

Police and compliance

We are committed to working with police to ensure their complaints system achieves fair and just outcomes for all concerned. We also aim to help police use the complaints system to identify how they can improve the way they operate.

Our work includes independently reviewing the way the NSW Police Force (NSWPF) handles complaints about serious misconduct and investigating particular areas of police practice, if it is in the public interest to do so. We check how police handle less serious complaints, and regularly audit the way their complaint-handling processes are working to ensure they are effective and comply with legislative requirements.

We use information from complaints to identify and proactively investigate public interest issues.

This year we started our second review of the use of tasers by police as we were concerned about the number of incidents involving tasers (see page 59). Our other public interest investigations include NSWPF's compliance with their guidelines for in-car video (see page 58) and the use of excessive force (see page 58). We also undertook an audit of complaints that raised domestic violence issues (see page 61), which led to a report to Parliament in May 2011.

Our police and compliance branch also has responsibility for dealing with witness protection appeals (see page 62) and complaints as well as reviewing law enforcement agency compliance with a range of legislation that gives them authority to undertake covert operations (see page 63).

Highlights

- | Finalised five direct investigations on a range of matters including use of excessive force. [SEE PAGE 57](#)
- | Reviewed the NSWPF's complaint handling guidelines making 25 recommendations to improve them. [SEE PAGE 54](#)
- | Finalised our report on the use of in-car video. [SEE PAGE 58](#)
- | Made recommendations to the Commissioner about NSWPF procedures for handling bullying, harassment and workplace discrimination. [SEE PAGE 60](#)
- | Reviewed the impact of CINs on Aboriginal and Torres Strait Islander communities and tabled a report in Parliament in July 2010. [SEE PAGE 62](#)
- | Audited the NSWPF's handling of domestic and family violence complaints, resulting in a report to Parliament. [SEE PAGE 61](#)
- | Re-negotiated a new agreement with PIC about the types of complaints to be notified. [SEE PAGE 52](#)

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Policing

Our role in the police complaints system

Every year, approximately 5,000 formal and informal complaints are made about police. These come from both the public and from police officers themselves. The complaints enable the NSWPF to identify systemic problems, as well as address individual instances of misconduct. We directly assess approximately 60% of complaints about police. The *Police Act 1990* gives the NSWPF the primary responsibility for investigating and resolving all complaints about police. Our role is to oversee the way the police complaints system works – both through reviewing investigations of individual complaints and checking that the processes police use to resolve complaints are working fairly and effectively.

The NSWPF must notify us about more serious complaints – such as those involving allegations of criminal, corrupt or improper conduct. We closely consider these complaints to ensure they have been investigated properly and in a timely manner and that the action taken is appropriate. As part of doing this, we may:

- | ask for additional information
- | monitor the police investigation as it is being conducted
- | prepare a report about the investigation if we think it is deficient
- | ask police to review the action if we consider it is inadequate
- | investigate the matter of our 'own motion'
- | report to Parliament if there are issues of significant public interest.

In February 2011, we entered a new agreement with the Police Integrity Commission (PIC) about the types of complaints that must be notified to the Ombudsman. Some less serious complaints – such as complaints about poor customer service, rudeness or minor workplace conduct issues – may be resolved by local area commanders without our direct oversight. Police are still required to register the details of these complaints on their complaints system, and we regularly audit the way these complaints are handled to ensure they are appropriately addressed.

Under the new agreement, police must also notify us about a range of additional complaints. This includes complaints about:

- | the unreasonable use of tasers, capsicum spray or batons
- | apprehended violence or stalking by police
- | police pursuits and responses to urgent duty resulting in death, injury or significant financial loss.

Trends in police complaints this year

This year we received 3,256 formal or written complaints about police for assessment and review – a slight increase compared to the previous three years. This includes complaints we receive directly as well as those notified to us by police or referred from the PIC. We finalised 3,278 complaints. In addition to these formal complaints, we received 2,596 informal complaints or enquiries by telephone or in person. We dealt with these by providing advice and referral information. Figure 35 shows the number of complaints we have received and finalised over the past five years.

Figure 35: Formal complaints about police received and finalised

	06/07	07/08	08/09	09/10	10/11
Received	3,466	2,969	2,948	3,032	3,256
Finalised	3,555	3,254	3,094	3,093	3,278

Of the complaints we received, figure 36 shows the proportion that were made by police officers and the public over the past five years.

Figure 36: Who complained about the police

This figure shows the proportion of formal complaints about police officers made this year by fellow police officers and from members of the general public, compared to the previous four years.

	06/07	07/08	08/09	09/10	10/11
Police	1,268	1,056	1,158	1,090	1,208
Public	2,198	1,913	1,790	1,942	2,070
Total	3,466	2,969	2,948	3,032	3,278

Figure 37 shows a breakdown of the kinds of complaints that were notified to us this year (some complaints may contain more than one allegation). Appendix A provides more detail about the types of complaints and the way they were handled.

Figure 37: What people complained about

Subject matter of allegations	No. of allegations
Arrest	149
Complaint-handling	215
Corruption/misuse of office	293
Custody/detention	134
Driving-related offences/misconduct	78
Drug-related offences/misconduct	172
Excessive use of force	596
Information	675
Inadequate/improper investigation	805
Misconduct	1,613
Other criminal conduct	474
Property/exhibits/theft	178
Prosecution-related inadequacies/misconduct	287
Public justice offences	190
Search/entry	116
Service delivery	1,103
Total	7,078

Note: Please see Appendix A for more details about the action that the NSW Police Force took in relation to each allegation.

This year, 899 (27%) of the complaints were assessed as not requiring investigation for reasons such as the availability of alternative and satisfactory means of redress, for example raising matters in court. Another 398 (12%) were assessed as local management issues and referred to commands for resolution without any oversight by this office.

We closely reviewed the quality of the way police investigated or resolved complaints, and found that 1,645 (83%) had been handled satisfactorily. However in 333 matters (17%) we considered the handling of the complaint to be deficient. Of these, 157 matters were deficient only because there were unreasonable delays in investigating or resolving them.

Unfortunately, the NSWPF is still not meeting their own timeliness standard for completing investigations and resolving complaints – and delays have increased from last year (see figure 38).

In 176 matters (9%), we believed the investigation or the proposed management action in response to the investigation findings was deficient. Following our advice, police remedied the deficient investigation or management actions in 64% of these cases. This is a 10% drop in matters remedied since last year.

We also provided commanders with written feedback in 93 matters where we considered the police investigation satisfactory – but identified opportunities for them to improve complaint-handling and investigation practices when dealing with similar matters in the future.

