

REPORT TO PARLIAMENT

REGARDING

THE FORMER SPECIAL BRANCH

OF THE NEW SOUTH WALES POLICE SERVICE

June 1998

POLICE INTEGRITY COMMISSION REPORT TO PARLIAMENT REGARDING THE FORMER SPECIAL BRANCH OF THE NEW SOUTH WALES POLICE SERVICE JUNE 1998

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The Hon Max Willis MP
President
Legislative Council
Parliament House
Sydney 2000

The Hon John Murray MP
Speaker
Legislative Assembly
Parliament House
Sydney 2000

Dear Gentlemen

In accordance with section 96 of the *Police Integrity Commission Act 1996*, the Commission hereby furnishes to you a report regarding the former Special Branch of the New South Wales Police Service, being a report in relation to a matter which has been the subject of an investigation by the Commission.

I draw your attention to section 103(2) of the Act, pursuant to which I recommend that this report be made public forthwith.

Yours faithfully

Judge P D Urquhart QC
Commissioner

June 1998

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EXECUTIVE SUMMARY

In December 1996 and March 1997, evidence was led at the Royal Commission into the New South Wales Police Service regarding activities of the Special Branch. The Royal Commission's investigations revealed, amongst other things, serious management shortcomings, a lack of accountability on the part of the Branch, a seemingly indiscriminate approach to information collection, inadequate record management practices, and the possible misuse of public funds.

The Commissioner of Police disbanded the Special Branch on 12 March 1997 and secured its records. On 13 March 1997, a notice under section 26 of the *Police Integrity Commission Act 1996* was served on the Commissioner of Police requiring production of all records of the Special Branch. The Police Integrity Commission has examined those records and found inconsistencies and lack of appropriate supervision in their creation and destruction.

The New South Wales Police Service, under the supervision of the Police Integrity Commission, has conducted a detailed audit of those records which are now held in secure storage.

The Special Branch had operated from 1948, concentrating its efforts on the "subversive" conduct of communist and related groupings. As the hysteria of the Cold War abated, less attention was paid to such matters. Because its records addressed an overlap between functions of intelligence and the protection of VIPs, the Special Branch also became the manager of close personal protection arrangements for those VIPs.

The principal focus of the Special Branch had shifted to the protection of VIPs, with this constituting about seventy-five percent of the work performed by the time of the Branch's closure. The intelligence gathering activities had drifted towards politically motivated violence, thought to be a tactic of radical groupings.

The investigation undertaken by the Police Integrity Commission revealed the following matters of concern regarding the operation of the former Special Branch:

- There was a closed shop approach to recruitment, which led to cronyism and the perpetuation of an outdated culture and outdated practices. There was little rotation in and out of the Special Branch, particularly at management level, and therefore limited injection of fresh blood.

- The Special Branch was virtually unaccountable. The Mission Statement was varied to move with the times, but no effective scrutiny of the Special Branch's activities was undertaken and no attempt made to bring those activities into line with the changing charter. Information gathering on people who posed no threat of politically motivated violence or similar matters continued unabated, despite criticisms of this practice by the Privacy Committee in 1978 and a recommendation for the implementation of guidelines to avoid it.

- There was an unacceptable overlap between the functions of information gathering and protection of VIPs, with unnecessary information being held in relation to VIPs and public figures, rather than those who posed a threat to the VIPs and public figures.

- The relationship between the Special Branch and VIPs appeared capable of extending beyond the provision of VIP protection to protection from the consequences of the individual's own misconduct (the Yeldham case). There is no indication that the provision of this service by Special Branch involved any blackmail or requirement for return favours.

- In addition to no external supervision, there was minimal internal supervision of the administrative activities of the Special Branch staff, such as the creation and destruction of index cards and dossiers, and decisions about what went on to such cards and dossiers. These decisions were made by unsworn clerical staff and by Police officers.

- The destruction of some records may have been in breach of the *Archives Act 1960*. Special Branch management, and at times, senior Police, allowed this destruction to occur without regard to that Act.

- The manual filing systems were anachronistic and unreliable. In addition, documents and firearms which should have been accounted for and properly stored were found in safes and other locations, with no satisfactory explanation of why they were there and how long they had been there. In many cases, it is apparent the items were left by retiring senior officers and there had been no review by their successors of the material.

- There were no satisfactory procedures for the management of informants, and inadequate procedures for managing the cash fund, which was ostensibly drawn upon to pay informants, but was used at times to fund personal expenses by Special Branch officers. When a new regime which allowed for closer supervision of payments to informants was implemented, a way round that barrier was found by payments to what were described as community contacts.

The Police Integrity Commission recommends that:

- The proposals for which the Royal Commission recorded its support concerning the creation of a new agency to replace the former Special Branch should be enacted as a priority

- The Working Party convened by the Police Service should make recommendations to the Commissioner of Police for decision by the Government on the ongoing use, archiving, etc of the records of the former Special Branch, taking into account the considerations at paragraphs 8.5 - 8.9.

- There be no further investigation by other agencies of the issues identified by the Royal Commission and by the Police Integrity Commission.

1/ INTRODUCTION

1.1 In December 1996 and March 1997, evidence was led at the Royal Commission into the New South Wales Police Service ("the Royal Commission") regarding the activities of the Special Branch. As reported in Volume II of the Royal Commission's Final Report in May 1997, the evidence disclosed the following matters of concern regarding the Branch:

- the disregard of its charter;
- the fact that it seemed accountable only to itself, operating under a cloak of secrecy;
- the possible abuse of allowances and of monies ostensibly payable to informants or sources of intelligence;
- lax and inconsistent record keeping practices and woefully inappropriate systems for recording payments and allowances;
- long lunches by supervisors and the consumption of alcohol on duty, particularly within the Special Branch office where it seems a bar was regularly opened in the afternoon;
- the opening of dossiers and the keeping of records in respect of various persons, for example, barristers practising in the criminal law who on no reasonable basis could have been of interest to Special Branch within its charter;
- the ineffective and outdated intelligence system it maintained;
- the belief that it had long been associated with political interests, and seen as an agency which could be used for political advantage against persons on whom 'dirt files' had been kept;
- the limited investigative success it had achieved in relation to subversive activities in the past;
- the destruction of files soon after the Royal Commission was announced; and
- the unsatisfactory recruitment practices of the Special Branch which were based on patronage and friendship.[1]

1.2 Following that evidence, the Commissioner of Police announced on 12 March 1997 that the Special Branch had been disbanded. The Special Branch records room at Police Headquarters was secured and locked. On 13 March 1997 the Police Integrity Commission ("the Commission") informed the Commissioner of Police that it would undertake a preliminary investigation of the Special Branch holdings in order to discover or identify conduct that might be made the subject of a more complete investigation under the *Police Integrity Commission Act 1996* ("the Act"). A notice was served upon the

[1] Royal Commission into the New South Wales Police Service Final Report, Volume II, pp 251-52.

Police Service pursuant to section 26 of the Act requiring the production of all of the Special Branch documents and records which existed at the time it was disbanded.

1.3 The following report, made under section 96 of the Act, sets out the results of that preliminary investigation. The Commission did not discover or identify conduct that warranted being made the subject of a more complete investigation.

2/ PRODUCTION OF SPECIAL BRANCH HOLDINGS TO THE POLICE INTEGRITY COMMISSION

2.1 The Special Branch records room contained the following storage facilities:

- 18 four-drawer cabinets;
- Seven two-door cabinets;
- Two compactus;
- Two cabinets of 12 drawers each of photographic prints and index cards;
- Two cabinets of 18 drawers containing photographic negatives;
- A card index contained in three cabinets, each of eight drawers;
- Two safes;
- A map drawer cabinet; and
- A key cabinet.

A further three vault safes, one four-drawer cabinet safe, and a smaller safe were located in other areas of the office.

