

Loss of Commissioner's Confidence

A special report to Parliament under
section 31 of the *Ombudsman Act*

August 1999

NSW Ombudsman

The Hon. Meredith Burgmann MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon. John Murray MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Madam President and Mr Speaker,

I submit a report pursuant to section 31 of the *Ombudsman Act*. In accordance with the Act I have provided the Minister for Police with a copy of the report.

I draw your attention to the provisions of section 31AA of the *Ombudsman Act* in relation to the tabling of the report and request that you make it public forthwith.

Yours faithfully,



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NSW Ombudsman
August 1999

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Introduction

The purpose of this special report is to make public my concerns regarding the operation of the ‘loss of commissioner’s confidence’ process.

In 1996 the Royal Commission into the New South Wales Police Service proposed that the Commissioner of Police be provided with new legislative powers which would allow him to remove from the Service those officers in whom he no longer had confidence.¹

The resulting loss of commissioner’s confidence provisions (**see Annexure A**) became law in late 1996. These gave the Commissioner what was intended to be a relatively quick and efficient means of removing unsuitable police officers from the Service, having regard to their ‘competence, integrity, performance or conduct’.²

In May 1998 this Office nominated as a key issue the need to identify ‘what standards should be applied in determining the level of misconduct by a police officer sufficient to warrant the removal of the officer from the Police Service’.³

The contemporary case study which forms the basis of this report indicates that the Service is still struggling to come to terms with this difficult threshold issue. The case study also demonstrates serious and on-going problems in the area of police internal investigations — both in terms of delay and the Service’s failure to sufficiently investigate key evidentiary issues.

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1. Royal Commission into the New South Wales Police Service, *Interim Report — Immediate Measures for the Reform of the Police Service of New South Wales*, November 1996, p.4.
 2. *Police Service Act 1990*, s.181D(1).
 3. NSW Ombudsman special report to Parliament, *Police Adversely Mentioned at the Police Royal Commission*, May 1998, p.6.

The origins of the loss of confidence provisions

Prior to 1996, the *Police Service Act* only provided for the dismissal of officers from the Service following proof of a departmental or criminal charge. This was seen as a difficult and time-consuming means of removing officers whose conduct was of an unsatisfactory standard. Furthermore, in the absence of any conviction, officers of concern could not be removed.

It was intended that the new power invested in the Commissioner should be managerial as opposed to disciplinary in nature, and that it should no longer be dependent upon the proving of a criminal or departmental charge.

The need for such a power was predicated upon the following:

- the community's expectation of high standards in its police officers;
- the principle that the Police Commissioner is entitled to expect that members of the Service will perform to a high standard of integrity and competence, and should not be expected to retain any person in whom he has lost confidence;
- the fact that the continued retention of those members who do not enjoy the Commissioner's confidence is a canker within the Service, and a focus of disaffection and corruption.⁴

In commenting on the rationale behind the new loss of confidence provisions, the Royal Commission stated:

At the end of the day it is the Commissioner who must take responsibility for inappropriate performance of the Service. It follows that it is he who should be able to maintain a team in whom he has confidence. This principle flows down through the ranks. A sergeant should not be required to lead those who are not worthy of the Commissioner's confidence, nor should an officer have to work with a colleague if that colleague is not deserving of the Commissioner's confidence.⁵

4. Royal Commission into the New South Wales Police Service, *Interim Report — Immediate Measures for the Reform of the Police Service of New South Wales*, November 1996, p.4.

5. Royal Commission into the New South Wales Police Service, *Final Report Volume II: Reform*, May 1997, p.353.

Police Service's loss of confidence guidelines

The Service document entitled *Commissioner's Confidence Process Guidelines* can be found in its entirety in **Annexure B** of this report. A summary of these guidelines for applying the loss of confidence provisions, provided to this Office by the Commander of Internal Affairs on 5 February 1999, is set out below:

Any determination pursuant to section 181D(1) of the *Police Service Act*, to remove an officer from the Service, is entirely within the province of the Commissioner ...

In considering whether to issue a Notice pursuant to s.181D(3)(a), or alternatively a Performance Warning Notice, the Commissioner is provided with a submission detailing the facts of the issue/s relative to the officer's integrity, conduct, performance or competence which gave rise to the nomination. The submission may also include matters of a similar nature linked to the contemporary behaviour of the officer. This submission or 'profile' also details the Police Service action in response to the issue/s which brought the officer to notice.

Should the Commissioner determine to issue a notice, the officer is allowed at least 21 days in which they have the opportunity to respond in writing to the Commissioner. Any response provided by the officer, together with an assessment of that response, is forwarded to the Commissioner for consideration as to whether the officer should be removed. The Commissioner, when issuing an Order for the removal of the officer or alternatively, the issue of a Performance Warning Notice (Order level), takes into account the profile, grounds notice, the officer's response and the assessment of the response in making his decision. ⁶

6. Letter from Commander Brammer to Ombudsman dated 5 February 1999.

Case study

Senior Constable X was considered for removal from the Service under the loss of confidence provisions in 1998. While X's full complaints profile can be found in **Annexure D** of this report, a summary of his case is outlined below.

In 1996, X was convicted of *stalking, intimidation with intent to cause fear* in relation to his harassment of a former girlfriend. X's criminal conviction was upheld on appeal, and the officer was placed on a six month good behaviour bond.

The police investigation into X's activities also found that he had left his patrol in 1996, while on duty and without permission, in order to spy on his former girlfriend's premises from a police vehicle. In addition, it was found that X had unlawfully accessed details of the victim's criminal record on the Service computer.

X again came to notice for unrelated matters in 1996 and 1997. Firstly, it was recommended that the officer be admonished by his district commander for having made inappropriate advances to a 16 year-old girl. Secondly, an investigation found X had improperly attempted to obtain a police brief of evidence for a court matter on behalf of a friend.

This latter incident occurred while X was still under suspension for earlier misconduct, and resulted in the officer's local area commander recommending that X be terminated under the provisions of Section 181D.

It is also mandatory under Service guidelines for commanders to nominate officers for consideration under s.181D once they are charged with a criminal offence. In X's case, the process would therefore have been triggered at the time he was charged with *stalking*.

Such a policy is consistent with the presumption of dismissal outlined in the Service *Code of Conduct and Ethics*:

If a criminal offence is proven against you in a court of law, there is a presumption of removal from the Service. Examples include offences such as dishonesty, assault, unlawful access to or use of confidential information, supply of illegal substances and driving under the influence of alcohol. ⁷

All of X's conduct outlined above was considered by the Commissioner with a view to the appropriateness of X remaining a member of the Service.

In 1998 the Commissioner reached his decision, determining that X be given one more chance⁸ and arranging for the officer to be issued with a performance warning notice in lieu of removal from the Service.

