

The Ombudsman Reports

THE workings of the Complaints (Australian Federal Police) Act, 1981, 'fishing expeditions' and complaints made in bad faith are among the issues covered in the latest annual report from the Office of the Commonwealth Ombudsman.

The following are edited extracts:

... The Complaints Act has operated for five years and has proved to be very workable legislation. Although fine tuning has been necessary the Act enables effective independent scrutiny of the investigation of complaints against the AFP. Moreover, the co-operation between my office and the Internal Investigation Division has meant that my officers can be involved at the early stage and can make suggestions about the direction of an investigation. (This approach is particularly useful in the case of more serious complaints. We rarely seek early involvement in routine cases.) In this way, independent scrutiny of investigations — essential for public confidence in the handling of complaints by police — is possible at a much earlier stage and hence can be much more effective.

The IID and my office work closely together in developing and revising instructions governing the investigation of complaints. One of the most important is the IID instruction to investigation officers to ensure that, where more than one AFP member is involved, they should not be given an opportunity to discuss the complaint. They should be given directions to provide reports at the same time but separately and should be kept apart until they have provided the reports and have been interviewed.

From time to time it is difficult for investigation officers to meet this requirement but it is most important to obtain members' accounts contemporaneously and separately, even if at some inconvenience to members. Where there is no possibility of collusion, I can place significant weight on consistent evidence provided by AFP members. On the other hand where there has been an opportunity to discuss the details of a complaint, I cannot prefer the accounts provided by AFP members over the account provided by the complainant. All too often, in the absence of independent evidence, I find that a complaint is incapable of determination. This is unsatisfactory to both the AFP members and the complainant and I shall continue to stress the need for members to give contemporaneous and separate accounts to enable me to reach a definite conclusion, one way or the other, in as many cases as possible . . .

Section 24 Discretion

There are many complaints, of course, which do not warrant investigation, perhaps because:

- they relate to incidents that occurred too long ago for an investigation to be effective;
- the same matter has been or will be considered by a court that is hearing related charges (and preliminary inquiries do not reveal any reason to believe the charges should not have been laid);
- or the complaint is trivial, vexatious or not made in good faith

Sub-section 24(1) of the Complaints Act, like section 6 of the Ombudsman Act, provides the ombudsman with a discretion to decide that a complaint which falls in such a category should not be investigated.

Before deciding whether to exercise this discretion, preliminary inquiries, either by my office or by the IID, are often necessary.

In the case of minor complaints, preliminary inquiries may be all that is required. Complaints about rudeness often fall into this category. Where preliminary inquiries into such complaints reveal conflicting accounts of what happened between the complainant and the member concerned and there are no independent witnesses, I see no purpose in further investigation. Moreover, many such complaints may be resolved by reconciliation. Where this is not possible, my office writes to the com-

plainants explaining the outcome of the preliminary inquiries and why we do not consider further action is warranted.

Section 24 provides the Ombudsman with a discretion to decide that a complaint should not be investigated where, in his opinion, it was not made in good faith. Unfortunately it is rarely possible to determine that a complaint has no substance and has been made in bad faith until at least preliminary inquiries have been conducted.

Complaints made in bad faith

There may be many reasons for making a complaint against police other than a genuine belief that the AFP has acted wrongly. A person charged with an offence may feel upset about being caught and may want to hit out at the police member who charged him. Some people subject to criminal charges believe it will help their defence if the AFP member who is giving evidence against them is under investigation as a result of a complaint. Others, still under police investigation, lodge a complaint in the hope that investigation of the complaint will hinder and inconvenience the members investigating them and delay their investigation. Whatever the reasons, complaints lodged otherwise than as a result of a genuine grievance and a belief that the police have acted defectively are an abuse of the Complaints Act. Where my office identifies such complaints we give them short shrift and we continue to

PACIFIC CRIME



Deputy Commissioner John Johnson and Pacific colleagues in Pago Pago.

A CENTRAL international criminal intelligence reporting system is being set up in Pago Pago in Western Samoa following concern about drug movements through the Pacific.

The US Government is funding the intelligence network.

'There appears to be a growing use of the Pacific Islands as a staging place for bringing drugs into Australia and the United States and for money laundering,' Deputy Commissioner John Johnson (Administration) said.

'The Islanders throughout the region co-operate as much as possible. They do not have a drug problem because of their traditional culture which is quite strong but they do find it very difficult to pay for the enforcement methods which Australia suggests,' he said.

'The AFP is aware that sometimes the various island states can be fairly vul-

take active steps to discourage such abuse.

When we suspect that a complaint has been made to attack the credibility and integrity of police witnesses in court, my office tries to determine whether the complaint has substance before the complainant's charges go before the court. This may require giving it higher priority than if a court hearing was not involved. The aim is to have my conclusions on the complaint available to both parties in time for the court hearing. Where I have concluded that the complaint is unsubstantiated, it would clearly be counter-productive for the defence to raise it in court. Alternatively, if the allegations proved to be substantiated the Commissioner and Director Of Public Prosecutions would then have the opportunity to consider whether the prosecution should proceed.