2.2 The Police Integrity Commissioner inspected the Special Branch offices on 14 March 1997, in the presence of the Commissioner of Police. The only door to the records room was then secured. A more comprehensive inspection of the records room was conducted by Commission officers on 19 March 1997. It became apparent after such inspections that, for the Commission to conduct a meaningful preliminary investigation, it would be necessary for an audit of the Special Branch records to be conducted. The enormity of such an audit caused the Commission to conclude that such task could only be carried out by a co-operative approach under the supervision of the Commission.

2.3 A Management Plan for the audit of Special Branch holdings by the Police Service and a floor plan indicating the layout of the records room were supplied to the Commission, which approved the Management Plan. Plan and elevation drawings were prepared and the preparation of an inventory commenced on 14 April 1997. The audit team under the supervision of the Commission comprised officers from the Police Service's Quality and Review Branch and the Comprehensive Audit Branch and included the NSW Police corporate archivist and a number of clerical officers. For security reasons, Police Service officers involved in the audit were approved by the Commission. As a further security measure, staff cataloguing the records worked in pairs, with one person describing each item and its location and the other person writing. That process also involved transcription of that inventory into a computerised record of the catalogue. The examination and computer record generation was not completed until 17 October 1997. It was only at that time that the Commission could effectively check the holdings by cross-referencing.

2.4 A register was maintained and supervised by the Commission of access to the records room, including the identity of all persons entering, after the Special Branch was disbanded by Commissioner Ryan. On 1 July 1997 the audit team was joined by two officers from the Archives Authority of New South Wales who assisted with the auditing process until 25 August 1997. That auditing process sought to establish that the contents of each of the files, later identified in this Report as dossiers, accorded with the file's index. The Commission is satisfied, from that process and from its inspection of dossiers, that the content did accord with the file's index.

2.5 The Commission had access to all Special Branch records, and selected those original items it wished to examine. When any material was required by the Commission a request form was completed, detailing the subject and the audit reference and location description. Following copying of the entire record under the supervision of the Commission, the original was provided to the Commission, with the request form being used as a receipt reference. The copy was placed in the space left by the original, together with a duplicate of the request/receipt form. All material received by the Commission was placed in secure storage in locked filing cabinets at the Commission's premises, with access only to those officers involved in the investigation. Apart from copies of files made by the Commission, all material has now been returned to the Police Service. These copies will be disposed of in due course according to law.

2.6 The contents of the records room included index cards, subject (person / organisation / event) files, photographs (negatives / prints / slides), maps, building plans, video and audio recordings, reports, correspondence, a library of publications and reference material, lists, exhibit items, equipment, inspection records, stationery, diaries, and notebooks. The Commission also conducted an extensive review of all computer applications used by the Special Branch. Those applications were primarily confined to word processing tasks as opposed to intelligence records.

2.7 There were 58,150 index cards in the master index system. This did not correspond to 58,150 separate subjects, as the same information often appeared as a cross reference on another index card. The index cards also acted as a file system on persons about whom there were not substantial holdings. Until a person's index card record exceeded about four index cards with typewritten detail on each side, an independent file, referred to as a dossier, was not created. The system was divided into the following classifications:

- 26,800 index cards on individuals;
- 6,930 index cards on "terrorists", as they were described by the Special Branch, (those names were also usually included in the 26,800 card index);
- 6,004 index cards on organisations or groups;
- 9,950 index cards on addresses (including interstate);
- 3,453 index cards on telephone numbers;

- 2,144 miscellaneous index cards;[3]
- 866 index cards on bomb threats;
- 861 index cards on publications;
- 228 index cards on members of a particular religious group;
- 112 index cards on "Issues", as they were described by the Special Branch;
- 102 index cards on video recordings;
- 59 index cards on the President Clinton visits;
- 45 index cards on transcripts; and
- 596 index cards withdrawn from the index of persons for the purpose of destruction.

A reference source was included on all index cards.

2.8 There were two additional indices, one of 9,085 index cards containing various items of information (eg names, addresses, telephone numbers and vehicles) relating to another religious group, and another of 873 index cards on addresses of consular premises.

2.9 Files on individuals or subjects were referred to as dossiers. By cross referencing and collating various records it was established that Special Branch created 10,324 dossiers from 1939 to 1997. Most of those were not found and the records indicated they had been destroyed. Of the 1079 dossiers which remained, some were very substantial and occupied large spaces in the records room, for example the dossier titled "Demonstrations, Meetings, Debates etc", which was opened in 1948, included over 4,700 items.

2.10 Other documents located in the records room included photographic material, correspondence books which recorded all incoming correspondence and reports, and monthly files, which contained correspondence and reports not filed in particular dossiers.

2.11 In broad classification groupings, the material removed from the Special Branch records room and taken to the Commission for inspection comprised 55 electronic media storage configurations (including desktop and notebook computers, floppy disks, digital recording tapes), and more than 13,500 pages of documents. It was not possible for the Commission to examine every record held at Special Branch, having regard to the large volume involved. While a substantial quantity of the records were removed to the Commission for inspection, they constituted only a small percentage of the entire holdings in the records room of the Special Branch. Detailed examination of all

[3] These cards served as a cross referencing system, summarising identification of the persons, businesses, or subjects which were the object of interest to the persons and groups about whom reports were compiled and on whom files/dossiers were created. The detail on these cards included the file referencing numbers.

records would have taken a considerable time so it was impractical to undertake a more extensive review.

2.12 The Commission found that there was no system of classification according to profession, social grouping, community interest or the like, however, index cards and dossiers recorded profession and/or membership of community interest groups against the individual or organisation's name. Every index card and/or dossier identifying a Member of Parliament, member of the legal profession, member of the judiciary, and some persons recorded as trade unionists or community activists was examined by the Commission.

2.13 All material kept in safes within the Special Branch and all administrative material including accounting books and records of holdings were examined. Random sampling from the remainder of index cards and other records was undertaken to test the validity of the indexing system. The sample comprised approximately 10% of the records.

2.14 The results of the Commission's examination of those various types of records, together with the results of the other inquiries undertaken by the Commission and Royal Commission are set out hereunder, prefaced by a brief history of the Special Branch, necessary for a proper understanding of its particular role and activities.

2.15 For privacy considerations, this report does not identify any persons about whom a record was found at the Special Branch.

3/ A HISTORY OF THE SPECIAL BRANCH

3.1 At a conference of State Police Commissioners in 1948 it was agreed that each Force should establish a "Special Branch" to liaise with military intelligence units and D Branch (which later became the Australian Security Intelligence Organization - ASIO) to monitor subversive activity and assist in the maintenance of national security.[3]

3.2 Prior to this decision, politically motivated crimes and acts of violence in NSW were the responsibility of the Police Subversive Organisations Investigations Bureau, formed in the mid 1930s. At the start of World War II the Bureau combined with elements of the Commonwealth and armed forces to form the Military/Police Intelligence Branch. This Branch was dissolved at the end of World War II and the Subversive Organisations Investigations Bureau was reconstituted as a Police function until 1948, when ASIO and the Special Branches in the various states were formed. The Special Branches were modelled on New Scotland Yard's Special Branch and took the same name.[4]

3.3 For many years the Special Branch in NSW operated as part of the Commissioner's Office, in later times coming under the control of the Deputy Commissioner (Operations), the Special Operations Group, State Intelligence Group, the Tactical Services Group, and the State Commander.[5]

3.4 Little evidence was found of formal operating or reporting procedures for the Special Branch from the time of its inception. The earliest evidence found by the Commission of a formal statement of Special Branch's objectives was in the Privacy Committee's 1978 report which quoted a 1975 directive by the Commissioner as to the activities of Special Branch:

> a) To be aware of subversive and extremist activities within the boundaries of New South Wales and to keep the Commissioner of Police advised of any incidents likely to occur which would result in violence or civil disorder so that preventative measures can be taken to avoid danger or injury to persons and damage to property.
>
> Also to provide the Commissioner with whatever information might be available in relation to proposed demonstrations and protests where breaches of the peace may occur so that adequate policing can be arranged.
>
> b) To gather information in relation to the activities of various factions within the ethnic communities so that preventative action can be taken to avoid outbreaks of violence between opposition groups or against Consular representatives and premises within New South Wales.