Managing complaints

The NSWPF can take a range of actions in response to complaints about police. Some of these 'management actions' are reviewable by the Industrial Relations Commission (IRC) – including a decision by the Commissioner to remove an officer or reduce their rank, seniority or salary. Other management actions are not reviewable by the IRC – such as officer counselling, training, restricting duties, issuing warnings and reprimands, transferring officers, mentoring and increased supervision. In response to complaints, police may also make changes to policies and practices or apologise to complainants.

Police took management action in 56% of complaints that we oversaw this year. This is a slight drop, back to 2006-2007 levels (see figure 39).

Last year we reported on Project Lancaster – the Professional Standards Command's (PSC) review of the disciplinary processes used by the NSWPF for proven officer misconduct.

As a result of the review, the PSC drafted a new reporting template for evidence-based investigations to improve

procedural fairness in complaint investigations. We provided feedback to the PSC on the draft. The reporting template has been in use since January 2011 and we will be monitoring the impact it has on the way investigations are conducted and reported.

The NSWPF has also changed their approach to management action as a result of Project Lancaster. They now emphasise taking non-reviewable action (such as issuing conduct management plans or warnings) in response to sustained findings of misconduct, rather than reviewable action. Our independent review of this work in assessing the adequacy of management action is particularly important given this changed approach.

In some serious misconduct matters, an officer may be charged with a criminal offence. In 2010-2011, 64 police were charged with a total of 215 offences. This is a significant fall in charges and officers charged compared with last year however, this figure is more consistent with the trend from 2006-2007 to 2008-2009 – see figure 40.

Many of these matters arise from complaints made in previous years, and these figures do not include charges against officers in this year that have not been finalised.

Some of the charges include:

- | summary criminal offences – such as engaging in conduct to obtain financial advantage from a Commonwealth entity or offensive language (71 charges were laid against 26 officers)
- | indictable criminal offences – such as larceny, forgery and using false documents (43 charges were laid against seven officers)
- | common assault (26 charges were laid against 17 officers)
- | sexual or indecent assault (20 charges were laid against three officers)
- | driving offences including drink driving, unnecessary speeding and dangerous driving (19 charges against 16 officers)
- | drug offences (seven charges against four officers)
- | unauthorised access to or disclosure of information (13 charges against four officers)
- | public justice offences such as perverting the course of justice or fabrication of evidence (10 charges against four officers).

Some officers received charges in more than one offence category.

This year a total of 14 police officers and probationary constables were removed from the NSWPF and another 11 resigned following the initiation of disciplinary procedures.

Figure 38: Timeliness of the completion of investigations and informal resolutions by the NSW Police Force

Percentage of	06/07	07/08	08/09	09/10	10/11
Investigations less than 90 days	28	34	40	44	42
Informal investigations less than 45 days	14	15	41	47	39

Figure 39: Action taken by the NSW Police Force following complaint investigations

	06/07	07/08	08/09	09/10	10/11
No management action taken	1,000	901	741	781	874
Management action taken	1,287	1,177	1,095	1,112	1,107
Total investigations completed	2,287	2,078	1,836	1,893	1,981

Figure 40: Police officers criminally charged in relation to notifiable complaints finalised

Number of	06/07	07/08	08/09	09/10	10/11
Complaints leading to charges	63	50	63	92	68
Officers charged	60	49	60	95	64
Total charges laid	184	136	259	300	215
Officers charged following complaints by other officers	48	32	45	68	49
Percentage of officers charged as a result of complaints by other officers	80%	65%	75%	72%	77%

Figure 41: Action taken in response to formal complaints about police that have been finalised

Action taken	08/09	09/10	10/11
Investigated by police and oversighted by us	1,395	1,145	1002
Resolved by police through informal resolution and oversighted by us	443	751	979
Assessed by us as local management issues and referred to local commands for direct action	468	340	398
Assessed by us as requiring no action (eg alternate redress available or too remote in time)	788	857	899
Total complaints finalised	3,094	3,093	3,278

Reviewing complaint-handling guidelines

This year we completed a review of the NSWPF's complaint-handling guidelines and made 25 recommendations to improve them.

Our report coincided with a review of the guidelines by the PSC. They have advised that they will implement 22 of our recommendations.

An important issue we identified during our review concerns the guidance given to commanders about using evidence-based investigation techniques and informal or outcome-focused investigation techniques. Our view is that evidence-based investigation techniques should always be used in the first instance to investigate complaints of serious misconduct. This ensures that investigations are rigorous and evidence is collected in a form that can be used to start criminal proceedings or take reviewable management action if the complaint is substantiated. The PSC does not share our view – they support a system where complaints about serious misconduct are the subject of informal inquiries unless or until incriminating evidence is identified. We will continue to monitor this issue closely.

There continues to be an increase in the use of informal resolution by police to address complaints, and a decrease in the use of evidence-based investigation (see figure 41).

Overseeing investigations into serious misconduct

As well as making sure that individual complaints are effectively handled, we contribute to the quality of complaint investigations and outcomes by providing feedback to police about potential problems in investigative approaches, and by highlighting operational issues that may not have been identified.

Investigating criminal allegations against police

The Police Act contains an anti-corruption provision that requires police officers to be charged if there is sufficient evidence of criminal conduct. However, the Commissioner or other senior police have the discretion not to authorise these proceedings.

When the discretion to not prosecute is used, a protocol established between the NSWPF, PIC and the Office of the Director of Public Prosecutions (ODPP) provides for the independent review of the decision by the ODPP to ensure accountability and transparency. The ODPP must also review matters if there may be a doubt about pursuing criminal prosecution due to complex legal issues or sufficiency of evidence. In the last year, we have come across a number of cases where the NSWPF neglected to refer decisions not to prosecute to the ODPP for independent review.

In case study 37, the NSWPF did not investigate alleged criminal conduct at the outset. It demonstrates how such decisions can potentially circumvent the processes aimed at ensuring that criminal conduct by police is not covered up.

Case study 37: Young person assaulted

Two officers patrolling the streets of a country town late on a Saturday night stopped and spoke to an intoxicated 15 year old male. The young man repeatedly swore at the officers while being questioned about the contents of his backpack.

One of the officers walked up behind the young man and slapped him to the head with an open palm, causing him to stumble forward. A short time later, the same officer grabbed the young man around the neck and pushed him up against the police vehicle, telling him to stop carrying on stupidly. At this point, the officer's partner intervened and the officer let go of the young man. At the end of the shift, the officer reported 'losing it' with the young man to the shift supervisor.

