Wales Law
14 Enforcement Conduct Commission; that's one style of model?

15 A. Right.

16
17 Q. Which would be civilian controlled?

18 A. Right.

19
20 Q. And the other style of model which would also be
21 civilian controlled is the omnibus style, where there is a
22 separate police unit within the existing CCC?

23 A. Correct.

24
25 Q. In terms of other functions of the CCC having the
26 super crime-fighting function, is there a conflict there in
27 terms of the secrecy or the lack of transparency, the
28 opaque nature required for that sort of function compared
29 to the functions that would be required for an integrity
30 body?

31 A. That's right. So to operate effectively you would
32 have to take that serious and organised crime fighting
33 function out of that agency and go back to essentially what
34 we had in the mid-1990s with a separate crime commission,
35 which is what New South Wales has as well.

36
37 Q. Are the powers - you might have talked about this a
38 little bit earlier, but are the existing powers within the
39 CCC many of the powers that would be required or that is
40 seen in civilian control models such as PONI?

41 A. Right, yes. The powers are there. I wouldn't see a
42 need for change in that regard.

43
44 Q. In terms of - we sort of looked at some of the
45 barriers that could exist. What in your view would be
46 essential for the success of any civilian review model -
47 sorry, civilian control model in Queensland?

1 A. It would certainly need political support from the
2 government. It would be good if the opposition supported
3 it as well. I think that's probably unlikely. It would be
4 terrific if the union and the police supported it, but
5 I think that's unlikely as well. But obviously government
6 support is essential. Setting it up properly so that it
7 can work is the most basic requirement. If it's set up to
8 fail then it will fail.

9
10 Q. Was that a problem with the CJC straight after
11 Fitzgerald in terms of resourcing?

12 A. I think the legislation should have been clearer.
13 I think resourcing was probably fairly good, although not
14 quite up to the task of dealing with the large number of
15 complaints, and there were these conflicting roles right
16 from the start.

17
18 Q. And in terms of the complaints at that particular
19 point in time in Queensland history; that was quite a
20 unique point in time?

21 A. Yes. Yes. So this is common around the world:
22 wherever you set up a new agency to receive complaints
23 against police that's - independently, the mere rush in
24 complaints.

25
26 Q. And in terms of the resources is that something -
27 you've just talked about. What about the difference
28 between the specialised crime fighting versus police
29 integrity; is that the split that you talked about
30 previously?

31 A. Right, yes.

32
33 Q. And that would be necessary, in your view?

34 A. I believe so, yes.

35
36 Q. In terms of the adequate geographical coverage, how
37 would you see that operate in Queensland? What would be
38 necessary?

39 A. Well, I think there has to be public outreach and
40 there has to be services where the problems are. To me,
41 that's one of the advantages of an omnibus agency, is
42 you've got an agency that's dealing with state government
43 employees, people who do business with the state
44 government, local government, where we've had a lot of
45 problems in Queensland, and politicians. I think there's a
46 case for regional offices - probably the Gold Coast,
47 Toowoomba, Sunshine Coast, certainly Cairns, maybe

1 somewhere along the way - and so that provides a basis then
2 for investigations in smaller towns and in regional areas.

3
4 Just for example - Michael will probably tell you - if
5 there's a death in police custody the Police Ombudsman
6 officers go directly to the scene, carry out a normal
7 investigation like police would, preserve the scene,
8 identify witnesses and all that sort of thing. To do that
9 in Queensland effectively and quickly I think you do have
10 to have officers with a regional presence so they can move
11 quickly for the more serious incidents. But also I think
12 you just need somewhere where ordinary citizens can walk
13 into a shop front to make a complaint.

14
15 Q. In terms of the omnibus commission concept, is there
16 any correlation between that concept and the recent
17 recommendations of the Coaldrake report?

18 A. I can't comment on that, sorry. I'm not informed
19 sufficiently.

20
21 Q. In terms of the other features that you have - I think
22 you referred to this earlier, but that you can have a
23 civilian control model that helps with - that is essential
24 to police oversight and conduct and complaints handling,
25 but there is still a necessity for things to occur
26 internally within a police force to ensure that as a whole
27 the integrity of the police force is strong. What are
28 those types of features? Are you able to identify some of
29 those things?

30 A. Sure. A lot of standard good practices that have
31 emerged in misconduct prevention. One of them is the use
32 of early intervention systems. So these are computer-based
33 programs for identifying officers who have an abnormal
34 number of complaints or allegations against them, or other
35 adverse indicators against them that might indicate that
36 they are at risk of developing a pattern of misconduct, and
37 so they can be identified and subject to counselling or
38 retraining or a range of remedial interventions.

39
40 Q. Can I just ask about that early intervention system.

41 A. Yes.

42
43 Q. Would those complaints, the variety of complaints, to
44 trigger I guess an early intervention require to be
45 substantiated, or is it the making of the complaint itself
46 which --

47 A. All complaints, all complaints, even withdrawn

1 complaints, yes. The better systems use all complaints.

2

3 Q. And in terms of the types of things is this something
4 that does happen in other civilian control --

5 A. They're usually run by police themselves, early
6 intervention systems. Some of them have up to, like, 30
7 indicators that can trigger a profile. For example, all
8 police now have to fill out use of force reports. So every
9 time there's a use of force report completed that goes into
10 the system. It can be excessive sick days, disciplinary
11 actions, a wide range of indicators.

12

13 Generally when they were first developed in the 1980s
14 early intervention systems were focused on behavioural
15 interventions to try to reduce presumed adverse conduct by
16 police that generated complaints. Now they're seen much
17 more as a welfare measure. So they identify police who can
18 have a range of stressors in their life. One of the
19 expressions of that is forms of misconduct and conflict
20 with citizens.

21

22 Q. And are things such as HR reports where there are sick
23 days and things, other things that would feed into an early
24 intervention system?

25 A. That's right.

26

27 Q. And what about having a victim-centric approach or an
28 organisation that focuses on victim care? Is that one of
29 the things that you've identified as important?

30 A. I think so. That should reduce complaints and reduce
31 police misconduct as well; better training and management
32 of police in seeing people who report crime incidents to
33 police not just as witnesses but as whole people who are
34 suffering a range of problems and deserve support, and that
35 would extend to complainants as well, not just people who
36 are reporting crime problems. People who have had an
37 adverse experience with police are potentially at risk from
38 a range of psychological and even physical health issues
39 that need to be supported.

40

41 Q. And in terms of the monitoring of police integrity is
42 that an important aspect? I think what you refer to as
43 indicators such as ethical climate surveys, stakeholder
44 surveys, public perception surveys?

45 A. That's right. There are a wide range of tools that
46 can be used on an annual basis or a biannual basis which
47 provide a kind of failsafe mechanism. So, if you see an

1 increase in public perceptions of police as being dishonest
2 or engaging in excessive force, that can be a trigger for
3 improved training or supervision in the area of use of
4 force. So ethical climate surveys, which as you mentioned
5 are surveys of police officers about their perceptions of
6 ethical issues and their ratings of the seriousness of
7 ethical issues, they have been shown to be very important
8 for indicating the kind of predisposing attitudes that
9 police have towards misconduct as well as complaints
10 themselves, public experience and perception surveys.
11

12 There have even been surveys here in Queensland of
13 people who have been arrested by police. Unfortunately
14 they weren't continued, but that's a really good source of
15 information about people's experiences with police. The
16 results of those were fairly positive in terms of police
17 following procedures in arresting people. But the more you
18 can get perspectives on police behaviour on the street, in
19 the field, the more you're aware of the problems that you
20 have to deal with, if there is a problem that has to be
21 addressed or if things are going well.
22

23 Q. And what about the need or is there a need for that
24 sort of information to also be publicly accessible --

25 A. Absolutely.
26

27 Q. As opposed to be an internal affairs document?

28 A. Yes, all that sort of information de-identified should
29 be on the public record and should be a source of public
30 confidence in the police, public trust.
31

32 MS CAPPELLANO: Thank you, Professor Prenzler. They are
33 all the questions I have for you.
34

35 COMMISSIONER: Ms Hillard?
36

37 MS HILLARD: Yes, thank you, Commissioner.
38

39 <EXAMINATION BY MS HILLARD:
40

41 Q. Professor, was I correct in understanding one of your
42 answers Counsel Assisting asked you about the existing
43 powers of the CCC and whether they were adequate and
44 I think you said that they didn't need to change. I just
45 wanted to clarify that was your intended answer?

46 A. Yes. That is my intended answer.
47

1 Q. So the CCC powers wouldn't need to change?

2 A. I don't think so, to the best of my knowledge.

3

4 COMMISSIONER: Except for the devolution part of it.

5 A. I don't consider that to be a power. When I say
6 powers I'm thinking of things like requiring answers to
7 questions, requiring people to appear at a hearing,
8 conducting undercover investigations, phone taps, search
9 and seizure, all those kinds of things.