7. NSW Police Service, *Code of Conduct and Ethics*, January 1997, p.4.

8. NSW Police Service, *Commissioner's Comments re Section 181D Notices — Senior Constable [X]*, 24 November 1998.

Prior complaints history of Senior Constable X

Senior Constable X joined the NSW Police Service in 1987, and first came to adverse notice in 1990 when he became involved in a brawl at the Bathurst Leagues Club. No action was taken by the Service against any of the persons involved due to conflicting accounts about what had occurred.

X came to further notice in 1992 for failing to report an allegation of police misconduct made by a member of the public. This resulted in the officer being reminded by his patrol commander of his obligation to report complaints about police.

In the same year, the Service found that X engaged in a sexual relationship with a female drug offender he had arrested while she was still reporting to his police station on bail. After pleading guilty to one departmental charge of *misconduct*, X was fined \$1,000 in respect of this matter.

In 1994 the Service found that X had harassed the internal witness who reported his improper relationship with the female drug offender referred to above. X was admonished by his patrol commander in respect of this misconduct.⁹

Also in 1992, X had pleaded guilty to two further departmental charges of *misconduct*. These charges related to X's unlawful access to and disclosure of confidential police information, and resulted in the officer being fined \$2,000.

An internal investigation in 1993 found X had placed registration plates from another vehicle onto his own unregistered and uninsured car. X admitted doing this in order to escape police detection when driving to work at his police station. X was summonsed for the offences of *plates calculated to deceive*, *drive unregistered motor vehicle* and *drive uninsured motor vehicle*.

9. Section 173(2) of the *Police Service Act 1990* provided for 'admonishment' of an officer in cases where, although the Commissioner was satisfied that the officer's conduct was not satisfactory, the preferment of a departmental charge would not be justified.

Prior complaints history not considered by the Commissioner

None of the misconduct outlined above in X's prior complaints history was included amongst matters considered by the Commissioner when assessing the officer's suitability to remain in the Service.

The omission of such matters from the profile provided to the Commissioner for consideration was in accordance with his direction `that matters which are historical in nature or which have been previously dealt with by the Service will not be taken into account´.¹⁰

Commissioner Ryan commented further on the current state of the loss of confidence process:

Primarily, the process has been enhanced to reflect my personal requirements for gravity and recency to be the pivotal issues and the observations of the Industrial Relations Commission¹¹ ...

... The loss of commissioner's confidence process was based upon the intent and philosophy of the Royal Commission to have a simple and effective mechanism to manage the removal of officers from the Service. However, the process has evolved to become complex and legalistic which is onerous and is not reflective of the intentions of the Royal Commission.¹²

As can be seen from the Commissioner's comments, and the Service's *Commissioner's Confidence Process Guidelines*, prior complaints histories of officers nominated for removal from the Service will only be considered when they involve `matters of a similar nature linked to the contemporary behaviour of the officer´.¹³ Exactly what would constitute such a `linked´ matter is unclear.

It is my view that all information relevant to an officer's fitness to continue as a member of the Service should be considered by the Commissioner as part of the loss of confidence process. I believe such information should include, but not be limited to, all adverse findings made against an officer arising from a complaint unless:

- the finding relates to a trivial issue; or
- a review of the investigation indicates the finding was based on inadequate evidence; or
- the Service had previously given a formal assurance that the finding would not be further held against the officer.

10. Letter from Commissioner Ryan to Ombudsman dated 13 May 1999.

11. Any decision made by the Commissioner to remove an officer from the Service pursuant to s.181D of the *Police Service Act 1990* may be appealed to the Industrial Relations Commission.

12. Letter from Commissioner Ryan to Ombudsman dated 13 May 1999.

13. NSW Police Service, *Commissioner's Confidence Process Guidelines*, 18 February 1998.

Deficiencies and delays associated with the investigations into X's conduct

The Service's investigations into the complaints about X exceeded the statutory time limit by almost two years. Repeated formal requests by this Office for the Service to provide status reports on the progress of the investigations were ignored.

It was this failure by the Service to meet its legislative obligations which led the Office to initiate its own investigation into the manner in which the Service was dealing with the complaints about X.

Crucial avenues of investigation were never explored by the Service, and the various complaints concerning X were dealt with in isolation without any coordinated investigative strategy being employed.

In acknowledging 'a number of deficiencies in the investigations which were undertaken by the various officers',¹⁴ the Commissioner declined to pursue the issue of the accountability of individual investigators, supervisors, commanders and administrative staff responsible for the deficiencies and delays identified by this Office:

... I do not believe there would be any benefits from the Service conducting a review of each investigation, given the investigations were undertaken to establish the validity or otherwise of the allegation. In essence, the outcome reached has been brought to conclusion by the issue of a Performance Warning Notice to Senior Constable [X] in those relevant matters and in the disciplinary action taken in the past. The allocation of significant resources to revisit the investigations would not alter the outcome of the action taken in relation to the officer, particularly given its place in history ...

This particular case has been a learning experience for the investigators involved and the Service generally. Whilst I certainly acknowledge there were significant delays in the management of the investigations, there were a number of factors which contributed to the situation ... senior Commanders were transferred and another senior officer entered sick report prior to his retirement. Commanders ... have ... been provided with a copy of your report and ... are now conversant with the deficiencies which you have identified and the criticisms detailed as a consequence of your analysis ...¹⁵

The Commissioner referred to new complaint handling procedures being trialed within the Service since the investigation into X's conduct, and concluded that 'the Service has now moved on'.¹⁶ Given the general circumstances and the passage of time, I agree that little would be achieved by now pursuing this aspect of the matter any further.

14. Letter from Commissioner Ryan to Ombudsman dated 13 May 1999.

15. *ibid.*

16. *ibid.*

While the Service has recently taken initiatives to address some of the problems identified in this report, this Office continues to witness poorly handled and tardy police internal investigations. It is essential for the Service to lift its game, and to hold senior managers and investigators accountable for their failures, in this important area.

Loss of confidence statistics

As part of the investigation into this matter, this Office sought statistics from the Service on the use of the loss of confidence process. As of 1 February 1999, only 21 officers out of a total of 465 nominated for consideration had been removed from the Service pursuant to s.181D. A further 69 officers had resigned while under consideration, 17 following the service of a s.181D notice. Another 40 officers had been issued with a performance warning notice in lieu of dismissal. (See **Annexure C** for a more detailed breakdown of statistical data relating to loss of confidence decisions.)

Commissioner voices concern over current s.181D process

The loss of confidence process, as it currently stands, appears to be based on a fear that the Industrial Relations Commission will impose stringent limits on the Commissioner in exercising his discretion. Indeed, the Commissioner has advised that the standard of proof required in relation to evidence upon which the Service may rely to remove an officer appears to be no less than beyond reasonable doubt.¹⁷

Commissioner Ryan adds:

Quite clearly, this was not the intention behind the Royal Commission's recommendation for the introduction of the s.181D process, nor my understanding of the powers conferred by the Act. Discussions between the Industrial Relations Commission and my legal advisers have resulted in a similar concern.¹⁸

The fact is that the Industrial Relations Commission is yet to hand down a definitive ruling on many of the issues surrounding s.181D decisions. In particular, no evidence has been put before me to date by the Service which would suggest that the Industrial Relations Commission might object to the Commissioner considering relevant historical information.