The commander spoke to the officer who admitted assaulting the young man. At the suggestion of the commander, the officer apologised to the young man in the presence of his mother. The young man signed the commander's notebook indicating that he was satisfied with the apology and that he did not want the officer charged.

The police investigation made a sustained finding for 'unreasonable use of force'. The commander referred the matter to the Internal Review Panel, recommending that the officer be placed on a conduct management plan 'to assist the officer to deal with emotions when reacting inappropriately'.

We raised concerns with the commander about the failure to conduct a criminal investigation into the alleged assault. We also noted that the management action proposed by the commander appeared lenient, given the officer's complaint history. Two years earlier, he had slapped another person to the head at a police station. On that occasion, the ODPP found sufficient evidence to prosecute the officer, but determined that he could be dealt with internally by police rather than being prosecuted. The Police Commissioner considered dismissing the officer but instead issued a warning notice stating that he would not tolerate any future failures to comply with acceptable standards. The officer's pay was also reduced for 18 months.

Although we appreciated that the young male accepted the officer's apology and did not want the officer charged - we believed it was appropriate for a report to be prepared to the Police Commissioner and Minister for Police on the need for a criminal investigation into this matter. Although the wishes of the victim are relevant to the question of whether there is sufficient evidence to prosecute, they did not justify the failure to conduct a criminal investigation into the alleged assault. We considered that it may have been appropriate to prosecute the officer – given that the action taken for the previous assault did not change his behaviour, and his partner would have been able to give credible and reliable evidence if he had been charged.

The NSWPF accepted these views and agreed to amend their complaint-handling guidelines to clarify that there is an obligation to ensure that alleged criminal conduct by police is appropriately investigated. They also agreed to increase awareness of the obligation to refer any exercise of the discretion not to prosecute to the ODPP for independent review.

The Commissioner considered whether to dismiss the officer. While observing that the officer's conduct had again fallen below the standards expected by the community and the NSWPF, the Commissioner decided that he still had confidence in the officer's suitability to be a police officer and issued another warning notice. The officer was also put on a six-month conduct management plan and could only perform restricted duties.

Monitoring investigations and requiring police to investigate

Sometimes we may disagree with a decision by the NSWPF that a complaint does not need to be investigated. We can require the NSWPF to investigate matters that they have initially declined to investigate, as we did in case study 38. We also monitored the investigation that we required police to undertake, as we did in case studies 39 and 47. Monitoring investigations allows us to observe interviews with

complainants, witnesses and officers, or review investigation records progressively during the course of the investigation. It also allows us to liaise with police investigators to ensure all relevant lines of inquiry are fully considered.

Often the complaints we choose to monitor involve complainants from vulnerable groups, or those who have communication difficulties. This year we used our monitoring powers to closely scrutinise 17 investigations.

Case study 38: Police decline to investigate

An officer alleged that he had been indecently assaulted by another officer who had touched him on the genitals with the back of his hand, and that he had seen the officer do the same thing to other police. These allegations were made to the officer's supervisor who failed to report the matter.

The inspector made enquiries and identified a second officer who said that he too had been touched on the genitals by the subject officer. However after he told the subject officer to stop, the assaults were not repeated. This officer did not report the assaults at the time, but was prepared to provide written evidence if needed.

The inspector took steps to minimise contact between the officers and to monitor the subject officer's behaviour. The NSWPF declined to investigate the complaint because the alleged conduct had happened some time ago, and the first alleged victim did not want to make a formal complaint or participate in a criminal investigation.

We disagreed with the police decision not to investigate, and asked for an evidence-based investigation with a view to addressing issues about a problematic workplace culture. We monitored the investigation, attending the interviews with the second alleged victim and with the subject officer.

We were also concerned that the inspector had not reported the initial complaint and asked that this also be investigated.

The subsequent investigation made sustained findings against the subject officer for indecent assaults on the two officers and he was transferred from the unit. The investigation also found that the inspector failed to report the misconduct and he was reminded of his responsibilities in these matters.

Case study 39: Building community relationships to better address complaints

We received four complaints in quick succession from the Aboriginal Legal Service (ALS), each alleging that police had used excessive force during separate arrests of Aboriginal young people. In relation to two of the matters, the ALS also alleged that police had questioned the young person without a support person present. The ages of the young people ranged from 13 to 15 years. The force alleged included incidents involving the inappropriate use of a taser weapon and OC spray, officers having their firearms drawn, and assault.

Because of the serious nature of the complaints, we decided to monitor all four inquiries and sent an investigator from our Aboriginal Unit to observe the police interviews of each of the four young people in relation to their complaints.

That investigator and a team leader from our police division also met with the local commander and other staff from the command to discuss the complaints and the command's work with local Aboriginal communities generally. We learned that the two Aboriginal Community Liaison Officer (ACLO) positions had been vacant for about 18 months, but that one of the positions had been recently filled. The new ACLO had been instructed to give priority to establishing a Local Area Command Aboriginal Consultative Committee (LACACC) with local Aboriginal community members.

There had also been a delay in police appointing a new Aboriginal portfolio holder to replace an officer who was awaiting a transfer. The portfolio holder is the senior officer who has responsibility for implementing the police force's Aboriginal Strategic Direction (ASD) initiatives at a local command level. An appointment is expected to be made shortly.

Following our meeting, the commander and his professional standards duty officer met with the ALS solicitor to discuss the complaints. They also agreed to meet regularly to discuss any concerns and how best to address them. The commander sent a LAC-wide memo to officers informing them that concerns had been raised about the use of excessive force during the arrests of some Aboriginal young people, and reminding officers to remain professional at all times.

We also met with staff from the ALS, the new police ACLO and the coordinators of the Circle Sentencing program, the Aboriginal Community Justice Group and an Aboriginal women's service, the Goorie Galban Aboriginal Corporation. Our staff agreed to maintain contact with these services and to provide information and training to the justice group and to Goorie Galban on the role of the Ombudsman's office.

We are currently waiting for police to finalise their complaint investigations and will continue to monitor the command's work in improving the police relationship with the local Aboriginal community.

Misuse of instant messaging

Last year we reported about the misuse of the NSWPF email system to distribute highly offensive material. Our main concern was that NSWPF systems did not ensure consistent assessment, investigation and management action for what was often identical misconduct. The NSWPF issued a practice note in January 2010 to achieve consistency in its handling of email complaints. An emerging and similar form of misconduct involves the misuse of NSWPF's instant messaging 'chat' function. These complaints raise similar issues about consistency in assessment, investigation and outcomes. See case study 40.