10

11 MS HILLARD: And in respect of the powers as well, perhaps
12 I may have misunderstood and the definitions may be
13 slightly different, you were asked some questions about a
14 tension between someone investigating or an entity
15 investigating misconduct as well as corruption. Is there a
16 tension that exists between those two, the same entity
17 exercising misconduct investigation as well as corrupt
18 conduct?

19 A. No, I think I was talking about an agency like the CCC
20 investigating organised crime and also integrity issues.
21 I think that's what I was referring to in that context.

22

23 Q. Okay. So when we're talking about misconduct in this
24 Commission there was evidence yesterday about, for example,
25 police failure to exercise duty amounts to misconduct.
26 That would not typically, historically, be dealt with by
27 the CCC. Is that something that your evidence is
28 essentially that that should continue or that should
29 change?

30 A. That should change. I consider that more kind of
31 jurisdiction. So I think all allegations and complaints,
32 because the use of terms like "serious misconduct" are
33 easily interpreted in a way that trivialises matters and
34 downgrades matters.

35

36 Q. In respect of the gold standard that you spoke about
37 and that Counsel Assisting asked you a couple of questions
38 about, they are primarily at pages 33 through to 35 of your
39 report, and you spoke there about jurisdiction and the
40 powers. Can I just clarify one thing about the role of the
41 Ombudsman type model. The current powers of the CCC don't
42 extend to compelling the Commissioner of Police to take
43 particular steps or to take particular disciplinary action;
44 that's something that you mentioned.

45 A. Right.

46

47 Q. Is that something that would be essential?

1 A. Yes.

2

3 Q. It would be necessary to be beyond a mere
4 recommendation to the Commissioner of Police; it would be a
5 power to actually require the Commissioner to take steps?

6 A. Yes.

7

8 Q. And in respect of other powers that you spoke about in
9 the gold standard and you talked about protocols and victim
10 care, and you gave evidence about victims being heard and
11 their sense of justice, if I can use that word. Is it
12 necessary for the victim or the person making the complaint
13 to be interviewed and have a voice or an advocacy presence
14 in the investigation process?

15 A. I think so.

16

17 Q. And when it comes to a hearing and an investigation,
18 assuming it's a more traditional type of hearing that the
19 body would undertake, would it be important for that victim
20 to have the opportunity to be able to present and speak at
21 that hearing to be involved in that in some way, if they
22 chose to be?

23 A. Yes.

24

25 Q. And what's the benefit of their involvement as an
26 advocate or even as a witness or the like?

27 A. I think it satisfies those basic procedural justice
28 requirements of a voice and respect. That's what victims
29 of abuses want or people who have had an adverse experience
30 with police want to make a complaint. I'll even go further
31 and say they should be consulted about how their matter is
32 dealt with. Some will want mediation, formal mediation,
33 and that will produce very positive responses. Some will
34 be happy with managerial resolution or informal resolution
35 by police themselves. They'll be happy with that. Others
36 want more of a forensic investigation and disciplinary
37 process. So, although there's a potential for
38 inconsistency in the way matters are dealt with, I think
39 it's better to have a negotiated process, and that starts
40 with a default process where there is direct communication
41 with the complainant, questions are asked, and also they're
42 asked about how they would like the matter to be dealt
43 with. That doesn't mean they control the process, but
44 I think that's essential.

45

46 So a long time ago I had a look at - I was involved in
47 a research project looking at case files that the CJC

1 generated about public complaints, and it was just
2 appalling to look at these complaint files or investigation
3 reports to see that the complainant wasn't even contacted.
4

5 Q. Back to the involvement of the complainant, it would
6 be perhaps inappropriate in certain cases for them to be a
7 witness to be interrogated, for their complaint to be
8 interrogated; for example, they might be particularly
9 vulnerable, have a disability, they might be traumatised.
10 Do you have a view about that?

11 A. That's something that has to be taken into account,
12 for sure.
13

14 Q. In respect of one of the questions that you were asked
15 earlier on about false promises to victims, and
16 Counsel Assisting asked you about that and that appears on
17 page 11 of your statement, in your statement you go on to
18 talk about false promises to victims of police misconduct
19 and then you speak then about the investigation and the
20 adjudications. Can I just talk about those for a moment.
21

22 COMMISSIONER: Where is this?
23

24 MS HILLARD: Page 11, the last paragraph, the third line.
25 "Agencies promote their independence from police but fail
26 to directly investigate and adjudicate."
27

28 COMMISSIONER: Yes, I can see that.
29

30 MS HILLARD: So I just wanted to ask you a question, if
31 you had anything to elaborate specifically in addition to
32 what you've already said about the two prongs: the
33 investigation and the adjudication?

34 A. Just to reiterate that there are some review agencies
35 that do do independent investigations, but then they're
36 essentially hamstrung by their lack of authority when it
37 comes to discipline. So you still have this problem of
38 police undermining the decisions and the recommendations of
39 those bodies. So again it's kind of like a waste of time.
40 It's a defeat of the full process.
41

42 Q. It perhaps comes back to my earlier question around
43 the need to have a power to compel the Commissioner of
44 Police to take certain steps.

45 A. Right.
46

47 Q. Would you agree?

1 A. Yes, that's right. And the surveys of complainants
2 show that the majority don't want a sanction against the
3 police officer. They're looking for an apology, and in
4 particular they're looking for behavioural change. So they
5 want something done so that other people don't have the
6 same adverse experience from the same or another officer
7 that they had. So on the whole complainants are not
8 vindictive or punitive. They want this more positive
9 restorative behavioural change process to be initiated by
10 the agency.

11
12 Q. When we talk about the behavioural change you may not
13 be able to comment on this, it may or may not be in the
14 ambit of what you've researched, but would you have a view
15 or have a comment about for the behavioural change to not
16 just talk about you must tick forms or comply with forms
17 but to be meaningful behavioural moderated change?

18 A. Absolutely, yes.

19
20 Q. Can I just ask a question. You talked about expertise
21 of police as investigators and former police officers or
22 former investigators and the like. I thought I would ask
23 you if you had a view on this. At times lawyers can be
24 appointed as investigators, external. It might be
25 workplace matters, might be health and safety, that type of
26 thing. Do you have a view about investigators also
27 supplementing police as investigators?

28 A. I think anybody who has the right training can - and
29 some kind of supervised on-the-job development can act as
30 an investigator. I'm sure that legal qualifications would
31 be of great assistance.

32
33 MS HILLARD: Thank you, Commissioner. Those are my
34 questions.

35
36 COMMISSIONER: Ms Morris, do you have any questions?

37
38 MS MORRIS: I don't have any questions, Your Honour.

39
40 MR HUNTER: I don't have any either, thank you.

41
42 MS JUHASZ: Commissioner, I just have two questions, with
43 leave.

44
45 **<EXAMINATION BY MS JUHASZ:**

46
47 Q. Professor Prenzler, just picking up a little on what

1 Ms Hillard was going through with you then with respect to
2 the CCC having sufficient powers to investigate in relation
3 to the QPS, that is, though, determined - the level of
4 their investigation incorporating the devolution principles
5 pursuant to section 34 of the Act, that's a mandatory
6 requirement in considering the utilisation of those powers;
7 correct?

8 A. Right.

9

10 Q. And would you also agree that the responsibility
11 really rests with the Commissioner of Police also pursuant
12 to section 41 of the Act in relation to that body having
13 the primary responsibility in relation to dealing with
14 complaints regarding the Queensland Police Service?

15 A. That's what the Act says, yes.

16

17 Q. I just have an additional question --

18

19 COMMISSIONER: That's essentially the problem, isn't it?

20

A. Yes.

21

22 MS JUHASZ: And an additional question with regards to
23 whether you're aware of any academic review or stakeholder
24 engagement or research following changes to the Public
25 Service Administration Act in October 2019?

26

A. Sorry, I'm not aware.

27

28 Q. And probably I should specify that regarding police
29 discipline following those amendments?

30

A. I can't comment, sorry.

31

32 Q. Just looking at - and it's not a criticism, but
33 looking at your report much of it or the reflection on
34 academic review seems to end in about 2016; would that be
35 fair, when you conducted the review of a number of judicial
36 systems and overview of police discipline?

