



# Law Enforcement and Defence Complaint Handling

WORKSHOP PROCEEDINGS

September 2007

Papua New Guinea

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## **Dedication**

This publication is dedicated to Mr John Hevie, an officer of the Ombudsman Commission of Papua New Guinea, whose sudden passing in January 2008 has been a great loss to us all.

John Hevie spent four months on a work placement with the office of the Commonwealth Ombudsman in 2006, and drew upon that experience to build professional bridges between Papua New Guinea's disciplined forces and its Ombudsmen.

His leadership on the issue of improved complaint handling within defence and law enforcement agencies has been extremely influential, and led directly to the successful workshop recorded in the following pages.

It is our hope that the continuation of this work to improve professional standards in these law and justice agencies will prove a fitting tribute to the key foundation role that John played.

## INTRODUCTION

This publication brings together the presentations made at the Law Enforcement and Defence Complaint Handling Workshop held in Port Moresby on 18 September 2007. Director John ToGuata from the Papua New Guinea Ombudsman Commission chaired the workshop.

Presentations were made to the workshop by representatives from key Papua New Guinea (PNG) and Australian public sector agencies, including:

- Papua New Guinea Ombudsman Commission
- Papua New Guinea Defence Force
- Royal Papua New Guinea Constabulary
- Commonwealth Ombudsman
- Office of the Inspector-General of the Australian Defence Force
- Australian Federal Police.

Together, the presentations considered a range of models for liaison between the Ombudsman and government agencies, particularly defence and policing agencies.

The office of the Commonwealth Ombudsman has built a close and active relationship with the PNG Ombudsman Commission. Since 2005, with support from the Australian Agency for International Development (AusAID) under the Law and Justice Sector 'Twinning' Program, the offices have participated in an active program of staff exchanges, training, seminars and technical support. There have been clear benefits for both organisations. A major focus of the partnership has been to improve systems for liaison with the public sector agencies with which we both work.

The office of the Commonwealth Ombudsman commends the initiative of the PNG Ombudsman Commission in hosting this important workshop.

The rapporteurs for the workshop, who were responsible for preparing this publication, were Pauline Fowlie and David Ward from the Commonwealth Ombudsman's office, Matthew Weiner from the Australian Federal Police, and Timothy Wrumongo from the PNG Ombudsman Commission.

## WELCOME BY THE CHIEF OMBUDSMAN OF PNG

*Chief Ombudsman Ila Geno*

Good morning ladies and gentlemen and thank you all for coming.

First let me join Mr ToGuata in expressing a warm welcome to our important guests from Australia and our important representatives from the Defence Force, Police and Corrective Services. I am pleased that the Defence Force Commodore, the Police Commissioner and the Corrective Services Commissioner will be joining us during the workshop.

I will ask his Excellency the High Commissioner to make a few remarks before the workshop commences, but if you will allow me I would like to say one or two things.

First of all, I want to once again very sincerely thank Prof. John McMillan, Mr Geoff Earley and Detective Superintendent Hulbert, for making the time available to be with us today. I know they are very busy people and they could have gone to other commitments.

I will also thank the other dignitaries here for their presence, including Mr John Dinsdale and Ms Joanne Cho from the Law and Justice Sector Program, and the Public Solicitor of Papua New Guinea, Mr Fraser Pitpit.

I think it is important for me to say a little bit about how this program commenced. Back on 2 September 2003 many of you will recall that the PNG Ombudsman Commission, as a member of the Asia Pacific Ombudsman Region (APOR), hosted the 21<sup>st</sup> Australasia Pacific Region Conference in Madang.

The Commonwealth Ombudsman attended that conference. In attendance also were the Ombudsmen from all the Pacific Island Countries, PNG, Australia and New Zealand and from other Asian countries like Japan, Taiwan and Malaysia.

At that time, Prof. McMillan had only recently become the Commonwealth Ombudsman. During the meeting we held a lot of informal discussions to come up with some sort of informal arrangement for exchanges between the office of the Commonwealth Ombudsman and the PNG Ombudsman Commission.

As you know in PNG the Ombudsman Commission has two roles: the conventional role of the Ombudsman Commission is complaint handling, but we also have a Leadership Code by which the Ombudsman Commission investigates leaders. We saw the exchanges with the Commonwealth Ombudsman as a way to strengthen the conventional role of the Ombudsman Commission in PNG. The first outcome of that discussion was the exchange of officers between the two offices.

In 2004, with the commencement of the AusAID supported Law and Justice Sector program, the Chief Executives who were involved with Law and Justice Sector came on stream to offer their support to the exchange program. By this time our informal arrangements had already been in place for about a year.

In early September 2005 the Commonwealth Ombudsman hosted an informal meeting of the Samoan, Fijian and PNG Ombudsmen to explore ways we might further the regional discussions we held in 2003. Since that time our regional network has continued to grow, and I wish to particularly thank Dr Stephen Ranck for his work to liaise with the Pacific Ombudsmen and with PNG.

Later, on 14 December 2005, we finalised a Memorandum of Agreement with the Commonwealth Ombudsman to commence a placement program under the Twinning Arrangement with the support of AusAID.

We began to work more closely with the Disciplined Forces after September 2006 when we held a meeting at Loloata Island to which we invited the Defence Force Commander and the Police Force Acting Commissioner.

By this time we had held a number of exchanges under the program, including Ms Alice Kuipa and Mr John Hevie who travelled to Australia from PNG, and also Mr David Ward who came to work with us from the Commonwealth Ombudsman's office.

Through these arrangements John Hevie was able to go out with the Australian Ombudsman staff and look in some detail at procedures for working with the police and the Defence Force. When he came back to the PNG Ombudsman Commission he shared with us and with the Defence and the Police Force personnel these models for cooperation and liaison. We began to consider together how we could adapt some of these ideas from the Australian context.

Commodore Ilau was a keen participant in these discussions, and he began thinking about engaging someone who could assist him to update his legislation for the three elements in the Defence Force—air, sea and land—to address some of the challenges he faced as Commander of the Defence Force. I'm glad that Mr Jack Denny, who is very experienced, is here and I think the Commodore himself will be speaking to you during the course of the workshop today.

As a result of that re-fit, and other ongoing communications with the Defence Force, the Police and the Correctional Services, we reached agreement on the idea of having a joint workshop with our Australian counterparts. I really want to express my very sincere thank you to the Commodore of the Defence Force, the Commissioner of Police and the Corrective Services Commissioner for their support for this workshop.

As you may recall some months ago there was already a strong dialogue between the Police and the Ombudsman officers and there was a series of workshops and seminars held throughout the country to build understanding in the police service of why the Ombudsman Commission wants to be involved in resolving some of the complaints that are being received. And we want to thank the Police and the Ombudsman Commission officers who participated in those meetings led by Mr John ToGuata, our Director for External Relations.

From those meetings a team formed, led by Mr John Maru from the Royal PNG Constabulary (RPNGC), John Hevie and Director of Complaints, Mr Joe Molita, from the Ombudsman Commission. That team drew up the Joint Agreement between the RPNGC and the Ombudsman Commission, which sets out how the Ombudsman Commission will work with the police in jointly addressing complaints against police. The Ombudsman Commission and the RPNGC signed that agreement in Port Moresby on 1 June 2007.

I have also the task of giving you some sort of background information of the two roles we have at the PNG Ombudsman Commission. The first role, which Ombudsman John Nero will be speaking of, is Leadership. The second role is the conventional Ombudsman function, a role we regard as paramount. This is therefore an opportune time for our audience in PNG to hear these presentations by the Commonwealth Ombudsman Prof. John McMillan, Inspector General Geoff Early from the ADF, and Det/Supt Steven Hulbert of the AFP.

Each of these three will be making a presentation to us on the way things are functioning in Australia. Following their presentations it will be our task to consider how we can adapt these models to suit the unique Papua New Guinea context. Before I invite you each to speak, I want to sincerely thank each and every one of you for making it to this workshop. I look forward especially to hearing from the Commodore, Police Commissioner and Corrective Services Commissioner who will join us during the course of the morning.

Now let me introduce to you the Australian High Commissioner to Papua New Guinea, Mr Chris Moraitis. Thank you.

## OPENING ADDRESS BY THE AUSTRALIAN HIGH COMMISSIONER TO PNG

*Australian High Commissioner to PNG, HE Mr Chris Moraitis*

Chief Ombudsman Geno, members and staff of the Ombudsman Commission, distinguished guests, ladies and gentlemen.

I would like to thank the Chief Ombudsman for his invitation to speak at this important workshop. It would be stating the obvious—but good governance is an issue about which Australia feels very strongly and oversight agencies, like the Ombudsman Commission, play an important role in facilitating accountability and good governance.

I am particularly pleased to be speaking to today's topic: 'Fostering good working relationships with government bodies'. It has been clear to me in my time here that the Ombudsman Commission has been working to strengthen its relationship with other government agencies. Today's workshop is another positive step along this path, and I congratulate the Chief Ombudsman for his initiative in bringing it together.

I would also take the opportunity to welcome my colleagues from Australia, the Commonwealth Ombudsman, Prof. John McMillan, Det/Supt Steve Hulbert of the AFP's Professional Standards unit and Inspector-General Geoff Earley from the ADF. I am sure you are looking forward to hearing from them later this morning. To echo the comments of the Chief Ombudsman—the fact that you have taken time out from your busy schedules to be here is a great testament to your commitment to see PNG's Ombudsman Commission succeed.

To do its job properly, the Commonwealth Ombudsman must work well with the agencies that it is investigating. It has developed long-term relationships with these organisations to help it do its job. But these relationships also need to be balanced against the need for the Commonwealth Ombudsman to be seen as independent and effective.

Hopefully, today's workshop will provide some useful insights into, and a possible model of how the Ombudsman can work with government agencies to resolve complaints.

I have been encouraged by the efforts of the Chief Ombudsman to strengthen similar links in PNG. For example, as some of you would no doubt be aware, the Chief Ombudsman and the Police Commissioner signed an agreement earlier this year to set up a police oversight mechanism within the Ombudsman Commission. The Police Commissioner himself publicly acknowledged the role of this agreement in addressing issues of public trust and confidence in the police.

Relationships such as these—and the oversight they bring—are important for good governance. Improved governance has benefits for all Papua New Guineans. Weak governance can open the door for corruption. This damages development and impacts upon everyone. The waste that this causes falls most immediately and disproportionately on poor people.

Good governance is also about better management. This includes strong leadership of the public sector. Strong and effective leadership is essential for good governance, sustained growth and development. Oversight agencies, like the Ombudsman Commission, play an important role. But the departments themselves must also take responsibility for their performance.