17. Letter from Commissioner Ryan to Ombudsman dated 12 August 1999.

18. *ibid.*

Conclusions and recommendations

In its final report on the Service's investigation of X, this Office criticised the process which led to X being served with a performance warning notice for failing to take into account relevant aspects of the officer's prior complaints history.

In responding to my final report, Commissioner Ryan advised that a commissioner's confidence process review project is under way 'aimed at aligning the Commissioner's Confidence process with a strategic human resource management context to address conduct, performance and integrity issues'.¹⁹

With regard to those aspects of X's complaints history not included in the s.181D profile put before him, but later brought to his attention by this Office, the Commissioner advised:

Legal advice ... concludes that it would be unreasonable for me to base any subsequent decision upon material which should have been known to me at the time of my decision to issue Senior Constable [X] a Performance Warning Notice.²⁰

In further correspondence, the Commissioner added:

I too, believe that this officer should no longer be a member of the Service but, even in the light of the additional, to me that is, information in your report, I do not believe that the decision can now be reversed.

Hopefully, the procedures now being discussed to improve the profile and details provided to me, coupled with enhanced and speedier investigations, will not allow such a circumstance to occur again ...²¹

I appreciate the fact that the omission of significant material from the s.181D profile provided to the Commissioner has, as legal advice indicates, created difficulty for him in revisiting his decision not to remove the officer. It is to be hoped that the new procedures referred to by the Commissioner will address the need for the inclusion of prior complaints histories, where relevant, in the profiles of officers being considered for removal under s.181D.

I share the Commissioner's concern that the s.181D process may have become unnecessarily complex and legalistic. For that reason, in my final report about Senior Constable X, I recommended that key stakeholders meet at the earliest opportunity to discuss changes that may be needed to the loss of confidence process.

While seeing 'significant merit'²² in this proposal, the Commissioner felt that such a meeting would be most beneficial after finalisation of the commissioner's confidence process review project and 'the specific outcome of appeals now before the Industrial

19. *ibid.*

20. Letter from Commissioner Ryan to Ombudsman dated 13 May 1999.

21. Letter from Commissioner Ryan to Ombudsman dated 12 August 1999.

22. *ibid.*

Relations Commission'.²³ It remains to be seen if these cases currently before the Industrial Relations Commission will clarify all outstanding issues relating to the exercise of the Commissioner's discretion under the s.181D process.

Accordingly, I recommend that:

- the Commissioner facilitate prompt completion of the current project reviewing the present s.181D guidelines, to ensure that overly-restrictive limits are not imposed regarding the nature of information that may be put before him when considering officers for removal. In particular, the s.181D guidelines should ensure that, where relevant, officers' prior complaints histories are taken into consideration in any determinations under the process; and
- key stakeholders in the loss of confidence process meet in early 2000 to discuss ways of streamlining the process. I expect that by this time the review project would be complete and the outcome of the appeals to the Industrial Relations Commission would be known. In any event, I believe productive discussions should be able to take place even if there are procedural or legal issues not fully resolved. If necessary, these discussions should examine the need for legislative change.



Irene Moss AO

NSW Ombudsman

23. *ibid.*

Annexure A: Extract from the *Police Service Act 1990*

Division 1B Summary removal of police officers in whom Commissioner does not have confidence

181D Commissioner may remove police officers

- (1) The Commissioner may, by order in writing, remove a police officer from the Police Service if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct.
- (2) Action may not be taken under subsection (1) in relation to a Deputy Commissioner or Assistant Commissioner except with the approval of the Minister.
- (3) Before making an order under this section, the Commissioner:
 - (a) must give the police officer a notice setting out the grounds on which the Commissioner does not have confidence in the officer's suitability to continue as a police officer, and
 - (b) must give the police officer at least 21 days within which to make written submissions to the Commissioner in relation to the proposed action, and
 - (c) must take into consideration any written submissions received from the police officer during that period.
- (4) The order must set out the reasons for which the Commissioner has decided to remove the police officer from the Police Service.
- (5) The removal takes effect when the order is made.
- (6) (Repealed)
- (7) Except as provided by Division 1C:
 - (a) no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this section, and
 - (b) no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this section.

In this subsection, **tribunal** means a court, tribunal or administrative review body, and (without limitation) includes GREAT and the Industrial Relations Commission.

- (7A) Nothing in this section limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.
- (7B) Nothing in Division 1C limits or otherwise affects the Commissioner's power to vary or revoke an order in force under this section.
- (8) For the purposes of this Act, removal of a police officer from the Police Service under this section has the same effect as if the police officer had resigned (or, in the case of a police officer who is of or above the age of 55 years, had retired) from the Police Service.
- (9) The Commissioner may take action under this section despite any action with respect to the removal or dismissal of the police officer that is in progress under some other provision of this Act and despite the decision of any court with respect to any such action.

Division 1C Review of Commissioner's decision under Division 1B

181E Review generally

- (1) A police officer who is removed from the Police Service by an order under section 181D may apply to the Industrial Relations Commission (referred to in this Division as the **Commission**) for a review of the order on the ground that the removal is harsh, unreasonable or unjust.
- (2) An application under this section does not operate to stay the operation of the order in respect of which it is made.
- (3) Except to the extent to which the regulations otherwise provide, it is the duty of the Commissioner to make available to the applicant all of the documents and other material on which the Commissioner has relied in deciding that the Commissioner does not have confidence in the applicant's suitability to continue as a police officer, as referred to in section 181D (1).

181F Proceedings on a review

- (1) In conducting a review under this Division, the Commission must proceed as follows:
 - (a) firstly, it must consider the Commissioner's reasons for the decision to remove the applicant from the Police Service,
 - (b) secondly, it must consider the case presented by the applicant as to why the removal is harsh, unreasonable or unjust,
 - (c) thirdly, it must consider the case presented by the Commissioner in answer to the applicant's case.
- (2) The applicant has at all times the burden of establishing that the removal of the applicant from the Police Service is harsh, unreasonable or unjust. This subsection has effect despite any law or practice to the contrary.
- (3) Without limiting the matters to which the Commission is otherwise required or permitted to have regard in making its decision, the Commission must have regard to:
 - (a) the interests of the applicant, and
 - (b) the public interest (which is taken to include the interest of maintaining the integrity of the Police Service, and the fact that the Commissioner made the order pursuant to section 181D (1)).