37

A. That's correct.

38

39 MS JUHASZ: Thank you.

40

41 COMMISSIONER: Are you suggesting there has been more
42 recent research?

43

44 MS JUHASZ: No, I was querying whether there is. There is
45 of course the current investigation regarding Fitzgerald,
46 but that's yet to hand down any findings until August. So
47 I was just querying with the Professor --

1
2 COMMISSIONER: The 8th, Monday, we will find out.
3
4 MS JUHASZ: 9 August.
5
6 COMMISSIONER: The 9th?
7
8 MS JUHASZ: Yes. So just whether Professor Prenzler knew
9 of any further research following the amendments?
10 A. I couldn't find anything.
11
12 COMMISSIONER: We might find out on Tuesday.
13
14 MS JUHASZ: Thank you, Madam Commissioner.
15
16 MS CAPPELLANO: Thank you. No further questions.
17
18 COMMISSIONER: Thanks very much, Professor Prenzler.
19 Thanks for coming in.
20
21 **<THE WITNESS WITHDREW**
22
23 MS CAPPELLANO: The next witness is not available until
24 four. I can make some enquiries to see if he might --
25
26 COMMISSIONER: That's all right. We'll just adjourn and
27 let us know when you're ready.
28
29 MS CAPPELLANO: Thank you.
30
31 **SHORT ADJOURNMENT**
32
33 MS CAPPELLANO: Thank you, Commissioner, I call
34 Dr Michael Maguire, who is present via the videolink.
35
36 **<MICHAEL MAGUIRE, affirmed:**
37
38 **<EXAMINATION BY MS CAPPELLANO:**
39
40 COMMISSIONER: Thank you, Doctor. Counsel Assisting will
41 ask you some questions.
42
43 MS CAPPELLANO: Thank you, Commissioner. Dr Maguire, you
44 were the Police Ombudsman for Northern Ireland between 2012
45 and 2019; is that correct?
46 A. That's correct.
47

1 Q. And as the Police Ombudsman you were responsible for
2 misconduct and criminal investigations into police
3 officers, including high-level investigations into the
4 Royal Ulster Constabulary during the Northern Island
5 conflict?

6 A. That is correct.

7

8 Q. Prior to joining the Police Ombudsman for
9 Northern Ireland office you were the Chief Inspector of
10 Criminal Justice in Northern Ireland responsible for the
11 inspection into the main justice agencies, including
12 police, prisons, probation services, courts administration,
13 public prosecution service, youth justice and third sector
14 organisations?

15 A. That's correct.

16

17 Q. Prior to working as the Ombudsman did you conduct an
18 evaluation of the PONI?

19 A. I did, as Chief Inspector, yes.

20

21 Q. Have you also been a visiting professor of practice at
22 Monash University in Melbourne?

23 A. I have, in 2019.

24

25 Q. In your role at Monash University have you written
26 articles which have covered topics such as the lessons that
27 Victorian jurisdiction can take from the reform of the
28 Police Ombudsman's office in Northern Ireland?

29 A. I did, yes, with a colleague in Monash University.

30

31 Q. Are you also an honorary professor at the
32 George Mitchell Institute for Peace, Security and Justice
33 at the Queen's University of Belfast?

34 A. I am.

35

36 Q. And prior to your work as the Chief Inspector of
37 Criminal Justice were you a partner in a global consulting
38 firm?

39 A. I was, for 10 years. I have an 18-year career in
40 management consulting.

41

42 Q. And in terms of your current positions are you
43 currently a lay member of the United Kingdom House of
44 Commons Select Committee on Standards?

45 A. Yes.

46

47 Q. And what's that committee?

1 A. It's the parliamentary select committee that deals
2 with complaints against members of parliament in relation
3 to the code of conduct for MPs. It's the only select
4 committee in parliament that has lay members on it. It's a
5 full select committee of the House.

6

7 Q. Are you also a lay member of the Legal Practitioners
8 Disciplinary Tribunal in Ireland?

9 A. Yes.

10

11 Q. Heading back to Australia, are you also a member of
12 the Yoorrook Justice Commission Expert Advisory Committee
13 in Victoria?

14 A. I am.

15

16 Q. What's your role with that Commission?

17 A. That's a royal commission that's been set up to look
18 at the nature of the relationship between the state and
19 Indigenous peoples of Victoria, and they set up an advisory
20 panel. I'm the only non-Indigenous person on it who is a
21 member of that panel.

22

23 Q. Have you been in 2019 awarded a CBE Queen's birthday
24 honours list for services to justice in Northern Ireland?

25 A. I was.

26

27 Q. Have you for this Commission collaborated with
28 Professor Prenzler to prepare a joint report?

29 A. We did. We both worked on a report looking at the
30 Queensland situation and comparisons with Northern Ireland
31 and PONI in particular.

32

33 Q. And the opinion expressed in that report supports the
34 establishment of an independent police complaints and
35 oversight body in Queensland in the form of a civilian
36 control model; is that correct?

37 A. That's correct.

38

39 Q. The Commission has just heard Professor Prenzler's
40 evidence in relation to the aspects of the report which
41 covers the different types of police complaints models, the
42 critiques of those various types of models, an analysis of
43 the current situation in Queensland, and in evidence we
44 have of course heard about PONI in a general sense. I'm
45 going to ask you now about some more specific questions
46 about the operation of PONI and as well as any learnings
47 that can be gleaned from that organisation for the

1 situation in Queensland. Dr Maguire, can you begin by
2 giving the Commission an overview of the circumstances that
3 led to the creation of the Police Ombudsman's office in
4 Northern Ireland?

5 A. Yes. The context for the establishment of the office
6 of the Police Ombudsman was the political situation in
7 Northern Ireland commonly referred to as The Troubles.
8 Coming out of the Good Friday Agreement in 1998 one of the
9 critical issues was how to deal with the criminal justice
10 system from a community confidence point of view.
11 Policing - criminal justice generally but policing in
12 particular was a contested space, and one of the issues
13 that had to be dealt with was to - how to deal with
14 increased community confidence in the criminal justice
15 institutions.

16
17 There was a general reform of the criminal justice
18 system which set up a number of bodies, such as the
19 Director of Public Prosecutions, which took prosecutorial
20 decisions out of the police. It set up an independent
21 inspectorate, the criminal justice inspectorate. But there
22 was a particular issue in relation to policing, and there
23 were two specific areas of activity which helped establish
24 PONI as an organisation.

25
26 The first was the Patten Commission, headed by Lord
27 Patten, which looked specifically at reforms of the Royal
28 Ulster Constabulary, which was the police service that was
29 in existence in Northern Ireland at that time. It made
30 quite a number of recommendations concerning police reform.

31
32 Prior to that there was a report by the Ombudsman in
33 Northern Island called Maurice Hayes, who looked
34 specifically at the need for a policing - a change in
35 police oversight. Previous attempts at police oversight
36 had been largely discredited. They hadn't been heard of,
37 their substantiation rates were very low, and there was
38 little confidence in the mechanisms for police oversight.

39
40 So it was decided to establish a police ombudsman
41 specifically to try and help with the issue of community
42 confidence in policing, and that ran parallel with police
43 reform arising out of the Patten commission.

44
45 Q. Dr Maguire, how important was it for the establishment
46 of PONI for there to be both public and police confidence
47 in that institution?

1 A. I think it was critical because there was great
2 concern over the changes to policing in Northern Ireland.
3 Significant sections of the population were supportive of
4 the police, but at the same time police did not have the
5 full confidence of the community. So it was decided in the
6 context of police reform and changes to police oversight it
7 was built into the legislation that PONI should have the
8 confidence of both the police and the community in Northern
9 Ireland.

10
11 Q. And in your view was that achieved and, if so, how was
12 it achieved?

13 A. I think it has been achieved, and there are a number
14 of different factors associated with that. I think when
15 you look at the establishment of PONI one of the critical
16 issues that was built into the organisation from the
17 beginning was independence - independence from the
18 Department of Justice, independence from the police,
19 independence from NGOs, lawyers and families - and that has
20 been a thread that has run through the establishment of the
21 office and its operations since 2000.

22
23 PONI has spent a great deal of time in measuring its
24 effect on the wider community, both in terms of the general
25 public, those who deal - who bring complaints to the
26 office, but also specifically police officers, and one of
27 the features of PONI as an organisation is that those
28 surveys consistently over a period of time have shown high
29 levels of awareness of the office, which is extremely
30 important because prior to PONI the police oversight
31 mechanisms were largely misunderstood, if they were heard
32 of at all. There was a widespread awareness of PONI as an
33 organisation. Those who came to the office with
34 the complaints - with complaints, while they may not have
35 liked the outcome of those complaints, in general have
36 found that they have been treated fairly and independently
37 and professionally, and that's also the same with police
38 officers. While initially there was a mixed response to
39 PONI as an organisation, we're now in a situation 20 years
40 on where police officers in the Police Service of
41 Northern Ireland who have come into the organisation have
42 only known PONI as an organisation, and when they're
43 surveyed their response is that they have been treated
44 independently, fairly and professionally overall. So the
45 transparency associated with PONI's activities I think has
46 been very, very great.

47

1 Q. In terms of the current features, functions and
2 structure of PONI, can you give an overview for
3 the Commission to how the office works?

4 A. Yes. PONI - the Police Ombudsman's office deals with
5 all public complaints against the Police Service of
6 Northern Ireland, from wherever that complaint comes. So
7 if you go into a police station and you want to make a
8 complaint, if you're in a police cell and you want to make
9 a complaint, if you email, if you come into the office, if
10 you're - as a member of the public if you have a complaint
11 against the Police Service, that complaint comes to the
12 Police Ombudsman's office.