The Australian government is supporting the PNG government to develop and implement its own policies and initiatives to improve governance and accountability. This includes work through the Enhanced Cooperation Program (ECP), funding across all sectors through the aid program and initiatives that increase the community's demand for good governance.

Today's workshop is a practical example of the way that we are helping the PNG government to advance its own objectives. The workshop has been organised by the Chief Ombudsman and his staff. We welcome his initiative and congratulate him on pulling together such a strong line-up.

For me, this workshop is worthwhile in two very important respects: first, in terms of the subject matter and the ultimate aim of fostering working relations with government bodies; and second, as another concrete manifestation of the good and strong link being developed between the Ombudsmen of Papua New Guinea and Australia.

Once again, thank you for inviting me to address you today. I hope that today's workshop will prove worthwhile for you individually. I also hope that it helps to develop and strengthen links between the Ombudsman Commission and other government agencies.

## OMBUDSMAN OVERSIGHT OF POLICING AND DEFENCE IN AUSTRALIA

*Prof. John McMillan, Commonwealth Ombudsman*

Papua New Guinea and Australia have a long friendship, close ties, and a history that is intertwined. The strong relationship between the PNG Ombudsman and the office of the Commonwealth Ombudsman in Australia is an example of the ties that bind our countries. The relationship between our agencies, embedded now in a Twinning Program, strengthened considerably following discussions held at a regional meeting of the International Ombudsman Institute, hosted by the PNG Ombudsman Commission at Madang in 2003. The Commission has since hosted many visits from my staff, and we have likewise hosted many visits to Australia from Ombudsman Commission staff.

A reason that my office is strongly committed to the Twinning Program with the PNG Ombudsman Commission is that we greatly respect the work that it has undertaken in PNG over more than thirty years. In the finest traditions of the Ombudsman office—an international tradition that stretches for nearly 200 years—the PNG Ombudsman Commission has earned a reputation for being independent, for thorough investigation of problems in government, and for working tirelessly to help members of the public and to improve government administration. PNG can be proud that the Chief Ombudsman, Ila Geno, is a widely respected leader in Ombudsman circles in the Pacific region and internationally.

Let me turn to today's workshop. There are two related themes. The first is that it is important in all areas of government—police, defence, and corrections included—to have procedures in place for receiving and investigating complaints from members of the public. The second is that the office of the Ombudsman has an essential role to play in that complaint system. Since those two themes must run together, there must be a strong working relationship between the Ombudsman, and police, defence and corrections agencies.

My task is to explain how we have developed those two themes in Australia. This has been done over a period of thirty years, involving much thought and a lot of work. The overall result is that the administration of police, defence and prisons is fairer. Officers working in those areas know that people have both a right and the opportunity to complain against their actions. A complaint can trigger both internal and external review to examine whether administrative action was legally and factually correct. Over time, the quality of administration improves. Police, defence and prison officials know that their actions can be scrutinised by others: metaphorically, they know that there is always somebody looking over their shoulder.

There are other benefits also. The public can have greater confidence in policing, defence and prisons when there is a system in place for dealing in an open and reasonable manner with complaints and other problems. External scrutiny is itself a safeguard against the wrongful exercise of power.

It is equally important for police, defence and prison officers to know that they work in a profession that is committed to integrity and accountability to the public. That knowledge gives meaning to the notion that they are engaged in public service.

I will start by saying a little about my own office of Commonwealth Ombudsman, and then I will talk about how we relate to police and defence.

***Commonwealth Ombudsman—background information***

The office of Commonwealth Ombudsman was established in 1977—this year is our thirtieth anniversary. Australia has a federal system of government and we are one of many Ombudsman offices in Australia. There are separate Ombudsman offices in each of the Australian States, such as New South Wales and Victoria.

We also now have many industry Ombudsman offices. At the national level, for example, there is a Banking and Financial Industry Ombudsman, a Telecommunications Industry Ombudsman, and in some Australian States, an Energy and Water Ombudsman, and a Public Transport Ombudsman.

As that indicates, Australia has developed great confidence in the role that Ombudsman offices, and complaint handling generally, can play in improving government and big business.

As to my own office, we receive around 18,000 complaints each year, of which we investigate just over 4,000. We also receive another 15,000 telephone enquiries and approaches from people who seek our assistance. A large role of the office is to assist people to understand why a government decision was made, or where assistance to deal with a problem can be obtained.

The Ombudsman's office has worked hard over the last thirty years to encourage all government agencies to establish their own internal systems for handling complaints from the public. Many agencies—such as the Taxation Office, the Department of Immigration, the postal service, and police and Defence—now have internal units that deal with far more complaints each year than the Ombudsman's office. The policy of the Ombudsman's office is that a complaint should first be dealt with by an agency before we will conduct an investigation.

Some of the complaints that are investigated by the Ombudsman's office deal with serious issues and problems in government. Examples are that a person was assaulted by police, a person was wrongly denied an immigration visa to visit Australia, a government contract was awarded to the wrong tenderer, damage was caused to someone's property by a government official, or a pension was wrongly taken away from a person. Many other issues dealt with by the Ombudsman's office are of the more routine kind that nevertheless cause inconvenience and irritation to members of the public. Examples are that a government letter was sent to the wrong address, a government form is hard to understand, an agency cannot find a document someone provided to them, or a government official was rude to a member of the public.

In addition to investigating complaints, the Ombudsman's office does many other things. For example, we initiate our own investigations into government issues on which there have been many complaints to the office. Three examples of recent own motion investigations are into immigration detention centres, into the difficulties faced by young people in the military forces, and into government delays and other problems in providing public access to information under Australia's freedom of

information law.<sup>1</sup> We also conduct training workshops on complaint handling, meet regularly with other agencies to discuss issues they are facing, and provide assistance to Ombudsman offices in the Asia-Pacific region.

The work of the office is undertaken by a staff of nearly 150, who work in seven offices around Australia. The main office is in Canberra, the national capital.

I will now look specifically at our role in relation to policing and defence. I will not have much to say about oversight of correctional facilities, since that task is undertaken in Australia by the State Ombudsman offices.

### ***Commonwealth Ombudsman oversight of policing***

There are two national law enforcement agencies in Australia that come within the jurisdiction of the Commonwealth Ombudsman—the Australian Federal Police (AFP) and the Australian Crime Commission (ACC). Complaints are received mostly about the AFP, because of its community policing function and its active role in investigating incidents of crime, terrorism threats and other matters. We receive on average around 750 complaints each year against the AFP.

The way that police complaints are handled changed recently, though the core principles remain the same. Prior to 2007 a special Act—the *Complaints (Australian Federal Police) Act 1981*—regulated how the Ombudsman dealt with and investigated complaints against the AFP. A feature of that Act was that complaints against the AFP, whether received by the Ombudsman or the AFP, were notified to the Ombudsman. The Ombudsman worked jointly with the Professional Standards Unit in the AFP to resolve all complaints. Minor complaints—for example, that a police officer was rude or discourteous when imposing a traffic fine or executing a search warrant, or that police failed to keep a person informed of progress in an investigation—were dealt with by AFP Professional Standards through a conciliation process. For example, a meeting would be held between police and the person who made a complaint to discuss the issue and see if common ground could be found.

More serious complaints—such as an allegation that police used excessive force, damaged private property, or mishandled an exhibit—were usually investigated first by AFP Professional Standards, which prepared a report that would be reviewed by the Ombudsman. Sometimes the Ombudsman would conduct the initial investigation, or conduct the investigation jointly with police.

That system for handling police complaints changed in 2007. Complaints against police now come under the Ombudsman Act and are mostly handled in the same way as complaints against other government agencies. That is, it is expected that AFP Professional Standards will normally handle any complaint against police in the first instance; only allegations of serious misconduct have to be notified to the Ombudsman. Ordinarily, the Ombudsman will only investigate when a person lodges a complaint with us after the matter was first investigated by AFP Professional Standards.

There were two main reasons why the system for handling police complaints changed in 2007. The first is that the former system involved double handling of most

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<sup>1</sup> See Commonwealth Ombudsman, *Lessons for Public Administration: Ombudsman Investigation of Referred Immigration Cases*, Report No 11|2007; *Australian Defence Force: Management of Service Personnel under the Age of 18 Years*, Report No 4|2005; *Scrutinising Government: Administration of the Freedom of Information Act 1982 in Australian Government Agencies*, Report No 2|2006.

complaints by the Ombudsman and AFP Professional Standards. This could be inefficient and confusing for people. Secondly, the former Complaints Act had a strong focus on discipline and blaming officers. The new system emphasises that dealing with complaints and allegations is integral to managing the employment performance of police officers.

A few other features of the new system are worth noting:

- In dealing with AFP complaints, the Commonwealth Ombudsman now has the special title of Law Enforcement Ombudsman. This recognises the importance and special nature of the role of dealing with police complaints.
- The Law Enforcement Ombudsman and the Commissioner of the AFP are required by the *Australian Federal Police Act 1979* jointly to sign a determination<sup>2</sup> that divides all police complaints into three categories: broadly, they cover customer service matters (which are generally dealt with by a police office's supervisor); minor misconduct (which is dealt with by AFP Professional Standards); and serious misconduct (which must be notified to the Ombudsman, who can decide to investigate or allow the matter to be dealt with by AFP Professional Standards). There is also a fourth category, corruption, which is handled by a new agency, the Australian Commission for Law Enforcement Integrity, headed by the Integrity Commissioner.
- The Law Enforcement Ombudsman is required to undertake an annual review of how the AFP has handled complaints that it has received and investigated. The Ombudsman's report on this review is tabled in the Parliament.
- The Ombudsman also has another specialist police oversight role, of periodically inspecting police records relating to telephone interception, electronic surveillance and controlled operations. This enables the Ombudsman to examine (and to reassure the public) whether police have acted properly in exercising coercive and intrusive powers that by their nature are hidden from public view.

### ***Commonwealth Ombudsman oversight of defence***

In dealing with defence matters, the Ombudsman also has the special title of Defence Force Ombudsman, to recognise both the importance and the difference in this role. This special role of Defence Force Ombudsman was given to the Commonwealth Ombudsman in 1983.

In the combined role of Commonwealth and Defence Force Ombudsman, complaints can be received from the public about nearly any aspect of defence operations—for example, a complaint that a member of the Defence Force damaged civilian property, that a person was wrongly refused enlistment in the Defence Force, that a contract or tender was badly handled by Defence, or that the Department of Defence has refused to provide access to documents under the Freedom of Information Act.

The special feature of the Defence Force Ombudsman role is that it enables the Ombudsman to receive complaints about employment matters from serving or former members of the Defence Force—the Army, Navy or Air Force. For example, the complaint may relate to a discharge, promotion, performance assessment, payment of allowances, a defence posting, or defence housing.

