



24 June 2015

Mr Andrew Tink AM
Review of Police Oversight in NSW

By email: policeoversightreview@justice.nsw.gov.au

Dear Mr Tink

Review of Police Oversight in NSW

1. Women's Legal Services NSW (WLS NSW) thanks the NSW Government for the opportunity to comment on the Review of Police Oversight in NSW.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. A significant part of our work is with women who have experienced domestic and family violence, including sexual assault. Given the short time frame to respond we limit our comments to this issue only.

Single civilian oversight model for police in NSW

4. We support the establishment of a single, independent, adequately resourced body to oversee Police complaints in NSW, critical incident investigations and with powers of own motion inquiries to address systemic concerns.
5. Such a body is important to ensure public confidence in the Police.
6. If there is a single body that can receive all complaints, as occurs in Northern Ireland, this will reduce confusion about how and where to lodge a complaint and can help to make a complaint system more accessible.
7. There also needs to be an ongoing public awareness campaign about the role of this independent body and how to make a complaint, including targeted strategies to ensure



everyone is able to access the complaint system.

8. The subject matter of all complaints received by the independent body should be recorded, irrespective of how the complaint is dealt with once received, be it referred back to Police or otherwise.
9. In the case of complaints about Police response to domestic violence, including sexual assault, the subject matter may include failure to take a report and enter in COPS; failure to apply for an apprehended violence order (AVOs) where one is warranted; failure to take action on breaches of AVOs; failure to correctly identify the primary aggressor or primary victim; poor customer service; etc.
10. If all complaints are received and recorded by a single body we believe this will assist in identifying and addressing systemic issues.

Complaints in the context of domestic violence, sexual assault and child sexual abuse

11. The Police Ombudsman for Northern Ireland can refer a complaint back to Police to investigate where it is 'not a serious complaint' and the complainant consents.¹
12. We acknowledge there is a continuum of seriousness of issues the subject of Police complaint. In principle we support the approach in Northern Ireland that with the complainant's consent, Police investigate where the independent body has deemed it is not a serious complaint. We see it as an important role of the independent body to undertake this initial assessment. With all complaints going to the independent body systemic issues can be more quickly identified and addressed, irrespective of who ultimately is asked to resolve the matter, including if a matter is referred to Police to investigate.
13. In the context of Police responding to domestic and sexual violence, what may be considered less serious, for example, complaints relating to customer service such as rudeness or delay in responding, may have lethal consequences if, for example, a victim of domestic violence no longer reports the violence to Police nor otherwise seeks Police assistance after a negative experience.
14. Given the nature of domestic violence, including sexual assault, we recommend that a complaint relating to Police response to such violence be considered in the context of a continuum of incidents which requires a different and lower threshold of seriousness and one that should be assessed by people with expertise in responding to domestic and sexual violence.
15. The need for a lower threshold of seriousness of complaint and a specialist unit assessing the complaint also applies to complaints about Police responses to child sexual abuse.
16. We therefore strongly recommend a specialist domestic violence and sexual assault unit within this single independent body. The complexity of domestic violence, including sexual assault, lends itself to specialisation and in our experience is essential to good practice.

¹ *Police (Northern Ireland) Act 1998*, section 53(2)

17. We also recommend specialist domestic violence and sexual assault units within Police to investigate Police responses to domestic and sexual violence matters. These could be complaints referred back from the independent body that are deemed by their specialist unit 'not to be serious' as well as Police undertaking a mandatory review of Police responses to domestic and sexual violence. The review could happen by way of an annual audit of at least 40% of randomly selected cases involving Police response to domestic and sexual violence incidents.
18. The different and complementary means of oversight are important as it is well documented that there are many barriers to victims/survivors of such violence making complaints about Police.² By Police proactively reviewing their cases this can lead to early identification of systemic issues. A report of the findings and actions taken as a result of such internal reviews should be provided to the independent body.
19. Where a matter is referred back to Police, the independent body should be provided a copy of the investigation report and recommendations and have the opportunity to challenge the outcome and make alternative recommendations.

Enforcement

20. The independent body should have the power to make recommendations related to: criminal prosecutions and referral of matters to the Director of Public Prosecutions for investigation and possible prosecution; disciplinary action; policy and practice; and training as occurs in Northern Ireland.
21. To increase accountability, there needs to be an effective enforcement mechanism to ensure a timely response to the independent body's recommendations, be it in the area of Police complaints, critical incident investigations or own motion inquiries to address systemic concerns.
22. The timeframe for response should be legislated.
23. If the relevant authorities do not agree to fully implement recommendations they should be required to provide reasons as to why they are not fully implementing such recommendations as soon as reasonably practicable after receiving the recommendations. This is legislated in the New Zealand model.³ They should also be required to outline the alternative action they will be taking.
24. If there is no response from the relevant authority within a reasonable time, enforcement options could include informing the Attorney General and Minister of Police and providing the Attorney General with a report to table in Parliament. This currently occurs in New Zealand.⁴
25. In the context of disciplinary proceedings, the Independent Police Complaints Commission in the United Kingdom has the power to direct the appropriate authority to 'take steps' to 'secure that full effect is given to the recommendation' and the authority is

² For example, Jane Goodman-Delahunty and Anna Corbo-Crehan 'Enhancing Police Responses to Domestic Violence Incidents: Reports from Client Advocates in New South Wales' (2014) (unpublished)

³ *Independent Police Conduct Authority Act 1988 (NZ)*, section 29(1)(b)

⁴ *Independent Police Conduct Authority Act 1988 (NZ)*, section 29(2)

required to comply.⁵ We recommend that for NSW an independent body have the power to direct appropriate authorities to respond to its recommendations and where such recommendations will not be fully implemented to provide reasons and alternative action to be taken. The appropriate authorities should also be required to provide a follow up report about the effectiveness of the response, with the independent body having the power to make additional recommendations.

Publishing reports

26. A report outlining the number, frequency and nature (subject) of complaints, including systemic issues identified should be published on an annual basis by the independent body. Police action in response to the identification of systemic issues should also be included in this annual report. After the first year, the report should include a comparison of number, frequency and subject of systemic issues over time as a means of measuring the effectiveness of the Police response. Where issues continue to be identified as systemic issues, Police should be required to provide further information about how they are addressing these issues.
27. Reports should also be published in a timely manner regarding critical incident investigations and own motion inquiries to address systemic concerns.

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or myself on 02 8745 6900.

Yours faithfully,
Women's Legal Services NSW

Janet Loughman
Principal Solicitor

⁵ *Police Reform Act 2002 (UK)*, Schedule 3, paragraph 27(4)