13
14 On average we've dealt with in the region of 2,500 -
15 I think the maximum in my time was roughly 3,000 -
16 complaints per annum, and the office deals with those in a
17 number of particular ways. It categorises generally,
18 despite whatever organisational complex existed, A, B and C
19 cases. Category A cases were those - were of the most
20 serious type. They involved death after contact with
21 the police officer, or they may have involved death in
22 custody, and those cases were under supervision of the
23 Ombudsman himself. I looked at those cases during my time.
24

25 Category B cases were those which were less serious
26 but nonetheless may have led to a criminal charge or a
27 substantive misconduct investigation, and they were dealt
28 with separately. Volume type complaints, those which were
29 dealing with incivility, were dealt with as category C
30 cases under a separate bit of the organisation which dealt
31 with those cases overall. So we categorised - in
32 organisational terms we organised ourselves to deal with
33 the different types of complaints that existed in order to
34 try and expedite them as quickly as possible.
35

36 Q. In terms of the investigation, your office would
37 undertake the investigation of all those matters?

38 A. Sorry, could you repeat that question?
39

40 Q. So the office of PONI would investigate entirely those
41 matters, whether they be a category C matter or a
42 category A matter?

43 A. Yes. We had full control over the complaints process
44 and the office decided what complaints were suitable for
45 mediation with the police officer at a low level. At the
46 same time those complaints could still be investigated.
47 But also at the high level we took complete control of the

1 complaints process.

2

3 So if, for example, there was a death in custody it
4 would be PONI staff who would arrive at the police station,
5 who controlled the crime scene. We would take evidence
6 from officers on the ground and so on. So we had complete
7 control of the complaint process.

8

9 There are two different types of complaints. The
10 first was a criminal investigation. PONI did the criminal
11 investigation and a file went to the Director of Public
12 Prosecutions for decision whether to prosecute or not. For
13 the majority of cases, they were misconduct investigations
14 and they went to the Chief Constable with a recommendation
15 for a performance conversation or a misconduct proceeding.

16

17 Q. And PONI didn't conduct those misconduct proceedings
18 but made recommendations - makes recommendations in
19 relation to them; is that correct?

20

21 A. That is correct. The Chief Constable retained control
22 over the complaints and discipline process. He received a
23 recommendation from PONI, and it was his office which
24 decided on the sanction at the end of the day.

24

25 Q. And in terms of how often the recommendation was
26 followed or is followed, are you able to give any
27 indication of that?

28

29 A. Yes, in broad terms it was between 75 and 80 per cent,
30 roughly. It changed from year to year. But in broad terms
31 the vast majority of recommendations were accepted.

31

32 Q. And in circumstances where recommendations weren't
33 followed was there any redress or any further power for
34 PONI?

35

36 A. No. Our role finished with the completion of the
37 investigation file. I was always of the opinion that it
38 was right that the Chief Constable retained control over
39 the complaints and discipline process. If there was an
40 occasion where the Chief Constable did not want to take a
41 misconduct hearing against an officer, and these were
42 usually the more serious power, PONI had the power to
43 direct the Chief Constable to undertake a hearing. In my
44 time as Police Ombudsman that power was never used because
45 when that recommendation was made the Chief Constable would
46 usually accept it. But, no, once the file went to the
47 Chief Constable it was his decision as to the nature of the
sanction which should be implemented.

1
2 Q. And in terms of - that's the investigative powers.
3 Does PONI also have a role in terms of policy
4 recommendations?

5 A. Yes. One of the objectives that I established coming
6 from our legislation when I was Ombudsman was that we would
7 look at areas where policing practice could be improved.
8 One of the benefits - I'm just going to sidetrack for a
9 second. One of the benefits of dealing with all public
10 complaints was that we had an incredible database by
11 district, by region within the Police Service of Northern
12 Ireland and by officer across a range of complaints that
13 were made. That was extremely valuable management
14 information that we shared with the Police Service on a
15 regular basis and also with the police oversight body, the
16 Policing Board.

17
18 So the policy recommendations were really at two
19 levels. One arising from the broader strategic issues
20 emerging from the management information that we had, that
21 on a number of occasions contributed to a police complaints
22 reduction strategy within the organisation. So, for
23 example, at one time there were issues around excessive
24 force. That was identified, and those actual complaints in
25 that area came down over a period of time. So there were
26 kind of broader strategic issues that we addressed.

27
28 But, secondly, arising from individual cases the
29 organisation had the ability to make recommendations to the
30 police in relation to operational changes. So that in my
31 time, for example, there were issues to do with police
32 vehicles and the locks weren't secure. There were issues
33 to do with how money was being held securely within the
34 police and so on. So these were recommendations to improve
35 policing policy and practice across the organisation, and
36 that came out of individual cases.

37
38 Another one which was a big issue in my time was how
39 police dealt with high-risk missing persons, and we dealt
40 with a number of significant cases of where the police had
41 failed to deal with that properly; so the recommendations
42 that came out of that in order to improve policing practice
43 in that area.

44
45 Q. And in terms of its high level recommendations were
46 they discussed internally or were they formulated
47 internally within PONI or was that a collaborative exercise

1 with the police?

2 A. It came from PONI initially but obviously throughout
3 the period that the office has been in existence there has
4 been close collaboration - cooperation, rather, I should
5 say, between the police and the office. So, yes,
6 recommendations would have been discussed to ensure that
7 they were - (a) that they were issues that weren't already
8 in existence but, secondly, we would look at the practical
9 implications of them as well in relation to that. So, yes.
10 And afterwards there were three organisations - the Police
11 Ombudsman, the Policing Board and the police themselves
12 dealt with as a group how those recommendations would be
13 implemented and signed off.

14
15 Q. In terms of - you talked a little bit about the
16 different categories of cases, and in the report you
17 indicate that the timeframes for which different categories
18 of cases would be resolved. For the high volume cases, the
19 category C cases, that would be within about a three-month
20 period; the category B within about a four-month period;
21 and the category A within about an eight or nine-month
22 period. One of the issues that was identified in the
23 report when Professor Prenzler was looking at the former
24 models in Queensland were issues with timeliness of
25 Queensland complaints processes particularly in the
26 aftermath of the Fitzgerald Inquiry. Are there any
27 learnings arising out of how to have that timely response
28 to complaints even though a body is dealing with all police
29 complaints?

30 A. Looking at it from an organisational point of view
31 I think the first issue is to want to measure it. Quite
32 often case management is not recorded accurately and it's
33 not recorded in a way which allows senior managers within
34 an organisation to take decisions to try and improve it.
35 When I was Chief Inspector of Criminal Justice I did quite
36 a substantive report on avoidable delay across the criminal
37 justice system, and one of the issues was trying to
38 identify the metrics that could be used to try and improve
39 on addressing avoidable delay. That was the same within
40 the Police Ombudsman office. We wanted to try and move
41 cases forward as quickly as we could. We couldn't always
42 because quite often things were outside our control. So we
43 were dependent on medical reports, for example. So
44 therefore we had no control over the health service. The
45 same with any criminal justice organisation.

46
47 But the first issue was to try and identify how you

1 were going to measure those cases and then to put the
2 management information systems in place to allow you to do
3 that. So it was a continual issue throughout my time and
4 I think before, but that's down to resources and issues
5 outside our control on occasion. But we did try and
6 identify where we could improve case management across the
7 different types of cases.

8
9 Q. The Hayes review which you mentioned previously
10 indicated in a much-quoted passage I guess in your report
11 and in academia on police oversight more generally that
12 during the Hayes review the overwhelming message that was
13 received from nearly all sides and nearly all political
14 parties was a need for investigation to be independent and
15 to be seen to be independent. The main value impressed
16 upon Hayes was independence, independence, independence.
17 Just in relation to this concept of independence, the
18 evidence in your report suggests that this was really the
19 foundation of PONI. Would that be a fair statement?

20 A. Yes, I think it was the critical factor throughout the
21 period from when the organisation was established in 2000,
22 yes.

23
24 Q. And is independence whether both - sorry, not whether,
25 both actual or perceived independence particularly
26 important in your experience when the police complaints
27 involved marginal sections of society who had historically
28 had a negative relationship with police?

29 A. It was extremely important. I mean, coming back to
30 the establishment of PONI as an organisation, policing was
31 a contested space. There were large sections of the
32 community in Northern Ireland who simply did not trust the
33 police and who would not trust what the police said in
34 relation to critical incidents. So issues could become
35 highly politicised very quickly in the context of a
36 policing incident, particularly those that involved death
37 after contact with a police officer.