181G Application of Industrial Relations Act 1996 to reviews

- (1) The provisions of the *Industrial Relations Act 1996* apply to an application for a review under this Division in the same way as they apply to an application under Part 6 (Unfair dismissals) of Chapter 2 of that Act, subject to this Division and to the following modifications:
 - (a) section 83 (Application of Part) is to be read as if subsection (3) were omitted,
 - (b) section 85 (Time for making applications) is to be read:
 - (i) as if a reference to 21 days in that section were instead a reference to 14 days, starting from the day on which the applicant is given a copy of the order to which the application relates, and
 - (ii) as if subsection (3) were omitted,

- (c) section 86 (Conciliation of applications) is to be read as if it provided that a judicial member of the Commission who is involved in any endeavour to settle the applicant's claim by conciliation must not subsequently be involved in the conduct of proceedings on the review,
 - (d) section 89 is to be read as if subsection (7) (Threat of dismissal) were omitted,
 - (e) section 162 (Procedure generally) is to be read as if the requirement of subsection (2) (a) of that section that the Commission is to act as quickly as is practicable were instead a requirement for the Commission to commence hearing the application within 4 weeks after the application is made,
 - (f) section 163 (Rules of evidence and legal formality) is to be read as if it provided that new evidence may not be adduced before the Commission unless:
 - (i) notice of intention to do so, and of the substance of the new evidence, has been given in accordance with the regulations under this Act, or
 - (ii) the Commission gives leave.
- (2) The Commission may grant leave as referred to in subsection (1) (f) (ii) in such circumstances as it thinks fit and having regard to the nature of proceedings under section 181F, and without limiting the generality of the foregoing, the Commission must grant leave in the following circumstances:
- (a) where the Commission is satisfied that there is a real probability that the applicant may be able to show that the Commissioner has acted upon wrong or mistaken information,
 - (b) where the Commission is satisfied that there is cogent evidence to suggest that the information before the Commissioner was unreliable, having been placed before the Commissioner maliciously, fraudulently or vexatiously,
 - (c) where the Commission is satisfied that the new evidence might materially have affected the Commissioner's decision.

181H Commissioner and members of Commissioner's Advisory Panels compellable witnesses only by leave

- (1) In any proceedings before the Commission under this Division, neither the Commissioner nor any member of a Commissioner's Advisory Panel is compellable to give evidence in relation to the exercise of the Commissioner's functions under section 181D unless the Commission gives leave.
- (2) The Commission may give such leave only if it considers that extraordinary grounds exist that warrant leave being given.
- (3) In this section, **Commissioner's Advisory Panel** means a panel established by the Commissioner to assist in the exercise of the Commissioner's functions under section 181D.

181I Matters relating to evidence

- (1) Section 128 (Privilege in respect of self-incrimination in other proceedings) of the *Evidence Act 1995* applies to a witness giving evidence before the Commission in proceedings under this Division in the same way as it applies to a witness giving evidence in proceedings before a court, and so applies as if a reference in that section to a court were a reference to the Commission.

- (2) Subject to subsection (1) of section 163 (Rules of evidence and legal formality) of the *Industrial Relations Act 1996*, nothing in this Division limits or otherwise affects the admissibility in evidence in proceedings before the Commission under this Division of any transcript of the proceedings of any other court or tribunal.

181J Application of Division to both reviews and appeals from review decisions

This Division applies not only to proceedings before the Commission on a review under this Division but also to proceedings before the Full Bench of the Commission on an appeal from a decision of the Commission under this Division.

Division 1 D Constitution of Industrial Relations Commission for the purposes of proceedings under this Part

181 K Constitution of Commission for the purposes of Division 1C

- (1) A review under Division 1C is to be conducted before the Industrial Relations Commission (referred to in this Division as the **Commission**) constituted by a single judicial member.
- (2) An appeal from the decision of the Commission on a review under Division 1C is to be conducted before a Full Bench of the Commission constituted by 3 judicial members.
- (3) Proceedings on a review under Division 1C, or on an appeal from the decisions of the Commission on a review under Division 1C, are taken not to be proceedings of the Commission in Court Session.

Annexure B: Commissioner's Confidence Process Guidelines

Commissioner's Confidence Process Guidelines

Section 181D of the Police Service Act 1990

This document should be read in conjunction with the Commissioner's Confidence Process Flowchart.

Officer nominated for consideration under s.181D

Who can nominate an officer for consideration?

- Nomination is received from within the Police Service or external agencies such as the Ombudsman's Office, Police Integrity Commission or New South Wales Crime Commission.

What are the key criteria that brings an officer to notice?

- Clearly identified deficiencies in the areas of conduct, integrity, performance or competence that are linked to a contemporary issue.

What is required to support a nomination for consideration?

- A nomination should contain:
 - A summary of issue(s) which brought the officer to notice.
 - Matters of a similar nature linked to the contemporary behaviour of the officer.
 - Current status of the officer including duty type and operational status (suspended/restricted).
 - Details of managerial responses leading to this action. *This is particularly relevant to performance and competence issues which require a clear document trail detailing the remedial processes implemented (for example, Employee Management/Performance Management Scheme).*
- This nomination should be forwarded to the Commander, Probity Assessment Unit (PAU) under the cover of a s.181D Check List for Commanders/Managers available from the PAU.

Referred to Commander, Probity Assessment Unit (PAU) for initial assessment

What is the role of the PAU in the initial assessment?

- Facilitates a clinical and critical assessment of the information and considers the type of matter(s) (for example; conduct or performance) and cogency of grounds, relevant supplementary information, the risk to the organisation/individual. Recommendations are made as to the suitability of the officer as a candidate for the s.181D process and the priority of the Service's response.

(Current: 18 February 1998)

Initial assessment reviewed and prioritised. Decision to progress

Who reviews and prioritises the initial assessment and makes the decision to progress or not to progress?

- The Commander, PAU, Research Manager and Senior Analyst, Strategic Assessment and Security Centre (SASC).

What happens as a result of a decision not to progress?

- If the officer is found to be inappropriate for further consideration, options are (*refer to shaded box on flow chart*):
 - Return papers to the field for the implementation of an appropriate managerial response (Employee Management/Performance Management Scheme).
 - Preparation and service of a Performance Warning Notice (PWN) signed by the Commander, Internal Affairs where a decision is made not to continue with the process (the Commissioner will issue a PWN where he elects not to exercise his power under s181D). The Commander, PAU arranges service of the PWN. Grounds disputed by the officer will be, where practicable, resolved at local level.
 - Other appropriate action.

What is a PWN?

- A PWN is a notice served on an officer who has been considered under the provisions of s.181D but a decision has been made not to continue the process or where the Commissioner elects not to exercise his power. A PWN includes:
 - The grounds that brought the officer to notice
 - A clear indication of the serious nature of the issues
 - The required level of conduct and/or performance
 - The consequences should the officer again come to notice under s18 1D
 - The role of the officer's Commander/Manager in providing an appropriate managerial response.

What happens as a result of a decision to progress?