[3] Privacy Committee Report, "The Special Branch - Criminal Records in NSW", March 1978 (PCR), p 2.
[4] Royal Commission into the New South Wales Police Service Transcript, 3 Dec 96, pp 34645-46.
[5] PCR, p 2.

Where such outbreaks have occurred and injury or damage has resulted, to assist investigating Police to detect the person or persons responsible.

c) Where necessary to assist with Police arrangements and provide security escorts in connection with visits to New South Wales of members of Royalty, Heads of State, Heads of Government, or controversial figures from overseas. Also when the need arises to carry out similar duties in respect of the Governor-General, State Governor, Prime Minister, State Premier and members of Federal and State Parliaments.

d) When during the course of these functions the Special Branch obtains information which would appear to be of a security interest from a national point of view, this information be passed to the Regional Director of ASIO through the Commissioner of Police. Similarly, if information obtained is considered to be of security interest to the State Government it should again be passed to the Commissioner who will in turn advise the Premier.[6]

3.5 The Privacy Committee report of 1978 indicated that the major focus of the Special Branch in its earlier years was communists and others with left wing sympathies.[7] Lists of the titles of dossiers from the 1950s and 1960s which were examined by the Commission also indicate that focus. When the records were first subjected to an outside inspection in 1977, many of the dossiers on individuals had by then been determined, within the Special Branch, as inactive.[8] A policy of review instituted in 1978 resulted in the destruction of most of those dossiers by 1980.[9] Consequently, it is not possible to report on the material recorded in those dossiers.

3.6 In 1977 the NSW Privacy Committee sought and was permitted access to Special Branch officers and records as part of its enquiry into record keeping in the NSW public and private sector. An Interim Report was issued in November 1977 and a final report in March 1978. The Committee was critical of the extent of data collection by the Special Branch and some of its methods, noting that the procedures of the Special Branch had developed in response to differing priorities from time to time since the inception of the Special Branch. The Committee reported there was an extensive collection of irrelevant information on the beliefs of individuals and organisations who could not reasonably be expected to breach the peace. The Committee noted that there was no written material on the functions, activities, procedures or guidelines relating to the Special Branch and recommended that a 'Manual of Practices' be introduced as well as restrictions on the information gathered and procedures for the logging, culling and destruction of information.

3.7 Some of the Privacy Committee's recommendations[10] were implemented. The first paragraph of the Commissioner's directive regarding the activities of the Special Branch was reworded to remove reference to 'subversive and extremist activities' (it

[6] Privacy Committee Report, "The Special Branch - Criminal Records in NSW", March 1978 (PCR), p 2.
[7] PCR, pp 8-9.
[8] PCR, p 6.
[9] Privacy Committee News Release, 5 May 80.
[10] Privacy Committee Report, "The Special Branch - Criminal Records in NSW", March 1978 (PCR), pp 22-8.

was considered by the Committee that the collection of information on individuals should be confined to those posing a risk of 'political violence'[11]). A Practice Manual was introduced some years after the Privacy Committee recommendations. A recommendation that there be some form of temporary advisor[12] or external supervision[13] of the Special Branch was not acted upon.

3.8 In 1989 then Police Commissioner Avery invited the Privacy Committee to review the Special Branch holdings again. According to Commissioner Avery this was prompted by adverse publicity received by the Police Service in Victoria following the discovery of a large volume of information in the Victorian Special Branch which was regarded as inappropriate. Commissioner Avery told the Commander of the NSW Branch to "clean up the files and get rid of any rubbish".[14] The Special Branch Intelligence Coordinator at the time caused a "fairly substantial cull" of Special Branch records in late 1989/1990 "in conjunction with" the Privacy Committee visit.[15] He also conferred with the Privacy Committee about a more adequate system of culling, so that files would automatically come up for review after a certain period and be destroyed if appropriate.[16]

3.9 The induction manual in use by the Special Branch at the time of disbanding described the principal functions and responsibilities as:

> (1) To be aware of politically motivated violence or extremist activity within the boundaries of New South Wales.
>
> (2) To advise the State Commander of any incidents likely to occur which would result in violence or civil disorder so that preventative policing measures can be taken to avoid danger or injury to persons and/or damage to property.
>
> (3) To gather information in relation to the activities of rival factions within the Ethnic Communities so that preventative measures can be taken to avoid conflict between opposing groups or violence against Consular representatives or premises within New South Wales. Where such outbreaks have occurred and injury or damage has resulted, to investigate or assist investigating Police to detect the person or persons responsible.
>
> (4) To provide security escorts for visiting Royalty, Heads of State, Internationally Protected Persons, the Australian Governor General, State Premier and members of Federal and State Parliaments and other controversial figures, visiting New South Wales.
>
> (5) To conduct security reviews and provide advice where necessary.

[11] PCR, p 22.
[12] PCR, pp 23-5.
[13] PCR, pp 31-2.
[14] Royal Commission into the New South Wales Police Service Transcript (RCPS Transcript), 5 Dec 96, p 34999.
[15] RCPS Transcript, 9 Dec 96 pp 35266-67.
[16] RCPS Transcript, 9 Dec 96, pp 35268-69.

(6) When during the course of these functions information which would appear to be of interest from a national security point of view is obtained, such information is passed to the Regional Director of the Australian Security Intelligence Organisation (A.S.I.O.) through the Commissioner of Police. Similarly, if information is considered to be of security interest to the State Government, it should again be passed to the Commissioner, who will in turn advise the Premier.

3.10 The Mission Statement of the Special Branch at that time was as follows:

THE MISSION OF THE SPECIAL BRANCH

The New South Wales Police Special Branch, under the command of a Detective Superintendent is part of the State Command and is located at the JK Avery Building, Level 16, 14-24 College Street Sydney. In addition, Detective Sergeants are located at the Wollongong and Newcastle Police Stations.

Our Mission:

(a) To provide relevant, current and specialised strategic and tactical intelligence concerning politically motivated violence and/or civil disorder, terrorist and extremist activity and

(b) To plan and implement security procedures to ensure the safety of VIPs and property.

3.11 It appears that the Special Branch reworded its Mission Statement from time to time to conform with the prevailing expectations of the day. The Commission was told that during the Avery period the Mission Statement was worded to fit in with the concept of community based policing, and that in 1996 it was reworded again, to the above version, in response to criticisms of the Special Branch by Commissioner Wood during the Royal Commission hearings.

3.12 Each time the Mission Statement was reworded it was submitted for approval to the Commander of the Group responsible for the Special Branch, for example the Commander of the Tactical Services Group or, later, the State Commander. Approval was granted when the relevant Commander signed a copy of the reworded statement.

3.13 There was no evidence of any attempt to publicise each reworking of the Statement or to modify the activities of the Special Branch to correspond with the revised wording. The Commission considers that the tinkering with the Mission Statement was a transparent gesture which amounted to no more than window dressing. It had no impact on the day to day activities of the Special Branch which were never held up for close scrutiny or revision.

4/ APPOINTMENT TO THE SPECIAL BRANCH

4.1 Recruitment procedures for the Special Branch differed from other sections of the Police Service in that constables' positions were not advertised. If a constable wished to join Special Branch he/she filled out an Expression of Interest form which was held by the Branch until a vacancy arose. The applicant would be interviewed at the time of submitting the application and again at the time a position became available. Checks would be conducted through the Police Professional Integrity Branch and ASIO, prior to an appointment to Special Branch.

4.2 Positions for sergeants and above (for example Team Leader) were advertised. Many of the successful applicants for those positions were promoted from within because of their knowledge and experience of the Special Branch.

4.3 In March 1997 the Special Branch comprised the following officers:

- Commander;
- Operations Coordinator;
- Intelligence Officer; and
- Six Teams - each comprising a sergeant and a number of constables.

4.4 In total there were approximately 32 officers attached to the Special Branch, in addition to four non-sworn public service staff and six or eight trainees.