38
39 So demonstrable independence as in when there was an
40 issue associated, a critical incident, for PONI staff to be
41 able to go to the family and say, "This investigation is
42 now out of the hands of the police. It's in the hands of
43 an independent organisation," the family were liaised with
44 separately from the police, and also at a political level
45 to be able to say to political representatives, "This is
46 now in the hands of an independent investigation. Allow
47 that investigation to take its course."

1
2 To be honest with you, that was found to be extremely
3 useful for the police themselves. On more than one
4 occasion, in fact I would say in nearly all of the
5 occasions where there was a critical incident, the police
6 were very clear to say, "This is now in the hands of an
7 independent investigation," and to allow that investigation
8 to take its course.
9

10 Q. In terms of the high profile cases how does - and as
11 I understand your evidence, if I just take a step back,
12 part of the role of PONI is an historical directorate which
13 is investigating cases which occurred during the Northern
14 Ireland conflict, and there's also been a number of high
15 profile cases which you refer to in your report moving
16 forward - sorry, in current days or in recent times. How
17 has independence been critical in those high profile cases?

18 A. Well, I think they are two separate issues. The most
19 difficult area that I experienced as Police Ombudsman was
20 to deal with legacy cases or what we termed legacy cases,
21 which were those cases dealing with the role and conduct of
22 police officers during the Northern Ireland conflict. As
23 you would imagine, the history of Northern Ireland, there
24 is no agreed narrative, there is no agreed conclusion as to
25 what happened. So an organisation such as ours which was
26 able to look at the role of policing in particular was able
27 to provide an evidence based report on the nature of police
28 activity during that term.
29

30 The area which was less contested but equally
31 important were those cases which involved current cases and
32 when, for example, you had an allegation made by an
33 ex-senior police officer that the Chief Constable and
34 members of the senior team had been involved in criminal
35 acts, you can imagine the context in which such an
36 allegation was made, highly controversial, very high
37 profile. Again the office was able to say, "Look, this is
38 now the subject of an independent investigation." The
39 Chief Constable himself, and I quote this in the report,
40 said that he had confidence in that independent
41 investigation and to allow the organisation to get on and
42 do its job.
43

44 So in both those cases independence was extremely
45 important and a reputation for independence was extremely
46 important in providing community confidence in a wider
47 community sense that what happened was subject to

1 independent investigation. I always took the view that a
2 report that said the police had done no wrong was equally
3 important as one which was critical of the police, because
4 they were evidence based and they were demonstrable to say,
5 "This is what happened." Certainly in current cases
6 I can't think of any substantive case where a current
7 investigation is challenged in that regard.

8
9 Q. In terms of the cases and the investigations, are the
10 reports published?

11 A. Yes. Well, there's two different levels to that. An
12 individual whose case was subject to investigation received
13 what was called a closure letter addressed specifically to
14 that individual which set out the nature of the complaint,
15 the process of the investigation, and the findings and
16 broad conclusions. So you were in receipt of a closure
17 letter if you made a complaint to the office.

18
19 As Police Ombudsman I had the powers to publish
20 reports, and I did in those cases which were mainly
21 category A cases where I felt there was public interest and
22 widespread concern about a particular issue. Therefore
23 I had the power to publish reports in that regard. I think
24 that was an important point in demonstrating the work of
25 the office and also in raising the profile and awareness of
26 the independence of the police complaints system.

27
28 Q. In terms of the staffing of the office you indicate
29 that the staff are drawn from a variety of backgrounds,
30 including ombudsman organisations, military and auditing
31 backgrounds, but there's also 41 staff who come from a
32 policing background. Now, how is independence managed in
33 circumstances where there are former police officers
34 working in the organisation?

35 A. That figure, it's 41 per cent of staff were drawn from
36 a policing background. Again, there's two dimensions to
37 that. First of all, given the nature of the work of the
38 office it was extremely important to have - certainly in
39 its early days, but throughout the period of time that the
40 office has been in existence it was extremely important to
41 have staff who understood the day-to-day practical
42 applications of policing, who had been police officers, who
43 were able to provide insight into the daily operations of
44 what it was like to be a police officer from a very
45 practical point of view.

46
47 I was very fortunate in my time as Ombudsman that

1 I had a chief executive, for example, who had been a deputy
2 Chief Constable in an English police force, and he was
3 chief executive during my time and he provided extremely
4 valuable advice on both strategic areas of policing and
5 operational aspects of what was acceptable or not
6 acceptable in that regard, although the judgment ultimately
7 was the office itself.

8
9 Having said that, it was important that the office
10 created and established its own culture and identity in
11 relation to it's an independent police oversight body. One
12 of the risks associated with any oversight body that's
13 dominated by police officers is that it simply replicates
14 the culture and approach as existed in the police from
15 which they came. That is not what the office of the Police
16 Ombudsman was about. We created our own identity. We
17 created our own approach to doing things. And again staff
18 were extremely aware, the values of the office were
19 imprinted on them from the beginning, that we were an
20 independent, impartial police oversight organisation. Some
21 former police officers found that difficult to adjust to
22 and they didn't stay; others absolutely accepted it and
23 have been with the organisation for quite a long time.

24
25 When I did what were called legacy investigations some
26 of my most senior investigators were detectives who had
27 experience of being in excess of 100 murder cases. So they
28 were extremely experienced police officers. But at the
29 same time they recognised the importance of independent
30 police oversight, and that was again one of the threads
31 that ran through the organisation from the beginning.

32
33 So I had absolutely no difficulty, in fact not only
34 that, it was extremely important that there were police
35 officers in the organisation. But it was also important
36 that we had our own culture and identity as an independent
37 police oversight body.

38
39 Q. Did you ever use - sorry, when I'm saying "you", I'm
40 referring to the Ombudsman's office, was there ever the use
41 of seconded police officers or was it always former police
42 officers?

43 A. No, at the beginning of the office there were - when
44 the office was established the first Ombudsman identified
45 two issues which she felt were important in order to make
46 the office effective. First was resources, which came from
47 the Department of Justice. The second was expertise.

1 Clearly from a standing start the only way that that could
2 have happened was to bring in officers, both seconded and
3 former officers, into the organisation in order to help
4 develop the systems in place for the office itself.
5 Initially secondments were an important part of the way in
6 which it was done, but that trailed off over time as the
7 office began to develop it's skills and expertise and
8 others who came in who had resigned from the Police Service
9 itself. So it was a mix of staff.

10
11 Q. And in terms of that development of skills is it the
12 case that all non-policing staff take on - take part in an
13 accredited investigator training program delivered by
14 Portsmouth University when they start work with PONI?

15 A. Yes, that's correct. That was in conjunction with the
16 independent police oversight organisations in the Republic
17 of Ireland and in England and Wales. But also as you
18 progressed through the organisation there were additional
19 training courses that you partook in such as level 5
20 interviewing for experienced officers, but also the senior
21 investigating officer course itself. So there are a
22 variety of different levels of training, dependent on the
23 area that you work in within the organisation. But at a
24 basic level, yes, staff were involved in that type of
25 training.

26
27 Q. One other feature that you talk about in the report as
28 being a critical area of the office relates to the
29 provision of the statistical information to a range of
30 bodies, not just the police but also the Policing Board,
31 the Department of Justice. Can you talk about that?

32 I know you've already talked about data in an initial
33 sense, but that broader data collection and that sharing of
34 information?

35 A. Yes. The office had a very good management
36 information system so that all complaints when they came
37 into the organisation, they were logged, the type of
38 complaint was logged, where it came from, the officer
39 involved. It then linked into the case management
40 investigation file. So what developed over a period of
41 time was a significant database of all the complaints that
42 had come to the office which could then be analysed by a
43 number of different factors. You've seen in the report the
44 way in which they have been analysed in terms of the
45 profile of the complaint; the religious denomination of the
46 individual making the complaint, which is important in the
47 context of Northern Ireland; the region from where the

1 complaint came from and so on. At a granular level that
2 was very specific.

3
4 So, for example, in one case I remember looking at
5 information around how the response teams - the complaints
6 against response teams in a particular area of Belfast.
7 What that information showed was that there were I think
8 four or five response teams, from memory, and two teams had
9 double the number of complaints compared to other teams
10 working in the same area. That information was provided to
11 the Chief Superintendent responsible for that location for
12 him to investigate further why those particular teams were
13 generating more complaints. There may be entirely
14 legitimate reasons for that, but also as a management
15 information it was important to understand what was
16 happening on the ground.

17
18 So on a regular basis we shared that information with
19 the police, it was their management information after all,
20 and that was used within the organisation both at a
21 strategic level and at an operational level because it
22 flagged up officers who were receiving complaints on an
23 ongoing basis and that then allowed corrective action to be
24 taken across the organisation. So it was an extremely
25 valuable tool based on the fact that we dealt with all
26 complaints to be able to say to the police, "This is the
27 profile of complaints within your organisation, this is
28 where they're coming from, this is who they're directed
29 against, and you're responsible for this from a performance
30 management point of view." So it allows you to be able to
31 make decisions in that regard.