- If the officer is found to be appropriate for further consideration, a Profile, s.181D Notice and PWN are prepared by the PAU. The Commander, PAU, arranges service of a letter which notifies the officer that they are being considered under s.181D. Once informed the officer's Commander/Manager must take managerial action in relation to the officer's operational duty/functions. A case officer from Health Services will be advised and will contact the officer.
- The matter is initiated on the Complaints Information System (CIS) which is for record management purposes only when either the Review Team determine that a PWN is to be served or that the matter should be progressed (enhancements to the CIS will be undertaken prior to the implementation of the recording process).

(Current: 18 February 1998)

Profile, s.181D Notice and PWN prepared by PAU

What is a Profile and s.181D Notice?

- A Profile is a thoroughly researched document that details the officer's Service history and the facts relating to the matter being considered. A s 18 1 D Notice is the document that advises the officer of the grounds for which they may be considered and provides the opportunity for the officer to respond to the issues raised. These documents are forwarded to the Commander, PAU.
- Legal/industrial advice may be sought in the preparation of documents.

Decision by Commander, PAU to progress

What is the role of the Commander, PAU?

- To assess the suitability of the matter to proceed. If the matter is inappropriate for further consideration, *refer to the action options in the shaded box of the flowchart* (service of a PWN is mandatory). If the matter is appropriate to progress, the documents are forwarded to the Commissioner for consideration by the Commander, Internal Affairs. The Deputy Commissioners are informed by the Commander, Internal Affairs of the officer under consideration.

Decision by Commissioner to progress

What is the role of the Commissioner?

- If, based on the facts in the Profile, the Commissioner decides not to progress the matter, alternative action is undertaken, including the mandatory service of a Performance Warning Notice, *refer to the action options in the shaded box of the flowchart*.
- If the Commissioner decides to progress the matter, he signs the s.181D Notice and refers it for service.

Commander, PAU arranges service of s.181D Notice or PWN

What is involved in the service of a s.181D Notice and PWN?

- The Notice is served personally upon the officer and suitable notation is made by the person serving the Notice. At least 21 days is given within which the officer is provided the opportunity to respond to the Commissioner. The officer is provided a copy of the Profile.
- If a PWN is served, managerial action will be taken at a local level.

Officer decision — respond, not respond, resign

What happens when the officer responds?

- The officer's response is received by the Office of the Commissioner and forwarded to the Commander, PAU.

Commander, PAU arranges analysis of response

What happens to the officer's response?

- The Commander, PAU arranges for the officer's response to be analysed and returned to the Commissioner for information.

What happens when the officer does not respond?

- The Commissioner bases his decision to remove or not to remove the officer on the information provided by the Service.

What happens when the officer resigns?

- If the resignation is accepted it is processed by the Executive Director, Human Resources and Development Directorate. Resignation does not impact upon the prosecution of any criminal matters.

Decision by Commissioner to remove

What is the role of the Commissioner in removing an officer?

- The Commissioner must consider the written response of the officer in making his decision to remove them from the Police Service. All material relied upon must be noted. The Commissioner is mindful in his consideration for removal that the grounds relied upon are fair, reasonable and just. If the Commissioner decides to remove the officer, he calls for a s.181D Order to be prepared indicating his reasons for removal.
- Where the Commissioner decides not to remove the officer, a PWN is issued, *refer to the action options in the shaded box of the flowchart.*

Commander, PAU prepares the s.181D Order to remove

What is involved in an Order?

- An order is a document which states the Commissioner's reasons for his loss of confidence in an officer's suitability to remain a police officer. It indicates what the Commissioner has considered in making this decision. The Commander, PAU prepares the Order on behalf of the Commissioner.

(Current: 18 February 1998)

Commissioner signs Order

What happens when the Commissioner receives the Order?

- The Order is reviewed by the Commissioner to ensure that it accurately states his reasons for removal. Upon signature, the Order provides for the removal of the officer effective from the date the Order is made (signed). The Order is referred for service.
- Removal of a police officer has the same effect as if the police officer had resigned or, in the case of a police officer who is of or above the age of 55 years, had retired from the Police Service. This circumstance also applies should an officer resign at any time during the process.

Commander, PAU arranges service of Order

How is the Order served?

- The Commander, PAU arranges for the Order to be served personally upon the officer and suitable notation is made by the person serving the Order. The Commander, PAU ensures that all relevant Service agencies are informed.

Officer decision to commence action at Industrial Relations Commission

A right of appeal exists under the legislation to the Industrial Relations Commission (IRC). An application (prescribed form) including a copy of the Order and an affidavit in support of the application must be lodged within 21 days of the date of service of the Order upon the officer.

The IRC provides a compulsory conciliation process prior to a hearing. The hearing must commence within one month of the application.

Annexure C: Loss of commissioner's confidence process statistics

Statistics on the loss of commissioner's confidence process from its introduction in December 1996 until February 1999

Nominations

Four hundred and sixty five (**465**) police officers have been nominated for consideration under the s.181D process.

Resignations prior to any action being implemented

Sixty nine (**69**) officers resigned while being considered for possible removal under s.181D.

PWNs not involving a s.181D notice

Seventy one (**71**) officers were issued with PWNs without proceeding to the point of a s.181D notice being issued. Of the 71 PWNs, **21** were issued by the Commander of Internal Affairs and **50** by the Commissioner of Police.

Section 181D notices

Ninety (**90**) officers were issued with s.181D notices anticipating their possible removal from the Service. The results were as follows:

Outcomes following the issue of a s.181D notice

- Twenty (**20**) officers were removed from the Service on the Commissioner's order.
- Seventeen (**17**) officers resigned.
- Forty (**40**) officers were served with PWNs.
- In **12** cases, the Commissioner decided not to make a removal order or issue a PWN.

Annexure D: Complaints profile of Senior Constable X

The following complaints profile of Senior Constable X covers the period from 1987, when he first joined the Service, up to the present time:

Brawl at leagues club

In the early hours of a Saturday morning in November 1990, uniformed police attended a brawl involving several persons at the Bathurst Leagues Club. Enquiries revealed that three of the involved persons were off duty police officers visiting from Sydney. One of those officers was then Constable X, who was alleged to have become involved in an altercation inside the club. After X's party was ejected from the premises, they apparently lay in wait for the other party to emerge. It was further alleged that X then identified himself as a police officer and assisted a friend in 'pushing and shoving' a member of the opposing party.

Attending police arrived to find the involved persons scuffling outside the club. It was noted that X's shirt was ripped, while another officer had a studded belt wrapped around his hand. Due to the conflicting versions of events provided by all involved, it was decided by police to take no action against any of the involved persons.

The sergeant who attended the disturbance commented as follows:

It appears that Constables [X] and [another officer] have attended Bathurst to go shooting on a property outside of Bathurst with [a friend] and it is considered that their versions of the incident cannot be relied upon due to their possible bias toward [their friend].

Associating with criminals

In 1992 Sydney police interviewed a criminal in connection with an apprehended violence order being taken out against him. This person had a number of convictions for driving offences, and other matters such as *obscene exposure* and *assault occasioning actual bodily harm*. When the criminal presented for interview, X also attended at his request as a friend and witness.