Case study 40: Inappropriate messages

In 2010, we received a number of complaints from police about the excessive use by other police of the instant message 'chat' system for gossiping and exchanging highly explicit messages. Users of the system appeared to be unaware that the messages were retained by the NSWPF, as evidenced by one officer who said 'I wonder if any members of the public realise we get paid \$80,000 each to talk dirty on an instant chat all week? Now that's funny'.

The complaints included allegations that officers spent hundreds of hours chatting about non-work-related topics. For example:

- | two sergeants exchanged over 2,000 non-work-related messages in one day
- | a very senior officer engaged in explicitly sexual chat sessions with at least two junior female officers.

We asked the NSWPF for information about the rationale for introducing instant messaging and how they intended to minimise the risk of misuse. They suspended the system within five days of our letter, pending a full review. That review identified what the NSWPF considers to be a number of valid uses for the instant messaging system. They propose to develop an information and communications strategy for the proper use of instant messaging before reactivating the system. We will continue to work with the PSC to ensure appropriate measures are in place to identify and respond appropriately to any misuse of the system.

Problems with information and record-keeping

Police use a database – the Computerised Operational Policing System (COPS) – to record their activities, including information about alleged criminal incidents and other occurrences attended by and reported to police. The COPS database also includes information used in policing, such as information about the bail conditions of accused people. Problems with recording information can adversely affect police and members of the public, as shown in case study 41.

Case study 41: JusticeLink, COPS and bail checks

When a magistrate or judge makes a decision to vary or dispense with bail, this decision will be recorded on the 'JusticeLink' case management system of the Department of Attorney General and Justice (DAGJ) by a member of the court staff. Data from JusticeLink should automatically be transferred to COPS, so that police will have up-to-date information about court decisions.

Police have reported that the interface between JusticeLink and COPS is not working properly, resulting in inaccuracies in the information on COPS – such as information about bail conditions not being up-to-date. Police are therefore having to manually update court decisions about bail conditions onto COPS to ensure they have accurate and up-to-date information for bail compliance checks.

Despite the manual process, police have been unable to keep COPS up-to-date and this has resulted in police officers wrongly arresting people for breaching bail conditions. In the past year, we received 16 complaints about police arresting young people for breach of bail when the bail conditions were no longer enforceable.

NSWPF and the DAGJ have prepared business cases seeking additional resources to improve the JusticeLink/COPS interface and resolve this problem.

In the interim, the police have developed practical strategies to reduce the delays in having COPS updated with new court outcomes about bail and reduce the risk of wrongful arrests. Now, if a person says their bail

conditions are no longer enforceable, police will check with the NSWPF criminal records unit and they will check JusticeLink before any further action is taken.

A class action has been commenced against the NSWPF in relation to the alleged wrongful detention of young people for breach of bail.

The *Criminal Records Act 1991* deems certain minor convictions as being 'spent' after a crime-free period or after a finding of guilt where a court orders that no conviction be recorded. A person does not usually have to disclose spent convictions when asked questions about their criminal history.

The legislation aims to overcome any long-term prejudicial or discriminatory effects that convictions for minor offences may have on someone. It is an offence for a person with access to records of convictions to disclose information about spent convictions without lawful authority.

The Criminal Records Section of the NSWPF responds to requests for information about criminal histories and is responsible for ensuring that information is released consistent with spent conviction provisions. See case study 42.

Case study 42: Disclosing spent convictions

We received a complaint about the disclosure of a South Australian cannabis offence on a National Police Certificate issued by the NSWPF. The offence related to a 2002 charge where the magistrate found the then 19 year old complainant guilty of cultivating two cannabis plants, fined him \$200, and directed that no conviction be recorded.

The complainant advised us that he had attempted without success to resolve the complaint with the NSWPF. He did not accept the NSWPF's view that the legislation only related to offences committed in NSW and therefore permitted the disclosure of the cannabis offence on the certificate. The complainant noted that the legislation states that offences committed in places other than NSW can be dealt with under the NSW legislation, and a conviction is spent immediately if a court orders that no conviction be recorded.

We wrote to the NSWPF asking for an explanation of their decision to disclose the cannabis offence. They responded by re-stating their position that the conviction was not spent under the NSW legislation. However they nevertheless issued the complainant with an amended certificate by adding the words 'without conviction' next to the cannabis offence.

We again wrote to the NSWPF suggesting that they obtain independent legal advice as our view was this was an incorrect interpretation of the law. The magistrate had directed that the cannabis offence not be recorded, but they were disclosing the offence as part of the complainant's criminal history.

As a result of legal advice provided by the Crown Solicitor, the NSWPF issued a further certificate to the complainant without the cannabis offence. They apologised to the complainant for the error and undertook to update their internal guidelines to reflect that convictions from other jurisdictions are capable of becoming 'spent' under the NSW legislation.

Although the final outcome for the complainant in this matter was positive, we have received a further two complaints involving the improper disclosure of spent

convictions by the NSWPF – including one where the complainant alleges that he did not gain employment as a result. We are following up the reasons for these disclosures with the NSWPF.

See pages 78-79 in *Children and young people in relation to problems associated with the creation of multiple Central Names Indexes (CNIs) for individuals on the COPS database in the context of applications for child-related employment.*

Investigations by the Ombudsman

As well as overseeing the way police have investigated complaints, we can choose to directly investigate matters of significant public interest. This year we finalised five investigations of alleged police misconduct. Case studies 43 and 44 are examples of our investigative work.

Case study 43: Perverting the course of justice

We reviewed a complaint by a police officer alleging another officer had not properly investigated a motor vehicle accident. The subject officer had failed to send the driver's blood samples for testing to check if he could be charged with driving under the influence of prohibited drugs. The officer later charged the driver with negligent driving on the day before the offence was to become statute barred. The complainant felt there was insufficient evidence to support this charge and recommended the charge be withdrawn.

The NSWPF's initial investigation sustained three issues against the subject officer. They were:

- | a failure to investigate
- | entering false information in COPS
- | failing to comply with a direction to withdraw the charge.

However, the evidence suggested that the subject officer had been untruthful about serving the Court Attendance Notice (CAN) on the driver. When filing the matter in court, the officer said the CAN was served personally on the driver at his home address, but the driver was in prison at that time.

We wrote to police about our concerns that the investigator had failed to question the subject officer about his apparent untruthfulness. We also noted that the proceedings for the charge were not commenced in accordance with legislative requirements. We asked the command to investigate further, and to consider applying for an annulment of the driver's conviction, as it appeared that the driver was convicted after an ex-parte hearing where he was not given reasonable notice of the charge against him.