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<sup>2</sup> *Australian Federal Police Categories of Conduct Determination 2006.*

Each year we receive around 680 defence complaints. We have also undertaken important own motion investigations. A recent example was an investigation of the problems faced by people aged under 18 who enlist in the military. Complaints to the Ombudsman had highlighted some worrying issues, including that young people had not received appropriate support after enlisting in the military or had been depressed and engaged in self-harm. The investigation made far-reaching recommendations that were accepted by Defence, to clarify the legal duty of care it owed to young people, better training of defence personnel in the support that may need to be given to young people, and better communication with parents of young people about problems that arise.

Another issue recently studied in an own motion investigation is how Defence manages complaints of unacceptable behaviour by its members. This investigation led to many recommendations to improve record keeping, training, and reporting of incidents of unacceptable behaviour. Currently we are undertaking a large own motion investigation into whether Defence had failed to act on a prior warning of an equipment problem that led to a fire and deaths on a naval ship, the HMAS *Westralia*.

There are some restrictions on the defence matters the Ombudsman can investigate. We cannot investigate disciplinary action against a defence member once a charge has been laid, nor can we investigate whether an individual honour or award should have been granted. As in other areas of Ombudsman work, we expect that a person should first deal with their complaint through internal processes before coming to the Ombudsman. There is a highly developed redress of grievance system in the defence system, and separate internal bodies that can deal with complaints, such as the Fairness and Resolution Branch in the Defence Force.

### ***Principles of effective Ombudsman oversight of policing and defence***

The Australian system for Ombudsman oversight of police and defence works well. There are, as one would expect, occasional tensions between the Ombudsman's office and police and defence agencies. Some tension is inevitable when our role is to investigate whether police or defence have acted wrongly. Indeed, occasional tension is a healthy sign that there is active oversight by an independent Ombudsman office.

It is nevertheless important to maintain a trusting and effective relationship between the Ombudsman's office and the agencies that it oversees. We work hard with police and defence to do this. I will discuss how this is done.

#### ***1. Combining internal and external complaint handling***

The prime responsibility for handling complaints against an agency must belong to that agency itself. The agency must have clear procedures for dealing with complaints, and there must be a special unit in the agency that takes responsibility for ensuring that all complaints are investigated properly.

This is the most effective way of dealing with complaints, quickly and without unnecessary formality. It also provides important intelligence for the agency on how its systems are operating and its officers are performing.

It is equally important that there is an external body, an Ombudsman's office, to which the public can turn when dissatisfied with a government agency. External oversight reassures the public that accountability and the rule of law are part of the fabric of government. External oversight provides a reality check for agencies, by

requiring them from time to time to stand back and see their own conduct in a different light.

In summary, the Ombudsman's office is a strong supporter of the internal mechanisms for complaint handling in police and defence, but equally we expect them to be strong supporters of our independent role. We are not competitors: we are partners in dealing with people's problems and working to improve government.

## 2. *Building trust and understanding*

We recognise that police and defence are different to other areas of government with which we deal, such as the tax office and the social security agencies. An obvious example is that defence incorporates at least three different communities—the Army, Navy and Air Force—that each has its own history, culture, uniforms and symbols. The veterans' community is different again. Police and defence are also different to many other areas of government, because of their strong internal culture and discipline, and the fact that people join young and often remain in the force for their entire career. It is quickly apparent in overseeing police and defence that the internal chain of command plays a stronger role in management, discipline and organisational philosophy than in other government agencies.

It is important for the Ombudsman's office to acknowledge those differences and work hard to understand them. It is equally important for police and defence to understand they share much in common with the rest of government. Their employees are public officials who are expected to obey the law, to be publicly accountable, and to show honesty and integrity in their work. Consequently, the principles of good administration and complaint handling should be observed and monitored by police and defence, no less than by other government agencies.

It is therefore necessary for police, defence and the Ombudsman's office to work closely to build mutual trust and understanding. There are various ways we do this:

- we meet regularly to discuss individual investigations, as well as systemic issues in complaint handling and agency administration
- Ombudsman staff visit police stations and defence bases, to be visible, and gain a better understanding of issues on the ground
- we participate in each other's training courses
- the agency heads meet periodically, to discuss relationship issues, and also to show staff that there is a senior level commitment to building an effective relationship
- we strive to maintain a balanced approach in complaint handling and to acknowledge that there are both strengths and shortcomings in what each has done.

## 3. *Complaint procedures and liaison arrangements*

Police and defence are large organisations that are spread widely across the country, and indeed around the globe. It is therefore important that clear procedures are in place for liaison between the Ombudsman and police and defence. Those procedures must state who in the organisation is to be notified when a complaint is received by the Ombudsman, where an Ombudsman request for information is to be sent, the timelines for dealing with every such request, and who is responsible to ensure that those procedures and timelines are respected. Unless those procedural issues are spelt out and followed by both organisations, enquiries will either fall

between the cracks, or lead to argument every time a new request for information is received.

It is equally important that the Ombudsman, police and defence have their own internal procedures that state clearly how matters will be dealt with internally. For example, to ensure that matters are dealt with swiftly and efficiently, I sign only a small proportion of the letters that are sent from my own office. Equally, it is important that my staff have a clear idea as to when my signature is essential.

#### *4. Joint investigations*

The Ombudsman and police and defence mostly work independently of each other, but sometimes it is advantageous to undertake a joint investigation. We can pool the wisdom of all agencies—the knowledge that police and defence have of their own systems, combined with the Ombudsman's perspective on good administration and complaint handling.

Joint investigations can also be effective as to outcomes. In a joint enterprise all agencies are committed to finalising the investigation, and to ensuring that the findings and recommendations are implemented.

An example of a joint investigation we recently undertook was into police watch house operations (holding cells). A joint Ombudsman and AFP team was formed, and worked together over three months to produce a lengthy joint report that looked comprehensively at policies and procedures in watch houses, physical conditions for staff and detainees, training of police officers, care of detainees with special needs, and use of force against detainees. The report was published at a joint press conference between the AFP and the Ombudsman's office. Both organisations committed to conducting a review after six months into progress in implementing the recommendations from the investigation.

A similar joint review was undertaken by Defence and the Defence Force Ombudsman of the redress of grievance system for dealing with internal defence complaints. A joint project team conducted the review and prepared a report that was jointly launched. The report recommended improvements to internal complaint handling in Defence, better training for investigators, better record keeping, and quicker resolution of grievances. This report, like many other joint reports, led to a marked improvement in redress of grievances within Defence. There has since been a steady decline in the number of Defence grievances brought to the Ombudsman. A parliamentary committee that has been reviewing the military justice system has taken a great interest in the findings and the impact of this joint review.

#### ***Conclusion—key messages***

I will end by summarising five key messages that apply to complaint handling in Australia between the Ombudsman, police and defence. It is for you in Papua New Guinea to decide the suitability of these messages for your country—though I believe that here, as in many other areas, there is much that we share in common.

##### *1. Shared vision and cooperation between police, defence and the Ombudsman*

Police and defence must share the belief of the Ombudsman's office that effective complaint handling is important. Complaint handling respects the right of citizens to complain about government. Complaints tell us whether public officials are acting properly. External investigation of complaints promotes transparency and responsiveness in government. And complaints lead to better administration.

2. *Integration of internal and external complaint systems*

Complaints must be handled at two levels within government—internally within agencies by a specialist complaints unit; and externally by the Ombudsman's office.

3. *Well-defined system for receiving, investigating and finalising cases*

Both the internal agency complaints unit and the Ombudsman's office must have clear procedures for receiving and investigating complaints and for liaising with each other.

4. *Active management and supervision of cases*

Complaints vary in complexity. Some are simple and can be handled quickly by an investigation officer. Some other complaints are more complex and require the skill of senior officers to decide what to do. There must be a regular review of complaint handling in both the internal unit and the Ombudsman's office, to gauge whether complaints are being handled efficiently and effectively. This is important if there is to be public confidence in the complaint system.

5. *Leadership in complaints management*

In policing and defence, leadership is all important. Police officers and defence members will not treat complaint handling seriously unless they know that the leaders of their organisations have a continuing interest in and commitment to the complaints system. Police and defence leaders must demonstrate this, both by declaring their support for the complaint system, and by taking an active interest in how complaints are being handled, what lessons they expose, and how well the complaints unit is performing.

Thank you for the opportunity to share these thoughts with you. This workshop is an historic meeting of staff from policing, defence, corrections and the Ombudsman's office to discuss accountability and complaints management. My office is proud to play a role in the workshop. I promise the full cooperation of my office to our friends in Papua New Guinea in ensuring that the insights from this workshop are implemented in your country.

## PROFESSIONAL STANDARDS IN POLICING—THE AUSTRALIAN TWO-TIERED APPROACH

*Federal Agent Detective Superintendent Steven Hulbert, Australian Federal Police*

Building confidence and trust in the community and government is essential in providing a police service. The community and government must trust that the people and the processes have integrity and are accountable.

Customer confidence and trust is built through showing that the police force has a robust and rigorous professional standards framework. But an internal professional standards framework is not enough to satisfy the community of the integrity of the police force and the accountability of its system.

External oversight provides a mechanism by which the community is able to have confidence that independence has been applied in reviewing, auditing and overseeing the conduct and accountability of the people and the system.

My paper provides an example of how working within a two-tiered approach to build integrity in policing is an effective model, and examines how the Australian Federal Police (AFP) builds policing integrity within a two-tiered model and the processes involved.

### ***Role and function of the AFP***

The AFP's role is to enforce Commonwealth criminal law and to protect Commonwealth and national interests in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the Australian government's chief source of advice on policing issues.

The AFP works closely with a range of other law enforcement bodies at state, territory, national and international levels, enhancing safety and providing a secure regional and global environment.

The AFP is a rapidly growing organisation which consists of over 6,000 staff, who are located in every capital city, major regional centre and airports in Australia as well as 27 countries around the world.

### ***AFP priorities***

Current areas of focus include:

- preventing, countering and investigating terrorism
- illicit drug trafficking
- transnational and multi-jurisdictional crime
- organised people smuggling (including sexual servitude and human exploitation)
- serious fraud against the Commonwealth
- high-tech crime involving information technology and communications
- regional peacekeeping and capacity building
- money laundering.

Other significant areas of focus include: providing community policing services to the Australian Capital Territory, Jervis Bay and external territories; contributing to the government's international law enforcement interests; and providing for the security of Australian air travellers and the aviation industry.

### ***Professional Standards (PRS)***

The AFP operates in an increasingly complex and dynamic environment, driven predominately by changes in what comprises national security. To effectively perform in this environment, it is critical the AFP secures and maintains the confidence of national and international governments, partners and communities. Central to this is the integrity and professionalism of the AFP employees on an individual level and the ability of the AFP at an organisational level to prevent and counter internal corruption and misconduct.