Further inquiries by police indicated that the subject of the interview, along with a convicted car thief and another criminal, all at one time lived in X's premises. X admitted knowing all three from residing in the same area. The criminal who was the subject of the interview was an ex-schoolmate of X, while the other two were allegedly friends of his parents.

X denied knowing the criminal background of these persons, and the Service found nothing improper in his association with them.

Failure to report allegation of police misconduct

X's brother-in-law is a criminal with a number of drug convictions. In April 1992 local police executed a search warrant on the brother-in-law's premises, locating 13 blocks of cannabis resin and a quantity of cash. The brother-in-law admitted possession of the drugs, and was subsequently charged with *supply of a prohibited drug and goods in custody*.

While police were at the brother-in-law's premises X arrived. Sometime after his arrest the brother-in-law informed X that the arresting police had stolen his drug scales and a quantity of cash. X took no action upon being informed of this allegation of misconduct other than to inform his brother-in-law that he could complain to Internal Affairs.

The subsequent internal investigation failed to sustain the allegations of theft made by X's brother-in-law. However, investigating police found that X had acted improperly in failing to report his brother-in-law's corruption allegation. He was therefore reminded by his patrol commander of his obligations under the *Police Service Act* to report complaints about police.

Shooting and drug allegations

A female resident of Baradine contacted local police in November 1992 about a party of four shooters who had visited the area from Sydney in May of that year. One of the shooters had identified himself as a police officer, and subsequent inquiries revealed this person to be then Constable X.

The complainant stated:

They were all talking about smoking drugs and they all told me that they had drugs with them ...I have smoke [sic] dope myself and been amongst people who are smoking dope and I know when someone is on it and all four of these men were [sic] appeared to me to be stoned ...

The complainant also alleged that `they were firing shots all over the place around the camp and carrying on stupid'. The local officer receiving the complaint commented as follows:

The aspect raised ... regarding irrational shooting at the camp sight [sic] can be corroborated by a farmer who complained at the time of the shooting. Police attended but the shooting had stopped ... No offence was detected.

A subsequent internal investigation failed to uncover any evidence to corroborate the allegations, and the complaint was found *not sustained*.

Sex with bail reportee

In November 1992, two police officers attended the sentencing of a female offender they had arrested, along with her boyfriend, for *break, enter and steal* offences.

The offender, Donna, remarked to the officers in conversation that, instead of waiting for her boyfriend to be released from prison, she was 'going out with two coppers'.

Donna identified one of the officers she was allegedly dating as X, and described how she first met him:

He locked me up with something to do with drugs and I used to report to [his police station] and he hit on me while I was reporting ... [X] is a real good help he got me stuff about the police computer from work.

One of Donna's arresting officers then reported her alleged association with X to the Professional Integrity Branch, sparking off an internal investigation. This investigation confirmed that X first met Donna when he arrested her in February 1992 on a first instance warrant.

In August 1992 Donna started reporting on bail to the police station where X was on duty. She claimed to investigators that after approximately one month of reporting to the station X telephoned her at home and asked her out for a drive.

Donna stated:

About a week after the first time I went with [X], he rang again and I met him. We went for a drive to the Seven Hills football oval ... and progressed to sex in the back of his car. This occurred again on two separate occasions ... one time when he was in uniform but his own car and had just finished night shift.

Donna had a number of convictions for drug and motor vehicle offences, and such matters as *receiving stolen goods, aid and abet escape* and *malicious damage*. She added that X was aware of her criminal history as he had arrested her on one occasion. Donna's boyfriend, and co-offender, has a much more extensive criminal history, including motor vehicle and drug offences and offences involving dishonesty and violence.

X admitted to investigators that he had a sexual relationship with Donna while she was reporting on bail to his police station. X claimed, however, that he only had sex with Donna on one occasion and that it took place inside her boyfriend's premises while the boyfriend was serving time in prison. X also admitted to knowing the criminal histories of both Donna and her boyfriend.

Investigators asked X why he allowed himself to become involved in a personal relationship with a criminal reporting on bail. He replied:

I don't know it's just one of those things I suppose I was sucked in ... I'm not proud of what happened, but it's just one of those things like I said.

Donna denied in a formal interview her earlier claim that X had supplied her with any information from the Service computer. X also denied supplying Donna with any such information. At the conclusion of the investigation X was departmentally charged with one count of *misconduct* in respect of his association with Donna. He pleaded guilty to the charge and paid a \$1,000 fine.

Harassing an internal witness

In January 1994 Donna's arresting officer, who had reported her relationship with X to the Professional Integrity Branch, received the following anonymous letter via the departmental post:

... Thanks for putting me in for something I didnt [sic] do. You could have used Tact at the time and went about it differently as nice people would have & I thought you were one of those. Anyway just to let you know and let you sleep, the matter was NOT Sustained. The person denied it in their Statement anyway. Anyway thanks for all that Stress & Trauma my Family and I endured for such a long time and still [sic] enduring, I really need it.

Regards. A friend, no more.

P.S.: Its [sic] amazing what people, (Family supposedly), do for Promotion.

The arresting officer, a female senior constable who had known X on a professional basis for six years, reported that she suffered considerable anxiety and concern as a result:

Upon reading the letter I became very angry, especially due to the insinuation that I had contacted Professional Integrity to enhance my chance of promotion. The letter also caused me to feel frustrated. At the time I was seven months pregnant and I was experiencing complications as a result and I was worried about the contents of the letter adversely affecting my condition.

In the ensuing internal investigation, X admitted to typing the letter because the officer had reported his inappropriate relationship with Donna. As a result X was admonished by his patrol commander.

Attempt to obtain intelligence holdings

A female intelligence officer attached to X's station reported that she had been approached by him in December 1992 and asked to check if the Service held any intelligence concerning X or one of his family members:

I said 'If he is known just go and ask the State Intelligence Group, but they will want to know the reasons you require the information.' He was ... hesitant and said 'I just want to see if my name is mentioned on any forms.' I said 'Why should your name be mentioned on any forms in town?' He went on to say 'I want to see if my name is mentioned with my brother-in-law's, because he is a bit of a druggie.' There was further conversation that apparently the brother-in-law lived in a flat below him and his wife. [X] then said 'Can you go and do it, because you are in intelligence and they will do it easier for you than me.' I said 'No way.'

When questioned by investigators, X admitted asking the intelligence officer to conduct a check on his name with the State Intelligence Group:

... at the moment I'm living with my in-laws, my wife's brothers um, they smoke marijuana ... I'm aware that a search warrant was conducted and ah my wife's brother was arrested ah in relation to drug matters um, at the time the search warrant um, I was spoken to by the police and ah, they've already known my name and seem to know a bit about me, that concerned me in a way and the place I was living ah, had an effect on me as well ... I was having ... domestics with the wife and that in relation to moving out ... I thought that um, there'd be C.I.U.'s on my wife's brothers and then I thought well living in the same complex ... I might be mentioned in some C.I.U.'s and just out of curiosity I just wanted to know if I was mentioned ...