4.5 The last Commander of the Special Branch had been attached to the Branch since 1974, and remained there until 1997, a period of 23 years, with one interruption of four years when he was seconded to provide personal protection for the Premier between 1984 and 1988. The last Operations Coordinator had been at the Special Branch since 1981, an uninterrupted period of 16 years. This length of tenure was entirely at odds with the rotation policies applicable to the rest of the Police Service and the Commission considers that this created a closed shop which allowed the perpetuation of anachronistic practices and prevented the injection of new blood.

5/ ACTIVITIES OF THE SPECIAL BRANCH

5.1 The activities of the Special Branch prior to 1997 fell into the following broad categories:

PROVISION OF VIP SECURITY

5.2 This involved providing escorts and close personal protection for dignitaries and politicians or high profile figures visiting NSW. In the Commission's opinion the escort work was performed conscientiously and competently. This was the principal activity of the Special Branch. According to the last Commander, the security escort work increased to comprise approximately 75% of the Special Branch's work by 1997.

5.3 Not all VIPs received escorts. A threat assessment prior to a visit, particularly one supplied by a Commonwealth source such as ASIO, could result in a determination that no protection was required. In the case of celebrities who were not associated with government or royalty, the question of whether or not security was provided was largely at the discretion of the Commander, subject to the approval of the State Commander.

5.4 As well as providing varying levels of security for visiting VIPs, Special Branch provided protection for State Members of Parliament and others when necessary, and according to the assessed level of security required. For example, a full time escort was provided for the Premier, security escorts were provided for a Minister's child who had been the subject of a threat, and protection patrols of various premises were conducted. The Special Branch also responded to random incidents of violence or threats directed towards Members of Parliament, such as break-ins at electoral offices. If a Member of Parliament had concerns for his or her safety the Special Branch would assess the Member's electoral office and/or home and identify deficiencies in security. An examination of the Special Branch's computer records indicated, in relation to VIPs, and various venues, offices, and residences, a significant commitment to training, planning, and threat assessment.

5.5 It appears that at times Judges were accorded the same VIP status and service as Members of Parliament, even though Judges were never mentioned in any of the Special Branch directives or Mission Statements.

5.6 A former Chief Justice of the NSW Supreme Court, who retired in 1988, gave evidence to the Royal Commission regarding the relationship between the Court and the Police. He said he kept the Police at arm's length and that any dealings with the Police were always through the Sheriff's officers at the Court. If a particular Judge needed protection at his home because of a high profile case, for example, that would go through the Sheriff to the Police.[17] In 1989 the Police Service published a Judicial Officers Security Plan which provided that any threat to a Judge or a member of his/her

[17] Royal Commission into the New South Wales Police Service Transcript, 10 Dec 96, p 35318.

family was to be reported by the Sheriff's officer at the Court to the Duty Operations Inspector, Sydney Police Centre. Special Branch was not mentioned in the Plan. Despite the existence of this scheme, when the private addresses and telephone numbers of the Judges of the Family Court and NSW Supreme Court were supplied to the Police Commissioner for security purposes, both before and after 1989, the information was passed on to Special Branch.

5.7 The Commission found a Special Branch dossier on investigations in 1990 when a Supreme Court Judge received a series of harassing phone calls at his home. The Deputy Chief Executive Officer of the Court made direct contact with Special Branch and an investigation was instigated by the Special Branch. This response did not involve the Sheriff or his officers and bore no resemblance to the procedures prescribed in the 1989 Judicial Officers Security Plan.

5.8 There is nothing necessarily inappropriate about the Chief Executive of the Court making direct contact with Special Branch on behalf of one of the Judges. It is not unreasonable that the judiciary should be entitled to the same VIP protection as Members of Parliament. What is unsatisfactory is the lack of any written acknowledgement of such a relationship between the Judges and Special Branch, and the discrepancy between the Plan devised by the Police Service and the reality of what happened in practice.

5.9 Although no impropriety is suggested in the above example, the case involving former Justice Yeldham, which was examined in detail in Royal Commission hearings, pointed to the lengths to which the Special Branch would be prepared to go to 'protect' a member of the judiciary, or presumably any other public official, even if it meant becoming involved in Police business falling outside the Special Branch's charter and creating false records.

5.10 The Royal Commission investigated an incident at Wynyard Station in 1990 when Justice Yeldham was apprehended and questioned about a complaint that he had been acting in an offensive manner. The Transit Police officers involved in the incident gave evidence that Special Branch officers attended the Station and instructed them to "write off" the incident.[18] The Special Branch officers who gave evidence to the Royal Commission denied any recollection of this incident. Subsequently one officer admitted that the Commander of the Special Branch had dispatched two officers to Wynyard to deal with the situation.[19]

5.11 The Royal Commission found that Special Branch was involved and that the incident demonstrated "the inappropriateness of the intrusion of any successor to Special Branch into such matters, and of its use, with or without official sanction, as an agency able to smother or sort out matters of potential embarrassment to public officials or to the government".[20]

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[18] Royal Commission into the New South Wales Police Service Final Report (RCPS Final Report), Volume IV, p 810.

[19] RCPS Final Report, Volume IV, p 812.

[20] Royal Commission into the New South Wales Police Service Final Report, Volume IV, p 823.

5.12 While the Commission found no evidence of similar incidents of protection of public officials, the Yeldham example raises the possibility that other incidents involving public figures could have occurred and been smoothed over by Special Branch, and any records destroyed.

ATTENDING DEMONSTRATIONS AND RESPONDING TO OCCURRENCES OF POLITICALLY MOTIVATED VIOLENCE

5.13 Special Branch officers attended demonstrations and protests and advised the Commissioner of Police regarding forthcoming events in order that adequate policing could be arranged.

5.14 In the event of an unexpected civil disturbance or act of violence towards an individual or an organisation associated with a political issue, Special Branch would be called in, either with the local police or alone.

5.15 If it was felt the premises of the individual/organisation required a security assessment then this might be undertaken by Special Branch. Often the individual or organisation would be invited to maintain ongoing liaison with Special Branch in relation to any security concerns they had.

CONDUCTING OR ASSISTING MAJOR INVESTIGATIONS

5.16 On rare occasions the Special Branch initiated investigations. An investigation in the early 1990s into the activities of Australian National Action led to convictions against members of the group for shooting into the home of the Australian representative of the African National Congress in 1989, and for other matters.

5.17 Sometimes Special Branch officers were assigned to assist other investigations, for example two officers were seconded to work on the John Newman murder investigation.

MINISTERIAL ENQUIRIES AND EMPLOYMENT CHECKS

5.18 The Special Branch was frequently called upon to supply information to the Police Minister to enable him to answer queries received from other Members of Parliament, from consulates, and from constituents of Members about matters within the responsibility of the Special Branch. These queries generally related to the security work rather than the information gathering activities of the Special Branch.

5.19 Requests from other government departments for more personal information were sometimes made to the Special Branch. In 1989 a request for information on the character of an individual was received from the office of a senior Minister. Special Branch had no holdings on the individual but newspaper cuttings and information reports were obtained from other sections of the Police Service. The contents of the information reports were not passed on to the Minister's office. Only information

contained in the newspaper clippings (i.e. information in the public domain) was supplied, thereby preserving the confidentiality of the Police information.

5.20 In 1992 a Minister asked the Special Branch for a security clearance in respect of three employees in sensitive positions in the Minister's department. Checks were made against the Police Service Criminal Names Index, the Special Branch indices and the intelligence database at the State Intelligence Group. All checks returned a nil result and the Minister was advised that nothing of an adverse nature was recorded against any of the individuals.

5.21 The Commission was informed that employee checks were also conducted for consulates and a Commonwealth law enforcement agency, but only with the consent of the individual involved. No evidence of such checks was found but it is unlikely, in the view of the Commission, that the consent given by the individuals would have extended beyond a standard criminal record check, and would not have contemplated a search of Special Branch indices.

5.22 The Commission found no examples of Special Branch information being released in the context of an employment check, to the detriment of an individual, however the examples referred to above raise the possibility that this could have occurred, without the knowledge of the individual concerned. Nothing in the Special Branch Mission Statements or directives would have justified the use of its information in this manner, and when regard is had to some of the information gathering practices adopted by the Branch over the years (see below), the prospect of such a possibility is even more disconcerting.