The NSWPF failed to respond to our concerns for 10 months. When they did respond, they advised that additional inquiries had been unable to determine whether the officer had been untruthful, and they would further review the circumstances of the motor vehicle accident to decide whether to apply for an annulment of the driver's conviction.

Dissatisfied with this response, we started a direct investigation and concluded that the subject officer had been untruthful about serving the CAN on the driver, which we considered may have amounted to perverting the course of justice as the officer had falsely declared that he served the CAN on the driver.

Following our recommendation, the NSWPF had the driver's conviction annulled and apologised for starting proceedings against him without reasonable notice.

The conduct of the subject officer was referred to the ODP. They determined that there was sufficient evidence to support a prosecution against him for perverting the course of justice and he has now been charged with this offence.

Case study 44: Using excessive force

We received a complaint from a police officer that a highway patrol officer had used excessive force on more than one occasion when dealing with a member of the public. The NSWPF conducted a non-criminal investigation which found the subject officer had used unreasonable force and inappropriate language on one occasion. The officer was rotated out of highway patrol for three months.

Our concerns about the handling of this investigation included the failure to:

- | investigate the matter criminally
- | consider the officer's use of force on another occasion
- | take adequate management action.

The officer's complaint history since 2003 included four previous matters involving unreasonable force.

We began a direct investigation, uncovering allegations of two further unreasonable uses of force by the subject officer, and information that one of the involved officers may have been untruthful in response to our inquiries.

We found that the subject officer had assaulted a member of the public on two occasions. We recommended that an additional 'unreasonable use of force' finding be added to the subject officer's history, and that police:

- | conduct a criminal investigation into the further allegations of assault and untruthfulness
- | review the management action taken against the subject officer
- | suspend his 'Leading Senior Constable' designation.

The NSWPF accepted all of our recommendations and we were satisfied with their subsequent investigation. The subject officer's Leading Senior Constable designation was removed and he was issued with a Commander's warning notice and placed on a six month conduct management plan.

Checking progress on our recommendations

After we finish an investigation or a report about the way the NSWPF have handled a complaint investigation, we check how they are implementing our recommendations. Case studies 45 and 46 are examples of our ongoing work in following up on our recommendations.

Case study 45: Delays in destroying records of fingerprints

In last year's annual report, we reported on our investigation of NSWPF practices for destroying the fingerprints of people who were found not guilty, were acquitted, or had the charges against them withdrawn or dismissed. As a result of our investigation, police agreed to re-assess the 414 applications for destruction that they had not acted on and to write to applicants advising them of the outcome of their previous applications.

This year, two applicants contacted us advising they had not heard anything from the NSWPF. When we followed this up, we discovered that police had:

- | failed to destroy their fingerprint records
- | decided that almost two-thirds (261 of 414) of the remaining applications did not meet the criteria for destruction.

As a result of us following up on this issue, police have now destroyed the fingerprint records of the two applicants and apologised to them for the 'regrettable administrative oversights' that led to the initial failure to destroy their records. They reviewed the remaining 261 applications and advised some applications were not actioned because the applicants had been convicted, no fingerprints had been taken, or the applications related to charge photographs or other records.

Case study 46: Using in-car video

In February 2011, we finalised our report on NSWPF compliance with legislation and police guidelines for using in-car video (ICV). ICV can provide valuable video and audio evidence of interactions between police and motorists, and police are required to use ICV for traffic policing if it is fitted to the police vehicle.

Our investigation found a number of instances of very effective use of ICV. We also found a number of unexplained failures to activate ICV, particularly ICV audio, and poor use of ICV as a source of evidence. This sometimes led to officers making important decisions based on information which, when later checked with the ICV, was clearly incorrect. We made 12 recommendations including that:

- | police better enforce the requirement that officers provide an explanation if ICV policy has not been followed
- | ICV audio be required to be activated during pursuits
- | police review their guidelines about removing people from ICV view
- | police view ICV footage before completing records of incidents – such as witness statements or criminal charge narratives
- | highway patrol supervisors regularly review ICV to identify and manage risks and reinforce good practice.

When we consulted police before issuing our report, they indicated support for all our recommendations. But when our final report was issued they changed their stance on a number of recommendations. We have since met with the Commissioner and he has indicated that police will support the recommendations. Police have now also advised us that they will seek a legislative amendment to require the activation of ICV audio during pursuits.

Ongoing concerns about the use of tasers

In November 2008, we reported on our investigation into the use of tasers by specialist commands. Although we found no evidence of the misuse of tasers, we identified serious risks with the decision to provide tasers to general duties police officers and made recommendations to strengthen the standard operating procedures (SOPs), training and accountability mechanisms for using tasers.

Last year we reported that the NSWPF had not implemented our recommendation to amend the SOPs to make clear that tasers should not be used as a compliance tool against individuals offering passive resistance. Following our report, the Minister for Police announced that the SOPs would be amended in accordance with our recommendation.

During the same month, a number of incidents involving taser use by police in NSW and other states of Australia attracted media attention and public interest. One incident involved a man, armed with two knives, who died soon after being tasered by police in NSW. In Queensland, a man died shortly after he was tasered up to 28 times by police. In October 2010, the Corruption and Crime Commission in WA reported on an incident where an Aboriginal man had been tasered 13 times by police in a watch-house.

Because of the risks associated with the use of tasers and the need for the NSWPF to have appropriate policies, procedures and accountability mechanisms, we decided to start a second review of taser use by police.

We have been reviewing a large volume of information provided by the NSWPF concerning the use of tasers by general duties police. We aim to determine whether tasers are being used in accordance with the NSWPF SOPs, whether the procedures are appropriate, and whether they are being implemented in an effective manner. We are examining the reasons recorded by police for the use of tasers over a six month period, viewing the tasercam footage of each incident, and the records made by senior police officers that reviewed each incident. This includes over 2,000 records relating to over 600 incidents in which the taser was used by police. We will conduct focus groups with operational police to gain a detailed understanding of the perspectives of rank-and-file police about the use of tasers. More broadly, we are conducting a literature review of issues relating to the use of taser across the world to assess developments in other jurisdictions and seeking to evaluate the impact of tasers including the level of injuries suffered by police and members of the public.

This review will be completed in 2012.