In some instances solicitors have advised that their clients, having made complaints against police, would not be available to be interviewed until after court proceedings had concluded. Unless there are special circumstances applying, my view is that the complaint investigation should not be delayed. If the client is not prepared to co-operate with the investigation of his complaint I give serious consideration to exercising the discretion available to me to direct that it not be investigated at all. In some instances, notwithstanding the complainant's failure to co-operate, the allegations can and should be investigated (at least in a preliminary fashion) before charges are heard in court and I direct that this be done. Where possible, my office and the IID avoid having unresolved complaints hanging over the heads of AFP members

giving evidence on related matters in court.

Similarly, where complaints appear to have been made to disrupt a criminal investigation, I consider whether I have sufficient basis to exercise my discretion under section 24 to conclude that it not be investigated. If I do not have such a basis, I request that preliminary inquiries be undertaken into the complaint to test the credibility of the complainant. This may simply involve examining the investigation file or obtaining a report from the investigators. Frequently, this is sufficient to determine whether the complaint lacks substance. If further investigation is necessary, the aim of my office and of the IID is to ensure that it is investigated quickly and thoroughly with the minimum of disruption to the criminal investigation.

Regrettably, assigning a higher priority to such complaints necessarily means that the determination of other complaints is delayed. Nevertheless, I see no alternative if abuse of the Complaints Act is to be discouraged.

Fishing expeditions

Attempts by those involved in crime to discover what the AFP knows about their activities are made from time to time in the guise of complaints. In some instances, a complainant, searched upon his departure from or return to Australia, complains about the search in order to discover what information the police were acting upon at the time. In other cases where criminal investigations are under way, perhaps involving execution of search warrants, suspects complain that police interest in them is unwarranted and seek to learn its basis.

nerable to drug traffickers and we want to develop their intelligence gathering skills in tandem with US enforcement agencies.

'The islands are often visited by large yachts and international criminals don't recognise national boundaries,' he said.

The Sixteenth South Pacific Chiefs of Police Conference was held in Pago Pago from 9-13 October 1987.

Deputy Commissioner John Johnson and Assistant Commissioner Ray McCabe (Eastern Region) attended with Deputy Commissioner Peters of the Western Australia Police as Australian delegates.

The conference comprises the chiefs of police from Papua New Guinea, the Solomon Islands, Tonga, Niue, Kiribate, New Zealand, the Cook Islands, American Samoa, Western Samoa, Fiji, Vanuatu and Australia. The Mariana Islands were admitted as a member at the conference.

The conference enables the chief of police of each member country to present

papers of topical and mutual interest, exchange ideas and develop matters such as liaison procedures.

Besides the obvious value of the conference itself, the week-long personal associations develop friendships that are of inestimable value long after every delegate has returned home.

The significant success at the conference was the agreement by all delegates to creating the central international criminal intelligence reporting system.

The conference was opened by the Governor of American Samoa, the Honourable A. P. Lutali, with the keynote address being given by Dr. James O'Connor, Deputy Director (Training) of the Federal Bureau of Investigation.

Luncheon addresses were given by the Chief Justice of American Samoa and by representatives of the US Drug Enforcement Administration and United States Customs Services. 'In Session' addresses were given by FBI representatives.

The social diary included lunches and

I should hasten to add here that not all who complain about being the subject of police attention do so in bad faith. People come to police attention for a variety of reasons, many through no fault of their own. Such people may quite reasonably feel aggrieved and seek to discover why the police were interested.

My office takes the greatest care when responding to complaints of this type, whether or not we believe they are deliberate fishing expeditions, to avoid prejudicing, by disclosure of sensitive information, methods of surveillance and detection used by law enforcement authorities. This care is taken regardless of the honesty or integrity of the complainant involved.

I have a duty of course to satisfy myself that actions complained about are fair and reasonable and comply with the requirements of both the law and the AFP internal rules. Thus where a complaint is received about, say, the execution of a search warrant or perhaps the conduct of a body search under the authority of Section 196 of the Customs Act, the IID will, as part of its investigation, establish not only what occurred but why. My subsequent examination of the facts is usually sufficient to allow me to determine whether the police actions were reasonable.

I am able then to pass on my conclusions. Even if I am unable to discuss the content of the information held by police and used as the basis for their actions, I am in a position to reassure members of the public that an independent body — the Ombudsman's office — has examined the facts and has been able to assess whether the AFP's actions were defective."

dinners at restaurants, a beach-side barbecue with a 'humu' (whole pig roasted underground beneath a bed of coals), and a 24-hour hospitality room.

Each delegate was presented with a sports shirt, a Samoan 'luau' (skirt) and baseball cap, all specially made for the occasion and bearing the conference logo and inscription.

As well, the leader of each delegation — in the case of Australia it was Deputy Commissioner Johnson — was, in Samoan style, formally presented with a 'tapa' (bark cloth) wall hanging bearing a Samoan motif, a palm-leaf mat, a specially prepared meal of chicken and taro root, and a case of 'wahu' (prime quality tuna).

After leaving Pago Pago Deputy Commissioner Johnson and Assistant Commissioner McCabe spent half a day in Apia (Western Samoa) where we had informal but useful discussions with the Australian High Commissioner, Mr Tony Godfrey-Smith, before returning to Australia via New Zealand.