INFORMATION GATHERING

5.23 The vast bulk of the records maintained by Special Branch comprised information about individuals and organisations, in the form of index cards and dossiers. If an individual came to attention an index card was created, recording that individual's name and any available personal details such as date of birth, occupation and address, together with the information which led to the creation of the record. An individual generally became the subject of an index card at Special Branch as a result of any form of public support for or association with a political, religious, or social cause. This extended to a number of barristers and solicitors who became the subject of a record by merely representing a client associated with such a cause.

5.24 The primary sources of the information which formed the basis of the Special Branch index cards and dossiers were media reports, personal observations at demonstrations and meetings, use of informants, and information supplied by other sections of the Police Service.

5.25 Personnel of the Special Branch were grouped into teams, which each had responsibility for the monitoring and recording of the political activity of particular groups, under the supervision of a team leader. A review conducted by the Police Service prior to the disbanding of the Special Branch found little evidence of the team

leaders being supervised in some areas relating to information gathering. The Commission considers those areas to have been significant.

Media Clippings

5.26 Reports would frequently be created as a result of a newspaper article about an individual attending or addressing a demonstration or public meeting for any number of causes. The range of such activities included anti-Vietnam war rallies, trade union marches, anti-logging protests, demonstrations against the third runway and protests against Commonwealth cuts to Legal Aid. The majority of people who became the subject of index cards in this manner could not have been reasonably described as representing a threat of politically motivated violence or subversive or extremist activity. Rather, an almost inflexible routine of creating an index record of all identified persons was slavishly followed, without the application of an objective set of criteria as to what constituted behaviour which demonstrated or implied a possibility of politically motivated violence, or subversive or extremist activity.

5.27 A number of Members of Parliament became the subject of index cards prior to their election to Parliament, when they appeared at meetings or demonstrations in support of a particular cause. Some subsequent attendances of these Members at a public meeting or protest became the subject of a further cross-referenced entry on dossiers and index cards.

5.28 Special Branch routinely monitored newspapers and certain publications. The media clippings would then be attached to a covering report to become part of a dossier. A summary notation was made on related index cards and dossiers. A Letter to the Editor in support of a certain cause could also become the subject of such a report.

Attendance at Demonstrations and Meetings

5.29 In the past, Special Branch officers attending demonstrations recorded the names of all persons at the demonstration who were known to the Special Branch. In more recent times that practice ceased and usually only the identity of speakers was noted.

5.30 If an officer attended a demonstration which involved any violence the procedure was that an occurrence pad entry would be submitted and filed in the Intelligence Officer's office, following which an Intelligence Report would be submitted.[21] If a particular individual featured in an Intelligence Report that report could be placed with the individual's dossier and if a record did not exist then an index card would be created.

5.31 There were occasions when Special Branch officers attended meetings or actually participated in demonstrations as an information gathering exercise. There was, however, no evidence found of infiltration or undercover Police targeting of organisations by Special Branch members, and such activity was denied by the last Commander of the Special Branch. The Commission was told that the purpose of

[21] Royal Commission into the New South Wales Police Service Transcript, 3 Dec 96, p 34661.

covering the demonstrations was "to make sure that nothing did take place...that there was nothing untoward."

5.32 Photographs were taken covertly by Special Branch officers at demonstrations and meetings. The Royal Commission was told by a former officer who was attached to the Special Branch between 1958 and 1978 that he instigated the covert photography section of the Special Branch and was in charge of all photography, which included the taking and processing of the photographs. The Special Branch maintained its own developing and printing room until the time of its closure. Despite this, when the Privacy Committee enquired in 1977 about the taking of photographs by the Special Branch the following reply, which disguised the true position, was supplied by the then Commissioner of Police:

> photographs of persons arrested at demonstrations are taken not by the Special Branch but by the Photographic Section of the Scientific Investigation Section of the Criminal Investigation Branch for evidence purposes and are produced to the court as required to identify the person arrested and the arresting officer.[32]

5.33 The Special Branch also had a practice of recording the number plates of vehicles parked outside premises where a meeting was taking place, or outside the headquarters of certain organisations. If a meeting was taking place inside a Town Hall, for example, Special Branch officers might drive past and take details of vehicles parked outside. In 1979 the Special Branch recorded details of a vehicle parked outside the headquarters of an extremist organisation and created an index card on the registered owner of the vehicle, describing the individual as a suspected member of that organisation.

5.34 This practice was of course attended by the enormous risk of records being created on individuals who had no association whatsoever with the organisations in question. Not only was the presence of a vehicle at a certain location an entirely unsound basis for linking an individual with a particular organisation, there was a complete absence of evidence that the individual posed a risk of politically motivated violence or civil disorder.

5.35 Although the Commission found no evidence of such records being put to any use which was detrimental to an individual, the examples quoted in the previous section of security checks undertaken by the Special Branch at the request of certain employers, raise the possibility that an entirely unreliable 'record' could have been used by the Special Branch in a manner which had serious adverse consequences for the individual involved. Such a possibility illustrates the dangers inherent in the excessive record keeping practices of the Special Branch.

Use of Informants

5.36 While informants were not commonly used in recent years, from time to time Special Branch recruited members of organisations, or their associates, to act as informants.

[32] Letter of l0 Nov 77 from the Commissioner of Police to the Privacy Committee.

For reasons which will become clear below, after 1994 those persons were referred to as community contacts.

5.37 There was no satisfactory system in place for the registering and handling of informants prior to 1994. At best there may have been a list kept at one stage by the Commander on which the names of the Special Branch's informants were recorded. There was no formal procedure for recording information obtained from informants. Information may have been recorded in the officer's duty book or in an information report.

5.38 There was an all purpose cash fund, established in the 1970s, which was drawn upon by Special Branch officers, ostensibly to pay informants, but there is no evidence that any informant was ever paid for information. Evidence was led at the Royal Commission from a officer of the Special Branch that during a 12 month period, when he was having weekly meetings with an informant, he would sign out $100 at a time and the cash book would record "Payment to X" (the informant's codename) but no payment was ever made, the money being used instead to buy lunch for the officer and the informant.[33] The system did not require the officer to account for how the money was spent, and accordingly no record was ever made of what happened to the money. The officer gave evidence of drinking a number of bottles of wine with the informant over lunch and then driving back to the office in a Police vehicle.

5.39 The system was further abused when officers of a more senior rank pressured the above-mentioned officer to start "sharing" the informant's payments with them, by making drawings on the fund in the name of his informant and then handing the cash to those other officers,[34] who would then use it for personal purposes, such as long lunches. The evidence revealed above was obtained at the Royal Commission hearings under objection[35] and cannot be used against the officer making those admissions. Those assertions were denied by the other officers named[36] and evidence is not otherwise available for prosecution.

5.40 There was evidence of attempts made to conform with the requirements of the Service-wide Informant Management Plan after its introduction in March 1994. There appears, however, to have been minimal contact between Special Branch officers and informants between that time and the disbanding of the Branch in March 1997. The controls imposed by that Plan required accounting for payments to informants; and it was evidently to avoid such controls that the Special Branch began to describe its informants as "community contacts" and thus not subject to the Plan.

5.41 A practice developed whereby unreceipted payments were allegedly made to community contacts. While the system of payments for petty cash expenditure required support by documentary evidence,[37] the community contact expenditures were

[33] Royal Commission into the New South Wales Police Service Transcript (RCPS Transcript), 12 Mar 97, pp 37068-71.

[34] RCPS Transcript, 11 Mar 97, pp 37029-36, 12 Mar 97, pp 37085 & 37089-90.

[35] RCPS Transcript, 11 Mar 97, p 37025.

[36] Royal Commission into the New South Wales Police Service Transcript, 11 Mar 97, pp 37037-38; 12 Mar 97, p 37072.