Performance indicators

2010-2011 criteria (%)	Target	Result
Formal reports about police conduct that made recommendations relating to law, policy or procedures	70	82
Recommendations in formal reports supported or implemented by the NSW Police Force	80	90

Keeping the complaints system under scrutiny

As well as reviewing investigations of individual complaints, we proactively review general complaint-handling practices and keep the complaints system under scrutiny. Section 160 of the Police Act requires us to do this and to inspect the NSWPF's records at least once every 12 months to see if they are appropriately recording and managing complaints.

Registering complaints

Last year we reported on our investigation into the NSWPF's practices for deciding whether to register complaints on their complaints database, 'c@tsi'. Proper registration of complaints, including details of investigations conducted and management actions taken, allows us to audit and assess complaint-handling. It also allows the NSWPF to track individual officer complaint histories and complaint trends across the state, encourages consistency in decision-making, and promotes transparency and accountability. This investigation suggested a widespread failure to comply with the process for registering complaints, identifying more than 250 complaints that had not been registered.

This year we entered a memorandum of understanding (MOU) with the PIC and the NSWPF about the registration of complaints. This MOU will be reviewed in two years and provides guidance about which complaints need not be registered on c@tsi.

Every year we inspect the records of a range of local area commands (LACs) to ensure that complaints are being properly identified and complaint-handling processes are being followed. This year we inspected records across six different LACs, identifying 35 matters that should have been notified to us but had not been. Steps have been taken to have these matters notified as complaints.

We also check whether police are notifying us about complaints of serious misconduct. This year we conducted two audits, finding 65 matters that should have been notified to us. These complaints have now been properly notified so we can review how they were handled.

Auditing PoliceLink

This year we audited the PoliceLink Command – one of the main avenues for members of the public to contact the NSWPF. PoliceLink primarily manages calls by members of the public to the '000' emergency line, the Police Assistance Line and Crime Stoppers. PoliceLink also receives calls about complaints via the Customer Assistance Unit and the Corruption Hotline.

Our audit considered those areas within PoliceLink that were tasked with or likely to receive complaints about police conduct. Before the audit, PoliceLink advised that in 2010 they had received approximately 700 complaints about police and 600 other contacts that were classified as 'concerns'. We found that there were shortcomings in the way in which PoliceLink was managing and recording complaints, and that many of the matters classified as 'concerns' were actually complaints. We provided our audit report to NSWPF in June 2011 and await their response.

Bullying, harassment and discrimination within NSWPF

In 2006, following evidence of sexual misconduct at the Goulburn Police Academy, the then Commissioner of Police commissioned Ms Chris Ronalds SC to prepare a report on sexual harassment and discrimination in the NSWPF.

The Ronalds Report found that:

- | inappropriate workplace conduct was occurring in pockets throughout the NSWPF
- | there was an absence of coordinated, comprehensive and ongoing training programs on discrimination and harassment in the workplace
- | there was a lack of experienced investigators with knowledge of discrimination and harassment issues
- | NSWPF had no central point of contact for providing accurate and reliable advice and assistance on workplace equity issues
- | inconsistent decision-making processes were resulting in perpetrators avoiding the consequences of their misconduct.

In response, the NSWPF created a Workplace Equity Unit (WEU) and in April 2009 produced resolution procedures for handling workplace equity complaints.

In late 2009, we began an audit to assess the implementation of these new procedures. We examined relevant complaints, reviewed the WEU's systems and records, and spoke with WEU staff and management.

Our audit found that key aspects of the procedures had not been implemented effectively. Our overall concern was that the WEU lacked sufficient input and responsibility for monitoring and improving the handling of workplace equity complaints. We found a lack of compliance with the procedures, and a lack of suitable administrative systems within the WEU – including the absence of any capability to measure complaint trends.

We also identified a number of complaints that did not appear to have been investigated in a timely and effective manner. In particular, the assessment and investigation of complaints about sexual harassment had been inconsistent and insufficiently rigorous.

We made 12 recommendations to strengthen the WEU's role in providing advice and quality assurance for key decisions made by commands – including initial assessments, investigation findings and management actions. We also recommended that NSWPF survey police officers to determine their level of awareness, satisfaction and confidence in the procedures for making and resolving workplace equity complaints.

In June 2011, the NSWPF accepted all the recommendations in our draft report. We look forward to further consultation with them about the implementation of our recommendations.

Policing domestic violence

Our 2006 investigation into the policing of domestic violence continues to generate improvements in this area. This year the NSWPF has focused particularly on enhancing the service received by victims who are required to attend court, a specific area of focus for our 2006 report. For example it has worked to identify and develop a cohort of prosecutors to become domestic violence 'specialists'. These are prosecutors who have a specific interest in this area of court work, and the capacity to 'lead' good practice.

The NSWPF also progressed the development of a specialist domestic violence training course for police prosecutors, a recommendation of our 2006 report. We provided advice to inform this process. The course will comprise both face-to-face and 'e-learning' components, and will have focus on practical court room skills. The roll-out of the course is due to begin in early 2012.

This year the NSWPF also commenced trialling two initiatives aimed at better engaging victims of domestic violence in the court process. 'Domestic violence clinics' have been introduced at Katoomba, Lithgow and Burwood courts. A partnership between police and local Women's Domestic Violence Court Assistance Schemes (WDVCAS), the clinics are aimed at preparing victims for court by educating them about the criminal justice process and what their participation in it will involve. Victims who have a court date approaching are invited to participate in a structured group discussion led by the police prosecutor and Domestic Violence Liaison Officer (DVLO), who familiarise themselves with the circumstances of each of the participating victims prior to the clinic. Where individual issues are identified during the clinic, the DVLO, prosecutor and WDVCAS are able to provide appropriate follow-up.

The second initiative is running at Campbelltown, Fairfield, Sutherland and Wollongong local courts and involves individual 'conferencing' for victims of domestic violence participating in defended hearings (both charges and Apprehended Violence Orders). The objective of the conferences is to provide a structured opportunity for police prosecutors to build rapport with the victim and to be better informed about all relevant aspects of their matter. The aim is to achieve increased prosecutions rates, particularly by decreasing the number of victims who 'withdraw' from the court process.

A hybrid model of both of the above initiatives will shortly be introduced on the North Shore. We understand that all of the initiatives will be evaluated to determine their potential state-wide application

Case study 47: Reinvestigation results in convictions

A criminal investigation conducted by the PSC recently resulted in a man being convicted in NSW District Court of 17 out of 20 charges relating to domestic violence offences over a 20 year period. This investigation stemmed from a complaint lodged by the victim that police in a number of commands had failed to act in response to her ongoing allegations of domestic violence. We monitored the handling of this complaint and referred it to the PSC for a coordinated response, as the complaint involved the actions of numerous local area commands over a number of years. PSC did a comprehensive and sensitive review of her complaint allegations and reinvestigated her allegations against the man resulting in the man's conviction of attempted manslaughter and other offences.