The Service found nothing improper about X's attempt to obtain details of intelligence holdings concerning him or his brothers-in-law (at least one of whom was a convicted drug dealer).

Access & release of confidential information

An audit of computer accesses made during 1992 led to X admitting that he had improperly conducted RTA checks for his father, brother, cousins and brother-in-law in relation to the number of points they had lost on their driving licences. X added that he had informed them verbally of the result.

X further admitted to checking the police computer to see if his brother and brother-in-law had any outstanding commitment warrants, again informing them of the result.

X had also checked the criminal history of his wife's uncle, who has convictions for *goods in custody*, *supply prohibited drug* (heroin and cannabis), *possession of an unlicensed pistol*, illegal betting and traffic offences. X stated that he made the check 'out of just curiosity', and denied passing this information on to the criminal. Additionally, X admitted to having made a number of other RTA checks for other family members and friends in order to ascertain the number of points remaining on their driving licences.

The Service charged X departmentally with two counts of *misconduct*. These charges related to his access of confidential information and his disclosure of that information to others. X pleaded guilty to both counts and was fined a total of \$2,000.

Vehicle registration plates calculated to deceive

In February 1993, a patrol commander noticed that X's private motor vehicle had no registration label affixed when driven into the police station parking area. An RTA check also revealed that the registration plates affixed to X's vehicle belonged to another vehicle. An internal investigation was initiated.

X admitted, on questioning, to having placed the registration plates from his brother's vehicle onto his own unregistered and uninsured vehicle so that he could escape police detection while driving to work.

X was summonsed with the offences of *drive unregistered motor vehicle*, *drive uninsured motor vehicle* and *plates calculated to deceive*. This Office has received no advice as to whether or not X was convicted of these charges.

Stalking of ex-girlfriend

In March 1996, a young woman, Julie, informed police that she had been in an intimate relationship with X. Julie complained that since the breakdown of that relationship in October 1995 X had followed her, harassed her and breached her privacy on a number of occasions.

In one incident Julie crashed her car outside a police station while being pursued and allegedly run off the road by X who was following in another vehicle. Julie ran up to a sergeant who had emerged from the police station to investigate the crash. X then alighted from his vehicle but was intercepted by the sergeant before he could reach Julie. X yelled to Julie 'All I want to do is talk to you', to which the sergeant replied 'She does not want to talk to you.' X continued to speak to Julie in spite of the sergeant warning him that his actions might place his job in danger.

As a result of ongoing harassment, police served X with an apprehended violence summons to attend court in April 1996. Julie subsequently informed police that X had again approached her in an attempt to persuade her to withdraw her complaint against him. This led to X being charged with two counts of *stalking, intimidation with intent to cause fear*, later merged into one count. X was convicted of the charge in the local court in November 1996, placed on a three year good behaviour bond in the sum of \$1,000, and was additionally fined \$1500.

X's subsequent all grounds appeal was heard at the district court in July 1997, with the presiding judge dismissing his appeal against conviction. X was discharged pursuant to s.556A of the *Crimes Act*, and placed on a six month good behaviour bond under a self-recognition of \$1,000, in lieu of the penalty imposed by the local court.

Improperly accessing girlfriend's criminal history

While giving evidence during the hearing of the *stalking* charge, Julie alleged to the court that X had also unlawfully accessed her criminal history between October and November 1994.

The presiding magistrate directed that the Service should follow up this allegation, and an audit of the police computer system confirmed that X had accessed Julie's criminal history in November 1994.

When interviewed, X claimed that he had accessed Julie's record at her request to see if she had any outstanding warrants. To date the Service has not interviewed Julie to ascertain if she did in fact make such a request. Aside from the need to consider the propriety of the access from a departmental point of view, the police investigator recommended that, following X's interview, advice should be sought from the Director of Public Prosecutions regarding the lawfulness of the access. This recommendation was never implemented.

Absent from duty to spy on ex-girlfriend's premises

On 10 March 1996, X was assigned to be the observer on night shift mobile patrol duty while a probationary constable was the designated driver. Sometime that night X asked the probationary constable for the keys to the police vehicle. X then drove the vehicle outside of their patrol, claiming that his sister was overseas and he wished to check on her premises.

On the way back to the station X allegedly told the probationary constable not to inform their supervisor about their unauthorised absence from the patrol. The probationary constable therefore omitted to record the journey in the vehicle log book, which X was required by Service instructions to verify as containing accurate records of their journeys.

The probationary constable subsequently learnt that X had been served with an apprehended violence order and charged with *stalking*. The officer also heard that the woman X was alleged to be stalking lived in the vicinity of the premises they had driven to on night shift. Fearing that X had lied about the purpose of the trip, the probationary constable reported the matter.

The ensuing internal investigation revealed that X had indeed left the patrol area in order to observe the premises of Julie, his estranged ex-girlfriend. Julie later informed police that '[X] had become obsessed with checking her whereabouts and finding out what she was doing', even though she had told him to leave her alone.

The investigation found that X had travelled outside his patrol without permission, that he had failed to report to police radio (VKG) that he was leaving the patrol, and that he had failed to verify the police vehicle log book as containing accurate entries. The investigator accordingly recommended that X face three departmental charges. These charges were never preferred.

Break & enter on estranged girlfriend's premises

On the day X was charged with *stalking*, Julie also informed police that he had broken into her townhouse in November 1995 while she was absent from the premises. The kitchen flyscreen had been forced, her bedroom ransacked and personal letters disturbed, and the cassette tape used to record messages on her telephone answering machine had been stolen.

About the same time as the break and enter occurred, Julie was receiving anonymous harassing telephone calls. Her suspicions that X was responsible for the break and enter were realised when he finally confronted her with the stolen tape in his possession:

In early March 1996 [X] came to my sister's house ... He said 'There is [sic] a few things I want to talk to you about.' He said 'Who is Mick?' [referring to a caller on the stolen answering machine tape]. I said 'None of your business.' He then produced my tape from his pocket. This tape is the one that was stolen from my townhouse in November 1995. I said 'Why didn't you admit to it earlier when I asked you?' He said 'Because [I] had to verify who Mick was.' He then said 'I know who Mick is.' I said 'So you did break in?' He said 'Yes. I wanted to know what you were up to. You shouldn't be going out with blokes because it is indecent ...'

X also allegedly confessed to the break and enter to a number of police officers, one of whom was not interviewed in the ensuing investigation. Subsequent advice sought from the Director of Public Prosecutions was to the effect that there was 'no reasonable prospect of conviction and that no [criminal] charges should be laid.'