[37] Treasury Direction 290, *Public Finance and Audit Act 1983*.

universally identified by the phrase "to offset cost of gathering intelligence". The Commission considers that this did not achieve appropriate standards of accountability. Other than for small expenses, it is not satisfactory that public funds are available or used for payments which are not verifiable by production of a receipt showing the money has been received by another person. The justification for the expense, and whether there was in fact any payment to the community contact, was entirely reliant on the honesty of the claiming officer. The community contact payment system was therefore open to the same abuses as occurred with informants prior to the Informant Management Plan of 1994.

Criminal Information

5.42 Other sections of the Police Service forwarded reports to Special Branch if the subject matter was considered of relevance to the Branch. Such a practice led to the accumulation of information which fell widely outside the Special Branch Mission Statement, despite claims by the Branch that it only collected information about politically motivated violence and the like, as opposed to ordinary criminal information. For example, an index card was created on a former NSW Police detective who was sighted outside a Kings Cross night-club with members of the criminal milieu. This person had no known links with politically motivated violence and no basis for becoming the subject of a Special Branch record.

5.43 Information about Members of Parliament was forwarded to the Special Branch by other sections of the Police Service. Examples included a complaint made to a local Police station about alleged harassing phone calls from a Member to an ex-lover; a discovery by detectives investigating a drug dealer that the dealer's step-daughter was a friend of the daughter of a Minister; a discovery by detectives that a suspect charged with fraud offences was an associate of a senior Minister.

5.44 The justification given for retaining such information was that it could prove relevant in the future if there was any sort of threat or action taken against the Member of Parliament (including blackmail or extortion) which the Special Branch would be called upon to investigate. Whilst this argument might justify the gathering of certain information, there is clearly a point beyond which the retention of such information, particularly in the case of allegations concerning the personal relationships of a Member (as opposed to a potentially damaging association of which the Member may be unaware), constitutes nothing more than a "dirt file",[28] the very existence of which significantly increases the risk to the Member of blackmail or extortion, either by members of the Police Service or others to whom the information could be leaked.

5.45 The deliberate assembling of "dirt files" was denied by the last Commander of the Special Branch and the Commission found no evidence to suggest there was covert surveillance or other forms of deliberate information gathering by the Special Branch on the private lives of any visitor to or resident of the State.

[28] Royal Commission into the New South Wales Police Service Final Report, Volume II, p 251.

5.46 There was no evidence found suggesting that any of the information which was retained on public figures was ever subjected to any analysis or put to any use - the Special Branch appeared to do no more than gather and store such information. Such a procedure was nevertheless contrary to the stated position of the Special Branch, even as far back as 1978, when the Privacy Committee was told of a "stated policy of the Special Branch to remove and destroy dossiers of prominent people, particularly members of Parliament".[29] The Commission found no evidence of such a policy being implemented or such a policy being recorded.

Passport Photographs

5.47 A list of all applicants for passports was being supplied to the Special Branch[30] until 1977. The Privacy Committee Report noted that following receipt of the list the Special Branch then obtained copies of application forms and associated photographs of interest. The personal details of the applicants and witnesses to the applications led to inferences of relationships.[31] Many of the photographs in the indices of the Special Branch appear to be copies from passport records.

LIAISON WITH ASIO

5.48 Information on matters of national security and photographs were passed directly between the Special Branch and ASIO.[32]

VIP SECURITY TRAINING

5.49 Training was provided for officers from other regions and sections of the Police Service and other government authorities. There were six trainees at the Special Branch at the start of 1997. There were extensive computer records on this training.

[29] Privacy Committee Report, "The Special Branch - Criminal Records in NSW", March 1978 (PCR), p 6.
[30] PCR, p 11.
[31] PCR, p 11.
[32] Royal Commission into the New South Wales Police Service Transcript, 3 Dec 96, p 34648.

6/ RECORD KEEPING AND DESTRUCTION

6.1 Information coming into Special Branch was filed initially in Occurrence Pad sheets and/or intelligence reports. Special Branch officers in the field were expected to record information firstly in notebooks and then on return to the office an Occurrence Pad entry and possibly an intelligence report would be prepared.[33] Occurrence Pad entries were kept on a clipboard then filed in folders.[34] No procedure was found by the Commission for storing the notebooks used by the officers in the field. It was expected that the officer would destroy the notebook once it was full.[35]

6.2 The Special Branch had its own intelligence report forms.[36] Both these, and any incoming correspondence, were referred to the Commander or Operations Coordinator for review. A notation would be made on the report indicating the current Special Branch holdings on mentioned individuals and organisations. If an index card already existed the notation "(c)" would signal the existence of that record. This would ultimately lead to the copying of the information on to that record. If not previously recorded, the notation "(npr)" would prompt the creation of a new record. If a person or organisation name was mentioned co-incidentally, (i.e. it had no significance to the report), the notation "(dnr)" indicated that no record of the association was to be made.

6.3 After a report was reviewed or an item of correspondence had been seen by the Commander or Operations Coordinator, it went to a public servant who allocated a sequential file number to the document and recorded the item in a correspondence book in chronological order. Even if an item was subsequently destroyed there would still be a record of its existence in the correspondence book.[37] All inwards correspondence, Special Branch intelligence reports, internal memoranda, and outgoing correspondence were allocated file numbers.

6.4 A Special Branch Synopsis of Activities and VIP Escorts would be completed every week by the Intelligence Coordinator.[38] This included the week's events taken from the Occurrence Pad and intelligence reports.[39] A synopsis of activities was also produced on a monthly basis for the information of the State Commander and Commissioner. The synopsis detailed:

- escorts and protection;
- observations;
- demonstrations;
- geographic reviews (demography);

[33] Royal Commission into the New South Wales Police Service Transcript, (RCPS Transcript), 9 Dec 96, p 35153.
[34] RCPS Transcript, 9 Dec 96, p 35211.
[35] RCPS Transcript, 3 Dec 96, p 34667.
[36] RCPS Transcript, 3 Dec 96, p 34694.
[37] RCPS Transcript, 9 Dec 96, pp 35242-43.
[38] RCPS Transcript, 9 Dec 96, p 35232.
[39] RCPS Transcript, 9 Dec 96, p 35235.

- protection patrols;
- coming events;
- national security issues; and
- general inquiries and administrative matters.

6.5 As stated above, index cards could be created, usually as a result of an information report or a media report. The creation of index cards was not the particular responsibility of any person. Index cards could be created by any member of the Special Branch, including the public servants. No formal guidelines existed governing the creation of index cards.

6.6 The Privacy Committee review of 1977 found 50,000 culled, but not destroyed, index cards.[40] By 1980, they had been destroyed.[41]

6.7 The index card system was altered following the Privacy Committee review; a five year cycle was introduced for index cards. Each year a new colour was used for index cards created that year. If at the end of five years the subject had been active and accumulated a number of entries, a decision was made to convert the coloured index card to a permanent blue index card. If the subject was not active the index card would be culled and destroyed. It was noted (paragraph 2.7) that 596 index cards on persons, which had been withdrawn for destruction, were found in the audit of the Special Branch records in 1997. Those index cards were created in 1990 (few) and 1991 (most) and did not have entries after that date. The withdrawal of the index cards was in line with the general thrust of the recommendations of the Privacy Committee in 1978.[42] It is apparent that reports resulted in the creation each year of many index cards on persons who did not again come to notice. That so many people came to notice but were not again of interest is indicative of a recording system which did not apply objective assessment to the relevance of the information reported about the individual.

6.8 On the other hand, there was evidence of the reverse process taking place whereby a 1993 press clipping was used as the subject of an incident report but there was selectivity by the Special Branch in the creation of index cards from names in the press clipping. The press clipping concerned an anti-logging group. The body of the report is a reasonably accurate paraphrasing of the attached clipping and most of the names of persons and organisations named in the report were annotated with dossier numbers or symbols such as "(c)". However, the person who was quoted most extensively in the press clipping, as an office holder of one of the named organisations, was not mentioned in the report. Consequently, there was no "(npr)" notation that would have prompted the creation of a new index card on that person and, if there had been an existing index card on that person, there was no "(c)" notation that would have led to the existing card being updated. Further, had there been an existing dossier in that person's name the absence from the report of the number of that dossier would not have

[40] Privacy Committee Report, "The Special Branch - Criminal Records in NSW", March 1978 (PCR), p 5.
[41] Privacy Committee News Release, 5 May 80.
[42] PCR, p 26.

enabled the dossier to have been updated. The absence of the person's name from the report also meant that there was not even a "(dnr)" notation. At that time, there was not an index card or dossier on this person. It is concluded by the Commission that there was a deliberate course of conduct to prevent the name of the person from being noted on any Special Branch record initiated in consequence of the report. That person was also a member of a government body with relevance to the NSW Police Service. There is no evidence that the person was aware of the response by Special Branch to the press clipping.