32
33 Q. And as well as monitoring those trends from a
34 strategic level and perhaps a station level would you also
35 be able to monitor trends from an individual officer's
36 level to work out if there were patterns of behaviour that
37 might be problematic?

38 A. Yes, absolutely. That was extremely important because
39 when, for example, a complaint came in against an officer,
40 while the investigation was based solely on the evidence of
41 that particular incident, the complaint history of that
42 officer was considered and would have been important, for
43 example, in determining sanction against an officer and a
44 recommendation against that officer within the police
45 themselves.

46
47 So if you had an officer who was continually getting

1 complaints in a certain area and whose behaviour didn't
2 seem to be being corrected, then obviously that would
3 increased the nature of the discipline associated with
4 that. So the complaints against individual officers were
5 identified, easily identified, and that became part of the
6 decision-making process for the police.
7

8 Q. And was there any identification of high risk prior to
9 - sort of high-risk officers or preventative actions taken
10 as a result of that data?

11 A. Well, that would have been from within the police.
12 You know, because we dealt with complaints, our
13 investigations tended to be reactive. So we investigated
14 an incident after it had happened. But certainly in the
15 context of officers who - I do remember on one occasion
16 identifying an officer who had a significant number of
17 complaints against him. I brought that to the attention of
18 the assistant Chief Constable. My understanding was -
19 I can't be absolutely sure, but my understanding was that
20 officer was relocated from the area that he was based in.
21 So, yes, there was corrective action taken.
22

23 Q. And then you've also talked about the role in terms of
24 making recommendations, and that's another critical role
25 that you've already discussed --

26 A. Yes.
27

28 Q. Based on that data; is that correct?

29 A. It was, yes, absolutely. At a policy level the
30 recommendations came from issues emerging from the
31 individual investigations but also the management
32 information; that is correct, yes.
33

34 Q. So that data could be used on a broad level to make
35 policy recommendations but also shared with other agencies
36 like the police, like the Police Board, like the Department
37 of Justice so that they could do their own analysis on that
38 data that you were keeping?

39 A. Exactly. The oversight body for police in
40 Northern Ireland, the main oversight body, that appointed
41 the Chief Constable and had a mix of political
42 representatives and lay people was the Policing Board, and
43 it received all of our management information on a regular
44 basis. So it allowed them to have a conversation with the
45 Chief Constable about the nature and profile of complaints
46 and how they were going to be dealt with.
47

1 It also allowed the policing authority to have - the
2 Policing Board, rather, to discuss with the Chief Constable
3 the strategic recommendations coming from the Ombudsman's
4 office. I didn't have the powers to engage in an ongoing
5 basis - sorry, not the powers, the resources to deal with
6 the police on an ongoing basis about the implementation of
7 recommendations. So we passed that to the police authority
8 for them to have that conversation at a broader strategic
9 level. That was the main place where those discussions
10 were had.

11
12 Q. And how important to the office is being transparent
13 and accountable, given that you're an oversight agency?

14 A. I think - and it was Professor Prenzler's view in the
15 report, because he provided comparisons, I think he said
16 that the Police Ombudsman's office is one of the most
17 transparent that he had come across. That transparency is
18 based on the information that we provide, the service that
19 is provided to complainants, the views of police officers,
20 the views of the wider public, the reports themselves,
21 particularly the category A cases that are published are
22 open to public scrutiny; people can look at them, can
23 interrogate them, can decide whether or not the facts are
24 correct and so on. So there's a high degree of
25 transparency in relation to the work of the office.

26
27 Q. Mr Operator, could you just put page 24 up on the
28 screen. While that's occurring, Dr Maguire, we've heard
29 some evidence from Professor Prenzler in relation to public
30 surveys being used on an annual basis and there being
31 surveys of the public but also complainants and police; is
32 that the case?

33 A. Yes, that is the case. The independent research
34 organisation, the Northern Ireland Statistics and Research
35 Agency, carry out regular omnibus surveys of
36 Northern Ireland. We have questions in that survey about
37 awareness of the office and perceptions of the office
38 itself. We also have independent surveys of those who make
39 complaints to the office. They are surveyed after they
40 make complaint about the process. Similarly with police
41 officers, once they have been subject to investigation,
42 they're also asked questions about the nature of the
43 service that has been provided and their views of it, yes.

44
45 Q. And just on that page that's on the screen in front of
46 you the dot points there are a summary of some of the
47 public perception surveys in terms of public awareness, and

1 that's from 2021; is that correct?

2 A. Yes, that's correct.

3

4 Q. And that's demonstrating high levels of public
5 awareness of the Police Ombudsman's office and also high
6 levels of public confidence in terms of having complaints
7 dealt with in an impartial way and treated in a fair way;
8 is that correct?

9 A. That is correct, yes.

10

11 Q. You've provided a lot of different tables and I won't
12 take you through each of those but that deal with complaint
13 surveys, complainant surveys and also police officer
14 surveys. Is it fair to say that while from a complainant
15 point of view - and some of this evidence was given by
16 Professor Prenzler earlier, that while from a complainant
17 point of view the complainants might not always have been
18 happy with the outcome, when it was looking at whether or
19 not they were treated with respect, the fairness of the
20 process, you received high complainant satisfaction scores?

21 A. In broad terms that is correct, yes.

22

23 Q. What about in terms of the police satisfaction?

24 A. Well, again the police officers themselves when asked
25 questions about the way in which they have been treated,
26 was the investigation independent, and in overall terms the
27 general message coming from police officers was, yes, they
28 felt they had been treated professionally and the complaint
29 had been handled properly.

30

31 Q. And we've heard some evidence from Professor Prenzler
32 in relation to - thank you, Mr Operator; that can be taken
33 down - about public confidence and also police confidence.
34 I do understand the evidence that you've given previously
35 this afternoon that in relation to the police currently the
36 perception is that the independent model is of benefit to
37 the police because when an independent investigation takes
38 place and police officers are exonerated then those
39 decisions are accepted by the public as well as in a way
40 that might not be the case if it was a police investigating
41 police type model?

42 A. That's been my experience, yes. An example that we
43 quote in the report which I think was illustrative of this
44 was that there was an occasion in a particular part of
45 Northern Ireland where there had been public order
46 disturbances and the allegation was that an individual - an
47 extremely serious case, an individual had been murdered,

1 beaten to death effectively, and that the police had stood
2 by and watched this happen. In the context of a community
3 where the police were mistrusted, where there was
4 antagonism against the police, you can imagine the
5 political and also the community profile of that incident
6 and the way in which that was described within that
7 location.

8
9 We did an investigation into that incident. We looked
10 at - as any investigation would - the CCTV evidence, the
11 extensive witness statements, the monitoring of police
12 calls and so on, and I was able to come to a very clear
13 conclusion that that did not happen. It simply was not the
14 case that the police had allowed that to happen. That
15 report was published and it demonstrated independently that
16 the police had done no wrong in that regard. I think that
17 was an extremely valuable report from a Police Ombudsman
18 and a police oversight perspective. So, yes, it was of
19 value to the police, and indeed the police themselves would
20 I think agree with that, that it was invaluable to have an
21 independent assessment of what were quite critical and
22 high-profile instances.

23
24 Q. And in terms of this police sentiment in particular
25 there are quotes in the report, and I think you referred to
26 it a little bit earlier in your evidence about the senior
27 levels of police talking about the value of having
28 independent investigations, you've just given the example
29 there and the high police satisfaction rates with the
30 process. It's painting a fairly rosy picture now 20 years
31 after the establishment of PONI. Was it always this rosy,
32 if you go back to the early days?

33 A. No, it wasn't. Step back a bit. The Police
34 Federation, for example, which is the police union, while
35 in principle accepted the concept of PONI and the concept
36 of independent investigations I think would have been
37 critical of the office in its early days. It would have
38 been critical of the legacy reports because it would have
39 been seen to be a challenge to the reputation of the Royal
40 Ulster Constabulary. So throughout the period of time
41 there have been particular issues around the publication of
42 legacy reports and how they have been interpreted, and
43 certainly police unions, retired police officers would have
44 been critical of the office in that regard.

45
46 In my time as Police Ombudsman I received criticism
47 from the police unions. They accused me of engaging in a

1 witch-hunt against officers, which I find hard to believe
2 in the context of an organisation that in the main didn't
3 substantiate complaints against police officers. If it was
4 a witch-hunt, it wasn't a very good one in my opinion.
5

6 So it would not be fair - sorry, it would be fair to
7 say that there's not been criticism of the office. There
8 has been criticism of the office. But I always had a very
9 good strategic professional relationship with the senior
10 command within the police. They saw the benefits of
11 independent police oversight. Also I would have looked
12 closely at the experience of individual officers who were
13 subject to complaint. While initially there were issues
14 around how that complaint was handled and so on and the
15 independence of it, I think as it evolved over time, as
16 officers came into the organisation who grew up with PONI
17 as an institution, who accepted it as part of the oversight
18 architecture, in the main as you can see from the figures
19 those responses were relatively good. There's always room
20 for improvement, but I think it was relatively good.
21

22 Q. And you give an example in the report of particularly
23 in the very early days where there was a very high profile
24 investigation that at that point in time senior management
25 of police were negative about the initial findings. After
26 that was that a tipping point?