Police response to complaints about domestic violence

In May we tabled a special report to Parliament, *Audit of NSW Police Force handling of domestic and family violence complaints*. The report presented the findings and recommendations from our detailed audit of 289 complaints received by the NSWPF in 2008 that raised domestic violence issues. The audit was conducted as part of the requirement in our legislation that we 'keep under scrutiny' the NSWPF's systems for handling complaints. It also built on our 2006 investigation and report on the policing of domestic violence.

Complaints are an important source of information about key issues and concerns. Used properly, they can provide insights into areas that might need improvement, and evidence to test the validity of recurring criticisms of particular police practices. Responding effectively to complaints is vital to maintaining – or in some cases, restoring – the confidence of victims of domestic violence who have sought assistance from police but feel they have not received an appropriate response. It can also help police to build goodwill with community sector partners who advocate on behalf of domestic violence victims.

The audit enabled us to assess concerns and provide feedback to the NSWPF, support services in the domestic violence sector and the broader community about whether domestic violence-related complaints are being appropriately and effectively handled. Our aim was to contribute to efficient, high-quality police complaint-handling.

NSW Police recorded 25,528 domestic violence-related assault incidents in 2008. In a number of commands, responding to domestic violence incidents accounts for the majority of police officers' time. By comparison, the number of domestic violence-related complaints was low.

Our audit found that domestic violence-related complaints received in 2008 were generally well-handled by the NSWPF.

In most cases, police correctly assessed the issues raised by complaints, notified them to the Ombudsman when required and, when warranted, took appropriate action to address the issues raised. In addition, police generally initiated protective action on behalf of victims in response to complaints. Some form of management action was taken in relation to the majority of complaints referred for evidence-based investigation and we were satisfied with the nature of that action in most cases. There was a reasonable level of complainant satisfaction where our audit was able to determine this.

However, we did identify some instances where complaints were not well-handled by police. Although there were few such complaints, the audit highlighted the very serious consequences that can occur when police respond poorly to incidents of domestic violence. Although the report focused on the handling of domestic violence-related complaints, it also included some related observations about operational policing issues.

The NSWPF has responded positively and constructively to the audit results, endorsing the 19 recommendations made to improve how domestic violence complaints are handled and the way information from complaints can be used to enhance operational policing. The NSWPF commitment to implementing the recommendations and strengthening its response to domestic violence includes developing a Domestic and Family Violence Complaint Practice Note to address many of the issues raised. We have provided comments to the NSWPF on the draft of the Complaint Practice Note which will now be finalised and distributed shortly.

Overall, the positive findings of the audit should enable victims, their advocates and the wider public to be confident that, if they complain to the NSWPF about how police have responded to domestic violence, their concerns will be handled in an appropriate and responsive manner.

Reviewing the implementation of legislation

Since 1998, the NSW Parliament has required the Ombudsman to keep under scrutiny a range of additional powers conferred on police. We independently and impartially analyse the exercise of these new powers, taking into account the perspectives of police officers, agencies and the people affected by their use.

Appendix B lists our legislative review activities in 2010-2011.

Terrorism powers

In December 2010, the NSW Parliament gave us an ongoing role to review the exercise of powers conferred on police and other officers under Parts 2A and 3 of the *Terrorism (Police Powers) Act 2002*. Under Part 2A, a person can be detained by a court order for up to 14 days to prevent, or preserve evidence of, a terrorist act. Part 3 allows police and Crime Commission staff to obtain covert search warrants if this would help them respond to a suspected act of terrorism. These powers have not been used since we last reported. The preventative detention powers, which also exist in all other states and territories, have never been used in NSW or any other jurisdiction.

We are currently finalising a further report under the Act. In it, we consider the way recommendations from our previous report have been implemented, and whether there is any ongoing utility in the powers in light of their very limited use. We hope to provide our report to the Attorney General and Minister for Police early in 2011-2012.

Criminal organisations

The *Crimes (Criminal Organisations Control) Act 2009* gives police the power to apply to an eligible judge for an organisation to be declared a criminal organisation, and then to apply to the Supreme Court for control orders on members of that organisation. The Act also created a range of offences, such as association between controlled members and recruiting people to join criminal organisations.

Under the legislation, controlled members can be prevented from engaging in a range of prescribed activities – including working in the security industry, carrying on a business buying, selling or repairing motor vehicles, possessing firearms licences or licences to sell liquor, operating a casino, operating a tow truck and a range of activities in the racing industries.

In July 2010, the NSWPF lodged an application to have the Hells Angels Motorcycle Club declared a criminal organisation. However on 23 June 2011, in response to a case lodged by the Hells Angels, the High Court of Australia found the Crimes (Criminal Organisations Control) Act invalid as it was repugnant to, or incompatible with, the institutional integrity of the NSW Supreme Court. The Attorney General has announced he is reviewing the implications of the High Court's decision.

To date, our review has included observing the way police have implemented the legislation, reviewing the significant volumes of documentation lodged by the NSWPF in support of their application against the Hells Angels, and attending court proceedings.

Implementing recommendations from our reports

The response to recommendations from our review of the Terrorism (Police Powers) Act has been positive. Of the 37 recommendations in our September 2008 report, 28 have been implemented and five are supported but awaiting implementation. The four that were not implemented recommended changes to the Act which, while not made, have been addressed by police through their SOPs.

Our review of the impact of Criminal Infringement Notices (CINs) on Aboriginal and Torres Strait Islander Communities was tabled in July 2010. The Attorney General gave support in principle to 22 of our 25 recommendations, convening a working party to consider how changes to the CINs scheme could be implemented. At the time of writing, the working party has not finalised its activities.

We have still not received advice about the implementation of the 77 recommendations we made in our May 2009 report about the *Law Enforcement (Powers and Responsibilities) Act 2002*. This report looked at the exercise of powers to conduct personal searches on arrest and in custody, establish crime scenes, and require the production of documents. Police have declined to report on the implementation of our recommendations pending the finalisation of a policy review by the NSWPF and the DAGJ. That review has not yet been finalised. Many of our recommendations were about improvements to police procedures and training, and it is not clear why the policy review process should delay implementing this type of operational recommendation.