6.9 If the blue index card subject remained active and accumulated further entries, then it would be converted to a dossier, usually when the number of index cards reached about five. The dossier would include all the information accumulated on both coloured and blue index cards prior to the creation of the dossier. Some matters became the subject of a dossier straight away, for example a subject file in which a lot of material was going to be collected, such as the Olympics.

6.10 Dossiers created in one year were placed in a specific drawer in the designated filing cabinet. The Privacy Committee review of 1977 found 3,500 active and 6,000 inactive dossiers.[43] By 1980, of the inactive dossiers 5,500 had been destroyed and the balance of 500 and all active dossiers were being progressively culled.[44] A list of dossiers opened in any one year would be compiled in a book at the end of that year. When dossiers were destroyed at the annual cull the fact of destruction was recorded and an index card was inserted in the main index, thereby leaving a record of the previous existence of the dossier but no indication of its contents.

6.11 There was evidence of dossiers which never became part of the official filing system. The 1978 Privacy Committee report referred to a dossier on the Australian Labor Party which was found in a safe of the Special Branch. The dossier was reportedly created in 1963,[45] however there was no reference to such a dossier in the list of dossiers created in 1963 and the Commission could find no evidence in any of the Special Branch lists or indices of the existence of that dossier.

6.12 Dossiers were on a 10 year cycle, which meant that a dossier which had been inactive for 10 years would be culled and its destruction considered. The Commission did find some evidence of this system; 207 dossiers with no entries since 1986 were identified for destruction and set aside in 1997. The system was not applied rigidly. An inactive dossier would not necessarily be destroyed at the end of the 10 year period if for some reason someone thought it should be kept. Similarly, not all index cards which had been inactive for five years or more were automatically destroyed.

6.13 The Operations Coordinator was supposedly responsible for the culling however there was evidence of other members of the Special Branch, eg non-sworn clerical staff, making decisions about the culling of dossiers without consultation with management. Index cards and dossiers which had been set aside for culling would be stored in the

[43] Privacy Committee Report, "The Special Branch - Criminal Records in NSW", March 1978 (PCR), p 6.
[44] Privacy Committee News Release, 5 May 80.
[45] PCR, p 10.

office of the Operations Coordinator or the records room until they were destroyed. The Operations Coordinator was not required to consult with anyone else about destruction of index cards or dossiers.

6.14 Index cards were destroyed by shredding. Dossiers were sent to security "burns" which took place periodically and included other material the Police Service wanted destroyed by burning.[46] No dates were kept, or lists created, of index cards and dossiers destroyed. There was a master list of dossiers, in chronological order according to the year the dossier was opened, which was noted when a dossier was destroyed, however there was no record which showed the rationale for destroying individual dossiers.

6.15 Dossiers were destroyed in accordance with the Special Branch's usual practice during the Royal Commission, namely in 1994, 1995, and 1996. Although dossiers were extracted for destruction during 1997, the process had not reached that action when the records were secured by the Commissioner of Police. There appears to be no sinister motive for the culling which took place in each of those years and there does not appear to have been any attempt to thwart investigations or potential investigations of the Royal Commission. (The only dossier destroyed in those years which appeared to bear any relationship to the Royal Commission was a dossier on one of its officers).

6.16 The index cards and dossiers of the Special Branch fell within the definition of "public records" for the purposes of section 2 (1) of the *Archives Act*, and should not have been destroyed without the approval of the Archives Authority. A schedule had been supplied by the Archives Authority to the Police Service showing those Police records which did and did not have to be forwarded to the Authority for archiving, once they were no longer required by the Police Service.

6.17 Special Branch documents from the 1980s, including a submission from the Commissioner to the Minister, contain reference to the *Archives Act,* however it appears no consultation took place with the Archives Authority before destruction of the Special Branch records took place.

6.18 The last Commander of the Special Branch stated in evidence at the Royal Commission that he was unaware if the Police Service had any special dispensation or provision to cull and destroy, as distinct from archive, its records.[47]

6.19 The recommendations of the Privacy Committee in 1978 for the disposal of records drew a distinction between the culling of records and the destruction of records[48], however the distinction seems to have been lost on Special Branch personnel, who appear to have applied the terms interchangeably.

6.20 In addition to inappropriate management of the index cards and dossiers, there was evidence of other unsatisfactory document handling practices in the Special Branch. A

[46] Royal Commission into the New South Wales Police Service Transcript (RCPS Transcript), 12 Mar 97, p 37056.
[47] Royal Commission into the New South Wales Police Service Transcript, 10 Dec 96, p 35372.
[48] Privacy Committee Report, "The Special Branch - Criminal Records in NSW", March 1978, p 26, paragraphs 7.5.4 & 5.

number of sensitive files concerning prominent criminals were found in one of the safes at the Special Branch. The files had nothing to do with politically motivated violence and were said to have been sent to the Special Branch from the State Intelligence Group (SIG) for safe keeping because of the risk of a leak from the SIG.

6.21 Papers about a person described as a "potential political candidate" and a "drug trafficking suspect" were found in a safe in the records room. There were no identifying file reference details of the Special Branch on the papers but there was a notation "not in corro book" by a former Commander. The last Commander of the Special Branch was unaware of the existence of those papers and suggested they may have been placed there by a predecessor. He agreed that it was possible other material was scattered throughout the Special Branch in secure or semi-secure locations. This was consistent with the file management identified by the Royal Commission in the Yeldham matter, in which important information was deliberately kept off the system and was thereby unavailable to anyone relying on the system in the conduct of a search.

6.22 There was a cabinet in the records room found to contain firearms, other weapons and detonators. It was revealed that some of those items had been there for eight years. The last Commander of the Special Branch admitted no knowledge of those items. A subsequent Internal Affairs investigation found that the same firearms had been seized by the Special Branch during an operation but had not been disposed of in accordance with the proper procedures. The other weapons and the detonators could not be identified as having been seized in any operation but they were located in the Special Branch records room with documents relating to an alleged extremist group.

7/ PUBLIC ACCESS TO SPECIAL BRANCH FILES

7.1 Since the commencement of the *Freedom of Information Act 1989* ("the FOI Act") there have been periodic requests from individuals for access to their Special Branch files, in the event that a file existed. There was a slight increase in the number of such requests following the publicity given to the Royal Commission hearings into the Special Branch.

7.2 Schedule 1 of the FOI Act provides at Part 1, section 4(3) that a document created by the Special Branch is an exempt document under the Act. This exemption, as well as sections 25(1) and 28(3) of the same Act, have been relied upon by the Police Service to decline the provision of advice to any individual about the existence or otherwise of a file at Special Branch.

7.3 Under the FOI Act a person aggrieved by a decision can seek internal review of the decision by the relevant government department (section 54) and, if still aggrieved following review of the decision, make a complaint to the Ombudsman (section 52) or appeal to the District Court (section 53). The Ombudsman can make recommendations but cannot override an agency's decision.

7.4 The avenue of appeal to the District Court has not been widely exercised in New South Wales. Complaints have been lodged with the Ombudsman regarding a number of the determinations made by the Police Service to decline to supply information regarding the existence or otherwise of a Special Branch file on a particular individual. At the time of this Report, the Ombudsman was considering those complaints lodged in 1997. The Commission did not become involved in the determination of those complaints and in view of the structure put in place by the FOI Act, it is not appropriate that the Commission become so involved.