27 A. Yes, I think it was. I wasn't there at the time, but
28 from talking to staff who were in the office at that time
29 it was certainly something that could have fundamentally
30 damaged the office below the waterline if the investigation
31 ultimately hadn't been accepted in that regard.
32

33 The context of it was - this was the first report,
34 really substantive report, that the office had done into
35 legacy operations of the police, although you wouldn't
36 quite call it a legacy issue but an historical report for
37 want of a better term, and to say so publicly that the
38 police had failed to pass on intelligence, that the
39 investigation itself wasn't up to standard was quite a
40 thing to say at that time and certainly generated quite a
41 strong response from the police themselves.
42

43 Ultimately I make reference to comments by the
44 Chief Constable. He ultimately apologised for those
45 comments. The recommendations of the report were accepted,
46 as I understand it, by (indistinct) Chief Constable coming
47 into the organisation over time and certainly set in train

1 a number of issues to do with how intelligence was handled,
2 the structure of the police themselves, and how
3 intelligence was processed within the organisation. So it
4 had quite a considerable impact and it generated quite an
5 impact at the time it was published, yes. That was my
6 understanding.
7

8 Q. You have identified a number and talked about a number
9 of features of PONI, and the Commission has - there's also
10 more detail in the report. Are you able to identify the
11 particular features, and I think some of these are outlined
12 in a list at page 30 of your report, what are the
13 particular features that are essential for any civilian
14 control model of police oversight?

15 A. Well, if you look at page 30 of the report, I mean,
16 I think those are the ones that on reflection looking back
17 at the history of the office over the last 20 years I think
18 were important. First of all, institutional independence
19 from the police. The fact that not only in daily cases but
20 in high profile cases to be able to say that the office was
21 independent of the police, that the investigation was
22 independent of the police, (indistinct) not only to the
23 complainant in terms of their confidence in the process but
24 actually also to the police themselves, that this was going
25 to be investigated independently.
26

27 The fact that PONI dealt with all complaints within
28 the office I think was important because that, as I said
29 earlier, was able to develop a significant database which
30 was hugely valuable management information for the police
31 and other oversight bodies in looking at where there were
32 areas of concern within policing, what type of complaints
33 were being made, was it excessive force, was it incivility,
34 were there particular geographical locations where there
35 were problems, and again that was important in developing a
36 response to that.
37

38 The fact that we had control over the complaints
39 process. Public complaint, I could decide whether or not -
40 not whether or not to investigate, but I could decide how
41 to investigate that complaint. But also from getting to
42 the end of the process it was entirely within the hands of
43 office. The decision whether to implement the
44 recommendation, the decision whether to prosecute was taken
45 by another agency, but the investigative process itself was
46 completely in the hands of the Police Ombudsman's office.
47

1 Underpinning that was the legislation which
2 established the office, the Police Act. That gave the PONI
3 staff the powers of a police officer. So we were able to
4 punish, we were able to arrest police officers where it was
5 appropriate to do so, to search lockers, to search their
6 premises, search their homes. That gave (indistinct) with
7 the police and it also gives the powers necessary to
8 undertake the appropriate investigation.
9

10 We've talked about transparency and the fact there
11 were a wide range of surveys of those who engage with the
12 office and the publication of reports which again can be
13 subject to scrutiny give a high degree of transparency of
14 the work of the office and what it did.
15

16 Sorry, one point I should have said in relation to the
17 legislation, the fact that the police had to give
18 information to the office which was important. At one
19 point I had to threaten - well, I didn't threaten,
20 I actually did a judicial review in my early days as
21 Police Ombudsman the Chief Constable for his failure to
22 hand over information which was important to me as an
23 investigative body. It couldn't be allowed to have
24 investigations subject to negotiation.
25

26 As it turned out, a new Chief Constable was appointed,
27 the other one came to the end of his tenure, and he
28 actually did not allow the (indistinct) to go further. He
29 said, "Look, this is a battle. There's no point in
30 fighting with the Ombudsman's office. We will give him the
31 information he requires." So the legislation underpinning
32 that was important.
33

34 We've talked a bit about the organisational identity
35 of the Police Ombudsman's office, the fact it was imprinted
36 on staff from the beginning that we were an independent
37 police oversight body, that, "You're not a police officer.
38 You're independent of the police. You need to think about
39 your judgment independently of the complainant but also
40 independently of the police themselves," and that was
41 important.
42

43 I think finally in looking at the history of the
44 office the fact that there was a single Ombudsman who was
45 appointed by Royal Warrant who was independent of the
46 police themselves and the Department of Justice helped
47 develop trust in that individual and trust in the work of

1 the office themselves. It was quite a high profile
2 position in Northern Ireland because of the nature and
3 awareness of the office, and trust in that individual
4 I think was important in demonstrating the work that it did
5 and the value of the work that it did.

6
7 Q. Do you have any view on whether that Ombudsman, given
8 the high profile nature of that position, it's necessary
9 for that person to be a civilian or that person could be a
10 former police officer?

11 A. My own opinion, and this is actually something which
12 has been reinforced by the current Ombudsman who has called
13 for legislative change in this regard, my own opinion is
14 that whoever is appointed as Police Ombudsman should not be
15 a police officer because it copper-fastens the independent
16 nature of the oversight body. As I've said earlier, having
17 police in the organisation was not only valuable, it was
18 extremely important, and I would go so far as to say
19 critical for the successful operations of the office. But
20 I don't think the Police Ombudsman in Northern Ireland
21 should ever have been a police officer or should be a
22 police officer, a former police officer.

23
24 Q. And in the report, after outlining those sort of
25 critical features which you in your opinion are necessary
26 for the success, did you also perform in consultation with
27 Professor Prenzler a sort of comparison with the current
28 situation in Queensland in terms of whether those features
29 are present in the current Queensland situation?

30 A. Yes, we did. Yes.

31
32 Q. And what's your evidence in that regard?

33 A. Well, I think there's a stark contrast between what
34 exists in Queensland and the Police Ombudsman model as it
35 exists in Northern Ireland. I think there's the risk of
36 false assurance of handling police complaints in Queensland
37 because only a very small percentage of complaints are
38 dealt with by the oversight body. The vast majority of
39 complaints are investigated by the police themselves. My
40 understanding is the community confidence in that process
41 is very low. Therefore, there are significant differences
42 between what exists in Queensland and the PONI model as has
43 developed in Northern Ireland.

44
45 Q. How important is complexity or simplicity of a
46 process, a police complaints process?

47 A. From a public confidence point of view it's extremely

1 important because you want to make the complaints process
2 accessible, particularly to those from marginalised
3 communities who may distrust government generally, the
4 criminal justice system generally and policing in
5 particular. You want to make the complaints process
6 accessible to them. So therefore simplicity is very
7 important because it demonstrates and is able to illustrate
8 the processes of making a complaint.
9

10 If you want a complaints organisation to be successful
11 you need to have people to have confidence in that
12 complaints organisation that they will trust it with their
13 complaints. You're dealing with individuals at their most
14 quite often vulnerable point in their life and you want an
15 organisation that is able to take that complaint
16 sensitively and to deal with it from an independent point
17 of view. So simplicity in that regard I think is important
18 because it facilitates access to the complaint process.
19

20 I have to say I always took the view, while we were
21 independent, we were the conduit between the citizen and a
22 huge public sector body that they didn't know how to
23 negotiate with, that they didn't understand, and therefore
24 it was important that we were able to deal with that side
25 of it and facilitate their access to the complaints
26 process.
27

28 Q. In terms of the situation in Northern Ireland and the
29 current situation you've given evidence about how PONI was
30 established in very specific circumstances. Do you have
31 any view on whether or not a PONI style model would be
32 appropriate in other jurisdictions or is it something
33 that's in such a specific circumstance - has arisen out of
34 such specific circumstances that it wouldn't be able to be
35 transferable to other jurisdictions?

36 A. Well, I think the context for PONI is unique in the
37 sense of the political context arising from The Troubles
38 which established the organisation. However, the model
39 itself in terms of access to the complaints process, the
40 way in which complaints can be dealt with independently of
41 government, the establishment of an independent
42 organisation with its own resources, with its own
43 legislative underpinning base, the mix of staff that exists
44 within the organisation that can deal with complaints
45 professionally, the publication of the reports to help
46 generate public confidence in the complaints process, all
47 of those things I think can be transplanted to other

1 jurisdictions.