The AFP Core Values and Code of Conduct require all appointees to exercise their powers and conduct themselves in accordance with legal obligations and the professional standards expected by the AFP, government and the wider community.

In an operational sense it relates to the expectations the Commissioner has of all AFP appointees. AFP appointees are subjected to high levels of accountability and scrutiny in relation to both their on-duty and off-duty behaviour.

In a practical sense, 'Professional Standards' is the description given to the functional area of the AFP that deals with professional standards issues. This includes the internal administrative structures and methodology for investigating and resolving professional standards matters in relation to AFP appointees.

### ***Professional Standards portfolio***

The PRS portfolio consists of five areas:

- **Operations Monitoring Centre (PR SOMC)**—is usually the first point of contact, both internally and externally to the AFP, regarding the lodgement of complaints.
- **Security**—is responsible for developing, implementing and managing physical and information security policy for the AFP. The team provides security input to all AFP building projects and is responsible for the conduct of security investigations, the AFP security audit program, undertaking risk assessments and the provision of security advice.
- **Vetting**—is responsible for conducting security clearances for all recruits, current appointees and contractors.
- **Integrity assurance**—is the proactive arm of PRS responsible for identifying corrupt individuals, activities, places and processes, current and emerging integrity trends and issues, actively develops intelligence responses and provides advice in relation to corruption prevention strategies.
- **Investigations**—investigate Category 3 conduct matters and, in consultation with other agencies, may investigate some Category 4 corruption matters.

### ***Statistics and trends in complaints***

As Table 1 indicates, the majority of complaints in 2006–07 related to neglect of duty (20.3%), followed by excessive use of force (15.7%), incivility or rudeness (10.2%), conduct issues (eg. inappropriate behaviour) (8.9%) and harassment (7.8%).

Over the past two years, there has been a decrease in the proportion of complaints completed regarding incivility (5.2% decrease) and practices and procedures (5.1%). On the other hand, there has been an increase in the proportion of complaints completed regarding excessive use of force (6.4% increase), criminal offence (4.1%) and fraud (4%).

**Table 1 Percentage of cases received cases by PRS by case type<sup>3</sup>**

<b>Issue</b>	<b>2005–06</b>	<b>2006–07</b>
A.C.T.—Fraudulent misappropriation (repealed)	0.0	0.1
Advice	6.4	2.5
Arrest	5.2	5.3
Assault	1.1	2.4
Conduct	5.2	8.9
Criminal offence	0.1	4.2
Entry and search	2.6	1.7
Fraud	0.4	4.4
Harassment	4.9	7.8
Incivility	15.3	10.2
Miscellaneous	2.9	0.7
Misuse of authority	5.8	6.9
Neglect of duty	22.7	20.3
Non complaint	0.1	0.3
Practices and procedures	9.1	4.0
Property	5.7	3.0
Traffic	3.4	1.5
Excessive use of force/person	9.3	15.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>

### ***Review of Professional Standards Practices—The Fisher Review***

In May 2002, AFP Commissioner Keelty requested retired NSW Supreme Court Judge, Mr William Fisher AO QC, to undertake a review of the AFP's professional standards regime. The Fisher Review was completed in February 2003 and tabled in the Federal Parliament late that year.

Essentially, the Fisher Review recommended that the AFP adopt a professional standards regime based on the principles of a managerial model or otherwise known as the administrative approach. The report argued that the application of this model would have the outcomes of reducing the time taken to resolve a complaint, deliver timely results for complainants and be more effective in addressing underperformance and behavioural issues.

<sup>3</sup> Australian Federal Police Annual Report 2005–06; data file 2006–07.

In his review, Justice Fisher recommended that better outcomes would come from revising how minor breaches of integrity requirements were dealt with emphasising that some matters could be dealt with at a local level by managers and did not necessarily require the full weight of an internal investigation.

### ***Prior to the Fisher Review: Operation under the AFP Complaints Act 1981***

In his report, Justice Fisher was critical of the inappropriate use of discipline and punishment in police complaints systems. He observed:

Police services have traditionally tended to focus too much on the aspect of reactive punishment. This has been due to the reliance on military precedence and the notion that good 'discipline' is at the heart of the effective operation of policing. Today, what is really needed is appropriate motivational management. This leads, in relation to policing, to a renewed emphasis on personnel management and less interest in the alleged motivations stemming from military-style discipline.<sup>4</sup>

This criticism recognises that performance failures can be the result of many factors, including inadequate supervision and training. The report also argued that any system with a punitive regime as its central focus couldn't adequately address the causes of poor performance or bring about significant behavioural improvement.

It is important to note that Justice Fisher did not entirely dispense with the idea of discipline in policing, acknowledging that the complex role of policing requires a disciplined approach to achieve the high expectations demanded from Government and the community. The real question was the means by which police administrators can achieve discipline to increase and enhance performance.

### ***The managerial model***

Modern police management needs to draw on a new culture of professionalism that will not tolerate corruption or other misbehaviour. The best way to do this is to manage employees and not to punish them. Managers need to engage with the issues presented to them and respond to poor performance and behavioural problems when it occurs.

The review argued the need for greater emphasis on personal management and less interest in the alleged motivations. More focus needed to be placed on remedial steps rather than punishment. Minor infractions should be seen as an opportunity to improve performance of that person and review the systems in place that allowed the incident to occur in the first place. This provides scope to deal with common mistakes, or minor lapses in conduct, particularly in a policing environment where inexperience or difficult situations impact on events.

### ***Benefits of the managerial model***

There are a number of benefits the new managerial model has brought how AFP Professional Standards manages complaints such as:

- matters under enquiry are worked to some form of conclusion by the primary decision maker
- simplicity, expedition and minimum formality are the keys to modern management of PRS

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<sup>4</sup> Fisher Review (2003), page 59.

- more difficult cases are still dealt with centrally, but functional areas within the AFP still play a significant role
- increase in the speed of complaints resolution, which in turn produces high complainant satisfaction and lowers the distress that often accompanies lengthy investigations
- frictional elements which tended to arise in the past are thus reduced and there is increased confidence, and a sense of assurance in the workforce
- faster resolution of issues within the workplace as minor issues are dealt with by managers who know the staff, know the workplace and have a greater capacity to make immediate improvements to risk areas—this allows greater resources and efficiency for PRS to deal with more with serious Category 3 and Category 4 matters.

### ***Implementing the Fisher Review recommendations***

The Review recommended the AFP adopt a graduated PRS regime according to the seriousness of the matter, which reinforces the requirement of management and supervisors to deal with performance issues.

While recognising that the current AFP PRS approach has been to introduce managerial resolutions wherever possible, positioning the AFP as a learning organisation keen to develop our employees, the Review advocated a structural change to extend and develop these ideas and practices.

Accordingly, the graduated professional standards regime takes the form of a tiered complaint management system. Functional areas will principally address the first two categories of complaint management, while the third and fourth categories reserved for serious breaches of professional standards remain with PRS.

### ***Complaint categories***

#### *Category 1—Minor management matters*

These are typically characterised as minor issues of conduct, rudeness or a failure to provide customer service. This category of complaint would be resolved by managers or supervisors in the workplace with innovative and motivational management techniques being used to address poor performance.

Outcomes from this process would include coaching, mentoring, retraining, personal development or increased supervision. The emphasis would be on a quick resolution of the issue in a non-adversarial setting, with appropriate advice back to complainants to ensure continued public confidence.

#### *Category 2—Non-reviewable action*

Category 2 matters include issues such as failure to follow guidelines and poor performance. Category 2 matters are similar to Category 1 but have a wider application and more prescribed outcomes are available including:

- re-educational outcomes
- behavioural improvement
- employment—structured change
- recording of adverse findings.

These matters are dealt with in the workplace and are underpinned by the management philosophy advocated by Justice Fisher, with the manager playing a pivotal role.

It is important to note that the outcomes flowing from Category 1 and Category 2 complaints are not reviewable by a court or tribunal, save for the role of the Ombudsman to monitor management of the complaint or the Federal Court of Australia to review administrative action. This makes the decisions in these cases more certain and eliminates elaborate review processes that have proven to be costly and fraught with delay.

#### *Category 3—Conduct matters*

Category 3 conduct matters would include matters of the following kind:

- involve serious misconduct (such as excessive use of force or fraud)
- conduct giving rise to consideration of employment termination
- breaches of the criminal law
- serious neglect of duty

#### *Category 4—Corruption matters*

A 'corruption matter' is an issue where a staff member of a law enforcement agency has engaged, is engaged in or may engage in corrupt conduct. A staff member engages in corrupt conduct if they abuse their office, pervert or attempt to pervert the course of justice, or engage in corruption of any other kind.

The AFP Commissioner is obliged to refer corruption matters as soon as practicable to the Commissioner of the Australian Law Enforcement Integrity Commission.

Potential outcomes that may be applied to an AFP appointee for an established Category 4 matter are the same as those for Category 3 matters.

It is clear that Category 3 or Category 4 matters would not necessarily be amenable to managerial resolution and public confidence requires serious cases to be handled in a more proscribed manner. Results flowing from these cases would include any of the outcomes applicable to minor management matters or non-reviewable action as well as the application of the criminal law and the Commissioner's power to terminate employment.

Other recommendations included repealing of the AFP Discipline Regulations and Complaints (AFP) Act, including abolition of the Federal Police Discipline Tribunal, and their replacement with new provisions in the AFP Act, AFP Regulations and Commissioner's Orders.

#### ***Complaints recording and management system***

The Complaints Recording and Management System (CRAMS) is an automated, user-friendly computer based complaint referral system, which can be accessed by all AFP appointees via the AFP Intranet.

CRAMS enables initial recording of all complaints, automatically categorises the matter according to seriousness of the breach of professional standards and refers

the complaint to either the appropriate Complaint Management Team (CMT) or PRS for further action.

The system enables a paperless and immediate transfer of information between these key players in the complaints resolution process.

### ***Complaint management teams***

A Complaint Management Team (CMT) consists of a group of at least four senior members of a functional stream or office who meet regularly to manage Category 1 and Category 2 matters involving AFP appointees within their business area. The CMT is a subset of an Operations Committee (OC) and reports aggregated complaint data back to the relevant OC.

### ***External complaints mechanisms***

#### *Commonwealth Law Enforcement Ombudsman*

The Commonwealth Law Enforcement Ombudsman (the Ombudsman) can consider and investigate complaints from people who believe they have been treated unfairly or unreasonably by the AFP under the *Ombudsman Act 1976*. The aim is to resolve complaints impartially, informally and quickly. The Ombudsman cannot override the decisions of the AFP, nor issue directions to AFP members.<sup>5</sup> Instead, the Ombudsman resolves disputes through consultation and negotiation, and if necessary, by making formal recommendations to the most senior levels of government.