7.5 The *Administrative Decisions Tribunal Act 1997* provides for the establishment of an Administrative Decisions Tribunal which will assume the existing jurisdiction of the NSW District Court to hear appeals regarding decisions taken by administrators on access to documents under the FOI Act. At the time of this Report, this Act had not been proclaimed to commence.

8/ ASSESSMENT AND RECOMMENDATIONS

MATTERS OF CONCERN

8.1 The investigation undertaken by the Commission revealed the following matters of concern regarding the operation of the former Special Branch:

- There was a closed shop approach to recruitment, which led to cronyism and the perpetuation of an outdated culture and outdated practices. There was little rotation in and out of the Special Branch, particularly at management level, and therefore limited injection of fresh blood.

- The Special Branch was virtually unaccountable. The Mission Statement was varied to move with the times, but no effective scrutiny of the Special Branch's activities was undertaken and no attempt made to bring those activities into line with the changing charter. Information gathering on people who posed no threat of politically motivated violence or similar matters continued unabated, despite criticisms of this practice by the Privacy Committee in 1978 and a recommendation for the implementation of guidelines to avoid it.

- There was an unacceptable overlap between the functions of information gathering and protection of VIPs, with unnecessary information being held in relation to VIPs and public figures, rather than those who posed a threat to the VIPs and public figures.

- The relationship between the Special Branch and VIPs appeared capable of extending beyond the provision of VIP protection to protection from the consequences of the individual's own misconduct (the Yeldham case). There is no indication that the provision of this service by Special Branch involved any blackmail or requirement for return favours.

- In addition to no external supervision, there was minimal internal supervision of the administrative activities of the Special Branch staff, such as the creation and destruction of index cards and dossiers, and decisions about what went on to such cards and dossiers. These decisions were made by unsworn clerical staff and by Police officers.

- The destruction of some records may have been in breach of the *Archives Act 1960*. Special Branch management, and at times, senior Police, allowed this destruction to occur without regard to that Act.

- The manual filing systems were anachronistic and unreliable. In addition, documents and firearms which should have been accounted for and properly stored were found in safes and other locations, with no satisfactory explanation of why they were there and how long they had been there. In many cases, it is apparent the items were left by retiring senior officers and there had been no review by their successors of the material.

- There were no satisfactory procedures for the management of informants, and inadequate procedures for managing the cash fund, which was ostensibly

drawn upon to pay informants, but was used at times to fund personal expenses by Special Branch officers. When a new regime which allowed for closer supervision of payments to informants was implemented, a way round that barrier was found by payments to what were described as community contacts.

ROYAL COMMISSION RECOMMENDATIONS

8.2 In its Final Report, the Royal Commission noted that the Police Commissioner had at that time foreshadowed the creation of a new agency to replace the Special Branch, to be called the Protective Security Response Group. (An interim agency was subsequently established and is presently known as the VIP Security Unit.) The Royal Commission supported the creation of the new agency, subject to a number of conditions, one of which was :

- an annual audit by the Deputy Commissioner of Special Operations in conjunction with the Commissioner of the PIC, to ensure that
  - it is performing its charter;
  - its staff are sufficiently aware of its mission statement and have not reverted to the practices of old;
  - it is adhering to strict controls on the use and payment of informants;
  - it has sound operating procedures; and that
  - proper procedures exist for the recording and use of intelligence gathered.[49]

8.3 At the time of this Report, that and some other related matters for which the Royal Commission recorded its support[50], including the proposed functions of the new agency, are under consideration by the Government. The implementation of those matters for which the Royal Commission recorded its support is seen as an imperative by the Police Integrity Commission if the new agency is to have an integrity both as to its operating and record keeping procedures.

[49] Royal Commission into the New South Wales Police Service Final Report (RCPS Final Report), Volume II, p 254.
[50] RCPS Final Report, Volume II, pp 253-55.

THE RECORDS OF THE SPECIAL BRANCH

8.4 A question for consideration is the fate of the existing records of the former Special Branch, in respect of which the following matters are relevant.

8.5 A proportion of the information held by Special Branch can be characterised as being untested reports and allegations relating to political organisations and conflicts within the community. It appears this information was recorded and stored without any attempt to evaluate its veracity. Under a regime of 'best practice', this information would have been compared with other independently sourced data and subjected to an objective analysis concerning its accuracy and utility for further action. Special Branch's practice in simply storing untested and potentially biased reports is significant given the information was frequently derived from individuals involved in, or affected (adversely or otherwise) by a particular political movement or organisation. The Commission considers that the release of this information into the public domain may serve to inflame extant conflicts and disputes within the community.

8.6 Much of the material held by the Special Branch at the time it was disbanded can be identified as interesting historical information, but of no ongoing value. It includes details on demonstrations, meetings, and events which occurred more than 30 years ago. Where those records are reports of public conduct or are compiled from public records, that content might be extracted from the holdings and referred to the Archives Authority from where it might be available for public inspection.

8.7 The records, however, also include material which by its nature may identify the confidential informant source which supplied it. That material needs to be carefully assessed to prevent unintended retribution or revenge. Valid criteria for assessment of the levels of confidentiality to be applied to that information and its sources should be determined. In those circumstances where the source is a person, there continues an obligation to protect those identities, particularly in the light of recent legislative developments requiring protection for whistleblowers. Further, the FOI Act, provides in Schedule 1 at section 4(1)A(b) that a "document is an exempt document if it contains matter the disclosure of which could reasonably be expected...to enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained". This legislation was intended to maintain a level of confidentiality about such documents by exempting them from the inspection provisions of the FOI Act. Because they contain information which is not in the public domain, such records may still be sensitive and may remain so while ever the persons concerned are alive. All such material might be referred to the Archives Authority for storage in accordance with that principle.

8.8 As noted, the Government has decided that there should be a VIP Security Unit within the Police Service, and clearly some of the former Special Branch records would be relevant to the Unit's work.

8.9 The Police Service has recently convened a Working Party, comprising representatives of the Independent Commission Against Corruption, the Archives Authority, ASIO and the Police Service, to give consideration to the proper disposal of the records of the former Special Branch. The Commission has a presence on that Working Party. The Commission believes that the considerations mentioned above should be taken into account by the Working Party, which should make recommendations to the Commissioner of Police for consideration by the Government. The Commission notes that the objective assessment of the records and the making of recommendations on retention or archiving/destruction will be a substantial undertaking but, in conjunction with new criteria which limit future collection to relevant parameters, those existing records can be of continued value to the benefit of the New South Wales community. Similarly, protection of the welfare of prominent persons is a task which requires proper consideration being given to protection planning and strategies. In this area, much work has been performed over several years and it remains valid.

ACCOUNTING FOR PUBLIC MONIES

8.10 As noted, one of the Royal Commission recommendations concerning the successor agency to the Special Branch was that it "adhere to strict controls on the use and payment of informants." It is also apparent to the Police Integrity Commission that there were loopholes in the management of cash accounts operated by the Special Branch. A signature by a member of the Service for receipt of funds is not, of itself, an acceptable verification that the funds have been expended on the legitimate pursuits of the Service. Systems for payment of expenses should require transparent acquittal with the ultimate recipient being identifiable within the annual audit recommended by the Royal Commission.

FURTHER INVESTIGATIONS

8.11 The Police Integrity Commission will not at this stage be undertaking any further investigations in relation to the issues identified in this Report or by the Royal Commission. The officers identified who may have been responsible for improper conduct are no longer in the Service, and it is unlikely that evidence would be obtained to support criminal prosecutions if investigations were to continue. The Commission does not consider that any further investigation by other agencies into these issues is necessary.

RECOMMENDATIONS

The Commission recommends that:

1. The proposals for which the Royal Commission recorded its support concerning the creation of a new agency to replace the former Special Branch should be enacted as a priority.

2. The Working Party convened by the Police Service should make recommendations to the Commissioner of Police for decision by the Government on the ongoing use, archiving, etc of the records of the former Special Branch, taking into account the considerations at paragraphs 8.5 - 8.9.

3. There be no further investigation by other agencies of the issues identified by the Royal Commission into the Police Service and by the Police Integrity Commission.