Witness protection

The witness protection program was established under the *Witness Protection Act 1995*. It is designed to protect the safety and welfare of crown witnesses and others who have given information to police about criminal activities. The Ombudsman is responsible for hearing appeals about the exercise of certain witness protection powers by police and handling complaints from people in the program.

Appeals

The NSW Commissioner of Police has the power to refuse a person entry to the witness protection program or to remove them from it. A person who is directly affected by such a decision can appeal to the Ombudsman who must make a decision within seven days. The Ombudsman's decision is final.

This year we received and determined two appeals under the Act.

Complaints

Every person taken onto the witness protection program has to sign a memorandum of understanding with the Commissioner of Police. This memorandum sets out the basic obligations of the participant and the police, and:

- | prohibits the participant from engaging in certain activities
- | governs arrangements for family maintenance, taxation, welfare, and other social and domestic obligations or relationships
- | sets out the consequences of not complying with the provisions of the memorandum.

All witnesses have a right to complain to the Ombudsman about the conduct of police in relation to any matters covered in the memorandum.

Historically, we have received very few complaints from participants in the witness protection program, and received only two this year. When complaints have raised systemic issues, the NSWPF have generally responded positively and resolved those issues. These ongoing improvements in the management of the program have in turn lead to fewer complaints.

Covert operations

Under the *Telecommunications (Interception and Access) (New South Wales) Act 1987* and the *Surveillance Devices Act 2007*, the NSWPF, the NSW Crime Commission, the Independent Commission Against Corruption and the PIC can intercept telephone conversations and plant devices to listen to, photograph or video conversations and track the position of objects.

Controlled or 'undercover' operations can also be carried out under the *Law Enforcement (Controlled Operations) Act 1997* which allows activities that would otherwise involve breaches of the law, such as the possession of illicit drugs. The Australian Crime Commission, the Australian Federal Police and the Australian Customs and Border Protection Service are also authorised to conduct controlled operations under the NSW legislation.

Operations of these kinds involve significant intrusions into people's private lives. Agencies must therefore follow the approval procedures and accountability provisions set out in the relevant legislation. Reviewing the compliance with these requirements is an important function of the Ombudsman.

Controlled operations

Controlled operations are an important investigation tool. They allow law enforcement agencies to infiltrate criminal groups – particularly those engaged in drug trafficking and organised crime – to obtain evidence to prosecute criminal offences or expose corrupt conduct.

The head of the law enforcement agency gives approval for controlled operations without reference to any external authority. To ensure accountability for these undercover operations, we have a significant role in monitoring the approval process.

Agencies must notify us within 21 days if an authority to conduct an operation has been granted or varied, or if a report has been received by the agency's chief executive officer on the completion of the operation. Retrospective authorities for controlled operations must be notified to us within seven days of being granted.

We inspect the records of each agency at least once every 12 months to ensure they are complying with the requirements of the legislation. We also have the power to inspect agencies' records at any time and make a special report to Parliament if we have concerns that should be brought to the attention of the public.

During 2010-2011, we inspected the records of 385 controlled operations.

We report in detail on our monitoring work under the *Law Enforcement (Controlled Operations) Act* in a separate annual report that is available on our website. We include details about the type of criminal conduct targeted in the operations and the number of people who were authorised to undertake controlled activities, as well as information about the results of the operations.

Telecommunications interceptions

The Ombudsman has been involved in monitoring compliance by law enforcement agencies with the requirements of the telecommunications interception legislation since 1987.

Our role does not include scrutinising the approval process for telephone intercepts because a judicial officer or member of the Administrative Appeals Tribunal grants a warrant for a telephone interception.

We check whether the agency carrying out the telecommunication interception has complied with record-keeping requirements. Records must document the issue of warrants and how the information gathered was used. All telephone intercept records have to be kept under secure conditions by the agency and destroyed once specified conditions no longer apply. Some records must be provided to the Attorney General.

We are required to inspect each agency's records at least twice a year and also have the power to inspect their records for compliance at any time. We report the results of our inspections to the Attorney General. The *Telecommunications (Interception and Access) (NSW) Act 1987* prevents us from providing any further information about what we do under that Act.

Surveillance devices

The *Surveillance Devices Act 2007* (the SD Act) sets out the requirements for the installation, use and maintenance of listening, optical, tracking and data surveillance devices. It restricts the communication and publication of private conversations, surveillance activities and information obtained from using these devices. NSW law enforcement agencies are given power under the SD Act to use surveillance devices to investigate crime and corrupt conduct.

Applications are made to eligible judges for warrants to authorise the use of most surveillance devices. In the case of tracking devices – or retrieval warrants for tracking devices – applications can be made to eligible magistrates.

The Act imposes a number of record-keeping, reporting, use and security responsibilities on law enforcement officers granted a warrant. It also requires us to inspect the records of each agency from time to time to determine the extent of compliance with the Act, and to report to the Attorney General at six monthly intervals on the results of those inspections.

This year, we carried out four inspections under the SD Act. On 1 October 2010 we reported to the Attorney General on our inspections of surveillance device records up to 30 June 2010, and on 1 April 2011 we reported on our inspections up to 31 December 2010. Both reports are available on our website.

Inspecting records of search warrants

Covert search warrants

Part 19 of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires the Ombudsman to inspect the records of the NSWPF, the NSW Crime Commission and the PIC every 12 months to determine whether they are complying with the requirements of the Act in relation to covert search warrants. We have to prepare a report of our work in this area for the Attorney General and Minister for Police.

This year we carried out two inspections of the records of the NSWPF – where we inspected 21 files and the NSW Crime Commission, where we inspected three files. The PIC did not apply for any covert search warrants.

Criminal organisation search warrants

On 19 May 2009, the *Criminal Organisations Legislation Amendment Act 2009* introduced a new form of search warrant – a criminal organisation search warrant – which police can seek from an eligible judge of the Supreme Court. These warrants allow police to search premises for things connected with an 'organised criminal offence'. These are serious indictable offences arising from, or occurring as a result of, organised criminal activity.

The powers conferred in these warrants are the same as for usual search warrants, except that they operate for seven days instead of 72 hours and have a lower evidentiary threshold ('reasonable suspicion') compared to ordinary search warrants ('reasonable belief'). Applications to the eligible judge must be approved by a police officer of the rank of superintendent or above.

Under the legislation, we have to inspect and report on the records of the NSWPF every two years to ensure that the requirements of the Act are being complied with.

Criminal organisation search warrants are not covert, but we inspect them as part of our general program for inspecting records of covert operations. This year we conducted one inspection of criminal organisation search warrants.