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As Professor Prenzler noted in his review, there are three different types in broad terms of how to deal with complaints: the internal affairs, the review and the civilian oversight. PONI is the best example of the civilian oversight body, independent oversight body. The features of that I think and the components of that in legislative terms and in organisational terms, there's no reason why they can't be built in other jurisdictions.

Q. And those features are what you have just - I think it was the nine features that you have just identified that would be critical to the success of a civilian oversight or civilian control model in other jurisdictions?

A. That's correct, yes.

Q. Was there anything, Dr Maguire, specific in terms of learnings that Queensland as a jurisdiction could take out of the PONI and the Northern Ireland experience, other than what you've already discussed?

A. There will always be resistance to complete independence of police oversight because there will be concerns of how that will be handled. Some of those concerns are legitimate in the context of will it be properly resourced, will staff have experience. Some of them will just simply be a reaction to independent oversight.

I think what the PONI model demonstrates is that as it has evolved over time that you can develop an organisation which is independent of the police, which is independent of other criminal justice bodies, independent of judgment, and which can investigate complaints in a way which provides public confidence in policing. I come back to what I said earlier, that this isn't just about how complaints are dealt with from a citizen's point of view but also and as it has evolved over time it has been important from a policing perspective that they're able to say, "Well, this is now subject to independent investigation," and to be able to let that investigation run its course. That has contributed, in my view, to public confidence in the overall policing situation in Northern Ireland in comparison to what went before. So I think those are important learning points I think that can be drawn out of the PONI experience.

1 MS CAPPELLANO: Thank you, Dr Maguire. I have no further
2 questions.

3
4 COMMISSIONER: Ms Hillard?

5
6 MS HILLARD: I won't be long, Your Honour.

7
8 **<EXAMINATION BY MS HILLARD:**

9
10 Q. Dr Maguire, in respect of your report at the end of
11 page 20 and the top of page 21 that's where you talk about
12 at section 59 of the relevant legislation and some powers.
13 A. Yes.

14
15 Q. So if I can just - if we just look at the top of
16 page 21, the third line down, it speaks there about how an
17 officer can appeal the sanction determined by the PSNI.
18 A. Yes.

19
20 Q. That's an acronym for the investigator, I expect. Is
21 there a right of victim appeal or the person who has made
22 the complaint?

23 A. The office can be judicially reviewed by the
24 complainant, and that has been done in the past where an
25 individual was not happy with the process of how the
26 complaint was dealt with. This was particularly the case
27 in relation to some legacy cases. So there is that option
28 open to them with their legal representatives. But in
29 terms of the individual disciplinary sanction and
30 misconduct sanction implemented by the police, no, there
31 wouldn't be a right of appeal from the victim's point of
32 view, no.

33
34 Q. And in the second paragraph at the top of page 21 you
35 speak about the percentages, and Counsel Assisting took you
36 through those roughly, in respect of where there might be
37 performance action you refer to it as otherwise misconduct
38 or disciplinary proceedings. So if I can just focus in on
39 that part.

40 A. Yes.

41
42 Q. Bearing in mind you might have a different meaning of
43 what is misconduct, but where we're talking as I understand
44 your evidence and these two pages and the paragraphs you
45 have a power to compel your head of police, whatever the
46 phrase would be; ours is Commissioner of Police --

47 A. Chief Constable.

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Q. You said Chief Constable, to conduct disciplinary proceedings but no power of any of those other performance actions, for example; is that correct?

A. That is correct. The situation is that the performance related function would be - the performance related discipline would be with regard to those relatively minor - and I use this word cautiously because it is not necessarily minor for the individual concerned - but from a discipline point of view they would be at the lower end of the scale and therefore a performance discussion with the officer with the appropriate way to deal with their behaviour and what needed to be done. The misconduct situations are those - as you go up the scale, the nature of the behaviour has been more substantive and therefore requires a different discussion.

I'm not sure if I said earlier but it's important to make the distinction between criminal investigations and misconduct investigations. Where an officer is subject to a criminal investigation and those are at the more serious end of the cases, a file is delivered to the Public Prosecution Service to make a decision on whether or not to prosecute. If the decision is to prosecute that goes through the criminal justice process. These are misconduct cases. So therefore they're not criminal cases and therefore they're dealt with through the misconduct regime within the police themselves.

Q. So your category A, B and C, which is also on page 21, you refer to serious neglect of duty. Putting aside the definitions of what might be serious neglect of duty for you, if hypothetically there is a failure of a police officer to act that may become a misconduct or a performance action rather than disciplinary matter depending on your investigation?

A. Yes, the decision would be taken, "Is this a criminal investigation or is it a misconduct investigation," and that decision would be taken at the early stages. So, for example - that decision could emerge in the course of an investigation and it could change. So if you were looking at, for example, a death in custody, as that investigation emerged, as you began to look at CCTV evidence, you might well take the decision, "Well, actually, there's potentially a criminal act here," and that then will become a criminal investigation.

1 Q. And when you're dealing with hypothetically an
2 identified pattern that might emerge or patterns of failing
3 to exercise duty there doesn't appear to be a specific
4 power to raise that with your head of police or your
5 Chief Constable?

6 A. Well, it certainly would have been done in practice in
7 relation to the individual officer who is subject to an
8 investigation. As I said earlier, because of the nature of
9 the management information that we had on my computer
10 screen I could have looked at that officer, looked at all
11 of the complaints against that officer, looked at the
12 nature of the complaint and what the outcome was, and that
13 information would certainly have been shared with the
14 police as part of their misconduct discussions.

15
16 Q. It might be shared with the police, but it would
17 depend on what is now after 20 years of establishment a
18 very positive relationship that you have with the police
19 that would benefit that sort of information sharing?

20 A. I think you've hit on a very interesting point there
21 which is the nature of the relationship with the police.
22 It evolved over time. Certainly when I was Police
23 Ombudsman, the seven years I was Police Ombudsman, I had a
24 very professional relationship with the senior command team
25 within the police and certainly would have drawn issues to
26 their attention and they would have acted on them. I can
27 give numerous examples where that was the case. That was
28 based on mutual respect for each other's role in relation
29 to the work that we were doing in that regard.

30
31 At an operational level my director of investigations
32 would have met with his counterpart on the complaints and
33 discipline side, and the individual investigators would
34 have met with staff across the policing fraternity, and
35 working relationships in the main were generally very
36 positive. So that evolved over time and certainly you
37 wouldn't take it for granted.

38
39 Q. So back to my question a couple of moments ago about
40 if there is a systemic matter or a pattern matter that has
41 emerged and you don't have that positive relationship as
42 you have just described and developed over time you
43 wouldn't have any power to direct or compel or to ask them
44 to take particular steps even if they're in that category
45 of misconduct?

46 A. Well, we could, actually. The legislation did allow
47 me to direct the Chief Constable to undertake a

1 disciplinary hearing if he decided not to do that. I never
2 had to exercise that power in seven years, but that
3 legislation - that power was there in the context of the
4 work that we did.

5
6 If you think about the context for this, I mean, as
7 the Chief Constable - if we were dealing with - the
8 disciplinary hearings were the most serious end of the
9 spectrum in terms of misconduct cases. If a
10 Chief Constable refused to undertake a disciplinary hearing
11 for an officer who was involved in a serious incident
12 I would absolutely (indistinct) - I'm getting interference.

13
14 COMMISSIONER: Just hang on a second, Doctor.

15
16 MS HILLARD: Commissioner, I was going to say that was my
17 last question anyway.

18
19 COMMISSIONER: Yes, but others might have questions.

20
21 MS HILLARD: That's right.

22
23 WITNESS: I can hear you now.

24
25 COMMISSIONER: Okay. Thank you.

26
27 MS HILLARD: Sorry, you were part way through answering.
28 A. Sorry, yes, because of the public confidence issue,
29 and this would have been a case where in my opinion there
30 would have been significant public concern in what
31 happened, I would have gone public and the Chief Constable
32 would have had to explain himself as to why no disciplinary
33 hearing was undertaken in that regard. But in any case
34 I would have directed him to do that. But that power
35 I never had to use.

36
37 MS HILLARD: Thank you. That's all of my questions, but
38 other people may have some questions.

39
40 MS MORRIS: No questions.

41
42 MR HUNTER: No questions.

43
44 MS JUHASZ: I have no questions either.

45
46 MS CAPPELLANO: Thank you. I have no further questions,
47 thank you, Commissioner.

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COMMISSIONER: That's probably lucky, given the line seems to be breaking up, Dr Maguire. But thank you very much. I know you got up early for us this morning. So I appreciate you doing that, and you can cut the connection.

A. Thank you.

<THE WITNESS WITHDREW

MS CAPPELLANO: Dr Maguire is the last witness for today, and there is no hearing scheduled for tomorrow.

COMMISSIONER: Ten o'clock on Thursday.

**AT 5.12PM THE COMMISSION WAS ADJOURNED UNTIL THURSDAY,
4 AUGUST 2022**

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