Only the Ombudsman can decide that an investigation should not be conducted by PRS, although many complaints are resolved by conciliation.<sup>6</sup> The Act provides for disciplinary action against AFP appointees and for the Ombudsman to report following an investigation.<sup>7</sup>

#### *Australian Commissioner for Law Enforcement Integrity (ACLEI)*

The role of the Integrity Commissioner and ACLEI is to detect, investigate and prevent corruption in the Australian Crime Commission and the AFP.

The Integrity Commissioner has powers similar to a Royal Commission, such as the ability to conduct public or private hearings, and summon any person or government agency to produce documents or things or attend a hearing to give evidence under oath and be cross-examined. ACLEI investigators can access coercive and other powers used in law enforcement, such as telephone interception, electronic surveillance, undercover and controlled operations, search warrants, and passport confiscation. Special ACLEI powers include: the power to enter the premises of a law enforcement agency without prior warning to carry on an investigation and seize articles; and the power to apply to a judge for the arrest of a person refusing or attempting to evade giving evidence.

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<sup>5</sup> Commonwealth Ombudsman's website:  
[http://www.ombudsman.gov.au/commonwealth/publish.nsf/Content/aboutus\\_role](http://www.ombudsman.gov.au/commonwealth/publish.nsf/Content/aboutus_role)

<sup>6</sup> *Complaints (Australian Federal Police) Act 1981*.

<sup>7</sup> *Australian Federal Police Act 1979*.

### ***Working cooperatively***

#### *Australasian Police Integrity Forum (APIF)*

The APIF consists of states and territories throughout Australia and officers from RNPNG, New Zealand and Fiji, who meet on an annual basis to exchange information and research on emerging issues and trends in professional standards in policing. The Forum creates an opportunity for networking between jurisdictions in relation to best practice. Listed below are some of the recent issues that have been raised at recent APIF meetings:

- assaults by police (use of force)
- misuse of information technology systems
- secondary employment
- drug use by police
- sexual harassment
- recruitment to internal investigations
- unauthorised release of information to the media
- probity and integrity checking
- whistleblowing (internal witnesses)
- proactive targeting of 'at risk' officers.

#### *The Ombudsman*

The Ombudsman works closely with the AFP to ensure complaints against police are impartially investigated and appropriately responded to where required to ensure the confidence of the community in its policing service is maintained.

In order to facilitate a good working relationship, PRS meet with the Ombudsman's office on a regular basis. These meetings are effective as they provide a more informal communication point and an efficient process to resolve minor issues and direct other issues through appropriate channels. Weekly meetings are held between members of the Ombudsman's office and PRS members. PRS Coordinator Operations also meets weekly with representatives from the Ombudsman's office to discuss current investigations and provide feedback. The Manager Professional Standards meets on a monthly basis with the Manager from the Ombudsman's office. PRS members also participate in six-monthly workshops with the Ombudsman, where contemporary issues are discussed and solutions are identified.

Recently the AFP worked cooperatively with the Commonwealth Ombudsman in the conduct of a review of the ACT Police Watch House procedures. The AFP instigated the review after concerns were raised about watch house practices in late 2006.

Over a period of two months, the review team conducted a robust assessment of every aspect of watch house policies, practices and procedures against best practice both in Australia and overseas. As part of this process, submissions were received from a diverse range of groups, including representatives of government departments, multicultural groups and health professionals.

The review provided an impartial assessment of current practices and a framework to bring watch house operations in line with international standards. By engaging the Ombudsman's office in the review, the AFP ensured a proper and independent

investigation into watch house practices. The review demonstrated the value of working collaboratively to address areas of concern to the community.

### ***Challenges to the relationship***

While PRS works closely with the Commonwealth Ombudsman in order to ensure the impartiality of complaint resolution, it is important to note that there is often tension between the role and priorities of both organisations. For example, with the introduction of the new AFP PRS legislation, the Ombudsman no longer has oversight on all matters (as per the old AFP Complaints Act), but rather has moved to more of an audit/inspection function, particularly in relation to minor matters (Category 1 and Category 2). The Ombudsman's involvement can often create a perception of distrust that the AFP is unable to resolve minor issues, whereas the AFP needs to be able to let their managers manage workplace issues.

The perception that the Ombudsman's office lacks an understanding of the nature of policing and the difficult environment in which police operate is also another source of tension. For example, PRS is required to balance the best interests of two groups—the complainant and the subject of the complaint, whereas the Ombudsman focus is on the best interests of the complainant. Furthermore, the Ombudsman needs to keep at 'arms length' and not be seen as favouring the police.

The challenge is to cooperate more openly and informally rather than resort to formal written documentation of all interactions, which can be to the detriment of resolution of issues.

### ***ACLEI***

As ACLEI was established late in 2006, the working relationship with the AFP has only been brief. To date, the relationship between the organisations has been mutually positive. The AFP is building a very good mutual relationship and is looking to jointly examine systemic issues. The AFP and ACLEI hold regular informal meetings in which discussions are both proactive and strategically focused.

## WAYS OF WORKING—THE INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE AND THE COMMONWEALTH OMBUDSMAN

*Inspector General Geoff Earley ADF*

I am pleased to participate in this important gathering both in my own right as the Inspector General of the Australian Defence Force, and on behalf of the Chief of the Defence Force, Air Chief Marshal Angus Houston. The CDF sends his greetings and best wishes for a successful workshop.

I have been asked to talk about the ADF's approach to complaint handling both internally and externally as it interlinks with the Commonwealth Ombudsman who, as you have heard, also has a specific role as the Defence Force Ombudsman.

The ADF has a comprehensive and, many would think, fairly elaborate system for dealing both with complaints by members about aspects of their service, as well as complaints about members in the performance of their duties.

What I would like to do in this presentation is briefly outline the main mechanisms and features of the system, including the role of my own office. I will indicate how all the parts fit together and link in with the function of the Defence Force Ombudsman who is, of course, outside the Defence Department.

Before I do that, it may be useful to explain why the ADF places so much importance on this issue of complaint handling.

One way to explain why the ADF believes complaint management is important, would be to say that the CDF and his Service Chiefs simply want all their members who think they may have been hard done by, or have been accused of some type of misconduct, to get a 'fair go'. Getting a 'fair go' is a value that ordinary Australians hold dearly.

While that explanation may be true, there is also a more practical reason that has to do with what the Defence Force is all about—operational effectiveness. As most people would realise, in an all volunteer force, those men and women who decide to join the Defence Force, understand that by doing so they will have to give up some of their civil rights and freedoms. They will subject themselves not only to the normal law applicable to all citizens, but to an additional set of disciplinary rules that do not apply to civilians.

The practices of the Australian Defence Force evolved from British traditions; in times past, the discipline of the Armed Services was harsh. Punishment up to and including the death penalty was imposed for breaches of discipline. The ordinary soldier or sailor did not enjoy much in the way of personal rights.

One right that was clearly spelt out, even as far back as 200 years ago, was the right of individual soldiers and sailors to state a complaint and be heard if they had a grievance about their service. The right to bring a grievance to the notice of superior commanders was probably regarded as a necessary counter balance to the severe disciplinary regime that applied to them. Of course, it is another question whether, in those earlier days, actually making a complaint was an effective or smart thing to do,

but the *right* to do so is a principle that has survived to this day and underpins our present system in the ADF.

The reason it has survived is because good morale is a vital element of operational effectiveness. If members feel that legitimate grievances about their service cannot be brought to attention or will not be dealt with fairly, morale is likely to suffer. If that happens, operational effectiveness will probably also decline.

So there is a sound *operational basis* that underpins the ADF's interest in having an accessible and effective system for dealing with complaints.

Even if the redress of grievance process is enshrined in legislation, as it is for the ADF, it will not be of much use unless it has the support of command and management. I am pleased to say that in the ADF that support is given by the Chiefs and can be seen from this extract from an address given by the CDF to the senior commanders and managers of the ADF. He said in part:

Everybody under your command, and I mean everybody, should be treated with respect and get a fair go. That's the Australian way, that's the ADF way and I expect to see that right across the three Services and right across the whole Defence organisation. And when I talk about our people, I'm not just talking about the permanent people, I'm also talking about our reservists and I'm also talking about the civilians.

### ***So what is the complaints handling system?***

At the internal level, all members of the ADF have available a number of formal and informal mechanisms to address complaints. In the first instance, it is expected that members should seek resolution of any complaint at the lowest possible level through the normal chain of command.

If a member is not satisfied that a complaint can be or has been resolved by informal means, the formal redress of grievance procedure established by legislation may be accessed. This requires a complainant to make a written submission to the complainant's Commanding Officer. A member may submit a complaint about any matter in relation to his or her service. If the complainant is not satisfied with the Commanding Officer's decision, the complaint may be referred to the appropriate Service Chief in Canberra for decision.

In practice, what then happens is that the complaint is actually independently investigated by an organisation called the Complaints Resolution Agency (CRA), which will make a recommendation to the Service Chief. The decision by the Service Chief is the final step in the internal process, although in the case of Officers and Warrant Officers, a further level of review by the CDF is also available.

It is important that complaints are finalised without undue delay. All formal complaints received by Commanding Officers must be immediately reported to the CRA, which will monitor progress to ensure that the matter is being properly progressed. The CRA is given authority by a joint Directive from the Chief of the Defence Force and the Secretary of the Defence Department, to access any records or information the CRA requires in investigating a complaint.

The formal internal Redress of Grievance system was recently revised following a comprehensive review of the system sponsored jointly by the Defence Force Ombudsman and the CDF. Earlier concerns, particularly delays in finalising

complaints, have been largely overcome and the system appears to be working quite well.

Complainants are entitled to the assistance of a Service Legal Officer at no charge, to advise them in submitting their grievance. When the outcome of a complaint is decided, the decision maker is required to give reasons for their decision. It is not acceptable to simply say, for example 'the complaint is not upheld'. It is an offence for any ADF member to prevent or impede someone from stating a complaint or to victimise someone for doing so.

In the last financial year 2006–07, about 270 formal complaints were received. Forty-five percent were either not upheld or were withdrawn by the complainant. The average time taken to deal with a complaint in financial year 2006–07 was 4.7 months, down from the average of 6.4 months in the previous financial year.

In recent years, there has been an increasing tendency towards finding alternative ways of dealing with Service member's grievances other than by resorting to the formal redress of grievance system.

This has included the establishment of an Alternative Dispute Resolution capability within the Defence Department that is able to provide mediation services, workplace conferencing and conflict coaching. Those last two activities, workplace conferencing and conflict coaching, refer to techniques for dealing with disputes or conflict in the workplace or providing confidential advice to those responsible for managing a workplace dispute.