Harassment of teenage girl

On 2 April 1996, the same day he was charged with stalking his estranged girlfriend, X allegedly harassed a total stranger during her lunch break. Sally, a 16 year old doctor's receptionist, went to a Chinese restaurant near her workplace for lunch. While eating her meal Sally noticed X outside the restaurant, 'peeping' at her through the blinds.

X then allegedly entered the restaurant and sat down at the table beside Sally:

... he said 'I'm [Christian name given], I'm a cop, what's your name?' I said 'Oh, Sally.' ... The [restaurant owner] then came over to the table to take his order and he said 'I'm right, I'm Sally's friend, aren't I Sally.' I said softly 'Yeah.' He said 'Just pretend we're friends so [no]one will think I'm trying to chat you up.' ... I thought he was weird. He said 'Come, chuck that away, let's get out of here and I will buy you a nice healthy salad sandwich.' ...

I said 'I have to go back to work now.' I didn't really, I still had 45 minutes but I didn't want to be around him ... He said 'I'm a cop, you can trust me.' ... He then ... showed me a badge that looked like a police badge ... He said '... I'm on holidays now. That's why I've grown my beard. I'm not meant to have one. Come on Sally. I'm going to buy you a salad sandwich. I'll tell your boss so you can be my witness.' He said that so I could get a sandwich and get off work. I said 'I really have to go back to work now.' He said 'Have you got a number?' I said 'No.' He said 'Just a minute, and I'll go and get my number ...' ... I didn't want his number.

He left the restaurant ... there was another man in the restaurant. I said to him 'He's just turned me off my food, I hope you enjoy your's.' I left and I saw him next door in the supermarket. He saw me and he handed me the number ... He said 'You're sure you can't get out of work and come with me. I've got a cream shit car just over there in the carpark ^... I said 'No, I really have to go back to work.' He said 'Can I ring you at work?' I said 'No.' He said 'Oh well, I know where to find you when I need you, don't I Sally...'

... I said to [him] 'I can't believe you're a cop, 'cause of the way you talk.' He said 'I like to have my fun Sally, I'm a cool cop.' ... he said he used to do weights ... He was acting really funny and he was not looking at me when he was talking. He said things like 'I'm not like the rest of the cops, I'm a cool cop.'

The following afternoon X allegedly telephoned Sally at the doctor's surgery where she worked:

... He said 'What time do you finish work?' ... I just wanted to get off the phone. I didn't want to argue with him so I said 'five thirty', even though I finish at five. He said '... Sally, do you want to go somewhere tonight ... do you want to meet me tonight and we'll do something.' I said 'I don't know, I'll ring you.' I just wanted to get off the phone ...

Sally stated that she did not see X on leaving work that day, and 'when I got home I told my Nan about what was happening and she rang the police'. After her grandmother reported the harassment to police, Sally provided a statement on the matter and indicated she would consider seeking an apprehended violence order should X's unwanted attention not cease.

X was then interviewed by an internal investigator, largely disputing Sally's version of events. X claimed that '[Sally] was excited at seeing a real police badge ... and said to me that I was a really nice bloke and she wanted to talk more with me. She asked for my number ... At that particular time I was suffering from anxiety and stress due to personal problems, and a chat to somebody relieved some stress and pressure.'

Sally's complaint was *sustained* by the Service, X's district commander commenting 'I consider that allegations against [X] to the effect that he was trying to encourage Sally ... to act irresponsibly to be an action unbecoming to the office of police officer.' It was recommended that X be admonished for his conduct, but this recommendation was never acted on by the Service.

Allegation of domestic violence

In March 1997, X's sister-in-law reported to police that her sister (X's wife) 'had been slapped across the face by her husband [X]' during a domestic argument. X denied the allegation, there was no physical evidence to support the complaint of assault, and X's wife 'refused to supply any information about the incident to police'. This complaint was recorded by the Service as *not sustained* and no further action was taken.

Improper attempt to obtain police brief

On the morning of 2 December 1997, X was heard banging on the outside security door of a Sydney suburban police and court complex. A female staff administrative officer opened the door, whereupon X 'walked straight past [her] demanding to attend court process.'

X then entered the court process office and approached a female court process officer:

... [X] entered the office and stood with his hands on his hips. I asked if I could help him and he inquired about the case of [a defendant] for hearing [later that month]. I asked who he was and [his] reply was that he was 'in the job'. [X] did not show any identification to me. He had an arrogant manner, unkept [sic - unkempt] dress and in my opinion needed a good wash. I then referred him to the police prosecutors in the ... court house.

The court process officer then received a telephone call from X, who had meanwhile entered the prosecutors office. X asked for the name of the police informant in the matter and also the case number. After several demands, X eventually identified himself as a senior constable attached to a suburban police station. X did not reveal to the court process officer, however, that he was currently suspended from duty. The court process officer then provided X with the name of the informant in the matter and X terminated the call.

The court process officer immediately informed the staff administrative officer about X's inquiry, complaining that he had been rude and reluctant to disclose his identity. The administrative officer recalled X's name from her previous job at another police station as being that of a suspended police officer. She also knew that X had been charged with *stalking*, that his police firearm had been taken from him, and believed he had been prohibited from entering police premises. X's presence in the building was then reported to the senior police prosecutor.

By this time X had informed a police prosecutor in the prosecutors office that he was 'in the job', and was seeking a copy of the police brief so that he could apply for an adjournment on behalf of the defendant in the matter. The court prosecutor recalled:

He said 'How do I get a copy of the brief?'

I said 'Court process may have it.'

He said 'I've just been there. I'm actually a friend of the defendant. He doesn't speak English, and I'm trying to help him out by getting all the information for him.'

I said 'He should have a solicitor do that.'

He said 'He's unemployed and can't really afford one ... His solicitor asked me to do the running around.'

I said 'Do you think you should be doing this, you're leaving yourself open.'...

He said 'I don't care. I'm leaving the job soon anyway. I have a business.'

The senior police prosecutor, who had meanwhile been informed of X's presence in the building and the nature of his inquiries, then approached X and directed him to leave the premises. The incident was duly reported.

X explained his actions to the internal investigator as follows:

[The defendant] was issued with a Traffic Infringement Notice [for Negligent Driving]. [He] came to see myself for some advise [sic] about the notice as he believes that he was unjustly dealt with by the Police ... [He] speaks very little English and asked for my assistance which I accepted [sic]. I spoke with his legal representative about the matter and as the matter was before court the end of December, 1997, and to save costs I was advised to attend ... court to make inquiries to ascertain the Officer in Charge of the matter as no brief was served and to attempt to adjourn the matter in order for time to be afforded to have the matter looked at and prepared by the legal representative.

The officer in charge of the court matter contradicted X by claiming that the defendant 'had a good understanding of the English Language, where he read and signed his version of the accident'. The internal investigation found that X 'acted in an inappropriate manner' in attempting to obtain a traffic brief for a friend, and his local area commander 'recommended Senior Constable [X] be terminated under the provisions of s.181D of the *Police Service Act 1990*.'

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