While it might be thought that these types of approaches would not necessarily fit very easily into a hierarchical military environment, they can in fact be very useful in appropriate circumstances and are being increasingly used by ADF Commanders as well as by public service personnel. (Last financial year there were 25 mediations, 31 conflict coaching, and three workplace conferences.)

Certain specific types of complaints may require a more specialised response. Two that I will mention are complaints about unacceptable behaviour and complaints about the military justice system.

The ADF, and indeed the whole of the Australian Defence Department, place great store in ensuring that a safe, secure and fair work environment free from unacceptable behaviour, is provided for its employees, both military and civilian.

Unacceptable behaviour can take many forms but includes harassment, workplace bullying, discrimination, abuse of power and so on. Where this type of behaviour is seen to occur, whether or not a complaint is made about it, commanders are required to take early action to investigate it and eliminate it.

In November last year (2006), the Defence Force Ombudsman initiated an own motion investigation into the effectiveness of the ADF's handling of complaints of unacceptable behaviour. The report of that investigation supports the view that Defence currently provides an effective complaint-handling mechanism, although a number of recommendations for improvements were also made and were accepted.

Complaints about military justice are where my own office, as Inspector General of the ADF, fits in. The Inspector General of the ADF (IGADF) was established in 2003, so it is relatively new. It is a statutory office appointed by the Minister for Defence to be independent of the normal chain of command. My role is to provide the CDF with

internal audit and review of the entire military justice system, and to provide a means by which any failures in military justice can be impartially investigated and remedied.

In practice what this means is that we conduct a rolling audit or performance check program of military justice arrangements at unit level. There are between 400–500 units across the three Services in the ADF and we aim to visit about 50 of them each year to ensure that their military justice arrangements and practices are fair and comply with the law and policy.

The other main part of my role is to investigate complaints concerning military justice. Anybody, whether they are an ADF member, ex-member, friend or relative or simply a member of the public, can make a submission about military justice to my office. In addition, my office deals with complaints about Service police in the performance of their policing duties. I can also investigate matters by own motion if I believe a need exists.

I have about 25 permanent military and civilian staff as well as a dozen or so senior Reservists. I have fairly wide powers to conduct inquiries into military justice matters that come to my attention. Those matters may include issues involving:

- denial of procedural fairness
- abuse of authority
- cover-up and failure to act
- avoidance of due process
- unlawful punishments
- victimisation and harassment
- bullying.

My office will not normally take action if the normal channels for dealing with complaints through the command chain have not been tried first. However, if special circumstances exist, for instance, where the command chain itself is the subject of complaint, my office may agree to deal with the matter.

Like the Defence Force Ombudsman, I have no executive authority to change decisions, but I can make recommendations to the relevant Service authority. If I believe that my recommendation is not acted on and there is no good reason for that, I can report the matter to the CDF for his adjudication.

Each year we deal with 60 to 70 submissions or complaints and because my office is, in a sense, the final avenue of internal review, many of the matters that are dealt with can be quite complex.

The concept of the IGADF is, as I mentioned, relatively new and was established partly in response to criticisms of the military justice system that have surfaced from time to time. The establishment of the IGADF, not unexpectedly, was initially greeted with some caution by parts of the ADF, but once it was realised that the function my office performs actually provides an aid to Commanders rather than something they should be nervous about, it has been well accepted and certainly has the strong backing of the CDF and Service Chiefs.

What I have talked about so far are the internal mechanisms for dealing with complaints in the ADF. ADF members, as Australian citizens, are also entitled to seek assistance from external agencies. These include the Commonwealth

Ombudsman (DFO), Human Rights and Equal Opportunity Commission, Privacy Commissioner, the Minister, their local Member and judicial review

Defence is fully responsive to all these agencies and authorities. While all could choose to take action on matters brought to them straight away, most times they would decline to do so unless the internal processes have been exhausted. I know that is certainly the approach usually taken by the Defence Force Ombudsman.

You will have noticed that I have mentioned the Defence Force Ombudsman a number of times already in what I have said. Existence of an external authority such as the Defence Force Ombudsman, who is attuned to ADF or Defence matters, is a particularly important feature of the ADF grievance system. It is important because it can provide a completely independent review of an individual's concerns but also for the fact that systemic aspects of administration and policy can, where necessary, be identified and assessed at arms length.

Where an ADF member's formal complaint is not upheld, the complainant is routinely advised of his or her right to apply to the Defence Force Ombudsman for external review.

While it may be a natural reaction of many to be wary of scrutiny by outside agencies, whether it is the Complaints Resolution Authority, the IGADF, or the Ombudsman, the value of that process cannot be doubted. The key to its acknowledgement and acceptance as a valuable and worthwhile feature of administration, in the Defence context is, in my view, the presence of mutual trust between the agencies.

This trust must work in both directions. There must be trust on the part of the Ombudsman's office that Defence will not try to conceal or cover up information or material it requires as part of its investigation. There must correspondingly be trust on the part of Defence that the Ombudsman's staff will be sufficiently aware and informed about Defence culture and practices to make useful judgements about Defence matters.

While I think both agencies would agree that this has not always been the case in the past, that is certainly not the situation now and there is an excellent professional relationship between Defence agencies and the Ombudsman's office. That may take the form of regular meetings to exchange ideas and information of mutual interest, joint reviews and projects, familiarisation visits and the participation of speakers in a range of training workshops and courses.

To conclude, may I reiterate that, for the ADF, a robust internal complaints handling system is regarded as an essential element of operational effectiveness. Far from being an impediment to the exercise of command authority, if implemented correctly the experience in the ADF is that it reinforces command authority.

While we believe that, wherever possible, complaints by members and about members are best addressed through the internal mechanisms I have described, we also believe that the independent oversight of the internal system that can be offered by certain external agencies, but by the Defence Force Ombudsman in particular, acts as a sort of quality assurance feature that adds credibility to the ADF's internal arrangements.

## QUESTIONS AND ANSWERS ARISING FROM PRESENTATIONS FROM PROF. JOHN McMILLAN, DET/SUPT STEVEN HULBERT, AND INSPECTOR GENERAL GEOFF EARLEY

*Q. One of the points running through all the presentations so far is the need for a robust complaint-handling mechanism within each of the agencies. If that is achieved then 75% of the work is done. Obviously tensions can arise when the Ombudsman needs to ensure that complaints are properly and thoroughly handled. Prof. McMillan, can you please explain how these tensions are handled in respect of complaints that arise against police and defence?*

**Prof. McMillan:** There are two sources of tensions that I frequently see.

Firstly, there is criticism by police and defence agencies, but also by other government agencies, that the Ombudsman's office does not fully understand the special issues the agencies are dealing with and does not have a proper sense of balance about their priorities and the challenges that confront them.

Agencies will often say—'You have received one complaint, but do you realise how many decisions we made last year?' I always respond—'It doesn't matter. Our role is to deal with individual complaints, and complaints are a wonderful window through which to see the bigger problems of administration'.

There are many examples around Australia and throughout the world of how individual complaints tell us a great deal about an administrative system. For example, the Joint Review the Ombudsman's office undertook with the AFP of the police watch house came from a few complaints that told us there were bigger problems we had to address. The Military Justice Inquiry that I referred to came from half a dozen complaints to members of Parliament and to the Ombudsman's office. Those complaints are individual, but they told us a lot.

The second problem is that when a disagreement arises with an agency, the investigation takes longer to complete. By the time an issue gets onto my desk and I have to resolve it, the file has been open for a long while. Agencies then complain that the issue is stale and we should move on.

I usually reply that the case is only old because we did not get the complaint resolved quickly at the start, and it has reached the stage that the heads of two agencies need to sit down and sort it out. The complaint issue is still important, notwithstanding that it has taken so long to reach us.

Those two sources of tension teach us the need for regular interaction between agencies to understand the issues confronting each other and for discussion at all levels.

My final comment is that we try to resolve those tensions by working at a few levels within the organisation. We have about five levels of contact between my office and other agencies. The five levels are contact by investigation officers, by the Directors of the investigation teams, by Senior Assistant Ombudsmen, the Deputy Ombudsmen, and the fifth level is the Ombudsman personally.

So one of the best ways we resolve complaints is by moving things up and down that chain. Most things start at the investigation officer level, but we emphasise in the office that if things are starting to break down and tensions are arising then the case should be moved to the next level and so on.

My view is that as Ombudsman I should only have to contact the head of an agency two or three times a year to deal with an issue that our organisations haven't been able to resolve. It is very important that there is a strong trust between myself and other agency heads; once a case has got to our level we have to resolve it and we have to trust each other. In short, using all the levels within the organisation is important.

*Q. I have enjoyed these presentations. They present very exciting approaches and we need to work on adapting these to the Papua New Guinea context and lifestyle, which is slightly different from your way of doing things outside. One area I'd like to ask more about is the 'management model' for maintaining professional standards in the Australian Federal Police. Can you explain a little more about the distinction between this approach and a 'discipline-based' model?*

**Det/Supt Hulbert:** The key to a management approach for us in the AFP is to move away from dealing with *all* matters in a rigorous disciplinary manner. Historically, we had within our organisation a Complaints Act, which had very set outcomes. Everything was dealt with through Professional Standards. If someone complained in the workplace about any issue, their complaint would come to Professional Standards and would go through our complaints process.

In contrast now, as Prof. McMillan outlined, some of those issues are dealt with through conciliation, and others are sent out into the workplace for authorised officer investigations. The difference is that we have given powers to authorised people in our workplace to conduct directed interviews on members to ascertain what has happened in order to investigate a complaint effectively. Everything is then put into a report and is sent back to Professional Standards for our team to then adjudicate on and make recommendations.

The change is to recognise that the appropriate area to deal with those minor performance issues, like 'incivility', 'inadequate service delivery', and other minor complaints, is in the workplace. It formalises a process where the Ombudsman and the Commissioner can jointly decide on what issues will fit where under that four-tiered model. The model defines what matters we consider to be minor in nature and it allows those minor complaints to be purely dealt with and managed in the workplace. That's the objective in the managerial and administrative model: to identify what the big issues are, deal with the big issues in a manner that we do currently and recognise the need for that, but deal with the minor matters more in the workplace and more as performance issues and as learning issue.

*Q. Can you describe some of the current initiatives undertaken by the Federal Police in Australia by Professional Standards to investigate complaints that are brought before the internal mechanisms?*

**Det/Supt Hulbert:** In respect to the current initiatives that we are looking at, it's really driven by what is happening in the workplace and the audit of our complaints—what we see coming in. We focus on things jointly with the Ombudsman, such as the watch house review. The watch house review identified a number of areas where we

required improvement in our systems and our processes, for example, to deal with the issue of an excessive use of force in the workplace.

Another initiative is monitoring. Whenever the use of force is applied, we analyse and review and through our integrity assurance area we look at the reports to identify areas that we may need to improve in. We also look at the volume and types of complaints that we have and we conduct analysis around where they are coming from, whether they come from a particular station or from a particular squad within a station or whether there is some sort of a culture in a workplace that we need to address.

They are some of the initiatives we are taking. Also within our investigations we have an area where we are able to raise issues of organisational consideration so when we identify issues out of an investigation, those issues are flagged with the executive. The executive can then take remedial action in their workplace to address those behaviours or practices.

**Q.** *I want to comment that two things came clear out of the presentations. One is that there is strong advocacy for internal mechanisms to be in place. Secondly, there is an emphasis on having on top of that a well functioning relationship between the agency and OCPNG to allow effective external oversight. I'd like to commend the RPNGC for their turn-out here today and I'd also like to explore further the issue of organisational culture and mindsets.*

*I've been in the service for 27 years now and a lot of my counterparts too over the years have seen a decline in the professional and ethical standards of members. We have had some changes in the way we reactively and proactively try to deal with discipline problems in the forces. We are trying to ensure that the number of complaints we receive from the public is reduced through good conduct and so on, but it remains the case that our culture and lifestyle is very different to that in Australia. Would you care to comment further on these issues?*

**Prof McMillan:** I'd like to make a couple of very important points about the importance of developing systems that are adapted to the culture and legal systems of particular countries.

You make an important point that while it is important to speak about the role that ombudsman offices can play, equally it's important not to overstate their importance. If we overstate what they do, it can be just as damaging as having nothing there. I well believe that having an ombudsman's office does not produce better decisions in each agency, just as having courts does not ensure that every decision is made lawfully. But ombudsman and courts are important, and they do make a difference. They are important in addressing the mindset issue that you mentioned; they are important in just reminding people of what the fundamentals of the system are, for reinforcing that there are procedures in place for dealing with problems.

In Australia, notwithstanding that our system has worked well, every now and again we see systems performing very badly. That is why we are still here after thirty years and we will still be here after another thirty years. The problems keep occurring all the time. There is never a guarantee that decisions will be properly made, but equally we see many examples of where having a system and being focused and committed to developing good complaint handling procedures internally and externally does

over time produce results. That explains our important commitment to those objectives.

**Det/Supt Hulbert:** I also wish to acknowledge the comments from both yourself and Chief Superintendent Maru. I think the underlying message is that we recognise that every different police service and indeed every different county faces unique challenges. In PNG you face particular challenges, which I have witnessed, in respect to things like housing. I think that we recognise that there is no quick fix. The significance of everybody coming together at this meeting is that you recognise that this is part of a longer journey and you have already started on that journey in many instances. There is a recognition that partnerships are very important in raising professional standards and behaviours.

These obligations don't just fall to the agencies here, they fall to the whole of government. Yes, it is a long journey, but you do have to form those partnerships to try and create a better opportunity for success and to fix those issues that, as you say, underlie some of the professional standards issues you face. We all recognise the diversity within PNG and the models that you formulate and the MOAs that you enter into obviously will have to be reflective of that. No one knows how to resolve issues in that cultural environment better than a Papua New Guinean.

**Insp/Gen Earley:** The point about the agencies we represent is that we should provide constant scrutiny. All the agencies, but certainly the Defence Force, represents a passing parade of people who come and go constantly. The Defence Force turns over between 8,000–10,000 people a year. The new people who come in represent community attitudes—they are changing all the time. It is not the case that we have a complaints resolution agency, an Ombudsman or an internal affairs unit, that will tackle one particular problem and once they solve it that's the end of the matter. It won't be the end of the matter. These things tend to run in cycles. For that reason there needs to be a permanent presence that can provide that sort of constant scrutiny, although not one that's necessarily overly obtrusive.

## THE GOVERNING BODIES LIAISON PROGRAM

*Ombudsman John Nero*

Ombudsman Nero thanked the previous speakers for raising a number of points that would be very useful to PNG in pointing the way forward.

Ombudsman Nero outlined the legal basis for the work of the Ombudsman in the Constitution—ss 218 and 219—and in the Organic Law.

Ombudsman Nero outlined the work being carried out under the Governing Bodies Liaison Program (GBLP) since 2001.

The program aims to build more effective working relationships between the PNG Ombudsman Commission and PNG Government departments, based on clear ways of working and mutual commitment to improved complaint handling.

The first stage in this work was the nomination by departments of Liaison Officers with whom Ombudsman staff can work in the first instance for the resolution of complaints. The Liaison Officers are a key to the success of the program, and to ensuring that complaints are handled efficiently within agencies.

The second stage saw the release in 2002 of a Practice Guideline, which forms the basis for outreach to other agencies. Over fifty agencies are participating in the program.

One of the benefits of improved internal complaint handling under this system has been that public servants have a clearer understanding of what is expected of them and are more satisfied with decision-making.

The GBLP has been based on the understanding that straightforward administrative problems should be dealt with internally by agencies, simply and without the need for a report by the Ombudsman.

The Ombudsman's power to report is then more focused on instances of wrong conduct and the Commission is able to act as oversight agent, and to recognise that principal responsibility for investigating and resolving complaints lies with the agency themselves.

Ombudsman Nero also outlined the way forward for the GBLP. New Memoranda of Agreement (MOAs) are being established, for example with Defence and statutory authorities, to build on what has been learnt in previous years and to move towards more formalised processes for dealing with categories of complaint.

There will also be an extension of the focus of the GBLP to provinces, and greater consideration of the unique situations of each provincial governing body.

## OPENING THE ROYAL PNG CONSTABULARY TO GREATER PUBLIC SCRUTINY

*Commissioner Gari Baki*

The PNG Police Service is going through a major reform process to open our operations to greater public scrutiny. We want the public to be able to see the service that is provided, and we aim to increase public confidence by allowing external oversight.

The Royal Papua New Guinea Constabulary (RPNGC) is 122 years old, and has had fourteen commissioners since independence. The shift in terminology from police 'force' to police 'service' is symbolic of wider shifts in accountability and governance. Claims against the state cost the people of PNG millions in kina. The answer is to promote responsible, transparent and accountable processes. By increasing transparency our goal is to reduce damage claims against the police.

One major focus of our work will be strengthening provincial internal investigations units. Our aim is to strengthen internal affairs at the provincial level, to ensure that this level of operations is accountable to the Commission, and gives access to the public for complaints. I will be working closely with Mr Maru to strengthen internal affairs. Already three major cases are under consideration.

We also recognise that an external oversight body is necessary to reassure the public that every government agency is accountable. The Memorandum of Agreement (MOA) with the PNG Ombudsman Commission is an instrument to enable effective public scrutiny of the police service. The MOA is a starting point for wider improvements to accountability, and we would like to see it given full effect. We are conducting awareness campaigns in the service so that our officers see that the MOA with the Ombudsman Commission is not something to be feared but rather presents an opportunity to increase accountability, and to build public confidence and cooperation.

As Commissioner I am in strong support of the implementation of the MOA, especially at the provincial level. At next week's Police Conference in Lae we will be making a strong statement of the need for transparency, and further reinforcing the message that the MOA must be a living document. We will also be maintaining a strong focus on the quality of policing in the National Capital District, where it is crucial we improve both the performance and the perception of the police service before moving onto other areas. Maintaining dialogue with the Ombudsman Commission, as well as strengthening transparency and accountability through our Internal Investigations units, will remain critical for us in the RPNGC.

## MANAGING DISCIPLINE AND RAISING PROFESSIONAL STANDARDS IN THE PNG DEFENCE FORCE

*Commodore Peter Ilau*

The first part of a major reform process in the Papua New Guinea Defence Force (PNGDF), the 'build-down', has already been completed. The PNGDF is now undergoing a 're-build' to support the development of a force that is modern and professional. The re-build process aims to support a PNGDF that is independent and able to rely on itself in implementing the Acts, Regulations, Rules, etc that govern its functions.

There are four pillars to the re-build process:

- technology
- outsourcing
- multi-skilling
- quality.

Part of the process around improving quality involves consideration of a Defence Force Ombudsman.

The military does not have a union and the needs of serving officers are complex. Within each service there are different organisational cultures which need to be recognised and managed.

The history of PNG shows the need for this work. Historical events, where Defence force personnel challenged government openly over their terms and conditions or because of poor morale, have clearly demonstrated the need to have a complaint-handling procedure so that these events do not occur again.

Soldiers and civilians clashed in 1963, and soldiers and police clashed again in 1964. In 1972 the PNGDF underwent significant unrest from soldiers. In 1999 soldiers marched to the National Parliament. Experiences on Bougainville further undermined loyalty and discipline, leading in 1997 to the 'Sandline' issue. On 22 March 2001 weapons were lost from armouries. In 2002 again we saw a barrack's mutiny. This was handled internally and 27 soldiers were convicted.

Such events highlighted the need to listen to soldier's grievances, and showed that the handling of industrial grievances had been poorly documented in the military institutions.

My term of leadership will end in 2009. One of my priorities for Defence Force complaint handling is to ensure that the Defence Act is not undermined by the Ombudsman or civil courts. The Military discipline system must be exhausted before external oversight is applied, and Ombudsmen should support the Military Code of Discipline.

The Military Ombudsman should have those agency relationships but also needs strong independent standing within the military, in order to be able to issue independent advice to the commander of the day. Thus we wish to ensure that the external oversight function contributes to, but does not undermine, command, control

and management. We would like to see the Act strengthened to allow Senior Officers to deal more effectively with emerging discipline issues.

The PNGDF is currently facing many court challenges around the issues of Absent Without Leave, and Dishonourable Discharge. At one time we faced 600 cases around the issue of entitlements.

We also strongly support the separation of politics and the military.

PNG faces many serious challenges. By 2000, for example, 50% of the population will be aged nineteen or under.

In summary, the Military Ombudsman:

- should be an independent body
- should have legal qualifications
- have adequate military knowledge
- be committed to minimum external interference
- strengthen policies and processes
- enjoy credibility of command
- be able to provide advice to reduce civil/military legal conflicts
- apply a definition of 'bad soldier' common to both civil and military spheres
- contribute to confidence in the RPNGDF.

To this end, the Military Discipline Code and Defence Act must be strengthened.

## **PNG CORRECTIVE SERVICES PARTNERSHIP WITH THE OMBUDSMAN COMMISSION**

*Commissioner of Corrective Services, Richard Sikani*

Corrective Services is a massive undertaking in PNG, with between 7,000 and 8,000 people passing through 21 institutions every year, overseen by 1,500 staff.

The Corrective Services Department faces a large and increasing volume of complaints. Some are outside of our jurisdiction, relating for example to the term of sentence, but others relate to issues such as mistreatment by Corrective Services staff.

Corrective Services has been a strong supporter of the Ombudsman Commission's Governing Bodies Liaison Program. The Ombudsman Commission currently refers all complaints to Corrective Services management first, because we have found that the practice of investigators directly approaching prisoners and staff outside of proper channels causes a number of problems.

### ***Staff complaints and queries***

Prior to the inception of the Liaison Program staff made their complaints direct to the Ombudsman Commission. The Ombudsman Commission officers visit the Institution and make further investigation by talking to the staff (complainant).

Complaints by staff are mostly related to management issues which they want a body outside of Corrective Services to investigate.

The results of any investigations against Commanding Officers are referred to the Commissioner, and if the matter is criminal in nature, it is referred to the Police.

### ***Detainees complaints and queries***

Prior to the inception of the Liaison Program in 2002 all detainee complaints/queries were sent directly to the Ombudsman Commission. Letters written to the Ombudsman Commission were not opened by Corrective Services staff—unlike ordinary letters sent by detainees, as required under the censorship rules in the Corrective Services Regulation.

### ***Introduction of Corrective Services/Ombudsman Commission Liaison Program***

In 2002, the Corrective Services/Ombudsman Commission Liaison Program commenced. With the introduction of this program two senior officers at Corrective Services headquarters were appointed. One officer is responsible for complaints from detainees and the other for complaints from staff. They are known as Liaison Officers.

### ***Procedure in dealing with complaints***

Complaints received by the Ombudsman Commission from staff or detainees are referred directly to the respective Liaison Officer. The Liaison Officers investigate the complaints or queries and make their response to the Ombudsman Commission.

This procedure was designed to reduce the time taken to deal with trivial issues, and ensures that management at both Corrective Services and the Ombudsman

Commission are informed of important issues raised. This process is thus fully in accordance with the Law and Order Sectoral Approach Strategy.

Most complaints from detainees relate to claims of police brutality during arrest, lack of adequate diet in gaols, assaults by officers and lengthy periods in detention cells.

### **Statistics**

The following statistics show the number of complaints referred by the Ombudsman Commission to Corrective Services by both staff and detainees since the inception of the Liaison Program in 2002:

<b>Year</b>	<b>Staff</b>	<b>Detainees</b>
2002	57	0
2003	43	3
2004	69	2
2005	33	3
2006	33	1
2007	35	0

We find that the Corrective Services/Ombudsman Commission Liaison Program is working well as most of the complaints or queries do not re-surface once they are dealt with.

A lot of these are minor cases, and we also have some concerns around false and vexatious complaints. There are a number however of cases relating to human rights of prisoners, and a number of these are in the courts. Corrective Services is also working with police on a number of cases. Our experience has shown us a clear need to strengthen the role of the Ombudsman Commission in relation to Corrective Services complaints, in particular, to recognise which complaints are valid and which are self-motivated. We are currently looking to appoint liaison officers to each of the 21 corrective institutions in PNG.

## THE PROVINCIAL AFFAIRS DEPARTMENT—COORDINATING TO IMPROVE PROFESSIONAL STANDARDS

*Deputy Secretary, Provincial Affairs Department, Mr Vali*

The Provincial Affairs Department has 79 officers working to cover 20 provinces, 89 districts and 6,300 local governments. The whole-of-government approach is central to the way we work.

A large volume of the complaints we see relate to misuse of grants, and to terminations of employment.

As the Provincial and Local Monitoring Authority, we have established a central coordinating body, Provincial and Local Level Service Monitoring Authority (PLLSMA), made up of all central and agency heads, to share issues and seek action from relevant authorities.

This body works with the Provincial Coordinating Monitoring Committee (PCMC), which assists in prioritising department resources across districts.

We have also piloted the Provincial Performance Improvement Initiative (PPII), which works to ensure that development plans complement corporate plans and clearly set out responsibilities for tasks to extend services to areas of need.

Using MOUs with Governors and Provincial Administrators, the PPII is linked to a system of incentive payments.

We support this process through three pilot, co-located offices for project management, in East Highlands, East New Britain and the Sepik.

These offices support projects that cannot be met by internal budgets, making available up to one million kina.

Through these efforts we are seeing that proper planning and thorough monitoring and evaluation of projects, cuts down the number of complaints the department receives.

Our performance management program sets out basic standards in key sectors such as education and health.

We are also working in partnership with the Ministry of Finance on Strengthening Provincial Internal Audits (SPIA).

Where weaknesses are detected or complaints are received we carry out our own investigations under the Act.

The Corporate Plan is the key to our internal monitoring. Coordination through meetings such as PLLSMA, which is open to all agencies, is the foundation of our efforts to better deliver services.

## WAY FORWARD—DISCUSSION

**Theme:** *We have heard described the Australian model for internal and external complaint investigations for disciplined forces. How can this apply to PNG?*

**Prof. McMillan:** It is heartening to see the excellent leadership shown here today, particularly by Police, Military and Corrective Services.

There are perhaps six or seven different models for a Military Ombudsman in use around the world. Some have it as a separate office. In Australia the office is merged with the office of Commonwealth Ombudsman, for the following reasons:

- to cover the country—the office of the Commonwealth Ombudsman has eight offices and 150 staff
- using an existing office provides the benefit of established complaint management systems and expertise
- we have a very strong Inspector-General of the Australian Defence Force, which serves in part the Military Ombudsman role.

In other countries the office of Military Ombudsman is separate, but again there are special reasons. For example:

- Canada has no national Ombudsman
- citizens in the United Kingdom can only approach their Ombudsman through a Member of Parliament.

We would recommend you talk about the various options in more detail to find one most suitable for your circumstances.

**Insp/Gen Earley:** I too have been very impressed by the presentations today. I would make only a couple of points. Firstly, it is important to have a robust internal system. The two systems, internal and external, do complement each other. External oversight provides reassurance and adds to the credibility of the internal system.

Reputation management is very important. One incident can undo years of good work, and it can be very difficult to respond. If an external agent can respond, commenting on your systems at a broader level than just one incident, it is that much more credible. Reputation also impacts on the quality of your recruitment.

It is not impossible to arrive at a common thread of what is right and proper, despite different organisational cultures. A single organisation or body can represent these agencies.

**Det/Supt Hulbert:** I too would like to acknowledge the commitment shown to good internal complaint-handling systems and good external oversight, and to echo the comments on reputation management. The Royal Papua New Guinea Constabulary has taken a significant step in internal systems for professional standards, and I would particularly support their stance that those who wear 'one uniform' share one uniformly high standard, across cultural barriers. It is true that there is no immediate fix to issues of professional standards; it is work that must be maintained all the time, in every police service.

## Questions and answers

**Q:** *What are the arrangements for state police forces?*

**A:** In every Australian state there is an oversight body, but arrangements differ.

**Q:** *(Mr Fraser Pitpit, Public Solicitor). I would like to support the speakers today. We have nothing to fear from an oversight body if we act within the law. My question is: 'Is the Ombudsman prepared to handle the increase in volume of complaints from the provinces which will accompany the signing of this and other similar MOAs?'*

**Chief Ombudsman Ila Geno:** Part of our approach to handling an expected increased volume of complaints from the provinces is to support very strong internal complaint-handling systems. We are advocating an equal partnership approach whereby agencies maintain ownership over their complaints. Ultimately, if such an approach is successful, the Ombudsman Commission will receive fewer complaints.

We are all agreed that an oversight agency is essential to ensure that we can be proud of our agencies. We have taken the disciplined services as the best starting point to model this approach to other public service organisations, because the disciplined services take a less casual approach.

We recognise that when we take complaints we need to understand the organisational culture. We also need to uphold the Constitution.

**Ombudsman Nero:** The idea of the MOA with agencies is that we support robust internal complaint-handling systems. Liaison officers within agencies have a critical role in following up on complaints.

**Mr Maru, Professional Standards, RPNGC:** The objective of the MOA is not that the Ombudsman will investigate all complaints and professional standards matters. What we are seeking is to build around our liaison officers an internal affairs team, which functions effectively so that the Ombudsman provides only oversight, and we retain primary carriage for professional investigations and responses.

**Ombudsman Kamburi:** It is important to note that not all complaints can be investigated. If other avenues are available, the Ombudsmen can refer those complaints back to the relevant department until all the proper channels are exhausted. This is a voluntary partnership arrangement.

**Commodore Ilau:** Defence is currently going through a process of reconfiguring the internal systems. We need to make the two ends of the bridge firm. Part of this work is to ensure that our robust internal systems are fully understood by the Ombudsman Commission. We recognise that the Ombudsman Commission has an important role to play in helping government agencies to be responsive to the needs of the people.

**Mr John Hevie, Ombudsman Commission:** The Ombudsman Commission has done considerable 'stocktaking' work through the Governing Bodies Liaison Program to build an understanding of what systems each agency currently has in place to deal with complaints and manage professional standards. Considerable groundwork is required to put in place a MOA with an agency. The MOA is a written agreement to underpin a strong working relationship. To be successful, the MOA process needs to be initiated by the agency. Before the MOA can go ahead we need to look at what

models are working and what models are not working. There are several steps in the process. We need to find out what the agency wants, to find a model that will work in their specific circumstances, develop an MOA, and continue after the MOA is signed to work on ways to strengthen the relationship.

## CLOSING REMARKS

**Prof McMillan:** It has been a great honour to speak to this workshop today. The Ombudsman oversight model needs to adapt over time. This requires a constant conversation of the kind we have had here today, to ensure Ombudsmen can continue to adjust their ways of working to the needs of agencies and of the public. We would like to congratulate the PNG Ombudsman Commission for taking this approach to their work with the disciplined services, and assure you of our continued support now and into the future.

**Chief Ombudsman Ila Geno:** Thank you to all those who have attended today. We are committed to continuing our work with each of your agencies to ensure that we can support more effective internal complaint handling and effective external oversight.

## ABBREVIATIONS

ACLEI	Australian Commission for Law Enforcement Integrity
ADF	Australian Defence Force
AFP	Australian Federal Police
APIF	Australasian Police Integrity Forum
AusAID	Australian Agency for International Development
CDF	Chief of Defence Force
CRAMS	Complaints Recording and Management System
GBLP	Governing Bodies Liaison Program
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
OC	Ombudsman Commission
PCMC	Provincial Coordinating Monitoring Committee
PLLSMA	Provincial and Local Level Service Monitoring Authority
PNG	Papua New Guinea
PNGDF	Papua New Guinea Defence Force
PPII	Provincial Performance Improvement Initiative
PRS	Professional Standards
PRSOC	Professional Standards Operations Monitoring Centre
RPNGC	Royal Papua New Guinea Constabulary
SPIA	Strengthening Provincial Internal Audits